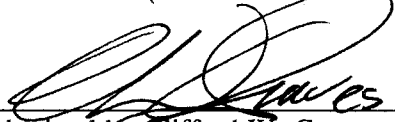


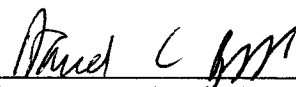


City of Carson Report to Mayor and City Council

May 7, 2013
New Business Consent

**SUBJECT: CONSIDER THE ANNUAL REVIEW OF THE BOULEVARDS AT SOUTH BAY
(CARSON MARKETPLACE, LLC) DEVELOPMENT AGREEMENT**


Submitted by Clifford W. Graves
Director of Community Development


Approved by David C. Biggs
City Manager

I. SUMMARY

The City Council is being asked to consider the required Annual Review Report (Exhibit No. 3) of The Boulevards at South Bay Development Agreement (Exhibit No. 1) and the First Amendment to the Development Agreement (Exhibit No. 2).

II. RECOMMENDATION

RECEIVE and FILE.

III. ALTERNATIVES

1. DIRECT staff to TAKE action resulting from the Annual Review Report.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

On March 21, 2006 (Exhibit No. 4), the City Council approved a development agreement with Carson Marketplace LLC for The Boulevards at South Bay project and on April 5, 2011, approved the First Amendment to the Development Agreement (Exhibit No. 2). The development agreement requires an annual review within 30 days after the anniversary of the approval date of the development agreement. The development agreement provides the developer an opportunity to present oral and written testimony. This is the seventh annual review report for this project. LNR, the managing partner of Carson Marketplace LLC, was acquired by Starwood Capital on April 19, 2013. Carson Marketplace LLC has indicated that Starwood Capital remains committed to the Boulevards at South Bay project.

The Boulevards at South Bay is a mixed-use commercial and residential project consisting of up to two million square feet of commercial space and 1,550 residential units. The 168-acre site is located north and south of Del Amo Boulevard, west of the I-405 San Diego Freeway, and north and east of the Dominguez Channel. A Specific Plan and Owner Participation Agreement were also approved as part of the project.

The development agreement has timing constraints to ensure that the project is proceeding. The development agreement requires an annual review by the City Council to evaluate progress by the developer. The purpose of the annual review is for the developer to demonstrate and for the city to determine that the developer is in good faith compliance with the terms of the Development Agreement. The City Council found the developer to be in compliance with the annual reviews of the Development Agreement on the following dates: May 1, 2007 (Exhibit No. 5); April 15, 2008 (Exhibit No. 6); April 7, 2009 (Exhibit No. 7); May 4, 2010 (Exhibit No. 8); April 19, 2011 (Exhibit No. 9) and April 17, 2012 (Exhibit No. 10).

Carson Marketplace LLC has made significant progress in preparing the site for development with the installation of remediation systems. The landfill remediation system, including a gas collection system and liner in the parking areas, has been installed. The groundwater treatment wells are also being installed. The portion of the operation center, which will house the equipment for the groundwater treatment, the gas collection system and the flares, is completed and equipment installed. The site is awaiting an electrical connection at which time these systems will be operational. The Operations Building itself should be under construction this summer. The applicant is working with the Department of Toxic Substances Control (DTSC) and city to allow for phasing of the development. The storm drains, all public/private water lines, domestic fire water lines and reclaimed water lines have been installed. The gas lines have been installed and the electrical lines are ready to be installed.

Carson Marketplace LLC established two Community Facility Districts (CFDs). Through the CFDs, assessments will be collected from the property owners and tenants. Assessments from the first CFD will pay for the environmental monitoring and maintenance. The assessments from the second CFD will pay for required mitigation for the LA County Fire Department for fire service improvements in the area, the LA County Library for improvements for the library on Carson Street, the storm drains, park fees and school fees.

Carson Marketplace LLC is also considering changing the proposed uses on a portion of the site to incorporate an outlet mall due to changes in market conditions. The outlet mall would be over 500,000 square feet of buildable area and located on the east side of Lenardo Drive and adjacent to the I-405 freeway. The likely design option for the outlet mall would be an open air mall with large parking garages at either end of the mall. The development plans will be adjusted to accommodate the outlet mall and to prioritize the highest and best uses for the remaining property.

The Carson Marketplace Specific Plan provides significant flexibility for the developer to adjust the type and location of commercial and residential uses.

The addition of the outlet mall is consistent with the Carson Marketplace Specific Plan. More information on the revised illustrative plan will be submitted to the city as the project continues through the review process. A phased remediation plan is currently under review to determine appropriate timelines for start and completion of development on the former landfill. Substantial progress has been made this year, and the project is in compliance with the requirements of the Development Agreement.

V. FISCAL IMPACT

The developer paid a nominal fee of \$500.00 for the city's review of this Annual Review Report.

VI. EXHIBITS

1. Carson Marketplace Development Agreement. (pgs. 4-49)
2. First Amendment to the Development Agreement. (pgs. 50-54)
3. Annual Review Report from the Developer. (pgs. 55-56)
4. Minutes of City Council Meeting dated March 21, 2006. (pg. 57)
5. Minutes of City Council meeting dated May 1, 2007. (pg. 58)
6. Minutes of City Council meeting dated April 15, 2008. (pg. 59)
7. Minutes of City Council meeting dated April 7, 2009. (pg. 60)
8. Minutes of City Council meeting dated May 4, 2010. (pg. 61)
9. Minutes of City Council meeting dated April 19, 2011. (pg. 62)
10. Minutes of City Council meeting dated April 17, 2012. (pgs. 63-64)

Prepared by: Chris Ketz, Planning Consultant

TO: Rev09-04-2012

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Public Works
Community Development	Community Services

Action taken by City Council

Date _____ Action _____

RECORDING REQUESTED BY)
AND WHEN RECORDED, MAIL TO:)

CITY CLERK)
City of Carson)
701 East Carson St.)
Carson CA 90745-2224)

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DEVELOPMENT AGREEMENT

between

THE CITY OF CARSON

("City")

and

CARSON MARKETPLACE LLC,
A Delaware limited liability company

("Developer")

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CITY OF CARSON

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EXHIBIT NO 1



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into on March 21, 2006, by the CITY OF CARSON (the "City"), a municipal corporation, and CARSON MARKETPLACE LLC, a Delaware limited liability company (the "Developer"), pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, Sections 65864 through 65869.5 of the California Government Code. City and Developer shall be referred to within this Agreement jointly as the "Parties" and individually as a "Party."

RECITALS:

A. Capitalized Terms. The capitalized terms used in these recitals and throughout this Agreement shall have the meaning assigned to them in Section 1. Any capitalized terms not defined in Section 1 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

B. Property Status. Developer holds a legal or equitable interest in certain real property which is located in the City, and is more particularly described in the "Legal Description of Property" attached hereto as Exhibit A, and is shown on the "Site Map" attached hereto as Exhibit B which together show the "Property".

C. Project. The grant of development rights hereunder is consideration for Developer's good faith efforts to complete the development of a multi-million dollar, mixed use, commercial and residential project consisting of up to approximately 2 million square feet of commercial space and 1,550 residential units as described in the Specific Plan (as hereinafter defined). The project as approved by the Specific Plan is hereinafter referred to as the "Project." The Project to be constructed by Developer, with financial assistance from the Carson Redevelopment Agency (the "Agency") according to the terms of an Owner Participation Agreement, will benefit City by remediating a former landfill site, creating new jobs in the community, aiding in the revitalization of City's economy, providing new entertainment and shopping venues and creating residential units including some with affordability covenants as provided in Section 5.5. The Project will pay all applicable City Developer Fees, including Quimby park fees, and Processing Fees which will assure that all costs of the Project will be mitigated.

D. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California adopted the Development Agreement Statute, Sections 65864, et seq., of the Government Code, authorizing City to enter into an agreement with any Person (as hereinafter defined) having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. The legislative findings and declarations underlying the Development Agreement Statute and the provisions governing contents of development agreements state, in Government Code Sections 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities is a serious impediment to the development of new housing, and that



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applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

E. Intent of the Parties. Developer and City have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of Developer for infrastructure and public improvements and facilities will be met, and to provide for the orderly development of the Property, assist in attaining the most effective utilization of resources within the City, and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to City and the public benefits of the development of the Property, Developer will receive assurances that City shall grant all permits and approvals required for total development of the Property and the Project in accordance with this Agreement.

F. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA")), appropriate studies, analyses, reports or documents were prepared and considered by the Planning Commission and the Redevelopment Agency. The Planning Commission, after a public hearings on November 29, 2005, January 24, 2006 and January 31, 2006, recommended, and the Redevelopment Agency, after making appropriate findings, certified, by Resolution No. 06-07 adopted on February 8, 2006 a Final Environmental Impact Report for the Project in compliance with CEQA, more specifically identified as the "Final Environmental Impact Report", State Clearinghouse No. 2005051059, (the "EIR"). On January 31 and February 14, 2006, the Planning Commission of the City (the "Planning Commission"), after giving notice pursuant to Government Code Sections 65090, 65091, 65092 and 65094, held a public hearing on Developer's application for this Agreement. On February 21, 2006, the City Council, after providing public notice as required by law, held a public hearing to consider Developer's application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City including Resolution 90-050 of the City Council establishing procedures for the review and approval of development agreements (the "Enabling Resolution"). Specifically, the City Council has found that the Agreement: (i) is consistent with the General Plan and any applicable specific plan; (ii) is in conformity with public convenience and good land use practices; (iii) will not be detrimental to the health, safety and general welfare; (iv) will not adversely affect the orderly development of property or the preservation of property values; and (v) is consistent with the provisions of Government Code Sections 65864 through 65869.5.

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

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute as it applies to City, the Enabling Resolution and the Authorizing Ordinance, and in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be and hereby are incorporated into this Agreement, the Parties agree as follows:



1. DEFINITIONS

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below and shall be applicable to both the singular and plural form of any noun and verbs of any tense.

1.1 Affiliate. "Affiliate" means, with respect to any specified Person, any Person which, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such specified Person.

1.2 Agency. "Agency" means the Carson Redevelopment Agency.

1.3 Agreement. "Agreement" means this Development Agreement as the same may be amended or modified from time to time.

1.4 Applications. "Application(s)" shall mean a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc.) meeting all of the Existing Land Use Regulations, provided that any additional or alternate requirements in Future Land Use Regulations which affect the Project application shall apply only to the extent permitted by this Agreement.

1.5 Approval Date. "Approval Date" means the date of the adoption of the Authorizing Ordinance by the City Council.

1.6 Authorizing Ordinance. "Authorizing Ordinance" means Ordinance No. 06-1343 of City approving this Agreement.

1.7 CEQA. "CEQA" means the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.).

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

1.9 City Council. "City Council" means the governing body of the City of Carson.

1.10 Claims or Litigation. "Claims or Litigation" shall mean any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, Land Use Regulations, this Agreement, Development Approvals, or other actions of City pertaining to the Project, or (ii) seeking damages against City as a consequence of the foregoing actions or for the taking or diminution in value of their property as a consequence of the foregoing actions.

1.11 Conditions of Approval. "Conditions of Approval" means those conditions of approval imposed by City upon the Existing Development Approvals as of the Approval Date, and any additional conditions of approval thereafter imposed by City upon Future Development Approvals in accordance with this Agreement.

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1.12 Control. "Control", or any derivative thereof, when used with respect to any specified Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities or partnership or membership or other ownership interests, by contract or otherwise; provided, however, that, without limiting the generality of the foregoing, (i) a general partner shall always be deemed to Control any general partnership, limited partnership, or limited liability partnership of which it is a general partner, and (ii) a manager shall always be deemed to Control any limited liability company of which it is a manager.

1.13 City Manager. "City Manager" means the Chief Administrative Officer of City.

1.14 CPI Index. "CPI Index" means the Consumer Price Index for all Urban Consumers, Los Angeles-Anaheim-Riverside Metropolitan Index (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor or, if such index is discontinued, any successor index thereto.

1.15 Cure Period. "Cure Period" means thirty (30) days after the date that the Non-Defaulting Party provides written notice to the Defaulting Party in accordance with Section 11.2 setting forth the nature of any breach or failure by the Defaulting Party under this Agreement and the actions, if any, required by the Defaulting Party to cure such breach or failure. If a non-monetary breach or failure cannot be cured within such thirty (30) day period, the Cure Period is subject to extension in accordance with Section 11.2.

1.16 Default. "Default" means the failure of the Defaulting Party to take such actions as are required of the Defaulting Party pursuant to this Agreement and the failure of the Defaulting Party to cure any such breach or failure by the Defaulting Party under this Agreement within the Cure Period after receipt of written notice from the Non-Defaulting Party in accordance with Section 11.2 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; provided, however, that if a breach or failure cannot be cured within such Cure Period, and if, and as long as, the Defaulting Party complies with clauses (a) through (e) of Section 11.2, then the Defaulting Party shall not be deemed in Default under this Agreement.

1.17 Defaulting Party. "Defaulting Party" means the Party in Default or alleged to be in default under this Agreement.

1.18 Developer. "Developer" means Carson Marketplace LLC, a Delaware limited liability company, and any permitted assignee in accordance with Section 12.

1.19 Developer Fees. "Developer Fees" mean those fees established and adopted by City with respect to development and its impacts pursuant to applicable governmental requirements, including Section 66000, *et seq.*, of the Government Code of the State of California, including impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on or in connection with new development but only when imposed by the City. Developer Fees does not mean or include Processing Fees.

1.20 Development. "Development" means the remediation of the Property in preparation for development and the improvement of the Property for purposes of effecting the structures, improvements and facilities comprising the Project including, grading and the construction of subsurface structures; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings in accordance with the Development Approvals during the Term of this Agreement; and the installation of landscaping; but not including the maintenance, repair, or redevelopment of any structures, improvements or facilities after the construction and completion thereof.

1.21 Development Agreement Statute. "Development Agreement Statute" means Sections 65864 through 65869.5 of the California Government Code as in effect on the Approval Date, as the same may thereafter be amended.

1.22 Development Approvals. "Development Approvals" means all site-specific (meaning specifically applicable to the Property or the Development thereof only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals includes, but is not limited to, specific plans (including, without limitation, the Specific Plan), site plans, tentative and final subdivision maps, vesting tentative maps, variances, zoning designations, planned unit developments, conditional use permits, grading, building, and other similar permits, the site-specific provisions of general plans (including, without limitation, the General Plan), environmental assessments, including environmental impact reports (including, without limitation, the EIR), and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City (except to the extent applicable to the Property or the Development thereof as provided above).

1.23 Development Plan. "Development Plan" means the Existing Development Approvals, Future Development Approvals and Existing Land Use Regulations.

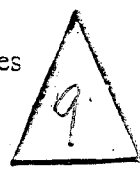
1.24 DTSC. "DTSC" means the California Department of Toxic Substances Control or any successor agency thereto.

1.25 EIR. "EIR" means the Final Environmental Impact Report for the Project more specifically identified as the "Final Environmental Impact Report", State Clearinghouse No. 2005051059,, which was certified by the Redevelopment Agency, after making appropriate findings; by Resolution No. 06-07 adopted on February 8, 2006, as being in compliance with CEQA.

1.26 EIR Mitigation Measures. "EIR Mitigation Measures" means the mitigation measures imposed upon the Project pursuant to the EIR and the Conditions of Approval thereof.

1.27 Exaction. "Exaction" means dedications of land, payment of Developer Fees and/or construction of public infrastructure by Developer as part of the Development.

1.28 Existing Developer Fees. "Existing Developer Fees" mean the Developer Fees applicable to the Property and/or the Development thereof in effect as of the Approval Date.



1.29 Existing Development Approvals. "Existing Development Approvals" means only the Development Approvals approved prior to or concurrent with the Approval Date and includes, without limitation, General Plan Amendment No. 13-05 and Zone Change Amendment No. 149-05 related to the Project, the Specific Plan, the EIR, the EIR Mitigation Measures, and similar matters.

1.30 Escrow. "Escrow" means the escrow(s) pursuant to purchase agreements between the Developer and two current owners of the parcels of the Property, being L.A. MetroMall, LLC, a California limited liability company, for the purchase of approximately 157 acres ("Central Parcel") and Del Amo Gardens, a California general partnership, for the purchase of approximately 11 acres ("Del Amo Parcel").

1.31 Existing Land Use Regulations. "Existing Land Use Regulations" means those certain Land Use Regulations applicable to the Property and/or the Development thereof in effect on the Approval Date.

1.32 Future Developer Fees. "Future Developer Fees" mean any Developer Fees applicable to the Property and/or the Development thereof not in effect as of the Approval Date. Future Developer Fees which affect the Project shall apply only to the extent permitted by this Agreement.

1.33 Future Development Approvals. "Future Development Approvals" means those Development Approvals applicable to the Property and/or the Development thereof approved by City after the Approval Date such as tentative tract maps, subdivision improvement agreements and other more detailed planning and engineering approval requirements. Future Development Approvals which affect the Project shall apply only to the extent permitted by this Agreement.

1.34 Future Land Use Regulations. "Future Land Use Regulations" means any Land Use Regulations applicable to the Property adopted or enacted after the Approval Date including, without limitation, any modification or amendment of Existing Land Use Regulations after the Approval Date. Future Land Use Regulations which affect the Project shall apply only to the extent permitted by this Agreement.

1.35 General Plan. "General Plan" shall mean the general plan of the City of Carson as in effect on the Approval Date.

1.36 Holder. "Holder" or "holder" means the holder of any mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing, as provided in Section 16.1.

1.37 Land Use Regulations. "Land Use Regulations" means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of City which affect, govern, or apply to the Property or the implementation of the Development Plan. Land Use Regulations include the ordinances and regulations adopted by City which govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Property, including, but not limited to, the General Plan, specific plans (including, without limitation, the Specific Plan), zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances

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and park codes, any other similar or related codes and building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; uniform building codes; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; or similar matters.

1.38 Mortgage. "Mortgage" or "mortgage" means any mortgage (whether a leasehold or feehold mortgage or otherwise), deed of trust (whether a leasehold or feehold deed of trust or otherwise), or other security interest, or sale and lease-back, or any other form of conveyance for financing, as provided in Section 16.1.

1.39 Non-Defaulting Party. "Non-Defaulting Party" means the Party other than the Defaulting Party.

1.40 Operative Date. "Operative Date" means the date this Agreement becomes operative with respect to the Development of the Property and the Project as set forth in Section 3.2. In the event that the conditions precedent to the operation of the Agreement are not timely satisfied, this Agreement shall expire and be of no further force and effect.

1.41 Parties. "Parties" means City and Developer jointly.

1.42 Party. "Party" means City and Developer individually.

1.43 Person. "Person" means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, association, firm, joint stock company, trust, estate, unincorporated association, governmental or quasi-governmental body, authority or agency, or other entity.

1.44 Phase. "Phase" means any discrete portion or part of the Project developed by Developer or any successor in interest thereto.

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

1.46 Planning Director. "Planning Director" shall mean the Planning Manager or similar officer of City.

1.47 Processing Fees. "Processing Fees" means all processing fees and charges required by the City in connection with the Development of the Property and the Project including, but not limited to, fees for land use Applications, building permit Applications, building permits, grading permits, subdivision or parcel maps, inspection fees and certificates of occupancy. Processing Fees shall not mean or include Developer Fees.

1.48 Project. "Project" means the project as approved by the Specific Plan, as the same may be developed upon the Property pursuant to the Development Plan and this Agreement.

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1.49 Project Public Improvements. "Project Public Improvements" means the public improvements required to be made as part of the Development Plan as more particularly described in the EIR Mitigation Measures set forth in Section C1 through C16 of the EIR.

1.50 Property. "Property" means the real property which is located in the City, is more particularly described in the "Legal Description of Property" (Exhibit A), and as shown on the "Site Map" (Exhibit B). The Property, as shown on Exhibit B, is divided into two parcels designated herein as the "Central Parcel" and the "Del Amo Parcel."

1.51 Reservations of Authority. "Reservation of Authority" has the meaning set forth in Section 9 of this Agreement.

1.52 Specific Plan. "Specific Plan" means the Carson Marketplace Specific Plan No. 10-05 as prepared by The Planning Center, Planning Consultants, and as approved by City including all conditions of approval approved concurrently therewith.

1.53 Term. "Term" means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Section 3.1.

2. EXHIBITS.

The following are the Exhibits to this Agreement:

Exhibit A: Legal Description of the Property

Exhibit B: Site Map

Exhibit C: Form of Estoppel Certificate

This Agreement includes the foregoing Exhibits which are attached hereto and are incorporated herein in their entirety.

3. TERM.

3.1 Term. The term of this Agreement (the "Term") shall commence upon the Approval Date and shall end upon the fifteenth (15th) anniversary of the Operative Date. Upon the expiration of the Term, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect any right or duty of a Party hereto, arising out of any Development Approval or the provisions of this Agreement, in effect on or prior to the effective date of such termination.

3.2 Operative Date. This Agreement shall become effective immediately upon the Approval Date for the limited purpose of effectuating necessary provisions of this Agreement (e.g. definition of Existing Land Use Regulations, the Indemnity provisions of Section 13, etc.), but this Agreement shall not become fully operative with respect to the Development of the Property and the Project unless and until the latest date that all of the following conditions precedent are timely satisfied: (i) thirty (30) days after the 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



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Authorizing Ordinance, the date the election results are declared approving the Authorizing Ordinance, (ii) Agency and Developer shall have made and entered into an Owner Participation Agreement concerning the remediation of the Property and the construction of the Project Public Improvements in preparation for the Development of the Property and the Project, and (iii) Developer shall have closed Escrow and acquired each and every parcel of the Property; provided that if this Agreement does not become fully operative with respect to the Development of the Property and the Project within eighteen (18) months after the Approval Date, it shall expire and be of no further force or effect. In such event the Parties shall have no liability one to the other under this Agreement except as provided in Section 13.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Right to Develop. During the Term, Developer shall have a vested right to develop the Property to the full extent permitted by the Development Plan and this Agreement. Except as expressly provided in this Agreement, the Development Plan shall exclusively control the development of the Property (including the permitted 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 and the development of the Property). Except as expressly provided in this Agreement, any Future Land Use Regulations shall not be applied to the Project or any Phase thereof unless Developer gives written notice to City of its election to have such Future Land Use Regulations applied to the Project or such Phase. Developer may elect to develop and construct upon the Property or any portion thereof a Development of lesser height, size, or density than that permitted by the Specific Plan provided that such Development otherwise complies with the Development Plan and this Agreement.

4.2 Specific Plan Regulations. Notwithstanding the provisions of Section 4.1, it is recognized by the Parties that the Existing Development Approvals, including the Specific Plan, are generalized and that City's procedures for approving specific development involve a more precise and detailed review including tentative tract map approval, final site plan approval and building plan check review and approval. At these levels of review, site specific criteria are considered, along with factors such as parking and loading requirements, setbacks, minimum lot frontages, open space requirements and similar matters as specified in applicable portions of the Specific Plan and the Carson Municipal Code. For example, although the Specific Plan specifies the general location of the proposed uses, the City, through administrative approval or the Planning Commission, as the case may be, at the time of the approval process for the site plan must approve the exact location with due consideration for topography, geology, compatibility with surrounding property and other constraints. In addition, the City has not fully evaluated the need for or timing of construction of public infrastructure but such requirements by City shall be subject to the restrictions specified in Sections 4.7 and 5.3. Therefore, City retains the right to impose appropriate Conditions of Approval in granting Future Development Approvals not in conflict with the Existing Development Approvals so long as such Conditions of Approval to Future Development Approvals (i) permit Developer to construct the Project with the permitted uses and the density and intensity of use and as otherwise provided in the Specific Plan and in accordance with this Agreement, and (ii) do not result in the imposition of any additional Exactions on the Project except as specifically permitted in accordance with this Agreement.

4.3 Subdivision Maps. In order for the Project to be developed in accordance with the Specific Plan and this Agreement, Developer must file Applications for tentative, vesting tentative or parcel maps. As provided in Section 4.2 above, there will be more detailed Project information and site specific criteria that will be considered and City shall retain the right to add Conditions of Approval as stated in Section 4.2. After approval, such tentative, vesting tentative or parcel maps shall be considered part of the Development Approvals applicable to the Property and the Development thereof, and Developer's rights thereunder shall be vested pursuant to this Agreement. As provided in Cal. Govt. Code Section 66452.6 and 65863.9, the term of any tentative, vesting tentative or parcel map hereafter approved with respect to the Project shall remain in effect and be valid through the scheduled termination date of this Agreement.

4.4 Environmental Equivalency. The EIR includes an environmental equivalency program which permits a trade off of uses so long as greater environmental impacts are not thereby incurred, and such environmental equivalency program is incorporated in this Agreement as provided in the EIR. In addition, if Developer cannot acquire real property that is required in order to implement any Condition of Approval or if Developer does not have the legal capacity to satisfy a Condition of Approval for any other reason, and City elects not to acquire such real property or to take such actions as are necessary to enable Developer to satisfy such Condition of Approval and such Condition of Approval is not physically required for the Project to operate, then Developer shall be allowed, at its election, to complete the Project without performing such legally infeasible Condition of Approval; provided that, in that event, if City so elects, Developer shall implement such substitute measure or measures as are required by City so long as such substitute measures (i) constitute an environmental equivalent (as defined in the EIR Mitigation Measures) to the legally infeasible Condition of Approval, (ii) have a nexus to the Project, and (iii) do not exceed the cost to Developer of the legally infeasible Condition of Approval by more than one hundred and fifty percent (150%).

4.5 Water Supply Assessment. All tentative maps prepared for this Project shall comply with the provisions of Government Code Section 66473.7 to the extent applicable hereto. In connection with the foregoing, City has found and determined that the immediate contiguous properties surrounding the Project are, or previously have been, developed for urban uses within the meaning of Government Code Section 66473.7(i).

4.6 Interim Uses. Notwithstanding anything that is or appears to be to the contrary in this Agreement or the Development Plan, City agrees that, until development of the Project, Developer may continue use and operation of the Property for any use which is otherwise permitted by applicable zoning and other laws and ordinances as they may be from time to time amended.

4.7 Modifications to Required Public Improvements. With respect to Future Development Approvals, based on future planning studies and long range General Plan forecasts, the City Engineer may determine that the Project Public Improvements (Exhibit E) must be modified to better meet long-term City infrastructure needs. The modifications shall be within the discretion of the City Engineer, and the City Engineer may determine the priority of the Project Public Improvements, how the Project Public Improvements can be modified, Developer's fair share responsibility therefor, whether Developer must install the Project Public Improvements or pay in lieu fees, and similar matters. Notwithstanding anything to the contrary

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in this Agreement, City Engineer may not order modification of the Project Public Improvements unless each of the following conditions is met:

(a) The modifications may not disrupt the timing of construction of the Project or the use or operation of any completed portions of the Project;

(b) Any costs to be incurred by Developer in connection therewith which are in excess of the projected costs of the Project Public Improvements as of the Approval Date (subject to CPI Index escalation) shall be included in the financial assistance provided by Agency and/or City to Developer under the Owner Participation Agreement or otherwise funded at no additional cost or expense to Developer; and

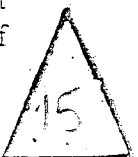
(c) City shall be solely responsible for complying with CEQA with respect to any changes in the Project Public Improvements.

Notwithstanding the foregoing, nothing herein shall limit the City Engineer's ability to require as a part of Future Development Approvals additional (i) exactions on the Project for customary dedications on the Property pursuant to Existing Land Use Regulations for rights of way or easements for public access, utilities, lighting, water, sewer and for drainage for the Project and adjacent development, or (ii) additional improvements internal to the Project or immediately adjacent, to alleviate an impact caused directly by the Project so long as the Developer is still able to construct the Project with the permitted uses and the density and intensity of use permitted in the Specific Plan and so long as it is not in conflict with Specific Plan.

4.8 Special Uses.

(a) The following use shall not be permitted in the Project: any single proposed retail store, that primarily sells goods and merchandise for personal or household use, with a size that exceeds 100,000 square feet (whether contained in one or more buildings) and which devotes more than ten percent (10%) of its floor area to the sale of non-taxable goods (hereinafter "Superstores"). For purposes of this Section, "non-taxable goods" means products, commodities, or items not subject to California state sales tax. Further, for purposes of this Section, "non-taxable goods" shall not include, without limitation, floor area devoted to (i) services, including the services of a chiropractor, optometrist, optician, physician, surgeon, podiatrist, dentist, spa, gym, nail salon and travel accommodation services, (ii) theaters and entertainment uses, (iii) photography studio, and (iv) food sales for on-site consumption. Superstore excludes discount membership stores, wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic assessment fee. Superstore also excludes the sale or rental of motor vehicles, except for parts and accessories, and the sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware.

(b) A conditional use permit shall be required for any proposed residential use north of Del Amo Boulevard and within 300 feet of the freeway pavement edge. City may utilize its discretion in evaluating such conditional use and a denial of



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such use shall not be construed to be inconsistent with the Existing Development Approvals.

(c) The provisions of this Section shall supercede any conflicting provisions of the Specific Plan. Without limiting the generality of the foregoing, this supersedes and replaces Condition No. 3 of Exhibit B ("Conditions of Approval") to the Specific Plan.

4.9 Employment of 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 Carson 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 listed with the City's Job Clearinghouse, the Torrance-Carson-Lomita Private Industry Council and any other replacement job listing clearing house reasonably selected by the City and designated in writing to Developer. Developer will inform its purchasers and lessees of the provisions of this program and insert provisions in their contracts to provide necessary recordkeeping and reporting. Without limiting the generality of Section 17.9, the provisions of this Section 4.9 are not intended, and shall not be construed, to benefit or be enforceable by any Person whatsoever other than City.

4.10 Obligations of Developer Respecting Project Costs. Except as specifically provided herein, it is expressly understood that Developer is fully responsible for the cost of the Project and obtaining any necessary construction or long term financing therefor. Developer anticipates financial assistance to be provided by the Carson Redevelopment Agency pursuant to an Owner Participation Agreement.

4.11 Later Enacted Measures: No Moratorium. This Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Approval Date, except as otherwise expressly provided herein, including in Section 9. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan or the Project (including the issuance of all necessary Future Project Approvals or permits for the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project unless otherwise provided by State law. Without limiting the generality of the foregoing, no City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, a board, agency, commission or department of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property or the Project during the Term of this Agreement.

4.12 Grading Prior to Final Maps. City agrees that, at Developer's request, it will allow grading of the Property to proceed prior to recordation of final subdivision maps for the Property and shall issue grading permits therefor in accordance with the Development Plan and this Agreement notwithstanding that final subdivision maps have not then been recorded.

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5. TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT.

5.1 Right of Developer to Control Timing. Developer cannot fully predict the timing, phasing, or sequencing in which the Project will be developed, if at all. Such decisions depend upon numerous factors, many of which are not completely within the control of Developer, such as market orientation and demand, interest rates, absorption, completion, availability of financing, and the state of the general economy. Therefore, Developer may decide, subject to meeting the specific requirements of Section 5.2, the timing, phasing, and sequencing of the Project as Developer from time to time deems appropriate in the exercise of Developer's business judgment.

5.2 Timing Constraints to Development Plan. Developer shall prepare a "Phasing Plan" and shall provide it to the City prior to the completion of the remediation of the Property setting forth Developer's then current plan for the development of the Project. The Phasing Plan shall include the phasing of the Development of the Project Public Improvements and shall be consistent with the timing requirements for completion of the Project Public Improvements in the EIR, the Specific Plan, and this Agreement. Although Developer may modify the timing, phasing and sequencing of the Project and modify the Phasing Plan accordingly as Developer from time to time deems appropriate in the exercise of Developer's business judgment (and shall inform City of proposed changes including, in particular, to the Project Public Improvements), the Project will be undertaken consistent with the following timing constraints, each subject to extension for the period of time of any actual delay resulting from the occurrence of any of the events set forth in Section 17.2:

(a) Developer will submit Applications for subdivision maps necessary to initiate Development of at least a portion of the Project within one (1) year of the Operative Date; provided that Developer's submission of Applications therefor, or City's approval of same, shall not be deemed to preclude Developer from subsequently submitting Applications for further or additional subdivision maps for the Development of any additional or subsequent portion(s) or Phase(s) of the Project, and all such Applications for further or additional subdivision maps shall be subject to the provisions of Section 4.3.

(b) Developer will commence actual physical remediation work, beginning with deep dynamic compaction, on the Central Parcel within two (2) years of the Operative Date. On-site testing and evaluation work is not deemed commencement of remediation herein. Developer shall give City written notice of actual commencement of remediation and within thirty (30) days thereafter City shall inform Developer as to whether it concurs as to the establishment of the date of commencement.

(c) Developer will complete remediation work on the Central Parcel within three (3) years of Developer's commencement of remediation work as described in clause (b) above. For purposes hereof, Developer conclusively shall be deemed to have completed remediation work upon Developer's receipt of all necessary approvals and clearances from DTSC permitting construction of the Project's vertical improvements to commence.

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(d) Developer will commence construction of the vertical improvements for at least a portion of the commercial or residential components of the Project within six (6) months after Developer completes remediation work on the Central Parcel as described in clause (c) above; provided that Developer's commencement of construction thereof within that time period shall not be deemed to preclude Developer from subsequently commencing construction of further or additional commercial or residential components of the Project thereafter in accordance with the Development Plan and this Agreement.

(e) Developer will complete construction of the Project within ten (10) years after Developer completes remediation work on the Central Parcel as described in clause (c) above; provided that Developer's completion of construction of the Project shall not be deemed to preclude Developer from subsequently reconstructing any structures or buildings in accordance with the Development Approvals during the Term of this Agreement.

(f) The timing constraints for construction of the Project Public Improvements shall be as provided in Section 5.3.

(g) Any construction which is commenced shall be completed in accordance with the terms of any permit which is issued in accordance with the Existing Land Use Regulations and this Agreement.

5.3 Timing of Public Improvements. The Parties understand and agree that the Specific Plan identifies the currently known public infrastructure construction requirements applicable to the Project but does not specify precisely the phasing of the public infrastructure. The Parties recognize that as Future Development Approvals are obtained there may be modifications or additional public infrastructure required in accordance with and as described in Section 4.7. City desires that required public infrastructure generally be constructed in the early phases of the development cycle subject to the terms of this Section 5.3. In consideration of the foregoing, notwithstanding any provision herein to the contrary, with respect to the timing of construction of the public infrastructure, City shall retain the right to condition any Future Development Approvals upon Developer's dedicating necessary land for public improvements, paying the Developer Fees and Processing Fees specified in Section 6, and/or constructing the required public infrastructure at such time as City shall determine, so long as the timing of the dedication, payment or construction is reasonably phased to be completed commensurate with the logical progression of the Project development as well as the reasonable usage needs of the public existing from time to time.

5.4 Construction Standards for Public Improvements. When Developer is required by this Agreement and/or the Development Plan to construct any public works facilities which will be dedicated to City or any other public agency upon completion and if required by applicable laws to do so, Developer shall perform such work subject to the same construction standards as would be applicable to City or such other public agency should it have undertaken such construction work. City shall not accept dedication of streets located on remediated landfill property.

5.5 Affordable Housing. Developer has agreed to reserve ten percent (10%) or less, at the City's sole discretion, of the for sale residential units, which are ultimately built, up to a maximum of seventy-five (75) units for purchase by moderate income qualified purchasers, and fifteen percent (15%) or less, at the City's sole discretion, of the rental residential units for low and very low income qualified tenants, each pursuant and subject to agreement of Developer and the Agency upon the terms of an affordable housing agreement to be negotiated between Developer and the Agency. The location within the Project of such reserved for sale and rental residential units shall exclude the Del Amo Parcel, unless otherwise agreed to by the Parties each acting in their sole discretion.

6. FEES, TAXES AND ASSESSMENTS.

Notwithstanding anything herein to the contrary, during the first two (2) years of the Term of this Agreement, the Project and Developer shall not be subject to any Future Developer Fees. In addition and notwithstanding anything herein to the contrary, during the entire Term of this Agreement, the Project and Developer shall not be subject to any Future Developer Fees consisting of traffic mitigation fees or inclusionary housing fees. After the second (2nd) anniversary of the Approval Date, any Future Developer Fees (other than traffic mitigation fees or inclusionary housing fees) may be imposed only if such Future Developer Fees are being imposed on a City-wide basis and are not being directed exclusively or even primarily against the Project and the amount of such Future Developer Fees applicable to the Project do not exceed a cumulative total of five hundred thousand dollars (\$500,000) which limit shall increase annually from the Approval Date based on the CPI Index.

In addition, notwithstanding anything herein to the contrary, except as expressly provided in the following sentence, during the entire Term of this Agreement, the Project and Developer shall not be subject to any increase in the amount of the Existing Developer Fees. At all times during the Term of this Agreement, the Project shall be subject to increases in the amount of Existing Developer Fees if, but only if, those increases meet all of the following requirements: (i) any such increase shall be a City-wide increase of uniform application and such increase shall comply with the requirements of California Government Code Section 66000, et seq., and any other applicable law, and (ii) the cumulative percentage increase in the amount of the affected Existing Developer Fees occurring since the Approval Date does not exceed the amount of the then cumulative percentage increase in the CPI Index from the Approval Date.

Except as expressly provided above, Developer shall not be subject to payment of any Developer Fees with respect to the Project. City shall not, without the prior written consent of Developer, impose any additional Developer Fees, Processing Fees, taxes or assessments on all or any portion of the Project, whether as a condition to a Future Development Approval or otherwise, except such Developer Fees, Processing Fees, taxes and assessments as are described in or permitted by this Agreement and/or the Development Plan.

With respect to Processing Fees, the amount thereof shall be that amount in effect at the time said Processing Fee is due, provided that the Processing Fee is not imposed in a manner which discriminates against Developer or the Project and does not exceed the estimated reasonable cost of providing the service.

This Agreement shall not prohibit the application of fees, taxes or assessments as follows:

(a) Developer shall be obligated to pay any applicable fees or taxes imposed on a City-wide basis which are not related to construction or development activities such as business license fees or taxes and utility taxes.

(b) Developer shall be obligated to pay any new fees (other than Developer Fees), taxes or assessments which are imposed in accordance with applicable law on a City-wide basis or area-wide basis such as a utility tax, landscape or lighting assessment, or a community services assessment so long as the tax, fee or assessment was not directed exclusively or even primarily against owners, lessees, businesses, residents or occupants of the Project.

(c) Developer shall be obligated to pay any fees as imposed pursuant to any assessment district established within the Project otherwise proposed or consented to by Developer.

(d) Developer shall be obligated to pay any fees which were imposed as Conditions of Approval in the Specific Plan, the EIR Mitigation Measures or any other condition or mitigation measure, required as part of the approval for Existing Development Approvals consistent with this Agreement.

(e) Subject to all applicable legal requirements, City may form a Community Facilities District under authority of Governmental Section 53311 et. seq. or other appropriate authority.

Nothing in this Agreement shall prevent Developer from legally contesting, in any appropriate forum, the imposition or the amount of any Processing Fees or Developer Fees or other Exaction, fee or imposition, or any increase therein. City shall not withhold or delay issuance of any Development Approvals based upon any pending protest or appeal with respect thereto.

7. PROCESSING OF REQUESTS AND APPLICATIONS: OTHER GOVERNMENT PERMITS.

7.1 Processing. In reviewing Future Development Approvals which are discretionary, City may impose only those Conditions of Approval, Exactions, and restrictions which are consistent with the Development Plan and this Agreement. Upon satisfactory completion by Developer of all required preliminary actions, meetings, submittal of required information and payment of appropriate Processing Fees, if any, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project in accordance with the Development Approvals. In this regard, Developer, in a timely manner, will provide City with all documents, Applications, plans and other information necessary for City to carry out its obligations hereunder and will cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the Parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Development Approvals. City agrees to timely consider and expeditiously act upon any matter which is reasonably required, necessary or desirable to accomplish the intent, purpose and understanding of the Parties in entering into this Agreement, including, without limitation,

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processing of any ministerial permit or approval or any request for a discretionary action or approval. All Future Development Approvals shall be subject to the terms and conditions of this Agreement. Notwithstanding the foregoing, nothing contained herein shall be construed to require City to process Developer's Applications ahead of other projects in process in the City and City's obligations hereunder shall be subject to the City's workload and staffing at any given time. If Developer elects, in its sole discretion, to request City to incur overtime or additional consulting services to receive expedited processing by City, City shall reasonably cooperate with Developer to provide such expedited processing and Developer shall pay all such overtime costs, charges or fees incurred by City for such expedited processing.

7.2 Tentative Subdivision Maps. City shall extend through the Term hereof (pursuant to Government Code Section 66452.6) all Tentative Subdivision Maps applied for by Developer during the Term of this Agreement and approved by City in the future.

7.3 Phased Final Maps. Developer may file as many phased final maps for the Project as it deems appropriate and consistent with this Agreement.

7.4 Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project in accordance with the phasing requirements set forth herein. City shall cooperate with Developer in its efforts to obtain such permits and approvals.

7.5 Public Agency Coordination. City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

7.6 Processing During Third Party Litigation. The filing of any Claims or Litigation or other third party lawsuit(s) against City or Developer relating to this Agreement, the Development Approvals, any Future Development Approvals or other development issues or approvals affecting the Property shall not delay or stop the development, processing or construction of the Project, or approval or issuance of any Future Development Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

8. AMENDMENT OF DEVELOPMENT AGREEMENT.

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

8.2 Procedure. Except as set forth in Section 8.4 below or Section 11.3, 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.

8.3 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.



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8.4 Minor Modifications.

(a) Implementation of the Project may require minor modifications of the details of the Development Plan and performance of the Parties under this Agreement. 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 of the Development Plan shall not require modification of this Agreement, although they shall require the written consent of both Parties.

(b) A modification will be deemed non-substantive and/or procedural if it does not result in a material change in fees, residential density, number of hotel rooms, intensity of use, permitted uses, the 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. In the case of ambiguity, the amendment process shall be utilized.

(c) The determination as to whether a matter is non-substantive and procedural shall be made by the City Manager based on the advice of the City Attorney. The determination of the City Manager shall be final. A written record, containing the written consent of both Parties hereto, shall be made of all non-substantive and/or procedural changes.

(d) Notwithstanding the foregoing, City will process any change to this Agreement consistent with applicable State law.

8.5 Effect in Specific Plan. The Specific Plan contains provisions concerning minor modifications subject to administrative review, major modifications subject to Planning Commission review, and site plan and design review. Nothing in this Article 8 shall be deemed to supersede, override or replace such procedures.

8.6 Effect of Amendment to Development Agreement. The Parties agree that, 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.

9. RESERVATIONS OF AUTHORITY.

9.1 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by City hereafter shall apply to and govern the Development of the Property ("Reservation of Authority"):

(a) Future Regulations. Except as otherwise specifically provided in this Agreement, all Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, or (ii) if in conflict with the Existing Land Use Regulations, the application of which to the Development of the Property has been consented to in writing by Developer.

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(b) State and Federal Laws and Regulations. Where state or federal laws or regulations enacted after the Approval Date prevent or preclude compliance with one or more provisions of this Agreement, those provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

(c) Public Health and Safety/Uniform Codes.

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

(ii) Adoption Regarding Public Health and Safety/Uniform Codes. This Agreement shall not prevent City from adopting future laws and ordinances of general applicability ("Regulations") concerning the use of Property required for public health and safety which (A) are applicable throughout the City, (B) directly result from findings by City that failure to adopt such Regulations would result in a condition injurious or detrimental to the public health and safety, and (C) that such Regulations are the only reasonable means to correct or avoid such injurious or detrimental condition. This provision is not intended to and does not provide a basis for the imposition of additional Exactions or a moratorium or other like restriction on the timing of development which would impact the Development of the Project.

(iii) Adoption Automatic Regarding Regional Programs. This Agreement shall not prevent City from adopting Future Land Use Regulations or amending Existing Land Use Regulations which are regional codes and are based on recommendations of a county or regional organization and which become applicable throughout the region.

9.2 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of City possess authority to regulate aspects of the Development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies.

10. ANNUAL REVIEW.

10.1 Annual Monitoring Review.

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(a) City and Developer shall review the performance of this Agreement, and the Development of the Project, on or about each anniversary of the Approval Date, provided that if development does not proceed in accordance with this Agreement, an earlier monitoring review may be conducted. As part of such annual monitoring review, within thirty (30) days after each anniversary of the Approval Date of this Agreement, Developer shall deliver to City the deposit provided in this section and shall present all information reasonably requested by City regarding Developer's performance under this Agreement and as required by the Existing Land Use Regulations.

(b) The cost of the annual monitoring review shall be borne by Developer, and Developer shall submit a deposit in an amount determined by the Planning Director to cover such review; any excess deposit above the actual cost of the review shall be refunded to Developer and, if the deposit is insufficient to pay the actual cost of the review, then Developer shall pay the difference to City within 30 days of Notice by City to Developer of the insufficiency.

(c) As part of the annual review, the City Council shall conduct a review hearing at which the Developer must demonstrate good faith compliance with the terms of this Agreement. The Developer shall be allowed to present oral and written testimony at the hearing. The burden of proof is upon Developer with respect to such showing. The hearing shall be administrative with no public testimony, unless the City Council otherwise determines. The City Council may refer the review hearing to the Planning Commission, in which case the Planning Commission will be subject to the provisions hereof to the same extent as the City Council. Any determination of non-compliance by the Planning Commission shall be automatically referred to the City Council.

(d) If City determines that Developer has complied in good faith with the terms of this Agreement, the review shall be concluded. If City Council, by a majority of its membership, finds and determines on the basis of substantial evidence that Developer has not complied in good faith with the terms of this Agreement, City may declare a default by Developer in accordance with Section 11.1, subject to the required notice and opportunity to cure provided in Section 11.2.

10.2 Certificate of Compliance. If at the conclusion of a periodic review City finds that Developer has complied in good faith with the terms of this Agreement, City shall, upon request by Developer, issue an Estoppel Certificate to Developer in the form shown on Exhibit D attached hereto.

10.3 Failure to Conduct Annual Review. The failure of City to conduct the Annual Review shall not constitute a Default by Developer.

11. DEFAULT, REMEDIES AND TERMINATION.

11.1 Rights of Non-Defaulting Party after Default. It is expressly agreed that this Project is extremely complex, including extensive remediation of a former landfill site, mixed use development, extensive transportation improvements, including the interstate highway

system, and is the most expensive development project in the City's history. Furthermore, the Parties agree that once Development of the Property and the Project is commenced, it would be impractical to return the Parties to their respective positions prior to the commencement of Development. The Parties agree that legal damages would be extremely difficult to determine, and would not give the Parties the benefit of their bargain. Accordingly, the Parties agree that, subject to the provisions of Section 11.4, following the occurrence of a Default, the Party not in Default (as defined in Section 11.2 below) (the "Non-Defaulting Party") shall have only the equitable remedy of specific performance or alternatively the ability to terminate this Agreement for a Default by the other Party (the "Defaulting Party"), subject to the procedure of notice and hearing herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Non-Defaulting Party shall comply with the notice and cure provisions of this Section 11. A claim of Default on the part of City would include, without limitation, a failure of City to timely accept, process or render a decision on necessary development permits, entitlements or other land or building approvals for use of the Property as provided in this Agreement. Nothing in this Section shall limit a Party's right to recover attorneys' fees pursuant to Section 17.5.

11.2 Notice and Opportunity to Cure. The 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 Defaulting Party to perform any material duty or obligation of said 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 Defaulting Party shall be deemed in "Default" under this Agreement if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) days after the date of such notice ("Cure Period"). However, if a breach or failure cannot be cured within such Cure Period, and if, and as long as, the Defaulting Party does each of the following:

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

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

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

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

(e) Diligently prosecutes such cure to completion,

then the Defaulting Party shall not be deemed in Default under this Agreement.

11.3 Modification or Termination.



(a) If, (i) upon a finding pursuant to subsection (d) of Section 10.1 and the failure of Developer to cure such noncompliance after notice and within the Cure Period in accordance with Section 11.2, the City Council determines that modification of the Agreement is appropriate or that the Agreement should be terminated, or (ii) in the case of a Default which is not timely cured after notice and within the Cure Period, in accordance with Section 11.2, City determines that this Agreement shall be terminated, then City shall give notice to Developer of its intention to modify or terminate this Agreement. Such notice shall provide: (i) the time and place of the public hearing to consider such action; (ii) a statement as to whether the City proposes to terminate or modify the Agreement; (iii) such other information as the City considers appropriate to inform the other party of the nature of the proceeding.

(b) A public hearing for termination or for modification shall be conducted except that any amendment or modification which does not relate to the duration of the Agreement, permitted uses of the property, density or intensity of use, height or size or proposed buildings, provisions for reservation or dedication of land, or to any conditions, terms, restrictions or requirements relating to subsequent discretionary actions relating to design, improvement, construction standards and specifications, improvement and construction standards or any other condition or covenant relating to the use of the property shall not require a noticed public hearing before the City Council.

(c) The City Council may refer the matter to the Planning Commission for further proceedings or for a report and recommendation. Upon receipt of any such report and recommendation and the completion of the public hearing, if any, the Council shall take final action on the modification or termination. Developer must demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof is upon the Developer. The hearing shall be administrative with no public testimony, unless the Council otherwise determines. Developer shall have the opportunity to present written or oral testimony. As part of that final determination, the Council may impose conditions which it considers necessary and appropriate to protect public health, safety and welfare and the interests of the City. The decision of the City Council must be by a majority of its membership, and shall be final, except for judicial review thereof.

(d) Notwithstanding anything in this Agreement to the contrary, there shall be no modification of this Agreement without Developer's written consent thereto. If the City Council determines that modification of this Agreement is appropriate pursuant to this Section 11.3, City shall inform Developer of such proposed modification and, unless Developer consents in writing to such modification, City shall have the right to proceed with termination of this Agreement pursuant to the provisions of this Section 11.

11.4 Completion of Public Improvements After Termination. Notwithstanding the provisions of Section 11.1, City shall not have the right to specifically enforce against Developer any provisions of this Agreement, nor in any way to compel Developer to either start or complete the Project, nor to seek any monetary damages from Developer for Developer's failure to start or complete the Project; provided, that, City shall have the right (i) to compel Developer by an action for specific performance to complete any Project Public Improvements which have been

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commenced and are partially completed as of the date of termination, including, without limitation, bringing an action against any bonds posted to secure the construction of those Project Public Improvements, and (ii) to require Developer to dedicate any property and complete any Project Public Improvements which are required by the Development Approvals to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement.

11.5 Waiver of Breach. By recordation of a final map on all or any portion of the Property, Developer shall be deemed to have waived any claim that any Condition of Approval of the map is improper or that the map as approved constitutes a breach of the provisions of this Agreement.

11.6 Rights and Duties Following Termination. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except (i) with respect to any obligations to have been performed prior to said termination or with respect to any Default in the performance of the provisions of this Agreement which has occurred prior to said termination, (ii) with respect to the indemnity obligations set forth herein, and (iii) with respect to any right or duty arising from entitlements or approvals, including the Development Approvals, on the Property approved prior to the effective date of the termination.

12. TRANSFERS.

12.1 Right to Transfer.

(a) General. Except as specifically provided herein, neither Party shall Transfer (as hereinafter defined) its interests, rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, City shall have the right to sell, assign or transfer its interest in any real property dedicated or transferred to City pursuant to the terms of this Agreement to another public agency.

(b) Definition of Transfer. "Transfer" means any hypothecation, sale, conveyance, lease, assignment or other transfer of the Developer's rights under this Agreement or of the Property together with any rights or obligations under this Agreement. Transfer shall include the transfer to any Person or group of Persons acting in concert of more than seventy percent (70%) of the present equity ownership and/or more than fifty percent (50%) of the voting Control (jointly and severally referred to herein as the "Trigger Percentages") of Developer or any general partner of Developer in the aggregate, taking all transfers into account on a cumulative basis, except Transfers of such ownership or Control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family, or transfers between or among Affiliates. A Transfer of interests (on a cumulative basis) in the equity ownership and/or voting Control of Developer in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event Developer or any general partner comprising 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 of beneficial interests of such trust; in the event that Developer or any general partner comprising Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than the Trigger Percentages in the limited or general partnership interest; in the event that Developer or any general partner is a joint venture, such transfer shall refer to the Transfer of more than the Trigger Percentages of such joint venture, taking all transfers into account on a cumulative basis.

(c) City Standard for Approval of Transfer. Developer shall not Transfer this Agreement or any of Developer's rights hereunder, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of the City Council, which approval shall not be unreasonably withheld, and if so purported to be transferred without such consent, the same shall be null and void. In considering whether it will grant approval to any Transfer by Developer, which Transfer requires City approval, the City shall consider factors such as: (i) the financial strength and capability of the proposed Transferee to perform Developer's obligations hereunder; and (ii) the proposed Transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iii) the status of Developer's performance under the Agreement.

(d) Assumption Agreement. No attempted Transfer of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form reasonably approved by City assuming such obligations. No consent or approval by City of any Transfer requiring City's approval shall constitute a further waiver of the provision of this Section 12.1(a) and furthermore, City's consent to a Transfer shall not be deemed to release Developer of liability for performance under this Agreement unless such release is specific and in a writing executed by City (provided that City shall not unreasonably refuse to consent to release Developer of liability for performance under this Agreement to the extent such liability is assumed by the Transferee). Upon the written consent of City to the complete Transfer of this Agreement and the express written assumption of the assigned obligations of Developer under this Agreement by the assignee, Developer shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Developer is in Default under the terms of this Agreement prior to said Transfer. Following any such Transfer of any of the rights and interests of Developer under this Agreement, in accordance with Section 12.1(a) above, the exercise, use and enjoyment of such rights shall continue to be subject to the terms of this Agreement to the same extent as if the Transferee were Developer; provided, however, that, if released by City, any Default by Developer shall not constitute a Default by the Transferee, and any Default by such Transferee shall not constitute a Default by Developer or any other Transferee.

(e) Exclusions. The foregoing requirement for City approval of a Transfer shall not apply to any of the following:



(i) Any Transfer arising from or pursuant to any Mortgage and any resulting foreclosure (or deed or assignment in lieu of foreclosure) therefrom.

(ii) The granting of easements or dedications to any appropriate governmental or quasi-governmental agency or utility or permits to facilitate the development of the Property.

(iii) A 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 or other entity are assigned directly or by operation of law to a Person or Persons which acquires the Control of the voting capital stock of such corporation or other entity or all or substantially all of the assets of such corporation or other entity.

(iv) A Transfer of less than the Trigger Percentages between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or transfers to a corporation or partnership in which the immediate family members or shareholders of the transferor who owns at least ten percent (10%) of the present equity ownership and/or at least fifty percent (50%) of the voting Control of Developer.

(v) A Transfer between or among Affiliates of Developer.

(vi) A Transfer of common areas to a property owner's association.

(vii) The execution of any leases or subleases within the Project for occupancy purposes.

(viii) The sale of individual residential units within the residential portion of the Project.

(f) No Approval of Terms of Loan by City. Notwithstanding anything to the contrary set forth herein with regards to the approval by City of hypothecation, encumbrances or mortgages, in connection with any Transfer of Developer's interests, rights or obligations under this Agreement to a lender, City shall only have the right to approve the identity of Developer's lender, which approval will not be unreasonably withheld, taking into consideration such lender's financial strength, reputation, and other relevant factors. City shall not



have any right to approve any of the terms or conditions of Developer's financing arrangements with any third party lenders.

12.2 Sale to Residential Builder. Nothing herein shall prevent Developer from selling one or more portions of the Property for residential development subject to any approved final subdivision map to one or more residential builders for construction of residential houses, townhomes, condominiums, or apartments in accordance with the terms of this Agreement provided that such residential builder must enter into an assumption agreement in a form reasonably approved by City assuming the obligations of Developer under this Agreement relating to such residential development, subject to the provisions of Section 12.1 above.

12.3 Declaration of Covenants, Conditions and Restrictions. Prior to the Transfer of any portion of the Project to a third party, Developer shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the applicable subdivision to City for its review and approval ("CC&Rs"). Such CC&Rs shall be substantially similar in form and substance to City's standard form of declaration of covenants, conditions and restrictions imposed by City upon commercial development projects located in the City, and will contain, among other things, protective covenants to protect and preserve the integrity and value in the subdivision, including but not limited to use restrictions, maintenance covenants, EIR Mitigation Measures, restrictions under this Agreement and the Specific Plan which will continue to apply to the subdivision, and a provision giving City the right to enforce said CC&Rs. In addition, DTSC through its implementation program for the RAP may establish recorded covenants burdening the Property with on-going obligations with respect to monitoring and evaluation of remediation operating systems and City may also include provisions in the CC&Rs to mandate compliance with DTSC programs, to the extent permitted by law.

13. INDEMNITY.

13.1 Third-Party Litigation.

(a) Non-liability of City. As set forth above, City has determined that this Agreement is consistent with the General Plan and that the General Plan and Development Approvals meets all of the legal requirements of state law. The Parties acknowledge that:

(i) In the future there may be challenges to the legality, validity and adequacy of the General Plan, the Development Approvals and/or this Agreement; and

(ii) If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 13, City shall have no liability under this Agreement for any failure of City to perform under this Agreement or the inability of Developer to develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that,

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on the Approval Date, or at any time thereafter, the General Plan, the Land Use Regulations, the Development Approvals, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

(b) Revision of Land Use Restrictions. If for any reason the General Plan, Land Use Regulations, Development Approvals, this Agreement or any part thereof is hereafter judicially determined as provided above to be not in compliance with the State or Federal Constitutions, laws or regulations and if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan, Development Approvals and this Agreement shall be amended, as necessary, in order to comply with such judicial decision.

(c) Participation in Litigation; Indemnity. Developer agrees to indemnify City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or Agency for any Claims or Litigation which arise during the Term of this Agreement. City shall promptly provide Developer with notice of the pendency of any such Claims or Litigation and request that Developer defend the same. If City fails promptly to notify Developer of any such Claims or Litigation or fails to cooperate fully in the defense thereof, Developer shall not, thereafter, be responsible to defend, indemnify, or hold harmless City. Developer may utilize the City Attorney's office or use legal counsel of Developer's choosing, but shall reimburse City for any necessary legal cost incurred by City. If Developer fails to do so, City may defend the Claims or Litigation and Developer shall pay the cost thereof, but if City chooses not to defend the Claims or Litigation, it shall have no liability to Developer. Developer's obligation to pay the defense cost shall extend until judgment and thereafter through any appeals. In the event of an appeal, or a settlement offer, the Parties will confer in good faith as to how to proceed and the resolution of any such appeal and the Parties' response to any such settlement offer shall require the consent of both Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing however, City shall have the unilateral right to settle such Claims or Litigation brought against it in its sole and absolute discretion at any time after the elapse of two (2) years from the filing of any Claims or Litigation and Developer shall remain liable hereunder for the Claims and Litigation provided that (i) if the settlement would reduce the density or intensity of the Project by ten percent (10%) or more, and (ii) Developer opposes the settlement, then if City still unilaterally determines to settle such Claims or Litigation, then City shall be responsible for its own litigation expense and shall promptly reimburse Developer for reasonable litigation costs actually paid by Developer (with the burden on Developer to document and prove such costs) but shall bear no other liability to Developer.

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13.2 Hold Harmless: Developer's Construction and Other Activities. Developer hereby agrees to, and shall defend, save and hold City and its elected and appointed boards,

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commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any third party damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's agents, contractors, subcontractors, agents, or employees' performance under this Agreement, whether such performance be by Developer or by any of Developer's agents, contractors or subcontractors or by any one or more Persons directly or indirectly employed by or acting as agent for Developer or any of Developer's agents, contractors or subcontractors. City shall promptly provide Developer with notice of the pendency of any such claim, action or proceeding against City and request that Developer defend the same. If City fails promptly to notify Developer of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, Developer shall not, thereafter, be responsible to defend, indemnify, or hold harmless City. Nothing herein is intended to make Developer liable for the acts or negligent omissions of City's officers, employees, agents, contractors of subcontractors or any liability arising therefrom.

13.3 Condition of Property upon Termination. In the event of any termination of this Agreement, Developer shall leave the Property in a good and acceptable condition. A good and acceptable condition means that (i) all Project Public Improvements described in Section 11.4 shall be completed in accordance with Section 11.4; (ii) all buildings and structures under construction shall be completed in accordance with the existing permits, or be removed within one hundred and eighty (180) days of such termination; (iii) any remediation activities shall be completed in accordance with the requirements and to the extent required by DTSC; and (iv) any grading activities shall be completed to the extent necessary so that, in the opinion of the City Engineer, no dangerous conditions or conditions of nuisance whatsoever shall be left on the Property.

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

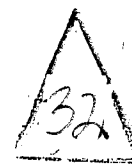
14. EFFECT OF AGREEMENT ON TITLE.

Subject to the provisions of Sections 12 and 16:

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

(b) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

(c) Each covenant to do or refrain from doing some act on the Property hereunder (i) is for the benefit of and is a burden upon every portion of the Property, (ii) runs with such lands, and (iii) is binding upon each Party and



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each successive owner during its ownership of such properties or any portion thereof, and each Person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other Person succeeding to an interest in such lands.

15. PARTIES' OFFICERS AND EMPLOYEES; NON-DISCRIMINATION.

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

15.2 Conflict of Interest, Warranty, and Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute, ordinance or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or not an "interest" pursuant to California Government Code Sections 1091 through 1091.5. Developer warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement other than customary expenses of attorneys, advisors, consultants and other similar third parties assisting Developer in the negotiation and documentation of this Agreement. Developer further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result or consequence of obtaining or being awarded any agreement other than customary expenses of attorneys, advisors, consultants and other similar third parties assisting Developer in the negotiation and documentation of this Agreement. Developer is aware of and understands that any such act(s), omission(s) or other conduct in violation of applicable law resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

15.3 Covenant Against Discrimination. Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Developer shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed religion, sex, marital status, national origin or ancestry.

16. MORTGAGEE PROTECTION.

16.1 Reserved.

16.2 No Encumbrances Except Mortgages to Finance the Project. Notwithstanding the restrictions on Transfer in Section 12, mortgages required or desired by Developer for any reasonable method of financing of the construction of the improvements are permitted but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Property or any separate lot(s) or parcel(s) thereof, for the construction of improvements thereon, in payment of interest and other financing costs, and for any other expenditures necessary and appropriate to develop the Project under this Agreement, or for restructuring or refinancing any of the same. Developer (or any or assignee, transferee, or other entity permitted to acquire title under this Agreement) or its lender shall notify City in advance of any future mortgage entered into thereby. Any lender which has so notified (or caused Developer or any assignee, transferee, or other successor to so notify) City shall not be bound by any amendment, implementation, or modification to this Agreement without such lender giving its prior written consent thereto. Developer shall promptly notify City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to completion of construction, whether by voluntary act of Developer or otherwise.

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16.3 Developer's Breach Not Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render void or invalid the lien of any mortgage made in good faith and for value but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage whose interest is acquired by foreclosure, trustee's sale, deed or assignment in lieu thereof, or otherwise.

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

16.5 Notice of Default to Mortgagee, Deed of Trust or Other Security Interest Holders. Whenever City shall deliver any notice or demand to Developer with respect to any Default or alleged Default by Developer hereunder, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to City therefor, or to the representative of such holder as may be identified in such a written request by such holder. No notice of Default shall be effective as to the holder unless such notice is given to such holder.

16.6 Right to Cure. Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within one hundred fifty (150) days after the receipt of the notice, and one hundred eighty (180) days after Developer's cure rights have expired, whichever is later, to:

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

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

provided that in the case of a Default which cannot with diligence be remedied or cured within such cure periods referenced above in this Section 16.6, such holder shall have additional time as reasonably necessary to remedy or cure such Default; and provided further that if obtaining possession is necessary to commence and diligently pursue said cure to completion, and such holder has been unable to obtain possession notwithstanding such holder's commercially reasonable and diligent efforts to obtain possession, such holder shall have such additional time as reasonably necessary to obtain possession and remedy or cure such Default.

In the event there is more than one such holder, the right to cure or remedy a Default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a Default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to

City under this Agreement by written agreement reasonably satisfactory to City with respect to the Project or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to City that it has the qualifications and financial responsibility reasonably necessary to perform such obligations.

16.7 [Reserved].

16.8 Changes Requested By Lenders. City acknowledges that any prospective lender(s) providing financing for the Project may require or desire certain modifications to the terms of this Agreement (including, without limitation, the terms of this Section 16) and City agrees upon request, from time to time, to meet with Developer and representatives of such lender(s) to negotiate in good faith any such request for modifications of this Agreement. City shall not unreasonably withhold its consent to any such requested modification provided such modification is consistent with the intent and purposes of this Agreement.

17. GENERAL.

17.1 Estoppel Certificates. Either Party (or a holder or prospective holder of a mortgage under Section 16) may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

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

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

(c) There are no existing defaults under this Agreement to the actual knowledge of the Party signing the Estoppel Certificate or, if there are existing defaults, identifying them.

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. An Estoppel Certificate may be relied on by assignees and holders or prospective holders of a mortgage. The Estoppel Certificate shall be substantially in the same form as Exhibit C attached hereto.

17.2 Force Majeure. The time within which Developer or City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, acts of terrorism, insurrection, strikes, lock-outs, other labor disputes, labor or material shortages, riots, civil disturbances, floods, earthquakes, fires, windstorms, hail, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation attributable to any of these, acts or failure to act of the other Party, acts or the failure to act of any public or governmental agency or entity (except that acts or failure to act of the Agency or City shall not excuse performance by City), legal or governmental restrictions on priority, initiative or referendum, moratoria, processing with governmental agencies other than City or Agency, unusually severe weather, third party Claims or Litigation as described in Section 13.1 of this Agreement, or any other similar causes beyond the control or without the

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fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause if written notice by the Party claiming such extension is sent to the other Party within thirty (30) days of obtaining knowledge of the commencement of the cause, or from the time such written notice by the Party claiming such extension is actually sent to the other Party if such written notice is sent more than thirty (30) days after obtaining knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

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

17.4 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the Parties shall comply with the procedures set forth in Section 13.1(b).

17.5 Attorney's Fees. If either Party to this Agreement is required to initiate or defend any action or proceeding against the other Party in connection with this Agreement, 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 attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted.

17.6 Joint and Several Obligations. All obligations and liabilities of Developer hereunder shall be joint and several among the obligees comprising Developer (if more than one).

17.7 Time of Essence. Time is of the essence in:

(a) The performance of the provisions of this Agreement as to which time is an element; and

(b) The resolution of any dispute which may arise concerning the obligations of Developer and City as set forth in this Agreement.

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

17.9 No Third Party Beneficiaries. The only parties to this Agreement are Developer and City. Except with respect to the holder or prospective holder of any mortgage who shall be entitled to rely upon the provisions of Section 16 hereof to the same extent as if such holder were a party to this Agreement, there are no third party beneficiaries of this Agreement and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other Person whatsoever.

17.10 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.

17.11 Relationship of Parties. It is specifically understood and agreed by and between the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that such Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of private property and the owner of such private property.

17.12 [Reserved].

17.13 Notice.

(a) To Developer. Any notice required or permitted to be given by City to Developer under this Agreement shall be in writing and delivered personally to Developer or mailed with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

Carson Marketplace LLC
c/o LNR Property Corporation
4350 Von Karman Avenue, Suite 200
Newport Beach, California 92660
Attention: Mr. Steve Coyne

With a copy to:

Brown, Winfield & Canzoneri, Incorporated
300 South Grand Avenue, Suite 1500
Los Angeles, California 90071-3125
Attention: Anthony Canzoneri, Esq.

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

(b) To City. Any notice required or permitted to be given by Developer to City under this Agreement shall be in writing and delivered personally to the City Clerk or mailed with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

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City of Carson
701 East Carson Street
Carson, California 90745
Attention: City Manager

With a copy to:

ALESHIRE & WYNDER, LLP
18881 Von Karman Avenue, Suite 400
Irvine, California 92612
Attn: David J. Aleshire, City Attorney

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

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

17.14 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. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

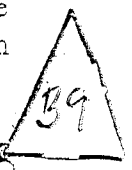
17.15 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

17.16 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.

17.17 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.

17.18 Recording. The City Clerk shall cause a copy of this Agreement to be executed by City and recorded in the Official Records of Riverside County no later than ten (10) days after the Operative Date. The recordation of this Agreement is deemed a ministerial act and the failure of City to record this Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

17.19 Authority to Execute. The Persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party 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, (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which



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said Party is bound, and (v) there is no litigation or legal proceeding which would prevent such Party from entering into this Agreement.

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

CITY OF CARSON

BY: Jim Dear
MAYOR, JIM DEAR

ATTEST:

Signed in Counterpart

[Signature]
CITY CLERK: 879-00

Approved as to form.

[Signature]
David J. Alexshire, Agency Counsel

"DEVELOPER"

CARSON MARKETPLACE LLC, a
Delaware limited liability company

BY: LNR Carson, LLC, a Delaware limited
liability company, its manager

BY: LNR Carson Holdings, Inc., a
California corporation, its
manager

By: [Signature]
David O. Yearn
Vice President

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Orange

SS.

NOTARY PUBLIC

On September 25, 2006 before me, Laura O. Barcia

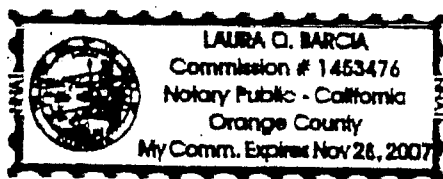
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared David O. Team

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Laura O. Barcia
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Development Agreement between Carson

Document Date: March 21, 2006 Number of Pages: 41

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

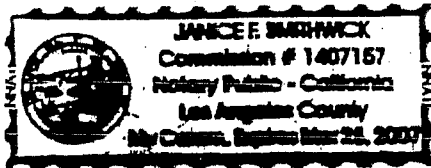
County of LOS ANGELES } SS.

On SEPTEMBER 27, 2006 before me, JANICE F. SMITHWICK, PUBLIC ^{NOTARY}
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared JIM DEAR Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Janice F. Smithwick
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: DEVELOPMENT AGREEMENT

Document Date: MARCH 21, 2006 Number of Pages: 41

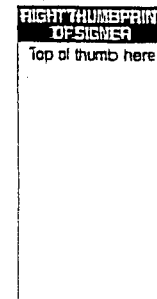
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



10/9/06

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2201898

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

ss.

On September 28, 2006 before me, Joy Marie S. Simarago, Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

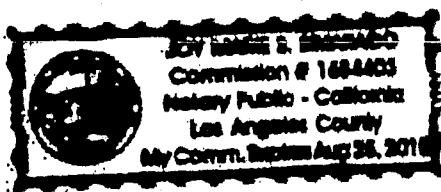
personally appeared

Wanda S. Higaki

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Joy Marie S. Simarago
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: March 21, 2006 Number of Pages: 41

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

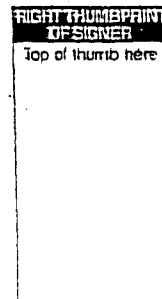


EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Central Parcel

That certain real property situated in the County of Los Angeles, State of California, and described as follows:

Lots 2 through 9 inclusive of Tract No. 42385, in the City of Carson, County of Los Angeles, State of California, as per map recorded in Book 1056 Pages 84 through 88 inclusive of Maps, in the office of the County Recorder of said county.

EXCEPT the oil, gas, petroleum and other hydrocarbon substances which lie below a plane parallel to and 500 feet below the natural surface of said land, without however, any right to enter upon the surface of said land, to explore for, develop or remove said substances, but with full right to explore for, develop and remove the same by means of wells and equipment having surface location outside the outer boundaries of said land, in and under or recoverable from said land, as reserved in the deed from Del Amo Estate Company, a Corporation, recorded January 10, 1964 as Instrument No. 2198, in Book D-2318 Page 313 Official Records.

Del Amo Parcel

That certain real property situated in the County of Los Angeles, State of California, and described as follows:

Lot 1 of Tract No. 42385, in the City of Carson, County of Los Angeles, State of California, as per map recorded in Book 1056 Pages 84 to 88 inclusive of Maps, in the Office of the County Recorder of said County.

EXCEPT, THE

EXCEPT the oil, gas, petroleum and other hydrocarbon substances which lie below a plane parallel to and 500 feet below the natural surface of said land, without however, any right to enter upon the surface of said land, to explore for, develop or remove said substances, but with full right to explore for, develop and remove the same by means of wells and equipment having surface location outside the outer boundaries of said land, in and under or recoverable from said land, as reserved in the deed from Del Amo Estate Company, a Corporation, recorded January 10, 1964 in Book D-2318 Page 313 Official Records, AS Instrument No. 2198.

98. 0/01



EXHIBIT B
SITE MAP OF THE PROPERTY



Legend:

- Development District Boundary
- DD Development District



Source: The Planning Center, 2005.

Figure 3.3a Development Districts

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10/6 '00

EXHIBIT C

ESTOPPEL CERTIFICATE

Date Requested: _____

Date of Certificate: _____

On _____, 2006, the City of Carson approved the Development Agreement between Carson Marketplace LLC, a Delaware limited liability company and the City of Carson (the "Development Agreement").

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

[CHECK WHERE APPLICABLE]

- _____ 1. The Development Agreement remains binding and effective.
- _____ 2. The Development has not been amended.
- _____ 3. The Development Agreement has been amended in the following aspects: _____

- _____ 4. To the best of our knowledge, neither Developer nor any of its successors is in default under the Development Agreement.
- _____ 5. The following defaults exist under the Development Agreement: _____

This Estoppel Certificate may be relied upon by any assignee or transferee or holder of any mortgage, or prospective assignee or transferee or holder of any mortgage (as those terms are defined and used in the Development Agreement), of any interest in the property which is the subject of the Development Agreement.

CITY OF CARSON

BY: _____
CITY MANAGER

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SPL INC.

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary Janice R. Smithwick

Notary Identification Number 11407157

Vender Identification Number NNAH

County Where Bond Is Filed LA

Date Commission Exp Mar. 25, 2007

SPL, Inc. as agent

DATE: 10/3/06

[Signature]
M. Guindi As Agent

State of California)
County of _____)
On _____ before me, _____ personally appeared, _____
personally known to me (or proved to me the basis of satisfactory evidence) to be
the person (s) whose name (s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her their
authorized capacity (ies), and that by his/her/their signature (s) on the instrument
the person (s), or the entity upon behalf of which the person (s) acted, executed
the instrument. WITNESS my hand and official seal. Signature ..

I CERTIFY UNDER PENALTY OF PERJURY THAT THIS MATERIAL IS A TRUE
COPY OF THE ORIGINAL MATERIAL CONTAINED IN THE DOCUMENT:

SPL, Inc. as agent

DATE: _____ / _____ / _____ 06

[Signature]
M. Guindi As Agent

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06 220189i

47

SPL INC.

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary Joy Marie S. Simarago

Notary Identification Number 1684403

Vender Identification Number N/A

County Where Bond Is Filed LA

Date Commission Exp Aug 25, 2010

SPL, Inc. as agent

DATE: 10/3/06

[Signature]

M. Guindi As Agent

State of California)

County of _____)

On _____ before me, _____ personally appeared, _____ personally known to me (or proved to me the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument. WITNESS my hand and official seal. Signature

I CERTIFY UNDER PENALTY OF PERJURY THAT THIS MATERIAL IS A TRUE COPY OF THE ORIGINAL MATERIAL CONTAINED IN THE DOCUMENT:

SPL, Inc. as agent

DATE: _____ / _____ / _____ 06

M. Guindi As Agent

06 2201898

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
10/03/06 AT 08:00am

TITLE(S) : _____



FEE

FEE \$	142H
DAF \$	2
C-20	

46

D.T.T.

CITY OF CARSON

2006 OCT 30 AM 10:57

RECEIVED
CITY CLERK

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown



NO FEE DOCUMENT

Gov't. Code 27383

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

City Clerk
City of Carson
701 East Carson Street
Carson, California 90745-2224

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement ("First Amendment") is entered into as of this 5th day of April, 2011, by and between the CITY OF CARSON, a municipal corporation ("City"), and CARSON MARKETPLACE LLC, a Delaware limited liability company ("Developer"), with reference to the following facts:

RECITALS

A. The City and Developer entered into that certain Development Agreement dated March 21, 2006 ("Development Agreement"). Capitalized terms used in this Amendment, but not otherwise defined herein, shall have the meaning provided for that term in the Development Agreement.

B. The Parties now wish to modify certain provisions of the Development Agreement to reflect updated phasing and timing status of the Project and certain other updated terms as set forth herein.

C. The Development Agreement is being amended pursuant to Sections 8.2 and 8.6 of that agreement. Following delivery of all required notices and conduct of all required hearings before the Planning Commission and the City Council, the Planning Commission and the City Council have found, on the basis of substantial evidence, that the Development Agreement, as modified by this First Amendment, remains consistent with all applicable plans, rules, regulations and official policies of the City including the Enabling Resolution. Specifically, the City Council has found that the Development Agreement, as modified by this First Amendment: (i) is consistent with the General Plan and any applicable specific plan; (ii) is in conformity with public convenience and good land use practices; (iii) will not be detrimental to the health, safety and general welfare; (iv) will not adversely affect the orderly development of property or the preservation of property values; and (v) is consistent with the provisions of Government Code Sections 65864 through 65869.5.

NOW, THEREFORE, based upon the foregoing, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and the Developer agree as follows:



1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.

2. Modification of Definition. The reference to the Specific Plan in Section 1.52 of the Development Agreement shall mean The Boulevards at South Bay Specific Plan, adopted February 8, 2006, as amended April 5, 2010, by City Council Ordinance No. 11-1469.

3. Confirmation of Operative Date. The Parties hereby acknowledge and confirm that the Operative Date under Section 3.2 of the Development Agreement occurred on January 30, 2007.

4. Update of Timing Provisions. The Parties hereby acknowledge and agree that:

(i) the requirements set forth in Sections 5.2(a) and (b) of the Development Agreement have been timely satisfied.

(ii) Subsection 5.2(c) of the Development Agreement is hereby amended and restated in its entirety to read as follows: "Developer will complete initial remediation work on the Central Parcel within five (5) years of Developer's commencement of remediation work as described in clause (b) above. For purposes hereof, Developer conclusively shall be deemed to have completed remediation work upon Developer's receipt of all necessary approvals and clearances from DTSC permitting construction of the Project's vertical improvements to commence upon a portion of the Site.

(iii) Subsection 5.2(d) is hereby amended and restated in its entirety to read as follows: "Developer will commence construction of the vertical improvements for at least a portion of the commercial or residential components of the Project within three (3) years after Developer completes remediation work on the Central Parcel as described in clause (c) above; provided that Developer's commencement of construction thereof within that time period shall not be deemed to preclude Developer from subsequently commencing construction of further or additional commercial or residential components of the Project thereafter in accordance with the Development Plan and this Agreement."

5. Modification of Public Improvement Construction Standards. The last sentence of Section 5.4 is hereby amended and restated to read in its entirety as follows: "Except as otherwise approved by the City, including as authorized by the City Engineer, City shall not accept dedication of streets located on remediated landfill property. Notwithstanding anything in this Development Agreement to the contrary, as provided in and contemplated by the First Amendment to Owner Participation Agreement entered into between the Agency and the Developer dated May 20, 2008 (the "First Amendment"), Lenardo Drive and its related utilities and street improvements and the Stamps Drive utilities, as such contemplated improvements are further described in the First Amendment, (i) will be accepted for dedication by City to the extent City typically holds title to such improvements, (ii) for any remaining improvements City will support and cooperate in the acceptance of the dedication or transfer of any applicable utilities to the governmental or quasi-governmental entity with jurisdiction over those improvements, and (iii) City acknowledges that all such improvements, whether dedicated or transferred to the City or another public or quasi-public entity, shall constitute "Participant



Public Improvements” for purposes of the Agency financial assistance to the Project as expressly now provided in the First Amendment.”

6. Confirmation of Affordable Housing Requirement. City has determined that the affordable housing assistance funds to be provided to the Project shall be applied to the multifamily rental elements of the Project. Accordingly, Section 5.5 of the Development Agreement is hereby amended and restated in its entirety to read as follows: “Developer has agreed to reserve fifteen percent (15%) or less, at the City’s sole discretion, of the rental residential units within the Project for low and very low income qualified tenants pursuant and subject to an agreement of Developer and the Agency upon the terms of an affordable housing agreement to be negotiated between the Developer and the Agency as more fully described in the Owner Participation Agreement. The location within the Project of such reserved affordable rental units shall exclude the Del Amo Parcel, unless otherwise agreed to by the Parties each acting in their sole discretion.”

7. The first sentence of Section 6 of the Agreement is hereby amended deleting the reference to “two (2) years” from that sentence and substituting in its place a reference to “ten (10) years”. The third sentence of said Section 6 is hereby amended by deleting the reference to “second (2nd) anniversary” from that sentence and substituting in its place a reference to “tenth (10th) anniversary”.

8. Force and Effect. All other provisions of the Development Agreement not modified or amended by this First Amendment shall remain in full force and effect.

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

[SIGNATURES FOLLOW ON NEXT PAGE]



IN WITNESS WHEREOF, the undersigned parties have executed this First Amendment to Development Agreement as of the date first above written.

"CITY"

CITY OF CARSON,
a municipal corporation

By: _____
Mayor, Jim Dear

ATTEST:

CITY CLERK

Approved as to form:

_____, Agency Counsel

"DEVELOPER"

CARSON MARKETPLACE LLC,
a Delaware limited liability company

By: LNR Carson, LLC,
a Delaware limited liability company,
Its Manager

By: LNR Carson Holdings, Inc.,
a California corporation

By: _____
Its: _____
Name: _____



STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On _____, 2010, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

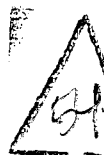
STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On _____, 2010, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (Seal)



ANNUAL REVIEW REPORT

I. BACKGROUND

On March 21, 2006, the City of Carson (the "City") and Carson Marketplace LLC, a Delaware limited liability company (the "Developer"), entered into a Development Agreement (the "Original Development Agreement") concerning The Boulevards at South Bay project (the "Project"). The Original Development Agreement contemplated that the Developer would use its good faith efforts to complete the development of a multi-million dollar, mixed use, commercial and residential project consisting of up to approximately 2,000,000 square feet of commercial space and 1,550 residential units, as more fully described in the Specific Plan for the Project. The Original Development Agreement was amended by that certain First Amendment to Development Agreement dated April 5, 2011 (the "First Amendment"). All references below to the Development Agreement shall mean the Original Development Agreement as modified by that First Amendment. The Development Agreement was entered into pursuant to the provisions of Section 65864 through 65869.5 of the California Government Code. Pursuant to Article 10 of the Development Agreement and California Government Code Section 65865.1, during the term of the Development Agreement the City and Developer are to review the performance of the Development Agreement, and the development of the Project, on or about each anniversary of the Approval Date of the Development Agreement. The Approval Date of the Development Agreement was March 21, 2006. Previous annual project status reports have been reviewed by the City and Developer's good faith compliance with the Development Agreement has been confirmed. This project status report has been prepared by the Developer and submitted to the City in furtherance of the annual review for 2013. The purpose of the annual review is for the Developer to demonstrate and for the City to determine that Developer remains in good faith compliance with the terms of the Development Agreement.

II. OPERATIVE DATE AND PROPERTY ACQUISITION

The initial progress requirement established by the Development Agreement is set forth in Section 3.2 of the Development Agreement, which provides that the conditions necessary to trigger the Operative Date under the Development Agreement are to be satisfied within eighteen (18) months after the Approval Date. Since the Approval Date occurred on March 21, 2006, the outside date for satisfaction of the Operative Date conditions was September 21, 2007. The 2007 Annual Review confirmed that all of these conditions were timely satisfied. The final condition which was satisfied was completion of the Property assembly. As set forth in Section 1.50 of the Development Agreement, the Property means and refers to two Parcels of real estate referred to as the "Central Parcel" and the "Del Amo Parcel". The Central Parcel comprises approximately 157 acres, which is approximately ninety-three percent (93%) of the Property, and the Del Amo Parcel comprises the remaining 11 acres, or approximately seven percent (7%) of the Property. The Developer completed its acquisition of the Central Parcel on September 29, 2006, and completed its acquisition of the Del Amo Parcel in January 2007. Accordingly, pursuant to Section 3 of the First Amendment, the Developer and the City confirmed that the Operative Date occurred on January 27, 2007, which was prior to the outside date of September 21, 2007.

III. STATUS OF ENTITLEMENT, MAP PROCESSING AND INFRASTRUCTURE

Under Section 5.2 of the Development Agreement the Developer was also required to submit an application for the subdivision map(s) necessary to initiate development of at least a portion of the Project within one (1) year after the Operative Date (Section 5.2(a)). The Developer has previously timely filed applications with the City with respect to processing of two separate subdivision maps, including the vertical environmental subdivision (PM 70372) and the horizontal subdivision (TTM 68889) of the Central Parcel. Both maps are necessary to initiate development of at least a portion of the Project and are, therefore, in compliance with this requirement. The Developer will be proceeding with recordation of the vertical environmental subdivision map (PM 70372) in the near future, and contemplates City approval of the horizontal subdivision tentative map (TTM 68889) shortly thereafter. Two sets of foundation-only plans for the vertical portion of the project have also been submitted to the City and have been reviewed and approved by the City. In addition, plans have been reviewed and approved for the installation of backbone sewer and storm drain lines throughout the site. These backbone lines have been completed, along with portions of the domestic water, recycled water and fire water lines that will service the operations center.

IV. ENVIRONMENTAL DUE DILIGENCE AND REMEDIATION

In addition to the site subdivision and infrastructure work described above, Developer has continued with the remediation work at the Property since the last update. The Developer commenced the remediation work, beginning with Deep Dynamic Compaction, prior to the outside date established by Section 5.2(b) of the Development Agreement (that outside date was two (2) years from the Operative Date, or January 30, 2009). The Developer has completed its Deep Dynamic Compaction work, the removal of existing roads and utilities, and the installation of the groundwater treatment system along the perimeter of the site. Primary header lines for the landfill gas extraction system have been installed throughout the site, and lateral lines have been installed below portions of the future parking areas and building pads. In portions of the future parking fields, the impermeable membrane has been installed above the gas extraction system. Vertical construction of the Project has commenced by virtue of the construction of the Operations Center for the remedial systems located upon the Property, and the Developer remains in compliance with all applicable progress requirements under the Development Agreement.

V. SUMMARY

As set forth above, the Developer is in compliance with all timing requirements set forth in the Development Agreement. In addition, Developer is making substantial progress on numerous aspects of the Project in accordance with the time frames contemplated by the Development Agreement, including the subdivision of the Property and the design and construction of the infrastructure necessary to prepare the Property for further development. As reflected above, the Developer is in good faith compliance with the terms of the Development Agreement as required by Government Code Section 65865.1 and Article 10 of the Development Agreement.



**MINUTES
CARSON CITY COUNCIL
REGULAR MEETING**

MARCH 21, 2006

ITEM NO. (30) WAIVE FURTHER READING AND ADOPT ORDINANCE NO. 06-1343, AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, APPROVING CARSON MARKET PLACE DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF UP TO 1550 RESIDENTIAL UNITS AND 1,995,125 SQUARE FEET OF COMMERCIAL USES ON A 168 ACRE SITE LOCATED SOUTHWEST OF THE 1-405 SAN DIEGO FREEWAY NORTHWEST OF AVALON BOULEVARD INTERCHANGE, EAST OF MAIN STREET AND NORTH AND SOUTH OF DEL AMO BOULEVARD (ECONOMIC DEVELOPMENT)

City Clerk Kawagoe reported that written communications were received as follows:

Letter, dated March 21, 2006, addressed to Mayor James Dear and City Council Members, from Gilbert D. Smith, Carson Resident, wherein he requested clarification of the meaning of Resolution No. 06-018, Adopting the General Plan Amendment No. 13-05, when it states in the Air Quality Section on Page 5-c: "With respect to on-site residential uses, an air handling system is required as a mitigation measure which would substantially reduce carcinogenic exposure inside the residential units, but impacts would remain significant and unavoidable. Based on the analysis in the EIR, the project would result in locating sensitive receptors within an area of cancer risk in excess of the SCAQMD significance threshold of 10 in one million and, therefore, the project would result in a significant impact."

Mayor Dear referred Mr. Smith inquiry to City Manager Groomes.

Speaker Card, dated March 21, 2006, from Robert Lesley, P. O. Box 11634, Carson, California 90746: "This project violate (sic) Healthy (sic) & Safety Code Sect. 901.6 (Prevent to Build School on Toxic Site). The "Deed Restriction" prevent (sic) schools, homes or hospitals on toxic site."

ACTION: WITH FURTHER READING WAIVED, it was moved to PASS, APPROVE, and ADOPT Ordinance No. 06-1343, as read by title only, on motion of Dear, seconded by Ruiz-Raber, and unanimously carried by the following vote:

Ayes:	Mayor Dear, Mayor Pro Tem Ruiz-Raber, Council Member Santarina, Council Member Williams, and Council Member Gipson
Noes:	None
Abstain:	None
Absent:	None

EXHIBIT NO 14

57



**MINUTES
CARSON CITY COUNCIL
REGULAR MEETING**

MAY 1, 2007

**ITEM NO. (14) ANNUAL PERFORMANCE REVIEW OF CARSON MARKETPLACE
DEVELOPMENT AGREEMENT (DEVELOPMENT SERVICES)**

RECOMMENDATION for the City Council:

1. RECEIVE and FILE the Annual Report.

ACTION: It was moved to Approve New Business Consent Calendar Item Nos. 7, 8, 10, 13, 14, 15, and 15A on motion of Gipson and seconded by Williams and unanimously carried by the following vote:

Ayes: Mayor Dear, Council Member Williams, Council Member Gipson, and Council Member Davis-Holmes
Noes: None
Abstain: None
Absent: Mayor Pro Tem Santarina



**MINUTES
CARSON CITY COUNCIL
REGULAR MEETING**

APRIL 15, 2008

**ITEM NO. (7) ANNUAL REVIEW OF AVALON AT SOUTH BAY (CARSON
MARKETPLACE) DEVELOPMENT AGREEMENT (DEVELOPMENT
SERVICES)**

This item was heard after Item No. 6.

Planning Manager Repp-Loadsman summarized the staff report and recommendation. She reported that if anyone had questions regarding construction, contracting, noise, etc., to use the hotline telephone number that has been posted on the City's website and on signs around the job site or City Hall.

A discussion ensued regarding the project as an opportunity to hire qualified and local residents, including women, for career-oriented jobs.

RECOMMENDATION for the City Council:

1. RECEIVE and FILE.

ACTION: There being no objection, Mayor Dear ordered that the report be received and filed.

EXHIBIT NO 16





**MINUTES
CARSON CITY COUNCIL
REGULAR MEETING**

APRIL 7, 2009

**ITEM NO. (17) ANNUAL REVIEW OF THE BOULEVARDS AT SOUTHBAY (CARSON
MARKETPLACE) DEVELOPMENT AGREEMENT (ECONOMIC
DEVELOPMENT)**

RECOMMENDATION for the City Council:

1. RECEIVE and FILE.

ACTION: It was moved to Approve New Business Consent Calendar Item Nos. 4, 6, 12, 14, 16, 17, and 18 on motion of Dear, seconded by Ruiz-Raber and unanimously carried by the following roll vote:

Ayes: Mayor Dear, Mayor Pro Tem Davis-Holmes, Council Member Santarina, Council Member Gipson, and Council Member Ruiz-Raber
Noes: None
Abstain: None
Absent: None

EXHIBIT NO 07

60



**MINUTES
CARSON CITY COUNCIL
REGULAR MEETING**

MAY 4, 2010

**ITEM NO. (10) CONSIDER THE ANNUAL REVIEW OF THE BOULEVARDS AT SOUTH BAY
(CARSON MARKETPLACE) DEVELOPMENT AGREEMENT (ECONOMIC
DEVELOPMENT)**

RECOMMENDATION for the City Council:

1. RECEIVE and FILE.

ACTION:

Approved balance, with exception of CC joint item No. 5 (Dear).
Nos. 6-11. JD/RR

Vote: 3 (JD, ES, and RR)/0/0/0 (Electronic)
MG and DH voted yes (Voice)

EXHIBIT NO 08





**MINUTES
CARSON CITY COUNCIL
REGULAR MEETING**

APRIL 19, 2011

**ITEM NO. (7) CONSIDER AN ANNUAL REVIEW OF THE BOULEVARDS AT SOUTH BAY
(CARSON MARKETPLACE) DEVELOPMENT AGREEMENT (ECONOMIC
DEVELOPMENT)**

RECOMMENDATION for the City Council:

1. RECEIVE and FILE.

ACTION: Item No. 7 was approved on the New Business Consent Calendar on motion of Dear, seconded by Ruiz-Raber and unanimously carried by the following vote:

Ayes:	Mayor Dear, Mayor Pro Tem Ruiz-Raber, Council Member Davis-Holmes, Council Member Gipson, and Council Member Santarina
Noes:	None
Abstain:	None
Absent:	None

EXHIBIT NO 19



Traffic Engineer Garland discussed standards of various traffic control devices needed and cost information.

RECOMMENDATION for the City Council:

TAKE the following actions:

1. DIRECT staff to install flashing yellow beacons above the pedestrian crossing warning signs on Central Avenue at Dimondale Drive.
2. DIRECT staff to install radar activated vehicle speed feedback signs on Central Avenue north and south of Dimondale Drive.
3. APPROPRIATE \$7,000.00 from the unreserved, undesignated Gas Tax fund balance to cover the costs of the recommended installations.

ACTION: It was moved to approve staff recommendation No. 2, alternative staff recommendation No. 3, and to allocate \$40,000 from the unreserved, undesignated Gas Tax fund balance to cover the costs of the recommended installations on motion of Dear and seconded by Gipson.

Council Member Davis-Holmes offered a friendly amendment to add a crossing guard for a two-month period and requested City Manager Biggs to contact the young lady who was injured about the action taken by the City Council, which was accepted by the maker and the second.

(Council Member Gipson exited and reentered the meeting at 12:26 A.M., on Wednesday, April 18, 2012.)

The amended motion was unanimously carried by the following vote:

Ayes:	Mayor Dear, Mayor Pro Tem Ruiz-Raber, Council Member Davis-Holmes, Council Member Gipson, and Council Member Santarina
Noes:	None
Abstain:	None
Absent:	None

ITEM NO. (8) CONSIDER ANNUAL REVIEW OF THE BOULEVARDS AT SOUTH BAY DEVELOPMENT AGREEMENT (ECONOMIC DEVELOPMENT)

RECOMMENDATION for the City Council:

1. RECEIVE and FILE.

ACTION: Upon a further review of the proceedings of the meetings of the City Council and Carson Successor Agency, it was noted that while there was a motion to approve Council New Business Consent Calendar Item Nos. 6, 8, 9, 12, 13 and Successor Agency New Business Consent Calendar Item No. 1, there was no indication that such motion received a second. However, the vote to approve these consent items was unanimous and pursuant to Carson Municipal Code § 2418, the

EXHIBIT NO 10

lack of a second does not prevent the motion from being adopted because no action of the City Council shall be invalidated, or the legality thereof otherwise affected, by the failure or omission to observe or follow [Robert's] Rules.

ITEM NO. (9) CONSIDER APPROVING TWO PROPERTY ACQUISITIONS AND AN UPDATE ON THE STATUS OF THE IMPLEMENTATION OF THE NEIGHBORHOOD STABILIZATION PROGRAM (ECONOMIC DEVELOPMENT)

RECOMMENDATION for the City Council:

TAKE the following actions:

1. APPROVE the following properties as a acquisition activity:
 - a. 32 Paradise Valley Lane, Carson, California 90745
 - b. 19112 Hillford Avenue, Carson, California 90746
2. AUTHORIZE the Mayor to execute and finalize the purchase agreements for the acquisition of the identified properties related to the Neighborhood Stabilization Program, following approval as to form by the City Attorney.

ACTION: Upon a further review of the proceedings of the meetings of the City Council and Carson Successor Agency, it was noted that while there was a motion to approve Council New Business Consent Calendar Item Nos. 6, 8, 9, 12, 13 and Successor Agency New Business Consent Calendar Item No. 1, there was no indication that such motion received a second. However, the vote to approve these consent items was unanimous and pursuant to Carson Municipal Code § 2418, the lack of a second does not prevent the motion from being adopted because no action of the City Council shall be invalidated, or the legality thereof otherwise affected, by the failure or omission to observe or follow [Robert's] Rules.

ITEM NO. (10) CONSIDER APPROVING RESOLUTION NO. 12-044 SUPPORTING ASSEMBLY BILL 1527 (AMMIANO AND PORTANTINO) THAT WOULD MAKE IT AN OFFENSE TO CARRY AN UNLOADED FIREARM THAT IS NOT A HANDGUN OUTSIDE A VEHICLE IN AN INCORPORATED CITY OR CITY AND COUNTY (PUBLIC SERVICES)

This item was heard after Item No. 7.

City Manager Biggs summarized the staff report and recommendation.

RECOMMENDATION for the City Council:

TAKE the following actions:

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