RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
City of Carson

701 E Carson Street
Carson, CA 90745
Attn: Planning Manager

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

AGREEMENT REGARDING DEVELOPMENT IMPACT FEES, COMMUNITY FACILITIES DISTRICT, AND OTHER PROJECT DEAL POINTS

This Agreement Regarding Development Impact Fees, Community Facilities District, and Other Project Deal Points ("Agreement") is entered into on the ____ day of _____, 2020 ("**Effective Date**") by and between the City of Carson, a municipal corporation of the State of California ("**City**"), and KL Fenix Corporation, a California corporation ("**Developer**"). The City and Developer shall sometimes be referred to jointly within this Agreement as the "**Parties**" and individually as a "**Party**."

RECITALS

A. *Orderly Development; Public Benefits.* The City Council finds that (i) this Agreement is entered into pursuant to Section 65864 *et seq*. of the California Government Code, (ii) this Agreement is in the best public interest of the City and its residents, (iii) adopting this Agreement constitutes a present exercise of the City's police power, and (iv) this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as defined below) will achieve a number of City objectives, including the orderly development of the Property (as defined below) and the provision of public benefits, or funds therefor, to the City and its residents.

B. *Moratorium.* On March 21, 2017, the City Council adopted Interim Urgency Ordinance No. 17-1615U, enacting a 45-day moratorium on the establishment, expansion, or modification of truck yards, logistics facilities, hazardous materials and hazardous waste facilities, container storage facilities, and container parking (collectively, "**Logistics Facilities**") within the City (the "**Moratorium**"). The purpose of the Moratorium was to give the City the time to fully study the impacts of Logistics Facilities on the City's infrastructure and to develop the appropriate measures to ensure that Logistics Facilities pay their fair share. The Moratorium provides that a developer can seek an exception from the Moratorium by agreeing to mitigate a particular project's impacts. On May 2, 2017, the City Council adopted Interim Urgency Ordinance No. 17-1618U, which extended the Moratorium for an additional 10 months and 15 days. On March 20, 2018, the City Council adopted Interim Urgency Ordinance No. 18-1805U, which extended the Moratorium for an additional 12 months.

C. *Moratorium Exception.* On August 21, 2018, the City Council adopted Resolution 18-113 ("**Resolution 18.113**") granting Developer an exception to the Moratorium (the "**Exception**") subject to certain conditions.

EXHIBIT NO. 4

D. *Moratorium Expiration.* The twice extended Moratorium expired March 16, 2020.

E. *Adoption of DIF Program.* On April 16, 2019, the City Council adopted Ordinance No. 19-1931 to implement the City's Interim Development Impact Fee Program ("**DIF Program**") to establish an interim Development Impact Fee ("**DIF**") schedule applicable to new development within the City. DIFs are valuable tools to fund infrastructure needs associated with new/additional development within the City pursuant to Government Code Sections 66000 *et seq*. DIFs serve the purpose of allowing the City to recover from each new development project a reasonable and proportional share of the cost of public facilities and infrastructure improvements that serve or will benefit that development.

F. *Agreed-Upon Payment of DIF Amount.* City staff and its rate consultants have analyzed the DIF Program and fee study data contained therein, and potential impacts upon public facilities and infrastructure attributable to the Project, in order to accurately determine the DIFs that would be applicable to the Project. Project DIF amounts in this Agreement were determined by reviewing the individual Project and its direct relationship to the impacts created by the Project, and the fees collected, and it was determined that the amounts of the fees are roughly proportional to the Project's specific impacts. Based on such analyses, the Parties mutually agree that Project impacts warrant a one-time DIF payment equal to the amount determined from the DIF Program and in effect at the time of issuance of building permits for Cargo Container Parking use, which, as of the Effective Date, is Seven Hundred Twenty Nine Dollars and Fifty Two Cents ($729.52) per truck and container space. Based on the number of truck and container spaces of the Project, as of the Effective Date, Developer would be responsible for development impact fees in the amount of Two Hundred Seventeen Thousand Three Hundred Ninety-Six Dollars and Ninety-Six Cents ($217,396.96). This amount is to be paid prior to issuance of Project building permits. Additionally, all applicable DIF amounts attributable to the warehouse, if any, as more particularly described in Section 3.1 of this Agreement, will be paid at the time applications for business licenses are submitted to City. All payments for DIFs pursuant to this Agreement are hereinafter referred to as the "**DIF Amount.**" The Parties agree that such DIF Amount is (i) directly related to the impacts of the Project, and (ii) roughly proportional to the specific impacts upon public facilities and infrastructure attributable to the Project.

G. *CFD Formation.* On November 7, 2018, the City formed a Master CFD entitled City of Carson Community Facilities District No. 2018-01 (Maintenance and Services) (the "**Master CFD**") for the purpose of funding the maintenance of public infrastructure within the area of the Master CFD which is within the City's jurisdictional boundaries (the "**Services**"). More specifically, the Services may include, but not be limited to, the provision of general City services and the maintenance of sidewalks, roadways, and parks to enhanced service levels. Additionally, the Master CFD may also fund any other public services as authorized under Section 53313 of the California Government Code. The Master CFD contemplates that the City will annex properties from time to time to the Master CFD to fund Services by unanimous written consent or as otherwise permitted by the Mello Roos Community Facilities Act of 1982 (the "**Act**"), which properties may be annexed as a "Zone" or otherwise with special taxes related to such properties to be assessed on the property owner pursuant to the Act.

H. *CFD Annexation.* On April 2, 2019, the City Council adopted Resolution No. 19-009 to: (i) adopt a uniform procedure for annexing future properties into the Master CFD administratively at City staff level, and (ii) adopt uniform tax rates based on land use categories and zones established under the applicable Fiscal Impact Analysis. Pursuant to the Exception, Developer was to form, fund, and participate in an applicable community facilities district and become subject to all special taxes applicable to the Property (the "**Property's Special Taxes**"), whether administered through the Master CFD or another community facilities district to be formed by the City related to Services to the Property (the "**CFD**"). With the formation of the Master CFD, the Property may now be annexed into the Master CFD, consistent with the purposes set out in the Exception. Based on an analysis of the Services needed for the Project, Developer agrees the Property will be taxed at the rate in effect at the time of issuance of Project building permits for Industrial – All Other, which, as of the Effective Date, is Four Hundred Eighty Dollars and Seventy-Five Cents ($480.75) per acre on an annual basis, which means the Property's Special Taxes would be Six Thousand Eight Hundred Eighty-Nine Dollars and Fifteen Cents ($6,889.15) annually, as adjusted pursuant to Section 3.2b of this Agreement.

I. *Agreement as Development Tool.* In light of there being inconsistencies within the City's Zoning Code and General Plan and in light of the interim nature of the proposed use of the Property and the extension to the Initial Term which may be granted Developer, the Parties desire to proceed and enter into this Agreement which they agree is the simplest way to provide Developer its requested entitlements.

J. *The Property.* Developer owns the property located at 20601 South Main Street situated immediately east of and adjacent to Figueroa Street, south of Del Amo Boulevard and north of Torrance Boulevard, in the City of Carson, having Assessor's Parcel Number 7336-003043, and legally described and depicted in Exhibit "A" and Exhibit "B," respectively, attached hereto and incorporated herein (the "**Property**"). The Property is zoned ML (Manufacturing Light) and is approximately 14.33 acres in size. The General Plan land use designation for the Property is Mixed Use – Business Park. Among the Property's surroundings are those that consist of General Plan land use designations of Mixed Use – Business Park within zoning district ML, Mixed Use – Business Park within zoning district CG, Light Industrial within zoning district ML, Low Density within zoning district RM, and General Open Space within zoning district ML.

K. *The Project.* Developer proposes to develop upon the Property, pursuant to this Agreement, as a temporary use, a logistics facility for use as a Cargo Container Parking Facility with up to 53,550 square feet of industrial warehouse building and 400 spaces for cargo containers and 75 spaces for truck parking, totaling approximately 14.33 acres (the "**Project**"), as more particularly described in Sections 1.26, 4.1, and 4.2 of this Agreement.

L. *Purpose of Agreement*. The purposes of this Agreement are: (i) to establish the allowable uses of the Property and establish the rights of the Parties, in light of there being inconsistencies within the City's Zoning Code and General Plan and in light of the temporary nature of the proposed use of the Cargo Container Parking Facility and the possible permanent vesting of the same that may be granted to Developer; (ii) for the City

to grant to Developer a property right for the development and use of the Project in exchange for certain public benefits (e.g., public art installation, prohibition against Developer accessing Main Street and Torrance Boulevard with its trucks, and penalties imposed on Developer for failure to comply with this Agreement) which address the City's concerns that resulted in the Moratorium; and (iii) for the City Council to find that this Agreement establishes substantial compliance by Developer with the Exception and the terms of Resolution 18-113.

M. *The Project's Entitlements.* City finds and determines that all actions required of City prior to approval of this Agreement have been duly and regularly taken. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, *et seq*. ("**CEQA**"), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a duly noticed public hearing held on May 27, 2020 and July 29, 2020, recommended approval of a Mitigated Negative Declaration for the Project in accordance with CEQA ("**MND**"). On the same days, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement ("**DA 24-18**"), General Plan Amendment ("**GPA 108-2018**"), Specific Plan ("**SP 18-2018**"), Conditional Use Permit ("**CUP 1074-2018**"), as well as a Site Plan and Design Overlay Review ("**DOR 1745-2018**") (collectively, together with the MND, the "**Entitlements**"), and recommended that the City Council approve said Entitlements. On August 18, 2020, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer's application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City. The Entitlements will expire upon expiration or sooner termination of this Agreement.

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. GENERAL DEFINITIONS.

In addition to those terms defined within the above Recitals and elsewhere within this Agreement, the following terms shall bear the meanings set forth below:

1.1 "**Adjacent Surrounding Parcel**" means each of the parcels from among the Surrounding APNs identified as the following: the four parcels identified as Parcel 3 collectively referred to as "Parcel 3," the four parcels identified as Parcel 4 collectively referred to as "Parcel 4," and "Parcel 5," as depicted in Exhibit "C," attached hereto and incorporated herein by this reference.

1.2 "**Adopting Ordinance**" means Ordinance No. _____ approving this Agreement, introduced on August 18, 2020 and adopted on September ____, 2020.

1.3 "**Agreement**" means this Agreement, including all of its exhibits.

1.4 "**Annual Review**" means the annual review of the Developer's performance under this Agreement in accordance with Article 6 of this Agreement.

1.5 "**Applicable Laws**" means, collectively, the following:

a. The Project Development Approvals, including the Conditions of Approval.

b. The Existing Land Use Regulations**.**

c. Subsequent Development Approvals.

d. Those Subsequent Land Use Regulations to which Developer has agreed in writing.

1.6 "**Assignment**" shall include any sale, transfer, lease, assignment, hypothecation or encumbrance of the Property and the transfer to any person or group of persons acting in concert of more than thirty percent (30%) of the present ownership and/or control of the Developer in the aggregate, taking all transfers into account on a cumulative basis. In the event Developer or its successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer, or the beneficial interests of such trust; in the event that Developer is a limited or general partnership, such transfer shall refer to the transfer of more than thirty percent (30%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

1.7 "**Approval Date**" means the date on which the City Council conducted the first reading of the Adopting Ordinance. That date is August 18, 2020.

1.8 "**Cargo Container Parking**" means the parking of trucks and trailers, detached from the tractor unit, on which is loaded one (1) or more cargo containers.

1.9 "**Cargo Container Parking Facility**" means a facility used in conjunction with Cargo Container Parking use and operations, with no stacking of containers permitted.

1.10 "**CFD**" means any Community Facilities District that is applicable to the Property and formed pursuant to the Mello Roos Community Facilities Act of 1982.

1.11 "**City**" means the City of Carson, a California Charter city.

1.12 "**City Council**" means the City Council of the City of Carson.

1.13 "**Conditions of Approval**" means all conditions imposed on the Project by the City, including those recommended by the Los Angeles County Fire Department, as part of the approval of the Entitlements.

1.14 "**Developer**" means KL Fenix Corporation, a California corporation, and its successors and assigns to all or any part of the Property.

1.15 "**Developer's Vested Right**" means Developer's right to complete the Project in accordance with, and to the full extent of, the Project Development Approvals, but only until the Term expires or is sooner terminated or unless Developer's rights become permanent pursuant to Article 2 of this Agreement.

1.16 "**Development**" means the improvement of the Property for the purposes of completing the structures, improvements, and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, and the maintenance, repair, or reconstruction of any building, structure, improvement, landscaping or facility after the construction and completion thereof.

1.17 "**Development Approvals**" means all Project-specific non-legislative City duly-issued approvals. Development Approvals include, but are not limited to, plans, maps, permits, site plans, tentative and final subdivision maps, design guidelines, variances, conditional use permits, grading, building, and other similar permits, environmental assessments, including environmental impact reports and negative declarations, and any amendments or modifications to those matters duly approved by the City. "Development Approvals" does not include (i) rules, regulations, policies, and other enactments of general application within the City, (ii) legislative enactments, or (iii) any matter where City has reserved authority under Section 5 of this Agreement. Development Approvals are not Land Use Regulations.

1.18 "**DIF(s)**" means Development Impact Fees agreed to by Developer pursuant to Section 3.1 hereof.

1.19 "**Effective Date**" means the date on which the Adopting Ordinance becomes effective, typically thirty (30) days after the second reading of the Adopting Ordinance.

1.20 "**Entitlements**" means this Agreement, the MND, GPA 108-2018, SP 18-2018, CUP 1074-2018, and DOR 1745-2018.

1.21 "**Exhibit**" means an exhibit to this Agreement, unless otherwise specifically referenced to a different agreement or document. The following exhibits are incorporated into the Agreement by reference as though set forth in full:

Exhibit A	Legal Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Adjacent Surrounding Parcels
Exhibit D	Site Plan

1.22 "**Existing Land Use Regulations**" means (i) all Land Use Regulations in effect on the Effective Date and (ii) any changes to Land Use Regulations enacted on or after the Approval Date and before the Effective Date for which Developer has provided its written consent to allow those changes to apply to the Project.

1.23 "**Land Use Regulations**" are laws and regulations enacted through legislative actions of the City Council. Land Use Regulations include ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan, Municipal Code, and Zoning Code which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction standards and specifications applicable to the Project. "Land Use Regulations" do not include (i) Development Approvals, (ii) regulations relating to the conduct of business, professions, and occupancies generally, (iii) taxes and assessments, (iv) regulations for the control and abatement of nuisances, (v) health and safety regulations, or (vi) any other matter reserved to the City pursuant to Article 5.

1.24 "**Mortgage**" means a mortgage, deed of trust, or other security instrument encumbering the Property or any part thereof.

1.25 "**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.

1.26 "**Project**" as described in Sections 4.1 and 4.2 of this Agreement, means the Development of the Property consistent with and to the full extent of the Project Development Approvals, inclusive of the Entitlements, and all applicable Land Use Regulations.

1.27 "**Project Development Approvals**" means all Development Approvals, inclusive of the Entitlements, which meet the following criteria:

a. Were applied for by Developer;

b. Are acceptable to Developer (including all Conditions of Approval); and

c. Are required or permitted by the Applicable Laws in order to complete the Project.

Project Development Approvals include, without limitation, all Development Approvals needed or desired by Developer to complete the Project, provided that those Development Approvals are consistent with Developer's Vested Right, this Agreement, and the City's General Plan and Zoning Code. The Entitlements (minus this Agreement), as examples of Project Development Approvals, have been or are anticipated to be approved prior to or in conjunction with the approval of this Agreement.

1.28 "**Property**" means the real property described and depicted in Exhibit "A" and Exhibit "B," respectively.

1.29 "**Reservation of Authority**" means the limitations, reservations, and exceptions to Developer's Vested Right set forth in Article 5 of this Agreement.

1.30 "**Subsequent Land Use Regulations**" means those Land Use Regulations which are both adopted and effective on or after the Approval Date and which are not included within the definition of Existing Land Use Regulations.

1.31 "Subsequent Development Approvals" means all Development Approvals issued subsequent to the Effective Date in connection with development of the Property, which shall include, without limitation, any changes to the Development Approvals.

1.32 "Surrounding APNs" means (1) the land parcels between Main Street and Figueroa Street north of the Property and south of Del Amo Boulevard, and (2) the land parcels between Main Street and Figueroa Street south of the Property and north of Torrance Boulevard; collectively, those parcels are identified as having Assessor's Parcel Numbers 7336-003027, 7336-003028, 7336-003029, 7336-003037, 7336-003038, 7336-003039, 7336-003040, 7336-003041, and 7336-003042.

1.33 "**Term**" means the period of time that is ten (10) years commencing on the date of issuance of the Certificate of Occupancy or final permit for all improvements associated with the Project, subject to any early termination provisions described in this Agreement.

1.34 "**Warehouse**" or "**warehouse**" means a 53,550-square-foot structure on the eastern portion of the Property with 39,500 square feet of warehouse space, 14,050 square feet of office space and 6 loading docks within a two-story building.

2. TERM & GENERAL COVENANTS.

2.1 Term. While this Agreement is effective as of the Effective Date, the term of this Agreement shall be ten (10) years commencing on the date of issuance of the Certificate of Occupancy or final permit for all improvements associated with the Project (the "**Term**"), subject to any early termination provisions described in this Agreement. Developer's operation of the Cargo Container Parking Facility and warehouse without first obtaining a Certificate of Occupancy shall be deemed a default under Article 7, without prejudice to any other rights which City may have with respect to any default or breach of the provisions of this Agreement.

2.2 Agreement Compliance Deposit. Prior to issuance of building permits, Developer shall deposit with the City $100,000 ("**Agreement Compliance Deposit**") which may be deposited into a separate interest bearing account, to be used by the City to ensure compliance with the provisions of this Agreement (in connection with Developer's breach of this Agreement or otherwise); at no point shall the minimum balance of the Agreement Compliance Deposit fall below $50,000. If for whatever reason it does fall below $50,000, Developer shall replenish the deposit no later than seven (7) days of the date of the City's written request to do so. Specifically, whenever in Articles 2 and 4 of this Agreement it is stated that Developer will be fined $500 per day as a penalty or fined $1,000 per occurrence or incidence as a penalty, and whenever it is contextually appropriate, such penalty along with any reasonable attorneys' fees and other expenses and fees incurred by the City in connection with City's enforcement of the terms of this Agreement, will be drawn against the Agreement Compliance Deposit until full Developer compliance has been reached, with determination of compliance to be made by the City in the City's sole and absolute discretion. In each such instance, notwithstanding Section 7.2 of this Agreement, prior to the City exacting any penalty against Developer and withdrawing

from the Agreement Compliance Deposit, City shall provide Developer with written notice of any such failure to perform and the City's intention to impose the penalty. In the event Developer should fail to cure its default within ten (10) business days of receiving notice ("**Penalty Cure Period**"), once Developer's deadline to file an appeal passes without a filed appeal, City may impose the fine or penalty. If Developer files a timely appeal then City may impose the fine or penalty after any hearing where there is an adverse ruling against Developer.

Developer may appeal any decision to impose a fine or penalty to the City Manager by filing a notice of appeal with the City Clerk by no later than five (5) business days following the Penalty Cure Period. The City Manager or his or her designee ("**City Manager**") shall fix a time and place for hearing such appeal and the City Clerk shall give written notice to Developer of the time and place of hearing by depositing it in a facility of the United States Post Office Department in Carson, California, postage prepaid, addressed to Developer, at the address shown in Section 13.2 of this Agreement. The City Manager shall have final authority to review all questions raised on such appeal and make all determinations based thereon.

No other action shall be required of City prior to imposing the penalty. Notwithstanding anything else to the contrary in this Agreement, City will use VSCs (as defined in Section 4.1(h) of this Agreement) as well as any other documentation or evidence, to make its determination of Developer's compliance. If there should remain any monies as part of the Agreement Compliance Deposit at the expiration of the Term, City shall release such remainder amount to Developer within thirty (30) days following such expiration. This Section 2.2 and the City's ability to impose any fine or penalty under Article 2 or Article 4 will survive expiration or sooner termination of this Agreement.

2.3 Permanent Vesting or Cessation of Cargo Container Parking Facility; Warehouse. If any of the Adjacent Surrounding Parcels or any of the Surrounding APNs that comprise any of the Adjacent Surrounding Parcels, is developed with any residential or commercial uses before expiration of the Term, then the 475 Cargo Container Parking spaces and use, and operations of the Cargo Container Parking Facility, must cease permanently and within sixty (60) calendar days after (i) Developer receives written notice from City that the Cargo Container Parking Facility operations and use must cease permanently or (ii) Developer receives written notice from any third party that one or more of the Surrounding APNs has been developed as residential or commercial; otherwise, Developer's use of the Property for Cargo Container Parking will permanently vest. Developer's rights to develop and use the warehouse shall be permanent irrespective of how the Adjacent Surrounding Parcels or any other areas get developed.

2.4 Requirements After Permanent Cessation of Cargo Container Parking Facility. If Cargo Container Parking Facility operations and use are required to cease permanently, within sixty (60) calendar days after Developer ceases operations and use, Developer shall modify the Property and improvements thereon, architectural features, setbacks, landscaped area, floor area ratio, and use so that such features can be made to be consistent with the requirements of the City's 2040 General Plan and any general plan adopted subsequent to it, and the then current Zoning Code. After such modification, Developer must obtain from City a new business license and approval of any proposed modified use of the Property from City's Planning Division. Without limiting the generality of the foregoing, Developer shall also fence off all 475 Cargo Container Parking spaces with the exception of a drive-aisle to access the

warehouse, maintain the entire Property in a clean condition in accordance with the City's Municipal Code, and provide landscaping throughout the Property in a way to effectively stop possible use of the Property, or any portion thereof, for Cargo Container Parking use. Landscaping shall be furnished in accordance with a future site plan and future landscape plan approved by the City's Planning Division, which plans Developer shall submit to City for City's approval prior to issuance of any Project permits. If and when Developer is required to cease Cargo Container Parking operations, Developer shall also post a landscaping and maintenance bond for an amount equal to the cost of installing and replacing the City-approved landscaping plus 10 years' maintenance thereof (the bond amount will be the estimated cost of installing landscaping at the time City provides its approval of the landscape plan plus costs to assure all landscaping is maintained in good condition at all times, including, but not limited, to maintenance of proper, working irrigation, replacement of dying or unhealthy vegetation, and provision of clean and safe conditions), for a period of ten (10) years. This bond requirement shall survive expiration or sooner termination of this Agreement. Additionally, City may initiate a change in land use designation for the Property from Heavy Industrial to Light Industrial or any other designation as City deems appropriate in accordance with the City's General Plan, 2040 General Plan, or any general plan adopted subsequent to it.

2.5 Meaning of Developed. For purposes of Section 2.3 of this Agreement, Adjacent Surrounding Parcels are deemed developed when the first building permit has been issued thereon.

2.6 Penalties Associated with Failure to Cease Use, Remove or Retrofit. Failure to (i) cease operations of the Cargo Container Parking Facility as required in this Article 2, and/or (ii) modify the site, architectural features, setbacks, landscaped area, floor area ratio, and use so that such features can be made to be consistent with the requirements of the City's 2040 General Plan and any general plan adopted subsequent to it and the then current Zoning Code, within sixty (60) days after Developer receives written notice from City that all Cargo Container Parking Facility operations and use must cease permanently, shall result in a fine of $500 per day as a penalty until compliance has been reached. Each day Developer remains non-compliant with this Section 2.6 shall be deemed to be a separate violation under Section 2.10. Additionally, Developer's failure to comply with this Section 2.5 shall be deemed a default under Article 7, without prejudice to any other rights which City may have with respect to any default or breach of the provisions of this Agreement.

2.7 Binding Effect of Agreement; Termination of Prior Entitlements. From and following the Effective Date, actions by the City and Developer with respect to the Development of the Property, including actions by the City on applications for Subsequent Development Approvals affecting the Property shall be subject to the terms and provisions of this Agreement.

2.8 Agreement Runs with the Land. This Agreement shall be recorded and shall run with the land. Pursuant to Government Code Section 65868.5, the burdens of this Agreement and each of its provisions shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties, including, but not limited to, all parties that enter into lease agreements with Developer for possession of any part of the Property.

2.9 Covenant Against Discrimination. The Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there

shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of this Agreement. The Developer shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry.

2.10 Violation of Conditions. Any violation of the conditions or requirements set forth in this Article 2, including but not limited to failure to replenish the Agreement Compliance Deposit in accordance with Section 2.2, shall result in fines of five hundred dollars ($500) per occurrence per day as a penalty until compliance has been reached, with determination of Developer's violation to be made by City upon City's review of VSCs (as defined in Section 4.1(h)) as well as any other documentation or evidence reasonably available to the City. City shall notify Developer of each violation by providing written notice. Developer hereby acknowledges and agrees that such fine represents reasonable compensation to the City for, and is not disproportionate to, the actual or anticipated damage to the City resulting from such compliance failure. If during any given month there are ten (10) or more violations, as soon as practicable following City's determination that Developer has violated conditions, requirements or permitted use restrictions set forth in Article 2 and in no event longer than thirty (30) days thereafter, the Project and the violations and support therefor shall be presented to the Planning Commission for consideration of a possible increase of the fine amount. The Planning Commission's determination of any increased fine amount shall be final and non-appealable, and the increased fine amount shall be made effective upon Planning Commission's determination that the fine shall be increased. The Parties expressly agree that commencing on the date of Planning Commission's decision to increase the fine, the increased fine amount shall be deemed to be incorporated into and made part of this Agreement including this Article 2.

3. DEVELOPER'S OBLIGATIONS.

As consideration for the granting of Developer's Vested Right in accordance with Article 4 below and subject to the City's Reservation of Authority set forth in Article 5 below, Developer shall do the following:

3.1 Development Impact Fees. Consistent with the purposes set out in the Exception, Developer shall pay to City the City-wide DIF adopted and in effect at the time of issuance of the building permits applicable to Cargo Container Parking Facilities and approved for the Project by the City (as of the Effective Date, such DIF Amount is Seven Hundred Twenty Nine Dollars and Fifty Two Cents ($729.52) per truck and container space). The total DIF Amount attributable to the Cargo Container Parking Facility as of the Effective Date, based on the number of truck and container spaces to be developed for the Project for which Developer will be required to pay City, is Three Hundred Forty Six Thousand Five Hundred Twenty-Two Dollars ($346,522.00). Additionally, at the time of application for a business license, if there are two different businesses proposed to be operated between the Cargo Container Parking Facility and warehouse, then an additional DIF payment will be made for the warehouse in the amount of One Hundred Thirty Seven Thousand Eighty-Eight Dollars ($137,088), calculated at $2.56 per square foot of building area (calculated at $2.56 x 53,550 = $137,088). Such DIF payment will be made at the time applications for the business licenses are submitted to City and the actual payment amounts shall be adjusted as described in Section 3.1(b) below.

The parties agree that each DIF Amount is (i) directly related to the impacts of the Project, and (ii) roughly proportional to the specific impacts upon public facilities and infrastructure attributable to the Project. The parties also agree that Developer's payment of the DIF Amount will satisfy Developer's obligation to enter into the IDIF Agreement required by the City through adoption of Resolution 18-113, and shall be in lieu of such agreement. Developer agrees to release, defend and hold the City harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, which may arise, directly or indirectly, from the City's determination, calculation or imposition of, or Developer's agreement to pay, the DIF Amount.

a. **Timing of Payment of DIF Amount.** The DIF Amount attributable to the Cargo Container Parking Facility must be paid at the time of issuance of building permits for the Project. The DIF Amount attributable to the warehouse shall be paid, if at all, at the time applications for business licenses are submitted to City in the amount in effect at the time of issuance of the business licenses.

b. **DIF Amount Adjustments.** All DIF Amounts shall be adjusted annually in accordance with the State of California Construction Cost Index (prior March to current March adjustment) on July 1st of each year

3.2 CFD Annexation. Consistent with the purposes set out in the Exception, Developer shall annex the Property into the Master CFD. Based on an analysis of the Services needed for the Project, Developer agrees the Property will be taxed at the rate in effect at the time of issuance of Project building permits for Industrial – All Other, which, as of the Effective Date, is Four Hundred Eighty Dollars and Seventy-Five Cents ($480.75) per acre on an annual basis, which means the Property's Special Taxes would be Six Thousand Eight Hundred Eighty-Nine Dollars and Fifteen Cents ($6,889.15) annually, which amounts shall be adjusted as described in Section 3.2(b) below. Developer understands that there is an impact on the Services provided by the City in connection with its Project, as is evident by the MND and other Project Development Approvals. Developer agrees to become subject to the Property's Special Taxes, which will help finance on-going Services associated with the Project.

a. **Timing of Payment of Property's Special Taxes.** Developer shall annex the Property into the Master CFD prior to issuance of any building permits for the Project.

b. **Tax Rate Adjustments.** On each July 1, commencing on July 1, 2020 through and including July 1, 2024, the Maximum Special Tax Rate for Tax Zone No. 4 (which applies to the Property) shall be increased by 7%. On each July 1, commencing on July 1, 2025 and thereafter, the Maximum Special Tax Rate for Tax Zone No. 4 shall be increased by the percentage change in the November annualized Consumer Price Index for Los Angeles-Long Beach-Anaheim for all Urban Consumers.

3.3 Escrow. Developer shall deposit $50,000 ("Claims Deposit") into an escrow account to be used by the City in the event of any future claims, actions, suits, damages, liabilities, and any other actions or proceedings associated with the Project and brought against the City, in effect, serving as an up-front payment toward Developer's indemnity obligations

under Article 8. Developer shall replenish the Claims Deposit any time the amount falls below $10,000. Such Claims Deposit into an escrow account shall in no way absolve Developer from its obligations to fully indemnify, defend and hold City harmless from any and all claims, actions, suits, damages, liabilities, and any other actions or proceedings to the full extent of the protections provided to City under Article 8. City shall provide Developer with a monthly accounting of the use of the Claims Deposit. Any and all interest earned on the Claims Deposit shall accrue to Developer.

4. DEVELOPMENT OF THE PROPERTY AND PROJECT.

4.1 The Project. The Project means the Development of the Property consistent with and to the full extent of the Project Development Approvals, inclusive of the Site Plan, attached hereto and incorporated herein by this reference as Exhibit "D," and any and all requirements including landscaping for the Project, set out therein.

The Project includes, without limitation, the following:

a. **Building.** The warehouse floor area shall be a maximum of 39,500 square feet, and the 2-story office floor area shall be a maximum of 14,050 square feet for a maximum total building floor area of 53,550 square feet.

b. **Loading Areas.** A maximum of 6 truck loading doors for the building shall be allowed.

c. **Parking Spaces.** 400 spaces for Cargo Container Parking and 75 spaces for truck parking (for a total of 475 spaces) shall be allowed on the site.

d. **Bifurcation of Project and Restricted Usage.**

The Project shall be bifurcated into two general categories ("**Permissible Usage**"), as follows:

(i) Warehouse Operations: Approximately 53,550 square feet of industrial warehouse building to use as a logistics facility and warehouse related to truck/trailer parking.

(ii) Cargo Container Parking Facility Operations: For use associated with Cargo Container Parking operations.

The warehouse structure and the temporary Cargo Container Parking Facility shall be constructed, developed and completed concurrently. The permits for the warehouse structure and the Cargo Container Parking Facility, including the Certificate of Occupancy or the final permit, shall be issued concurrently.

e. **Access.** The Project shall comply with the following access requirements:

(i) All truck ingress and egress to and from the Property shall be via Figueroa Street; and

(ii) No trucks shall be permitted to traverse on Torrance Boulevard or Main Street, as those rights of way shall be used for passenger vehicle access only.

f. **Artistic Piece.** Developer shall install one artistic piece of public art along Main Street prior to issuance of occupancy permits and shall provide details for the same to Planning Division for review and approval prior to issuance of any permits. In case of disagreement on this matter, an in-lieu fee to cover the cost of the artistic piece shall be paid by Developer before the issuance of any permits. The fee shall be determined by the Community Development Director and based on a review of similar artistic pieces installed in and around the City.

g. **Logos on Trucks.** All trucks entering and exiting the Property shall be marked clearly with large KL Fenix logos (or another appropriate logo in the event Developer should sell or lease the Property and there is a replacement operator, hereinafter, "**Successor Operator Logo**") in several locations on the truck including left, right and top to allow identification of the trucks from a distance, as determined by the City. Trucks without the KL Fenix logos or Successor Operator Logo shall not be authorized to use the site. Notwithstanding the foregoing, logos shall not be required to be placed on any third-party delivery or service vehicles, including any third-party operated trucks that need to access the warehouse for pick-ups or deliveries of such items as letters and small parcels. A Certificate of Occupancy shall not be released until all trucks using the facility have the required logos installed. All trucks must also be in compliance with all applicable port standards during the Term. Proof of certification and compliance shall be available at all times for all trucks and shall be furnished to the City upon request within ten (10) business days.

h. **Video Surveillance Cameras.** Developer shall at all times retain and pay for a professional commercial security systems company licensed by the Bureau of Security & Investigative Services and carrying all legally required insurance coverages, if any ("**VSC Professional**"), to install Video Surveillance Cameras ("**VSCs**") that record 24-7 and save all footage for a period of one hundred eighty (180) days or as approved by the City in writing, at the locations generally set forth in Subsections (i) through (ii) hereinbelow, to allow City to monitor Developer's compliance with Articles 2 and 4 of this Agreement. The locations and number of VSCs shown on the Site Plan, if any, are preliminary and subject to change as determined by City, as provided below. Developer shall provide or cause the VSC Professional to provide, footage from the VSCs within ten (10) days of City's written request, it being understood that City may request such footage any time but not more often than once per month unless City has reason to believe in its unfettered discretion that Developer is in violation of any provision of Article 2 and/or 4. If City believes Developer is in violation, City may request footage going back

180 days from the date of City's request. All VSCs shall be high resolution and be installed so they are not blocked by moving or stationary vehicles or any other equipment or objects, and shall be and remain operational at all times. Prior to and as a condition of issuance of any building permit, the VSC Professional will be required to coordinate with City to determine the precise locations and number of all operational VSCs to be installed, and the City shall have final authority to approve such locations, quantities, and the design of the VSC system. When designing the system, the VSC Professional shall take into account all potential objects that may block or impede the proper operation of the VSCs or present obstructions to a clear view. Examples of such objects or obstructions include, but are not limited to, landscaping (taking into account the growth of the landscaping), buildings, signs, fencing, gates, and vehicles in parking stalls. Prior to issuance of occupancy permits, the VSCs will be tested by City Planning staff to ensure that full coverage, as intended under this Section 4.1(h), is provided by the VSCs. If City Planning staff determines adjustments need to be made to provide full coverage, VSC Professional shall make adjustments as necessary. Developer expressly acknowledges that all City determinations made with respect to VSCs will be final unless City deems it necessary to modify the number or locations of the VSCs at any time.

(i) At Perimeter Locations. Various locations, both within the Property and within public rights of way at the intersections of (a) Torrance Boulevard and Main Street and (b) Torrance Boulevard and Figueroa Street, (both, "**ROW Intersections**"), to provide clear views of Main Street, Torrance Boulevard, and Figueroa Street travel lanes. The footage from these VSCs will be used to ensure Developer's trucks use only Figueroa Street to enter and exit the Property, do not travel on Torrance Boulevard or Main Street, and to generally monitor and ensure compliance with each and every section of Articles 2 and 4.

(ii) At Interior Locations. Several locations within the Property showing all areas of the Property. The footage from the VSCs shall be used by the City to determine whether trucks or cargo containers on trailers are parked outside the authorized areas within the Property, whether Developer's use of the Property is deviating from the Permissible Usage, whether Developer is in violation of the permitted hours of operation set forth in Section 4.1(i), and to generally monitor and ensure compliance with each and every section of Articles 2 and 4.

(iii) Review of Video Footage and Payment. City staff or an outside third party vendor retained by City ("**Third Party Video Review Vendor**"), will review video footage provided from the VSCs, and if warranted after review of the footage, as determined by City in its sole discretion, City staff may visit the Property to conduct site

inspections to assess whether Developer may be violating the terms of this Agreement beyond what the video footage is able to capture. Developer will pay for all City staff time at whatever hourly rate is accrued by such staff member, or for time spent by Third Party Video Review Vendor, for review of video footage, any resultant site inspections, and any action to enforce the terms of this Agreement; City shall be permitted to pay for all such fees/costs out of the Agreement Compliance Deposit.

(iv) Automatic License Plate Readers. If City so elects, in lieu of installing VSCs at the ROW Intersections, Developer shall install automatic license plate readers ("**ALPRs**"), which Developer acknowledges are less expensive than VSCs, to procure and install. All data gathered from the ALPRs shall be owned by City, and City will be permitted to utilize all such data generally to monitor and ensure compliance with Section 4.1(e) in the same manner and to the same extent City is permitted to monitor compliance where VSCs are installed within the ROW Intersections.

i. **Hours of Operation.** Hours of operation shall be limited to:

(i) Office uses have no limitation on hours.

(ii) Cargo Container Parking Facility Operations:

Mondays-Fridays 6:00 AM to 2:00 AM;

Saturdays 6:00 AM to 6:00 PM;

Sundays Closed.

j. **Air Quality Standards.** At any given time during operation of the Cargo Container Parking Facility operations, all of Developer's trucks shall be in compliance with the Port of Los Angeles and Port of Long Beach air quality standards.

4.2 Pavement. Prior to issuance of occupancy permits, Developer shall complete road improvements to Main Street and Figueroa Street, as follows:

a. **Main Street (southbound).** Developer shall construct half street improvements along the easterly boundary of the Property by removing the existing asphalt section of the road and constructing a new asphalt pavement section per City standards.

b. **Figueroa Street (northbound).** Developer shall construct half street improvements along the westerly boundary of the Property by removing the existing asphalt section of the road and constructing a new 8" concrete pavement section per City standards.

c. **Figueroa Street (southbound).** Developer shall construct half street improvements corresponding to the northerly and southerly boundaries of the site by removing the existing asphalt section of the road and constructing a new 8" concrete pavement per City standards. Developer shall also construct a left-turn pocket on south-bound Figueroa Street to allow for truck access on the project site per City standards and to the satisfaction of the City Traffic Engineer.

d. **Main Street Median.** Developer shall install medians on Main Street as required by the Engineering Division.

Prior to issuance of any building permit, improvement plans and bonds acceptable to the City for all improvements included in this section shall be submitted to the Engineering Division and approved.

4.3 Scope of Developer's Vested Right. Subject to the Reservation of Authority set forth in Article 5, Developer shall have the vested right to complete the Project to the full extent permitted under the Project Development Approvals, and to the full extent of Developer's Vested Right.

4.4 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 Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

4.5 Rights under State and Federal Law. Developer shall retain all rights it has under state and federal law, including, but not limited to, Developer's rights under Government Code Section 65865.2, which provides that subsequent discretionary actions shall not prevent development of the Property for the uses and to the density or intensity of development set forth in the Project Development Approvals.

4.6 Apportionment. Developer shall have the right to apportion the uses, intensities, and densities of the Project between itself and any subsequent owners, upon the sale, transfer, or assignment of all or any portion of the Property, so long as such apportionment is consistent with the Applicable Laws and this Agreement.

4.7 Lesser Development. Without amending this Agreement, Developer shall have the right to elect to develop and construct upon all or any portion of the Property a Project of lesser height or building size than that permitted by the Project Development Approvals provided that the Project otherwise complies with the Project Development Approvals and this Agreement.

4.8 Project Development Approvals; Subsequent Development Approvals. The Project Development Approvals for the Project will require the processing of Subsequent Development Approvals. The City shall accept for processing, review and action all applications

for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition. However, unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in the Project Development Approvals made pursuant to Developer's application shall not require an amendment to this Agreement. This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.

4.9 Role of Project Development Approvals. Except as provided within this Agreement, the Project Development Approvals shall exclusively control the uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement, and construction standards and specifications applicable to the Project. Pursuant to Government Code Section 66452.6, the term of any tentative map for the Property or any portion thereof, if any, filed within the term of this Agreement shall automatically be extended for the term of this Agreement, as amended by the Project Development Approvals.

4.10 Maintaining Property. The Property must at all times be maintained and generally kept in a clean condition, in accordance with the City's Code Enforcement regulations.

4.11 Violation of Conditions. Any violation of the conditions, requirements or permitted use restrictions set forth in this Article 4 shall result in fines of $1,000 per occurrence as a penalty, with determination of Developer's violation to be made by City upon City's review of VSCs as well as any other documentation or evidence reasonably available to the City. Developer hereby acknowledges and agrees that such fine represents reasonable compensation to the City for, and is not disproportionate to, the actual or anticipated damage to the City resulting from such compliance failure. If during any given month there are ten (10) or more violations, as soon as practicable following City's determination that Developer has violated conditions, requirements or permitted use restrictions set forth in Article 4 and in no event longer than thirty (30) days thereafter, the Project shall be presented to the Planning Commission for consideration of a possible increase of the fine amount. The Planning Commission's determination of any increased fine amount shall be final and non-appealable, and the increased fine amount shall be made effective upon Planning Commission's determination that the fine shall be increased. The Parties expressly agree that commencing on the date of Planning Commission's decision to increase the fine, the increased fine amount shall be deemed to be incorporated into and made part of this Agreement including this Article 4.

5. CITY'S RESERVATION OF AUTHORITY.

Notwithstanding Developer's Vested Right, the Project is subject to the following Subsequent Land Use Regulations:

5.1 City's Discretion Under Applicable Laws. In considering future applications, if any, for a Subsequent Development Approval, the City may exercise its regulatory discretion to the extent permitted by the Applicable Laws.

5.2 Uniform Codes. 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, or other such Uniform Codes, and also adopted by City as Subsequent Land Use Regulations, but only if applicable City-wide.

5.3 Emergencies. Emergency rules, regulations, laws, and ordinances within the City's police power that would limit the exercise of Developer's Vested Right ("**Conflicting Emergency Regulations**"), provided that the Conflicting Emergency Regulations:

a. Result from a sudden, unexpected emergency declared by the President of the United States, Governor of California, County Board of Supervisors and applicable to incorporated areas, including the City, or the City Council;

b. Address a clear and imminent danger, with no effective reasonable alternative available that would have a lesser adverse effect on Developer's Vested Right;

c. Do not primarily or disproportionately impact development of the Project; and

d. Are based upon findings of necessity established by a preponderance of the evidence at a public hearing.

5.4 Laws of Other Jurisdictions. Other public agencies not subject to control by City may possess authority to regulate aspects of the Project. This Agreement does not limit the authority of such other public agencies. Therefore:

a. Federal, state, county, and multi-jurisdictional laws and regulations (the "**Additional Regulations**"), including regional impact fees, which City is required to enforce or collect against the Property or the Project, except if the Additional Regulations are for the purpose of mitigating a significant or potentially significant impact that has already expressly and unequivocally been mitigated pursuant to the Project's Mitigated Negative Declaration.

b. If an Additional Regulation is enacted after the Effective Date and prevents or precludes compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may be necessary to comply with the Additional Regulation. In that event, this Agreement shall remain in full force and effect to the extent it is not inconsistent with the Additional Regulation and to the extent that the

suspension or modification necessitated by the Additional Regulation does not deny one of the Parties its primary benefits under this Agreement.

c. Developer shall apply in a timely manner for such other permits and approvals that are lawfully required by other governmental or quasi-governmental agencies in order to allow the Project to be constructed. City shall provide Developer reasonable cooperation in Developer's efforts to obtain such permits and approvals. The Parties shall cooperate and use reasonable efforts in coordinating the implementation of the Project Development Approvals with other public agencies, if any, having jurisdiction over the Property or the Project.

5.5 Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law. In the event that 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, 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.

5.6 Energy Efficient and Sustainable Building Design. All Project buildings shall promote sustainable and energy efficient practices through compliance with California Code of Regulations, Title 24.

5.7 Employment Outreach for Local Residents. A goal of the City with respect to this Project and other major projects within the City is to foster employment opportunities for City residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, the Developer shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction, operation and maintenance of the Project to be advertised in such a manner as to target local City residents and shall make other reasonable efforts at local employment outreach as the City shall approve. Developer shall also notify the City of jobs available at the Project such that the City may inform City residents of job availability at the Project. Nothing in this paragraph shall require Developer to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 5.7 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

5.8 Prevailing Wages. Developer's cost of developing the Project and constructing all of the on-site and off-site improvements, if any, at or about the Property required to be constructed for the Project shall be borne by Developer. Developer is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will defend, hold harmless, and indemnify City in the event Developer fails to do so. As the City is not providing any direct or indirect financial assistance to Developer, the Project should not be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720. Accordingly, it is believed by the parties that Developer is not required to pay prevailing wages in connection with any aspect of the

Development or the construction of the Project. However, to the extent that (contrary to the parties' intent) it is determined that Developer was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, Developer shall defend, indemnify, and hold the City (which, for purposes of this section, shall include its related agencies, officers, employees, agents and assigns) harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

5.9 Fees, Taxes, and Assessments.

a. **Processing Fees**. Developer shall be responsible for, and shall reimburse City for, all direct and indirect costs, fees and expenses of City related to review and processing applications for the Project Development Approvals and for monitoring compliance with any Project Development Approvals granted or issued (the "**City Costs**"). City Costs include, but are not limited to: (i) attorneys' fees, at a rate not to exceed $350 per hour, and staff time, required for drafting and reviewing this Agreement; (ii) attorneys' fees, at a rate not to exceed $350 per hour, and staff time, and all costs related to the review, drafting, and processing of the Project Development Approvals, the Exception application and all related entitlements and agreements, including but not limited to consultant costs which includes, without limitation, consultant fees, costs, and expenses associated with processing Developer's Community Facilities District assessment, noticing and holding public hearings and considering public comments; (iii) all fees, costs and expenses incurred in connection with CEQA review or compliance and the MND, including but not limited to City staff time, attorneys' fees at the rate set forth above, the environmental consultant fees, costs of preparing, reviewing, certifying and/or circulating necessary CEQA reports and documents, including any environmental impact report, technical studies and analyses, and other supporting documents, reports, written declarations, studies, or analyses, as deemed necessary and appropriate by City in accordance with CEQA; (iv) all costs related to studies, reports and design services for the development of any Project-related infrastructure; (v) all costs related to investigations of the Property or the Project; and (vi) any other fees and costs deemed necessary by the City in order to process, review, or act upon the Project Development Approvals, the Project, and all related entitlements. Developer's obligation to be responsible for and reimburse City Costs are in addition to Developer's duty to indemnify, defend, and hold harmless City, as set forth in Section 8.1, below.

b. **Permit Fees**. Except as expressly provided in this Agreement, Developer shall pay all standard permit fees and other fees and charges which are standard and uniformly-applied to similar projects in the City.

c. **General Charges**. Nothing herein shall prohibit the application of the following:

(i) Additional Taxes, Fees, and Charges. Developer, or Developer's Project occupants, shall pay all normal and customary taxes, fees, and charges applicable to all permits necessary for the Project, and any taxes, fees, and charges hereafter imposed by City, which are standard and uniformly-applied to similar properties in the City.

(ii) Developer, or Developer's Project occupants, shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as business license fees or taxes, sales or use taxes, transient occupancy taxes, utility taxes, and public safety taxes.

(iii) Developer, or Developer's Project occupants, shall be obligated to pay any future fees or assessments imposed on an area-wide basis (such as landscape and lighting assessments and community services assessments).

(iv) Developer, or Developer's Project occupants, shall be obligated to pay any fees imposed pursuant to any assessment district (e.g., a CFD) established within the Project otherwise proposed or consented to by Developer or the owner(s) of the Property.

(v) Developer, or Developer's Project occupants, shall be obligated to pay any fees imposed pursuant to any Uniform Code.

(vi) Developer, or Developer's Project occupants, shall be obligated to pay any utility fees and charges, including amended rates thereof, for City services such as electrical utility charges, water rates, and sewer rates.

5.10 Inconsistencies. It is expressly agreed that in the event of any inconsistency between the provisions or conditions of the Existing Land Use Regulations or Conditions of Approval and the provisions of this Agreement, the provisions of this Agreement shall govern. The conditions of such Existing Land Use Regulations and Conditions of Approval shall be interpreted insofar as possible to prevent such inconsistency, and in the event this Agreement is silent concerning an issue, the conditions of the Existing Land Use Regulations and Conditions of Approval shall govern. As between several instruments and regulations governing the Project, in the event of a clear and explicit conflict which cannot be resolved through interpretation, the following interpretive priorities shall apply: (i) the terms of this Agreement shall prevail over the provisions of the Existing Land Use Regulations and Conditions of Approval except where the Conditions of Approval are more restrictive in which event the Conditions of Approval shall prevail; (ii) the terms of the Project Development Approvals shall prevail over the terms of the

Existing Land Use Regulations, except where such Existing Land Use Regulations are legally preemptive; and (iii) the terms of the Project Development Approvals shall take priority over the provisions of the CEQA instruments and MND approved in conjunction with the Project, except where the MND is legally preemptive.

6. ANNUAL REVIEW.

6.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Developer with the terms of this Agreement ("**Annual Review**"). 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, nor shall it be deemed a breach on the part of Developer. The cost of the Annual Review shall be borne by Developer and Developer shall pay the actual and reasonable costs incurred by the City for such review.

6.2 Special Review. The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("**Special Review**"). Developer shall cooperate with the City in the conduct of such Special Reviews.

6.3 Standards for Annual Review. During the Annual Review, Developer shall demonstrate good faith compliance with the terms of this Agreement. Good faith compliance shall be established if Developer is in substantial compliance with the material terms and conditions of this Agreement.

6.4 Procedure. Each party shall have a reasonable opportunity to assert matters which 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. The procedure for an Annual Review or Special Review shall be as follows:

a. As part of either an Annual Review or Special Review, within ten (10) days of a request for information by the City, the Developer shall deliver to the City all information and supporting documents reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement, and (ii) as required by the Existing Land Use Regulations.

b. The City Manager, or his/her designee, shall prepare and submit to Developer a written report on the performance of this Agreement and identify any perceived deficiencies in Developer's performance. The Developer may submit written responses to the report and Developer's written response shall be included in the City Manager's report. If the City Manager determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual Review or Special Review shall be concluded.

c. If any deficiencies are noted, or if requested by a Councilmember, a public hearing shall be held before the City Council at which the Council will

review the City Manager's report. The report to Council shall be made at a regularly-scheduled City Council meeting occurring as soon as possible, subject to the requirements of the Brown Act, after the commencement of the Annual Review or Special Review process outlined in this Section 6.4. If the City Council finds and determines, based on substantial evidence, that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Article 7.

d. 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 13.10.

6.5 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 written 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, Planning Commission, and City Council that (i) this Agreement remains in effect and (ii) 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 shall at its cost 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 Property, or any lot or parcel within the Property.

6.6 Review Process Not a Prerequisite to Declaring a Default. Neither the Annual Review nor Special Review procedure is a prerequisite to either party declaring a default and initiating the default and cure procedure in Article 7. In other words, either party may declare a default at any time without first undertaking the Annual Review or Special Review process.

6.7 Public Hearings. The public hearing prescribed by Section 6.4 is independent of, and in addition to, any further hearing procedures relating to defaults and remedies prescribed in Article 7 below. Thus, if the City Council finds that the Developer has not substantially complied with the terms and conditions of this Agreement as part of a review process pursuant to Section 6.4 and determines to declare a default, the City Council is still required to follow the notice/cure process (Section 7.2) and the termination hearing process (Section 7.4) before terminating this Agreement.

7. DEFAULTS AND REMEDIES.

7.1 Remedies Available. The parties acknowledge and agree that other than the termination of this Agreement pursuant to Article 7, specific performance, injunctive and declaratory relief are the only remedies available for the enforcement of this Agreement and knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, Developer shall not be entitled to any money damages from City by reason of any default under this Agreement. Further, Developer shall not bring an action against City nor

obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which the Developer knew of or should have known of prior to the time of entering into this Agreement, Developer's sole remedies being as specifically provided above. Developer acknowledges that such remedies are adequate to protect Developer's interest hereunder and the waiver made herein is made in consideration of the obligations assumed by the City hereunder.

7.2 Declaration of Default & Opportunity to Cure.

a. Rights of Non-Defaulting Party after Default. The parties acknowledge that both parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein except as provided in Section 7.1. Before this Agreement may be terminated or action may be taken to obtain judicial relief the party seeking relief ("**Non-Defaulting Party**") shall comply with the notice and cure provisions of this Section 7.2.

b. Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("**Defaulting Party**") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure (the "**Default Notice**"). The Defaulting Party shall be deemed in default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary default cannot be cured within such thirty (30) day period, the Defaulting Party shall not be in default as long as it does each of the following:

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

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

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

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

(v) Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

7.3 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may seek termination of this Agreement, in which case the Non-defaulting Party shall provide the Defaulting Party with a written notice of intent to terminate this Agreement ("**Termination Notice**"). The Termination Notice shall state that the Non-defaulting Party will elect to terminate this Agreement within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default or a copy of the Default Notice) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, if Developer is the Defaulting Party, the Nondefaulting Party's election to terminate this Agreement will only be rescinded if so determined by the City Council pursuant to Section 7.4.

7.4 Hearing Opportunity Prior to Termination. If Developer is the Defaulting Party pursuant to Section 7.3, then the City's Termination Notice to Developer shall additionally specify that Developer has the right to a hearing prior to the City's termination of this Agreement ("**Termination Hearing**"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, Developer shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

a. Decide to terminate this Agreement; or

b. Determine that Developer is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

c. Impose conditions on a finding of default and a time for cure, such that Developer's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has caused or will cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, or such other interests that the City and public may have in the Project.

7.5 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, or (iii) the indemnification provisions of Article 8. Termination of this Agreement shall not affect either party's rights or obligations with respect to any Development Approval granted prior to such termination.

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

7.7 Interest on Monetary Default. In the event Developer fails to perform any monetary obligation under this Agreement, Developer shall pay interest thereon at the rate of six and one-half percent (6.5%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

7.8 Penalties. The provisions of this Article 7 shall be separate from and not affect the City's rights to impose penalties upon Developer for violation of requirements of this Agreement, including but not limited to those set forth in Articles 2 and 4 above.

8. THIRD PARTY LITIGATION.

8.1 Indemnification; Hold Harmless.

a. Developer hereby agrees to indemnify, defend, and hold City, its officers, agents, employees, members of its City Council and any commission, partners and representatives ("**City Indemnitees**") harmless from any and all claims, actions, suits, damages, liabilities, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature) (collectively, "**Claims**"), asserted against City or City Indemnitees arising out of or in connection with this Agreement, including, without limitation, (i) City's approval of this Agreement and all documents related to any of the Project Development Approvals, Entitlements, Conditions of Approval, permits, or other entitlements for the Project and issues related thereto (including, City's determinations regarding CEQA compliance and/or any other development incentives granted to the Project), (ii) the development of the Project, and (iii) liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from, or are attributable to, Developer's (or Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf ("**Developer's Representatives**")) performance of its obligations under this Agreement and/or the negligence or misconduct of Developer or of Developer's Representatives which relate to the Project or the Property.

b. The City shall provide the Developer with notice of the pendency of such Claims within ten (10) days of being served or otherwise notified of such Claims and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. In all cases, City shall have the right to utilize the City Attorney's office in any legal action. The Developer shall provide a deposit in the amount of 100% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any

award of attorney's fees. If the Developer fails to provide the deposit, and after compliance with the provisions of this Section 8.1, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. City agrees that it shall fully cooperate with the Developer in the defense of any matter in which the Developer is defending and/or holding the City harmless.

8.2 Loss and Damage. City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property 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 Property, or by any other cause of whatsoever nature. Nothing herein shall be construed to mean that the Developer shall bear liability for the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

8.3 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

8.4 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

8.5 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive expiration or sooner termination of this Agreement for any reason other than a default by City.

9. INSURANCE.

9.1 Types of Insurance.

a. **Public Liability Insurance**. Prior to commencement and until completion of construction of improvements by Developer on the Property, Developer shall, at its sole cost and expense, keep or cause to be kept in force, for the mutual benefit of City and Developer, comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the

Property or for property damage. Such policy shall provide protection of a least $5,000,000 for bodily injury or death to any one person, at least $5,000,000 for any one accident or occurrence, and at least $25,000,000 for property damage, which limits shall be subject to such increases in amount as City may reasonably require from time to time.

b. **Builder's Risk Insurance**. Prior to commencement and until completion of construction of improvements by Developer on the Property, Developer shall procure and shall maintain in force, or cause to be maintained in force, "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with Section 9.1(a). City shall be designated as a Loss Payee.

c. **Worker's Compensation**. Developer shall also 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 workers' compensation insurance as required by law.

d. **Automobile Liability Insurance**. Developer shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Developer arising out of or in connection with work performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

e. **Pollution Liability Insurance**. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than $1,000,000 dollars per claim and $2,000,000 in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

f. **Products/Completed Operations**. Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. The policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for

claims or suits expressly excluded from coverage. The policy shall specifically provide for a duty to defend on the part of the insurer. The City, its officials, officers, agents, and employees, shall be included as additional insureds under the policy.

g. **Other Insurance**. Developer may procure and maintain any insurance not required by this Agreement, but all such insurance shall be subject to all of the provisions hereof pertaining to insurance and shall be for the benefit of City and Developer.

9.2 Insurance Policy Form, Sufficiency, Content, and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) 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. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates together with endorsements evidencing the insurance. In the event the City's Risk Manager determines that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates an increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the insurance policies required by Section 9.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that Developer shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.

9.3 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 together with endorsements required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

a. For insurance required above, within thirty (30 days) after the Effective Date.

b. For any renewal or replacement of a policy already in existence, at least ten (10) days before the expiration or termination of the existing policy.

c. If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that

insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

9.4 Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any loss or damage to Developer or to any person or property, except as specifically provided hereunder and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.

9.5 Broader Coverages and Higher Limits. Notwithstanding anything else herein to the contrary, if Developer maintains broader coverages and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverages and/or higher limits maintained by Developer.

10. MORTGAGEE PROTECTION.

10.1 The parties agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. 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 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 Property shall be entitled to the rights and privileges set forth in this Article 10.

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

10.3 The Mortgagee of any Mortgage, where 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.

10.4 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 provide a copy of that notice to the Mortgagee within ten (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) sixty (60) days.

10.5 Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the Mortgage or deed in lieu of foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement.

11. ASSIGNMENTS.

11.1 The experience, knowledge, capability and reputation of Developer, its principals, employees and affiliates were a substantial inducement for the City to enter into this Agreement. Except as otherwise provided herein, Developer shall not sell, transfer, lease or assign this Agreement, the Property, or any part thereof without the prior written consent of the City Council, and then only upon presentation of reasonably satisfactory evidence demonstrating the following criteria: that the person or entity to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated (1) has the financial strength and capability to perform its obligations under the Agreement, as evidenced by, among other things, transferee's audited financials for at least the immediately preceding three (3) operating years; (2) has the experience and expertise to develop the Project, as evidenced by, among other things, documentation that the transferee has experience with operations and projects with a similar scale of the Project; and (3) has key principals with no felony convictions. The proposed transferee shall execute and deliver to the City an assumption agreement assuming Developer's Project obligations, which assumption agreement shall be in a form approved by the City Manager and City Attorney. No approved transfer shall release the Developer or any surety of Developer of any liability hereunder without the express consent of City.

11.2 City Consideration of Requested Assignment. The City agrees that it will not unreasonably withhold, condition, or delay approval of a request for approval of an Assignment required pursuant to this Article 11, provided that:

a. Developer delivers written notice to the City requesting that approval prior to the completion of the Assignment (the "**Consent Request**"); and

b. The Assignment is not completed until either (i) City has provided its written consent or (ii) sixty (60) days have passed after delivery by Developer to City of the Consent Request without the City having rejected the Consent Request in writing.

c. The Consent Request shall be accompanied by (i) a proposed draft of the Assignment and Assumption Agreement in a form acceptable to the City Attorney and City Manager, and (ii) evidence regarding the proposed assignee's development qualifications and experience and its financial commitments and resources in sufficient detail to enable the City to evaluate the proposed assignee's ability to complete the Project.

11.3 Assignments Permitted Without City's Consent. Notwithstanding any other provision of this Agreement, Assignments related to the following property conveyances and other transactions shall not require City consent:

a. The granting of easements or permits to facilitate construction of the Project or any public improvements.

b. The granting of easements or permits for utility purposes.

c. Transactions for financing purposes, including the grant of a deed of trust to secure the funds necessary, but not to exceed the amounts reasonably required, for land acquisition, construction, and/or permanent financing of any portion of the Project.

d. The acquisition of some or all of the Property by a Mortgagee in its capacity as a Mortgagee, such as through foreclosure or a deed in lieu of foreclosure.

e. A sale or transfer resulting from, or in connection with, a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

f. A sale or transfer between members of the same family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist primarily of family members of the trustor, or transfers to a corporation or partnership in which the family members or shareholders of the transferor own at least ten percent (10%) of the present equity ownership and/or at least fifty percent (50%) of the voting control of Developer.

g. If Developer is a trust, corporation, real estate investment trust, or partnership, a transfer of stock or other interests, provided there is no material change in the actual management and control of Developer.

h. Transactions with any member, partner, officer, employee, or affiliate of Developer or any trust or family member, provided that, following the transaction, the management of Developer on the Effective Date shall, subject to normal and customary business practices and personnel changes, remain the primary Developer representative(s) for purposes of communication with the City.

i. A sale or transfer after City issues a Certificate of Occupancy for all improvements that comprise the Project.

11.4 Effect of Assignment. Unless otherwise stated within the Assignment, upon an Assignment:

a. The assignee shall be liable for the performance of all remaining obligations of Developer with respect to those portions of the Property which are transferred (the "**Transferred Property**"), but shall have no obligations with respect to any portions of the Property not conveyed (the "**Retained Property**").

b. The owner of the Retained Property shall be liable for the performance of all obligations of Developer with respect to the Retained Property, but shall have no further obligations with respect to the Transferred Property.

c. The assignee's exercise, use, and enjoyment of the Transferred Property shall be subject to the terms of this Agreement to the same extent as if the assignee were the Developer.

12. AMENDMENT AND MODIFICATION.

12.1 Initiation of Amendment. Either party may propose an amendment to this Agreement.

12.2 Procedure. Except as set forth in Section 12.4, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance as set forth in Government Code Section 65867.

12.3 Consent. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the parties hereto and recorded in the Official Records of Los Angeles County.

12.4 Minor Modifications. The provisions of this Agreement require a close degree of cooperation between the Parties, and minor changes to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. The anticipated refinements to the Project and the development of the Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications ("**Minor Changes**"), as described in Section 12.4(a) of this Agreement, shall not require amendment of this Agreement.

a. **Minor Changes**. A modification will be deemed non-substantive, non-material, and/or procedural if it does not result in a material change in fees, the Property's Special Taxes, maximum building density, maximum intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and construction standards and specifications for the Project. A "non-material change" is generally one that does not change the standard by ten percent (10%) or more. For example, for a height limit of 20 feet, a change of less than two feet is deemed non-material. Where it is unclear if a change is non-material, the Community Development Director may, in light of all Building Code standards and the relative physical impact of the proposed change to the overall Project, make the determination as to whether the proposed change is material or non-material. For example, subject to Building Code requirements, design changes to color, facade finish textures or surfaces, minor changes to

height, landscaping or building configuration, or type of construction materials will generally be deemed "non-material" because they do not impact the overall character of the Project or adversely affect adjacent properties. The Developer may appeal the determination of the Community Development Director pursuant to this subsection to the City Council within fifteen (15) days of receiving such determination in writing, in accordance with the provisions of Section 9173.4 of the Carson Municipal Code.

b. **Hearing Rights Protected**. Notwithstanding the foregoing, City will process any change to this Agreement consistent with state law and will hold public hearings thereon if so required by state law and the parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

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

13. MISCELLANEOUS PROVISIONS.

13.1 Recordation. The City Clerk shall cause a copy of this Agreement to be recorded against the Property with the County Recorder within ten (10) calendar days after the Effective Date. The failure of the City to sign and/or record this Agreement shall not affect the validity of this Agreement.

13.2 Notices. Notices and correspondence required or permitted by this Agreement shall be in writing and either personally delivered or sent by registered, certified, or overnight mail or delivery service. Notices shall be deemed received upon personal delivery or on the second business day after registered, certified, or overnight mailing or delivery, or email if such email notice is acknowledged as received by the receiving party. Notices shall be addressed as follows:

To City:
City of Carson
701 East Carson Street
Carson, California 90745
Attn: Planning Manager

With copy to:
Aleshire & Wynder
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Fax: 949-223-1180
Attn: Sunny Soltani

To Developer:
KL Fenix Corporation
19401 South Main Street
Gardena, CA 90248
Attn: Young Kim

A Party may change its address by giving written notice to the other Party. Thereafter, notices shall be addressed and transmitted to the new address.

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

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

b. The Agreement has not been amended or modified or, if so amended, identifying the amendments; and

c. There are no existing defaults under the Agreement to the actual knowledge of the Party signing the Estoppel Certificate.

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

13.4 Project as a Private Undertaking. It is specifically understood and agreed by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect, and that each Party is an independent contracting entity with respect to this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of property owned by a private party. 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, 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, including but not limited to Developer's obligation to provide the public improvements set forth herein.

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

13.6 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. 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.

13.7 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement.

13.8 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be

affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

13.9 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, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

13.10 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, wars, terrorism, riots or similar hostilities, strikes, and other labor difficulties beyond the Party's control, government regulations, pandemics, court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of the impacts on the Project of each such event.

13.11 Waiver. All waivers of performance must be in a writing signed by the Party granting the waiver. Failure by a Party to insist upon the strict performance of any provision of this Agreement shall not be a waiver of future performance of the same or any other provision of this Agreement.

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

13.13 Governing Law and Venue. This Agreement shall be governed and interpreted in accordance with California law, with venue for any litigation concerning this Agreement in Los Angeles, California.

13.14 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

13.15 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.

13.16 Attorneys' Fees. If either party to this Agreement is required to initiate or defend litigation against the other party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and, in addition, a

party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

13.17 Recitals. The recitals in this Agreement constitute part of this Agreement and each party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.

13.18 Joint and Several Liability. In the event Developer should sell, transfer, lease or assign this Agreement, the Property, or any part thereof, Developer shall bear ultimate responsibility for all obligations, conditions, and restrictions set forth under this Agreement, it being understood that both Developer and any transferee, assignee, or lessee shall be jointly and severally liable.

13.19 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 attorney's 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 arising out of agreements by the indemnifying party to pay any commission or finder's fee.

13.20 Counterparts. This Agreement may be executed by the Parties in counterparts, which together shall have the same effect as if each of the Parties had executed the same instrument.

13.21 Compliance with Laws. Developer must comply with all federal, state and local laws and regulations, including the City's Municipal Code.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF CARSON,
a California Charter City

_____
Albert Robles, Mayor

ATTEST

_____
Donesia Guase, City Clerk

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

_____
Sunny K. Soltani, City Attorney
[RJL]

DEVELOPER:

KL Fenix Corporation,
a California corporation

By: _____
Name:
Its:

By: _____
Name:
Its:

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 _____, 2020, 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_____

_____

SIGNER IS REPRESENTING:

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____

TITLE OR TYPE OF DOCUMENT

_____

NUMBER OF PAGES

_____

DATE OF DOCUMENT

_____

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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_____

DESCRIPTION OF ATTACHED DOCUMENT

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TITLE OR TYPE OF DOCUMENT

_____

NUMBER OF PAGES

_____

DATE OF DOCUMENT

_____

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

PARCEL 4, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 62 PAGE 68 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING FROM THAT PORTION INCLUDED WITHIN LOTS 38, 39, AND 44 OF TRACT NO. 6378, ALL OIL, GAS, HYDROCARBON SUBSTANCES AND OTHER MINERALS IN AND UNDER SAID LAND WITH THE RIGHT TO DRILL FOR, MINE, EXTRACT, TAKE, AND REMOVE THE SAME FROM ANY WELLS OR SHAFTS LOCATED ON ANY LAND ADJACENT TO THE ABOVE DESCRIBED LAND WITHOUT ACCOUNTING TO THE GRANTEE FOR ANY RENTALS, ROYALTIES OR PROCEEDS FROM THE SALE OF SUCH MINERALS, AS RESERVED IN DEED FROM SUNSET OIL COMPANY, RECORDED AUGUST 2, 1944 IN BOOK 20925, PAGE 72 OF OFFICIAL RECORDS.

ALSO EXCEPT ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES AND ALL OTHER MINERALS IN AND UNDER SAID LAND (EXCEPT THE SOUTH 350 FEET OF LOTS 36 AND 37), AS RESERVED BY SUNSET OIL COMPANY, A CORPORATION IN DEED RECORDED JULY 1, 1955 IN BOOK 48230, PAGE 289 OF OFFICIAL RECORDS AND BY SUNSET INTERNATIONAL PETROLEUM CORPORATION, A CORPORATION IN DEED RECORDED JULY 20, 1960 IN BOOK D-916 PAGE 193 OF OFFICIAL RECORDS.

ALSO EXCEPT FROM SAID LAND THAT PORTION LYING WITHIN THE LINES OF LOT 91 TRACT NO. 4671, ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES WHICH LIE BELOW A PLANE OF 500 FEET FROM THE SURFACE OF SAID LAND AS EXCEPTED IN THE DEED FROM DEL AMO ESTATE COMPANY, A CORPORATION, RECORDED NOVEMBER 8, 1963 IN BOOK D-2250 PAGE 748 OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NUMBER: 7336-003043

EXHIBIT "B"

DEPICTION OF THE PROPERTY

EXHIBIT "C"

ADJACENT SURROUNDING PARCELS

ASSESSOR'S PARCEL NUMBERS:

7336-003027, 7336-003028, 7336-003029, 7336-003037, 7336-003038, 7336-003039, 7336-003040, 7336-003041, AND 7336-003042

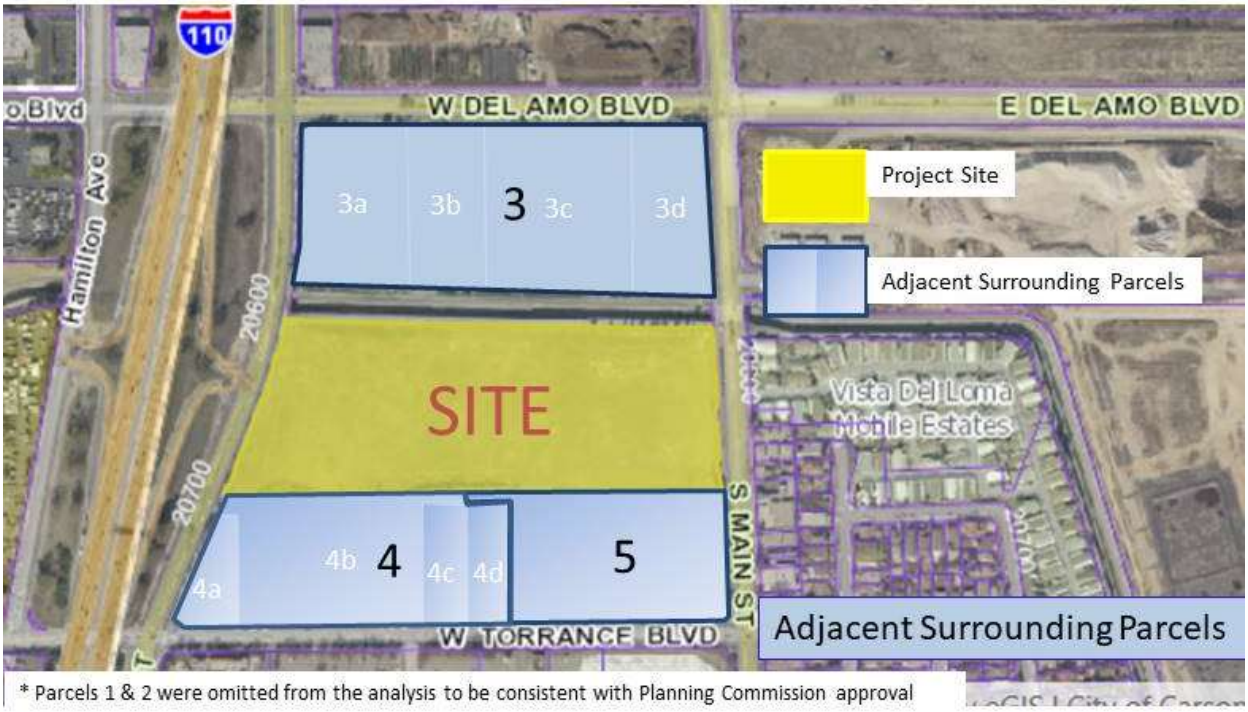

EXHIBIT “D”

SITE PLAN