

ECONOMIC DEVELOPMENT BENEFIT AGREEMENT

ARTICLE 1 PARTIES AND EFFECTIVE DATE.

1.1. **Parties.** This Economic Development Benefit Agreement (“**Agreement**”) is entered into on February 15, 2022 by and between the CITY OF CARSON, a California municipal corporation (“**City**”), and SOUTH BAY CARSON, LLC, a California limited liability company (“**Owner**”). City and Owner are sometimes referred to individually as a “**Party**” and together as “**Parties**” herein.

1.2. **Effective Date.** This Agreement is dated for reference purposes only. This Agreement will not become effective until the date (“**Effective Date**”) on which both of the following are true: (i) this Agreement has been approved by the City Council following all legally required notices and hearings; and (ii) this Agreement has been executed by the appropriate authorities of City and Owner.

ARTICLE 2 RECITALS.

2.1. Owner owns that certain real property located at 20151 South Main Street, Carson, California, as such property is specifically described in **Exhibit A** attached hereto and incorporated herein (“**Property**”).

2.2. On November 6, 2018, City’s voters approved a new Charter for the City which included a comprehensive set of economic development incentives and programs to promote the development of the City of Carson given the unique environmental constraints, to create jobs and to preserve the sound fiscal basis of City. City has determined that under the Charter, City has broad economic development powers to enact measures, to enter into agreements, and to loan, grant, fund, or finance projects which will provide public benefit and protect the public health, safety and welfare of the community, which programs may be carried out singly or in combination in a manner to promote the economic development objectives set forth in Section 206 of the Charter, which specifically allows for the use of “Tax and Assistance Agreements” for sales taxes, transient occupancy taxes, utility taxes or other taxes to be shared with the generator, and rebates or waivers of franchise fees, business license fees, development impact fees, or other revenue sources.

2.3. The incentives provided in this Agreement are intended by City to be consistent with and promote the purposes of Section 206 of the Charter via the sharing of Local Sales Tax Revenues (as defined below) for the purpose of encouraging Owner to attract and retain Retail Facilities (as defined below) within the City. This Agreement constitutes a “Tax and Assistance Agreement” and Owner shall be treated as a “generator” for purposes of Section 206 of the Charter.

2.4. Section 206 of the Carson Charter is consistent with Government Code section 53083 authorizing local agencies to provide economic development subsidies where the local agency provides written notice through its website concerning the economic development subsidy and the information required under subsection (a) therein.

2.5. City has determined that entering into this Agreement will provide significant ongoing public benefits to City and promote the public health, safety and welfare of the community by facilitating the opportunity to attract and retain Retail Facility(ies) within the City, thereby generating additional sales tax revenue and direct and indirect new jobs for the City and area

residents, and assisting City in maintaining a jobs/housing balance within the City, thereby creating social, economic and environmental benefits. The City has further determined that this Agreement will allow for the redevelopment of an organic landfill site, which otherwise would not be developable as a Retail Facility development. Specifically, the Property is identified as having been the former Southwest Conservation Landfill, which accepted wastes similar to other former landfills in the immediate area that now have documented soil and groundwater contamination from metals and volatile and semi-volatile organics; therefore, the Property likely has similar contamination. The total refuse disposed on the Property was approximately 1 million cubic yards, and 9 million gallons of liquid wastes were disposed over 22 acres to a maximum depth of 50 feet bgs. There is a methane gas monitoring system on the Property and has been in operation since the late 1970s or very early 1980s, prior to the drive-in operation. Accordingly, City has also determined that its entry into this Agreement serves a significant public purpose, while providing only incidental benefits to a private party, is consistent with Section 206 of the Carson Charter and noticed Government Code section 53083.

2.6. The Property is located within a former Carson Redevelopment Agency Project Area. Despite diligent efforts by the Carson Redevelopment Agency Board and staff to foster development of a beneficial end use for the Property, it has remained vacant for decades. Many proposed projects failed due to the nature of the Property as a former landfill. As such, the City Council finds that commercial development of the Property for retail uses is not economically feasible without the benefits provided by this Agreement.

2.7. City has expressed its desire for a Costco (as defined below) to be developed and operated on the Property. To accomplish the foregoing desire of City, Owner has taken a number of steps to diligently and in good faith pursue development of the Costco by, among other things, submitting a development application to City for the approval of the Costco. Provided, however, while Owner is committed to using its diligent and good faith efforts to facilitate development and Operations (as defined below) of the Costco, the Parties recognize that market realities and related considerations require a flexible entitlement strategy, which will be set forth in more detail in the Specific Plan.

2.8. Any Retail Facility developed and operated on the Property shall be vetted so as to avoid, whether directly or indirectly, the payment, transfer, diversion, or rebate of any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) for any purpose so as to trigger the prohibitions of Government Code Section 53084.5.

2.9. This Agreement has been reviewed by City with respect to applicability of the California Environmental Quality Act ("**CEQA**"), the State CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq.*, hereafter the "**Guidelines**"), and any applicable local CEQA policies and procedures and City has determined that this Agreement is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because City has determined, in its discretion and based on substantial evidence, that this Agreement constitutes a government funding mechanism or other government fiscal activity, which does not involve any commitment to any specific project which may result in potentially significant physical impact on the environment, pursuant to Guidelines section 15378(b)(4), or alternatively, it constitutes an organizational or administrative activity that will not result in a direct or indirect physical change in the environment pursuant to Guidelines section 15378(b)(5).

2.10. City, in consideration of the additional Local Sales Tax Revenues to be collected and remitted by any Retail Facility for the benefit of City, which City would not otherwise realize if the Property were used only for non-Sales Tax producing purposes, desires to provide City Payments (as defined below) to Owner as compensation for Operations of Retail Facility(ies) being established (whether through the development and operation by Owner and/or by tenant(s) of Owner) and for Owner otherwise satisfying its obligations under this Agreement.

2.11. City shall make the City Payments in accordance and subject to the terms of this Agreement.

2.12. City and Owner desire to enter into this Agreement for the purposes described above.

ARTICLE 3 DEFINITIONS.

3.1. **Definitions.** Unless the context otherwise requires, the terms defined in this Article 3 shall, for all purposes, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein, have the meanings defined herein; the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

3.1.1 **“Agreement”** shall have the meaning set forth in Section 1.1.

3.1.2 **“Annual Retained Amount”** shall have the meaning set forth in Section 4.2.3.

3.1.3 **“Business Day”** means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California (including the City) and/or City, State, or Federal offices are closed.

3.1.4 **“CDTFA”** means the California Department of Tax and Fee Administration and any successor agency.

3.1.5 **“CEQA”** shall have the meaning set forth in Section 2.7.

3.1.6 **“City”** shall have the meaning set forth in Section 1.1 and shall include any nominee, assignee or successor to City’s rights, powers and responsibilities.

3.1.7 **“City Payment”** means, with respect to a particular Fiscal Quarter within the Term, the sum total amount of City’s “Location Payment Obligation” (LPO), as defined in Section 3.1.23, for such Fiscal Quarter.

3.1.8 **“City Payments”** means each and every City Payment, collectively.

3.1.9 **“Costco”** shall mean a Costco Wholesale Corporation retail store, which Costco opens in at least one hundred thousand (100,000) square feet of retail space on the Property.

3.1.10 **“Costs”** shall have the meaning set forth in Section 6.16.

3.1.11 **“Data and Documentation”** shall have the meaning set forth in Section 4.1.2.

3.1.12 **“Default Rate”** shall mean a per annum rate of interest equal to six percent (6%) over the Secured Overnight Financing Rate, but not to exceed the maximum permitted by law.

3.1.13 **“Dispute Notice”** shall have the meaning set forth in Section 6.17.

3.1.14 **“DIR”** shall have the meaning set forth in Section 4.1.2.

3.1.15 **“Effective Date”** shall have the meaning set forth in Section 1.2.

3.1.16 **“Event of Default”** shall have the meaning set forth in Section 4.10.

3.1.17 **“Fiscal Quarter”** means each three-month period within the Term commencing on February 1, May 1, August 1, or November 1, and ending on, as applicable, the immediately following April 30, July 31, October 31, or January 31.

3.1.18 **“Force Majeure Delay”** or **“Force Majeure Event”** shall have the meaning set forth in Section 6.13.

3.1.19 **“Guidelines”** shall have the meaning set forth in Section 2.7.

3.1.20 **“Job Recruitment Fairs”** shall have the meaning set forth in Section 4.9.1.

3.1.21 **“Local Sales Tax Revenues”** means that portion of the Sales Tax, if any, paid by any Retail Facility upon taxable sales and uses attributable to the operation of the Retail Facility and which is allocated and paid to City pursuant to the Sales Tax Law. Provided, however, that Local Sales Tax Revenues shall not include (i) any Sales Tax levied by, collected for or allocated to the State of California, the County of Los Angeles, or a district or any entity (including an allocation to a statewide or countywide pool) other than the City, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule, or regulation and thus not received by or retained by City unless any such offsetting credit is ultimately received by City, (v) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State of California) or set aside and/or required by the State of California to be pledged to a specific use other than for deposit into or payment from City’s general funds. The California Legislature might provide for the payment to City of some form of revenues for the purpose of offsetting any losses City has suffered in Local Sales Tax Revenues resulting from the enactment of state legislation (e.g., the “triple flip” legislation). The Parties agree that should the California Legislature provide for such offsetting revenues, then any such offsetting revenues which are (i) intended to offset the loss of Sales Tax Revenues to City as a result of changes in law, and (ii) actually received by City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to Sales Tax Revenues received by California municipalities, shall be deemed to be “Local Sales Tax Revenues” within the meaning of this Agreement; provided however, that should any such legislative change cause an increase in Sales Tax Revenues to make up for other funding eliminated or reduced from City, the Parties shall adjust the Location Payment Obligation and/or eliminate the Annual Retained Amount as necessary to account for such impact so that the Parties

are made whole and neither Party receives any windfall or is prejudiced relative to the other Party by such change.

3.1.22 **“Local Sales Tax Revenue Commencement Date”** shall mean the date that the Costco commences Operations at the Property.

3.1.23 **“Location Payment Obligation”** or **“LPO”** means, as to a particular Fiscal Quarter during the Term, an amount equal to:

- (i) sixty-five percent (65%) of each dollar of Local Sales Tax Revenues received by City for each Fiscal Quarter commencing upon the Local Sales Tax Revenue Commencement Date until the fifth (5th) anniversary of the Local Sales Tax Revenue Commencement Date and, thereafter,
- (ii) an amount equal to fifty-five percent (55%) of each dollar of Local Sales Tax Revenues received by City for each Fiscal Quarter until the end of the Term.

The calculation of the LPO shall be based on the remaining Local Sales Tax Revenues after deducting once annually the Annual Retained Amount set forth in Section 4.2.3 from Sales Tax Revenues in the first Fiscal Quarter following the Local Sales Tax Revenue Commencement Date and in the same such Fiscal Quarter in each following year during the Term (and if the Annual Retained Amount is not fully deducted in the first such Fiscal Quarter, then with deductions of remaining amounts in each following Fiscal Quarter until City has deducted the total Annual Retained Amount).

3.1.24 **“Maximum City Payment Amount”** means payment of the City Payments totaling Eighteen Million Dollars (\$18,000,000).

3.1.25 **“Minor Amendment”** means any limited technical correction, or not-substantive modification of this Agreement, as determined by the City Manager and City Attorney.

3.1.26 **“Opening of the Costco”** means the first date that the Costco commences Operations on the Property.

3.1.27 **“Operation(s)”** means the Retail Facility is open, operating and generating Retail Sales.

3.1.28 **“Owner”** shall have the meaning set forth in Section 1.1.

3.1.29 **“Party”** or **“Parties”** shall have the meaning set forth in Section 1.1.

3.1.30 **“Permitted Closure”** shall mean: (1) a closure lasting less than three hundred sixty-five days (365) days regardless of the reason; (2) a Force Majeure Event impacting the Costco; (3) a casualty event provided that the Owner or operator of the Costco are proceeding with the repair and/or reconstruction of the Costco within a commercially reasonable time period; (4) Owner notifies City that it intends to replace the Costco with a warehouse store of similar size and a demonstrated record of producing Sales Tax, (5) a temporary taking lasting less than

eighteen (18) months, or (6) any closure of the Costco that is permitted pursuant to the terms of the Costco Lease.

3.1.31 **“Prevailing Wage Law”** shall have the meaning set forth in Section 4.1.2.

3.1.32 **“Project Approvals”** shall mean a development application for a General Plan Amendment, a Specific Plan and related entitlements.

3.1.33 **“Prohibited Financial Assistance”** shall have the meaning set forth in Section 4.1.1.

3.1.34 **“Property”** shall have the meaning set forth in Section 2.1.

3.1.35 **“Public Records Act”** shall have the meaning set forth in Section 6.12.

3.1.36 **“Resolution Period”** shall have the meaning set forth in Section 6.17.

3.1.37 **“Retail Facility” or “Retail Facilities”** means one or more retail facilities located on the Property (including, but not limited to, the Costco) at which Retail Sales and other sales transactions are consummated pursuant to the Sales Tax Law. A Retail Facility may include a warehouse component, but shall not include any facility used primarily for non-Retail Sales as part of warehousing, distribution, logistics, fulfillment or manufacturing facilities, e-commerce or internet sales or any so called “last mile” distribution facilities, but shall exclude any retail facility transferred from other locations within the City or new branches of retail facilities already located in the City whether as of the Effective Date of this Agreement or after. A Retail Facility shall further exclude the following discount retailers: 99 (cents) Only, Dollar Tree, Dollar General, Family Dollar, and Big Lots.

3.1.38 **“Retail Sales,” “Sale “ or “Sales”** means all sales of tangible personal property, taxable food, beverage, and vehicle fuel or energy source (including, but not limited to, electrical charging stations) sold to any person or entity at the Retail Facility, online or virtually and attributable to the Retail Facility and thereby subject to Sales Tax in the City of Carson following the Opening of the Costco and which generates Local Sales Tax Revenues.

3.1.39 **“Sales Tax”** means all sales and use taxes levied under the authority of the Sales Tax Law, excluding amounts to be refunded to the Retail Facility because of an overpayment of Sales Tax.

3.1.40 **“Sales Tax Law”** means (i) California Revenue and Taxation Code Section 6001 *et seq.*, and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code Section 7200 *et seq.*), and any successor law thereto, (ii) any legislation allowing City or other public agency with jurisdiction in City to levy any form of Sales Tax, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof; provided that “Sales Tax Law” shall not include any local transaction and use tax adopted by City, with approval by City voters, pursuant to Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code, and Section 7285.9 of the California Revenue and Taxation Code.

3.1.41 **“Secured Overnight Financing Rate”** shall mean the rate of interest per annum equal to the secured overnight financing rate on the applicable business day of determination, published by the Federal Reserve Bank of New York, currently at

<https://www.newyorkfed.org/markets/reference-rates/sofr> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time) as the current "30-Day Average".

3.1.42 "**Specific Plan**" shall mean that certain policy and planning document to be considered and adopted by City as part of the development application referenced in Section 4.1.1, which would govern development of the proposal for the Costco and other Retail Facilities, and any other use.

3.1.43 "**Term**" shall mean that period commencing on the Effective Date and ending on the twentieth (20th) anniversary of the Local Sales Tax Revenue Commencement Date; provided that this Agreement shall terminate earlier upon (i) the permanent closure of the Costco, unless due to a Permitted Closure, (ii) the receipt by Owner of the Maximum City Payment Amount; or (iii) the date on which this Agreement is terminated pursuant to the specific provisions of this Agreement, whichever occurs first. The Term shall be subject to the Tolling Period as specified in the Agreement. If within one (1) year of the Effective Date the Owner is unable to obtain, using reasonable and good faith efforts, a binding commitment from Costco to construct and open a retail facility, then the Owner, at its option, shall have the right to terminate this Agreement by sending written notice to the City.

3.1.44 "**Third Party Claim**" shall have the meaning set forth in Section 6.14.

3.1.45 "**Tolling Period**" shall mean any period during which a Force Majeure Event or a Permitted Closure is ongoing, during a Resolution Period, or any other event during which City Payments are not being made for a reason out of Owner's control.

ARTICLE 4 LOCATION AND OPERATION; CITY PAYMENTS

4.1 Covenants of Owner.

4.1.1 *Location and Operation Covenant.* Owner hereby represents that it is seeking to facilitate the development and Operations of the Costco within the jurisdictional boundaries of the City. To this end, Owner, as of the Effective Date, has already submitted the Project Approvals, including the payment by Owner of applicable fees therefor, which incorporates the proposal for the Costco. Owner intends to diligently pursue the Project Approvals from City in accordance with the applicable requirements of the Carson Zoning Ordinance and other applicable laws and regulations.

During the Term, Owner may not receive any Prohibited Financial Assistance (as defined below) from another competing jurisdiction to construct, open and operate a Costco in the competing jurisdiction if the competing Costco will result in the reduction of the Local Sales Tax Revenues. During the Term, City shall not provide any Prohibited Financial Assistance to any project or developer within its jurisdiction that will result in the reduction of the Local Sales Tax Revenues.

For purposes of this Section 4.1.1, the term "**Prohibited Financial Assistance**" shall mean any direct or indirect payment, subsidy, or other similar monetary benefit, including, without limitation, payment of land subsidies, relocation expenses, financial incentives, public financings, tax and assistance agreement, property or sales tax relief, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner, where the aforementioned is solely to assist with the creation of a competitive Retail Facility within

10 miles of the Retail Facility that is subject to this Agreement; provided, however, that participation in an Enhanced Infrastructure Financing District shall not be treated as Prohibited Financial Assistance.

4.1.2 *Lease Covenants.* Owner shall use commercially reasonable, good faith efforts to cause the Retail Facility leases to include the following covenants:

(i) The Retail Facility operator shall conduct its respective operations in accordance with all applicable provisions of local, state and federal law.

(ii) The Retail Facility operator shall authorize the California State Franchise Board to provide to City and Owner, access to sales and/or use tax records for the Retail Facility operator business located on the Property and shall sign any required documentation indicating its consent to facilitate such disclosure to City and Owner.

(iii) The Retail Facility operator will provide Owner and City copies of its quarterly sales tax reports for the relevant Retail Facility (collectively, “**Data and Documentation**”) provided to the CDTFA, which set forth the amount of Sales Taxes paid by each such Retail Facility to the CDTFA during the Fiscal Quarter arising from the Operation of the relevant Retail Facility. Specifically, the Retail Facility operator shall provide to the Owner and the City *Schedule C - Detailed Allocation By Location Of Sales And Use Tax Transactions* that it filed with the CDTFA. In each Schedule C, the Retail Facility operator shall separately state the Sales Taxes paid for its Retail Facility located on the Property. Notwithstanding anything to the contrary in the foregoing, in the event of a dispute regarding the Local Sales Tax Revenues from a Retail Facility, City may, at its sole expense and pursuant to all applicable laws and regulations, seek to compel the relevant entity to provide any such additional information and Retail Facility shall cooperate with City related to such request. City acknowledges and agrees that the Data and Documentation provided by each such entity is confidential and shall be treated by City as confidential material for purposes of Section 6.12.

(iv) The Retail Facility shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction pertaining to the relevant Retail Facility must be paid the prevailing per diem wage rate for their labor classification under Labor Code Section 1720 *et seq.* and implementing regulations (“**Prevailing Wage Law**”) and should any third party, including, without limitation, the Director of the Department of Industrial Relations (“**DIR**”), bring a claim that Owner or the entity establishing and Operating a Retail Facility is required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then the entity establishing and Operating a Retail Facility shall (with counsel reasonably acceptable to City) indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature), liabilities, damages, penalties or other proceedings, and shall assume all obligations and liabilities (if any) for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law.

4.2. Payment of City Payment.

4.2.1 *Sales Tax Payments.* In consideration of the substantial benefits to City from the development of Retail Facilities, City shall pay to Owner the City Payments described below. City Payments shall be made from any source available to City, in quarterly installments beginning with Local Sales Tax Revenue Commencement Date until the expiration of the Term of this Agreement. The Term shall be extended by the length of any Tolling Period. The Local Sales Tax Revenues generated by the Property for City's benefit as a result of the location by Owner of Retail Facilities will be directly related to the covenants agreed to by Owner in this Agreement, which covenants shall terminate and be of no further force or effect in any year in which City fails to pay to Owner the City Payments, following notice by Owner to City and an opportunity to cure pursuant to Section 4.10.2. The City Payments have been derived by allocating to Owner a percentage of the direct annual fiscal benefits accrued by City as a result of this Agreement. Accordingly, City is deemed to have received annual benefit in exchange for its entry into this Agreement.

4.2.2 *Separate Accounting.* During the Term, City shall separately track all the Local Sales Tax Revenues and segregate those funds in its bookkeeping ledger, so that the same can be easily audited, the City Payments can be accurately calculated, and the City is able to ensure the availability of said funds to make the obligated City Payments.

4.2.3 *Process.* Within forty-five (45) days following City's receipt of any and all Local Sales Tax Revenues applicable to such Fiscal Quarter and upon satisfaction of the remaining conditions set forth in Section 4.2.4, City will determine and pay to Owner the City Payment due for such Fiscal Quarter. The first one hundred thousand dollars (\$100,000.00) of Local Sales Tax Revenues collected by City from Retail Facilities each year of the Term ("**Annual Retained Amount**") shall be retained by City in its entirety from the Local Sales Tax Revenues from the First Fiscal Quarter and, if insufficient to fully pay the Annual Retained Amount, the following Fiscal Quarter or Quarters, as necessary, and shall be retained until City has reached the Annual Retained Amount. Thereafter, City shall make the City Payment on any remaining Local Sales Tax Revenues for that Fiscal Quarter and the following Fiscal Quarters for that year. City's obligation to pay the City Payment to Owner shall apply to each Fiscal Quarter or portion thereof during the Term and shall terminate at the end of the Term, provided that the obligation of City to pay the City Payments and all other amounts payable to Owner under this Agreement for all Fiscal Quarters or portions thereof occurring during the Term shall, together with all provisions for the benefit of Owner required or reasonably necessary to enforce such payment requirements, survive the termination of this Agreement. Each City Payment shall be accompanied by a statement setting forth the calculations made to determine the amount of such disbursement and setting forth all disbursements made to date, subject to any restrictions imposed by CDTFA regarding the disclosure of such information to third-parties. With each City Payment, City shall provide a full accounting on the Local Sales Tax Revenues received from the state, including the Sales Tax documentation it received from the state for each Retail Facility on the Property. City shall also provide the documentation showing the Annual Retained Amount, Local Sales Tax Revenues received, and the calculation of the City Payment with each quarterly payment.

4.2.4 *Conditions Precedent to City Payments.* For each Fiscal Quarter within the Term, City's obligations to make any City Payments to Owner hereunder are expressly contingent upon, and only upon, the satisfaction of the following conditions precedent in each Fiscal Quarter:

- (i) City has received from the Retail Facility, Owner or the State of California sufficient information, so that it can accurately calculate the Local Sales Tax Revenues; and
- (ii) City's receipt of Local Sales Tax Revenues from the State of California.

City shall exercise diligent and good faith, reasonable efforts to promptly obtain Local Sales Tax Revenues from the State of California. Should City reasonably determine that the condition precedent set forth in subsections (i) and (ii) above have not been satisfied for the relevant Fiscal Quarter, then City may delay making the City Payment to Owner for such Fiscal Quarter until such condition precedents are met. If City elects to so delay such City Payment, City must promptly give Owner written notice pursuant to Section 6.8 in reasonably sufficient detail of the basis for City's allegation that the condition precedents have not been fulfilled and cooperate with Owner's efforts to obtain the necessary information. Upon satisfaction of the condition in subsections (i) and (ii), City shall be obligated to pay all previously unpaid City Payments to Owner within thirty (30) days. Notwithstanding anything to the contrary in the foregoing, if City improperly delays making the relevant City Payment under this Section 4.2.4, then City shall, in addition to making the required City Payment, pay interest at the Default Rate until paid all sums due and owing are paid.

4.3. **Adequate Consideration.**

4.3.1 Each City Payment due and payable hereunder shall constitute the total payment to Owner for the Fiscal Quarter to which it relates. The Parties hereto have determined and agreed that the City Payment due and payable with respect to each Fiscal Quarter represents fair consideration to Owner for its covenants and obligations hereunder up to the amount of the Maximum City Payment Amount and the covenants and obligations of Owner hereunder represent fair and adequate annual consideration to City for its obligation to make the City Payments.

4.3.2 Both City and Owner expressly acknowledge and agree that Owner will receive no compensation under this Agreement other than the City Payments, any additional payments due under Section 4.2, and any funds received by Owner as a result of Owner exercising any remedies hereunder. Owner shall not be entitled hereunder to any reimbursement or other compensation from City for any costs incurred by Owner in performing or preparing to perform its obligations under this Agreement. The City Payments shall not be reduced or offset for any costs or expenses incurred by City in performing or preparing to perform its obligations under this Agreement, except that if Owner seeks any modification of this Agreement at any point in the Term, Owner shall reimburse City for all costs associated with effecting such modification. Provided, however, that if City seeks any changes in Sale Tax collection that results in modification(s) to this Agreement, then City shall reimburse Owner for all cost resulting from any such modification(s).

4.4. **Annual Reconciliation.** On March 15th of each calendar year, the parties shall reconcile the actual Local Sales Tax Revenues generated versus the amount used to calculate the City Payments for the previous year ("**Annual Reconciliation**"). The Annual Reconciliation will be based upon auditable backup information, including, but not limited to, tax bills, invoices, sales reports, and/or canceled checks. Such Annual Reconciliation shall take into account any overpayments or underpayments by the Retail Facility, which subsequently impacts the amount of Local Sales Tax Revenues generated in the previous years during the Term. City and Owner

shall reconcile the Annual Reconciliation with the annual City Payments made. If there has been an overpayment of the annual City Payments based on the Annual Reconciliation, within sixty (60) days of receipt by Owner of written notice from City of the overpayment (together with reasonable supporting documentation), Owner shall refund the amount of the overpayment to City. If there has been an underpayment of the annual City Payments based on the Annual Reconciliation, within sixty (60) days of receipt by City of written notice from Owner of the underpayment (together with reasonable supporting documentation), City shall pay the underpayment to Owner.

4.5. Appropriation of City Payment. City acknowledges that the City Payments are a material inducement for Owner to develop and construct a retail project on the Property, including, but not limited to, entering into long-term leases with the Costco and other Retail Facilities. The Owner would not have proceeded with the retail facility project without assurances that the City can and will make the City Payments. Towards that end, the City covenants that it will take all necessary steps to ensure all anticipated City Payments are included in the annual City budget and all appropriations of such City Payments are approved in a timely basis each year. City acknowledges that the City's failure to approve the annual appropriation of the anticipated City Payments shall be deemed an immediate Event of Default under this Agreement. For the fiscal year that the Opening of the Costco will occur, the City shall appropriate the City Payments in an amount equal to the City's good faith estimate of the City Payments payable in that fiscal year. In each subsequent fiscal year thereafter, the City shall appropriate City Payments in an amount equal to the City's good faith estimate, based on the historical Local Sales Tax Revenue data, as adjusted with any reasonably expected changes that are likely to impact the Local Sales Tax Revenue that particular fiscal year. Twenty (20) days prior to the City approving the appropriation, City shall send a written notice to Owner with the amount of the City Payments, together with the supporting documentation explaining its estimated City Payments for that fiscal year.

4.6. Recapture of City Payments. If, at any time during or after the Term of this Agreement, CDTFA makes a final Board determination that all or any portion of the Local Sales Tax Revenues received by City, for Sales Tax generated from the Property, were improperly allocated and/or paid to City, and if CDTFA requires repayment of, offsets against future Sales Tax payments, or otherwise recaptures from City those improperly allocated and/or paid Local Sales Tax Revenues, then City shall promptly contact Owner regarding any communication from the CDTFA pertaining to tax allocations associated with a Retail Facility's business. City and Owner agree that, should the CDTFA question the correctness of the allocation or determine that there has been an improper allocation to City, City and Owner shall (at the request of Owner) jointly engage legal counsel to use its best efforts to defend such allocation in all CDTFA administrative proceedings. Costs associated for any such efforts shall be borne by both City and Owner in proportion to their respective percentage interests in the Local Sales Tax Revenues. For purposes of this Section 4.6, administrative proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board members. The Parties shall reasonably cooperate with each other and their legal counsel retained for this matter. Only in the event that CDTFA prevails in a determination that there has been an overpayment in Sales Tax attributable to the Property, Owner shall, within thirty (30) days after such final determination, repay all City Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) days after City's written demand, together with all supporting documentation, then such obligation shall accrue interest from the date that is thirty (30) days after City's original written demand at then interest shall accrue from the date it was owed until it is paid at the Default Rate until paid. In addition, to the extent unpaid, City may withhold such amounts from future City Payments. This Section 4.6 shall survive termination of this Agreement.

4.7. **Underpayment by CDTFA.** In order to further the goals of this Agreement, City hereby authorizes Owner, upon reasonable notice and within the limits of the California Public Records Act, to allow a Retail Facility to review records regarding the receipt of Local Sales Tax Revenues by City from CDTFA relating to such Retail Facility. If necessary, Owner can compel City to pursue resolution of any underpayment, in which case the cost of attorney fees shall be borne by both City and Owner in proportion to their respective percentage interests in the Local Sales Tax Revenues. In the event of an underpayment of Local Sales Tax Revenues by the CDTFA, City agrees to promptly use diligent, reasonable good faith efforts to pursue its available administrative remedies against the CDTFA on behalf of Owner and any applicable Retail Facility. Only if City prevails in a determination that there has been an underpayment of Sales Tax attributable to the Property, City shall make the necessary City Payment in the Fiscal Quarter immediately following City's receipt from the state of the amount owed. Should City fail to make such City Payment on a timely basis, then interest shall accrue from the date it was owed until it is paid at Default Rate until paid. The provisions of this Section and all other Sections of this Agreement required to remain effective in order for City to make repayment to Owner of tax allocations made by CDTFA or the State to City following expiration of the Term shall survive the termination of this Agreement. If City fails to make the timely payment then City shall not be permitted to offset the Annual Retained Amount until the unpaid amount is paid.

4.8. **Audits.** Either Party shall, upon no less than seventy-two (72) hours prior written request from the other Party, make the entirety of its books and records relating to the calculation and determination of that Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law, including, without implied limitation, the California Evidence Code, California Government Code (including the Public Records Act), the Code of Civil Procedure, federal statutes and state or federal judicial decisions. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records; provided, however, that any audit and/or investigation undertaken in connection with any arbitration proceeding or as otherwise ordered by the court, may be recovered as an item of litigation expense pursuant to Section 6.17. Any audit conducted shall be conducted in a manner that preserves the confidentiality of retail sales information of Retail Facilities and Owner.

4.9. **Public Benefits**

4.10. **Employment Outreach for Local Residents.** In addition to the public benefits provided by this Agreement outlined in Sections 2.5 and 2.6 (which list of benefits is not exhaustive), the City has entered into this Agreement to foster employment opportunities for City residents. To that end, Owner shall use commercially reasonable, good faith efforts to include in all contracts (including leases) with other entity(ies) establishing and operating Retail Facilities to require that each such entity use commercially reasonable efforts and further subject to prudent business practices to recruit and hire local City residents for full and part time employment opportunities at the relevant Retail Facility. The foregoing shall be satisfied as follows: To the extent a Retail Facility conducts any local on-site and/or off-site Job Recruitment Fairs, which are defined as the relevant Retail Facility's pre-scheduled events open to the public with the purpose of filling twenty (20) or more job positions at the applicable Retail Facility, the Retail Facility shall furnish the City of Carson Human Resources Development and/or Development Services Department with the location, dates and times for such Job Recruitment Fairs prior to the date of

accepting applications. For purposes of this Section 4.9.1, the term “**Job Recruitment Fairs**” shall exclude any recruitment activities or events hosted by the relevant Retail Facility’s staffing agencies or third party vendors which may be used to fill temporary job positions at the relevant Retail Facility. Owner is not opposed to City seeking authority from the relevant Retail Facility to post and advertise the job recruitment information provided to City on the City’s website and other jobs available and job recruitment sites within the City. Notwithstanding anything to the contrary in the foregoing, any offers of employment shall be at the sole discretion of the entity that Operates the relevant Retail Facility, and nothing in this Section 4.9.1 shall be interpreted to require any such entity to offer employment to anyone, including, without limitation, to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 4.9.1 are not intended, and shall not be construed, to benefit or be enforceable by any third party. Further, City acknowledges and agrees that initial and future hires shall include transfers from other locations of similar facilities that are not located in the City and those transfers shall be permitted without reference to the provisions of this Section in order to allow Retail Facilities to employ experienced employees. The obligations of this section shall not apply to seasonal or special event hires. **Event of Default.** Each of the following shall constitute an “**Event of Default**”:

4.10.1 Failure by a Party to comply with and observe any of non-monetary covenant if such failure remains uncured within thirty (30) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a non-monetary default that cannot be cured within thirty (30) days, if the defaulting Party fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period, notice requirement, or remedy is specified under any other Section of this Agreement, then the specific provision shall control; provided that if the informal dispute resolution process described in Section 6.17 of this Agreement has been invoked by either Party, then no non-monetary Event of Default shall be declared by either party during the pendency of that ninety (90) day process.

4.10.2 Failure to make any monetary payment when due if such failure remains uncured for thirty (30) days after receiving written notice from the non-defaulting Party. If a due date is not specified in the Agreement, then such payment shall be payable within thirty (30) days upon receiving written demand for such payment from the other Party. If a Party fails to make the timely payment after written demand, then the other Party shall send written notice to the Party in breach, notifying the other Party of the breach. Upon receipt of such written notice, the Party in breach shall have thirty (30) days to cure such breach.

4.10.3 Any representation or warranty contained in this Agreement proves to have been incorrect in any material respect when made that impairs the ability of the obligated party to satisfy its obligations.

4.10.4 Failure of City to appropriate the anticipated amount of the City Payments on an annual basis shall be an Event of Default.

4.11. **Rights and Remedies; Rights and Remedies Not Exclusive.** Unless prohibited by law or otherwise provided by a specific term of this Agreement, the rights and remedies of City and Owner under this Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, including the right to terminate this Agreement. Upon the other Party’s Event of Default, in addition to those remedies expressly granted herein, the Parties shall also have the right to seek all other available legal and equitable remedies, including, but not limited to, specific performance and injunctive relief. In addition to all other rights and remedies

hereunder, if the City fails to appropriate the necessary funds or fails to make a timely City Payment, interest shall accrue on the previously unpaid City Payments at the Default Rate, commencing on the date that such City Payment should have been paid until it is actually paid by the City. The provisions of this Section shall survive the termination of this Agreement.

4.12. **Termination.** In the event of the permanent closure of the entirety of Retail Facilities' Operations on the Property, except due to a Force Majeure Event or Permitted Closure, either Party may terminate this Agreement and all of its prospective obligations under this Agreement without cost or liability, provided that the terms and provisions of this Agreement with respect to City Payments then accrued or due to Owner, or then due from Owner to City shall remain in effect and survive the termination of this Agreement.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1. **City Representations and Warranties.** City represents and warrants to Owner that:

- (i) City is a municipal corporation exercising governmental functions and powers and organized and existing under the State of California;
- (ii) City has taken all actions and implemented all procedures required by applicable law to approve the execution of this Agreement;
- (iii) City's entry into this Agreement and the performance of City's obligations under this Agreement do not violate any contract, agreement or other legal obligation of City or federal, state or local laws;
- (iv) To City's actual current knowledge, there are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement;
- (v) City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement; and
- (vi) The individual executing this Agreement is authorized to execute this Agreement on behalf of City.

The representations and warranties set forth above are material consideration to Owner and City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Agreement.

The term "City's actual current knowledge" means, and is limited to, the actual current knowledge of City Manager, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty. All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of City and its nominees, successors and assigns.

5.2. **Owner Representations and Warranties.** Owner represents and warrants to City that:

- (i) Owner is a duly formed California limited liability company and is in good standing and qualified to do business under the laws of the State of California;
- (ii) The individual(s) executing this Agreement is/are authorized to execute this Agreement on behalf of Owner;
- (iii) Owner has taken all actions required by applicable law to approve the execution of this Agreement;
- (iv) Owner's entry into this Agreement and the performance of Owner's obligations under this Agreement do not violate any contract or agreement of Owner;
- (v) To Owner's actual current knowledge, there are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner's obligations under this Agreement; and
- (vi) Owner has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized by Owner and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

The term "Owner's actual current knowledge" means, and is limited to, the actual current knowledge of Mr. William Vierra, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty.

The representations and warranties set forth herein are material considerations to City and Owner acknowledges that City is relying upon the representations set forth above in undertaking City's obligations set forth above.

5.3. **Identity of Owner.** City has entered into this Agreement with Owner because of the unique qualifications and identity of Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein. Owner may not assign or transfer all or any part of this Agreement except as provided in Section 6.27.

ARTICLE 6 MISCELLANEOUS

6.1. **Amendment; Modification.** At any time, City and Owner may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason. Any such amendment to this Agreement shall only be by written agreement between City and Owner. City and Owner agree to consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, although neither Party shall be obligated to approve any such amendment. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both City and Owner. With the concurrence of the City Attorney, the City

Manager is authorized on behalf of City to approve and execute Minor Amendments to this Agreement on behalf of City. Any amendment that is not a Minor Amendment shall require approval by the City Council. Any such approved amendment shall control over this Agreement.

6.2. **California Law.** This Agreement shall be construed and governed in accordance with the laws of the State of California without regard to its conflict of laws principles.

6.3. **Execution in Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one (1) and the same instrument.

6.4. **Business Days.** Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

6.5. **Tax Consequences.** Owner shall be responsible and assume all liability for federal, state and/or local income or other taxes resulting from its receipt of City Payments.

6.6. **Rights Not Granted.** This Agreement is not, and shall not be construed to be, a statutory development agreement under California Government Code Section 65864 *et seq.* or a disposition and development agreement under California Health and Safety Code Section 33000 *et seq.* This Agreement is not, and shall not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by City concerning any project, development, or construction by Owner in City, and shall not be deemed to commit City to any particular course of action with respect to the ultimate development of the Property. This Agreement does not, and shall not be construed to exempt Owner in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development or construction within City, and the Parties acknowledge and agree that to the extent such approvals are discretionary in nature, City shall be required to comply with CEQA in connection with the consideration thereof.

This Agreement does not, and shall not be construed to exempt Owner from the application and/or exercise of City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

6.7. **Consent.** Whenever consent or approval of either Party is required under this Agreement, that Party shall not unreasonably withhold, delay or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

6.8. **Notices and Demands.** All notices or other communications required or permitted between City and Owner under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by nationally recognized overnight courier service (e.g., Federal Express), or (iv) sent by electronic mail and addressed to the Parties at the addresses below subject to the right of either Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been received on the fourth (4th) Business Day after the same is deposited in the United States mail. Any notice

not so given by registered or certified mail, such as notices delivered by courier service (e.g., Federal Express), shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

To City: City of Carson
701 E. Carson St.
Carson, CA 90745
Attention: City Manager

With a copy to: Sunny Soltani, City Attorney
Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
Email: ssoltani@awattorneys.com

To Owner: Southbay-Carson LLC
C/O SyWest Development LLC
150 Pelican Way, San Rafael, CA 94901
Attn: William Vierra
Email: Bill_Vierra@sywest.com

With a copy to: Miller Starr Regalia
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596
Attn: Nadia Costa, Bill Shiber
Email: nadia.costa@msrlegal.com and basil.shiber@msrlegal.com

6.9. Non-liability of Parties' Officials and Employees. No officer, elected official, contractor, consultant, attorney or employee of City shall be personally liable to Owner, any voluntary or involuntary successors or assignees of Owner, or any lender or other party holding an interest in Owner's property, in the event of any default or breach by City, or for any amount which may become due to Owner or to its successors or assignees, or for any obligations arising under this Agreement.

No officer, official, contractor, consultant, attorney or employee of Owner shall be personally liable to City, any voluntary or involuntary successors or assignees of City in the event of any default or breach by Owner, or for any amount which may become due to City or to its successors or assignees, or for any obligations arising under this Agreement.

6.10. Conflicts of Interest. No officer, elected official, contractor, consultant, attorney or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any such officer, elected official, contractor, consultant, attorney or employee participate in any decision relating to this Agreement which unlawfully affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

6.11. Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral

offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement.

6.12. **Confidentiality.** Subject to the provisions of the California Public Records Act (Government Code Section 6250 *et seq.*) ("**Public Records Act**") which governs City's use and disclosure of its agreements and records, City and Owner hereby agree that each shall keep confidential information provided by the other and denominated as confidential and shall not disclose any such information to any Person without obtaining the prior written consent of the other Party, except that the confidentiality obligation under this Section shall not apply to (a) information that is a matter of general public knowledge or is already in a Party's possession prior to receiving it from the other Party, or (b) disclosure of information to the respective consultants and attorneys of each Party. Owner shall use reasonable efforts to clearly mark or otherwise identify in writing all information it considers to be proprietary and confidential at the time it is delivered to City. Notwithstanding the foregoing, City acknowledges and agrees that regardless of whether it is marked as proprietary and confidential information, all Data and Documentation and other financial information and documentation, if any, provided by Owner to City is proprietary and confidential and shall be maintained in a strictly confidential manner and used by City only for the purposes within the scope of this Agreement. City shall not disseminate such information and shall take all reasonable steps to maintain such confidentiality unless otherwise required by applicable law. In the event that City obtains a request pursuant to the provisions of the Public Records Act to disclose any of Owner's information which City is required to keep confidential pursuant to the terms of this Agreement, prior to responding to such request, City shall provide Owner with prompt written notice thereof and City and Owner shall cooperate in good faith at Owner's sole cost and expense to seek to avoid disclosure of such matters to the extent legally permissible pursuant to the provisions of the Public Records Act.

6.13. **Extensions and Delays.** Time is of the essence in the performance of the obligations of City and Owner under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder shall be extended where delays in performance are due to: war, insurrection, rebellion, act of terrorism, act of sabotage, civil commotion; blockade or trade dispute; any form of labor dispute, strike or lockout; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation or orders and judgments of courts of competent jurisdiction; acts of a public enemy; acts of governmental authorities (excluding acts of City); epidemic, pandemic, quarantine or quarantine restrictions; freight embargoes or lack of transportation; and other circumstances outside of a Party's reasonable control (each, a "**Force Majeure Delay**" or "**Force Majeure Event**"). Force Majeure Events shall not apply to the City's obligation to make the City Payments. If not a matter of general public awareness, the Party claiming the Force Majeure Delay shall notify the other Party in writing within ten (10) days of discovering the circumstances causing the same and describing the nature of the matter causing such Force Majeure Delay; provided further, that the extension of time shall be only for the period of the Force Majeure Event; and provided further that, if the Force Majeure Delay is due to an epidemic, pandemic or quarantine, the Parties agree to meet and confer to try to resolve the issue before the time to perform may be extended. In no event shall either Party be deemed in default of this Agreement because of a Force Majeure Event.

6.14. **Indemnification.** Owner agrees to indemnify City and hold it harmless from and against any and all third party demands, suits, proceedings, causes of action or claims arising from any negligence or willful misconduct of Owner (each, a "**Third Party Claim**"), except to the extent such Third Party Claim relates to or is caused by City's negligence or intentional misconduct, or the negligence or intentional misconduct of any of the City's officials, officers, employees, or agents. Provided, however, nothing in this Section 6.14 shall apply to a claim by

Owner against City for City default of its obligation(s) hereunder. City shall fully cooperate in the defense of any such Third Party Claim and upon written request of Owner shall provide to Owner such documents and records in possession of City that are relevant to such demand, suit, proceeding or claim and not otherwise protected by law. Notwithstanding anything to the contrary in the foregoing, the Parties shall share all costs of defense, including, without limitation, legal fees and expenses, court costs, and expert fees in proportion to their respective percentage interests in the Local Sales Tax Revenues in connection with a Third Party Claim brought by another local municipality.

6.15. **Offset.** Neither Party knows of any reason why any portion of Local Sales Tax Revenues would be shared with another jurisdiction. Notwithstanding the foregoing, in the event that a court or administrative body determines that any portion of Local Sales Tax Revenues must be shared with another jurisdiction, the Parties shall meet to discuss an appropriate adjustment to the Local Payment Obligation to address the impact therefrom and corresponding amendment to this Agreement to implement same.

6.16. **Attorneys' Fees.** In the event of the bringing of an action or suit by a Party hereto against the other Party by reason of any breach of any of the covenants or agreements hereunder arising out of this Agreement or any other dispute between the Parties concerning this Agreement then, in that event, the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to recover from the other Party all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees (collectively, "**Costs**") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 6.17, Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy reorganization, restructure or litigation, (vi) receivership or other custodial action. The provisions of this Section shall survive any termination of this Agreement.

6.17. **Informal Dispute Resolution.** The Parties shall attempt in good faith to resolve any differences, controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior officials of the Parties who have authority to settle the difference or controversy. The disputing Party may give the other Party written notice ("**Dispute Notice**") that a dispute exists between them. Within twenty (20) days after receipt of a Dispute Notice, the receiving Party shall submit to the disputing Party a written response. The Dispute Notice and response shall include (a) a statement of each Party's position and a summary of the evidence in reasonable detail and arguments supporting its position, and (b) the name and title of the official who shall represent that Party. The senior officials shall meet at a mutually acceptable time and place or by telephone conference within thirty (30) days of the date of the Dispute Notice, and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute, up to a maximum of ninety (90) days of the date of the Dispute Notice ("**Resolution Period**"). In the event any Party fails to provide a response to a Dispute Notice in accordance with this Section or fails to cooperate in the scheduling of, or to attend, the meetings, described above, to resolve the dispute, then, with respect to that Party, the Resolution Period shall be deemed to have run so that the dispute may immediately be subject to legal action.

6.18. **Jurisdiction and Venue.** Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate State of California court in the County of Los Angeles, California. Both Parties hereto irrevocably consent to the personal jurisdiction of

that court. City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between City and Owner, due to the fact that City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 6.18 are material consideration to City for its entry into this Agreement, in that City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

6.19. **Interpretation.** City and Owner acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

6.20. **No Waiver.** Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver by any Party of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

6.21. **Successors and Assigns.** The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

6.22. **No Third Party Beneficiaries.** This Agreement has been made and entered into solely for the benefit of the Parties to this Agreement and their respective successors and permitted assigns. Nothing in this Agreement confers any rights or remedies on any other Person. Nothing in this Agreement relieves or discharges the obligation or liability of any third Persons to any Parties to this Agreement. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement

6.23. **No Effect on Eminent Domain Authority.** Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever City's eminent domain powers with respect to any property.

6.24. **Warranty Against Payment of Consideration.** Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 6.24, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary or desirable by Owner nor shall it include payments to sellers, landlords or real estate brokers.

6.25. **Further Acts.** City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder. The foregoing shall not, however, be deemed to require City to exercise its legislative discretion in any particular fashion or to provide to Owner any remedy or claim for damages against City based on the lawful exercise of City's discretion.

6.26. **No Assignment, Transfer, Pledge or Hypothecation.** Except for an assignment, transfer or conveyance to a subsidiary or affiliate of Owner (as the same are defined under the securities laws of the United State), Owner may not assign, transfer, encumber or hypothecate its rights and obligations under this Agreement to any person or entity, without the express written consent of City, which shall not be unreasonably withheld, delayed or denied; provided Owner may demonstrate, with documentation acceptable to the City in its reasonable discretion, that the proposed assignee's financial resources are at least comparable to those of Owner and has the demonstrated ability to complete the development of the Property, as contemplated herein as approved under the Specific Plan, and comply with the terms of this Agreement. Any unpermitted assignment, transfer, pledge, encumbrance, or hypothecation of Owner's rights and obligations hereunder shall not confer any rights upon the purported assignee or transferee hereunder and shall constitute Owner's default of this Agreement, and City may, without providing Owner notice or opportunity to cure, exercise those remedies available to City pursuant to Section 4.11. Notwithstanding the foregoing, Owner shall have the right to assign this Agreement or any right or obligation hereunder, without obtaining City consent, to its immediate or ultimate parent, or to an affiliate, by providing advance written notice to City. An "affiliate" shall mean any legal entity that, at the applicable time, directly or indirectly controls, is controlled with or by, or is under common control with, Owner. Furthermore, nothing in this Section 6.26 prevents, prohibits or in any manner constrains or limits the ability of Owner to secure financing, including, but not limited to, the pledge or encumbrance of this Agreement in connection with such financing.

6.27. **Relationship of Parties.** The Parties shall not be deemed in a relationship of partners or a joint venture by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

6.28. **Recitals.** Each of the Recitals set forth in Article 2 of this Agreement are agreed by the Parties hereto to be true and correct in all material respects and are incorporated by reference into this Agreement as though fully set forth in this Section.

6.29. **Non-Dedication of Property.** The execution of this Agreement by Owner does not in any way constitute an offer of dedication nor does it result in the dedication of any Owner property for public use or otherwise.

[Signatures on following pages]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

CITY OF CARSON,
a California municipal corporation

By: _____
Lula Davis-Holmes, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Sunny Soltani, City Attorney

OWNER

SOUTHBAY-CARSON LLC,
a California limited liability company

By: SyWest Holdings LLC,
a California limited liability company

By: Syufy Enterprises,
a California limited partnership

By: Syufy Properties, Inc.,
a California corporation

By: _____
Name: _____
Its: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

<p>CAPACITY CLAIMED BY SIGNER DOCUMENT</p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input type="checkbox"/> CORPORATE OFFICER</p> <p>_____</p> <p>TITLE(S)</p> <p><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED</p> <p> <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p>OTHER _____</p> <p>_____</p>	<p>DESCRIPTION OF ATTACHED</p> <p>_____</p> <p>TITLE OR TYPE OF DOCUMENT</p> <p>_____</p> <p>NUMBER OF PAGES</p> <p>_____</p> <p>DATE OF DOCUMENT</p> <p>_____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE</p>
<p>SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))</p> <p>_____</p> <p>_____</p>	

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On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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<p>SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))</p> <p>_____</p> <p>_____</p>	

EXHIBIT A

Legal Description of Property

LEGAL DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE COUNTY OF LOS ANGELES, CITY OF CARSON, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1

LOTS 93, 94 AND 95 OF TRACT 4671, AS PER MAP RECORDED IN BOOK 56 PAGES 30 AND 31 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE THEREOF; BUT WITH NO RIGHT OF SURFACE ENTRY, AS PROVIDED IN THE DEED RECORDED NOVEMBER 8, 1963 IN BOOK D2250 PAGE 748, OFFICIAL RECORDS.

ALSO EXCEPT THE SUBSURFACE WATER RIGHTS, BUT WITHOUT THE RIGHT OF ENTRY TO THE SURFACE OR SUBSURFACE ABOVE A DEPTH OF 500 FEET, AS PROVIDED IN THE DEED RECORDED NOVEMBER 8, 1963 AS INSTRUMENT NO. 5443.

PARCEL 2

THAT PORTION OF LOT 92, OF TRACT NO. 4671, IN THE CITY OF CARSON, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 56 PAGES 30 AND 31 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHERLY OF A LINE PARALLEL WITH AND 50 FEET NORTHERLY OF THE FOLLOWING DESCRIBED LINES:

BEGINNING AT A POINT IN THE CENTER LINE OF MAIN STREET, DISTANT THEREON NORTH 6° 12' 44" WEST 292.93 FEET FROM ITS POINT OF INTERSECTION WITH THE EASTERLY PROLONGATION OF THE CENTER LINE OF JAMES STREET; THENCE SOUTH 87° 01' 26" WEST 75.13 FEET; THENCE SOUTH 87° 34' 22" WEST 853.34 FEET TO A POINT IN A LINE PARALLEL WITH AND 50 FEET SOUTHERLY OF THE NORTHERLY LINE OF SAID LOT 92; THENCE SOUTH 86° 37' 39" WEST TO A POINT IN A LINE PARALLEL WITH AND 50 FEET SOUTHERLY OF THE NORTHERLY LINE OF LOT 13 OF SAID TRACT 4671, DISTANT WESTERLY 333.52 FEET ALONG SAID PARALLEL LINE FROM ITS POINT OF INTERSECTION WITH THE EASTERLY LINE OF SAID LOT 13; THENCE SOUTH 85° 15' 55" WEST 880.00 FEET; THENCE SOUTH 86° 41' 35" WEST 82.47 FEET TO A POINT IN THE CENTER LINE OF NORMANDIE AVENUE, DISTANT THEREON NORTH 3° 21' 05" WEST 289.70 FEET FROM ITS POINT OF INTERSECTION WITH THE WESTERLY PROLONGATION OF CENTER LINE OF JAMES STREET, AS SAID STREETS ARE SHOWN ON SAID MAP OF TRACT 4671.

ALSO EXCEPT ALL (100 PER CENT) OF THE OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES WHICH LIE BELOW A PLANE PARALLEL TO AND 500 FEET BELOW THE NATURAL SURFACE OF SAID LAND, WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LAND TO EXPLORE FOR, DEVELOP, OR REMOVE SAID SUBSTANCES, BUT WITH FULL RIGHT TO EXPLORE FOR, DEVELOP AND REMOVE THE SAME BY MEANS OF WELLS OR EQUIPMENT HAVING SURFACE LOCATIONS OUTSIDE THE OUTER BOUNDARIES OF SAID REAL PROPERTY, IN AND UNDER OR RECOVERABLE FROM SAID REAL PROPERTY, AS EXCEPTED IN THE DEED FROM DEL AMO ESTATE COMPANY, A CORPORATION, RECORDED NOVEMBER 8, 1963 IN BOOK D-2250 PAGE 748, OFFICIAL RECORDS.

