

ORDINANCE NO. 17-1624

AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, APPROVING DEVELOPMENT AGREEMENT NO. 9-16 BETWEEN THE CITY OF CARSON AND BECKER BOARDS SMALL, LLC TO INSTALL ONE 56-FOOT-HIGH OUTDOOR ADVERTISING SIGN (“DIGITAL BILLBOARD”) ALONG THE PORTION OF THE SR-91 FREEWAY THAT DIRECTLY ABUTS THE NORTH SIDE OF THE SR-91 FREEWAY, IS ZONED ML-D LOCATED ALONG THE NORTH SIDE OF ARTESIA BETWEEN AVALON BOULEVARD AND CENTRAL AVENUE AT APN 7319-033-064

THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. An application for a Development Agreement (Agreement), pursuant to Government Code Sections 65864 through 65869.5 of the City of Carson, was duly filed by the applicant, Becker Boards Small, LLC (“Becker Boards”), with respect to the real property located at 840 E. Walnut Street (APN7319-033-064), as shown in Exhibit “A” attached hereto. The applicant proposes a 56-foot-high outdoor advertising sign (“digital billboard”) to be placed at the south area of the subject property.

Section 2. The City Council held public hearings on the Agreement on June 20, 2017 at 6:00 P.M. at City Hall in the Helen Kawagoe Council Chambers, 701 East Carson Street, Carson, California. A notice of the time, place and purpose of the aforesaid meetings were duly given.

Section 3. The proposed project was reviewed under the requirements of the California Environmental Quality Act (CEQA). The City Council finds that a Negative Declaration is determined since the proposed project has no potential to cause a significant effect on the environment.

Section 4. Evidence, both written and oral, was duly presented to and considered by the City Council at the aforesaid meeting.

Section 5. The City Council finds that:

a) The Development Agreement is proposed on a site which is located within an area suitable for the proposed use, and is in conformance the General Plan and the Manufacturing, Light zoning district.

b) The Development Agreement provides for a public convenience through significant monetary benefits which will contribute indirectly to programs and services designed to provide for the health, safety and welfare of the public.

c) The proposed Development Agreement will not be detrimental to the public’s health, safety and general welfare, nor will it adversely

[MORE]

Exhibit No. 1

affect the orderly development or property values for the subject property or areas surrounding it.

d) The Development Agreement is in compliance with the procedures established by City Council Resolution No. 90-050 as required by Government Code, Section 65865(c).

e) The Development Agreement in Section 5 provides for an annual review to ensure good faith compliance with the terms of the Agreement, as required in Section 65865.1 of the Government Code.

f) The Development Agreement specifies the duration of the agreement in Section 2.4, the Processing Fee in Section 2.5; the Development Fee in Section 2.6, and the Community Benefits in Section 2.7.

g) The Development Agreement includes conditions, terms, restrictions and requirements for development of the property in Section 3 and as permitted in Section 65865.2 of the Government Code.

h) The Development Agreement contains provisions in Section 4 for removal of the billboard upon the termination the Agreement.

i) The Development Agreement provides for amendment or cancellation in whole or in part, by mutual consent of the parties to the agreement or their successors in interest as required in Section 65868 of the Government Code.

j) That the Development Agreement is in the best public interest of the City and its residents and that this Agreement will achieve a number of City objectives including utilizing the site for a revenue-generating use.

Section 6. The Agreement provides for recovery of the City's costs and complies with the Statue with respect to all fees and costs provided under the Agreement.

Section 7. The Development Agreement is in compliance with the procedures established by City Council Resolution No. 90-050 and the City Council finds that the Agreement:

- a) Is consistent with the General Plan and any applicable specific plan;
- b) Is in conformity with public convenience and good land use practices;
- c) Will not be detrimental to the health, safety and general welfare;
- d) Will not adversely affect the orderly development of property or the preservation of property values;

[MORE]

e) Is consistent with the provisions of Government Code Sections 65864 through 65869.5.

Section 8. The Development Agreement is attached as Exhibit “B”.

Section 9. Agreement is on file in the office of the Community Development Department and is hereby incorporated herein by reference.

Section 10. Based on the aforementioned findings, the City Council approves the Agreement and authorizes its execution and all action necessary to comply with its terms.

Section 11. The Ordinance No. 17-1624 is approved for introduction and first reading on June 20, 2017 and adoption at the second hearing on July 5, 2017.

Section 12. The City Clerk shall certify to the adoption of this Ordinance and shall transmit copies of the same to the applicant. The City Clerk shall publish the adopted Ordinance pursuant to California Government Code 36933 within fifteen days of its adoption.

Section 13. The Ordinance shall become effective thirty (30) days after the second reading approval date, or if a referendum petition is filed (a) and fails to qualify for an election, the date the City Clerk certifies the disqualification of the referendum petition, or (b) if an election is held regarding the ordinance approving this Agreement, the date the election results are declared approving the Ordinance.

PASSED, APPROVED and ADOPTED this 5th day of July, 2017.

Mayor Albert Robles

ATTEST:

City Clerk Donesia Gause-Aldana, MMC
City of Carson, California

APPROVED AS TO FORM

Sunny Soltani, City Attorney

[MORE]

EXHIBIT "A"

LEGAL DESCRIPTION OF THE SITE

Real property in the City of Carson, County of Los Angeles, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 5238, IN THE CITY OF CARSON, AS SHOWN ON MAP FILED IN BOOK 59 PAGE 1 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THE WESTERLY 15.00 FEET OF THE NORTHERLY 34.00 FEET OF PARCEL 1 OF PARCEL MAP 5534 AS SHOWN ON MAP FILED IN BOOK 72 PAGE 10 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY.

EXCEPT THAT PORTION THEREOF LYING BELOW A PLANE 500.00 FEET, MEASURED VERTICALLY DOWNWARD FROM THE SURFACE, AS SAID PLANE WAS ESTABLISHED BY DEED RECORDED OCTOBER 28, 1965 AS INSTRUMENT NO. 1423 IN BOOK D3096 PAGE 696, OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON THE SURFACE OR TO ENTER UPON SAID LAND 500 FEET BELOW THE SURFACE THEREOF WAS QUITCLAIMED BY DOCUMENT RECORDED MARCH 29, 1972 AS INSTRUMENT NO. 3182, OF OFFICIAL RECORDS.

ALSO SHOWN AS PARCEL "A" OF THAT CERTAIN CERTIFICATE OF COMPLIANCE AND NOTICE OF LOT LINE ADJUSTMENT NO. 181-03 RECORDED MAY 11, 2004 AS INSTRUMENT NO. 04-1181667 OF OFFICIAL RECORDS.

APN: 7319-033-064

[MORE]

Recording Requested by And
When Recorded Return to:

CITY OF CARSON
701 East Carson Street
Carson, CA 90745
Attn: City Clerk

[Exempt From Recording Fee Per Gov. Code §6103]

DEVELOPMENT AGREEMENT NO.

This Development Agreement (hereinafter “Agreement”) is entered into this ____ day of _____, 2017, (hereinafter the “Effective Date”) by and between the CITY OF CARSON (hereinafter “City”) and BECKER BOARDS SMALL, LLC, an Arizona limited liability company (hereinafter “Developer”). City and Developer may be referred to, individually or collectively, as “Party” or “Parties.”

RECITALS

A. California Government Code Sections 65864, *et seq.*, (“Development Agreement Law”) authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. California Outdoor Advertising Act (Bus. and Prof. Code Sections 5200 *et seq.*), and specifically Sections 5412 and 5443.5, empower cities and sign owners to enter into Project agreements on whatever terms are agreeable to such parties.

C. Section 9146.7(A) of the Carson Municipal Code allows the placement of billboards in the City pursuant to a development agreement along the SR-91 Freeway Corridor, and establishing development regulations for a dual-faced new digital billboard that directly abuts the north side of the SR-91 Freeway, is zoned ML-D located at APN 7319-033-064 between Avalon Boulevard and Central Avenue. The proposed project, to add a fourth corridor: SR-91 Freeway Corridor District, will allow one digital billboard within this Corridor with City Council approval of a Development Agreement.

D. Developer has a leasehold interest with respect to that certain portion of real property in the City of Carson, located 118 feet north of the west-bound lanes of the 91 Freeway, south of Walnut Street, owned by Allen Schor as Trustee of the Walnut Warehouse Trust (“Property Owner”), Assessor Parcel Number 7319-033-064, as more specifically described in Exhibit “A” and depicted at Exhibit “A-1,” attached hereto and incorporated herein (the “Site”), upon which Developer seeks to construct a double-sided 14x48 foot digital display oriented toward the 91 Freeway as a double-sided 14x48-foot digital display, as depicted in Exhibit “A-2” (“New Digital Billboard”).

E. In exchange for the approvals sought to erect the New Digital Billboard, Developer has offered to:

1. Pay to the City an initial development fee and an annual development fee as set forth in Section 2.6 for the right to the installation and operation of the New Digital Billboard; and

2. Provide free of charge to City, on a space available basis, advertising space for public service announcements for city-sponsored, noncommercial civic events on the New Digital Billboard, subject to Developer's advertising standards and procedures), and offer a 10% discount off of its applicable rate card fees for the displays on the New Digital Billboard to any business that has its principal place of business in Carson and is a member in good standing of the Carson Chamber of Commerce.

F. The Site is located within the City's ML-D, Manufacturing Light – Design Overlay Zone, designated by the General Plan as Light Industrial and is also located within the SR 91 Freeway Corridor as defined by Section 9146.7(A) of the Carson Municipal Code.

G. Developer and City agree that a development agreement should be approved and adopted to memorialize the property expectations of City and Developer as more particularly described herein.

H. On _____, 2017, the Planning Commission of the City of Carson, at a duly noticed hearing to consider the approval of this Agreement, adopted Resolution No. _____ recommending approval of this Agreement to the City Council and find the Project, as defined below, categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15303 regarding new construction or conversion of small structures.

I. On _____, 2017, the City Council, at a duly noticed hearing to consider the approval of this Agreement, considered the proposal, and heard testimony relating to this Agreement.

J. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the addition of an aesthetically pleasing billboard in conformance with current billboard standards. At the end of the term of this Agreement, Developer will remove the New Digital Billboard if an extension of this Agreement is not negotiated with City.

K. On _____, 2017, the City Council held the second reading of Ordinance No. 17-__, thereby approving this Agreement.

L. On _____, 2017, the City Council held second reading of Ordinance No. _____, approving Zoning Code Text Amendment No. _____, enacting the SR 91 Freeway Corridor provisions of Section 9146.7(A) of the Carson Municipal Code.

M. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 17- _____ of the City Council have been duly and regularly taken.

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. In addition to the terms defined in the Recitals above, the defined terms include the following:

1.1.1 “Agreement” means this Development Agreement and all attachments and exhibits hereto.

1.1.2 “City” means the City of Carson, a California municipal corporation.

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

1.1.4 “Commencement Date” the date that the New Digital Billboard becomes operational, i.e., the date construction of the New Digital Billboard has been completed, final inspection by the City has occurred, and the sign is capable of displaying advertising copy electronically and is connected to a permanent power source. City will provide to Developer a Notice of Commencement Date.

1.1.5 “Developer” means Becker Boards Small, LLC; an Arizona limited liability company, duly existing and operating, and its successors and assigns, doing business at 4350 E Camelback Rd Suite B-260 Phoenix, Arizona 85018.

1.1.6 “Development” means the installation of the New Digital Billboard on the Site and undergrounding of all utilities from Southern California Edison’s electrical source to the New Digital Billboard.

1.1.7 “Development Fee” shall have the meaning provided in Section 2.6.

1.1.8 “Development Approvals” means the approved Development, based on the approval of the City Council by Ordinance No. 17-_____ on _____, 2017, as further described at Section 3.3 herein, and any and all approvals required by the California Department of Transportation (“Caltrans”) and any other governmental or other required approvals.

1.1.9 “Effective Date” means the date inserted into the preamble of this Agreement, which is 90 days following the effective date of the ordinance approving this

Agreement by ordinance of the City Council, provided the Agreement is signed by the Developer and City.

1.1.10 “Flat Fee Commencement Date” means the date 90 days after the Commencement Date.

1.1.11 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City, including, but not limited to, the City’s General Plan, Municipal Code and Zoning Code, which govern development and use of the New Digital Billboard Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of the New Digital Billboard, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the New Billboard Site which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include NPDES regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.12 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender, or each of their respective successors and assigns.

1.1.13 “Notice of Commencement Date” means a written notice from the City that notifies Developer that the New Digital Billboard is operational. The Notice of Commencement Date will include the Commencement Date and a schedule of payment for the annual Development Fee.

1.1.14 “Project” means the installation, including installing any new and moving all existing utilities underground, and operation and maintenance of the New Digital Billboard on the Site, all in accordance with the Development Approvals and this Agreement, including the Scope of Development attached hereto as Exhibit “E”, Schedule of Performance attached hereto as Exhibit “D” and all conditions of approval and consistent with the approval from the California Department of Transportation Outdoor Advertising Division.

1.1.15 “Site” refers to 840 E Walnut Street, APN No. 7319-033-064, as more specifically described in Exhibit “A,” and depicted at Exhibit “A-1” attached hereto and incorporated herein.

1.1.16 “Schedule of Performance” means the Schedule of Performance attached hereto as Exhibit “D” and incorporated herein.

1.1.17 “Scope of Development” means the Scope of Development attached hereto as Exhibit “E” and incorporated herein.

1.1.18 “Subsequent Development Approvals” means any approvals requested by Developer after the Project is fully completed but during the term of the Agreement and related to the New Digital Billboard.

1.1.19 “Subsequent Land Use Regulations” means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement) which govern development and use of the Site.

1.1.20 “Term” shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” (Legal Description of Site)

Exhibit “A-1” (Depiction of Site)

Exhibit “A-2” (New Digital Billboard Conceptual Rendering)

Exhibit “B” (Letter of Authorization from Property Owner)

Exhibit “C” (Schedule of Performance)

Exhibit “D” (Scope of Development)

Exhibit “E” (Developer’s Production Specification Sheet)

2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Project, including actions by the City on applications for Subsequent Development Approvals affecting such Site, shall be subject to the terms and provisions of this Agreement.

2.2 **Interest in Site.** City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under the Development Agreement Law and the Carson Municipal Code. Developer shall maintain its interest in the Site for the entire Term of this Agreement. If Developer’s interest in the Site is prematurely terminated and Developer is not contesting such termination, then Developer shall have no further obligations or rights under this Agreement and this Agreement shall terminate, except as provided under Section 4.1. During such time period that Developer is contesting the termination of its interest for the Site, this Agreement shall remain in full force and effect.

2.3 **No Assignment.** Developer may only assign or otherwise transfer this Agreement, or its interest in the Site, to any other person, firm, or entity, upon presentation to the City of an assignment and assumption agreement in a form reasonably acceptable to the City Attorney and receipt of the City’s written approval of such assignment or transfer by the City Manager; provided, however, that Developer may, from time to time and one or more times, assign its interest in this Agreement, or in the Site, to one or more persons or entities without City approval, but with written notice to the City, as long as Developer either assigns this

Agreement to a financial institution that finances Developer's Development of the New Digital Billboard or as long as Developer, or entities owned or controlled by it have and maintain at least a twenty percent (25%) ownership interest in such entities who are the assignees or transferees, or as long as the transfer is as a result of a sale of Developer and/or its assets, including the rights granted under this Agreement, to a publicly-traded company or an entity having a net worth that is substantially similar to, or greater than, Developer's net worth prior to such assignment or at the time of execution of this Agreement, which net worth is subject to verification by the City; and further provided that any assignee executes an assumption agreement assuming all of Developer's duties and obligations hereunder. Any security posted by Developer may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 Term of Agreement.

2.4.1 Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of (i) 30 years after the Commencement Date, as defined in Section 1.1.4, (ii) the expiration or earlier termination of Developer's interest in the Site per Section 6.1, or (iii) the permanent removal of the New Digital Billboard pursuant to the terms hereof. At the occurrence of the earliest of (i), (ii), or (iii), above, Developer shall completely remove the New Digital Billboard within the times and as provided under Section 4.1.

2.4.2 Notwithstanding the foregoing, City and Developer agree to negotiate in good faith for an extension of the Term of the Agreement, and may extend the term of this Agreement pursuant to mutual agreement in writing upon terms acceptable to both parties. Developer shall notify the City in writing of its intent to negotiate an extension no later than 180 days prior to the expiration of the Term. Within 30 days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1. Following termination or the expiration of the term, and provided no extension of this Agreement is agreed to, then the digital displays upon the New Digital Billboard shall be removed, as set forth in Section 4.1.

2.5 Deposit.

2.5.1 Developer has deposited with the City a non-refundable \$20,000 deposit (the "Deposit"). The City shall draw down on the Deposit for permit processing fees for all required permits related to the New Electronic Billboard, and to reimburse the City for all attorney fees related to the drafting of this Agreement. The Deposit will be replenished in full if at any time the balance falls below 2,500. The Deposit does not include the cost of permits or any other fees that may be required by non-City agencies, including but not limited to permit fees due to CalTrans. Within 15 days of the Effective Date of this Agreement, City will return to Developer any unused portion of the Deposit.

2.5.2 In the event that an amendment to the Agreement becomes necessary or desirable during the Term of the Agreement, Developer will provide a deposit of \$10,000

to cover City's attorney fees and permit processing fees that may be required for the amendment. This deposit will be replenished in full whenever the balance falls below \$2,500. Within 15 days of the effective date of the amendment, City will return to Developer any unused portion of the deposit.

2.6 Development Fee. The potential impacts of the Development on the City and surrounding community are difficult to identify and calculate. Developer and City agree that an annual development fee paid by Developer to City would adequately mitigate all such potential impacts. The parties therefore agree that Developer shall pay a development fee to the City on an annual basis for the duration of the Term. The parties therefore agree that Developer shall pay an annual Development Fee.

2.6.1 Calculation of annual Development Fee. The Development Fee will be the greater of the Flat Fee or the Gross Receipts Fee, calculated as follows:

(a) Flat Fee: An annual amount to City equal to \$125,000.00 for the first year of the Term of this Agreement starting on the Flat Fee Commencement Date, \$100,000.00 each year for Years 2 through 15; starting in Year 16 the latter amount shall increase by 10% each five (5) year anniversary thereof, which Flat Fee, for ease of reference purposes, shall equal the following amounts during the Term except the Flat Fee for the 1st and last year of the Term shall be pro-rated for partial calendar years if the Flat Fee Commencement Date or expiration of the term occurs on any day other than January 1 or December 31st respectively:

Year 1	\$125,000	Year 11	\$100,000	Year 21	\$121,000
Year 2	\$100,000	Year 12	\$100,000	Year 22	\$121,000
Year 3	\$100,000	Year 13	\$100,000	Year 23	\$121,000
Year 4	\$100,000	Year 14	\$100,000	Year 24	\$121,000
Year 5	\$100,000	Year 15	\$100,000	Year 25	\$121,000
Year 6	\$100,000	Year 16	\$110,000	Year 26	\$133,100
Year 7	\$100,000	Year 17	\$110,000	Year 27	\$133,100
Year 8	\$100,000	Year 18	\$110,000	Year 28	\$133,100
Year 9	\$100,000	Year 19	\$110,000	Year 29	\$133,100
Year 10	\$100,000	Year 20	\$110,000	Year 30	\$133,100

(b) Gross Receipts Fee: Six percent (6%) of Developer's annual gross advertising revenue. Annual gross advertising revenue shall mean all moneys that Becker Boards receives relating to the New Digital Billboard, which includes but is not limited to the sale of advertising space

on the New Digital Billboard, grants, and contributions of any kind whatsoever, prior to any deductions whatsoever, including but not limited to taxes, costs, and fees.

2.6.2 Payment Schedule:

(a) Within three business days of execution of the Agreement by both Parties, Developer will pay to City \$25,000 as a partial payment towards the Year 1 Flat Fee. The remainder of the prorated Year 1 Flat Fee will be paid to City no later than the Flat Fee Commencement Date.

(b) Thereafter, Developer shall pay the Flat Fee for each year on January 31 of that year.

(c) By January 31 of each year, Developer will provide an accounting statement for the preceding year, and any balance due if the Gross Receipts Fee amount is greater than the Flat Fee for that preceding year. By way of example, Developer shall pay \$100,000 on January 31 of Year 6, and any balance due on the Gross Receipts Fee amount for Year 5, if applicable.

2.6.3 Late Payment.

(a) Penalty. The City may notify the Developer if the Development Fee is not received within 10 days after the Due Date (“Late Notice”) and there shall be no penalty if payment is made within 10 days of the Late Notice. The date of the notice shall mean the date that the notice is placed in the U.S. Mail, certified mail with return receipt. Failure to sign the return receipt shall not affect the date the notice is given. If City does not issue a Late Notice, penalties will begin to accrue if payment is not made within 30 days of the Due Date.

(b) Late payment penalties shall be calculated as follows: 10% of the Flat Fee due that year shall be added to the Development Fee for failure to make the full payment within 10 days of the Late Notice, or within 30 days of the Due Date if no Late Notice is provided. As an example, the Flat Fee for Year 10 is \$100,000. A 10% penalty would result in a total amount due of \$110,000 (\$100,000 + \$10,000). Thereafter, for each additional 10 days that the full Development Fee is not paid, , including the penalty, the Developer shall incur an additional penalty of 10% of that year’s Flat Fee, for a maximum penalty of 30% of that year’s Flat Fee.

(c) Termination. Failure by Developer to pay the Development Fee to the City by March 31 of each year during the Term of this Agreement is considered a material breach of this Agreement, and if not paid in full to the City, including all late penalties, within 10 days after

written notice to Developer of such material breach, City may begin termination proceedings in accordance with Section 6, Termination and Default.

2.6.4 **City's Right to Audit Developer.** With prior written notice of not less than 10 business days, the City has the right to audit Developer's sign gross revenue related to this Agreement, at Developer's office, on normal workdays between 9:00 a.m. and 4:00 p.m. once a year. If the statement of total gross advertising revenue previously provided to City shall be found to be inaccurate for prior years of the Term, then and in that event, there shall be an adjustment and one party shall pay the other on demand such sums as may be necessary to settle in the full accurate amount of said percentage rental that should have been paid to City for the period or periods covered by such inaccurate statement or statements. If the audit discloses an underpayment of greater than 3% with respect to the amount of total gross advertising revenue reported by Developer for the period or periods of said report, then the Developer shall immediately pay to City the cost of the audit; otherwise, the cost of such audit shall be paid by City, plus 10% interest on the amount underpaid, but the application of the said interest is limited to 3 years before the time any underpayment should have been paid to the City.

During City audits, the City shall be entitled to review payer's contracts, payee's (Developer) sub-ledger, and general ledger verifying all associated revenues are documented and posted to the Developer's financial statements.

2.6.5 Nothing herein relieves the City from its contractual duty to issue all municipal building permits that are associated with the Development of the New Digital Billboard if Developer is in compliance with the terms of this Agreement.

2.7 **Community Benefits.** Developer shall also provide the following community benefits during the entire Term of this Agreement, for as long as the New Digital Billboard is operated with digital display faces:

2.7.1 **City's Display Time on New Digital Billboard.** Developer shall also provide advertising space free of charge to City on a space-available basis for public service announcements of noncommercial city-sponsored civic events ("City Messages"). City will be responsible for appropriate artwork for the digital displays pursuant to art specifications as specified by Developer from time to time. The City shall notify Developer 45 days prior to the requested display date and the display of City advertising copy is subject to the following conditions and parameters: all advertising copy must be submitted to Developer at least 5 business days before the Developer proposed display date and will be subject to Developer's standard advertising policies, which allow Developer, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed, provided such policies are consistent with the display of public service messages as well as those restrictions described in Section 2.8. City Messages may only display third-party names or logos of City event sponsors when those logos are part of the City Message; such logos may not be prominently displayed. Advertising space for City Messages may not be sold or exchanged for consideration of any kind to a non-governmental third party.

The City shall indemnify, defend, and hold harmless Developer for, from, and against, any claims, costs (including, but not limited to, court costs and reasonable attorneys' fees), losses, actions or liabilities arising from or in connection with any third party allegation that any portion of any City Message provided by the City infringes or violates the rights, including, but not limited to, copyright, trademark, trade secret or any similar right, of any third party. This indemnity shall not include Developer's lost profits or consequential damages or any similar right, of any third party.

2.7.2 Discount Advertising. Developer shall offer a 10% discount off of its applicable rate card fees for the display of advertising on the New Digital Billboard to any business that: 1) has its principal place of business in the City of Carson; and, 2) is in possession of a valid and current City of Carson business license and/or is a member in good standing of the Carson Chamber of Commerce.

2.8 Prohibited Use. Developer shall not utilize any of the displays on the New Digital Billboard to advertise smoking substances or paraphernalia, including but not limited tobacco, marijuana, etc., "gentlemen's clubs," or other related sexually explicit or overly sexually-suggestive messages, or as may be prohibited by any City ordinance existing as of the Effective Date of this Agreement.

3. DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT.

3.1 Rights to Develop Site. Subject to and during the Term of this Agreement, Developer shall have the right to develop the Site in accordance with, and to the extent of, the Development Approvals, the Land Use Regulations, and this Agreement.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Site, the density and intensity of use of the such Site, the maximum height and size of proposed New Digital Billboard structure, and the design, and improvement and construction standards and specifications applicable to Development of the Site shall be as set forth in the Land Use Regulations, as such term is defined in Section 1.1.9, which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

3.3 Development Approvals. Developer shall, at its own expense and before commencement of construction or development of any structures or other work of improvement upon the Site, secure or cause to be secured all necessary Development Approvals, which shall include any and all permits and approvals which may be required by City or any other governmental agency or utility affected by such construction, development, or work to be performed by Developer pursuant to the Scope of Development, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA") and by Caltrans. Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all (1) applicable development standards in City's Municipal Code, (2) applicable NPDES requirements pertaining to the Project, (3) all applicable building codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such

permits, and any fees and charges hereafter imposed by City in connection with the Development which are standard and uniformly-applied to similar projects in the City.

3.4 Timing of Development; Scope of Development. Developer shall commence the Project within the time set forth in the Schedule of Performance, attached hereto as Exhibit "C." "Commencement" of the Project is defined herein as commencement of construction or improvements under the building permit for the Project as soon as possible following Developer's receipt of Development Approvals. In the event that Developer fails to meet the schedule for Commencement of the Project, and after compliance with Section 5.4, either party hereto may terminate this Agreement by delivering written notice to the other party, and, in the event of such termination, neither party shall have any further obligation hereunder. However, if circumstances within the scope of Section 9.10 delay the commencement or completion of the Project, it would not constitute grounds for any termination rights found within this Development Agreement. In such case, the timeline to commence or complete the relevant task shall be extended in the manner set forth at Section 9.10. Notwithstanding the above, Developer shall, at all times, comply with all other obligations set forth in this Agreement regarding the Project. Developer shall also maintain the New Digital Billboard at all times during the Term in accordance with the maintenance provisions set forth in Section 3, the Scope of Development, attached as Exhibit "E" herein.

The purpose of this Agreement is to set forth the rules and regulations applicable to the Project, which shall be accomplished in accordance with this Agreement, including the Scope of Development (Exhibit "E"), which sets forth a description of the Project and the Schedule of Performance (Exhibit "D").

3.5 Changes and Amendments. Developer may determine that changes to the Development Approvals are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Development Approvals to effectuate such change(s). The Parties acknowledge that City shall be permitted to use its reasonable discretion in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing discretion, the City shall not apply a standard different than that used in evaluating requests of other developers. Accordingly, under no circumstance shall City be obligated in any manner to approve any amendment to the Development Approvals. The City Manager shall be authorized to approve any non-substantive amendment to the Development Approvals without City Council approval. All other amendments shall require the approval of the City Council. The parties acknowledge that any extension of the Term for no more than twenty-four (24) months total is an example of a non-substantive change, which the City Manager, in his or her sole discretion, may approve in writing. Nothing herein shall cause Developer to be in default if it upgrades or replaces the digital display installed pursuant to this Agreement during the term of this Agreement to incorporate newer technology; provided Developer shall secure all applicable ministerial permits to do so and such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement, Land Use Regulations, and Subsequent Land Use Regulations.

3.6 **Reservation of Authority.**

3.6.1 ***Limitations, Reservations and Exceptions.*** Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development:

(a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals submitted by Developer.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals, and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the New Digital Billboard. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to the Project.

(f) Applicable Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the Site or the Development of the Site and that do not have an exception for (1) existing signs, or (2) legal nonconforming uses, or (3) signs governed by an agreement entered into pursuant to Sections 5412 and 5443.5 of the California Outdoor Advertising Act which were in existence in the City before the approval of this Agreement. Notwithstanding the foregoing, if such regulations materially change Developer's costs or otherwise materially impact its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

3.6.2 ***Future Discretion of City.*** This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

3.6.3 Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law. In the event that applicable federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

3.7 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Development as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, State and local laws and regulations applicable to the New Digital Billboard, Site that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Project and that do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

3.8 Public Improvements. Notwithstanding any provision to the contrary, the City shall retain the right to condition any Subsequent Development Approvals (except any approvals in connection with Developer's upgrading or replacement of the digital panel(s)) to require Developer to pay any required development fees, and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions; provided that none of the following shall be applicable to the Project as set forth in this Agreement.

3.8.1 The payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project as a result of such Subsequent Development Approvals; and

3.8.2 The timing of the Exaction should be reasonably related to the development of the Project as a result of such Subsequent Development Approvals and said public improvements shall be phased to be commensurate with the logical progression of the Project as a result of such subsequent Development Approvals as well as the reasonable needs of the public as a result thereof.

3.8.3 It being understood, however, that if there is a material increase in cost to Developer or such action by City otherwise materially impacts developer's

performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

3.9 Fees, Taxes, and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Development Agreement and/or the Development Approvals. However, this Development Agreement shall not prohibit the application of fees, taxes or assessments upon the Site only and not the New Digital Billboard or Developer directly as follows:

3.9.1 Developer shall be obligated to pay those fees, taxes, or City assessments and any increases in same which exist as the Effective Date or are included in the Development Approvals;

3.9.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes;

3.9.3 Developer shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Developer;

3.9.4 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the application is filed by the Developer or that exists when the Developer applies for any Subsequent Development Approval.

3.10 Notwithstanding anything to the contrary herein, if there is a change in such fees to those charges as of the full execution hereof or any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

4. REMOVAL OF BILLBOARDS

4.1 Removal by Developer. Developer and City will negotiate an extension of Term as an amendment to this Agreement in good faith. If the extension for the Term is not granted by the City, Developer shall be obligated to remove the structure of the New Digital Billboard within 6 months following the expiration of the term of this Agreement. In the event City and Developer do not reach an agreement for an extension and Developer must remove the structure, Developer will pay a pro-rated share of the Development Fee for Year 31. The Flat Fee for Year 31 shall be \$146,410. If the New Digital Billboard is converted to a static billboard, either for the pendency of negotiations or as a result of the negotiations, Developer agrees to pay no less than 50% of the most recent Development Fee. In addition, if Developer terminates this Agreement pursuant to the express terms thereof, Developer shall remove the structure of the New Digital Billboard within 6 months following the termination of the term of this Agreement.

4.2 City's Right to Removal. Provided Developer is not in material breach of the terms of this Agreement past any applicable written notice and cure period (collectively, a

“Breach”), City will not have the right to require removal of the New Digital Billboard. Should such a Breach occur, City may require Developer to remove the digital display upon the New Digital Billboard and, at Developer’s discretion, Developer may either remove the structure of the New Digital Billboard or convert the displays to printed/static displays within 30 days of City’s notice to Developer of such Breach.

4.3 Property to Be Returned to Original or Better Condition. After removal of the New Digital Billboard, either by City or by Developer, Developer shall return the Property to its original condition or better. At a minimum, Developer shall obtain a demolition permit for the New Digital Billboard and shall remove all parts of the New Digital Billboard, including any foundation, and shall secure the Property.

5. REVIEW FOR COMPLIANCE.

5.1 Annual Review. The City Council shall review this Agreement annually at City’s sole cost, on or before the anniversary of the Term, to ascertain the good faith compliance by Developer with the terms of the Agreement (“Annual Review”). However, no failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement. Developer shall cooperate with the City in the conduct of such Annual Review and provide the following information and documentation to the City 30 days following the anniversary of the Commencement Date: (1) copy of a current and valid CalTrans permit; (2) description of all complaints from Caltrans or the City regarding the New Digital Billboard; (3) description of all complaints from the public regarding the display unrelated to any content of the message displayed; (4) status and amount of all payment obligations to the City required under this Agreement for the year in question and cumulatively beginning from the Commencement of the Project herein; (5) any easement, lease or license changes that could in any way materially impact the City or the obligations under this Agreement; (6) any utility changes that could in any way materially impact the City or the obligations under this Agreement; and (7) whether any City Messages per Section 2.7.1 have been displayed during the preceding year of the Term and a description of the duration of such displays.

5.2 Special Review. The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any (“Special Review”). Developer shall cooperate with the City in the conduct of such any Special Review, and shall promptly provide information relevant to the Special Review at the request of the City.

5.3 City Right of Access. Subject to Property Owner’s consent in writing, the City, its officers, employees, agents and contractors, shall have the right, at their sole risk and expense, to enter the Site at all reasonable times with as little interference as possible for the purpose of conducting the Review under this Section 5, inspection, construction, reconstruction, relocation, maintenance, repair, or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the City. This provision is not intended to interfere with the City’s police powers to address any nuisance, dangerous condition, or other condition pursuant to the City’s ordinances. Notwithstanding anything to the contrary herein, in no event will City representatives climb up the pole of the sign during any inspection.

5.4 **Procedure.** Each party shall have a reasonable opportunity to assert matters that it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If, on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied in good faith with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have 30 days to cure the non-compliance identified in the Notice of Non-Compliance, or if such non-compliance is not reasonably capable of being cured or remedied within the 30-day period, to commence to cure the non-compliance and to diligently and in good faith prosecute such cure to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to the Notice within 30 days after receipt. If the response to the Notice of Non-Compliance has not been received in the offices of the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than 15 days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice. In the event that a cure or remedy is not timely effected or, if the Notice is contested and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the 15-day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 9.10.

5.5 **Certificate of Agreement Compliance.** If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("Certificate") to Developer stating that, after the most recent Annual Review or Special Review, and based upon the information known or made known to the City Manager and City Council, that (1) this Agreement remains in effect and (2) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form and shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer may record the Certificate with the County Recorder. Additionally, Developer may, at any time, request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Site.

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 ***Termination of Agreement for Material Default of Developer.*** City, in its discretion, may terminate this Agreement for any failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the material terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In the event of a termination by City under this Section 6.1.1, Developer acknowledges and agrees that City may retain all fees

accrued up to and including the Development Fee for the year the Agreement is terminated, including the Processing Fee (collectively, the "Termination Fee"). Developer shall pay the Termination Fee, within 60 days after the date of termination and removal of the New Digital Billboard.

6.1.2 Termination of Agreement for Material Default of City. Developer, in its discretion, may terminate this Agreement for any failure of City to perform any material duty or obligation of City hereunder or to comply in good faith with the material terms of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In addition, Developer may terminate this Agreement if, despite Developer's good faith efforts, it is unable to secure the necessary permits and/or compliance with requirements under laws necessary to effectuate the Project. In the event of a termination by Developer under this Section 6.1.2, Developer acknowledges and agrees that City may retain all fees, including the Processing Fee and the Development Fee, Developer paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within 60 days after the date of termination and removal of the New Digital Billboard that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.3 Rights and Duties Following Termination. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, (iii) Developer's obligation to remove the New Digital Billboard pursuant to Section 4.1 or (iv) any continuing obligations to indemnify other parties.

7. INSURANCE, INDEMNIFICATION, AND WAIVERS.

7.1 Insurance.

7.1.1 Types of Insurance.

(a) *Liability Insurance.* Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, and Developer comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of Section 7.2. Such policy shall provide for limits of a least One Million Dollars (\$1,000,000) per occurrence and at least Two Million Dollars (\$2,000,000) general aggregate. Developer shall also furnish or cause to be furnished to City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same coverage required of Developer. Liability certificate of insurance shall name the City as additional insured and include the appropriate additional insured endorsement form.

(b) *Worker's Compensation.* Developer shall furnish and furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law. At a minimum, Developer shall provide for \$1,00,0000 Employer's Liability. A waiver of subrogation rights endorsement form is required as well.

(c) *Automobile Liability.* Developer shall furnish and furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries automobile liability insurance as follows: Minimum of \$1,000,000 combined single limit per accident for bodily injury and property damage covering "any auto". Automobile certificate of insurance shall name the City as additional insured and include the appropriate additional insured endorsement form.

(d) *Insurance Policy Form, Sufficiency, Content and Insurer.* All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against City and against City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by City, but only with respect to the liabilities assumed by Developer under this agreement; and (iii) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative Developer shall furnish City with certificates evidencing the insurance. City shall be named as an additional insured on all liability policies of insurance required to be procured by the terms of this Agreement.

7.1.2 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required of each policy within the following time limits:

(1) For insurance required above, within seven (7) days after the Effective Date or consistent with the requirements of Exhibit "C" (Schedule of Performance), Item No. 8.

(2) The City can request to see updated copies of the current certificates of all insurance policies required.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, after complying with the requirements of Section 5.4, the City may view such failure or refusal shall be a default hereunder.

7.2 Indemnification.

7.2.1 *Indemnification and Hold Harmless.*

7.2.2 *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 in the future; and if successful, such challenges could delay or prevent the performance of this Agreement and the development of the Project. The City shall have no liability under this Agreement for the inability of Developer to develop the Project as the result of a judicial determination that the entitlements, the general plan, the zoning, the land use regulations, or any portions thereof are invalid or inadequate or not in compliance with law.

7.2.3 *Participation in Litigation: Indemnity.* Developer agrees to indemnify, protect, defend, and hold harmless the City and its officials, officers, employees, agents, elected boards, commissions, departments, agencies, and instrumentalities thereof, from any and all actions, suits, claims, demands, writs of mandamus, liabilities, losses, damages, penalties, obligations, expenses, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures) asserted by third parties against the City that challenge, or seek to void, set aside, or otherwise modify or annul, the action of, or any approval by, the City for or concerning the Approvals (including, but not limited to, reasonable attorneys' fees and costs) (herein the "Claims and Liabilities") whether such Claims and Liabilities arise out of under planning and zoning laws, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. In the event any action for any Claims and Liabilities is brought against the City and/or related parties, upon City's notification to Developer of the pendency of a claim or suit, the Developer shall make a minimum deposit sufficient to pay all of the Developer's indemnification obligations for the next 90 days, which includes legal costs and fees anticipated to be incurred as reasonably determined by the City. Developer shall make deposits required under this section within 5 days of the City's written request. At no point during the pendency of such claim or suit, shall the minimum balance of the deposit fall below One Hundred Thousand Dollars (\$100,000.00). The deposit required under this section shall be administered in same manner as Section 2(a).

If Developer fails to timely pay such funds, the City may abandon the action without liability to Developer and may recover from Developer any attorneys' fees and other costs for which the City may be liable as a result of abandonment of the action. It is expressly agreed that the City shall have the right to utilize the City Attorney's office or use other legal counsel of its choosing. Developer's obligation to pay the defense costs of the City shall extend until final judgment, including any appeals. City agrees to fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless. The City may make all reasonable decisions with respect to its

representation in any legal proceeding, including its inherent right to abandon or to settle any litigation brought against it in its sole and absolute discretion.

7.2.4 Exception. The obligations of Developer under this Section shall not apply to any claims, actions, or proceedings arising through the sole negligence or willful misconduct of the City, its members, officers, or employees.

7.2.5 Additional Coverage. Without limiting the generality of the foregoing, Developer's indemnity obligation shall include any liability arising by reason of:

(1) Any accident or other occurrence in or on the Site causing injury to any person or property whatsoever and caused by Developer;

(2) Any failure of Developer to comply with performance of all of the provisions of this Agreement;

(3) Any harm, delays, injuries or other damages incurred by any party as a result of any subsurface conditions on the site caused solely by Developer, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

7.2.6 Loss and Damage. Except as set forth below, City shall not be liable for any damage to property of Developer, Property Owner, or of others located on the Site, nor for the loss of or damage to any property of Developer, Property Owner, or others by theft or otherwise. Except as set forth below, City shall not be liable for any injury or damage to Developer, its employees, or its property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. This provisions of this Section 7.2.4 shall not apply (i) to the extent City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Site, or (ii) to the extent covered in any permit to enter executed by the City, or (iii) results from a condition created upon such Site by the City.

7.2.7 Period of Indemnification. The obligations for indemnity under this Section 7.2 shall begin upon the Effective Date and shall survive termination of this Agreement.

7.3 Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its elected officials, agents, servants, or employees, for any loss or damage to Developer, its agents, employees, subcontractors, or invitees, or any property of Developer its agents, employees, subcontractors, or invitees relating to this Project, except as specifically provided hereunder, including but not limited to, a claim or liability arising from the sole negligence or willful misconduct of the City, its elected officials, officers, agents, or employees, who are directly responsible for the City.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Site or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Site. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer or Property Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Development or Site made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Development or Developer's interest in the Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within 10 days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) 60 days.

(d) Any Mortgagee who comes into possession of the Development or Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Development or Site or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Development or Site acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such

Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Development or Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within 10 days of execution, as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this agreement, which is to allow the Development to be permitted and operated and to provide the Development Fee to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

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

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

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

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

9.8 Waiver. Failure of 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.

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

9.10 **Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur except as otherwise provided herein, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to developer any portion of the Development fee paid for any period after the effective date of such termination.

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

9.12 **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.

9.13 **Litigation.** Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

9.14 **Covenant Not To Sue.** The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 **Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private 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. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private Development into a “public work” project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer’s private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

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

9.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain or Developer’s right to seek and collect just compensation or any other remedy available to it.

9.18 Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager upon approval by the City Attorney.

9.19 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.20 Notices. All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing by providing notice to the other party:

To City: City of Carson
701 E. Carson Street
Carson, CA 90745
Attn: City Manager

With Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., #1700
Irvine, CA 92612
Attn: Sunny K. Soltani, City Attorney

To Developer: Becker Boards Small, LLC
4350 E Camelback Rd Suite B-260
Phoenix, AZ 85018
Attn: Joseph White, Member & Mark Becker, Member

With Copy to: Nagle Law Group
4530 E. Shea Blvd.
Phoenix, AZ 85028
Attn: Robert Nagle, Esq.

9.21 **Nonliability of City Officials.** No officer, official, member, employee, agent, or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

9.22 **No Brokers.** City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF CARSON

By _____
Mayor Albert Robles

ATTEST:

By _____
Donesia L. Gause, CMC, City Clerk

APPROVED AS TO FORM:

By _____
Sunny K. Soltani, City Attorney
[EQG]

Developer: BECKER BOARDS SMALL,
LLC, an Arizona limited liability
company

By: _____

By: _____

Two corporate officer signatures required when Developer is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 _____, 2017 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

- ☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)

- ☐ GUARDIAN/CONSERVATOR

- ☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 _____, 2017 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

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CAPACITY CLAIMED BY SIGNER

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☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

LEGAL DESCRIPTION OF THE SITE

Real property in the City of Carson, County of Los Angeles, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 5238, IN THE CITY OF CARSON, AS SHOWN ON MAP FILED IN BOOK 59 PAGE 1 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THE WESTERLY 15.00 FEET OF THE NORTHERLY 34.00 FEET OF PARCEL 1 OF PARCEL MAP 5534 AS SHOWN ON MAP FILED IN BOOK 72 PAGE 10 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY.

EXCEPT THAT PORTION THEREOF LYING BELOW A PLANE 500.00 FEET, MEASURED VERTICALLY DOWNWARD FROM THE SURFACE, AS SAID PLANE WAS ESTABLISHED BY DEED RECORDED OCTOBER 28, 1965 AS INSTRUMENT NO. 1423 IN BOOK D3096 PAGE 696, OFFICIAL RECORDS.

THE RIGHT TO ENTER UPON THE SURFACE OR TO ENTER UPON SAID LAND 500 FEET BELOW THE SURFACE THEREOF WAS QUITCLAIMED BY DOCUMENT RECORDED MARCH 29, 1972 AS INSTRUMENT NO. 3182, OF OFFICIAL RECORDS.

ALSO SHOWN AS PARCEL "A" OF THAT CERTAIN CERTIFICATE OF COMPLIANCE AND NOTICE OF LOT LINE ADJUSTMENT NO. 181-03 RECORDED MAY 11, 2004 AS INSTRUMENT NO. 04-1181667 OF OFFICIAL RECORDS.

APN: 7319-033-064

EXHIBIT "A-1"

DEPICTION OF SITE

EXHIBIT “A-2”

NEW DIGITAL BILLBOARD CONCEPTUAL RENDERING

EXHIBIT “B”

LETTER OF AUTHORIZATION FROM PROPERTY OWNER

EXHIBIT “C”

SCHEDULE OF PERFORMANCE

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
1. City’s City Council holds hearings to approve Agreement and first and second reading of Ordinance	_____, 2017 (1 st Reading); _____, 2017 (2 nd Reading) provided Developer has fully executed the Agreement	Recitals
2. Effective Date of this Agreement	On the effective date of Ordinance	1.1.8
3. Developer prepares and submits to City working drawings specifications and engineering, City commences approval process	Within 120 days of the Council’s second reading of the Ordinance approving this Agreement	3.4
4. City to approve all construction, engineering drawings and specifications with a plan check approval and issue all necessary permits, including but not limited to, a building permit	Within 30 days of City’s receipt of Applicant’s construction drawings and specifications addressing all of City’s comments; provided that no permits shall issue prior to the Effective Date of the Agreement	3.4
5. Developer to submit proof of insurance to City	Prior to commencing any inspections and work on the Project	7.1.2
6. Developer pays first installment of Year 1 Development Fee (\$25,000)	Within 3 days of execution of this Agreement	
7. City provides Developer with Notice of Commencement Date and Payment Schedule	When billboard becomes operational	
8. Developer pays City remainder of Year 1 Development Fee	On Flat Fee Commencement Date	1.1.10

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
9. Developer pays City second through 30th installments of Development Fee	Beginning on January 31 of Year 2 and ending 29 years thereafter.	2.6
10. Developer to commence the development of the New Digital Billboard	Within 180 days of receipt of all Development Approvals.	3.4
11. Developer to complete the New Digital Billboard	Within 180 days of the commencement of the construction of the billboard footing, column and head of the sign billboard, but extended for those Force Majeure items listed in Section 9.10	3.4

It is understood that this Schedule of Performance is subject to all of the terms and conditions of the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both the Developer and the City. Notwithstanding any extension of the Term in the manner described in, and subject to the provisions of, Section 3.5, the City Manager shall have the authority to approve extensions of time set forth in this Schedule of Performance without action of the City Council not to exceed a cumulative total of 180 days.

EXHIBIT “D”

SCOPE OF DEVELOPMENT

Developer and City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. **The Project.** Developer shall install the New Digital Billboard in accordance with the terms of this Agreement. The New Digital Billboard consists of one 56-foot tall “bulletin” size freeway-oriented billboard with a total of two (2) displays (each display measuring 14’ x 48’) within the Site. The New Digital Billboard will be erected in the location depicted at Exhibit “A” and “A-1” hereto, in cooperation with Property Owner and as further provided in this Agreement at Section 3. As required by the City at the time of the final Development, Developer shall install underground all utilities necessary for the New Digital Billboard. The New Digital Billboard Site shall be maintained in accordance with the conditions at Paragraph 3 of this Exhibit “D.”

2. **Building Fees.** Developer shall pay all applicable City building fees, as described at Section 2.5 of the Agreement, at the time that a building permit is issued for the installation of the New Digital Billboard on the Site.

3. **Maintenance and Access.** Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the New Digital Billboard within the Site, including but not limited to, the displays installed thereon, and all related on-site improvements, easements, rights-of-way and, if applicable, at its sole cost and expense, including, without limitation, landscaping, poles, lighting, signs and walls, in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, State, and local bodies and agencies having jurisdiction over the Site unless those federal, State, and local bodies have an exception for a legal nonconforming use. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Development; (ii) the ongoing maintenance by the Developer of the access road to the New Digital Billboard to minimize dust caused by the Development; and (ii) the repair, replacement, and repainting of the New Digital Billboard structure and displays as necessary to maintain such billboard in good condition and repair.

(b) Maintenance of the New Digital Billboard within the Site in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Development.

4. **Other Rights of City.** In the event of any violation or threatened violation of any of the provisions of this Exhibit “D,” then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of this Agreement, the City shall have the right, after complying with Section 5.4 of the Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Paragraph 3 of this Exhibit D (subject to written permission by Property Owner to enter the Site) and charging

Developer for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke, after giving written notice of the violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Site, Project, or any part thereof or interests therein as to the violating person or one threatening violation.

5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Agreement. The failure of the City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No official, officer, employee, agent, or representative of the City shall be personally liable to the Developer, its successors, transferees, or assigns, for any default or breach by the City under this Agreement.

6. Conditions of Approval. The following additional conditions shall apply to the installation of the New Digital Billboard, which shall conform to all applicable provisions of the Carson Municipal Code (CMC) and the following conditions, in a manner subject to the approval of the Planning Officer or designee:

(a) A building permit will be required, structural calculations shall be prepared by a licensed civil engineer and approved by the City Building Official.

(b) The size of the active copy area of each sign display of New Digital Billboard shall not exceed a maximum area of 672 square feet with no more than 128 total feet of extensions or borders and shall not to exceed a maximum height of 56 feet, including all extensions, from the grade level, and shall be spaced at intervals that are no less than 500 feet from any other billboard on the same side of the freeway and measured parallel to the freeway as depicted in the Site Plan and Elevations at Exhibit "A-1" approved by the City as part of the Development Approvals.

(c) The New Digital Billboard pole shall match the specifications attached in Exhibit "A-1" subject to the approval of the City's Development Services Manager or designee.

(d) Plans and specifications for the proposed installation of the New Digital Billboard, including plans for the undergrounding of all utilities, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits.

(e) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(f) Developer shall maintain the Site and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, County, State or federal agencies with jurisdiction over the facilities, unless the Development is exempted as a legal nonconforming use.

(g) Developer shall, at all time, comply with the approval for the New Digital Billboard from the California Department of Transportation Outdoor Advertising Division and

shall maintain acceptable clearance between proposed billboards and Southern California Edison distribution lines.

(h) The Developer shall pay any and all applicable fees due to any public agency prior to the final issuance of the building permits.

(i) The activities proposed in this Agreement shall be conducted completely upon Site and shall not use or encroach on any operable portion of any public right-of-way.

(j) Developer shall be required to install all underground utilities in connection with the New Digital Billboard as set forth in paragraphs 1 and 3 of this Exhibit "D." To this end, City shall cooperate with the Southern California Edison requirement upon Developer to upgrade Developer's current electrical service to the New Digital Billboard. Developer shall comply with all necessary NPDES requirements pertaining to the proposed use, to the extent applicable.

(k) All graffiti shall be adequately and completely removed or painted over within 48 hours of notice of such graffiti being affixed on the Development.

(l) Developer shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment, the obligation to have automatic dimming capabilities, as well as providing the City's Planning Officer or designee with a designated Developer employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any complaint by the City's Planning Division or its designee, Developer shall dim the display to meet these guidelines and further perform a brightness measurement of the display using OAAA standards and provide City with the results of same within 5 days of the City's complaint.

(m) Each message on the New Digital Billboard display shall be displayed for at least eight (8) seconds.

EXHIBIT “E”

DEVELOPER’S PRODUCTION SPECIFICATION SHEET