



CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING: April 12, 2011

SUBJECT: Modification to Approved Development Agreement between Bulletin Displays, LLC and the City of Carson

APPLICANT: Bulletin Displays, LLC
3127 E. South Street, Suite "B"
Long Beach, CA 90805

REQUEST: To consider a modification to an approved Development Agreement to allow for the conversion of two static sign faces to electronic digital displays on an existing three-sided outdoor advertising sign.

PROPERTY INVOLVED: 19401 Main Street.

COMMISSION ACTION

- Concurred with staff
- Did not concur with staff
- Other

COMMISSIONERS' VOTE

		Chairman Faletogo			Gordon
		Vice-Chair Park			Saenz
		Brimmer			Schaefer
		Díaz			Verrett
		Goolsby			

I. Introduction

The applicant, Bulletin Displays, LLC, is proposing to modify language contained in the approved Development Agreement between them and the City of Carson in order to convert two static sign faces to electronic digital displays on an existing three-sided outdoor advertising sign located at 19401 Main Street.

II. Background

On November 4, 2009, the City Council approved Resolution No. 09-1434 amending Section 9141.1 and Section 9146.7 of the Carson Municipal Code (CMC) establishing a 405 Freeway Corridor District and development agreement requirement for new billboards.

Ordinance No. 09-1440, permitting a development agreement between Bulletin Displays, LLC and the City of Carson concerning the development of a 75-foot high, three-sided static display billboard was approved by City Council March 16, 2010. Sub-section B of the development agreement states that: "...Developer shall be allowed to install digital displays on the two (2) freeway faces if the city amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site..."

On November 3, 2010, the City Council approved Resolution No. 10-1455 amending Section 9141.1 and Section 9146.7 of the CMC establishing a development agreement requirement for new and converted electronic digital display outdoor advertising signs. This action also expanded portions of the following existing billboard overlay areas: Alameda Street between Del Amo Boulevard and Lomita Boulevard and adjacent I/405 Freeway areas north of Alameda Street (Alameda Street Area); and the north side of the I/405 Freeway between Main Street and Figueroa Street (Main Street Area). The expanded areas allow for a new electronic digital display billboards, or conversion of existing static display billboards with an approved development agreement.

Bulletin Display's 75-foot high, three-sided static billboard located at 19401 S. Main Street was constructed in October, 2009.

The applicant's request to modify language in the approved development agreement in order to convert two freeway-facing static faces of the existing billboard to electronic digital faces is consistent with the intent of the municipal code.

III. Analysis

The applicant requests to modify the language contained in Section 2.7 under "General Provisions" of the approved development agreement as it pertains to the percentage fee of income allotted to the city in exchange for authorizing the conversion of static display faces to electronic digital technology. A copy of the approved development agreement (Ordinance No. 09-1440) is included as Exhibit No. 2. The applicant wishes to modify the above language as follows (deleted text in ~~strikethrough~~, added text in underlined italics):



2.7. **Percentage Fee:** In addition to the payment of the Development Fee under Section 2.6 above and annually during the Term of this Agreement, Developer shall pay a percentage fee on revenue generated from the street-oriented static display face and each digital face installed on either or both of the two (2) freeway-oriented Billboard faces only if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site. No percentage fee shall apply to any static freeway-oriented Billboard face. Following such amendment to the Carson Municipal Code and within ninety (90) days following the end of each year of the Term hereof, and ending within ninety (90) days of the termination of the Term, Developer shall furnish to City a statement in writing, certified by Developer to be correct, showing the total gross advertising revenues made from each sign face of the Billboard during the preceding year of the Term, and shall accompany each such statement with a payment to City equal to Twenty-Five Percent (25%) of total gross advertising revenue ("Percentage Fee") for such prior year of the Term attributable to each sign face of Billboard to the extent such Percentage Fee exceeds the Development Fee combined with the land lease rent paid by the Developer to the Lessor of the Development Billboard Site for that same preceding year. The calculation of the gross advertising revenue shall exclude ~~the land lease rent paid by the Developer to the Lessor of the Development Billboard Site and any advertising agency or brokerage commissions and any applicable taxes paid by Lessee.~~ Further, the gross advertising revenue is based solely on the revenue generated from the digital displays and is not derived from the standard advertising on the Billboard if digital displays are not approved and/or installed and does not include free form cutouts, solid extensions, back-lit displays, 3D presentations, stretch faces, additional art work reproductions or any other special treatment or appurtenances as required by the advertiser; provided Developer shall not conceal advertising revenue derived from the digital displays or street static display within the normal price range the Developer charges for any appurtenance that is installed on the Billboard.

In addition to these changes, the applicant requests a minor modification to existing language contained in Sub-section 'd' of Section 6, "Conditions of Approval", in Exhibit "B", "Scope of Development", of the approved development agreement. The applicant wishes to modify the above language as follows (deleted text in strikethrough, added text in underlined italics):

(d) The Billboard pole shall be of a color subject to the approval of the City's Economic Development Services Manager Planning Officer, or designee.

Development Agreement Findings

The City Council adopted procedures for review and approval of development agreements in 1990 (Resolution No. 90-050.) The procedures require the Planning

Commission to conduct a public hearing and provide a written recommendation to the City Council. The City Council is also required to conduct a public hearing. In order to approve a development agreement, the City Council must find that the development agreement:

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

Staff has affirmed consistent findings which are included in the attached Draft Resolution (Exhibit No. 1).

Discussion

The amendment to the approved development agreement is being requested by the applicant to modify the "Percentage Fee" that is used in the equation set forth in the agreement which is applicable if and when digital electronic conversion of the static sign(s) occurs. The existing agreement guarantees the city a Development Fee of \$100,000 per year for the first five years of the 20-year term of the agreement. Section 2.7.2 of the development agreement guarantees the Percentage Fee for each billboard face is not less than \$100,000 during the first 10 years (i.e. \$200,000 if there are two electronic faces). The existing agreement then entitles the city to a 25% share of the adjusted gross revenue (revenue less agency commissions, applicable taxes, and revenue for display area in excess of the basic billboard area, i.e. sign extensions and 3-D callouts, etc.) for the remainder of the agreement, or years 11-20.

Bulletin Displays has since questioned if the land lease fees should be deducted from the adjusted gross revenue calculation from which the city's 25% revenue share is derived. They contend that land lease expenditure is a base operational expense that should be excluded from the gross advertising revenue similar to the deduction for the Development Fee paid to the city advertising agency or brokerage commissions and any applicable taxes. Therefore, they seek to modify the language in Section 2.7 in order to modify the calculation of the Percentage Fee for the term of the agreement. Bulletin Displays guarantees that the city will have collected a Percentage Fee of at least \$100,000 per electronic sign face by year ten if an electronic digital display is installed, and thereafter the city's 25% share will come from the adjusted gross revenue of the electronic sign face(s) less the land lease paid for that year.

The intent of the proposed amendment to the agreement is to modify accounting of the revenue adjustments and reports and, according to the applicant, to bring it in line with industry standards. There is no significant loss of potential income to the city resulting from the proposed amendment. Staff recommends that the Planning



Commission receive the staff report, open the public hearing, take public testimony, close the public hearing, deliberate and vote upon the resolution recommending to the City Council approval of the attached Development Agreement.

IV. Environmental Review

Pursuant to Section 1530, Class 1 (Existing Facilities), sub-Section 'g' (New copy on existing on and off-premise signs), of the California Environmental Quality Act (CEQA), the proposed project is found to be Categorically Exempt.

IV. Recommendation


That the Planning Commission:

WAIVE further reading and **ADOPT** Resolution No. _____, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ORDINANCE NO. 11-1472: A MODIFICATION TO DEVELOPMENT AGREEMENT NO. 03-10 BETWEEN THE CITY OF CARSON AND BULLETIN DISPLAYS, LLC FOR THE CONVERSION OF TWO STATIC ADVERTISING DISPLAY FACES TO DIGITAL ELECTRONIC DISPLAY FACES ON AN EXISTING THREE-SIDED OUTDOOR ADVERTISING DISPLAY LOCATED AT 19401 MAIN STREET"

V. Exhibits

1. Draft Resolution
2. Ordinance No. 09-1440: Development Agreement No. 03-10

Prepared by: 
Steven C. Newberg, AICP, Associate Planner

Reviewed and Approved by: 
Sheri Repp-Loadsmán, Planning Officer

SN/Mod1_DevAgrmt



CITY OF CARSON
PLANNING COMMISSION
RESOLUTION NO. 11-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMENDING TO THE CITY COUNCIL APPROVAL OF ORDINANCE NO. 11-1472: A MODIFICATION TO DEVELOPMENT AGREEMENT NO. 03-10 BETWEEN THE CITY OF CARSON AND BULLETIN DISPLAYS, LLC FOR THE CONVERSION OF TWO STATIC ADVERTISING DISPLAY FACES TO DIGITAL ELECTRONIC DISPLAY FACES ON AN EXISTING THREE-SIDED OUTDOOR ADVERTISING DISPLAY LOCATED AT 19401 MAIN STREET

THE PLANNING COMMISSION OF THE CITY OF CARSON HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. An application was duly filed by the applicant, Bulletin Displays, LLC, with respect to the real property located at 19401 Main Street, adjacent to north side of the I-405 freeway. The applicant requests approval of a modification to the an approved Development Agreement for a 75-foot high, three-sided outdoor advertising display ("billboard") located at the southeast area of the subject property.

On November 4, 2009, the City Council approved Resolution No. 09-1434 amending Section 9141.1 and Section 9146.7 of the Carson Municipal Code establishing a 405 Freeway Corridor District and Development Agreement requirement for new billboards.

On March 16, 2010, the City Council approved Resolution No. 09-1440 permitting a development agreement between Bulletin Displays, LLC and the City of Carson concerning the development of a 75-foot high, three-sided static display billboard

Section 2. A duly noticed public hearing was held on April 12, 2011 at 6:30 P.M., in the City Hall Council Chambers, 701 East Carson Street, Carson, California. A notice of the time, place and purpose of the aforesaid meeting was duly given.

Section 3. Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid meeting.

Section 4. The Planning Commission finds that:

- a) The amended Development Agreement involves a Site which is located within an area suitable for the proposed use, and is in conformance the General Plan and the Manufacturing, Light – Design Overlay zoning district.
- b) The amended Development Agreement provides for a public convenience through significant monetary benefits which will contribute indirectly to programs and services designed to provide for the health, safety and welfare of the public, thereby exhibiting good land use practices.

EXHIBIT NO. 1-



- c) The amended Development Agreement will not be detrimental to the public's health, safety and general welfare, nor will it adversely affect the orderly development or property values for the subject property or areas surrounding it.
- d) The amended Development Agreement is in compliance with the procedures established by City Council Resolution No. 90-050 as required by Government Code, Section 65865(c).
- e) The amended Development Agreement in Section 5 provides for an annual review to ensure good faith compliance with the terms of the Agreement, as required in Section 65865.1 of the Government Code.
- f) The amended Development Agreement specifies the duration of the agreement in Section 2.4, the Processing Fee in Section 2.5; the Development Fee in Section 2.6 and the Community Benefits in Section 2.7.
- g) The amended Development Agreement includes conditions, terms, restrictions and requirements for development of the property in Section 3 and as permitted in Section 65865.2 of the Government Code.
- h) The amended Development Agreement contains provisions in Section 4 for removal of the billboard upon the termination the Agreement.
- i) The amended Development Agreement provides for amendment or cancellation in whole or in part, by mutual consent of the parties to the agreement or their successors in interest as required in Section 65868 of the Government Code.
- j) That the amended Development Agreement is in the best public interest of the City and its residents and that this Agreement will achieve a number of City objectives including utilizing the Billboard Site for a revenue-generating use, assuring that redevelopment within the 405 Freeway Corridor is not hampered by the presence of billboards by assuring that the Billboard on the Site may be removed upon expiration of the Agreement.

Section 5. The Planning Commission further finds that the proposed amended to the approved development agreement is categorically exempted from the provisions of CEQA, pursuant to Section 1530, Class 1 (Existing Facilities), sub-Section 'g' (New copy on existing on and off-premise signs).

Section 6. Based on all evidence presented at the meeting and the aforementioned findings, the Planning Commission hereby recommends that the City Council approve the amendment to the Development Agreement, prepared pursuant to Article 2.5 of the Government Code and as shown in Exhibit "A".

Section 7. The Secretary shall certify to the adoption of the Resolution and shall transmit copies of the same to the applicant.

PASSED, APPROVED AND ADOPTED THIS 12th DAY OF APRIL, 2011.

PLANNING COMMISSION CHAIR



ATTEST:

SECRETARY



EXHIBIT "A"

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 03-10

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO 03-10 ("First Amendment") is entered into on this _____ day of April, 2011 ("Effective Date"), by and between THE CITY OF CARSON ("City") and BULLETIN DISPLAYS, LLC ("Developer").

RECITALS

WHEREAS, on or about March 24th 2010 the parties entered into a Development Agreement No. 03-10 ("Agreement") for the purposes set forth in the Agreement; and

WHEREAS, the parties now wish to amend the Agreement pursuant to the terms of this First Amendment (the "First Amendment").

NOW, THEREFORE, 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. Percentage Fee. Section 2.7 of the Agreement is replaced in its entirety with the following new Section 2.7 to read as follows:

§ 2.7 Percentage Fee: In addition to the payment of the Development Fee under Section 2.6 above and annually during the Term of this Agreement, Developer shall pay a percentage fee on revenue generated from the street-oriented static display face and each digital face installed on either or both of the two (2) freeway-oriented Billboard faces only if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site. No percentage fee shall apply to any static freeway-oriented Billboard face. Following such amendment to the Carson Municipal Code and within ninety (90) days following the end of each year of the Term hereof, and ending within ninety (90) days of the termination of the Term, Developer shall furnish to City a statement in writing, certified by Developer to be correct, showing the total gross advertising revenues made from each sign face of the Billboard during the preceding year of the Term, and shall accompany each such statement with a payment to City equal to Twenty-Five Percent (25%) of total gross advertising revenue ("Percentage Fee") for such prior year of the Term attributable to each sign face of Billboard to the extent such Percentage Fee exceeds the Development Fee combined with the land lease rent paid by the Developer to the Lessor of the Development Billboard Site for that same preceding year. The calculation of the gross advertising revenue shall exclude any advertising agency or brokerage commissions and any applicable taxes paid by Lessee. Further, the gross advertising revenue is based solely on the revenue generated from the digital displays and is not derived from the standard advertising on the Billboard if digital displays are not approved and/or installed and does not include free form cutouts, solid extensions, back-lit displays, 3D presentations, stretch faces, additional art work reproductions or any other special treatment or

Item # 11B



appurtenances as required by the advertiser; provided Developer shall not conceal advertising revenue derived from the digital displays or street static display within the normal price range the Developer charges for any appurtenance that is installed on the Billboard.

2. Conditions of Approval. Section 6.d. of Exhibit B to the Agreement, shall be replaced in its entirety with the following language:

The Billboard pole shall be of a color subject to the approval of the City's Development Services Planning Manager or designee.

City: CITY OF CARSON

By: _____
Mayor Jim Dear

ATTEST:

City Clerk Helen Kawagoe

APPROVED AS TO FORM:

City Attorney

Developer: BULLETIN DISPLAYS, LLC, a
California Limited Liability
Company

By: _____

Its: _____

(end of signatures)



ORDINANCE NO. 09-1440

AN ORDINANCE OF THE CITY OF CARSON,
CALIFORNIA, APPROVING A DEVELOPMENT
AGREEMENT BETWEEN BULLETIN DISPLAYS, LLC
AND THE CITY OF CARSON FOR THE
CONSTRUCTION OF A NEW OUTDOOR
ADVERTISING DISPLAY TO BE LOCATED AT 19401
MAIN STREET

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

Section 1. An application for a development agreement (Agreement), pursuant to Government Code Sections 65864 through 65869.5 and Resolution 90-050 of the city of Carson, was duly filed by the applicant, Bulletin Displays, LLC, with respect to the real property located at 19401 Main Street (Site), as shown in Exhibit "A" attached hereto. The applicant proposes a 75-foot high outdoor advertising display (billboard) to be placed at the southeast area of the subject property.

Section 2. The Planning Commission held a duly noticed public hearing to obtain public comments on the Agreement on January 12, 2010, at 6:30 P.M. at the City Hall Council Chambers, 701 East Carson Street, Carson, California. After consideration of the evidence and testimony, the Planning Commission voted to recommend approval of the Agreement.

Section 3. The City Council held public hearings on the Agreement on February 2, 2010, February 16, 2010, and March 2, 2010 at 6:00 P.M. at the City Hall Council Chambers, 701 East Carson Street, Carson, California. A notice of the time, place and purpose of the aforesaid meetings were duly given.

Section 4. The City Council finds that the proposed project is categorically exempted from the provisions of CEQA, pursuant to Section 15332 regarding Urban In-Fill Development Projects.

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

Section 6. The City Council finds that:

a) The Development Agreement provides for a Site which is located within an area suitable for the proposed use.

[MORE] EXHIBIT NO. 2 -

EXHIBIT NO. 2 Item # 11B



and is in conformance the General Plan and the Manufacturing, Light – Design Overlay zoning district.

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

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

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

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

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

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

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

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

j) That the Development Agreement is in the best public interest of the city and its residents and that this Agreement will achieve a number of city objectives including utilizing the

[MORE]



Billboard Site for a revenue-generating use, assuring that redevelopment within the 405 Freeway Corridor is not hampered by the presence of billboards by assuring that the Billboard on the Site may be removed upon expiration of the Agreement.

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

Section 8. The Development Agreement is in compliance with the procedures established by City Council Resolution No. 90-050 and the City Council finds that the Agreement:

- a) Is consistent with the General Plan and any applicable specific plan;
- b) Is in conformity with public convenience and good land use practices;
- c) Will not be detrimental to the health, safety and general welfare;
- d) Will not adversely affect the orderly development of property or the preservation of property values;
- e) Is consistent with the provisions of Government Code Sections 65864 through 65869.5.

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

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

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

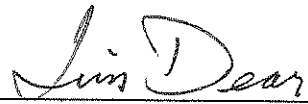
Section 12. The Ordinance No. 09-1440 is approved for introduction and first reading on March 2, 2010 and adoption at the second hearing on March 16, 2010.

Section 13. The City Clerk shall certify to the adoption of this Ordinance and shall transmit copies of the same to the applicant. The

City Clerk shall publish the adopted Ordinance pursuant to California Government Code 36933 within fifteen days of its adoption.

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

PASSED, APPROVED and ADOPTED this 24th day of March, 2010.



Mayor Jim Dear

ATTEST:


City Clerk Helen S. Kawagoe


APPROVED AS TO FORM


City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing ordinance, being Ordinance No. 09-1440 passed first reading on March 2, 2010, was duly and regularly adopted by the City Council of said City at an adjourned regular meeting of said Council, held on the 24th day of March, 2010, and that the same was passed and adopted by the following roll call vote:

AYES: COUNCIL MEMBERS: Mayor Dear, Santarina, Gipson, Davis-Holmes, and Ruiz-Raber
NOES: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None



City Clerk, City of Carson, California

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Property Address: 19401 Main Street

The land referred to as parcel no. 7339-016-013 is situated in the County of Los Angeles, State of California and is described as follows:

Lot 115 of Tract No. 4671 in the City of Carson, County of Los Angeles, State of California, as per Map recorded in Book 56, Page(s) 30 and 31 of Maps, in the Office of the County Recorder of said County.

[MORE]



Recording Requested by And
When Recorded Return to:

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

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

DEVELOPMENT AGREEMENT NO. 03-10

This Development Agreement (hereinafter "Agreement") is entered into this 24th day of March, 2010, (hereinafter the "Effective Date") by and between the CITY OF CARSON (hereinafter "City") and BULLETIN DISPLAYS, LLC, a California limited liability company (hereinafter "Developer").

RECITALS

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

B. Developer has a leasehold interest to that certain portion of real property located at 19401 Main Street, north-east side of the 405 Freeway, Assessor Parcel Number 7339-016-013 ("Billboard Site"), and situated on the real property in the City of Carson, County of Los Angeles, California, as more specifically described in Exhibit "A", attached hereto and incorporated herein ("Site"). The Billboard Site is depicted at Exhibit "C". Developer wishes to install one (1) 75' tall, "bulletin" size freeway-oriented billboard structure with a total of three (3) faces (each face measuring 14' x 48' with allowable extensions of 128 square feet per sign face, not to exceed 800 square feet per sign face). Developer shall be allowed to install digital displays on the two (2) freeway faces if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site. KL Fenix Corporation ("Owner") has consented to the application for this Development Agreement and Developer, as the lessee of the Billboard Site, has legal and/or equitable interest in the Billboard Site and thus qualifies to enter into this Agreement in accordance with Development Agreement Law.

C. The Site is located within the City's Industrial and/or Manufacturing Zone, designated by the General Plan as Industrial and is also located within the (405) Freeway Corridor as defined per Carson Municipal Code § 9146.7 Signs.

[MORE]

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D. Developer and City agree that a development agreement should be approved and adopted for this Site in order to memorialize the property expectations of City and Developer as more particularly described herein.

E. On January 12, 2010, the Planning Commission of the City, at a duly noticed hearing to consider the approval of this Agreement, adopted Resolution No. 10-2281 recommending approval of this Agreement to the City Council and find the Project, as defined below, categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15332 regarding Urban In-Fill Development Projects.

F. On February 2, 2010, the City Council of the City, at a duly noticed hearing to consider the approval of this Agreement, considered the proposal, heard testimony, and continued the public hearing.

G. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives including utilizing the Billboard Site for a revenue-generating use, assuring that redevelopment within the 405 Freeway Corridor is not hampered by the presence of billboards by assuring that the Billboard on the Site may be removed upon expiration of this Agreement.

H. On February 16, 2010, the City Council reconvened the continued public hearing to consider approval of this Agreement and continued the public hearing.

I. On March 2, 2010, the City Council reconvened the continued public hearing to consider approval of this Agreement and concurred with the Planning Commission, with the above-referenced change and concomitant changes to the development fees, as set forth herein, and held the first reading of Ordinance No. 09-1440 approving this Agreement and directed City staff and the City Attorney to incorporate revised deal points, as more fully described below in this Agreement, including to: (i) allow the Development Fee to be paid in equal payments over five (5) years, (ii) add a percentage fee revenue payment of twenty-five percent (25%), with a guaranteed minimum percentage fee that will be paid at the end of the tenth (10th) year if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site, (iii) prohibit the display of advertisements related to tobacco, illegal drugs, marijuana and hashish to the extent permitted by law or unless alcohol advertising allowed by the Carson Municipal code, alcohol advertising, (iv) if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site, then the Developer will increase the City's Use of the Billboards from two (2) months to three (3) months of annual advertising and Developer can utilize any of his billboards within (10) miles of the City boundary that are reasonably approved by the Parties in order for Developer to fulfill this commitment and the Parties can agree to

use an equivalent amount of time on the digital displays that may be allowed to be installed on the Billboard or any combination thereof that is reasonable to the Parties.

J. On March 16, 2010, the City Council adjourned the public meeting scheduled for that date until March 24, 2010, and then on March 24, 2010, the City Council held the second reading of Ordinance No. 09-1440, thereby approving this Agreement.

K. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 09-1440 of the City Council have been duly and regularly taken.

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

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

1.1.2 "Agency" means the Carson Redevelopment Agency, a California public body, corporate and politic.

1.1.3 "Billboard" means the proposed billboard structure containing three (3) billboard faces consistent with the Development Approvals and this Agreement, including the Scope of Development attached hereto as Exhibit "B".

1.1.4 "Billboard Site" means the portion of that certain real property where the Billboard shall be located, including any immediately surrounding areas used by Developer in connection with its use and maintenance of the Billboard, as depicted at Exhibit "C" hereto.

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

1.1.6 "City Council" means the City Council of the City.

1.1.7 "Developer" means Bulletin Displays, LLC., a California limited liability company duly existing and operating, and its successors and assigns, doing business at 3127 E. South Street, Ste. B, Long Beach, California 90805.

[MORE]



1.1.8 "Development" means the installation of the Billboard on the Site and the undergrounding of all utilities from Southern California Edison's electrical source to the Billboard.

1.1.9 "Development Approvals" means the approved Development, based on the recommended approval by the Planning Commission on January 12, 2010, pursuant to Resolution No. 10-2281 and approval of the City Council by Ordinance No. 09-1440 on March 2nd, 2010, as further described at Section 3.3 herein.

1.1.10 "Effective Date" means the date inserted into the preamble of this Agreement after this Agreement has been approved by ordinance of the City Council and signed by the Developer and City.

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

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

1.1.13 "Lease" means that certain lease agreement executed by and between Developer and Owner, respectively, on or about August 5, 2008, as amended and as may be extended, for the lease of the Billboard Site to Developer.

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

1.1.15 "Owner" means KL Fenix Corporation, a California corporation, the owner of the Site.

1.1.16 "Project" means the installation, including the undergrounding of all utilities, operation and maintenance of the Billboard on the Site in accordance with the Development Approvals and this Agreement, including the Scope of Development, Schedule of Performance and all conditions of approval and

consistent with the approval from the California Department of Transportation Outdoor Advertising Division.

1.1.17 "Site" means that certain real property located in the City of Carson, as more specifically described on Exhibit "A" attached hereto and incorporated herein.

1.1.18 "Schedule of Performance" means the Schedule of Performance attached hereto as Exhibit "D" and incorporated herein.

1.1.19 "Scope of Development" means the Scope of Development attached hereto as Exhibit "B" and incorporated herein.

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

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

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit "A" (Legal Description of Site), Exhibit "B" (Scope of Development), Exhibit "C" (Site Plan and Elevations) and Exhibit "D" (Schedule of Performance) and Exhibit "E" (Developer's Production Specification Sheet).

2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Development of the Billboard Site, including actions by the City on applications for Subsequent Development Approvals affecting the Billboard Site, shall be subject to the terms and provisions of this Agreement, provided, however, that nothing in this Agreement shall be deemed or construed (i) to modify or amend the Lease or any of Developer's obligations thereunder, or to bind or restrict Owner with respect to its ownership or operation of the Site except as expressly set forth herein with respect to the Billboard Site, or (ii) to impose any obligation whatsoever on Owner, including without limitation any obligation with respect to the Billboard, the Billboard Site, the Development or the Project, except as expressly set forth in this Agreement.

2.2 **Interest in Site.** City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under the Development Agreement Law. Developer, or its nominee(s) or successor(s) or assign(s), shall maintain its legal or equitable ownership in the Site for the entire Term of this Agreement. Additionally, prior to the

execution of this Agreement, Developer has allowed the City to view a copy of the Lease which demonstrates that Developer has a leasehold interest in the Billboard Site, which interest shall be maintained for the entire Term of this Agreement. If Developer's leasehold interest is prematurely terminated by Owner then Developer shall have no further obligations under this Agreement, except as provided under Section 4.1.

2.3 No Assignment. Developer may only assign or otherwise transfer this Agreement, or its interest in the Billboard Sites or any part of its interest in the Billboard Sites, to any other person, firm, or entity, upon presentation to the City of an assignment and assumption agreement in a form reasonably acceptable to the City Attorney and receipt of the City's written approval of such assignment or transfer by the City Manager; provided, however, that Developer may, from time to time and one or more times, assign this Agreement, or the Lease, to one or more persons or entities without City approval, but with written notice to the City, as long as Bulletin Displays, LLC either assigns this Agreement or Lease to a financial institution that finances Developer's Development of the Billboard Site or as long as Bulletin Displays, LLC, or entities owned or controlled by it have and maintain at least a twenty percent (25%) ownership interest in such entities who are the assignees or transferees. Any security posted by Developer may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of (i) twenty (20) years after the date Developer receives Final Permits or June 30, 2011, whichever occurs first, or (ii) the expiration or earlier termination of the Lease per Section 6.1 that applies to the Site. In such case, Developer shall completely remove the Billboard within the times and as provided under Section 4.1 herein. Within thirty (30) days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1 below.

2.5 Processing Fee. Within ten days of the execution of this Agreement, Developer shall provide City with a cash payment ("Processing Fee") in the amount of Five Thousand Dollars (\$5,000). The Processing Fee shall be in the form of a non-refundable cashier's check, wire transfer, or other instrument approved by the City's Finance Officer. The City shall retain and use the Processing Fee, or any part thereof, for any public purpose within the City's discretion. The Processing Fee shall be separate from all business license fees (due by Developer to City annually), and one time plan check fee and building permit fee and any other fees imposed by Los Angeles County.

2.6 Development Fee. Developer shall pay City a total of Five Hundred Thousand Dollars (\$500,000.00) ("Development Fee"), which Development Fee shall be paid as follows if Developer receives final approval from the applicable governmental

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authorities for any and all required permits to maintain and operate the Billboard as contemplated under this Agreement ("Final Permits") in equal installments of one hundred thousand dollars (\$100,000) for five (5) years, with the first installment no later than one (1) year after Developer receives Final Permits or June 30, 2011, whichever occurs first and each of the four (4) additional installments on the anniversary of such first payment. Nothing herein relieves the City from its contractual duty to issue all municipal building permits that are associated with the Development of the Billboard Site if Developer is in compliance with the terms of this Agreement.

2.7 Percentage Fee: In addition to the payment of the Development Fee under Section 2.6 above and annually during the Term of this Agreement, Developer shall pay a percentage fee on revenue generated from the street-oriented static display face and each digital face installed on either or both of the two (2) freeway-oriented Billboard faces only if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site. No percentage fee shall apply to any static freeway-oriented Billboard face. Following such amendment to the Carson Municipal Code and within ninety (90) days following the end of each year of the Term hereof, and ending within ninety (90) days of the termination of the Term, Developer shall furnish to City a statement in writing, certified by Developer to be correct, showing the total gross advertising revenues made from each sign face of the Billboard during the preceding year of the Term, and shall accompany each such statement with a payment to City equal to Twenty-Five Percent (25%) of total gross advertising revenue ("Percentage Fee") for such prior year of the Term attributable to each sign face of Billboard to the extent such Percentage Fee exceeds the Development Fee for that same preceding year. The calculation of the gross advertising revenue shall exclude the land lease rent paid by the Developer to the Lessor of the Development Billboard Site and any advertising agency or brokerage commissions and any applicable taxes paid by Lessee. Further, the gross advertising revenue is based solely on the revenue generated from the digital displays and is not derived from the standard advertising on the Billboard if digital displays are not approved and/or installed and does not include free form cutouts, solid extensions, back-lit displays, 3D presentations, stretch faces, additional art work reproductions or any other special treatment or appurtenances as required by the advertiser; provided Developer shall not conceal advertising revenue derived from the digital displays or street static display within the normal price range the Developer charges for any appurtenance that is installed on the Billboard.

2.7.1 Audit of Percentage Fee. With prior written notice of not less than ten (10) business days, City has the right to audit Developer's sign income account related to this Agreement, at Developer's office, on normal workdays between 9:00 a.m. and 4:00 p.m. If the statement of total gross advertising revenue previously provided to City shall be found to be inaccurate, then and in that event, there shall be an adjustment and one party shall pay to the other on demand such sums as may be necessary to settle in full the accurate amount of said percentage rental that should have been paid to City for the period or periods covered by such inaccurate statement or statements. If said audit

discloses an underpayment of greater than three percent (3%) with respect to the amount of total gross advertising revenue reported by Developer for the period of said report, then the Developer shall immediately pay to City the cost of such audit; otherwise, the cost of such audit shall be paid by City, plus a ten percent (10%) annual interest on the amount underpaid, but the application of said interest is limited up to three (3) years prior to the time any underpayment(s) should have been paid to City.

2.7.2 Percentage Fee for 1st through 10th Years of Term: The Percentage Fee shall apply to the revenue generated from all sign faces that are installed on the Billboard if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site. Within ninety (90) days following the end of the tenth (10th) year of the Term hereof, Developer shall furnish to City a statement in writing, certified by Developer to be correct, showing the total Percentage Fee paid to the City per Section 2.7 above during the first (1st) year of the Term through the tenth (10th) year of the Term ("Ten Year Percentage Fee"). If the Ten Year Percentage Fee is less than one hundred thousand dollars (\$100,000) per digital face (i.e., \$200,000 for 2 digital faces), then Developer shall pay to City, concurrently with its submission of such statement, an amount that is equal to the difference between the Ten Year Percentage Fee and one hundred thousand dollars (\$100,000) per digital face.

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

2.8.1 City's Use of the Billboard. Developer shall also provide, free of charge, but excluding the cost of vinyl production, to City or Agency the use of one face of the Billboard for two (2) months per year during the Term on any one of the Developers freeway billboard faces that are within ten (10) miles of the city boundary and that are reasonably acceptable to the Parties, for displays aimed at promoting the Agency, City, their facilities, programs, for charitable or civic advertising (as determined by City or Agency in its discretion) ("City Use"). If the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site, the two (2) months of City Use shall increase to three (3) months and the City Manager shall be authorized to substitute the three (3) months per year for vinyl billboard advertising for an equivalent amount of Digital time on the Billboard that is reasonably agreeable with Developer. If the Developer installs a digital display, then Developer use best efforts to request any advertiser(s) that will utilize that particular digital display to allow for City or Agency use in conformance with the rights set forth herein. If any advertiser(s) refuses in writing to provide City or Agency use of a digital display, then the year following said advertiser(s) refusal, the Developer will add a fourth (4th) month of City or Agency use in conformance with this section. The time for the use of the Billboard (vinyl or digital) for each year during the term shall be determined by Developer on a space availability basis. The display shall be planned and

designed and vinyl production paid and installation paid at City's or Agency's sole cost on a space availability basis onto the Billboard. Agency or City shall have sole discretion to approve the display advertising copy. The City or Agency will supply Developer with images of the proposed art work in a format that is indicated on Developer's Production Specification Sheet, a copy of which is provided at Exhibit E hereto.

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

2.8.3 Membership in the Carson Chamber of Commerce. Developer shall join the Carson Chamber of Commerce.

2.9 Prohibited Use. Developer acknowledges and agrees that Developer shall not utilize any of the display faces on the Billboard to advertise tobacco, marijuana, hashish or "gentlemen's clubs," adult entertainment businesses, sexually oriented materials, or use sexually oriented images or language all to the extent permitted by law or unless alcohol advertising allowed by the Carson Municipal code, alcohol advertising.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to and during the Term of this Agreement, Developer shall have the right to develop the Billboard Site in accordance with, and to the extent of, the Development Approvals, the Land Use Regulations, and this Agreement, provided that nothing in this Agreement shall be deemed to modify or amend the Lease.

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

3.3 Development Approvals. Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of improvement upon the Billboard Site, secure or cause to be secured all necessary Development Approvals, which shall include any and all permits and approvals which may be required by City or any other governmental agency or utility affected by such construction, development or work to be performed by Developer pursuant to the Scope of Development, including but not limited to, necessary building

permits and all approvals required under the California Environmental Quality Act ("CEQA"). Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all (1) applicable development standards in City's Municipal Code, (2) applicable NPDES requirements pertaining to the Project, (3) all applicable building codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by City or Agency in connection with the Development which are standard for and uniformly applied to similar projects in the City. Nothing contained in this Agreement shall be deemed to impose any obligation on Owner with respect to the Development Approvals or the Project.

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

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

3.5 Changes and Amendments. Developer may determine that changes to the Development Approvals are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Development Approvals to effectuate such change(s); provided that the City may request written consent from Owner if the modification is deemed material. The Parties acknowledge that City shall be permitted to use its sole and absolute discretion in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing discretion, the City shall not apply a standard different than that used in evaluating requests of other developers. Accordingly, under no circumstance shall City be obligated in any manner to approve any amendment to the

Development Approvals. The City Manager shall be authorized to approve any non-substantive amendment to the Development Approvals without processing an amendment to this Agreement. All other amendments shall require the approval of the City Council. The parties acknowledge that any extension of the Term for no more than twelve (12) months total is a non-substantive change, which the City Manager, in his or her sole discretion, may approve in writing.

3.6 Reservation of Authority.

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

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

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the Billboard on the Billboard Site.

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

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

(f) Applicable Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the Billboard Site or the Development of the Billboard Site and that do not have an exception for existing signs or legal nonconforming uses.

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

3.6.3 *Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.* In the event that applicable federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.

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

3.8 **Public Improvements.** Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any subsequent Development Approvals to require Developer to pay any required development fees, and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions.

3.8.1 The payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project; and

3.8.2 The timing of the Exaction should be reasonably related to the development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public.

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

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

3.9.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as business license fees or taxes or utility taxes;

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

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

4. REMOVAL OF BILLBOARDS

4.1 **Removal by Developer.** Upon the termination of this Agreement, as set forth at Section 6.2.4, and within One-Hundred-Twenty (120) days of any notice of termination provided under this Agreement or within such earlier time as otherwise provided in the Lease, Developer shall, at its sole cost and expense, completely remove the Billboard, including, but not limited to, any structure or facility erected or maintained as part of or in relation to the Billboard, from the Billboard Site. Removal of the Billboard shall be in accordance with any applicable federal, State, or local regulations, including regulations of the City. Developer shall, at its sole cost and expense, secure any required permit to remove and properly transport the Billboard from the Billboard Site, and not store any portion of the removed Billboard on the Billboard Site or any other location within the City, except as permitted under the then-applicable laws. Developer hereby waives any rights it may have under federal, State or local laws or other regulations of any kind whatsoever, including, but not limited to, the California Outdoor Advertising Act (Cal. Business and Professions Code §§ 5200, *et seq.*), to challenge the requirement of this Agreement that Developer remove the Billboard pursuant to the terms of this Agreement.

4.2 **City's Right to Removal.** Should Developer fail to remove the Billboard within the times and provisions included in (1) the Schedule of Performance or (2) Section 4.1, City shall have the right to remove the Billboard and dispose of same and to have the Developer reimburse the City for the City's actual cost of such removal. Developer and City acknowledge and agree that the City's removal of the Billboard in accordance this Section 4.2 shall comply with Section 5.4 by having the City provide notice to Developer upon Developer's failure to comply with Section 4.1 or the Schedule of Performance. Any such removal of the Billboard by City shall not entitle Developer to any damages of any kind whatsoever against the City provided such removal was authorized by this Agreement, and Developer hereby releases the City, its officers, employees, agents or contractors from any claims or liabilities, as defined at Section

7.2.1 below, for any action by the City, its officers, employees, agents or contractors in removing the Billboard provided such removal was authorized by this Agreement. City acknowledges that its rights to enter the Site and remove the Billboard are subject to the execution of a permit to enter in form reasonably acceptable to Owner, as described in Section 5.3 below.

5. REVIEW FOR COMPLIANCE.

5.1 **Annual Review.** The City Council shall review this Agreement annually at city's sole cost, on or before the anniversary of the Term, to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review"). However, no failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement. Developer shall cooperate with the City in the conduct of such any Annual Review.

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

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

5.4 **Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If, on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied in good faith with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such

thirty (30) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to said Notice within thirty (30) days after receipt of the Notice. If the response to the Notice of Non-Compliance has not been received in the offices of the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice. In the event that a cure or remedy is not timely effected or, if the Notice is contested and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 9.10.

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

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 Termination of Agreement for Material Default of Developer. City, in its discretion, may terminate this Agreement for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In the event of a termination by City under this Section 6.2.1, Developer acknowledges and agrees that City may retain all fees accrued up to the date of the termination, including the Processing Fee and the Development Fee, but that a proportionate amount of the Development Fee shall be returned from the City and to the Developer within 10 days after the date of termination and removal of

the Billboard that equates to the percentage of time remaining on the Term of this Agreement if the Term was not otherwise terminated.

6.1.2 *Termination of Agreement for Material Default of City.* Developer, in its discretion, may terminate this Agreement for any material failure of City to perform any material duty or obligation of City hereunder or to comply in good faith with the term of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In addition, Developer may terminate this Agreement if, despite Developer's good faith efforts, it is unable to secure the necessary permits and/or compliance with requirements under laws necessary to effectuate the Project. In the event of a termination by Developer under this Section 6.2.2, Developer acknowledges and agrees that City may retain all fees, including the Processing Fee and the Development Fee, Developer has paid to City prior to the date of such termination.

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

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

7.1 **Insurance.**

7.1.1 *Types of Insurance.*

(a) *Liability Insurance.* Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, and Developer comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of section 7.2. Developer has agreed to indemnify City hereunder to the extent of the liability insurance coverage with respect to its use, occupancy, disuse or condition of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing protection of a least One Million Dollars (\$1,000,000) for bodily injury or death to any one person, at least Two Million Dollars (\$2,000,000) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000) for property damage.

(b) *Worker's Compensation.* Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that

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any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law.

(c) *Insurance Policy Form, Sufficiency, Content and Insurer.* All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better. All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against City and against City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by City, but only with respect to the liabilities assumed by Developer under this agreement; and (iii) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with certificates evidencing the insurance. City shall be named as an additional insured on all liability policies of insurance required to be procured by the terms of this Agreement.

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

(1) For insurance required above, within thirty (30) days after the Effective Date or consistent with the requirements of Exhibit "D" (Schedule of Performance), Item No. 8.

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

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

7.2 Indemnification.

7.2.1 *General.* Developer shall indemnify the City and Owner, and their respective officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any

person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Site:

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

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

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

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

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

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

(3) Developer's failure to prevent any employee or any invitee or any other person from entering upon or remaining in any place upon the Site which is not safe and does not comply with all laws pertaining thereto as they may now or hereafter exist;

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

(a) *Loss and Damage.* Except as set forth below, City shall not be liable for any damage to property of Developer, Owner or of others located on the Site, nor for the loss of or damage to any property of Developer, Owner or others by theft or otherwise. Except as set forth

below, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. The foregoing two (2) sentences shall not apply (i) to the extent City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Site, or (ii) to the extent covered in any permit to enter executed by the City.

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

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

8. MORTGAGEE PROTECTION.

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

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the Development or Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written

notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

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

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

9. MISCELLANEOUS PROVISIONS.

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

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



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

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

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

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

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

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

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

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

be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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

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

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

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

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



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

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

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

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

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

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

To City:

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

[MORE]



With Copy to:

Aleshire & Wynder, LLP
18881 Von Karman Ave., #400
Irvine, CA 92612
Attn: William Wynder, Esq.

To Developer:

Bulletin Displays, LLC.
3127 E. South Street, Suite B
Long Beach, California 90805

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

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

9.23 No Amendment of Lease. Nothing contained in this Agreement shall be deemed to amend or modify any of the terms or provisions of the Lease. Nothing contained in this Agreement shall constitute or be deemed to constitute a limit on any of Developer's obligations under the Lease, or any of Owner's rights or remedies against Developer under the Lease.

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

[MORE]



City: CITY OF CARSON

By _____
Mayor Jim Dear

ATTEST:

By _____
City Clerk Helen Kawagoe

APPROVED AS TO FORM:

By _____
City Attorney

Developer: BULLETIN DISPLAYS, LLC.,
a California limited liability
company

By: _____

By: _____

[end of signatures]

[MORE]



STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On _____, 2010, before me, _____,
personally appeared _____ personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person whose name is subscribed to the
within instrument and acknowledged to me that she executed the same in her
authorized capacity, and that by her signature on the instrument the person or the entity
upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Notary Public
[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

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

Witness my hand and official seal.

Notary Public

[SEAL]

[MORE]



EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

Property Address: 19401 Main Street

The land referred to as parcel no. 7339-016-013 is situated in the County of Los Angeles, State of California and is described as follows:

Lot 115 of Tract No. 4671 in the City of Carson, County of Los Angeles, State of California, as per Map recorded in Book 56, Page(s) 30 and 31 of Maps, in the Office of the County Recorder of said County

[MORE]



EXHIBIT B

SCOPE OF DEVELOPMENT

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

1. The Project. Developer shall install the Billboard in accordance with the terms of this Agreement. The Billboard consists of one (1) 75' tall, "bulletin" size freeway-oriented billboards with a total of three (3) faces (each face measuring 14' x 48') within the Billboard Site. Developer shall be allowed to install digital displays on the two (2) freeway faces if the City amends the Carson Municipal Ordinance to allow digital displays on the Billboard at the Billboard Site. All utilities necessary for the Billboard shall be undergrounded and the Billboard Site shall be maintained in accordance with the conditions at Paragraph 3 below.

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

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

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

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

[MORE]



maintenance of the Development such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of the Billboard Site.

4. Other Rights of City. In the event of any violation or threatened violation of any of the provisions of this Exhibit "B," then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of this Agreement, the City shall have the right, after complying with Section 5.4 of this Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Paragraph 3 above (subject to the execution of a permit to enter in form reasonably acceptable to Owner) and charging Developer for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Billboard Site or any part thereof or interests therein as to the violating person or one threatening violation.
5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Agreement. The failure of the City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Developer, its successors, transferees or assigns, for any default or breach by the City under this Agreement.
6. Conditions of Approval. The following additional conditions shall apply to the installation of the Billboard, which Billboard shall conform to all applicable provisions of the Carson Municipal Code (CMC) and the following conditions, in a manner subject to the approval of the Director of Planning:
 - (a) A building permit will be required, structural calculations shall be prepared by a licensed civil engineer and approved by the City Engineer.
 - (b) The Billboard shall be located in the portion of the Site shown on Exhibit "C", and shall be of the dimensions described in Section 1, above.
 - (c) The size of the sign faces of Billboard shall not exceed a maximum area of 672 square feet with no more than 128 feet of extensions and shall not to exceed a maximum height of 75 feet, and shall be spaced at intervals that are no less than 500' from any other billboard on the same side of the freeway and measured parallel to the freeway as depicted in the Site Plan and Elevations at Exhibit "C" approved by the City as part of the Development Approvals.



(d) The Billboard pole shall be of a color subject to the approval of the City's Development Services Manager or designee.

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

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

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

(h) Developer shall, at all time, comply with the approval for the New Billboards from the California Department of Transportation Outdoor Advertising Division and shall maintain acceptable clearance between proposed billboards and Southern California Edison distribution lines.

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

(j) The activities proposed in this Agreement shall be operated completely upon the Billboard Site and shall not use or encroach on any public right-of-way.

(k) Developer shall ensure that all access to the Existing and New Billboards is kept restricted to the general public to the extent permitted under local laws.

(l) If any portion of the existing landscape is damaged by the Development and becomes in need of replacement, the Developer shall ensure that the replacement is accomplished within fourteen (14) days of notification by the City, unless such time is extended by the City's Planning Director if Developer shows unusual circumstances requiring more time to accomplish such replacement. Developer or Owner may trim such landscaping so as not to block the Billboards.

(m) Developer shall underground all utilities installed in connection with the Billboard.



(n) Developer shall comply with all necessary NPDES requirements pertaining to the proposed use, to the extent applicable.

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

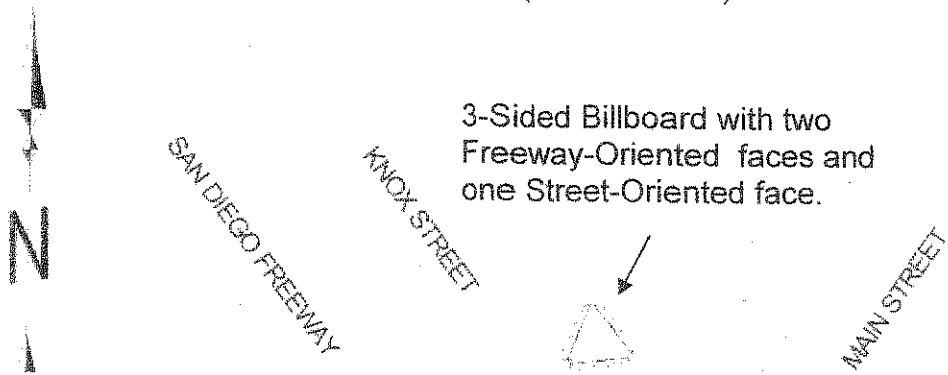
[MORE]



EXHIBIT C

DEPICTION OF BILLBOARD SITE

[Not to scale]



[MORE]



EXHIBIT D

SCHEDULE OF PERFORMANCE

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
1. City's Planning Commission holds public hearing and recommends approval of Agreement and Conditions of Approval	January 12, 2010	Recitals
2. City's City Council holds hearings to approve Agreement and first and second reading of Ordinance	February 2, 2010 (continued); February 16, 2010 (continued); March 2, 2010 (1 st Reading); March 24, 2010 (2 nd Reading) provided Developer has fully executed the Agreement	Recitals
3. Developer to provide copy of Lease and CalTrans approval to City	Completed	2.2
4. Developer prepares and submits to City working drawings specifications and engineering, City commences approval process. City agrees to receive the engineering prior to plan check approval, but not process it until Developer receives plan check approval.	Within 120 days of the approval by City of this Agreement	3.4
5. City to approve construction drawings and specifications with a plan check approval	Within 30 days from their submittal by Applicant	3.4
6. Developer to submit proof of insurance to City	Prior to commencing any inspections and work on the Project	7.1.2
7. City to approve all engineering and issue all necessary permits including but not limited to a building permit	Within 30 days of plan check approval by City	3.3
8. Developer pays City first installment of Development Fee if	Within 1 year of Developer receiving Final Permits or June	2.6

[MORE]

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ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
Developer receives Final Permits	30, 2011, whichever occurs first	
9. Developer pays City second through fifth installments of Development Fee if Developer receives Final Permits	Beginning within 2 years of Developer receiving Final Permits or June 30, 2012, whichever occurs first, and ending 3 years thereafter	2.6
10. If applicable, Developer calculates and pays the Percentage Fee	Within 90 days of the end of each calendar year	2.7
11. If applicable, Developer calculates and pays the difference between the Ten Year Percentage Fee paid and \$200,000.	Within 90 days of the end of the tenth (10 th) calendar year	2.7.1
12. Developer to commence the development of the Billboard	Within 90 days of the Developer being issued all necessary permits, including but not limited to a building permit	3.4
13. Developer to complete the Billboard	Within 2 weeks of the commencement of the construction of the billboard footing, column and head of the sign billboard, but extended for those Force Majeure items listed in Section 9.10	3.4

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

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

[MORE]

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EXHIBIT E
DEVELOPER'S PRODUCTION SPECIFICATION SHEET

ARTWORK SPECS

14' x 48' Bulletins whether static or digital (not including extensions)

File Size:	<u>Full Scale</u> 168" x 576" 9 D.P.I. min.	or	<u>3/16" = 1' Scale</u> 2.625" x 9" 576 D.P.I. min
File Format:	<u>Preferred</u> Photoshop (.psd)	or	<u>Other</u> Photoshop (.eps) Photoshop PDF (.pdf) JPEG (.jpg)

[MORE]



EXHIBIT E

DEVELOPER'S PRODUCTION SPECIFICATION SHEET

14' x 48' BULLETIN

VINYL SPEC SHEET

Bleed Size 14'6" x 48' 6"

Overall Vinyl Size 15' x 49'

Visual Area 14' x 48'

Ship Vinyls to
Bulletin Displays
c/o AMP
202 N. Loma Place
Upland, CA 91786

BULLETIN DISPLAYS, LLC
"CREATIVE OUTDOOR ADVERTISING"

