

ORDINANCE NO. 12-1498

AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CARSON AND CLEAR CHANNEL OUTDOOR TO REMOVE AN EXISTING DOUBLE-SIDED STATIC OUTDOOR ADVERTISING SIGN AND REPLACE IT WITH AN 80-FOOT HIGH DIGITAL OUTDOOR ADVERTISING SIGN LOCATED ALONG THE SOUTHBOUND I-405 FREEWAY AND ALAMEDA STREET (APN 7315-012-817)

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

Section 1. An application for a Development Agreement (Agreement), pursuant to Government Code Sections 65864 through 65869.5 and Resolution 90-050 of the City of Carson, was duly filed by the applicant, Clear Channel Outdoor, Inc., with respect to the real property located at Alameda and the southbound 405 Freeway (Site), as shown in Exhibit "A" attached hereto. The applicant proposes an 80-foot-high outdoor advertising display (billboard) to be placed at the southeast area of the subject property.

Section 2. The Planning Commission held a duly noticed public hearing to obtain public comments on the Agreement on September 11, 2012 and October 9, 2012, at 6:30 P.M. at the City Hall Council Chambers, 701 East Carson Street, Carson, California. After consideration of the evidence and testimony, the Planning Commission voted to recommend approval of the Agreement by adopting Resolution No. 12-2448.

Section 3. The City Council held public hearings on the Agreement on November 7, 2012 at 6:00 P.M. at the City Hall Council Chambers, 701 East Carson Street, Carson, California. A notice of the time, place and purpose of the aforesaid meetings were duly given.

Section 4. The City Council finds that the proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) Guidelines, pursuant to Section 15322 since the project has no potential to cause a significant effect on the environment.

Section 5. Evidence, both written and oral, was duly presented to and considered by the City Council at the aforesaid meeting.

Section 6. The City Council finds that:

a) The Agreement provides for a Site which is located within an area suitable for the proposed use, and is in conformance the General Plan and the Manufacturing, Heavy zoning district.

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

[MORE]

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c) The proposed Agreement will not be detrimental to the public's health, safety and general welfare, nor will it adversely affect the orderly development or property values for the subject property or areas surrounding it.

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

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

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

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

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

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

j) That the Agreement is in the best public interest of the City and its residents and that this Agreement will achieve a number of City objectives including utilizing the Billboard Site for a revenue-generating use and removing City Oriented billboard(s).

Section 7. The Agreement provides for recovery of the city's costs and complies with the Statute with respect to all fees and costs provided under the Agreement.

Section 8. T
he Agreement is in compliance with the procedures established by City Council Resolution No. 09-050 and the City Council finds that the Agreement:

a) Is consistent with the General Plan and any applicable specific plan;

b) Is in conformity with public convenience and good land use practices;

c) Will not be detrimental to the health, safety and general welfare;

d) Will not adversely affect the orderly development of property or the preservation of property values;

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

Section 9. The Development Agreement is attached as Exhibit "B".

Section 10. Agreement is on file in the office of the Development Services Department and is hereby incorporated herein by reference.

Section 11. Based on the aforementioned findings, the City Council approves the Agreement and authorizes its execution and all action necessary to comply with its terms.

Section 12. The Ordinance No. 12-1498 is approved for introduction and first reading on November 7, 2012 and adoption at the second hearing on November 20, 2012.

Section 13. The City Clerk shall certify to the adoption of this Ordinance and shall transmit copies of the same to the applicant. The City Clerk shall publish the adopted Ordinance pursuant to California Government Code 36933 within fifteen days of its adoption.

Section 14. The Ordinance shall become effective thirty (30) days after the second reading approval date, or if a referendum petition is filed (a) and fails to qualify for an election, the date the City Clerk certifies the disqualification of the referendum petition, or (b) if an election is held regarding the ordinance approving this Agreement, the date the election results are declared approving the Ordinance.

PASSED, APPROVED and ADOPTED this ____ day of November, 2012.

Mayor Jim Dear

ATTEST:

City Clerk Donesia Gause, CMC

APPROVED AS TO FORM

City Attorney

[MORE]



EXHIBIT A
LEGAL DESCRIPTION OF SITE

Dominguez Colony for Description See Assessor Maps Portion of Lot 6 Block C

7315-012-817



EXHIBIT B

Recording Requested by And
When Recorded Return to:

CITY OF CARSON
1 Civic Plaza Drive
Carson, CA 90745
Attn: City Clerk

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

DEVELOPMENT AGREEMENT NO. 5-11

This Development Agreement (hereinafter "Agreement") is entered into this ____ day of ____, 2012, (hereinafter the "Effective Date") by and between the CITY OF CARSON (hereinafter "City") and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation (hereinafter "Developer").

RECITALS

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

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

C. Developer has a leasehold interest in that certain portion of real property, located adjacent to the south-bound lanes of the 405 Freeway, west of S. Alameda Street, owned by the Southern Pacific Transportation Company in the City of Carson, Assessor Parcel Number 7315-12-817, as more specifically described in Exhibit "A" and depicted at Exhibit "A-1," attached hereto and incorporated herein ("**405 FWY Railroad Site**") upon which it seeks to install an upgrade to its existing lawfully permitted double-sided 19'6"x 48 foot static displays oriented toward the 405 Freeway ("**405 FWY Railroad Billboard**") to a double-sided 14x48 foot digital display, as described in Exhibit "B" ("**New Digital Billboard**").

Developer also has leasehold interests to certain portions of real property, located at (1) the corner of the 110 Freeway and Carson Street (double sided poster panels) and located at 21723 Figueroa Street, Assessor Parcel Number 7343-020-066, (2) the corner of Carson Street and Vera (double sided poster panels), and located at 1249 Carson Street, Assessor Parcel Number 7327-005-014 and (3) the corner of the 110 Freeway and Carson Street (single-sided poster panel) Address: 21731 Figueroa Street, Assessor Parcel Number 7343-020-069 in the City of Carson, as such parcels are more specifically described in Exhibit "B" and depicted at Exhibit "B-1," attached hereto and incorporated herein (collectively the three (3) billboard sites referenced above shall be referred to as the "**City-Oriented Billboard Sites**"), which City-

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Oriented Billboard Sites are each improved with one (1) static billboard structure oriented toward City rights-of-way, for a total of three (3) billboards having a total of five (5) static displays (collectively such three (3) structures and five (5) static displays shall be referred to herein as, "City-Oriented Billboards")

D. The City of Carson, as Successor Agency to the Carson Redevelopment Agency owns a site upon which Watson Land Company ("Watson Land") holds an easement to that certain portion of real property located adjacent to the south-bound lanes of the 405 Freeway, at 7315-012-900 in the City of Carson ("Watson Land Easement Site"). Developer is authorized to operate and maintain a billboard upon the Watson Land Easement Site ("Watson Land Billboard"), containing double-sided 14' x 48' static displays oriented toward the 405 Freeway, which displays are not proposed to be altered by this Agreement. The Watson Land Easement Site is more specifically described in Exhibit "C" attached hereto and depicted on Exhibit "C-1" attached hereto and incorporated herein. Watson Land has consented to the application for this Development Agreement by Developer, as the lessee of the Watson Land Easement site.

E. Developer and Watson Land with the approval of the City, as Successor to the Carson Redevelopment Agency, wish to relocate the Watson Land Billboard to the northwestern corner of the Watson Land Easement Site within the Watson Land Easement. Watson Land, Developer and the City, as Successor to the Carson Redevelopment Agency (with approval of the Carson Redevelopment Agency Oversight Board approval, as may be required), shall enter into the Easement Relocation Agreement in the form attached as Exhibit "D" hereto to confirm the new location for the Watson Land Easement and the placement of the Watson Land Billboard thereon (collectively, "Relocation").

F. In exchange for the approvals sought to convert the 405-FWY Railroad Billboard to a New Digital Billboard, Developer has offered to:

1. Remove the City-Oriented Billboards and waive any claim for compensation for the removal of such signs subject to the City entering into a relocation agreement for one of such City-Oriented Billboards as more fully set forth in this Agreement;
2. Relocate the Watson Land Billboard to the northwest corner of the Watson Land Easement Site within the Watson Land Easement to better accommodate future development upon such site.
3. Pay to the City an annual development fee as set forth in Section 2.5 for the right to the Relocation and installation and operation of the New Digital Billboard; and
4. Provide free of charge to City, on a space available basis, advertising space within a 10 mile radius of City, and offer a 10% discount off of its applicable rate card fees for the displays on the New Digital Billboard to any business that has its principal place of business in Carson and is a member in good standing of the Carson Chamber of Commerce.

G. The 405-FWY Railroad Site and Watson Land Easement Site are located within the City's Industrial and/or Manufacturing Zone, designated by the General Plan as

Industrial and are also located within the 405 Freeway Corridor as defined per Carson Municipal Code § 9146.7 Signs.

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

I. On October 9, 2012, the Planning Commission of the City, at a duly noticed hearing to consider the approval of this Agreement, adopted Resolution No. _____ recommending approval of this Agreement to the City Council and find the Project, as defined below, categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15332 regarding Urban In-Fill Development Projects.

J. On _____, 2012 the City Council of the City, at a duly noticed hearing to consider the approval of this Agreement, considered the proposal, heard testimony, and continued the public hearing.

L. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including the, removal of less-desirable City-Oriented Billboards and relocating the Watson Land Billboard to an area of the Watson Land Easement Site which will better accommodate future development thereon. At the end of the term of this Agreement, Developer will remove the digital displays from the new Digital Billboard if an extension of this Agreement is not negotiated with City. Upon such removal, Developer shall be entitled to convert the displays on the New Digital Billboard to static displays.

M. _____, 2012, the City Council held the second reading of Ordinance No. 12-1498, thereby approving this Agreement.

N. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 12-1498 of the City Council have been duly and regularly taken.

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement and all attachments and exhibits hereto.

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

1.1.3 "City Council" means the City Council of the City.

1.1.4 "Developer" means Clear Channel Outdoor, Inc., a Delaware corporation duly existing and operating, and its successors and assigns, doing business at 19320 Haborgate Way, Torrance, California 90501.

1.1.5 "Development" means the installation of the New Digital Billboard on the 405-FWY Railroad Site and, upon the completion of the remaining development on such site, the temporary installation of above-ground and thereafter undergrounding of all utilities from Southern California Edison's electrical source to the New Digital Billboard.

1.1.6 "Development Approvals" means the approved Development, based on the recommended approval by the Planning Commission on October 9, 2012, pursuant to Resolution No. 12-2448 and approval of the City Council by Ordinance No. 12-1498 on _____, 2012, as further described at Section 3.3 herein.

1.1.7 "Effective Date" means the date inserted into the preamble of this Agreement, which is 30 days following approval of this Agreement by ordinance of the City Council, provided the Agreement is signed by the Developer and City.

1.1.8 "Final Permits" shall have the meaning set forth at Section 2.6.

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

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

1.1.11 "Project" means the removal of the City-Oriented Billboards, Relocation and installation, including installing any new and, upon the completion of any remaining development on such site, moving all existing utilities underground, (provided the requirement to underground utilities is also imposed in the Development Agreement with another billboard operator, CBS Outdoor, being approved concurrently or substantially at

the same time as this Agreement), operation and maintenance of the New Digital Billboard on the 405 FWY Railroad Site, all in accordance with the Development Approvals and this Agreement, including the Scope of Development attached hereto as Exhibit "B", Schedule of Performance attached hereto as Exhibit "E" and all conditions of approval and consistent with the approval from the California Department of Transportation Outdoor Advertising Division. Nothing herein shall place any requirement upon Developer to provide or arrange for utilities for CBS Outdoor and/or any other billboard operator. Nevertheless, Developer shall use good faith efforts to cooperate with CBS Outdoor in securing utilities for its billboard and accommodate the shared use of utility facilities for placement of both the temporary above-ground utilities in accordance with the plan at Exhibit "H" hereto and permanent underground utilities per paragraphs 1 and 3 of Exhibit "E".

1.1.12 "Relocation" means the relocation by Developer and Watson Land, at Developer's sole cost and expense of the Watson Land Billboard to the northwest corner of the Watson Land Easement Site within the Watson Land Easement to better accommodate future development upon such site, with the approval of the City as Successor Agency to the Carson Redevelopment Agency and, if necessary, the Carson Redevelopment Agency Oversight Board, pursuant to the attached form of Easement Relocation Agreement between the City as Successor Agency to the Carson Redevelopment Agency, Watson Land and Developer attached as Exhibit "D" hereto.

1.1.13 "Sites" refers collectively to the 405 FWY Railroad Site, City-Oriented Billboard Sites and the Watson Land Easement Site, as such sites are more specifically described on Exhibits "A" through "C" and depicted at Exhibit "A-1" through "C-1" attached hereto and incorporated herein.

1.1.14 "Schedule of Performance" means the Schedule of Performance attached hereto as Exhibit "E" and incorporated herein.

1.1.15 "Scope of Development" means the Scope of Development attached hereto as Exhibit "F" and incorporated herein.

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

1.1.17 "Subsequent Land Use Regulations" means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement) which govern development and use of the Sites.

1.1.18 "Term" shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

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

Exhibit "A" (Legal Description of 405 FWY Railroad Site)

Exhibit "A-1" (Depiction of 405 FWY Railroad Site)

Exhibit "B" (Legal Descriptions of City Oriented Billboard Sites)

Exhibit "B-1" (Depiction of City Oriented Billboard Sites)

Exhibit "B-2" (Form of Caltrans Relocation Agreement)

Exhibit "C" (Legal Descriptions of Watson Land Easement Site)

Exhibit "C-1" (Depiction of Watson Land Easement Site)

Exhibit "D" (Form of Easement Relocation Agreement)

Exhibit "E" (Schedule of Performance)

Exhibit "F" (Developer's Production Specification Sheet).

2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Development of the 405 FWY Railroad Site and Relocation of the Watson Land Billboard within the Watson Land Easement, including actions by the City on applications for Subsequent Development Approvals affecting such Sites, shall be subject to the terms and provisions of this Agreement.

2.2 **Interest in Sites.** City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Sites and thus is qualified to enter into and be a party to this Agreement under the Development Agreement Law. Developer shall maintain its interest in the 405 FWY Railroad Site for the entire Term of this Agreement. If Developer's interest in the 405 FWY Railroad Site is prematurely terminated and Developer is not contesting such termination, then Developer shall have no further obligations or rights under this Agreement and this Agreement shall terminate, except as provided under Section 4.1. During such time period that Developer is contesting the termination of its interest for the 405 FWY Railroad Site, this Agreement shall remain in full force and effect.

2.3 **No Assignment.** Developer may only assign or otherwise transfer this Agreement, or its interest in the 405 FWY Railroad Site, to any other person, firm, or entity, upon presentation to the City of an assignment and assumption agreement in a form reasonably acceptable to the City Attorney and receipt of the City's written approval of such assignment or transfer by the City Manager; provided, however, that Developer may, from time to time and one or more times, assign this Agreement, or the 405-FWY Railroad Site, to one or more persons or entities without City approval, but with written notice to the City, as long as Developer either assigns this Agreement to a financial institution that finances Developer's Development of the New Digital Billboard or as long as Developer, or entities owned or controlled by it have and maintain at least a twenty percent (25%) ownership interest in such entities who are the assignees or transferees, or as long as the transfer is as a result of a sale of Developer and/or its assets, including the rights granted under this Agreement, to another publicly-traded company or an

entity having a net worth that is substantially similar to, or greater than, Developer's net worth prior to such assignment or at the time of execution of this Agreement, which net worth is subject to verification by the City; and further provided that any assignee executes an assumption agreement assuming all of Developer's duties and obligations hereunder. Any security posted by Developer may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of (i) twenty (20) years after the date Developer receives Final Permits, as defined in Section 2.6 below, (ii) the expiration or earlier termination of Developer's leasehold interest in the 405 FWY Railroad Site per Section 6.1, or (iii) the permanent removal of the digital display constructed on the New Digital Billboard pursuant to the terms hereof. In such case, Developer shall completely remove the New Digital Billboard within the times and as provided under Section 4.1 herein. Notwithstanding the foregoing to the contrary, City and developer may agree to extend the term of this Agreement pursuant to a mutual agreement in writing upon terms acceptable to both parties. Within thirty (30) days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1 below. Following the expiration of the term and provided no extension of this Agreement is agreed to, then the digital displays upon the New Digital Billboard shall be removed and Developer shall have the right to operate static displays thereon, as set forth under Section 4.1.

2.5 Processing Fee. Upon submission of its application for the approvals granted by this Agreement, Developer has paid to City a processing ("Processing Fee") in the amount of Seven Thousand Five Hundred Dollars (\$7,500). The City shall retain and use the Processing Fee, or any part thereof, for any public purpose within the City's discretion. The Processing Fee shall be separate from all fees which are standard and uniformly applied to similar projects in the City, including, but not limited to, business license fees (due by Developer to City annually), one time plan check fee and building permit fee and any other fees imposed by Los Angeles County, as may be applicable. Additionally, within 30 days of the City providing Developer with a final invoice of legal fees incurred by City related to the negotiation and preparation of this Agreement, Developer shall pay City any outstanding balance of such fees.

2.6 Development Fee. The potential impacts of the Development on the City and surrounding community are difficult to identify and calculate. Developer and City agree that an annual development fee paid by Developer to City would adequately mitigate all such potential impacts. The parties therefore agree that Developer shall pay an annual development fee to City equal to Fifty Thousand Dollars (\$50,000.00) for the first year of term of this Agreement, Sixty Thousand Dollars (\$60,000.00) for the second year of term, Eighty Thousand Dollars (\$80,000.00) for the third year of term, One Hundred Thousand Dollars (\$100,000.00) for the fourth year of term and thereafter increased by two and one-quarter percent (2.25%) each year ("Development Fee"), which Development Fee, for ease of reference purposes, shall equal the following amounts during the Term:

Year 1: \$50,000

Year 11 \$116,853.90



Year 2:	\$60,000	Year 12	\$119,483.11
Year 3:	\$80,000	Year 13	\$122,171.48
Year 4:	\$100,000	Year 14	\$124,920.34
Year 5:	\$102,250	Year 15	\$127,731.05
Year 6	\$104,550.63	Year 16	\$130,605.00
Year 7	\$106,903.02	Year 17	\$133,543.61
Year 8	\$109,308.33	Year 18	\$136,548.34
Year 9	\$111,767.77	Year 19	\$139,620.68
Year 10	\$114,282.54	Year 20	\$142,762.14

The Development Fee shall be paid annually, with the first installment no later than one (1) year after Developer receives final approval to construct the New Digital Billboard from the applicable governmental authorities for any and all required permits to erect, maintain and operate the New Digital Billboard as contemplated under this Agreement ("Final Permits"). Developer shall notify City within five (5) days of its receipt of Final Permits for the purpose of determining the date annual payments of the Development Fee shall commence. Nothing herein relieves the City from its contractual duty to issue all municipal building permits that are associated with the Development of the New Digital Billboard if Developer is in compliance with the terms of this Agreement.

2.7 Community Benefits. Developer shall also provide the following community benefits during the entire Term of this Agreement:

2.7.1 City's Display Time on New Digital Billboard. Developer shall also provide free of charge to City on a space available basis, advertising space within a 10 mile radius of City. City will be responsible for printing cost and install/takedown costs for static billboards and appropriate artwork for the digital displays. The display of City advertising copy is subject to the following conditions and parameters: all advertising copy must be submitted to Developer at least five (5) business days before the Developer proposed display date and will be subject to Developer's standard advertising policies which allow Developer, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed, provided such policies are consistent with the display of public service messages as well as those restrictions described in Section 2.8 below.

2.7.2 Discount Advertising. Developer shall offer a ten percent (10%) discount off of its applicable rate card fees for the display of advertising on the New Digital Billboard to any business that has its principal place of business in Carson and is a member in good standing of the Carson Chamber of Commerce.

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

3. DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT.

3.1 **Rights to Develop 405 FWY Railroad Site.** Subject to and during the Term of this Agreement, Developer shall have the right to develop the 405 FWY Railroad Site in accordance with, and to the extent of, the Development Approvals, the Land Use Regulations, and this Agreement.

3.2 **Relocation of Watson Land Easement Site.** Developer shall take all actions necessary to effect the Relocation so that the Watson Land Billboard located on the Watson Land Easement Site is relocated to the northwesterly location on the Watson Land Easement Site, as shown on Exhibit "C-1," attached hereto. Developer shall be solely responsible for working with Watson Land to implement the Relocation, including but not limited to, paying all costs, fees, expenses and taking all legal actions to relocate the Watson Land Easement Site. The City, as Successor to the Carson Redevelopment Agency, subject to any approval required by the Carson Redevelopment Agency Oversight Board, shall cooperate and take any actions required of it to authorize such Relocation; provided all costs, fees and expenses to implement same are paid for by Developer. Developer's obligations hereunder shall be subject to the execution of the Easement relocation Agreement in the form attached as Exhibit "D" hereto by the City as Successor to the Carson Redevelopment Agency (including any required Carson Redevelopment Agency Oversight Board approval) Developer and Watson Land.

3.3 **Demolition and Removal of City-Oriented Billboards.** Developer shall secure all demolition permits and approvals and commence the demolition and complete removal of the City-Oriented Billboards, including, but not limited to, the three (3) structures and total of five (5) static displays and any other structure or facility erected or maintained as part of or in relation to the such billboards and complete such demolition and removal, within the times set forth in the Schedule of Performance, attached hereto as Exhibit "E." Following the removal of such billboards, Developer shall, as reasonably as possible, restore the City-Oriented Sites to a good condition that reasonably matches the surrounding landscape. Developer and the City, with regard to the City-Oriented Billboards Sites owned by the City or City as Successor to the Carson Redevelopment Agency, subject approval by the Carson Redevelopment Agency Oversight Board, if required, hereby waive any further rights to utilize the City-Oriented Billboard Sites, respectively, for installation or operation of any billboard and waive any claim for compensation or damages for the removal of the billboards and related appurtenances thereon and agreement by the Developer to give up any further rights to utilize the City-Oriented Billboard Sites, respectively, for the installation or operation of any billboard displays thereon in the future. Such waiver and release of any claim for compensation or damages includes, but is not limited to, lost revenues, relocation expenses, severance damages, loss of business goodwill, costs, interest, attorney's fees, and any claim whatsoever of the respective Owners which might arise out of or relate to any respect to the requirements of this Section 3.3 or this Agreement. Developer's waivers and obligations hereunder are expressly conditioned upon the execution and delivery by the City as Successor Agency to the Carson Redevelopment Agency, with any required approval of the Carson Redevelopment Agency Oversight Board, Developer and Caltrans of the Relocation Agreement in the form attached hereto as Exhibit "B-2".

3.4 **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 405 FWY Railroad Site or Watson Land Easement Site, the density and intensity of use of the such 405 FWY Railroad Site or Watson Land Easement Site, the maximum height and size of proposed New Digital Billboard structure and Watson Land Billboard, respectively, and the design, and improvement and construction standards and specifications applicable to Development of the 405 FWY Railroad Site and or Watson Land Easement shall be as set forth in the Land Use Regulations, as such term is defined in Section 1.1.9, which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

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

3.6 Timing of Development; Scope of Development. Developer shall commence the Project within the time set forth in the Schedule of Performance, attached hereto as Exhibit "E". "Commencement" of the Project is defined herein as commencement of construction or improvements under the building permit for the construction of the New Digital Billboard on the 405 FWY Railroad Site and Relocation of the Watson Land Billboard as soon as possible following Developer's receipt of Development Approvals. In the event that Developer fails to meet the schedule for Commencement of the Project, and after compliance with Section 5.4, either party hereto may terminate this Agreement by delivering written notice to the other party, and, in the event of such termination, neither party shall have any further obligation hereunder. However, if circumstances within the scope of Section 9.10 delay the commencement or completion of the Project, it would not constitute grounds for any termination rights found within this Development Agreement. In such case, the timeline to commence or complete the relevant task shall be extended in the manner set forth at Section 9.10. Notwithstanding the above, Developer shall, at all times, comply with all other obligations set forth in this Agreement regarding the construction or improvement of the New Digital Billboard on the 405 FWY Railroad Site and Relocation of the Watson Land Billboard. Developer shall also maintain the New Digital Billboard and Watson Land Billboard at all times during the Term in accordance with the maintenance provisions set forth in Section 3, the Scope of Development, attached as Exhibit "G" herein.

The purpose of this Agreement is to set forth the rules and regulations applicable to the Project, which shall be accomplished in accordance with this Agreement, including the Scope of

Development (Exhibit "G") which sets forth a description of the Project and the Schedule of Performance (Exhibit "F").

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

3.8 Reservation of Authority.

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

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

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

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

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

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to Development of the 405 FWY Railroad Site and Relocation of the Watson Land Billboard.

(f) Applicable Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the 405 FWY Railroad Site, Watson Land Easement or the Development of the 405 FWY Railroad Site or Watson Land Easement and that do not have an exception for (1) existing signs, or (2) legal nonconforming uses, or (3) signs governed by an agreement entered into pursuant to Sections 5412 and 5443.5 of the California Outdoor Advertising Act which were in existence in the City before the approval of this Agreement. Notwithstanding the foregoing, if such regulations materially change Developer's costs or otherwise materially impact its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

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

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

3.9 **Regulation by Other Public Agencies.** It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Development as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, State and local laws and regulations applicable to the New Digital Billboard, 405 FWY Railroad Site, Watson Land Easement Site or Watson Land Billboard that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Project and that do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1.

Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

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

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

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

3.10.3 It being understood, however, that if there is a material increase in cost to Developer or such action by City otherwise materially impacts developer's its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.11 Fees, Taxes and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Development Agreement and/or the Development Approvals. However, this Development Agreement shall not prohibit the application of fees, taxes or assessments upon the 405 FWY Railroad Site and Watson Land Easement Site only and not the New Digital Billboard, Watson Land Billboard or Developer directly as follows:

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

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

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

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

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

4. REMOVAL OF BILLBOARDS

4.1 **Removal by Developer.** Developer has the right to negotiate an extension of Term as an amendment to this Agreement. If the extension for the Term is not granted by the City, Developer shall be obligated to remove the digital display upon the New Digital Billboard and, at Developer's sole discretion, may either remove the structure of the New Digital Billboard or convert the display to a 19'6" x 48' static sign, previously existing upon the 405 FWY Railroad Billboard within 6 months following the expiration of the term of this Agreement. In addition, if Developer terminates this Agreement pursuant to the express terms thereof, Developer shall be entitled to convert the display to a 19'6" x 48' static sign, previously existing upon the 405 FWY Railroad Billboard within 6 months following the termination of the term of this Agreement.

4.2 **City's Right to Removal.** Provided Developer is not in material breach of the terms of this Agreement past any applicable written notice and cure period (collectively, a "Breach"), City will not have the right to require removal of the New Digital Billboard. Should such a Breach occur, City may require Developer to remove the digital display upon the New Digital Billboard and, at Developer's discretion, may either remove the structure of the New Digital Billboard or convert the display to static displays, previously existing upon the 405 FWY Railroad Billboard within thirty (30) days of City's notice to Developer of such Breach.

5. REVIEW FOR COMPLIANCE.

5.1 **Annual Review.** The City Council shall review this Agreement annually at City's sole cost, on or before the anniversary of the Term, to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review"). However, no failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement. Developer shall cooperate with the City in the conduct of such any Annual Review and provide the following information and documentation to the City at least thirty (30) days before the anniversary of the Term: (1) description of all complaints from Caltrans or the City regarding the New Digital Billboard and Watson Land Billboard, (2) description of all complaints from the public regarding the display unrelated to any content of the message displayed (3) any updates to Developer's contact information related to complaints concerning the billboards, as required in the conditions at Exhibit E, Section 6 herein, (4) status and amount of all payment obligations to the City required under this Agreement for the year in question and cumulatively beginning from the Commencement of the Project herein, (5) any easement or lease changes that could in any way materially impact the City or the obligations under this Agreement, (6) any utility changes that could in any way materially impact the City or the obligations under this Agreement, (7) any maintenance issues addressed or needing to be addressed per the requirements of Exhibit E, and (8) whether any City messages per Section

2.7.1 have been displayed during the preceding year of the Term and a description of the duration of such displays.

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

5.3 City Rights of Access. Subject to the City's execution of a permit to enter in form reasonably acceptable to Owner, the City, its officers, employees, agents and contractors, shall have the right, at their sole risk and expense, to enter the 405 FWY Railroad Site and Watson Land Easement at all reasonable times with as little interference as possible for the purpose of conducting the review under this Section 5, inspection, construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the 405 FWY Railroad Site, or to perform any rights of the City under Section 4.2 above. Any damage or injury to the 405 FWY Railroad Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the City. Notwithstanding the foregoing, or any other provision in this Agreement (including without limitation Section 4.2 above), the City shall have no right whatsoever to enter the 405 FWY Railroad Site and Watson Land Easement unless and until the City executes and delivers to Developer a permit to enter in form reasonably acceptable to Developer (except that this provision is not intended to interfere with the City's police powers to address any nuisance, dangerous condition, or other condition pursuant to the City's ordinances). Notwithstanding anything to the contrary herein, in no event will City representatives ever climb up the pole of the sign during any inspection.

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

breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 9.10.

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

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 Termination of Agreement for Material Default of Developer. City, in its discretion, may terminate this Agreement for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the material terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In the event of a termination by City under this Section 6.1.1, Developer acknowledges and agrees that City may retain all fees accrued up to the date of the termination, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the New Digital Billboard that equates to the percentage of time elapsed in the year of the Term at the time of termination.

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

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

7. **INSURANCE, INDEMNIFICATION AND WAIVERS.**

7.1 **Insurance.**

7.1.1 *Types of Insurance.*

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

(b) *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 worker's compensation insurance as required by law.

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

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

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

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

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

7.2 Indemnification.

7.2.1 *General.* Developer shall indemnify the City and Owner, and their respective officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Sites:

(a) Developer will defend any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including reasonable legal costs and attorneys' fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company where insurance coverage applies.

(b) Developer will promptly pay any judgment rendered against the City or Owner or their respective officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of the Developer hereunder, and Developer agrees to save and hold the City and Owner and their respective officers, agents, and employees harmless therefrom.

7.2.2 *Exceptions.* The foregoing indemnity shall not include claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents, subcontractors or employees, who are directly responsible for the City.

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

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

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

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

7.2.4 Loss and Damage. Except as set forth below, City shall not be liable for any damage to property of Developer, Owner or of others located on the Sites, nor for the loss of or damage to any property of Developer, Owner or others by theft or otherwise. Except as set forth below, City shall not be liable for any injury or damage to Developer, its employees or its property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Sites or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. The foregoing two (2) sentences shall not apply (i) to the extent City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Sites, or (ii) to the extent covered in any permit to enter executed by the City, or (iii) results from a condition created upon such Site by the City as Successor Agency to the Carson Redevelopment Agency as the owner thereof.

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

7.3 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, its agents, employees, subcontractors, or invitees, or any property of Developer its agents, employees, subcontractors, or invitees relating to this Project, except as specifically provided hereunder which include but is not limited to, a claim or liability arising from the sole negligence or willful misconduct of the City, its officers, agents, or employees, who are directly responsible for the City.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the 405 FWY Railroad Site, Watson Land Easement or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the 405 FWY Railroad Site or Watson Land Easement. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer or Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the Development or 405 FWY Railroad Site or Watson Land Easement, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within 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.

(d) Any Mortgagee who comes into possession of the Development or 405 FWY Railroad Site, Watson Land Easement, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Development or 405 FWY Railroad Site, Watson Land Easement, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Development or 405 FWY Railroad Site or Watson Land Easement acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Development or 405 FWY Railroad Site, Watson Land Easement or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

9.8 **Waiver.** Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

9.10 **Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any

such events shall occur except as otherwise provided herein, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to developer any portion of the Development fee paid for any period after the effective date of such termination.

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

9.12 **Counterparts.** This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

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

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

9.15 **Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon

the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

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

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

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

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

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

To City:

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

With Copy to:

Aleshire & Wynder, LLP
18881 Von Karman Ave., #1700
Irvine, CA 92612
Attn: William Wynder, Esq.