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DEVELOPMENT AGREEMENT

between

THE CITY OF CARSON

("City")

and

CAM-CARSON, LLC

A Delaware limited liability company

("Developer")

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (together with all exhibits hereto, the "**Agreement**") is made by and between THE CITY OF CARSON ("**City**"), a municipal corporation, and CAM-CARSON, LLC, a Delaware limited liability company ("**Developer**"). City is entering this Agreement for the limited purposes as described below. City and Developer are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**".

RECITALS:

A. **The 157 Acre Site**. Carson Reclamation Authority ("**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 "**157 Acre Site**"). The 157 Acre Site is divided into five Cells (as defined below) as shown on **Exhibit "A"** and was subject to The Carson Marketplace Specific Plan, approved on February 8, 2006, and amended on April 5, 2011 (as so amended, "**The Boulevards at South Bay Specific Plan**" or the "**Boulevards Specific Plan**"). The Boulevards Specific Plan is being further amended concurrently with the approval of this Agreement and, as amended, has been renamed "**The District at South Bay Specific Plan**" also referred to herein as the "**Specific Plan**", a copy of which is attached as **Exhibit "O"**. The portion of the 157 Acre Site which is the subject of this Agreement is identified as "**Planning Area 2**" or "**PA 2**" in the Specific Plan and comprises Cell 2. The 157 Acre Site is a former landfill site, and on October 25, 1995, the California Department of Toxic Substances Control ("**DTSC**") approved a remedial action plan (as further defined below, the "**RAP**") for portions of the 157 Acre Site, which RAP requires the installation, operation and maintenance of the "**Remedial Systems**" (as defined below). Building protection systems ("**BPS**") which are necessary for development on the 157 Acre Site due to the prior landfill use will also be constructed. Although under DTSC rules BPS are not considered a part of the Remedial Systems, for convenience, BPS are included in the term "Remedial Systems" in this Agreement.

B. **Compliance Framework**. DTSC entered into the Compliance Framework Agreement dated as of September 28, 2006, with the then-current property owner, Carson Marketplace LLC ("**CM**"), as amended by the First Amendment to Compliance Framework Agreement dated as of December 31, 2007 (collectively, the "**CFA**") for the purpose of setting forth a plan for addressing the environmental condition of the 157 Acre Site, and the CFA required CM to establish financial assurance for implementation of the RAP, including long-term operation and maintenance of the Remedial Systems. CM sold the 157 Acre Site to Authority on May 20, 2015. Based on the CFA, DTSC continues to have certain oversight rights concerning the development of the 157 Acre Site and agreements affecting the Remedial Systems continue to be subject to DTSC approval.

C. **Authority Remediation of 157 Acre Site**. Immediately prior to the sale of the 157 Acre Site to Authority, CM, Authority, City, and the Successor Agency to the Carson Redevelopment Agency (the "**Successor Agency**") entered into that certain Settlement, Release and Indemnity Agreement dated May 12, 2015, pursuant to which Authority agreed to take title to the 157 Acre Site, and pursuant to which Successor Agency committed to provide Fifty Million Five Hundred Thousand Dollars ($50,500,000) in additional required funding to

Authority through the issuance of taxable bonds. The California Department of Finance provided a determination that the Successor Agency's obligation to provide the such funding is an enforceable obligation of the Successor Agency and that the Department of Finance had no objections to the transfer of the 157 Acre Site from CM to Authority, the issuance of bonds by Successor Agency to provide funding for completion of the remediation work and other infrastructure improvements. The Remedial Systems work is being undertaken with financial assistance being provided by Authority, the Carson Public Financing Authority and the Successor Agency through the issuance of multiple series of bonds.

D. **Authority to Transfer Ownership through Conveyancing Agreement**. For the purpose of developing the PA 2 portion of the 157 Acre Site as a high-quality regional fashion outlet and retail shopping center: (1) Authority, City and Developer entered into (i) that certain Exclusive Agreement to Negotiate on July 7, 2016, which was amended and restated in its entirety on June 20, 2017 (as so amended and restated, the "**ARENA**") and (ii) that certain Reimbursement Agreement dated as of July 7, 2016, pursuant to which Developer agreed to reimburse City and Authority for their respective costs in negotiating the Project Agreements (as defined below) and various other preliminary agreements, and to Advance certain of Authority's costs for holding the 157 Acre Site ("**Reimbursement Agreement**"), and (2) Authority and Developer entered into an implementing Memorandum of Understanding dated June 20, 2017 ("**MOU**").

E. **Project Agreements**. Concurrently with approval of this Agreement, it is anticipated that (1) Authority will enter into a purchase and sale agreement with Developer (as further defined in Section 1.37, the "**Conveyancing Agreement**") whereby Authority will convey and Developer will acquire the Developer Property (as defined below) comprising the interests in real property (including certain easement agreements, as described therein, necessary for a binding development agreement) and (2) City will enter into a cooperation agreement with Authority ("**Cooperation Agreement**") whereby Authority would agree to construct certain public infrastructure on behalf of City and City would agree to provide sales tax proceeds to Authority to enable Authority to meet its obligations to, among other things, remediate Cell 2 and construct the Offsite Improvements (as defined below). The effectiveness of this Agreement, the Cooperation Agreement and the Conveyancing Agreement are contingent, one on the other, as provided herein. Specifically, the effectiveness of this Agreement is conditioned on approval, execution and effectiveness of each of the Conveyancing Agreement and the Cooperation Agreement. The priority of various agreements is further described in Section 16.3.2. As required by the DA Statute as a condition to execution by City of this Agreement, the Conveyancing Agreement provides Developer with a legal or equitable interest in the portion of the 157 Acre Site described in Recital F as the Developer Property.

F. **Developer Property**. The 157 Acre Site has been vertically subdivided into a surface lot (the "**Surface Lot**") and a subsurface lot (the "**Subsurface Lot**") as more fully described on **Exhibit "B"**. Due to the contaminated condition of the 157 Acre Site, the intent of Developer to acquire only non-contaminated property and the likelihood of settlement of the former landfill contents over time, it is intended by Authority and Developer, as further described in the Conveyancing Agreement, that Authority shall (i) retain the Subsurface Lot and the "**Embankment Lot**", comprising a 5 acre strip of land within Cell 2 lying along the I-405

Freeway and between the freeway and the Cell 2 Surface Lot (as defined below) and (ii) convey to Developer: (1) fee title to approximately 41 acres of the Surface Lot as more particularly described on **Exhibit "C-1"** (but subject to modifications to the vertical subdivision as further described in the Conveyancing Agreement and excluding easements reserved by or granted to Authority by Developer for construction, operation, maintenance, use, repair and replacement of the BPS); (2) an exclusive easement in certain portions of the land underlying the Surface Lot as legally described in **Exhibit "C-2"** ("**Subsidence Easement Area**") as may be required to permit Developer to construct the Project (such land described in clauses (ii)(1) and (ii)(2) above to be conveyed by Authority to Developer by deed or exclusive easement being referred to herein collectively as the "**Cell 2 Surface Lot**"); and (3) an exclusive easement in a portion of the Embankment Lot as more particularly shown on **Exhibit "C-3"** ("**Pylon Sign Easement Area**") for purposes of allowing Developer to erect, maintain and use the Developer Pylon Sign (as defined below), and an access easement upon the Embankment Lot for purposes of construction, operation, use, maintenance, repair and replacement of the Developer Pylon Sign. The real property interests comprising the Cell 2 Surface Lot, the Pylon Sign Easement Area and such other easements and rights, if any, with respect to the 157 Acre Site as Developer may acquire from Authority pursuant to the Conveyancing Agreement are referred to herein collectively as the "**Developer Property**". Authority will retain all portions of the Subsurface Lot and Surface Lot other than the Developer Property. It is anticipated that Authority will convey the various components of the Developer Property pursuant to metes and bounds description and that City will, upon due consideration of same, provide a certificate of compliance pursuant to the Subdivision Map Act as to each parcel so created.

G. **Choice of Developer for Site Development**. Cell 2 is located directly southwest of the I-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. Developer previously investigated the development of a portion of the 157 Acre Site when it was owned by a prior entity, and consequently has a working understanding of the development constraints and environmental conditions, and continues to conduct its due diligence investigations thereof. As described below, Developer has proposed a unique project with components which have the financial strength to generate a reasonable share of the significant remediation and infrastructure costs of development, and Developer has the financial strength to meet its financial obligations hereunder. 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, and the ability to attract reputable commercial tenants. Developer, headquartered in Santa Monica, has substantial local experience in development.

H. **The Project**. Prior development projects have been proposed on the 157 Acre Property as described above, including the mixed-use regional retail and entertainment project described by the Boulevards Specific Plan and a 75,000-seat NFL Stadium. These projects have not proceeded. Developer has proposed development of the Developer Property, to include a state-of-the-art first class regional fashion outlet and retail mall (as further defined in Section 1.93, the "**Project**"). Developer shall endeavor to maintain high standards of urban design, architecture, and development, including "Cal-Green" and LEED building standards, adherence to building codes (subject to such variances as City may approve), best practices for

environmental protection, energy efficiency, water conservation, and reduced greenhouse gas emissions. The Project and its phasing are described in more detail in the Scope of Development attached hereto as **Exhibit "D"**. The Project is proposed to be constructed in two Phases (as defined below), with Phase I comprising approximately 65-70% of the development authorized by the Site Plan and Design Review approved by the City as part of the Existing Development Approvals.

I. **Environmental Review**. The original Carson Marketplace Specific Plan was subject to extensive environmental review with a Final EIR certified by the City Council on February 8, 2006, and was thereafter subject to legal challenge in *Carson Coalition for Healthy Families v. City of Carson/Carson RDA, LASC Case No. BS102076*, which case the City and former Carson Redevelopment Agency prevailed on both in the trial court and the Court of Appeal (Appellate Case No. B194923). An addendum to the Final EIR was approved by City in 2009. The District at South Bay Specific Plan and the Project have been subject to further environmental review including preparation of a final supplemental EIR as described in Recital N.

J. **Development of Remainder of the 157 Acre Site**. Authority, through a request for proposal process dated June 28, 2016, and a second process dated October 25, 2017, solicited some thirty-five developers to consider development of the other Cells of the 157 Acre Site, being Cells 1, 3, 4, and 5 as depicted on **Exhibit "A"**, comprising approximately 110 acres (the "**Remainder Site**"). Authority intends to enter into exclusive negotiating agreements with one to three developers (the "**Remainder Developers**") for development of the Remainder Site, to facilitate cooperation among these developers and Developer to achieve integrated projects to maximize the development potential of the 157 Acre Site.

K. **Public Benefits of the Project**. Appropriate development of the 157 Acre Site is expected to realize significant regional and community public benefits, including, without limitation:

1. *Increased Tax Revenues*. Due to the strategic location at the meeting place between Orange County, Long Beach, and Los Angeles, there is great potential for increased revenue through proper site development. The Project is estimated to produce over Three Million ($3,000,000) in annual sales taxes. The development of the 157 Acre Site as planned could result in increased real property taxes, sales taxes, transient occupancy taxes, and other revenues to City exceeding Five Million Dollars ($5,000,000) to Seven Million Dollars ($7,000,000) per year.

2. *Overcoming Constraint of Remediation Cost.* The 157 Acre Site is the only major undeveloped property exceeding 100 acres along the I-405 Freeway in an approximately 75-mile run. This continued vacancy is due to the extraordinary remediation costs, estimated to exceed One Hundred Fifty Million Dollars ($150,000,000), necessary to develop the 157 Acre Site. Many development projects have been proposed for this site over some four decades, but none have been financially feasible because of the environmental and soils condition of the 157 Acre Site as a result of its use as a Class II landfill. This Project represents a unique opportunity to develop the 157 Acre Site.

3. *Community Center.* The unique development is proposed to be a community and regional focus of economic and social activity helping, along with the South Bay Pavilion, to provide a new community center for Carson, and giving it a regional presence competitive with other major regional centers in the highly competitive Los Angeles market area.

4. *Job Generation.* The Project entails a land use and infrastructure plan that will support the creation of a major job center in the City and significantly improve the City's jobs to housing balance. The Project is proposed to provide substantial economic and employment opportunities for the community, with a goal of generating at least 1,600 new direct construction jobs, with another 1,000 indirect and induced, as well as 1,500 new permanent jobs.

5. *Insurance.* The Project contributes to a robust insurance program for the 157 Acre Site to provide coverage against environmental claims and provides protection to the public entities, developers, property owners and contractors carrying out construction on the 157 Acre Site, including coverage for general liability, personal injury, property damage and other claims and to which Developer pays its fair share as provided in Article 13. Total insurance coverage provided is almost One Billion Dollars ($1,000,000,000) for all types of insurance provided by the program.

6. *Carry Costs.* As part of Developer's agreement with Authority to acquire the Developer Property, Developer will agree to reimburse Authority for a proportional share of the Carry Costs (as defined below) of the 157 Acre Site, in an amount exceeding One Hundred Twenty-Five Thousand Dollars ($125,000) per month.

In exchange for these benefits to City and the other public benefits described herein, Developer desires to receive the assurance that it may proceed with development of the Project in accordance with the terms and conditions of this Agreement including without limitation the vested rights specified herein, all as more particularly set forth herein.

L. **Summary of Certain Terms of Related Agreements**. In addition to the conveyance of the Developer Property pursuant to the Conveyancing Agreement, Authority will agree to carry out the following work and to provide the following assurances to City and Developer:

1. *Remedial Systems.* The RAP requires that the Remedial Systems be constructed and operated and maintained for many years to cap the landfill and remove gas and contaminants which would pollute groundwater. This work includes preparing the 157 Acre Site, relocation and mitigation of trash layers and excavation and grading necessary to install such systems. Authority will cause the construction of the Remedial Systems at its sole cost, including the BPS, which shall be funded by Authority up to an agreed upon dollar cap. Operation and maintenance of the Remedial Systems shall be carried out by the Authority and funded through the Remediation CFD as the same may be restructured pursuant to Section 14.4.

2. *Infrastructure.* By agreement with City, Authority will construct required public offsite infrastructure and other improvements identified in **Exhibit "E"** hereto (as further defined in Section 1.83 below, the "**Offsite Improvements**"). Due to Authority's lack of resources, Developer will advance Ten Million Dollars ($10,000,000) for this purpose.

3. *Excess Development Costs.* Due to the contaminated condition of the 157 Acre Site and uncompacted condition of the soils thereon, resulting in excessive development costs, the 157 Acre Site has been undevelopable despite the interest of numerous developers over decades. These costs include grading and site work, and installing structural sub-foundation systems including piles, all of which must be done in contaminated soils using special safeguards. More specifically, prior to conveyance of the Developer Property to Developer, Authority shall carry out the work on Cell 2 defined in the Conveyancing Agreement as the "**Site Development Improvements**", which includes the following: (i) installation of piles and pile caps, vaults, under slab utilities ("**Sub-Foundation Work**"); (ii) establishing underground utility runs from the property lines to the utility shelves connected to the buildings ("**Utility Work**"); (iii) constructing the structural slab for the foundation of the buildings ("**Foundation Work**"). As described in the Conveyancing Agreement, Developer shall advance funds (the "**Advances**") to Authority for purposes of performing the Site Development Improvements and Offsite Improvements (collectively referred to herein as the "**Authority Work**"). The Advances shall be repaid by Authority to Developer over a twenty-five (25) year period subject to the terms of the Conveyancing Agreement. While the Authority shall perform the maintenance of the Site Development Improvements, Developer shall be responsible for the cost of such maintenance as set forth in the Conveyancing Agreement.

4. *Marketability of Property.* To remediate contamination of the 157 Acre Site and to make the property marketable in order to create economic development opportunities for the benefit of City and its residents, City caused Authority to be formed and is providing funding to Authority in the form of a rebate of up to fifty percent (50%) of sales taxes generated by the Project and received by City upon the terms and conditions and for the term set forth in the Cooperation Agreement and Conveyancing Agreement. This assistance will allow Authority to perform the Authority Work. In the absence of performance of the Authority Work by Authority, the landfill would remain contaminated brownfields property and would not be marketable.

5. *Schedule.* This Agreement requires the Project as approved to be developed in accordance with a Schedule of Performance provided in **Exhibit "L"**.

6. *Annual Review.* There is a requirement for annual review of Project performance and a five-year Major Review including public hearings as provided in Article 10.

7. *Insurance.* The Project contributes to a robust insurance program, for which Developer is required to make a fair share contribution as described in the Conveyancing Agreement.

8. *Indemnity.* Developer is covering a proportional share of the Carry Cost of the 157 Acre Site as set forth in the Conveyancing Agreement and pays for defense of any challenges to Project entitlements, as provided in Article 13.

M. **City Role with respect to Project**. City has no real property interest in the 157 Acre Site, which is wholly-owned by Authority. However, City possesses the legal authority to regulate the zoning of the 157 Acre Site, 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 including the Project and with reference to the Conditions of Approval, the SEIR and the SEIR Mitigation Measures applicable to the foregoing (the "**Entitlement Obligations**"). In addition to such regulatory authority, City provides public infrastructure and services to the 157 Acre Site, including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities, and must assure public accessibility to the 157 Acre Site including, without limitation, by assuring construction of the Offsite Improvements (the "**Infrastructure Obligations**"). Pursuant to the Cooperation Agreement and as further set forth therein, City will contract with Authority to cause Authority to construct the Infrastructure Obligations. In addition, in order to make the Project feasible and thereby realize the many benefits to City of the Project, City and Authority have negotiated a sales tax sharing agreement and provided for certain other related financial obligations of City as further described in the Cooperation Agreement to provide a revenue stream to Authority for repayment of Developer's Advances.

N. **Public Hearings: Findings**. In connection with the request for the Existing Development Approvals, a Supplemental Environmental Impact Report for the District at South Bay Specific Plan, State Clearinghouse No. 2005051059 (the "**SEIR**") was prepared by City in compliance with CEQA. On January 23, 2018, the Planning Commission of City, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, (i) held a public hearing on Authority's application for amendment of the Boulevards Specific Plan and Developer's application for Site Plan and Design Review and Comprehensive Sign Program, each as specified on **Exhibit "J"**, (ii) recommended to the City Council certification of the SEIR pursuant to Resolution No. 18-2620 and the adoption of the Specific Plan pursuant to Resolution No. 18-2621 and adopted the Site Plan and Design Review (DOR) and Comprehensive Sign Program, pursuant to Resolution No. 18-2622. On March 21, 2018, the Planning Commission held a public hearing on Developer's application for this Agreement and recommended approval to the City Council. On April 3, 2018, the City Council, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the proposed amendment to the Specific Plan and this Agreement, and after making appropriate findings, (i) pursuant to Resolution No. ___, adopted on April 3, 2018 certified the SEIR as in compliance with CEQA, adopted a statement of overriding considerations and adopted a mitigation monitoring and reporting program for the SEIR, (ii) adopted the Specific Plan amendment pursuant to Resolution No. ___ on April 3, 2018, and (iii) on April 10, 2018, adopted Ordinance No. 18-___ approving this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of City.

O. **Mutual Agreement**. Based on the foregoing and subject to the terms and conditions set forth herein, Developer and City desire to enter into this Agreement.

P. **Agreements Control Over Recitals**. The Parties acknowledge that the foregoing Recitals are intended to provide a general overview of the matters contemplated by this Agreement and related agreements being entered into concurrently herewith, but that the detail and specificity required for such transactions is contained only in the body of this Agreement and the Project Agreements, and therefore in the event of any conflict or inconsistency, the

provisions contained below in the body of this Agreement and the Project Agreements shall control.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Agreement, the Parties agree as follows:

ARTICLE 1. DEFINITIONS.

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below.

1.1 157 Acre Site. The "157 Acre Site" is that approximately 157 gross acres of real properly in the City of Carson, as shown on the Site Map attached hereto as **Exhibit "A"**. The 157 Acre Site is divided into five (5) Cells as shown on **Exhibit "A"** and is subject to the Specific Plan.

1.2 Actual Knowledge. "Actual Knowledge" shall have the meaning set forth in Section 14.7.

1.3 Advances. "Advances" shall have the meaning set forth in Recital L.

1.4 Agreement. "Agreement" means this Development Agreement, with all exhibits hereto, by and between City and Developer.

1.5 Anniversary Date. "Anniversary Date" means the date of the anniversary of each year following the Effective Date of this Agreement.

1.6 Annual Review. "Annual Review" means the annual review of Developer's performance of the Agreement in accordance with Article 10 of the Agreement and Government Code § 65865.1.

1.7 Applicable Future Rules. "Applicable Future Rules" shall have the meaning set forth in Section 8.2.1.

1.8 Applicable Law. "Applicable Law" means all statutes, rules, regulations, ordinances, resolutions, official policies, guidelines, actions, determinations, permits, orders, or requirements of the federal, State, County, City and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the Remedial Systems, the 157 Acre Site, or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, subdivision, non-discrimination, prevailing wages if applicable, and DTSC regulations. All references herein to Applicable Law include subsequent amendments or modifications thereof, unless otherwise specifically limited in this Agreement.

1.9 Application. "Application" means an application (whether discretionary or ministerial) for a Development Approval meeting all of the terms of the Specific Plan or when the terms of the Specific Plan do not address a particular permit, then meeting the terms of the Zoning Code and other Existing Land Use Regulations.

1.10 ARENA. "ARENA" means the Amended and Restated Exclusive Negotiation Agreement between Authority, City and Developer dated June 20, 2017.

1.11 Assignment. All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.

1.12 Authority. "Authority" means the Carson Reclamation Authority established on February 17, 2015, through the adoption of a Joint Powers Agreement and the Bylaws of the Carson Reclamation Authority by the members. The First Amended Joint Powers Agreement of the Carson Reclamation Authority was approved March 17, 2015, and being a joint powers authority organized under Government Code Section 6500 et seq., with the members being the Housing Authority and Community Facilities Districts of City.

1.13 Authority Work. "Authority Work" shall mean collectively (i) the Site Development Improvements and (ii) the Offsite Improvements.

1.14 Boulevards Specific Plan. "Boulevards Specific Plan shall have the meaning set forth in Recital A.

1.15 BPS. "BPS" shall have the meaning set forth in Recital A and as more fully described in the Conveyancing Agreement in Section 6.1.

1.16 Carry Costs. "Carry Costs" means those costs associated with ownership by Authority of the 157 Acre Site and operation of the Remedial Systems, as further defined and described in Section 12.2 of the Conveyancing Agreement.

1.17 Cell 2 CC&Rs. "Cell 2 CC&Rs" shall have the meaning set forth in Section 14.3.

1.18 Cell 2 Surface Lot. "Cell 2 Surface Lot" shall have the meaning set forth in Recital F.

1.19 Cells. "Cells" means each of the five (5) designated cells described in the RAP within the 157 Acre Site, as delineated in **Exhibit "A"**.

1.20 CEQA. "CEQA" means the California Environmental Quality Act, Section 21000 *et seq.* of the California Public Resources Code and its implementing regulations and guidelines, including future amendments to or recodification thereof.

1.21 Certificate of Review. "Certificate of Review" means the certificate issued by City at the request of Developer following each Annual Review or Major Review to evidence compliance by Developer with the terms of this Agreement.

1.22 Certificate of Completion. "Certificate of Completion" shall have the meaning set forth in Section 5.8.

1.23 Certificate of Occupancy. "Certificate of Occupancy," with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by City with respect to such building or other work of improvement.

1.24 CFA. "CFA" shall have the meaning set forth in Recital B.

1.25 CFD. "CFD" shall have the meaning set forth in Section 14.4.2.

1.26 City. "City" means the City of Carson, California.

1.27 City Attorney. "City Attorney" means the City Attorney for the City of Carson or his or her designee.

1.28 City Council. The "City Council" means the governing body of City.

1.29 City Delay. "City Delay" shall have the meaning set forth in Section 5.6.

1.30 City Manager. "City Manager" means City Manager of City.

1.31 City Pylon Sign. "City Pylon Sign" shall have the meaning set forth in Section 4.7.2.

1.32 Claims or Litigation. "Claims or Litigation" means any litigation, administrative action or other adversarial proceeding, brought by adjacent owners or any other third parties challenging (i) the legality, validity or adequacy of (1) this Agreement, (2) the Existing Development Approvals, (3) any Future Development Approvals, (4) the General Plan or Land Use Regulations to the extent arising in the context of a challenge to or affecting implementation of any of the foregoing Development Approvals, or (5) other actions of City pertaining to the Project, or (ii) seeking damages against City as a consequence of the foregoing actions. "Claims or Litigation" shall also include any referendum involving the approval of this Agreement, any of the Existing Development Approvals or Future Development Approvals.

1.33 CM. "CM" shall have the meaning set forth in Recital B.

1.34 Collateral Assignment of Cooperation Agreement. "Collateral Assignment of Cooperation Agreement" shall have the meaning set forth in Section 9.2.

1.35 Conditions of Approval. "Conditions of Approval" means those conditions to development of the Project imposed pursuant to the Existing Development Approvals and attached hereto as **Exhibit "I"**.

1.36 Consumer Price Index. "Consumer Price Index" shall mean the index established by the Bureau of Labor Statistics based on information made available from the Bureau of Labor Statistics for the Index – All Items – 1982-84 = 100 for the smallest geographic area that includes City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

1.37 Conveyancing Agreement. "Conveyancing Agreement" means the agreement between Authority and Developer to be approved by Authority substantially concurrently with approval by City of this Agreement as described in Recital E hereof for Authority's conveyance to Developer of the Developer Property for development of the Project.

1.38 Cooperation Agreement. "Cooperation Agreement" shall have the meaning set forth in Recital E.

1.39 Default. "Default" refers to any material default, breach, or violation of a provision of this Agreement as defined in Article 11 below for which a Notice of Default has been given and the time period for cure has passed without cure thereof. "City Default" refers to a Default by City, while "Developer Default" refers to a Default by the Developer.

1.40 Defaulting Party. "Defaulting Party" shall have the meaning set forth in Section 11.1.

1.41 Developer. "Developer" means CAM-CARSON, LLC, a Delaware limited liability company.

1.42 Developer Property. "Developer Property" shall have the meaning set forth in Recital F.

1.43 Developer Pylon Sign. "Developer Pylon Sign" shall have the meaning set forth in Section 4.7.2.

1.44 Development Agreement Statute. "Development Agreement Statute" means Sections 65864 through 65869.5 of the Government Code as it exists on the date the City Council approves this Agreement and as it may be subsequently amended.

1.45 Development Approvals. "Development Approvals" means the following (to the extent applicable to the Developer Property only and not generally applicable to some or all other properties within City), land use approvals, plans, maps, permits and entitlements of every kind and nature, including, but not limited to, Specific Plan amendments, General Plan or Zoning Code amendments, site plans, tentative and final subdivision maps, vesting tentative maps, variances, zoning designations, site plan and design review approvals, administrative permits, conditional use permits, sign program permits and approvals, review of building, signage or landscape plans, amendments and minor modifications and/or operating memoranda to this Agreement; parcel maps, tentative tract maps, subdivision improvement agreements, lot line adjustments, certificates of compliance, planning, engineering or other approvals required pursuant to the Conditions of Approval, grading, building and other similar permits affecting the Developer Property and other more detailed planning or engineering approvals, environmental

assessments, including without limitation environmental impact reports, addenda, initial studies and mitigated negative declarations affecting the Developer Property, any amendments or modifications to those plans, maps, permits, assessments and entitlements and all conditions of approval legally required by City with respect to development of the Developer Property, as a condition to subdivision of the 157 Acre Site and/or implementation of the Project in accordance with this Agreement. The term Development Approvals includes both the Existing Development Approvals and Future Development Approvals, but does not include rules, regulations, policies, and other enactments of general application within the City.

1.46 Development Impact Fees. "Development Impact Fees" means a monetary fee or exaction other than a tax or special assessment that is charged by a local governmental agency to an 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 development project, pursuant to Government Code Section 66000(b). Development Impact Fees includes, without limitation, fees imposed by the City or any entity under the control of the City, with respect to connection to, construction or use of utilities, wastewater, storm drains, solid waste and water (potable and reclaimed); public transit, including public transportation services and initiatives; traffic improvements and operations; affordable housing; sustainability or green initiatives; capital facilities fees for government buildings, land, and equipment; Sheriff and fire protection facilities, including stations and equipment, parkland development, improvements, parkland acquisition, services, and initiatives, library fees.

1.47 Development Plan. "Development Plan" means the Existing Development Approvals, the Existing Land Use Regulations and any then-approved Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement.

1.48 Development PLL. "Development PLL" shall have the meaning set forth in Section 13.2.

1.49 Development Standards. "Development Standards" means the development standards set forth in the Specific Plan.

1.50 DIR. "DIR" shall mean the Department of Industrial Relations.

1.51 Director. "Director" means the City's Director of Community Development or equivalent official. The Director shall be deemed the City's compliance officer for monitoring Developer's performance hereunder.

1.52 DTSC. "DTSC" means the California Department of Toxic Substances Control.

1.53 Easement Agreements. "Easement Agreements" means those certain easements to be granted by Authority in favor of Developer: (i) to provide access, development, operation and use rights for the Developer Pylon Sign in the Embankment Lot and (ii) to allow for subsidence of parking lot areas into the Subsurface Lot.

1.54 Effective Date. "Effective Date" means the latest of the following dates: (i) the date this Agreement becomes effective pursuant to the Development Agreement Statute; (ii) the date all necessary hearings have been held and the Existing Development Approvals have been granted; (iii) the filing of a Notice of Determination with the Recorder of Los Angeles County; and (iv) the date this Agreement has been executed by both Parties, which execution shall take place concurrently with execution of the Conveyancing Agreement by Authority and Developer and the Cooperation Agreement by City and Authority.

1.55 Embankment Lot. "Embankment Lot" shall have the meaning set forth in Recital F.

1.56 Entitlement Obligations. "Entitlement Obligations" shall have the meaning set forth in Recital M.

1.57 Entry Plazas. "Entry Plazas" shall have the meaning set forth in Section 4.6.

1.58 Entry Signs. "Entry Signs" shall have the meaning set forth in Section 4.6.

1.59 Existing CFDs. "Existing CFDs" shall have the meaning set forth in Section 14.4.1.

1.60 Existing Development Approvals. "Existing Development Approvals" means (i) the Development Approvals listed on **Exhibit "J"**, regardless of when the permits and approvals listed in **Exhibit "J"** actually take effect, and (ii) Project Agreements. Regardless of when the Project Agreements actually take effect, the Parties acknowledge and agree that the Project Agreements shall be deemed concurrent to the Effective Date of this Agreement.

1.61 Existing Land Use Regulations. "Existing Land Use Regulations" or "Existing Regulations" means those Land Use Regulations applicable to the Developer Property in effect on the date the City Council approves this Agreement.

1.62 Final Adverse Judgment. "Final Adverse Judgment" means, as to any Claims or Litigation involving litigation, administrative action or other adverse proceeding in the nature of litigation with respect to the Existing Development Approvals or the Project Agreements, the final unappealable judgment of the highest court with jurisdiction over the Claims or Litigation (or expiration of the period in which to file an appeal without appeal having been filed), which judgment sets aside approval of this Agreement, the Conveyancing Agreement, the Cooperation Agreement or any of the Existing Development Approvals.

1.63 Force Majeure. "Force Majeure" shall have the meaning set forth in Section 16.2.

1.64 Foundation Work. "Foundation Work" is a part of the Site Development Improvements described in Section 1.110.

1.65 Future Development Approvals. "Future Development Approvals" means any discretionary or ministerial Development Approval implementing the Project or regulating development or use of the Developer Property for which an Application or request is made or approved by Developer and for which the City grants approval after the Effective Date. A list of specifically-anticipated and agreed-upon Future Development Approvals is attached hereto at **Exhibit "K"**, but the list of Future Development Approvals is not limited by this list.

1.66 Future Land Use Regulations. "Future Land Use Regulations" means Land Use Regulations enacted after the date this Agreement is approved by the City Council in accordance with this Agreement.

1.67 GBA. "GBA" means the gross buildable area of the Project, which shall have the meaning set forth in the Specific Plan.

1.68 General Plan. "General Plan" means the City's General Plan as it exists on the date the City Council approves this Agreement.

1.69 Grading Permit. "Grading Permit" means a permit issued by the City's Division of Building and Safety which allows the excavation or filling, or any combination thereof, of earth.

1.70 Infrastructure CFD. "Infrastructure CFD" shall have the meaning set forth in Section 14.4.1.

1.71 Infrastructure Obligations. "Infrastructure Obligations" shall have the meaning set forth in Recital M.

1.72 Land Use Regulations. "Land Use Regulations" means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of City which affect, govern, or apply to the Project or regulate development or use of the Developer Property. Land Use Regulations include, without limitation, the ordinances and regulations adopted by City which govern permitted uses of land, the density and intensity of use, the architectural review, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project and the Developer Property, including, but not limited to, the SEIR and SEIR Mitigation Measures, the Zoning Code, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development impact fees, exactions, dedication requirements or other development-related fees or charges, subdivision and park codes, any other similar or related codes and building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term "Land Use Regulations" does not include, however, regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building codes; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; or similar matters.

1.73 Lender. "Lender" shall have the meaning set forth in Section 15.1.

1.74 Major Review. "Major Review" shall have the meaning set forth in Section 10.4.

1.75 Master Sign Program. "Master Sign Program" shall have the meaning set forth in Section 4.7.5.

1.76 Minor Modifications. "Minor Modifications" means those changes to this Agreement and the Development Plan which can be made administratively as set forth in Section 7.4.1.

1.77 MOU. "MOU" means that certain Memorandum of Understanding between Authority and Developer dated June 20, 2017.

1.78 Mortgage. "Mortgage" shall have the meaning set forth in Section 15.1.

1.79 Municipal Code. "Municipal Code" means City of Carson's Municipal Code as it existed on the date the City Council approves this Agreement and as it may be amended from time to time consistent with the terms of this Agreement.

1.80 Non-Defaulting Party. "Non-Defaulting Party" shall have the meaning set forth in Section 11.1.

1.81 Notice of Default. "Notice of Default" shall have the meaning set forth in Section 11.4.

1.82 O&M. "O&M" shall have the meaning set forth in Section 14.4.2.

1.83 Offsite Improvements. "Offsite Improvements" means those infrastructure, utilities and other improvements to serve the 157 Acre Site as identified in **Exhibit "E"** hereto, most of which are outside the boundaries of the Cell 2 Surface Lot including, without limitation, as required by the SEIR, the SEIR Mitigation Measures and the Conditions of Approval.

1.84 Operating Memoranda. "Operating Memoranda shall have the meaning set forth in Section 7.4.2.

1.85 Party or Parties. "Party" or "Parties" shall have the definition set forth in the preamble to this Agreement.

1.86 Performance Review. "Performance Review" shall have the meaning set forth in Section 10.6.

1.87 Permitted Land Uses. "Permitted Land Uses" means all land uses permitted by the Specific Plan for Planning Area 2 as of right or permitted with issuance of the appropriate administrative permit, conditional use permit, variance and/or site plan and design review approval, as the case may be, as further described in Section 6 of the Specific Plan,

including without limitation Tables 6.1 and 6.2 thereof. Permitted Land Uses shall specifically exclude the Prohibited Uses.

1.88 Permitted Transfer. "Permitted Transfer" shall have the meaning set forth in Section 12.1.

1.89 Phase, Phase I, Phase II, Phases. "Phase" shall mean each of "Phase I" and "Phase II", as the same are defined in Section 5.7, and Phases shall mean Phase I and Phase II, collectively.

1.90 Planning Commission. "Planning Commission" means the Planning Commission of City.

1.91 Processing Fees. "Processing Fees" means (i) City's normal fees for processing, tentative tracts/cell map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover City's costs associated with processing, review and inspection of Applications, plans, specifications, etc., and (ii) any fees required pursuant to any Uniform Code described in Section 8.2.3, but specifically excluding Development Impact Fees and other fees or exactions of similar type or nature. Developer is required to pay City's normal and customary Processing Fees, which Processing Fees are not subject to limitation hereunder except pursuant to City's general police power authority.

1.92 Prohibited Uses. "Prohibited Uses" shall have the meaning set forth in **Exhibit "N"**.

1.93 Project. "Project" means the development of high-quality, state of the art, fashion outlet and retail center of not less than 450,000 GBA square feet (for Phase I only) and up to 711,500 GBA square feet (taking into account Phase I and Phase II, which may be developed separately, concurrently or not at all, at the option of Developer), which may include, at the sole discretion of Developer, sit-down restaurant space of up to 15,000 GBA square feet, a VIP cocktail lounge, and the various take-out and on-site food and alcohol service uses permitted by right or with an administrative use permit or conditional use permit (in each case upon the approval by City of such permit) in the Specific Plan, and related signage on the Developer Property pursuant to this Agreement and the Development Plan, as described more specifically in the Scope of Development attached hereto as **Exhibit "D"**. The definition of Project includes the preparation of designs for, and improvement of, the Developer Property for purposes of effecting the structures and improvements comprising the Project including, without limitation: design, grading, the construction of infrastructure related to the Project, whether located within or outside the Developer Property; the construction of structures and buildings; construction in connection with leasing of the Project, including, without limitation, installation of tenant improvements; installation of landscaping; installation of signs, including, without limitation, the Developer Pylon Sign, the Entry Signs and other signs described in the Development Plan; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, sign, improvement, leased premises or facility after the construction and completion thereof.

1.94 Project Agreements. "Project Agreements" means, collectively, this Agreement, the Conveyancing Agreement, the Cooperation Agreement and the Collateral Assignment of Cooperation Agreement and the legally authorized amendments thereto.

1.95 Pylon Signs. "Pylon Signs" shall mean the freestanding digital and static freeway-oriented icon pylon signs described in Section 4.7.2.

1.96 Pylon Sign Easement Area. "Pylon Sign Easement Area" shall have the meaning set forth in Recital F.

1.97 RAP. "RAP" means the DTSC-approved a Remedial Action Plan for portions of the 157 Acre Site, which RAP requires the installation, operation and maintenance of Remedial Systems.

1.98 Reimbursement Agreement. "Reimbursement Agreement" shall have the meaning set forth in Recital D.

1.99 Remainder Developers. "Remainder Developers" shall have the meaning set forth in Recital J.

1.100 Remainder Site. "Remainder Site" shall have the meaning set forth in Recital J.

1.101 Remedial Systems. "Remedial Systems" means the installation, operation and maintenance of all required Remedial Systems, including without limitation a landfill liner and cap, gas collection and control system, and groundwater extraction and treatment system on the 157 Acre Site, the soil excavation and grading work to accommodate such systems, and including any other mitigation measures required by Applicable Law with respect to hazardous materials currently located on the 157 Acre Site. Although Remedial Systems do not include BPS under DTSC rules, for purposes hereof, BPS systems are included in the term Remedial Systems.

1.102 Remediation CFD. "Remediation CFD" shall have the meaning set forth in Section 14.4.1.

1.103 Reservation of Authority. "Reservation of Authority" means the reservation of Authority to City as set forth in Article 8.

1.104 Sales Tax Assistance. "Sales Tax Assistance" means the reimbursement by Authority to Developer of Developer's advances for Offsite Improvements and the Site Development Improvements pursuant to Section 7 of the Conveyancing Agreement, which reimbursements shall be funded by payments by City to Authority pursuant to the Cooperation Agreement. The Sales Tax Assistance is generally described as up to fifty percent (50%) of the sales taxes resulting from operations on the Developer Property for a term of up to twenty-five (25) years, but is governed by the specific formula set forth in the Conveyancing Agreement.

1.105 Scope of Development. "Scope of Development" means the description of the Project and the manner in which it will be developed as set forth in **Exhibit "D"**.

1.106 Schedule of Performance. "Schedule of Performance" means the timeline for performance of the Project as set forth in **Exhibit "L"**, and as it may be amended from time to time.

1.107 SEIR. "SEIR" shall have the meaning set forth in Recital N. The term "SEIR" is deemed to include all provisions of the 2006 Final EIR and 2009 addendum described in Recital I.

1.108 SEIR Mitigation Measures. "SEIR Mitigation Measures" means the Mitigation Measures attached hereto as **Exhibit "H"**.

1.109 Sheriff. "Sheriff" shall have the meaning set forth in Section 4.3.2.

1.110 Site Development Improvements. "Site Development Improvements" shall mean the improvements to be constructed within Cell 2 by the Authority and include: (i) installation of piles and pile caps, vaults, under slab utilities ("Sub-Foundation Work"); (ii) establishing underground utility runs from the property lines to the utility shelves connected to the buildings ("Utility Work"); and (iii) constructing the structural slab for the foundation of the buildings ("Foundation Work"), all as set forth in Recital L and as more specifically described in Section 5 of the Conveyancing Agreement.

1.111 Specific Plan. "Specific Plan" shall have the meaning set forth in Recital A.

1.112 State Board. "State Board" means the California State Board of Equalization.

1.113 Subdivision Map Act. "Subdivision Map Act" means Government Code § 66412 *et seq.* as implemented by Title IX, Chapter 2 of the Municipal Code.

1.114 Sub-Foundation Work. "Sub-Foundation Work" is part of the Site Development Improvements described in Section 1.110.

1.115 Subsidence Easement Area. "Subsidence Easement Area" has the meaning set forth in Recital F.

1.116 Subsurface Lot. "Subsurface Lot" has the meaning set forth in Recital F.

1.117 Surface Lot. "Surface Lot" has the meaning set forth in Recital F.

1.118 Successor Agency. "Successor Agency" shall have the meaning set forth in Recital C.

1.119 Term. "Term" means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Article 3 below.

1.120 Termination Hearing. "Termination Hearing" shall have the meaning set forth in Section 11.5.4.

1.121 The District at South Bay Specific Plan. "The District at South Bay Specific Plan" shall have the meaning set forth in Recital A.

1.122 Termination Notice. "Termination Notice" shall have the meaning set forth in Section 11.5.3.

1.123 Utility Work. "Utility Work" is part of the Site Development Improvements described in Section 1.110.

1.124 Zoning Code. "Zoning Code" means Title 17 of the Municipal Code as it existed on the date the City Council approves this Agreement, as the same may be further amended from time to time consistent with this Agreement.

ARTICLE 2. NATURE OF AGREEMENT.

2.1 Recitals. The recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each Recital as an inducement to enter into this Agreement. Any capitalized terms not defined in Article 1 shall have the meaning otherwise assigned to them in this Agreement, or where specifically indicated, the Project Agreements, or as apparent from the context in which they are used.

2.2 Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California adopted the Development Agreement Statute, Sections 65864, et seq., of the Government Code, authorizing City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

2.3 Creation of Authority. The Carson Reclamation Authority was established on February 17, 2015, through the adoption of a Joint Powers Agreement and the Bylaws of the Carson Reclamation Authority by the members. The First Amended Joint Powers Agreement of the Carson Reclamation Authority was approved March 17, 2015. Prior to the formation of the City of Carson, as unincorporated territory in the County of Los Angeles, significant portions of the territory were used as conveniently accessible waste disposal areas for Los Angeles and other cities in the basin, and significant industrial development also produced waste product; and alleviating these hazards was a significant reason for incorporation of City in 1968. While private development has proceeded since incorporation, the most contaminated areas, including the 157 Acre Site, were not developed. The 157 Acre Site passed in title from the owners of the former landfill to entities wishing to develop it, which development proposals were ultimately abandoned. Eventually, the then-owner offered to convey the 157 Acre Site to City without charge, but seeking indemnification. City determined that such a transaction may be the only way to develop the 157 Acre Site, but as under the state and federal environmental law, liability remains with the owner, if City took title it could assume landowner liability. City was unwilling to put its general fund, and taxpayers, at risk for environmental cleanup costs exceeding One

Hundred Million Dollars ($100,000,000). It was for these reasons Authority was formed to take title to and pursue remediation of the 157 Acre Site and similarly situated properties in the City. All of this history has been fully disclosed to Developer and the structure of this transaction is arranged to facilitate the goals of (i) fully remediating the 157 Acre Site, (ii) empowering Authority to carry out the transaction, (iii) protecting Developer from liability arising from the prior site contamination, (iv) obtaining necessary entitlements from City, (v) protecting City from any liability which would arise to the land owner, and (vi) obtaining adequate insurance to protect all Parties.

2.4 Limitation on Obligations of City. Based on the foregoing and the agreement of the Parties in the ARENA, City's obligations are specifically limited and described as the Entitlement Obligations, the Infrastructure Obligations and the Financial Obligations, and are summarized below:

2.4.1 *Entitlement Obligations.* The Entitlement Obligations are extensively described in this Agreement, and nothing herein shall be deemed to supersede any specific provision hereof relating to City's Entitlement Obligations. To perform the Entitlement Obligations, City shall be reimbursed its expenses by Developer for its Processing Fees as described Section 5.3.3, the expediting costs as described in Section 5.3.5 and other costs specified herein.

2.4.2 *Infrastructure Obligations.* These obligations will be contracted to Authority in the Cooperation Agreement. They include all SEIR Mitigation Measures and all applicable Conditions of Approval. The Offsite Improvements are described in **Exhibit "E"**.

2.4.3 *Financial Obligations.* In exchange for Authority undertaking the Infrastructure Obligations, Authority and City through the Cooperation Agreement have negotiated a sales tax sharing agreement obligating City to pay Authority the Sales Tax Assistance payments based on a formula described in the Conveyancing Agreement.

2.4.4 *Authority Obligations.* At various points herein, obligations of Authority are listed or described. This is for informational purposes only to clarify the obligations of the Parties and how the transaction will be carried out, and the description of an Authority obligation or commitment in this Agreement shall not make it an obligation of City unless it is specifically stated as an obligation of City. City has no express or implied obligations contrary to the intent of Sections 2.3 or 2.4 above or Recital M.

2.5 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 157 Acre Site, including, without limitation, the Developer Property, separately from, or jointly with, City, and this Agreement does not limit the authority of such other public agencies.

2.6 Exhibits. The following are the Exhibits to this Agreement, incorporated herein by this reference:

Exhibit "A" 157 Acre Site Map and Depiction of Cells 1 Through 5

"	Surface and Subsurface Lot Division
Exhibit "B"	Surface Parcel and Subsurface Parcel
Exhibit "C-1"	Cell 2 Surface Lot Legal Description
Exhibit "C-2"	Subsidence Easement Area
Exhibit "C-3"	Pylon Sign Easement Area and Location of Pylon Signs
Exhibit "C-4"	Entry Plaza Locations
Exhibit "D"	Scope of Development
Exhibit "E"	List of Offsite Improvements with Projected Costs
Exhibit "F"	Remedial Systems Cost
Exhibit "G"	Intentionally Deleted
Exhibit "H"	SEIR Mitigation Measures
Exhibit "I"	Conditions of Approval
Exhibit "J"	List of Existing Development Approvals
Exhibit "K"	List of Future Development Approvals
Exhibit "L"	Schedule of Performance
Exhibit "M"	Summary of Joint Authority/Developer Program of Insurance
Exhibit "N"	Prohibited Uses
Exhibit "O"	Specific Plan

ARTICLE 3. TERM.

3.1 Term. The term of this Agreement (the "**Term**") shall commence on the Effective Date and, unless earlier terminated pursuant to Article 11, shall continue until the earlier of the date (i) that is twenty-five (25) years from the date the first Sales Tax Assistance payment is made to Developer or (ii) upon which the full Total Recovery Amount (as such term is defined in the Conveyancing Agreement) is paid. Promptly following the payment of the first Sales Tax Assistance payment to Developer, the Parties shall cooperate to execute and cause to be recorded against the Cell 2 Surface Lot in the Recorder's office for Los Angeles County a notice setting forth the date of such issuance and confirming the date upon which the first Sales Tax Assistance payment was made.

ARTICLE 4. NATURE OF DEVELOPMENT.

4.1 Vested Right to Develop. During the Term, subject to the Reservation of Authority by City contained in Article 8, Developer shall have a vested right to develop the Project on the Developer Property in accordance with and to the full extent permitted by the Development Plan, as the same may be amended or modified from time to time consistent with the terms of this Agreement, all of which shall exclusively control the development of the Project (including, without limitation, the uses, the density or intensity of use, architectural review, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project or the Developer Property), including the vested right to construct the Project in two Phases and for a total of 711,500 GBA square feet of development rights. There are no Development Impact Fees applicable to the Project or the Developer Property and City agrees that during the Term it shall not impose, or allow the imposition of Developer Impact Fees upon Developer, the Project, or the Developer Property. To carry out the

Project, Developer anticipates making capital expenditures or causing capital expenditures to be made in reliance upon this Agreement and the Project Agreements. In the absence of this Agreement, Developer would not have assurance that it can complete and utilize the Project for the uses and to the density and intensity of development set forth in this Agreement and the Existing Development Approvals. This Agreement is necessary to assure Developer that the Project will not be (i) reduced or otherwise modified in density, intensity or use, maximum height and size of proposed buildings and the design standards applicable to the Project and the Developer Property, from what is set forth in the Existing Land Use Regulations and Existing Development Approvals, or (ii) subjected to new rules, regulations, ordinances or official policies or plans except (1) Applicable Future Rules; and (2) Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement. Accordingly, Future Development Approvals shall apply to the Project and the Developer Property only to the extent that they are not in conflict with the then-applicable Development Plan or are not contrary to the terms of this Agreement. Land Use Regulations enacted after the date this Agreement is approved by the City Council shall apply to Application(s) only to the extent such Applications do not relate to Existing Development Approvals and application of such Land Use Regulations is approved by Developer or is made applicable to the Project or the Developer Property pursuant to the Reservation of Authority of City in Article 8 of this Agreement.

4.2 Scope of Development. It is the Parties' mutual goal to make the 157 Acre Site an iconic regional attraction, both on the I-405 Freeway corridor, and generally. The nature of the other uses on the 157 Acre Site, and the architectural design should harmonize, and create a synergy with respect to the development of the entire 157 Acre Site. Developer shall construct the Project in substantial conformance with the Scope of Development, the SEIR Mitigation Measures, the Conditions of Approval, the Development Plan and the final plans and specifications approved by City. Developer shall not make any material changes (i.e., a change of more than plus or minus five percent (±5%) or a similarly not *de minimis* degree of change for matters than do not reduce to percentages to any one feature of Project) to the final plans and specifications without the written consent of the City Manager or his or her designee. This standard also applies to the Phases of the Project as specified in the Scope of Development, provided that the Scope of Development with respect to Phase I can be expanded by more than 5% and the Scope of Development with respect to Phase II may include all square footage, up to 711,500 GBA square feet, not utilized in Phase I. Further, Developer shall not construct the Project in a manner which would violate the Development Plan, SEIR Mitigation Measures, this Agreement or the Project Agreements, except upon obtaining any additional permits, orders, licenses or approvals required by the Existing Land Use Regulations, Existing Development Approvals and Applicable Future Rules and Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement. Developer shall maintain a copy of the Project's final plans and specifications on the Developer Property during construction and shall update them regularly to indicate any changes subject to the terms of this Section. Developer shall also make such plans and specifications available to City for inspection upon request. As soon as is practicable after completion of Project construction, Developer shall submit to City as-built plans and specifications showing the Project as actually constructed.

4.3 Modification of Specific Plan Standards. City hereby agrees to the following changes to the design and development criteria contained in the Specific Plan:

4.3.1 *Public Art Fee.* The public art fee provided in Section 6.9 of the Specific Plan is waived.

4.3.2 *Sheriff's Substation.* Developer intends to provide substantial private security and to coordinate with the Los Angeles County Sheriff's Department ("**Sheriff**") in security matters. Within the Project, Developer shall establish and furnish with equivalent equipment approved by City, a joint private security and Sheriff's substation, linked to the Sheriff's command facility with computer stations and furnishings commensurate with the furnishings provided for Developer's private security personnel. From time to time as requested by any Party or the Sheriff, the Parties shall meet and confer with the Sheriff regarding matters related to the security of the Project, including, if requested by the Sheriff, automated license plate reader cameras; provided that nothing herein shall require Developer to provide additional security measures, including automated license plate reader cameras. City and Developer agree that the obligations of Developer set forth in this Section 4.3.2 and Section 4.3.3 fully satisfy Developer's fair share contribution for Sheriff's services, facilities, and equipment in the SEIR Mitigation Measures and otherwise and no additional financial contribution shall be required from Developer with respect to the foregoing.

4.3.3 *Sheriff's Services and Fees.* City and Developer agree to equally share the cost of staffing for one full time deputy, with such services principally dedicated to the Cell 2 Surface Lot Additionally, Developer shall pay for supplemental or overtime services requested by Developer. All costs of Sheriff's services paid by Developer pursuant to this Section shall be administered through and rates shall be determined pursuant to City's contract with the Sheriff, as it may be amended from time to time, at the contracted rates paid by City for Sheriff's services and without mark-up or administrative fee of any type or sort, unless such administrative fee or mark-up is paid by City pursuant to the agreement between City and the Sheriff. Except as may otherwise be specifically agreed by Developer in writing and in advance, all other costs associated with provision of Sheriff's Department services to the Developer Property and/or the Project shall be at the sole cost and expense of City.

4.3.4 *Shuttle Fee.* The SEIR Mitigation Measures include a measure requiring City to operate a low emission public transportation shuttle among significant public locations and the Specific Plan provides for payment of an annual fee of Seventeen Thousand Dollars ($17,000) by Developer to operate such shuttle. Accordingly, upon commencement of shuttle operation by City, Developer shall pay such amount annually to City, as the same shall be adjusted by an amount equal to the increase or decrease in the Consumer Price Index in the prior calendar year. The operational plan will be reviewed with Developer and Remainder Developers prior to operation and will be updated from time to time, with ridership monitored to assure effectiveness.

4.4 City Infrastructure Obligations; Authority Work; Cooperation Agreement. Pursuant to Section 2.4.2, City is obligated to perform the Infrastructure Obligations. City has contracted with Authority to carry out the Infrastructure Obligations including construction of

the Offsite Improvements to avoid working the contaminated soil and the potential liability to taxpayers. Additionally, Authority is also constructing the Site Development Improvements, which are more fully described in the Conveyancing Agreement. Collectively, the Offsite Improvements and Site Development Improvements are described in this Agreement as the Authority Work. Developer is advancing funds to Authority to perform portions of the Authority Work. Authority has agreed (i) to construct the Authority Work in accordance with the requirements of the Conveyancing Agreement, including the Project Schedule set forth therein and the requirements of the SEIR, the SEIR Mitigation Measures, the Existing Development Approvals and Future Development Approvals, if any, made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement and (ii) to reimburse to Developer the sums advanced by Developer for the performance of the Authority Work. Authority's performance of the Authority Work is a necessary precondition to Developer's construction of the Project. City and Authority have concurrently entered into the Cooperation Agreement, pursuant to which, among other things, City has agreed to provide funding to Authority sufficient to allow Authority to reimburse advances made by Developer to Authority pursuant to the Conveyancing Agreement. The Cooperation Agreement is further described in Article 9.

4.5 Offsite Parking. The Conveyancing Agreement provides that if approved by DTSC, Authority will construct, at Developer's request and cost, parking for peak periods and buses on the Remainder Site, particularly, but not limited to, Cell 4, and permit Developer to use such parking at no cost except for reimbursement of the proportional share of the Carry Costs on the sites so used by Developer until commencement of development on such sites. City agrees that the use of parking in Cells other than Cell 2 by Developer is an ancillary use to the Project and a permitted use under the Specific Plan and that no additional City approvals would be required to utilize parking in Cells other than Cell 2 for such overflow and bus parking purposes. When requested by the Remainder Developer, Developer shall timely vacate the Remainder Site and Authority, at Developer's expense, will restore the property to a condition which accommodates the development of such Remainder Site.

4.6 Project Entries and Entry Monument Signs. As a part of the Offsite Improvements, City will permit design and development of three entry plazas for the 157 Acre Site at the main access points to the 157 Acre Site at Del Amo Boulevard, Main Street, and at the Avalon Boulevard/I-405 Freeway ramps generally in the locations shown on **Exhibit "C-4"** ("**Entry Plazas**"). The Entry Plaza improvements will include iconic entry monuments with integrated signage (comprising the "Entry Monuments" described in Section 6.6 of the Specific Plan) which shall include the overall development name for the 157 Acre Site and specific identification signage for the Project as approved by Developer ("**Entry Signs**"). The Entry Plazas and Entry Signs will be developed in accordance with Sections 6.4 and 6.6 of the Specific Plan and the Entry Plazas may incorporate hardscape, landscape or other aesthetic features in addition to the Entry Signs. Plans will be subject to review by Developer and Remainder Developers. The Entry Signs may include identity signage for the 157 Acre Site and shall in all cases include identity signage for the Project which shall be of a size and prominence commensurate with the size and prominence of the entry signage of other developments on the Remainder Site and with the design thereof approved by Developer. The costs of construction,

operation and maintenance of the Entry Plazas, including Entry Signs shall be funded pursuant to CFD, as further described in Section 14.4 below.

4.7 Signage; Master Sign Program; Covenant Regarding Embankment Lot.

4.7.1 *General.* Signage and visibility of the Project from the I-405 Freeway are vital to the economic viability and success of the Project and to the ability of the Project to generate sales tax revenues. Developer will have the exclusive right to place and operate digital, electronic message center/changeable message and static display signage on the exterior walls of the buildings constructed on the Cell 2 Surface Lot and shall also have the right to place other signs around and within the Cell 2 Surface Lot including, without limitation, along or visible from the I-405 Freeway, as well as the right to place the Developer Pylon Sign on the Embankment Lot and to have Project identity signage placed on the Entry Signs, as further described in this Agreement and in the Specific Plan.

4.7.2 *Pylon Signs.* The Specific Plan sets forth two Conceptual Sign Location options which vary only in number, location and type of Pylon Signs. The City has made a determination to implement Option A (depicted in Specific Plan Figure 6.6a and described in Specific Plan Table 6.6), which allows development of the following (collectively, the "**Pylon Signs**"): (i) two freestanding, 88-foot-high freeway-oriented icon pylon signs that are illuminated, utilize digital display with equivalent sign faces and/or LED and electronic message center/changeable message display, one reserved for use by the developer of Planning Area 2 ("**Developer Pylon Sign**") and the other by City ("**City Pylon Sign**") and (ii) two static freeway icon pylon signs which may be allocated to the Remainder Developers owning portions of the Remainder Site. Developer shall have the vested right to construct, use, maintain (including, without limitation, replacement of technology, internal systems and sign faces without changing the pylon structure), operate and repair the Developer Pylon Sign on the Embankment Lot in the Pylon Sign Easement Area and as further described in the Scope of Development attached as **Exhibit "D".** Developer shall have the right to cause Authority to install piles on the Embankment Lot as reasonably necessary to allow for construction of the Developer Pylon Sign as part of the Site Development Improvements. At the close of escrow under the Conveyancing Agreement, Authority shall grant to Developer an easement for the Developer Pylon Sign in the Pylon Sign Easement Area. City shall have a co-equal right to place the City Pylon Sign within the Embankment Lot in accordance with the provisions of this Agreement and Option A of the Specific Plan.

4.7.3 *Restrictions on Embankment Lot Use.* The location of the Pylon Signs in the Specific Plan has been determined pursuant to a view study conducted by Developer and approved by City. All Pylon Signs have been located in a manner that seeks to meet minimum Caltrans requirements and to maximum visibility for the Project and the Developer Pylon Sign and for the City Pylon Sign and the Pylon Sign(s) of the Remainder Developers. In no event shall City authorize placement of Pylon Signs in any location other than as permitted by Section 6.6 of the Specific Plan or in a manner which would violate any applicable regulatory requirements. Without limiting the generality of the foregoing and notwithstanding any other provision of this Agreement or the Specific Plan, in no event shall City permit the City Pylon Sign to be placed within a distance from the Developer Pylon Sign of one thousand (1,000)

linear feet or the static Pylon Signs within a distance from the Developer Pylon Sign of six hundred (600) linear feet, and the City shall in all events cause the signs to be placed in a manner that does not violate then-applicable Caltrans minimum sign separation standards. In addition, except with respect to the Pylon Signs described in Section 4.7.2, City shall not permit or authorize use of the Embankment Lot for any purpose other than open space, construction of ground cover, shrubs, low scale landscaping, and utility related improvements not to exceed one (1) foot in height from the top of the Embankment Lot and, further, such improvements shall not obstruct either (i) the fire lane or other fire or public safety access on the Cell 2 Surface Lot or (ii) views from the I-405 Freeway of the face area of Project signage, including without limitation, the Developer Pylon Sign and building identity and advertising signage of the Project.

4.7.4 *Signage on Embankment Lot; Off-Premises Advertising.* City and Developer will cooperate in obtaining such rights and permits as shall be needed for planned signage on the Embankment Lot, including, without limitation, supporting applications to Caltrans for off-premises advertising permits for either or both the Developer Pylon Sign and the City Pylon Sign, including by seeking to have Caltrans approve portions of the Embankment Lot as non-landscaped which would provide flexibility to allow off-premises advertising permits. The City Pylon Sign will be retained by City and shall be available to City for revenue purposes and to advertise community organizations and events and, if owned and controlled by City, may also be used for off-premises advertising with the approval of Caltrans. In no event shall off-premises advertising signage advertise competing shopping centers or off-premises advertising be permitted on any signage on the 157 Acre Site other than on the City Pylon Sign and/or the Developer Pylon Sign. If the City Pylon Sign or the Developer Pylon Sign is used for off-premises advertising, City and Developer shall share the net proceeds of such advertising on a 50/50 basis. The Parties shall use a mutually agreed upon independent audit firm to establish appropriate revenue sharing and shall share the cost thereof.

4.7.5 *Master Sign Program.* City shall have the right, in coordination with Developer and the Remainder Developers, to develop a Master Sign Program, provided that such Master Sign Program shall not be inconsistent with the Development Plan. The cost of the Master Sign Program shall be borne by the Remainder Developers except as provided below. Upon its adoption, the Master Sign Program will control with respect to all subsequent Future Development Approvals related to design and location of all 157 Acre Site signage, including, without limitation, along the Embankment Lot. Freeway signage is subject to approval by Caltrans. The Master Sign Program will be subject to revision as the Remainder Site is developed, with Developer and Remainder Developers forming a sign review committee which shall review any proposed revisions and make comments to City with City having final determination; provided that in no event shall the Master Sign Program supersede the Existing Development Approvals or any then adopted Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement. The Master Sign Program may be adopted in stages, provided that the initial (minimum) Master Sign Program shall include the Entry Signs and shall be subject to review by the sign review committee. In the event City determines to prepare a Master Sign Program, Developer shall collaborate with City and the Remainder Developers, if any, in undertaking view studies as a part of the Master Sign Program (i) to promote good design and compatibility, (ii) to prevent view obstruction of the signage of the Project and (iii) to prevent sign proliferation. To the extent any

portion of the Master Sign Program comprises a Future Development Approval for the benefit of the Developer Property (including, for example, by creating entitlements for Entry Signs), Developer shall pay thirty percent (30%) of the reasonable costs incurred by City in preparing the Master Sign Program.

4.8 Agreement to Govern Zoning; Priority of Regulations. City has determined that this Agreement is consistent with the General Plan, the Specific Plan and the Zoning Code. As such, this Agreement and its exhibits shall be the primary documents governing the Project and the use and development of the Developer Property, and, in the event of a conflict, shall prevail over the Existing Land Use Regulations. Any zoning issues or requirements applicable to the Developer Property or any portion thereof that are not otherwise governed by this Agreement, the Specific Plan, the Existing Development Approvals and/or the Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement shall be governed by the Existing Land Use Regulations. Project zoning and permitting shall be governed by the following hierarchy of regulations when there is a conflict in terms that is not reasonably susceptible to interpretive harmonization (with item "a" having highest governing authority and descending therefrom):

(a) The SEIR and SEIR Mitigation Measures in connection with the Existing Development Approvals, as the same may be amended from time to time, in accordance with this Agreement;

(b) The terms of this Agreement;

(c) The terms of any Existing Development Approvals including without limitation the Specific Plan;

(d) Existing Land Use Regulations.

4.9 Right to Future Development Approvals. Subject to City's exercise of its police power authority as specified in Articles 6 and 8 below, Developer shall have a vested right: (i) to receive from City all Future Development Approvals made applicable to the Project and/or the Developer Property that are consistent with and implement the SEIR, the Development Plan and this Agreement; (ii) not to have such approvals be withheld, conditioned or delayed for reasons inconsistent with the this Agreement, and (iii) to cause development of the Project on the Developer Property in a manner consistent with such approvals in accordance with this Agreement. All Future Development Approvals for the Developer Property, including, without limitation, zone changes, or tract maps, shall, upon approval by City, be vested in the same manner as provided in this Agreement for the Existing Development Approvals, for the Term of this Agreement.

4.10 Moratorium. Notwithstanding any other provision of this Agreement, no future amendment of any existing City ordinance or resolution or any subsequent ordinance, resolution or moratorium that purports to impose or result in a limitation on the conditioning, rate, timing and sequencing of the Project on all or any portion of the Developer Property or alter the sequencing of development phases, including without limitation, the Phases, or alter or limit entitlements to use or service (including, without limitation, sewer and water) imposed by City,

an agency of City or through the initiative and referendum process shall apply to govern, or regulate the Project or development or use of the Developer Property during the Term, whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates or permits or other entitlements to use issued or granted by City. In the event of any such subsequent action by City, Developer shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the Reservation of Authority set forth herein.

4.11 Existing Development Approvals. Only those items specifically set forth on **Exhibit "J"** hereto are deemed Existing Development Approvals for purposes of this Agreement. Any approvals not included within **Exhibit "J"** shall not apply to the Project with the exception of Applicable Future Rules permitted pursuant to Article 8 below and Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement.

4.12 CEQA. City shall be responsible for obtaining the approval of this Agreement and the Project as required by CEQA; CEQA review and approvals for the Project are or have been completed prior to, or concurrent with, approval of this Agreement by the City Council. Without limitation of the foregoing, Developer specifically acknowledges and agrees that in connection with the Project, Developer shall satisfy all SEIR Mitigation Measures for which Developer is assigned responsibility. Because the Project and Authority Work have been extensively analyzed in the SEIR, no new CEQA analysis shall be required for Future Development Approvals, provided that none of the conditions are present which required further environmental review under CEQA, including, without limitation, Public Resources Code Section 21166. In the event that any additional CEQA documentation is legally required for any discretionary Future Development Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Future Development Approval and City shall conduct such CEQA review as expeditiously as possible, at Developer's expense.

4.13 Employment Outreach for Local Residents. A goal of City with respect to this Project and other major projects within City is to foster employment opportunities for Carson residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, Developer shall make reasonable efforts to cause all solicitations for full- or part-time, new or replacement, employment relating to the construction, operation and maintenance of the Project to be advertised in such a manner as to target local City residents and shall make other reasonable efforts at local employment outreach as City shall approve. Developer shall also notify City of jobs available at the Project such that City may inform City residents of job availability at the Project. Developer will inform its purchasers and lessees of the provisions of these requirements. Nothing in this Section shall require Developer to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

4.14 Energy Efficient and Sustainable Building Design. All Project buildings shall promote sustainable and energy efficient practices through compliance with California Code of Regulations, Title 24. In addition, the Project shall be designed to meet the standards for a LEED Silver Certified building (or equivalent techniques or designed used for the purpose of reduction of energy use as approved by the Director in writing) and Developer shall use commercially reasonable efforts to exceed such standards. Systems which may be utilized would include solar panels and other alternative energy technologies. Additionally, to reduce emissions, at all truck loading locations, power plug-in stations shall be provided to reduce emissions from idling trucks. In addition, not less than eight percent (8%) of parking stalls in each Phase shall be clean air, including carpool, vanpool and electric vehicle spaces. Of those parking stalls, twenty-five percent (25%) shall be electric vehicle charging stations working at time of opening or with infrastructure in place at time of opening for future energizing including not less than one percent (1%) of total parking stalls for each Phase being electric vehicle charging stations working at the opening of such Phase.

ARTICLE 5. CONSTRUCTION AND SCHEDULING.

5.1 Timing of Development. The Schedule of Performance attached as **Exhibit "L"** sets forth the anticipated schedule for construction of the Project. Developer has the right to construct the Project in two Phases as further described in Section 5.7. Developer will use commercially reasonable efforts to process the Project and commence and complete construction of the Project in accordance with the Schedule of Performance. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer will adhere, with respect to development of Phase I, to the terms of the Schedule of Performance, as the same may be modified in accordance with this Agreement, regarding the timing of development and will have the right to develop Phase II at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment, with the failure to develop Phase II having the consequences provided in the Conveyancing Agreement. It is recognized that Developer's construction of the Project is dependent upon the timely completion of the Authority Work and Remedial Systems and compliance with the applicable Conditions of Approval and the SEIR Mitigation Measures and, further, that the Parties and Authority cannot fully predict the timing or sequencing in which the Project will be developed, since such decisions depend upon numerous factors, many of which are not completely within the control of the Parties or Authority. Accordingly, the Schedule of Performance shall be extended due to (i) forces beyond the Parties' reasonable control pursuant to a Force Majeure pursuant to Section 16.2; (ii) mutual agreement of the Parties pursuant to Section 5.6 and (iii) City Delay. Once construction is commenced for any Phase of the Project, it shall be diligently pursued to completion, and shall not be abandoned for more than one hundred and eighty (180) consecutive calendar days, except when due to a Force Majeure event. Developer shall keep the City informed of the progress of Project construction and submit written reports of the progress of the construction when and in the form reasonably requested by City and City shall keep Developer informed of the progress of Future Development Approvals and other matters before the City for consideration and approval and other matters related to the Project and/or the Developer

Property.

5.2 Plan for Construction Scheduling and Phasing.

5.2.1 *Construction Schedule.* Developer will provide Authority with a plan for the schedule of construction of the Project, including needed construction access prior to commencement of construction. City acknowledges that the Project may be developed in two Phases, with the approximate square footages specified in Section 5.7, and that the construction schedule may reflect that phasing. A similar schedule shall be reviewed from the Remainder Developers if the construction periods will overlap. Representatives of City, Authority, Developer and each Remainder Developer shall meet to develop a coordinated schedule for all construction activity so that no project interferes with another. The schedule shall also be utilized to develop an infrastructure phasing plan which shall be provided to Developer and Remainder Developers for comment.

5.2.2 *Remainder Site.* Consistent with the nature of a major construction project, City shall reasonably regulate development of the Remainder Site so as to ensure that construction activities on and around such other sites, including dust, noise, odors, traffic impediments, etc., do not adversely affect the Project, and that the construction activity on the Developer Property will not adversely affect the development of the Remainder Site. The phased development plan which is being discussed with DTSC will include mitigation measures for the phased development of Cells to comply with DTSC requirements.

5.3 Processing.

5.3.1 *Developer Submittals; City Processing.* Developer, in a timely manner which will implement the Project in accordance with the Schedule of Performance, will provide City with all documents, Applications, plans and other information necessary for City to carry out its obligations hereunder and will cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. Upon satisfactory completion by Developer of all required preliminary actions, meetings, submittal of required information and payment of appropriate Processing Fees, if any, City shall promptly commence and diligently proceed to process all required Development Approvals in accordance with Section 6.5.

5.3.2 *Good Faith Cooperation.* It is the express intent of this Agreement that the Parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals necessary for the Authority Work and the Project in accordance with the Existing Development Approvals and the Schedule of Performance. Notwithstanding the foregoing, nothing herein shall be construed to require City to process Developer's Applications ahead of other projects in process. If Developer elects, in its sole discretion, to request City to incur overtime or additional consulting services to receive expedited processing by City, Developer shall pay all such overtime costs, charges or fees incurred by City for such expedited processing and City agrees to expedite processing of Development Approvals, building permits and other permits and approvals required for the Development to construct the Project, including, without limitation, by authorizing overtime payments to its employees and contractors as reasonably required to expedite processing.

Notwithstanding the foregoing, the County, to which the City subcontracts certain of its Building and Safety Department functions, has indicated in writing that it will expedite processing of the Development Approvals under its authority at no additional cost to City and City agrees to cooperate with Developer to implement such agreement, to the extent feasible.

5.3.3 *Processing Fees.* Developer shall pay all normal and customary Processing Fees applicable to such permits which are standard for and uniformly applied to similar projects in City.

5.3.4 *Application for Future Development Approvals.* Unless specifically otherwise provided, all provisions of this Article 5 shall also apply to Article 6 governing Future Development Approvals, including Processing Fees, standard of work, permits by other agencies, and so forth.

5.3.5 *City Agreement to Expedite Work.* In consideration for Developer's agreement to pay for additional staff time associated therewith, City agrees to use its best efforts to expedite the processing of the Existing Development Approvals and Future Development Approvals. To the extent that consultants and professional must work overtime at premium rates to expedite the process, Developer shall pay for such expediting rates. Additionally, if Developer requires expedited performance from City employees, Developer shall pay City for such expedited service at agreed rates or may pay for a third-party contract consultant, at rates agreed upon with City. In furtherance thereof, City agrees to use its good faith efforts to cause all employees, consultants and professionals retained by City to act in a diligent and expeditious manner in performing their work.

5.3.6 *Standard of Work.* When Developer is required by this Agreement and/or the Development Plan to construct any improvements which will be dedicated to City or any other public agency, upon completion, and if required by Applicable Laws to do so, Developer shall perform such work in the same manner and subject to the same construction standards as would be applicable to City or such other public agency should it have undertaken such construction work. In the case, if any, where Developer performs the public improvements work, Developer shall pay prevailing wages as required by law and City shall not be liable for any failure in Developer's payment of prevailing wages or legally-imposed penalties therefore.

5.4 Prevailing Wages. Developer shall pay prevailing wages as required by law, as described in California Labor Code § 1720. To the extent that it is determined that Developer has not paid, or does not pay, prevailing wages required by law for any portion of the Project, Developer shall defend and hold City harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project in violation of the Prevailing Wage Law. Developer acknowledges and agrees that should any third party, including, but not limited to, the Director of the Department of Industrial Relations ("**DIR**"), require Developer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Developer shall indemnify, defend, and

hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. City makes no representation that any construction or uses to be undertaken by Developer are or are not subject to Prevailing Wage Law.

5.5 Other Governmental Permits; Delays. It is expressly understood by the Parties hereto that City makes no representations or warranties with respect to approvals required by any other governmental entity. Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Developer Property which are Developer's responsibility under the Scope of Development and this Agreement, Developer shall at its own expense secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. City shall cooperate with Developer in its efforts to obtain such permits and approvals and to satisfy the conditions to such permits and approvals. City shall keep Developer fully informed with respect to its communications with such entities that could impact the Project or the Developer Property. Developer shall not be obligated to acquire the Developer Property or commence Project construction if any such permit is not issued despite good faith effort by Developer. City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Project and the Development Plan with other public agencies, if any, having jurisdiction over the Project and the Developer Property. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

5.6 Extensions for Delay. As provided in Section 5.1, there can be various causes for delays in carrying out the Project in accordance with the Schedule of Performance. The City Manager has the authority to confirm extensions for Force Majeure and in the event of such authorized delays, the Schedule of Performance shall be extended day for day for each authorized day of delay. In addition, the Schedule of Performance shall be extended day for day for each day of delay by the City in processing beyond the periods set forth in Sections 5.8 and 6.5 ("**City Delay**"). In addition to such extensions, City Manager has additional authority in his absolute discretion to approve additional optional extensions in the time for performance in the Schedule of Performance attached as **Exhibit "L"** of up to one hundred eighty (180) calendar days, but any greater optional extensions must be approved by the City Council.

5.7 Phasing of Development. The Project may be constructed in two (2) Phases of vertical construction as further described in the Scope of Development (**Exhibit "D"**), consisting of a first phase of vertical construction of not less than 450,000 GBA square feet ("**Phase I**"), and, at the option of Developer, a second concurrent or subsequent phase of vertical construction which may utilize all remaining GBA square footage allocated to Planning Area 2 pursuant to the Specific Plan, up to a total of 711,500 GBA square feet, or such greater allocation as may be agreed upon by the Parties from time to time ("**Phase II**"). As noted above, Phase I is intended to comprise approximately 65-70% of the development authorized by the Site Plan and Design review approved for the Project as part of the Existing Development Approvals and Phase II is anticipated to contain the remaining GBA square footage from such Existing

Development Approvals and, at the election of Developer, may include additional development up to 711,500 GBA square feet pursuant to Future Development Approvals. Construction of the Phases shall take place in accordance with the Schedule of Performance as the same may be extended or modified pursuant to this Agreement. Construction of the Project shall conform to the requirements of the RAP and accordingly, unless otherwise permitted by amendment to the RAP approved by DTSC, construction of all Site Development Improvements for the outlet and retail center shall be constructed as part of Phase I. The Parties agree and acknowledge that the SEIR describes buildout of the Project by 2023 and that economic conditions or business factors may influence the ability to complete construction of the Project including Phase II by 2023. Therefore, with respect to any request for issuance of a building permit to initiate construction of the core and shell of the Project (i.e., excluding tenant improvements) after June 30, 2023, the Director shall make an administrative determination as to whether the SEIR together with any addendum thereto is sufficient for the issuance of the permit or approval or whether, as required by CEQA Section 21166 or CEQA Guidelines Sections 15162, 15163 and 15164, there have been substantial changes in circumstances or new information of substantial importance that would require additional environmental review. Failure of Developer to construct Phase II shall have the consequences provided in the Conveyancing Agreement, but shall not be a Default or cause for terminating this Agreement.

5.8 Certificates of Completion. Once Developer has completed construction of all improvements in a Phase, City shall furnish Developer with the Certificate of Completion for those improvements within thirty (30) calendar days of Developer's written request therefor; provided that City finds that Developer has completed the Phase pursuant to the terms of this Agreement and the Existing Development Approvals. It is anticipated that there will be two (2) Certificates of Completion issued for the Project, one for each Phase of construction. Each Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Los Angeles County. A "**Certificate of Completion**" shall be a certificate that shall state that it constitutes conclusive determination of satisfactory completion of the construction of the improvements required by this Agreement upon the Developer Property for the applicable Phase, and of full compliance with the terms of this Agreement with respect thereto. City shall not unreasonably withhold, condition or delay the Certificate of Completion. If City refuses or fails to furnish a Certificate of Completion within thirty (30) calendar days after written request from Developer or any entity entitled thereto, City shall provide a written statement of the reasons City refused or failed to furnish a Certificate of Completion. The statement shall also contain City's opinion of the action Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, City will issue its Certificate of Completion upon the posting of a bond or other security reasonably acceptable to City by Developer with City in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed. A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any Lender or any insurer of a Mortgage securing money loaned to finance the improvements, or any part thereof. A Certificate of Completion is not notice of completion as referred to in the California Civil Code Section 8182. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from City before the Certificate of

Completion is issued. Issuance of Certificates of Occupancy other than for the shell and core shall not be a pre-condition to issuance of a Certificate of Completion.

ARTICLE 6. PROCESSING OF APPLICATIONS FOR FUTURE DEVELOPMENT APPROVALS; OTHER GOVERNMENT PERMITS.

6.1 Project Uses. Developer shall have the right to utilize the Project in accordance with the Permitted Land Uses and to develop the Project on the Developer Property in accordance with the Development Standards and to the density and intensity of use, maximum height and size of proposed buildings and the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the Project or the Developer Property as set forth in the Existing Development Approvals and the Existing Land Use Regulations as the same may be amended from time to time in accordance with this Agreement. Developer shall not develop any Prohibited Uses on the Developer Property. Without limiting the generality of the foregoing, Developer shall have the right to develop a high quality fashion outlet and retail center of not less than 450,000 GBA square feet (for Phase I only) and up to 711,500 GBA square feet (taking into account Phase I and Phase II, which may be developed separately, concurrently or not at all, at the option of Developer), which may include, at the sole discretion of Developer, sit-down restaurant space of up to 15,000 GBA square feet, a VIP cocktail lounge, and the various take-out and on-site food and alcohol service uses permitted by right or with an administrative use permit or conditional use permit (in each case upon the approval by City of such permit) in the Specific Plan. Developer shall not develop or use the Developer Property or any portion thereof for any Prohibited Use set forth in **Exhibit "N"**. Nothing in this Section shall apply to any nonconforming uses or structures on the Developer Property which shall be governed by the Specific Plan and the Existing Land Use Regulations, unless otherwise agreed by the Parties.

6.2 Discretionary Approvals. Issuance by City of Future Development Approvals shall be governed by the terms of the Specific Plan and the provisions of this Agreement. The provisions of this Agreement shall implement the terms of the Specific Plan and shall supersede the provisions of Zoning Code Article Chapter IX, Chapter 1 except as specifically set forth in the Specific Plan. The Specific Plan is attached to this Agreement as **Exhibit "O"**. Unless modified pursuant to City's Reservation of Authority set forth in Article 8 or with the prior written consent of Developer, the provisions of **Exhibit "O"** shall in all cases govern with respect to processing and approval of the Development Approvals. The issuance of an Administrative Permit, Conditional Use Permit or Site Plan and Design Review Approval may result in the imposition of new or amended Conditions of Approval consistent with the requirements of this Agreement and not in conflict with the Development Plan (unless as a result of exercise by City of its Reservation of Authority under Article 8 or agreed to by Developer in writing). Notwithstanding any other provision of the Specific Plan or this Agreement, in no event shall City have discretionary review or approval rights over portions of the Project other than exterior facing facades/walls/surfaces. For avoidance of doubt, tenant storefronts and entries fronting on the pedestrian walkway providing circulation between stores on the Cell 2 Surface Lot and similarly located walls are not considered exterior facing facades/walls/surfaces and are not subject to City review or approval.

6.3 Duration of Permits and Approvals. Unless a longer period as set forth in any such approval is provided, the site plan and design review permit(s), administrative permits and the comprehensive sign program approvals by City with respect to the Project as part of the Existing Development Approvals and/or any of the foregoing or any administrative permit issued as a Future Development Approval shall continue during the Term of this Agreement. Subject to Section 11.8, following expiration of the Term, such approvals and permits will not be subject to this Agreement but to Land Use Regulations in effect at that time or subsequently.

6.4 Processing Future Development Approvals; General Protocols and Payment of Processing Fees. In order to implement the Project, Authority and/or Developer will be required to obtain certain Future Development Approvals, including without limitation those Future Development Approvals listed on **Exhibit "K"**. In addition to those items listed on **Exhibit "K"**, Future Development Approvals may include all other matters that will be subject to City's discretionary review and all ministerial permits, certificates and approvals required by City or any other governmental authority for implementation of the Project or regulating development or use of the Developer Property, including without limitation any engineering permits, grading permits, foundation permits, construction permits and building permits. If Developer requests Future Development Approvals, Developer, in a timely manner, will provide City with all documents, Applications, plans and other information necessary for City to carry out its obligations hereunder in processing the Future Development Approvals, and Developer will cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor.

6.5 General Time Periods for Processing Future Development Approvals. It is the express intent of this Agreement that the Parties cooperate and diligently work to implement any zoning or other land use, subdivision, grading, building or other approvals, including, without limitation, those required by any Condition of Approval and those requested by Developer pursuant to Section 13.4.1 in accordance with this Agreement.

6.5.1 *Application Completeness.* City shall in writing determine an Application to be complete or shall have reasonably determined that such Application is incomplete, for any submittal for Future Development Approvals made by Developer pursuant to this Section, within thirty (30) calendar days after such submittal. Any notice of incompleteness shall state in writing in reasonable detail the reason for the incompleteness and the additional information and/or corrections that City requests to complete the submittal. Developer shall provide the requested information and/or corrections and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days of the date of the notice of incompleteness. Thereafter, City shall have an additional ten (10) days for review of the re-submittal, but if City issues a subsequent notice of incompleteness, then the cycle shall repeat, until City has determined that the Future Development Approval Application is complete.

6.5.2 *Approvals That May Be Issued by the Director.* Once an Application for a Future Development Approval, which may be approved by the Director as the initial Review Authority, has been determined to be complete pursuant to Section 6.5.1, the Director shall reasonably approve or disapprove the Application within thirty (30) calendar days thereafter. All Applications made by Developer shall note the thirty (30) calendar day time limit,

and specifically reference this Agreement and this Section. If the Director shall fail to issue a determination within the time limit, in addition to any other remedies available to Developer, the provisions of Section 5.6 shall apply. Any appeal of the Director's determination shall be heard at the next available Planning Commission meeting, but in no event later than thirty (30) calendar days after the date of the Director's determination. Any appeal of the Planning Commission's determination shall be heard at the next available City Council meeting, but in no event later than thirty (30) calendar days after the date of the Planning Commission's determination.

6.5.3 *Approvals Requiring a Public Hearing.* Once an Application for a Future Development Approval, which requires a recommendation from the Director and a public hearing by the Planning Commission, has been determined to be complete pursuant to Section 6.5.1, the Director shall issue its recommendation within thirty (30) calendar days thereafter. The Planning Commission shall hold its hearing on the Director's recommendation at its next available meeting, but in no event later than thirty (30) calendar days after the date of the Director's recommendation. Where City Council action also is required, such as in the case of Specific Plan Amendments, the City Council shall hold its hearing on the Planning Commission's recommendation at its next available meeting, but in no event later than thirty (30) calendar days after the date of the Planning Commission's recommendation. Where the City Council only acts in the case of an appeal, the timeframes set forth in Section 6.5.2 shall apply. All Applications made by Developer shall note these time limits, and specifically reference this Agreement and this Section.

6.6 Progress Meetings. During the preparation of all drawings and plans for Future Development Approvals, the Parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by City. The Parties shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to City can receive prompt and speedy consideration. Approval of progressively more detailed drawings and specifications will be promptly granted by City if developed as a logical evolution of drawings and specifications theretofore approved. Any Future Development Approvals so submitted and approved by City (including City staff) shall not be subject to subsequent disapproval.

ARTICLE 7. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.

7.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement.

7.2 Procedure. Except as set forth in Section 7.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance, and meet the requirements of the Development Agreement Statute § 65867.

7.3 Consent. Except as expressly provided in this Agreement, no amendment, modification or clarification to all or any provision of this Agreement shall be effective unless

set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Office of the Recorder of Los Angeles County.

7.4 Operating Memoranda.

7.4.1 *Flexibility Necessary.* The provisions of this Agreement require a close degree of cooperation between City and Developer. Refinements and further development and implementation of the Project may demonstrate that clarifications and minor modifications to refine this Agreement are appropriate. In addition, the Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, from time to time, during the Term, the City Manager, and Developer may agree that procedural or other minor modifications or clarifications to this Agreement, including without limitation, to implement changes to the Schedule of Performance. Such changes may be implemented through Operating Memoranda approved by the City Manager and Developer pursuant to Section 7.4.2, which after execution shall be attached to and form part of this Agreement and need not be recorded. Except as provided in this Section and Section 7.5, all other modifications shall require an amendment to this Agreement.

7.4.2 *Operating Memoranda.* When and if Developer finds it necessary or appropriate to make changes to this Agreement pursuant to Section 7.4.1, the Parties shall effectuate such modifications through operating memoranda ("**Operating Memoranda**") approved by the Parties in writing that reference this Section 7.4. Operating Memoranda are not amendments to this Agreement but mere ministerial clarifications, therefore public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with Developer, to determine whether a requested clarification may be effectuated pursuant to this Section 7.4 or whether the requested clarification is of such character as to constitute an amendment to the Agreement which requires compliance with the provisions of Sections 7.2 and 7.6. The authority to enter into any Operating Memoranda is hereby delegated to City Manager, and City Manager is hereby authorized to execute any Operating Memoranda hereunder without further City Council action.

7.5 Specific Plan Adjustment Mechanisms. In addition to the procedures provided herein, the Specific Plan in Section 8 on Implementation, contains a process for issuing Administrative Permits and for making minor non-substantive changes to the Development Plan.

7.6 Hearing Rights Protected. City will process any amendment to this Development Agreement consistent with State law and will hold public hearings thereon if so required by State law. The Parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

7.7 Effect of Amendment to Development Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

ARTICLE 8. RESERVATION OF AUTHORITY.

8.1 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any statute, ordinance, or other limitation enacted after the date this Agreement is approved by the City Council, except as provided in this Article 8. Any such enactment, or the issuance of any Development Approvals, including without limitation, any Future Development Approval, or the adoption of Future Land Use Regulations applicable to the Project or regulating development or use of the Developer Property which is not an Applicable Future Rule under Section 8.2.1 and which (i) affects, restricts, impairs, delays, conditions, or otherwise impacts the vested rights granted to Developer by this Agreement, including, without limitation, the right of Developer to develop, operate and use the Project in accordance with the Development Plan, or (ii) is in any way in conflict with or contrary to the terms of this Agreement, shall not apply to the Project. Nothing herein shall restrict Developer's right to challenge or contest the validity of any state, federal or local law, regulation or policy or the applicability of such law, regulation or policy to the Developer Property or the Project.

8.2 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the SEIR and SEIR Mitigation Measures, this Agreement, the Existing Development Approvals and the Existing Land Use Regulations, only the following Land Use Regulations adopted by City after the date this Agreement is approved by the City Council shall apply to and govern the Project and the Developer Property:

8.2.1 *Future Regulations.* Future Land Use Regulations which (i) are not in conflict with this Agreement or with the Existing Land Use Regulations, the Existing Development Approvals or any Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement or; (ii) even if in conflict with the Existing Land Use Regulations, are enacted or adopted pursuant to the Reservation of Authority of City set forth in this Article 8; or (iii) even if in conflict with the Existing Land Use Regulations, have been consented to in writing by Developer ("**Applicable Future Rules**").

8.2.2 *State and Federal Laws and Regulations.* Where state or federal laws or regulations enacted after the date this Agreement is approved by the City Council prevent or preclude compliance with one or more provisions of this Agreement, those provisions shall be modified, through revision or suspension, to the minimum extent necessary to comply with such state or federal laws or regulations.

8.2.3 *Public Health and Safety/Uniform Codes.*

(a) *Adoption Automatic Regarding Uniform Codes.* This Agreement shall not prevent City from adopting Future Land Use Regulations or amending Existing Land Use Regulations that are uniform codes and are based on recommendations of a multi-state professional organization and become applicable throughout City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes.

(b) *Adoption Regarding Public Health and Safety.* This Agreement shall not prevent City from adopting Future Land Use Regulations respecting public

health and safety to be applicable throughout City which directly result from findings by City that failure to adopt such Future Land Use Regulations would result in a condition injurious or detrimental to the public health and safety; provided that such Future Land Use Regulations apply uniformly throughout the City with respect to similar uses or concerns. During any period in which DTSC has regulatory control over remediation of the 157 Acre Site, City shall not adopt Future Land Use Regulations as to matters relating to the existing condition of the 157 Acre Site or the landfill remediation that are more onerous than those DTSC is then applying to the 157 Acre Site pursuant to State law, State regulation or implementation of the RAP.

(c) *Adoption Automatic Regarding Regional Programs.* This Agreement shall not prevent City from adopting Future Land Use Regulations or amending Existing Regulations that are regional codes and are based on recommendations of a county or regional organization and become applicable throughout the region, such as the South Bay Cities Council of Governments, with the exception of any Future Land Use Regulations or amendments to Existing Regulations that will otherwise prohibit the uses or the density or intensity of uses, the maximum height or the design standards applicable to the Project or the Developer Property, that are allowed by this Agreement.

8.2.4 *Amendments to Codes for Local Conditions.* Notwithstanding the foregoing, no construction within the Project shall be subject to any provision in any of the subsequent Uniform Construction Codes, adopted by the State of California, but modified by City to make it more restrictive than the provisions of previous Uniform Construction Codes of City, notwithstanding the fact that City has the authority to adopt such more restrictive provision pursuant to the California Building Standards Law, including, but not limited to, Health and Safety Code § 18941.5, unless such amendment applies City-wide. City shall give Developer prior written notice of the proposed adoption of such amendment and Developer shall have the right to present its objections to the amendment.

8.3 Fees, Taxes and Assessments. Notwithstanding any other provision herein to the contrary, City retains the right, in accordance with the Existing Land Use Regulations of City: (i) to impose or modify Processing Fees, (ii) to impose or modify business licensing or other fees pertaining to the operation of businesses; (iii) to impose or modify taxes and assessments which apply citywide such as utility taxes, sales taxes and transient occupancy taxes; (iv) to impose or modify fees and charges for City services such as electrical utility charges, water rates, and sewer rates; (v) to impose or modify an assessment district uniformly applied to all commercial properties in the City; and (vi) to impose or modify any fees, taxes or assessments similar to the foregoing; provided that nothing herein shall restrict Developer's right to challenge or contest the validity of such fees, taxes and/or assessments.

ARTICLE 9. CITY PLEDGE SALES TAXES TO AUTHORITY.

9.1 Tax Payment Contract. Sales taxes are reported and paid to the State Board of Equalization (the "**State Board**") and remitted back to City quarterly, but up to six (6) months or more in arrears after reconciliation by State Board. Authority will also construct the Offsite Improvements pursuant to the Cooperation Agreement with City, in consideration of which City will pay to Authority the Sales Tax Assistance required pursuant to the

Conveyancing Agreement between Authority and Developer. During the Term, City shall not pledge, encumber or otherwise commit sales tax revenues from the Project in any manner that would impair its ability to provide the Sales Tax Assistance to Authority; provided that the foregoing does not preclude such pledges with respect to sales tax generated by the Remainder Developers.

9.2 Collateral Assignment of Cooperation Agreement. Concurrently with the execution of this Agreement and the Conveyancing Agreement, Authority is executing and delivering to Developer a Collateral Assignment of Cooperation Agreement (the "**Collateral Assignment of Cooperation Agreement**") assigning to Developer Authority's rights under the Cooperation Agreement in the event that Authority defaults in its obligations to enforce such Agreement as set forth in the Conveyancing Agreement. Accordingly, from and after execution by the Parties of the Cooperation Agreement, City shall not modify, amend, waive, postpone, extend, renew, replace, reduce or otherwise effectively change any provisions of the Cooperation Agreement with respect to any matter described above, without obtaining the prior written consent of Developer, which may be withheld in Developer's sole discretion.

ARTICLE 10. ANNUAL REVIEW.

10.1 Annual Review. Following commencement of construction by Developer, City and Developer shall review the performance of this Agreement and the development of the Project, on or about each anniversary of the Effective Date (the "**Annual Review**"). The cost of the Annual Review shall be borne by Developer and Developer shall pay a reasonable deposit in an amount requested by City to pay for such review. At the Annual Review, City shall review the extent of good faith substantial compliance by Developer with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code and the monitoring of mitigation in accordance with Section 21081.6 of the Public Resources Code. Developer shall cooperate in such review; provided however, that Developer, for so long as it is a publicly traded company, shall have no obligation to provide any information delivery of which would cause a violation of its federal (Securities and Exchange Commission) or state disclosure obligations, until such time as it has complied with such disclosure requirements.

10.2 Report and Response. The Director shall prepare and after consultation with Developer submit to Developer and thereafter to the City Council a written report on the performance of the Project, and identify any deficiencies and explain why such deficiencies have occurred and Developer's plan to correct them. A deficiency shall include the failure to timely proceed with development. Developer's written response shall be included in the Director's report. The report to Council shall be made within forty-five (45) calendar days of each Anniversary Date. If any deficiencies are noted or if requested by a Councilmember, the report can be brought before the City Council at a public meeting.

10.3 Failure to Comply. If City finds and determines that Developer has not substantially complied with the material terms and conditions of this Agreement for the period under review or that Developer fails to cooperate with City in the performance of the review, including making records in Developer's possession available to City that Developer is

authorized to disclose (and taking into account any restrictions on disclosure imposed on publicly traded companies pursuant to SEC regulation or other federal or state laws or regulations), City may, in accordance with the procedures set forth in Section 11.5 and after provision of the notice and cure periods set forth in Section 11.4, declare a Developer Default.

10.4 Major Review. Unless triggered by serious complaint that warrants review of these matters, not more than once every five (5) years, at the discretion of City, the Annual Review shall be a Major Review which, besides the elements contained in Section 10.1, shall additionally include:

(a) An audit of sales tax revenues, but with Developer only responsible for any information in its possession.

(b) An environmental review of all CEQA mitigation measures.

(c) Summary of any significant complaints concerning the Project.

(d) Summary of general maintenance of Project.

(e) Any recommendations for improvement of Project performance to meet objectives of this Agreement.

(f) Other significant issues pertaining to the obligations of Developer under this Agreement, in discretion of Director.

(g) Public presentation of the report to the City Council at a public meeting.

10.5 Certificate of Review. Any of the elements set forth in Section 10.4 may be included in an Annual Review at the election of City. If, at the conclusion of an Annual Review or Major Review, City finds that Developer is in substantial compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Review to Developer in a form approved by City.

10.6 Performance Review. In addition to the Annual Review, at any time based upon complaint or other cause, the Director may initiate a Performance Review, carried out in accordance with the same procedure used for an Annual Review.

10.7 Failure to Conduct Annual Review. The failure of City to conduct the Annual Review or Major Review shall not be a Developer Default unless Developer fails to cooperate in providing necessary information.

ARTICLE 11. DEFAULT, REMEDIES AND TERMINATION.

11.1 Rights of Non-Defaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all the remedies as provided below following the occurrence of a default to enforce any covenant or agreement herein. Before this Agreement

may be terminated or action may be taken against a defaulting Party ("**Defaulting Party**") to obtain judicial relief or otherwise, the Party seeking relief for a default ("**Non-Defaulting Party**") shall comply with the notice and cure provisions of Section 11.4.

11.2 Recovery of Money Damages.

11.2.1 *No Recovery of Monetary Damages.* Due to the complex trade-off of rights under this Agreement, there shall be no recovery for monetary damages for a breach of this Agreement, provided that the provisions of this Section shall not limit the right of any Party to reimbursement of amounts due under this Agreement or to interest or late fees as specified in Sections 11.2.4 and 11.9. Instead, a dispute resolution process is provided in Section 11.5. The Parties shall be entitled to equitable relief in the form of specific performance or injunction in the event of a violation of the terms hereof following utilization of the dispute resolution process.

11.2.2 *Force Majeure for Delays.* In the event of any claimed delay or Force Majeure under this Agreement, the sole recourse of the Party damaged by the delay shall be an extension of their performance deadlines, provided that the provisions of this Section shall not limit the right of any Party to reimbursement of amounts due under this Agreement or to interest or late fees as specified in Sections 11.2.4 and 11.9.

11.2.3 *Restitution of Improper Fees or Exactions.* In the event any fees or exactions, whether monetary or through the provision of land, good or services, are imposed on the Project or the Developer Property, other than those authorized pursuant to this Agreement, Developer shall be entitled to recover from City restitution of all such improperly assessed fees or exactions, either in kind or the value in-lieu of the fees or exaction, together with interest thereon at the rate of the maximum rate provided by Section 11.2.4.

11.2.4 *Reimbursement for Monetary Default.* In the event either Party fails to perform any monetary obligation under this Agreement, the Non-Defaulting Party may sue for the payment of such sums to the extent due and payable. The Defaulting Party shall pay interest thereon at the lesser of: (i) eight percent (8%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of the monetary obligation until payment is actually received by the Non-Defaulting Party.

11.3 Compliance with the Claims Act. Compliance with this Article 11 shall constitute full compliance with the requirements of the Claims Act, Government Code § 900 et seq., pursuant to Government Code § 930.2 in any action brought by Developer.

11.4 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement by delivering a written notice of the alleged default ("**Notice of Default**") in accordance with the procedures hereinafter set forth for any alleged failure or breach of any other Party to perform any material duty or obligation under the terms of this Agreement. Notwithstanding any failure or breach, a Party shall be deemed to be in Default under this Agreement (and therefore, a Defaulting Party) only if: (i) the Non-Defaulting Party has provided a Notice of Default to such Party setting forth the nature of the breach or failure and the actions, if any, required to cure such breach or failure, and (ii) the Party for which a breach is alleged shall have failed, if the breach or failure can be cured, to take such actions

and cure such default (x) within twenty (20) calendar days after the date of its receipt of the written notice delivered by the Non-Defaulting Party for monetary defaults and (y) for all other defaults, within thirty (30) calendar days after the date of its receipt of the Notice of Default delivered by the Non-Defaulting Party, provided, however, if any non-monetary default cannot be cured within such thirty (30) day period, then the Party against which a default is alleged shall not be deemed in breach of this Agreement if and as long as such Party does each of the following:

(a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(b) Notifies the Non-Defaulting Party of its Party's proposed course of action to cure the default;

(c) Promptly commences to cure the default within the thirty (30) day period;

(d) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(e) Diligently prosecutes such cure to completion.

11.5 Dispute Resolution.

11.5.1 *Meet & Confer.* Prior to any Party issuing a Notice of Default, the Non-Defaulting Party shall inform the Party whose breach is alleged either orally or in writing of the alleged Default and request a meeting to meet and confer over the alleged default and how it might be corrected. The Parties through their designated representatives shall meet within ten (10) calendar days of the request therefor. The Parties shall meet as often as may be necessary to correct the conditions of default, but after the initial meeting either Party may also terminate the meet and confer process and revive the claim of default by proceeding with a formal Notice of Default under Section 11.5.2.

11.5.2 *Notice of Default.* Should a Party, following receipt of a Notice of Default, fail to timely cure any default within the time period provided above, the Non-Defaulting Party may, in its discretion, extend the time for performance or provide the Defaulting Party with an additional notice of Default; provided that no Party shall be in Default under this Agreement unless a Notice of Default shall have been delivered and an opportunity to cure such alleged default shall have been provided as described in this Article 11.

11.5.3 *Termination.* Any termination permitted by this Agreement shall be carried out by provision of a Termination Notice stating that the Non-Defaulting Party will elect to terminate the Agreement within thirty (30) calendar days and stating the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based ("**Termination Notice**"). No Termination Notice shall be issued unless a Notice of Default shall have been delivered and an opportunity to cure each alleged default shall have been provided as described in this Article 11. Once a Termination

Notice has been issued, the Non-Defaulting Party's election to terminate this Agreement will only be waived if (i) the Defaulting Party cures all Defaults prior to the date of termination, or (ii) if the Defaulting Party is Developer, Developer requests a Termination Hearing within ten (10) calendar days of receiving such Termination Notice, and such Hearing results in contrary action on the Default.

11.5.4 *Hearing Opportunity Prior to Termination.* Prior to any termination of this Agreement by City, a termination hearing may be conducted as provided herein ("**Termination Hearing**") if Developer, as Defaulting Party, requests such hearing within ten (10) calendar days of receiving the Termination Notice. The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within ninety (90) calendar days of the request for Termination Hearing, subject to any legal requirements including, but not limited to, the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, Developer shall have the right to present evidence to demonstrate that it is not in Default with respect to any matter for which termination of this Agreement is a permitted remedy hereunder and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, as may be adjourned from time to time, the Council may, by adopted resolution, act as follows:

(a) Decide to terminate this Agreement, subject to the provisions of Section 11.7.

(b) Determine that Developer is innocent of a Default or has cured the Default and, accordingly, dismiss the Termination Notice and any charges of Default; or

(c) Impose conditions on a finding of Default and a time for cure, such that Defaulting Party's fulfillment of said conditions will waive or cure any Default.
In the event that, following the issuance by City of a Termination Notice, Developer or any person or entity on behalf of Developer either (i) cures the Developer Default or (ii) if the termination is primarily due to Developer's failure to complete Phase I, and then Developer completes Phase I of the Project prior to the termination date, such termination shall cease and be dismissed with respect to the Developer Default. Following the decision of the City Council, any Party dissatisfied with the decision may seek judicial relief consistent with this Article.

11.6 Developer Default. Following delivery of notice by City to Developer in accordance with Section 11.4 and failure of Developer to timely cure, the following shall be a Developer Default under this Agreement:

11.6.1 *Failure to Defend Litigation.* Developer fails to defend Claims or Litigation with respect to Existing Development Approvals as and to the extent required by Section 13.4 or fails to otherwise comply with the provisions of Section 13.4.

11.6.2 *Refusal to Obtain Permits or Commence Construction.* Developer refuses to apply for building permits and commence construction of the improvements for Phase I of the Project in accordance with the Schedule of Performance as extended by Force Majeure or otherwise in accordance with this Agreement.

11.6.3 *Failure to Complete.* Once City issues building permits for the Project, Developer commences construction but fails to complete Phase I of the Project and open for business prior to the first anniversary of the date set forth therefor in the Schedule of Performance, as extended by Force Majeure or otherwise in accordance with this Agreement. Nothing herein shall restrict Developer from completing the Project in two Phases as described in Section 5.7.

11.6.4 *Failure to Participate in Insurance.* Developer fails to participate in Development PLL required in Section 13.2 or to provide the indemnification in accordance with the terms of Section 13.3.

11.6.5 *Failure to Pay.* Developer fails to timely pay any sums Developer is required by this Agreement to pay.

11.6.6 *Other Defaults.* Any other material breach of the terms hereof.

11.7 Termination. The Parties shall have the following rights to terminate this Agreement. Other than as provided below, the Parties shall not have the right to terminate this Agreement.

11.7.1 *Termination Before Transfer of Developer Property.* Before the conveyance by Authority of the Developer Property to Developer pursuant to the Conveyance Agreement, this Agreement may be terminated as follows:

(i) Prior to commencement of Advances by Developer pursuant to the Conveyancing Agreement, by a Non-Defaulting Party due to the uncured material Default of the Defaulting Party;

(ii) From and after commencement of Advances by Developer pursuant to the Conveyancing Agreement, by a Non-Defaulting Party for material persistent Defaults by a Defaulting Party that remain uncured after applicable cure periods and for which the Non-Defaulting Party has no other reasonable remedy.

(ii) By either Party concurrently with the termination of the Conveyancing Agreement.

(iii) By either Party in the event of a Final Adverse Judgment in any Claims or Litigation with respect to the Existing Development Approvals.

11.7.2 *Termination After Transfer of Developer Property.* From and after the date that Developer acquires title to the Developer Property and until the issuance of a Certificate of Completion for Phase I, for material persistent Defaults by a Defaulting Party that remain uncured after applicable cure periods and for which the Non-Defaulting Party has no other reasonable remedy.

11.7.3 *Termination After Completion of Phase I.* From and after issuance of the Certificate of Completion for Phase I, City shall have the right to unilaterally terminate

this Agreement only (i) for material persistent Defaults by Developer that remain uncured after applicable cure periods and for which the City has no other reasonable remedy and (ii) if Developer ceases operation of completed portions of the Project for 365 calendar days for reasons other than Force Majeure or City Delay, and Developer shall have the right to unilaterally terminate this Agreement only for material persistent Defaults by City that remain uncured after applicable cure periods and for which Developer has no other reasonable remedy.

11.8 Effect of Termination. If this Agreement is terminated for any reason, such termination shall not affect any right or duty arising from City entitlements or Development Approvals with respect to the Developer Property approved concurrently with or subsequently to the approval of this Agreement by the City Council where a building permit has been obtained, and with respect to which substantial work has commenced. No termination of this Agreement shall prevent Developer from completing and obtaining certificates of occupancy for buildings or other improvements authorized pursuant to valid building permits approved by the City or under construction at the time of termination subject to existing City ordinances, including without limitation, otherwise vested rights.

11.9 Late Payment. Where one of the Parties hereto is required to make a payment to the other, payments shall be made promptly, and, unless otherwise specified, in no less than thirty (30) calendar days after the date of delivery of written request for payment supported with appropriate documentation. Any payment not made within thirty (30) calendar days of the due date then accrues interest compounded monthly at the rate set forth in Section 11.2.4.

11.10 CALReUSE. Upon acquisition of the Developer Property, an appropriately creditworthy affiliate of Developer will agree to indemnify City against any loss of City's Five Million Six Hundred Thousand Dollar ($5,600,000) CALReUSE grant to the extent such loss results from Developer's failure to thereafter diligently pursue the Project, other than by reason of circumstances beyond its control.

11.11 Waiver of Breach. By not challenging any (Existing or Future) Development Approval within ninety (90) calendar days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.

11.12 Venue. In the event of any judicial action, venue shall be in the Superior Court of Los Angeles County.

ARTICLE 12. ASSIGNMENT AND BINDING SITE COVENANTS.

12.1 Right to Assign. Neither Party shall have the right to assign this Agreement or any interest or right thereunder without the prior written consent of the other Party, except that Developer may without City's approval assign its rights and obligations under this Agreement to another entity which is at least fifty percent (50%) owned and effectively controlled (directly or indirectly) by The Macerich Partnership, L.P., which is the current sole member of Developer (a "**Permitted Transfer**") or to any entity to which Authority permits an assignment pursuant to the Conveyancing Agreement. Any assignee of Developer's rights

hereunder shall own, develop and operate the Developer Property pursuant to the provisions of this Agreement. The obligation to obtain a joint venturer's consent to typical joint venture "major decisions" does not vitiate effective control. City may assign this Agreement to a successor-in-interest to City that may be created by operation of law.

12.2 Effective Assignment by Transfer of Entity Interests. Any transfer of interests in Developer or any successor to Developer after a Permitted Transfer shall constitute an unpermitted effective assignment of this Agreement only if following all such transfers the then-current developer is not at least fifty percent (50%) owned and effectively controlled (directly or indirectly) by The Macerich Partnership, L.P.

12.3 Assumption by Assignee. No attempted assignment of any of Developer's obligations hereunder which requires City's approval shall be effective unless and until the successor entity signs and delivers to City an assumption agreement, in a form reasonably approved by City, assuming such obligations. No consent or approval by City of any transfer requiring City's approval shall constitute a further waiver of the provision of this Section 12.3 and, furthermore, City's consent to a transfer shall not be deemed to release Developer of liability for performance under this Agreement unless such release is specific and in writing executed by City. In no event shall City's release of Developer from liability under this Agreement upon a transfer be unreasonably withheld or delayed.

12.4 No Approval Needed for Certain Transfers. Notwithstanding any provision of this Agreement to the contrary, City approval of an Assignment of any portion of the Developer Property under this Agreement shall not be required in connection with any of the following (which shall also for purposes hereof be deemed a Permitted Transfer):

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing, and any resulting foreclosure, sale or assignment in lieu thereof.

(b) The granting of covenants, easements and/or dedications to facilitate the development of the Project on the Developer Property.

(c) A transfer of common areas to a duly-organized property owners' association.

12.5 Subject to Terms of Agreement. Following any Assignment of any of the rights and interests of Developer under this Agreement, in accordance with Section 12.1 above, the exercise, use and enjoyment of such rights and interests shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Developer.

12.6 Release of Developer. Upon the written consent of City to the complete assignment of this Agreement, or any Permitted Assignment, and the express written assumption of the assigned obligations of Developer under this Agreement by the assignee, Developer shall be relieved of the assigned obligations under this Agreement with respect to the portion of the Developer Property transferred, except to the extent Developer is in Default under the terms of this Agreement prior to the transfer.

12.7 Transfer of Sales Tax Assistance. Any transfer of the Developer Property shall include a transfer of the Sales Tax Assistance which cannot be transferred to any entity not an owner or operator of the Project.

12.8 Transfer of Development Rights. For purposes of the Specific Plan, Developer is the owner of Planning Area 2 and shall have the right, in its sole discretion, during the Term, to assign development rights in excess of the Phase I allocation of 450,000 GBA square feet to owners or operators of portions of the Remainder Site in accordance with the requirements of Section 3.5 of the Specific Plan. At the termination of this Agreement, any development rights not then utilized by Developer may be utilized by the City elsewhere on the 157 Acre Site, but nothing herein shall prevent City from amending the Specific Plan with appropriate CEQA review to increase entitlement rights on the Remainder Site, so long as such entitlements do not have the effect of reducing entitlement rights on the Developer Property.

ARTICLE 13. INSURANCE, RELEASES, INDEMNITIES, AND THIRD-PARTY ACTIONS.

13.1 Compliance with RAP. In connection with the development, operation and use of the Developer Property, Developer and City shall at all times comply with the RAP, as the same may be amended or modified by DTSC from time to time.

13.2 Insurance. Authority has obtained a comprehensive pollution legal liability program ("**Development PLL**") in which Developer will participate. Authority and Developer intend to obtain additional insurance in accordance with the Information Administration Agreement attached as **Exhibit "M"**, which details the terms and conditions of those insurance policies and shall dictate the terms of defense and indemnity on insured matters. Developer shall pay its share for such coverage as described on **Exhibit "M"**. This insurance will include coverage for environmental claims and provides protection to the public entities, developers, property owners and enrolled contractors carrying out construction on the Developer Property, including coverage for general liability, personal injury, property damage and other claims.

13.3 Hold Harmless: Developer's Operations Following Completion of Phase I. From and after the completion of Phase I, with respect only to third party claims and litigation, Developer shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from activities or business operations of Developer or Developer's agents, contractors, subcontractors, or employees on the Developer Property with respect to the Project, whether such operations be by Developer or by contractors or subcontractors to any of Developer's agents, contractors or subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's agents, contractors or subcontractors; provided that (i) the foregoing indemnity shall exclude matters arising from or related to the presence of hazardous materials in place or generated from materials or conditions in place prior to conveyance of the Developer Property to Developer; (ii) to the extent that the comprehensive insurance program discussed in Section 13.2 continues and provides coverage,

and so long as Developer is contributing its share of premium, the obligations of Developer under this Section 13.3 shall not apply if coverage for defense and payment of loss, in any amount, is provided to Authority and City, as applicable, under any of the insurance programs obtained and maintained by Authority or Developer and listed on **Exhibit "M"** and performance by such insurers shall be deemed to satisfy the obligations of Developer hereunder; (iii) the obligations of Developer under this Section shall not apply to any claims, actions, or proceedings arising through the gross negligence or willful misconduct of City, Authority, and their respective members, officers, agents or employees; and (iv) the obligations of Developer under this Section shall not apply with respect to agents, contractors and subcontractors retained by Authority or City and being directed by either of them.

13.4 Litigation Indemnity.

13.4.1 *Non-Liability of City Concerning Entitlements.* The Parties acknowledge that there may be challenges to the legality, validity and adequacy of the Development Approvals and/or this Agreement or any amendment hereto in the future; and if successful, such challenges could delay or prevent the performance of this Agreement and the development of the Project. City shall have no liability under this Agreement for the inability of Developer to construct the Project as the result of a judicial determination that the Existing Development Approvals, the General Plan, the zoning, the Land Use Regulations, or any portions thereof are invalid or inadequate or not in compliance with law. Nonetheless, City agrees to and shall timely take all actions which are necessary or required to uphold the validity and enforceability of this Agreement and the Development Approvals. If this Agreement or any portion hereof, or any Development Approval is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider and implement all modifications to this Agreement and the Development Approvals which are necessary or required to render them valid and enforceable to the extent permitted by applicable law. Additionally, Developer shall have the right before judgment is rendered to settle or confess judgement and then request modifications to this Agreement and the Development Approvals as provided in this Section.

13.4.2 *Participation in Litigation; Indemnity.* Developer agrees to indemnify City and its elected boards, commissioners, officers, agents, and employees and to hold and save each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) for any Claims or Litigation (other than litigation commenced by City or Authority or any entity under the control of or affiliated with either of them) seeking to restrain, enjoin, challenge or delay issuance of any of the Development Approvals or this Agreement. City shall provide Developer with notice of the pendency of such action and shall request that Developer defend such action. Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse City for any necessary legal cost incurred by City. Developer shall provide a deposit in the amount of City's estimate, in its sole and absolute discretion, of the cost of litigation, in a rolling 90-day basis, which shall be updated monthly, and shall make additional deposits as requested by City to keep the deposit at such level. City may ask for further security in the form of a deed of trust to land of equivalent value. If Developer fails to provide or maintain the deposit, City may abandon the action and Developer shall pay all costs resulting

therefrom and City shall have no liability to Developer. During any such pending litigation with respect to the Existing Development Approvals or the Project Approvals, Developer's obligation to pay the cost of the action, including judgment, shall extend until a Final Adverse Judgment or successful final termination of the Claims or Litigation is obtained; provided however that Developer may terminate the Conveyancing Agreement in accordance with its terms during any Challenge Litigation (as defined in Section 19.1 of the Conveyancing Agreement) and in such event the obligations of Developer under this Section 13.4 shall concurrently terminate. With respect to any Claims or Litigation relating to a Future Development Approval, Developer may at any time notify the City of Developer's intention to withdraw its request for such approval, and the obligations of Developer under this Section 13.4 shall terminate upon the date of such withdrawal, provided that Developer shall be obligated to indemnify the City for its costs and expenses from the commencement of the Claims or Litigation until the withdrawal from any then pending proceedings or litigation. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. In light of Developer's indemnity for Claims or Litigation, except as provided above regarding the Challenge Litigation, neither Party shall have the right to settle the litigation without the prior written consent of the other. Neither City nor Developer shall have any rights or obligations under this Section 13.4 prior to the Effective Date although Developer may, in its sole and unfettered discretion, assume the obligations if it chooses to do so.

13.4.3 *Developer Default; City Right to Abandon.* If Developer fails to timely pay such funds, City may abandon the action without liability to Developer and may recover from Developer any attorneys' fees and other costs for which City or Authority may be liable as a result of abandonment of the action.

13.5 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than City's Default.

ARTICLE 14. COVENANTS, MAINTENANCE CC&RS AND CFD.

14.1 Covenant Run with the Land. Subject to the provisions of Articles 12 and 15 and pursuant to the Development Agreement Statute (Government Code § 65868.5):

14.1.1 *Binding on Successors.* All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Developer Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

14.1.2 *Equitable Servitudes.* All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

14.1.3 *Benefit and Burden.* Each covenant to do or refrain from doing some act on the Developer Property hereunder (i) is for the benefit of and is a burden upon every portion of the Developer Property, (ii) runs with such lands, and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

14.2 Declaration of Non-Discrimination. Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of this Agreement. Developer shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry. This provision shall be included in the recorded Cell 2 CC&Rs.

14.3 Declaration of Covenants, Conditions and Restrictions. Prior to the transfer of the Developer Property to Developer, Developer and Authority shall negotiate and shall submit to City for its review and approval a proposed form of Declaration of Covenants, Conditions and Restrictions applicable to the Developer Property ("**Cell 2 CC&Rs**"). It is anticipated that the Cell 2 CC&Rs will contain covenants for (i) general maintenance standards to provide an attractive and well-maintained development, (ii) operation and maintenance of the BPS which come into the Cell 2 Surface Lot and attach to the buildings and their respective roofs, which are to be operated and maintained by Authority and (iii) the restrictions on use of the embankment and which among other things prevent obstruction of signage as provided in Section 4.7.3 of this Agreement. The Cell 2 CC&Rs shall survive the termination of this Agreement for such period as the Cell 2 Surface Lot is utilized for retail and outlet uses. City shall be a party to the Cell 2 CC&Rs and thereby shall have a right to enforce maintenance covenants contained in the Cell 2 CC&Rs as further set forth therein, including the right to recover its enforcement costs, any noncompliance by Developer following notice and the opportunity to cure provided in the Cell 2 CC&Rs. The Cell 2 CC&Rs shall be recorded at the close of escrow for the Developer Property. The Cell 2 CC&Rs shall be enforceable solely by Developer, Authority and City and their respective governmental successors, and shall not benefit private owners or occupants of the 157 Acre Site or any portion thereof other than owners of the Cell 2 Surface Lot.

14.4 Community Facilities Districts.

14.4.1 *Existing CFDs.* Two (2) Community Facility Districts have been established by City under statutory authority to pay for, respectively (i) O&M for Remedial Systems (CFD 2012-1) ("**Remediation CFD**") costs and (ii) the costs of installation, operation and maintenance of Entry Signs and Entry Plazas and the costs of operation and maintenance of public infrastructure within the 157 Acre Site (CFD 2012-2) ("**Infrastructure CFD**"; collectively with the Remediation CFD, the "**Existing CFDs**").

14.4.2 *Restructure of Existing CFDs; Restrictions.* City shall take such actions as are necessary or reasonably required to restructure the terms of the Existing CFDs encumbering the Developer Property such that the Project will be charged only such annual amounts as are necessary to pay the Project's pro rata share, (i) for the Remediation CFD, of only those line items for operation and maintenance of the Remedial Systems set forth on **Exhibit "F"** required in connection with the 157 Acre Site (the "**O&M**") and (ii) for the Infrastructure CFD, (1) costs of operation and maintenance of public infrastructure within the 157 Acre Site and (2) costs of installation, operation and maintenance of the Entry Plazas, including Entry Signs. The Existing CFDs shall be restructured or a new CFD approved (as restructured or replaced, collectively, the "**CFD**") in a manner to provide no greater proceeds than are required for the foregoing, and the CFD shall be dedicated solely to the foregoing costs. Actual CFD assessments can rise or fall due to the actual costs of such line items, subject to the limitations contained in the following sentence. Regardless of actual costs incurred by City, Authority or any community facilities district, neither Developer, the Project nor the Developer Property shall be charged, collectively, by the Existing CFDs or the CFD for the items specified in clauses (i) and (ii)(1) above, more than One Dollar and Seventy-Five Cents ($1.75) per square foot of GBA on an annual basis, except that (1) upon the later of (a) sale by Authority to private developers of all of the Remainder Site and (b) the date that is eight (8) years following the grand opening of Phase I, the $1.75 cap on per square foot CFD assessments may be increased proportionately for the Cell 2 Surface Lot upon an affirmative vote (by the majority or other percentage required by law) to increase the CFD cap by the landowners of the 157 Acre Site carried out in accordance with then applicable laws; and (2) in the event that Authority or City grants to any Remainder Developer proportionately more favorable CFD rates or terms of any kind including, but not limited to, a lesser CFD cost or lesser cap than that set forth above, Developer shall be entitled to the same rates and terms and the same cap granted to such Remainder Developer on a proportionate basis. In addition, Developer shall be responsible to pay its pro rata share of the costs of installation, operation and maintenance of the Entry Plazas, including Entry Signs, which shall be equal to thirty percent (30%) of the reasonable costs incurred by the City in each year for such purpose. The City has also previously created or commenced creation of CFD 95-1, which continues to appear on title reports for the Cell 2 Surface Lot. City agrees to determine whether CFD 95-1 was formed, and if formed and not previously terminated, to terminate such CFD prior to transfer of the Developer Property by Authority to Developer. In all events, prior to the conveyance of the Cell 2 Surface Lot to Developer, the City shall demonstrate to the satisfaction of Developer and the title company that CFD 95-1 does not affect the Cell 2 Surface Lot.

14.4.3 *No Other CFDs.* There shall be no tax or other financial burden imposed on the Developer Property or the improvements thereon on account of the CFD or any similar taxing authority of City or any agency or instrumentality of City or controlled by City, other than as set forth in this Section and the CFD shall be in lieu of any other assessments, special taxes, fees or charges that may otherwise be charged on account of the types of services covered thereby.

14.4.4 *Developer Review.* City will provide Developer with the opportunity to review and provide input on all documents and budgets relating to the establishing or restructuring the CFD (including, without limitation, any funding and acquisition agreement and the rate and method of allocating the CFD assessments) at least thirty (30) calendar days prior to the date on which the formation documents or amendments to the Existing CFDs or any CFD are expected to be submitted for the agenda package for the first public hearing related to such formation or amendment. Developer will not oppose a determination by City to form or amend the CFD, including without limitation a determination to subject all or any portion of the Developer Property and improvements thereon to such assessment, provided that City, the CFD and such assessments comply with the requirements of this Section 14.4.

14.5 Representations and Warranties of City. City represents and warrants to Developer that, to City's Actual Knowledge, the following matters are true and correct as of the Effective Date:

14.5.1 *City.* City is a general law city and a municipal corporation under the laws of the State of California. City has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which City is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

14.5.2 *Actions and Findings.* City has taken all actions and adopted such findings as may be required under applicable law to enter into this Agreement and the Cooperation Agreement and perform its obligations thereunder.

14.5.3 *No Violation.* City's execution and delivery of, and performance of its obligations under this Agreement, the Cooperation Agreement, and other agreements to which City is a party necessary to carry out this transaction, do not (i) violate the laws, acts or agreements pursuant to which City was created and is governed, (ii) violate, breach, or result in a default under any existing obligation of or restriction on City, or (iii) breach or otherwise violate any existing obligation of or restriction on City under any order, judgment or decree of any state or federal court or federal or state governmental authority.

14.5.4 *Required Consents.* No order, consent, permit or approval of any state or federal governmental authority is required on the part of City for the execution and delivery of, and performance of its obligations under, this Agreement and the Cooperation Agreement, except for such as have been obtained.

14.6 Representations and Warranties of Developer. Developer represents and warrants to City that, to Developer's Actual Knowledge, the following matters are true and correct as of the Effective Date:

14.6.1 *Developer.* Developer is a limited liability company formed under the laws of the State of Delaware. Developer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which Developer is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

14.6.2 *Actions and Findings.* Developer has taken all actions and adopted such findings as may be required under applicable law to enter into this Agreement and the Cooperation Agreement and perform its obligations thereunder.

14.6.3 *No Violation.* Developer's execution and delivery of, and performance of its obligations under this Agreement, the Conveyancing Agreement and other agreements to which Developer is a party necessary to carry out this transaction, do not (i) violate the laws, acts or agreements pursuant to which Developer was created and is governed, (ii) violate, breach, or result in a default under any existing obligation of or restriction on Developer, or (iii) breach or otherwise violate any existing obligation of or restriction on Developer under any order, judgment or decree of any state or federal court or federal or state governmental authority.

14.6.4 *Required Consents.* No order, consent, permit or approval of any state or federal governmental authority is required on the part of Developer for the execution and delivery of, and performance of its obligations under, this Agreement and the Cooperation Agreement, except for such as have been obtained.

14.7 Actual Knowledge. For purposes of this Section and each of the documents executed in connection herewith, "**Actual Knowledge**" or words of similar import means and is limited to the actual knowledge, as of Effective Date, or, if specifically stated, as of the date of transfer of the Developer Property by Authority to Developer, of Ken Farfsing or John Raymond for City and Tom Leanse or Garrett Newland for Macerich, without any further duty of inquiry or independent investigation on the part of the Party or such individual. Each Party represents and warrants that such persons are the persons within such Party's organization having overall responsibility for the operation and management of Cell 2. Each Party understands and agrees that such individual shall not be personally liable for any representation or warranty set forth herein.

ARTICLE 15. MORTGAGEE PROTECTION.

15.1 Definitions. As used in this Section, the term "**Mortgage**" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "**Lender**" shall mean and include the holder of the obligations secured by any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

15.2 Notice to City of Mortgage. Notwithstanding the restrictions on transfer in Article 12, mortgages required for construction or term financing of the Project shall be permitted without consent of City. Developer or Lender (or any other entity permitted to acquire title under this Agreement) may notify City in advance of any Mortgage or any extensions or modifications thereof. Any Lender which has so notified City shall not be bound by any amendment or modification to this Agreement without such Lender giving its prior written consent thereto.

15.3 Developer's Breach Not Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render void the lien of any Mortgage made in good faith and for value but, unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the successful bidder at any foreclosure sale under any such Mortgage, transferee in lieu thereof or similar transferee.

15.4 Lender Not Obligated to Construct or Complete Improvements. The Lender under any Mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such Lender to devote the Project or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

15.5 Notice of Default and Termination Notice to Mortgagee. Whenever City shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder or any proposed termination of this Agreement, City shall at the same time deliver a copy of such notice or demand to each Lender of record of any Mortgage who has previously made a written request to City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No Notice of Default or Termination Notice shall be effective as to the Lender unless such notice is given.

15.6 Right to Cure. Each Lender (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) calendar days after the receipt of a Notice of Default or Termination Notice, and one hundred twenty (120) calendar days after Developer's cure rights have expired, whichever is later, to:

(a) Obtain possession, if necessary, and to commence and diligently pursue the cure until the same is completed, and

(b) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that, in the case of a default which cannot with diligence be remedied or cured within such cure periods referenced above in this Section 15.6, including as a result of delays in obtaining possession of the Developer Property or Developer's bankruptcy, such Lender shall have additional time as reasonably necessary to remedy or cure such default. In the event there is more than one such Lender, the right to cure or remedy a breach or default of Developer under this Section shall be exercisable only by the Lender that is first in priority, or as such Lenders

may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

15.7 Assuming Lender. If a Lender or foreclosure transferee shall undertake to continue the construction or completion of the improvements on the Developer Property as contemplated by this Agreement (beyond the extent necessary to preserve and protect the improvements or construction already made), it must first assume the obligations of Developer under this Agreement by written agreement reasonably satisfactory to City. The Lender must also submit evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations, and must agree to complete, in the manner required by the Agreement, the improvements to which the lien or title of Lender relates.

15.8 Reasonable Modifications. City and Developer acknowledge that many Lenders have specific, detailed requirements for Lender protection as a condition to making loans secured by real property, and therefore City agrees to make such modifications and additions to the foregoing Lender protection provisions as Lenders may reasonably require, provided (i) they are consistent with then-current market practices of such Lenders in general, and (ii) they do not require any modifications to the Development Plan.

ARTICLE 16. MISCELLANEOUS.

16.1 Estoppel Certificate. Either Party (or a Mortgagee under Article 15) may at any time deliver written notice to the other Party requesting an Estoppel Certificate stating:

(a) The Agreement is in full force and effect and is a binding obligation of the Parties;

(b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

(c) There are no existing Defaults under the Agreement to the actual knowledge of the Party signing the Estoppel Certificate and such Party has not delivered any Notice of Default the other Party for which the specified default has not been cured or waived.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) calendar days after receipt of the request. The Director may sign Estoppel Certificates on behalf of City. An Estoppel Certificate may be relied on by assignees and Lenders.

16.2 Force Majeure. The time within which Developer or City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days for which such Party's performance is delayed by war; acts of terrorism, insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; natural disasters; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions on priority, initiative or referendum; moratoria adopted by governmental agencies other than City; unusually severe weather; inability to secure or delays in securing labor, fuels, materials, services or tools; lack of transportation; reasonably

unforeseeable physical condition of the 157 Acre Site including without limitation the presence of hazardous materials previously unknown or unanticipated environmental conditions discovered, including delay resulting from the investigation or remediation of such conditions; litigation, administrative action or other adversarial proceeding (other than litigation commenced by the delayed Party) seeking to restrain, enjoin, challenge or delay issuance of any of the Development Approvals or this Agreement or the Project Agreements, injunctions issued by any court of competent jurisdiction, changed conditions; inability to secure necessary labor, materials or tools and other similar causes; failure of governmental entities (other than the City) to issue permits or approvals (including without limitation failure of DTSC to undertake analysis or to issue health risk assessments, permits or approvals required to permit phased development and/or phased occupancy, operation and use of the 157 Acre Site or the Developer Property), changes in local, state or federal regulations; wide-spread economic dislocation or duress; delay by Authority (beyond the dates set forth in the Conveyancing Agreement for performance of that portion of the Authority Work) in construction of the portions of the BPS to be constructed above the slab and performance of other portions of the Authority Work to be performed following the Construction Period Commencement Date set forth in the Schedule of Performance or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform (the foregoing, individually or collectively, "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the Party claiming such extension is sent to the other Party within sixty (60) calendar days of knowledge by the requesting Party of the commencement of the cause, provided that if the Party claiming such Force Majeure fails to notify the other Party in writing of its request for a given Force Majeure within the sixty (60) calendar days specified above, any extension for such Force Majeure shall be in the sole discretion of the Party to which such request is subsequently made; and provided further that the foregoing sixty (60) calendar day period shall not apply if the City Manager or Assistant City Manager on behalf of City and Garrett Newland (or any subsequent authorized representative identified by Developer with notice to City) on behalf of Developer had (orally or in writing) discussed the event comprising a Force Majeure event.

16.3 Interpretation.

16.3.1 *Construction of Development Agreement.* The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of City's governmental powers over the Developer Property.

16.3.2 *Entire Agreement.* This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and this Agreement supersedes all previous negotiations, discussions, communications, oral or written, and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement. Any and all prior agreements, understandings or representations between the Parties, including without limitation, the Reimbursement Agreement and the ARENA are hereby terminated and

canceled in their entirety. With respect to the Project, City and Authority are parties to that certain Cooperation Agreement entered into substantially concurrently with the Effective Date, and Authority and Developer are parties to that certain Conveyancing Agreement entered into substantially concurrently with the Effective Date. In the event of any conflict between or among this Agreement, the Conveyancing Agreement and/or the Cooperation Agreement, the terms of this Agreement shall govern with respect to development rights, land uses and entitlements, the terns of the Conveyancing Agreement shall govern with respect to conveyance of the Developer Property from Authority to Developer and construction of the Project and the terms of the Cooperation Agreement shall govern with respect to sales tax matters.

16.3.3 *Mutual Covenants.* The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefitted thereby of the covenants to be performed hereunder by such benefitted Party.

16.3.4 *Severability.* If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the Parties shall comply with the meet and confer procedures set forth in Section 11.5.1 above.

16.4 Joint and Several Obligations. All obligations and liabilities of Developer hereunder shall be joint and several among the obligees.

16.5 No Third-Party Beneficiaries. There are no other third-party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person, excepting the Parties hereto.

16.6 Notice. All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (i) when hand delivered to the other Party; (ii) upon receipt by the Party to which notice is sent when placed in the US mail, with postage fully prepaid, registered or certified mail, return receipt requested, or (iii) the next business day after such notice has been deposited with an overnight delivery service reasonably approved by the Parties (Federal Express, Overnite Express, United Parcel Service and U.S. Postal Service are deemed approved by the Parties), postage prepaid, addressed to the Party to whom notice is being sent as set forth below with next business day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

16.6.1 *To Developer.* Any notice required or permitted to be given by City to Developer under this Agreement shall be in writing addressed as follows:

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

Attention: Chief Legal Officer
Email: ann.menard@macerich.com

and

Attention: Asset Management
Email: dave.short@macerich.com
Email: garrett.newland@macerich.com

With a copy to: Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard Los Angeles, California 90064
Attention: Tom Muller, Esq.
Email: tmuller@manatt.com

And a copy to: Armbruster Goldsmith & Delvac LLP
12100 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90025
Attention: Amy E. Freilich, Esq.
Email: amy@agd-landuse.com

or such other address as the Developer may designate in writing to City.

16.6.2 *To City.* Any notice required or permitted to be given by Developer to City under this Agreement shall be in writing, addressed as follows and in addition, shall be delivered in the same manner as specified above to both the City Clerk and Community Development Director at the address set forth below for the Community Development Director:

City of Carson
701 E. Carson Street
Carson, California 90745
Attention: Community Development Director

With a copy to:

Sunny Soltani, Esq., City Attorney
Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612

or such other address as City may designate in writing to Developer.

Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service receipt.

16.7 Relationship of Parties. It is specifically understood and acknowledged by the Parties that the Project is a private development, 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. The only relationship between City and Developer is that of a government entity regulating the development of private property and the owner of such private property.

16.8 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend litigation against the other Party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorney's fees on any appeal, and, in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

16.9 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to (i) implement this Agreement, the Project, the Existing Development Approvals and the Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement, (ii) satisfy the SEIR Mitigation Measures and Conditions of Approval and any subsequent conditions of approval legally required by City as a condition to subdivision of the 157 Acre Site and development of the Project on the Developer Property, and (iii) prepare and record the Cell 2 CC&Rs, other applicable agreements, covenants, conditions and restrictions and Easement Agreements in accordance with 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 to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

16.10 Time of Essence. Time is of the essence in: (i) the performance of the provisions of this Agreement as to which time is an element; and (ii) the resolution of any dispute which may arise concerning the obligations of Developer and City as set forth in this Agreement.

16.11 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.

16.12 Execution.

16.12.1 *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.

16.12.2 *Recording*. City Clerk shall cause a copy of this Agreement to be executed by City and recorded in the Office of the Recorder of Los Angeles County no later than ten (10) calendar days after the date that the City Council approves this Agreement (Gov't. Code § 65868.5). The recordation of this Agreement is deemed a ministerial act and the failure of City to record the Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

16.12.3 *Authority to Execute*. The persons executing this Agreement on behalf of each of the Parties hereto warrant that (i) the Party on which behalf it is executing is duly organized and existing, (ii) such person is duly authorized to sign and deliver this Agreement on behalf of the Party he or she represents, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which the Party is bound and (v) there is no litigation or legal proceeding which would prevent the Parties from entering into this Agreement.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, City, Authority and Developer have executed this Agreement on the date first above written.

THE CITY OF CARSON

By: _____
Albert Robles, Mayor

ATTEST:

_____
Donesia Gause, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

_____
Sunny Soltani, City Attorney

CAM-CARSON, LLC,
a Delaware limited liability company

By: _____
Ann C. Menard
Chief Legal Officer / Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On _____ before me, _____

personally appeared _____

_____

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

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

WITNESS my hand and official seal.

_____

Signature of Notary Public

Place Notary Seal Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On _____ before me, _____

personally appeared _____

_____

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

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

WITNESS my hand and official seal.

_____

Signature of Notary Public

Place Notary Seal Above