MEMORANDUM OF UNDERSTANDING OUTLINING MAJOR DEAL TERMS FOR OPTION AGREEMENT: CELLS 3, 4 AND 5 OF 157 ACRE SITE IN CARSON

This Memorandum of Understanding ("**MOU**") is made as of the 9th day of June, 2020 between Carson Reclamation Authority ("**CRA**"), City of Carson ("**City**"; CRA and City collectively referred to as "**Carson**") and FBD Carson, LLC ("**Developer**") or Developer's approved designee, as the "**Parties**" hereto. The Parties are prepared to enter into an Option Agreement containing the terms stated herein for Developer to propose a project consistent with the Site Plan and Scope of Development (each as defined below) (the "**Project**") to be developed on Cells 3, 4, and 5 (the "**Remainder Cells**") of the former Cal-Compact Landfill site, which consists of 157 acres generally located at 20400 Main Street in the City of Carson (the "**Site**").

PURPOSE: The negotiation of an Option Agreement has been on-going for over 30 days with exchanges of drafts by the Parties. CRA is working on a redraft of the Option Agreement and the Parties are working on preparing various exhibits thereto. It is likely that it will be at least a few weeks to finalize executable documents. Developer has not yet signed the Reimbursement Agreement or made the $2M deposit ("**Deposit**") as required by the CRA Board. The purpose of this MOU is to set forth the major terms of the transaction under the Option Agreement so that the Parties can execute the Reimbursement Agreement and Developer can deliver the Deposit to the CRA by the June 5, 2020 CRA Board meeting.

1. SITE. The Site and Remainder Cells are shown in Exhibit A (attached hereto).

2. PROJECT. The Project is conceptually shown in the "**Site Plan**" in Exhibit B (attached hereto) and, described in the "**Scope of Development**" attached hereto in Exhibit C.

3. OPTION RIGHTS. The Option Agreement shall give Developer two options: Options A and B. Option A must be exercised by Developer if City approves the Project in a form substantially consistent with the Scope of Development and Site Plan (the "**Required Approvals**") and Entitlements obtained. If the Project is not approved but suggested corrective actions are identified by the City Council in its disapproval, Developer has the obligation to Re-Process and resolve the basis of such disapproval. "Re-Process(ing)" as used herein requires timely action on the part of both Parties to submit, review, revise and act on land use applications/CEQA documentation as required by state and local ordinances in a continuous process through the point of hearings by the applicable approval body. As stated above, the Project must be consistent with the Required Approvals although Developer may, in Developer's sole discretion, propose amendments thereto. Developer has a second option, Option B, applicable in the event of unexcused failure to obtain Required Approvals and Entitlements for the Project including (i) City failure to consider Project after initial submittal or Re-Processing by Developer; (ii) City Council disapproves the Project but fails to identify actions in its disapproval which would address the reasons for the disapproval; (iii) City approval of a project substantially different from the Project (as described herein); (iv) City approval is reversed through Adverse Judicial Judgment and Developer submits an application for Re-Processing, but City fails to consider the Re-Processing; or (v) if after Re-Processing of the Project, the Project is denied by the City Council; all of which

actions are considered to be a "**Carson Default**". A Carson Default is excused by an uncured Developer material default.

4. TERM. Term is two (2) years, provided that the Term is tolled during any litigation. Additionally, CRA Executive Director shall grant further extensions of up to 180 days administratively, and it is agreed in accordance with Section 16 requiring good faith by the Parties, that if Developer is proceeding with due diligence in good faith the CRA Executive Director shall so provide such administrative extensions.

5. PURCHASE PRICE; ADVANCES. The Purchase Price for the Remainder Cells shall be $45,000,000 which shall be deposited under two escrows (A/B escrows) and made in two advances (a First Advance and a Second Advance) with title passing only upon the vesting of the entitlements that authorize and permit the development of the Project from all jurisdictional entities ("**Entitlements**"). Vesting shall be deemed to have occurred only upon the expiration or passage of all applicable appeal periods and successful resolution of all Challenge Litigation, if any. Litigation challenging such approval (the "**Challenge Litigation**") shall toll vesting of the Entitlements until successfully resolved, including Re-Processing if necessary. The Purchase Price is considered Liquidated Damages in the event of a material default by the Developer (see Section 14). Each escrow has certain collateral associated with it and the collateral and corresponding documents referenced herein (collectively "**Collateral Documents**") are exchanged when the Advances are made. The Escrows are described as follows:

A. **Escrow A**: The First Advance shall be $25,000,000 deposited by Developer into escrow and available for draw by the CRA upon the completion and deposit of the documents required for the Escrow A as provided herein. The Collateral available and corresponding Collateral Documents shall be as described below (and in Section 7).

(1) **Note:** $25,000,000 Promissory Note made by CRA in favor of Developer. [If the Entitlements are vested, this Note shall be forgiven pursuant to the Release / Reconveyance documentation to be deposited into Escrow B]

(2) **Deed of Trust**: Upon draw of First Advance, Developer receives a Deed of Trust encumbering Remainder Cells with a final legal description and a corresponding Certificate of Compliance, subject to revision when final Project boundaries determined (following a foreclosure / acquisition of the Remainder Cells by Developer or its assignee); Covenant recorded to secure the obligation of City/CRA to process the revision to the legal description.

(3) **Sign Lease:** Subject to the terms hereof, upon draw of First Advance, Developer shall receive an executed lease of the Sign (as defined below), subject to the terms hereof.

B. **Escrow B**: The Second Advance shall be $20,000,000 to be deposited by Developer into escrow and available for draw by the CRA upon the completion and deposit of the documents required for Escrow B as provided herein. The Collateral available and corresponding Collateral Documents shall be as described below (and in Section 7).

(1) **Note:** $20,000,000 Promissory Note made by CRA in favor of Developer.[If the Entitlements are vested, this Note shall be forgiven pursuant to the Release / Reconveyance documentation to be deposited into Escrow B]

(2) **Development Impact Fee Credit Agreement**: Upon draw of Second Advance, Developer receives DIF Credit for $20M, usable by Developer for projects within City and transferrable to other developers to be used within City. DIF Credit Agreement to be completed in final form by the time of the First Advance and put into escrow.

C. **Final Escrow Closing**: Final Escrow closes, title passes and collateral released when Required Approvals obtained, Entitlements are vested, and/or any Challenge Litigation resolved, if any.

D. **Levy on Collateral.** Developer cannot exercise its rights under the Option B documentation (described below) except following a Carson Default as provided in Section 14.

6. DUTY TO DEFEND. Developer has the duty to defend and pay the cost of defense and settlement of any legal challenge to the validity of the Entitlements through a final Judicial Judgment. Developer can settle and Re-Process the Project provided that City agrees that such changes are consistent with the Scope of Development / Specific Plan or that the Specific Plan can be amended for such purposes. Developer must initiate Re-Processing within 90 days, and the Re-Processing must address the defects identified through the judicial action. Developer shall pay all costs of Re-Processing. Developer shall propose Corrective Modifications which may be (i) modifications specifically required by the court, (ii) reasonably related to an environmental impact, or (iii) due to new conditions brought about by changes in the Project or the circumstances in which the Project is being undertaken.

7. DOCUMENTS FOR TRANSACTION. Generally described as follows:

Option A: Grant Deed [final form by Escrow A]

Assignment/Bill of Sale [final form by Escrow A]

Development Agreement[1] [form to be negotiated and finalized prior to Final Closing]

Subsurface License Agreement [final form by Escrow B]

Insurance Administration Agreement [final form by Escrow A]

CC&Rs [form to be negotiated and finalized prior to Closing/transfer of Remainder Cells]

Option B: First Advance Promissory Note [final form by Escrow A]

[1] Note final form will be in form and content substantially consistent with the Cell 2 Development Agreement; provided, however, that City staff shall have the sole right to determine the final form and terms of the Development that is ultimately presented to the City Council for approval.

Second Advance Promissory Note [final form by Second Advance]

Deed of Trust [final form by Escrow A]

Sign Lease [final form by Escrow A]

DIF Credit Agreement [final form by Escrow B]

Reconveyance/Release/Termination documents [by Escrow B]

8. REMEDIATION. The Site is subject to a Remedial Action Plan ("**RAP**") approved by DTSC in 1995. Remediation Work includes: all remediation work and all financial assurances for the funding thereof required under the CFA, the RAP, the MAPO and other applicable documents or regulatory requirements, including, but not limited to, the proper design, construction, installation, operation, and maintenance and monitoring of all Remedial Systems, and the undertaking of any future response actions that may be required by DTSC or any other agency with jurisdiction over the Remediation Work and/or the 157 Acre Site. Developer shall perform all Remediation Work on the Remainder Cells and other development work necessary on the Remainder Cells to enable the Project to be developed. As required by DTSC, there shall be no phased development within any Cell, and once development commences on a Cell it must proceed to completion. Under the provisions of the MAPO, the Cells do not have to be simultaneously developed, although it is desirable because the phased development would require the installation of buffer zone protections between completed and open Cells. The investigation of the environmental conditions, necessary testing and the development of the remediation plan on the Remainder Cells shall be undertaken by Developer at Developer's expense. CRA shall share with Developer all reports and investigations which have been previously prepared to the extent not subject to privilege. Any experts or consultants employed by either Party shall be paid for by the contracting Party, although CRA is able to use funds from the Reimbursement Agreement to pay for its expenses (if any).

9. CARRY COST; SIGNAGE REVENUE. CRA has certain costs for the operation and maintenance ("**O&M**") of the Remedial Systems which have been and will be constructed ("**Carry Costs**"). The Carry Costs have recently ranged from $200,000 to $445,000 per month on the entire Site. As of June 9, 2020, Developer shall commence paying the monthly Carry Costs attributable to the Remainder Cells to the CRA. Upon execution of the Option Agreement, Developer shall continue to pay for its proportional share of the Carry Costs (i.e., the costs attributable to the Remainder Cells) and shall also repay the CRA for the Carry Costs attributable to the Remainder Cells incurred by the CRA between March 9, 2020 (i.e., the date on which the CRA Board gave approval for staff and its attorneys to negotiate and prepare the Option Agreement with Developer) through June 9, 2020; provided, however, that in no event shall Developer be obligated to pay more than $250,000 per month or $6,000,000 in the aggregate during the initial two year term of the Option Agreement to satisfy its obligations with respect to Carry Costs. After approval of the Entitlements, even if subject to Challenge Litigation, Developer shall continue to be responsible for paying the Carry Costs subject to the overall cap. If Challenge Litigation occurs, Developer may, at its own election, exercise the right to install on City's behalf and lease from the City (the "**Sign Lease**") the Freeway Pylon Sign ("**Sign**") including constructing the subfoundation and all related structures as described in the Specific Plan, and to operate the Sign so as to raise funding to offset the Carry Costs until conveyance of title to the surface lot of the Remainder Cells ("**Final Closing**"). City will pay the cost of construction of the Sign so long as within the budget approved

by City / CRA, and at the approved location. Revenue from the Sign may payoff City's costs of construction; Developer shall pay for operation and maintenance out of Sign revenue. Sign revenues will go first (i) to Sign operation and maintenance expense, then (ii) to pay the Carry Costs, then (iii) to pay the City's construction cost of the Sign, and thereafter, and (iv) for the cost of improvements to the Site for up to 10 years.

10. INSURANCE PROGRAM. Developer must pay its fair share of the CRA's insurance programs, including PLL, CPL/PLI, and OCIP, on a pro-rata or risk allocation basis, based on acreage or construction valuation (depending on the policy) and based on which policies Developer elects to be insured under. CRA does not need to obtain CAM-Carson LLC's ("**CAM**") approval for the Option Agreement with Developer or for Developer's proposed Project.

11. USE OF ADVANCES. The Advances are primarily intended to be used to continue the performance of constructing the Remedial Systems on Cell 2, but for such project to proceed, the Cell 2 Developer, CAM, or another developer, will need to cooperate. In the event that CAM does not timely proceed, CRA shall have the option to (i) use the funds to pay prior unpaid obligations with respect to the Site; (ii) select an alternative developer for Cell 2 and use the funds for the Cell 2 Project (subject to CAM's rights pursuant to the Conveyancing Agreement, dated Sept. 6, 2018), with Developer given first right of negotiation; (iii) utilize the funds for other purposes which will directly benefit the development of the Site (with the understanding that $5,000,000 shall be allowed for soft costs of the CRA regarding the Site, including $2,500,000 for CRA incurred attorneys' fees); or (iv) in the event of a Carson Default, return the unused funds (or a portion thereof) to Developer. All of the Advances shall be set aside in a separate escrow account with the withdrawal of the funds being subject to the provision of the documentation specified herein and express limitation that no portion of the Advances will be used to pay for any costs or expenses associated with the litigation with CAM (except as otherwise provided herein) or paid to CAM in the litigation or as part of a settlement thereof, unless the CAM litigation is settled and the Cell 2 project proceeds with CAM or another developer, subject to the reasonable good faith approval of Developer.

12. ADDITIONAL COST OBLIGATIONS.

A. Developer shall timely pay all costs identified in the Reimbursement Agreement.

B. Developer shall construct the Project including all grading and construction of subfoundation and foundation systems, utility connections, site improvements and vertical improvements, unless expressly the obligation of the CRA.

C. Developer shall pay all Development Impact Fees as set forth in the City's DIF Ordinance.

D. Developer shall pay for 60% of the common expenses of the Master Sign Program (meaning the portion thereof that is exclusive to the signage located or to be located on Cell 2 or 1 and only benefits CAM or Cell 1 developer, but otherwise Developer shall either construct its and pay for its own signage on the Remainder Cells, and/or participate and pay for its fair share for the costs of the signage on the rest of the Site outside the Remainder Cells) and Entry Plazas and prorata share of the CFD assessments including (i) the O&M

CFD, (ii) the Capital Improvements O&M, and (iii) other improvements such as signage and entry plazas.

13. OFFSITE IMPROVEMENTS. CRA, using $22.4M available through Measure M and Measure R, shall design and construct the Lenardo Drive and the main stormwater infrastructure therein as well as the backbone roadway and traffic improvements, and water sewer, drainage, power, and other utilities within the public right-of-way to the property line of the Remainder Cells, including utility stubs to the Property, roadway and other off-site physical improvements required for development of the Project on the Property, including acquisition of any necessary easements or rights of way therefor, including those set forth in the EIR for the Specific Plan as a condition to development of the Site, all in accordance with the requirements of the EIR and applicable law. Developer shall install the utility connections from the utility stubs within the Remainder Cells. Developer shall pay no more than 60% of the total costs of the offsite public infrastructure required to serve and support the Project, provided, however, that with respect to the construction of Leonardo Drive only, the Parties shall be required to establish a cap on Developer's payment obligation which shall be delineated in an exhibit to the Option Agreement.

14. DEFAULTS. In the event of a material default by Developer under the Option Agreement or the failure of the Developer to Re-Process the Project if required pursuant to the terms and provisions hereof (or otherwise under the terms of the Option Agreement), the liquidated damages shall be the First and Second Advances. In the event of a Carson Default, as defined in Section 3 above, neither CRA nor City shall be liable for monetary damages, but provided the Parties have met and conferred to attempt to resolve any disputes for at least 45 days, Developer shall have other remedies, including, the following provided that such remedies shall be in the following order of priority:

A. Obtain reimbursement of the First Advance to the extent such funds have not been drawn for use as of the date of the Carson Default;

B. Receive the benefits under the DIF Credit Agreement;

C. Market the Remainder Cells for a period of 12 months ("**Marketing Period**") to a developer who will develop the Remainder Cells in accordance with the Specific Plan (or as modified through their proposed entitlements) and will develop a project under the Project Agreements then in place, or as Carson/CRA will amend, with a payment for the Remainder Cells necessary to pay off the Recovery Amount ($25,000,000 plus interest at 3% during the Marketing Period *(unless a mutually acceptableOption Agreement is approved by the CRA Board and fully executed by the Developer on or before July 9, 2020, in which case the interest rate shall be 6%),* but less any reimbursement of the First Advance under subsection A above (and any Sign Revenue and revenue from the interim use, if applicable)), with any surplus to go to CRA;

D. Developer is relieved of obligation to pay Carry Costs and may use surplus Sign Revenue as a credit against Recovery Amount in first priority over costs that such sum was previously being used for;

E. If no developer is approved by the end of the Marketing Period, and if Required Approvals have still not been approved, Developer has the right to develop any interim use allowed under the Specific Plan on such portion of the Remainder Cells as shall be necessary to pay the Carry Costs for the Remainder Cells and/or unpaid portion of the Recovery Amount, if any; and

F. Exercise its remedies with respect to the Remainder Cells pursuant to the Deed of Trust.

The foregoing are subject to the following provisions, (i) during Marketing Period the Parties must mutually agree on the new developer provided that the CRA may elect a developer not agreeable to Developer if CRA will pay any difference from the Recovery Amount; and (ii) Developer will provide project proformas detailing cost and revenue related to the above, and CRA has the right to audit all such financial calculations including the Recovery Amount, and all revenues whether from the Sign Revenues and costs, and the revenues and costs of the interim use. In the event of errors in reporting, Developer shall pay audit costs. In the event Developer transfers ownership of the Remainder Cells (as set forth below), does not acquire the Remainder Cells (for any reason), or materially defaults under the Option Agreement, the CRA shall be entitled to receive copies of all contracts, agreement, plans specifications, reports, etc. at no cost to the CRA, provided, however, Developer (or the applicable contractor) shall not be subject to any liability for errors/omissions.

15. TRANSFER. There shall be no transfer of the rights under the Option Agreement before the Final Closing. This does not preclude (i) transfers to a wholly related subsidiary entity of Developer; (ii) transfers of less than a 50% ownership of the existing development entity for financing purposes; (iii) transfers of interests in Developer or the Remainder Cells subject to the reasonable good faith approval of the CRA Board, or (iv) transfers of Developer's rights under the Collateral Documents to wholly related subsidiary entities of Developer, the exercise of which shall be governed by each respective Collateral Document. Grounds for approval shall include experience with comparable projects, financial strength of the transferee entity, identity of principals and management team assigned to the Project. After issuance of a Certificate of Occupancy for the Project, transfers shall not be restricted.

16. GOOD FAITH. During the term of this MOU, the Parties agree to work together and negotiate reasonably, diligently, and in good faith the Option A Documentation and Option B Documentation and to take such other acts consistent with the intent herein in order to effectuate the transactions contemplated herein, all of which shall be subject to the rules, regulations, standards, and criteria set forth in the City's General Plan, the Specific Plan, and the City's zoning and land use regulations (which may require amendment or other modification to accommodate Developer's proposed uses). As a part of the good faith obligation, in the event that one Party believes the other Party is in default, the Parties shall meet and confer together actively for at least 45 days to resolve the dispute before initiating any legal process.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date first set forth above.

DEVELOPER:

FBD CARSON, LLC, a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

AUTHORITY:

CARSON RECLAMATION AUTHORITY, a California joint powers authority

By: _____
Albert C. Robles, Chair

CITY:

CITY OF CARSON, a California municipal corporation

By: _____
Albert Robles, Mayor

ATTEST:

_____
Donesia Gause-Aldana
City Clerk / CRA Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Sunny Soltani, CRA Counsel
and City Attorney

EXHIBIT A

SITE

EXHIBIT B

SITE PLAN

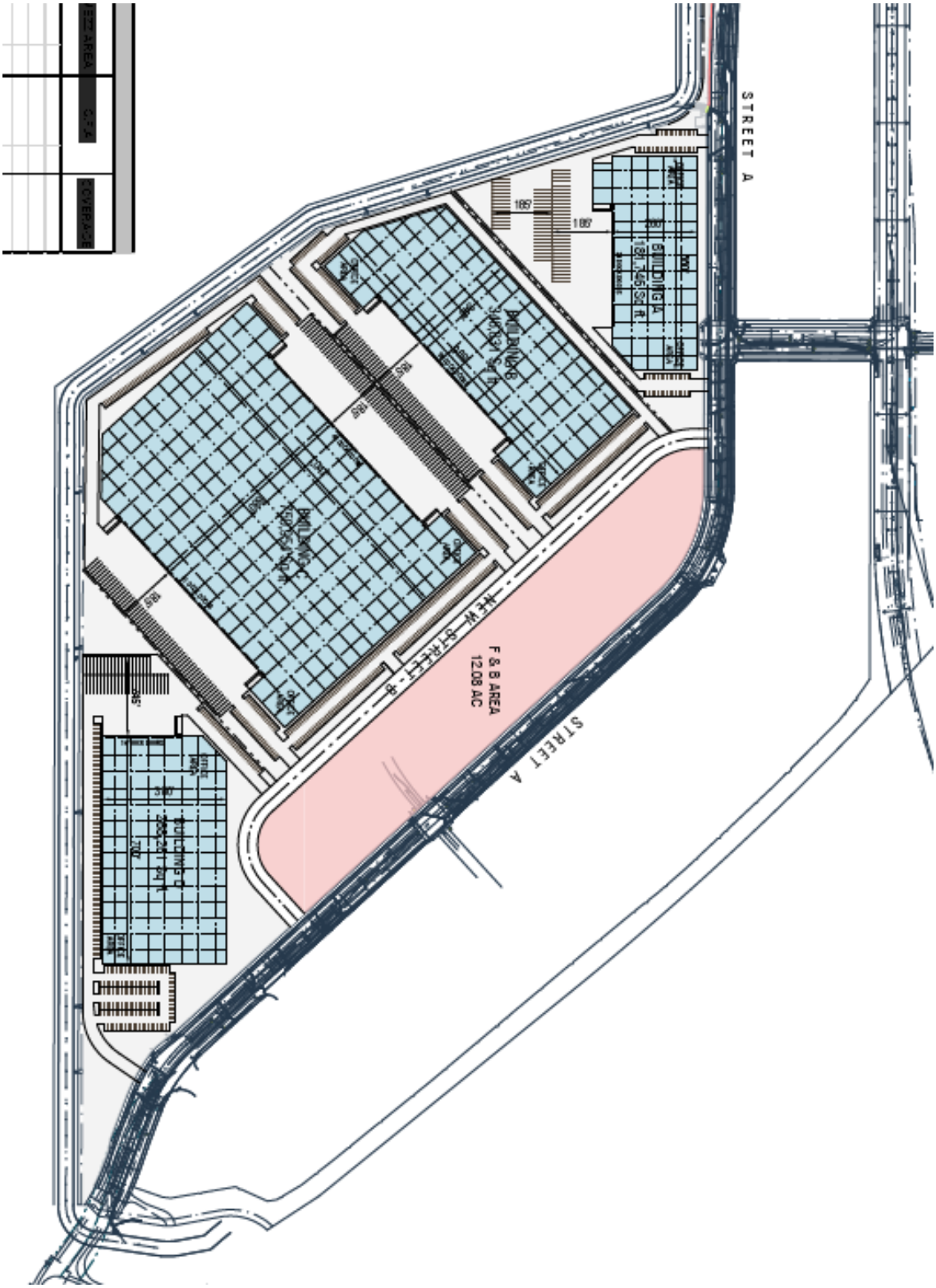

EXHIBIT C

SCOPE OF DEVELOPMENT

The Project shall consist of a 13 acre park, with associated food, café, and beverage facilities, (with the potential for hospitality, amphitheater, and iconic tower and museum uses), and the remainder of the Remainder Cells may be developed with an industrial park which uses shall include distribution warehouses, fulfillment centers, logistics, light industrial including manufacturing and assembly including all associated parking and ancillary office.