RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into on the ____ day of _____, 2022 ("**Execution Date**"), by and between the City of Carson, a municipal corporation of the State of California ("**City**"), and IMPERIAL AVALON, LLC, a California limited liability company ("**Developer**"). The City and Developer shall be referred to jointly within this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. *The Development Agreement Statute.* 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 purpose of strengthening the public planning process, encouraging private participation, and comprehensive planning and identifying the economic costs of such development.

B. *Orderly Development; Public Benefits.* The City Council finds 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 will achieve a number of City objectives, including the orderly development of the Property and the provision of public benefits, or funds therefor, to the City and its residents.

C. *The Property.* Developer owns the property located at 21207 South Avalon Boulevard in the City of Carson, County of Los Angeles, State of California (APNs 7337-001-025, 7337-001-026, 7337-001-027, 7337-001-028, and 7337-001-029) ("**Property**"). The General Plan land use designation for the Property is Regional Commercial and Low Density Residential and the Property is zoned Commercial Automotive (CA) and RM-8-D (Design Overlay). The City is currently in the process of updating its General Plan. The Carson General Plan 2040 Update identifies the site as "Downtown Mixed Use." The Property is currently improved and in operation as a mobilehome park, known as Imperial Avalon Mobile Estates ("**Imperial Avalon**" or the "**Park**").

D. *The Park.* Developer filed an application for approval of Relocation Impact Report No. 05-20 ("**RIR**") related to Park closure pursuant to CMC Section 9128.21 in early 2020 (the "**Closure Application**"). The Closure Application was heard and conditionally approved by the City's Planning Commission on May 13, 2020, via adoption of Planning Commission Resolution No. 20-2695. Following an administrative appeal to the City Council, on July 7, 2020, the City Council adopted City Resolution No. 20-113, affirming

the Planning Commission's decision subject to imposition of added and modified conditions as set forth the "Amended Conditions of RIR No. 05-20" which are attached to said resolution ("the **RIR Conditions**"), and specifying the earliest possible date of Park closure (i.e., the earliest date when residents may be compelled to vacate the Park) as January 1, 2022, subject to issuance of the required notices of termination of tenancy (the "**Closure Approval**"). As required by the Closure Approval, Developer has executed and recorded on title to the Property a "Declaration of Lease Covenants, Conditions and Restrictions Applicable to Park Closure Pursuant to Government Code § 27281.5" (the "**Option C Covenant**"). Furthermore, Developer has agreed to provide certain enhancements to the relocation impact mitigation measures set forth in the RIR Conditions for the benefit of the displaced Park residents, which enhancements were set forth in a letter from Developer to the Park residents dated September 9, 2021, and Developer may agree to provide further enhancements at a later date (collectively, the "**Enhancements**"). Developer has not yet issued the required 6-month notice of termination of tenancy, which is a prerequisite of Park closure. As of the Effective Date hereof, some residents remain in the Park while some have vacated the Park voluntarily pursuant to early termination agreements entered into with the Developer in accordance with the RIR Conditions, and implementation/satisfaction of the RIR Conditions remains pending and underway. Developer still intends, and has the right, to issue the requisite 6-month notice of termination of tenancies and thereafter close the Park during the effective period of the Closure Approval, although the precise dates of such actions are not currently known. It is understood and was decided by the City in acting upon the Closure Application that the Closure Application and the City's review and decision thereon was exempt from California Environmental Quality Act ("**CEQA**") review and did not constitute a "project" within the meaning of CEQA. On that basis, a Notice of Exemption was filed in connection with the Closure Approval on July 17, 2020, and no CEQA-related challenges were filed within the applicable 35 day statute of limitations period.

E. *The Project.* Developer desires to re-develop the Property as a mixed-use residential and commercial development (the "**Project**"). The Project consists of 764 multi-family residential units within two buildings of up to four stories (or sixty-eight feet, six inches [68'6"] each, including at least one parking structure per building, each on their own lot on the eastern portion of the Property (the "**Apartments**"), 351 attached/detached and stacked flat townhome units of up to three stories (or thirty-eight feet, six inches [38'6"]) each, all located on another lot on the western portion of the Property (the "**Townhomes**"), for a total of 1,115 residential units and a density of 41 dwelling units per acre, 111,581 square feet of publicly accessible open space (including a minimum 22,859 square foot park), and 10,000 square feet of commercial space, all of which shall be restaurant use(s). To that end, on October 3, 2019, Developer filed a development permit application with the City (Master Redevelopment Project No. PL10044) seeking various entitlements to develop the Project (collectively, the "**Development Application**"). The City determined the Development Application complete on December 24, 2019.

F. *Project EIR and Entitlements.* The City is the lead agency, within the meaning of the California Environmental Quality Act, Public Resources Code § 21000 *et seq*. ("**CEQA**"), for purposes of conducting environmental review of the Project. The City finds and determines that all actions required of City precedent to approval of this Agreement have been duly and regularly taken. In accordance with the requirements of the California

Environmental Quality Act (Public Resources Code § 21000, *et seq*. ("**CEQA**"), appropriate studies, analyses, reports, documents, and errata were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a duly noticed public hearing on November 21, 2022, certified the Environmental Impact Report ("**EIR**") and adopted a Statement of Overriding Considerations for the Project in accordance with CEQA. The Project is identified in the EIR as Alternative 3 and is fully assessed in the EIR and the errata thereto.

G. *Project Approvals.* On the same day, the Planning Commission, after giving notice pursuant to the CMC and Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Development Application, and following the hearing, adopted Planning Commission Resolution No. 22-___, which: (i) made CEQA findings and determinations as referenced above; (ii) conditionally approved Site Plan and Design Overlay Review ("**DOR**") No. 1803-19 and Vesting Tentative Tract Map ("**VTTM**") No. 83157 for the Project subject to City Council approval of General Plan Amendment ("**GPA**") No. 105-19 (changing the General Plan land use designation for the Property from Regional Commercial/Low Density Residential to Urban Residential), Specific Plan ("**SP**") No. 21-19 (Imperial Avalon Specific Plan), Zone Change ("**ZCC**") No. 188-19 (changing the Property zoning from Commercial Automotive (CA)/Residential, multifamily – 8 units per acre (RM-8) with a Design Overlay to Imperial Avalon Specific Plan [IASP]), and Development Agreement ("**DA**") No. 23-19 (this Agreement, inclusive of the Adopting Ordinance); and (iii) recommended that the City Council approve GPA No. 105-19, SP No. 21-19, ZCC No. 188-19, and DA No. 23-19 for the Project (DOR No. 1803-19, VTTM No. 83157, GPA No. 105-19, SP No. 21-19, ZCC No. 188-19, and DA No. 23-19 collectively, together with the EIR, the "**Entitlements**").

H. On _____ , 2022, the City Council, after provision of the public notice required by law, held a public hearing to consider the Development Application and the Planning Commission's actions and recommendations thereon, and following the hearing, conditionally approved GPA No. 105-19, SP No. 21-19, ZCC No. 188-19, and DA No. 23-19 as set forth in City Council Resolution No. 22-___. The Planning Commission and the City Council have found, on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City.

I. *Developer's Interest in the Property*. Developer currently owns the Property and as such, possesses the requisite equitable interest in the Property under Government Code Section 65865 that allows the Parties to enter into this Agreement.

COVENANTS

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

1. GENERAL DEFINITIONS.

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

1.1 "**Adopting Ordinance**" means Ordinance No. _____ approving this Agreement, introduced on _____, 2022 and adopted on _____, 2022.

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

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

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

a. The Project Development Approvals.

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

c. Subsequent Development Approvals.

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

e. The Closure Approval and associated covenants and agreements, including without limitation the Option C Covenant and the Enhancements.

1.5 "**Approval Date**" means the date on which the City Council conducted the second reading of the Adopting Ordinance. That date is _____, 2022.

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

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

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

1.9 "**CMC**" means the Carson Municipal Code.

1.10 "**Conditions of Approval**" means all conditions imposed on the Project by the City, including (without limitation) those recommended by the Los Angeles County Fire Department, as part of the approval of the Project.

1.11 "**Director**" means the City's Community Development Director, or his or her designee.

1.12 "**Developer**" means IMPERIAL AVALON, LLC, a California limited liability company, and its successors and assigns to all or any part of the Property.

1.13 "**Developer's Vested Right**" means Developer's right to complete the Project in accordance with, and to the full extent permitted under, the Applicable Laws and this Agreement, as more fully set forth in Articles IV-V of this Agreement.

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

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

1.16 "**Development Plan**" means Developer's plan for completion of the Project in compliance with and to the full extent of the Project Development Approvals and Applicable Laws.

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

1.18 "**Entitlements**" means this Agreement, and the other Entitlements and approvals listed in Recital G.

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

Exhibit A	Legal description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Public Open Space Areas
Exhibit D	Pedestrian Bridge

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

1.21 "**Land Use Regulations**" are laws and regulations enacted through legislative actions of the City Council. Land Use Regulations include ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan and the CMC (including the Carson Zoning Ordinance, Chapter 1 of Article IX of the CMC) which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the

provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction standards and specifications applicable to the Project. "Land Use Regulations" do not include (i) Development Approvals, (ii) regulations relating to the conduct of business, professions, and occupancies generally, (iii) taxes and assessments, (iv) regulations for the control and abatement of nuisances, (v) health and safety regulations, or (vi) any other matter reserved to the City pursuant to Article 5 of this Agreement.

1.22 **"Mortgage**" means a mortgage, deed of trust, or other security instrument encumbering the Property.

1.23 "**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.

1.24 "**Project**" as described this Agreement, means the development of the Property consistent with and to the full extent of the Project Development Approvals and all applicable Land Use Regulations.

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

1.26 "**Property**" means the real property described in Exhibit "A" and shown in Exhibit "B."

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

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

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

1.30 "**Term**" shall have the meaning ascribed to it in Section 2.1, unless earlier terminated as provided in this Agreement.

2. TERM & GENERAL COVENANTS.

2.1 **Term**. The term of this Agreement (the "**Term**") starts on the Effective Date and shall expire 15 years after City's approval of the last of the Entitlements, subject to any early termination provisions described in this Agreement. The Term and expiration date of all

Entitlements and Project Development Approvals shall also be extended to 15 years consistent with the Term of this Agreement.

2.2 Binding Effect of Agreement. From and following the Effective Date, actions by the City and Developer with respect to the development of the Property for completion of the Project, including actions by the City on applications for Subsequent Development Approvals affecting the Property, shall be subject to the terms and provisions of this Agreement.

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

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

2.5 Construction Timing and Park Closure. Developer covenants that Project construction will not commence until the existing mobilehome park at the Property (i.e., the Park) has been closed and all remaining Park residents or occupants have vacated the Property.

2.6 Park Closure Application and Covenants. Developer further acknowledges that nothing in this Agreement is intended to supersede or negate the benefits committed to Park residents (current or former) approved through the separate Closure Approval or associated covenants or agreements, including the Option C Covenant and the Enhancements, which are unrelated to the Project and this Agreement.

3. DEVELOPER'S OBLIGATIONS AND COMMUNITY BENEFITS.

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

3.1 Comprehensive Development Agreement Fee

In lieu of the Developer and the Project opting into Citywide Community Facilities District No. 2018-01 ("CFD") (estimated to have a net present value over the life of this Agreement of approximately fourteen million six hundred fifty-eight thousand three hundred sixty-two dollars ($14,658,362.00) and paying Development Impact Fees pursuant to Ordinance No. 19-1931 (estimated to be approximately thirteen million one hundred twenty-seven thousand fourteen dollars ($13,127,014.00) based on current Project features), Developer shall pay a Development Agreement Fee totaling thirty million fifteen thousand three hundred seventy-six dollars ($30,015,376.00) (the "Development Agreement Fee") (this includes an additional fee of $2,000

per residential unit multiplied by 1,115 units even if fewer units are constructed pursuant to Section 12.5 (equal to two million two hundred thirty thousand dollars ($2,230,000.00)). Developer shall have the right, in its sole and absolute discretion, to pay the Development Agreement Fee as prescribed below or cause the Development Agreement Fee contributions and payments to be made by a nonprofit entity in accordance with the terms prescribed by this Agreement. Except as otherwise provided for the Carson Park and Recreation Subsidy and the Initial DA Fee Payment in Sections 3.1.1-3.1.2, the amounts prescribed below shall be paid either by the Developer or the nonprofit entity at the City's direction toward specific programs, projects or uses within the following categories: (i) park, recreational and open space site acquisition, facility development and maintenance, (ii) City infrastructure improvements, maintenance and upgrades, and (iii) community recreational benefits and subsidies ("Development Agreement Fee Categories"). The Development Agreement Fee payments are limited to the amounts and subject to the schedule set forth below, unless the Developer and City agree to an earlier payment date, and shall be paid directly from the Developer or the nonprofit entity to the City:

3.1.1 Three hundred thousand dollars ($300,000.00) shall be due upon the Effective Date of this Agreement, and shall be used by City to subsidize Carson residents' fees and costs associated with park and recreational registration, trophies and jerseys ("Carson Park and Recreation Subsidy").

3.1.2 Five million dollars ($5,000,000.00) shall be due prior to issuance of a grading permit for the Project ("Initial DA Fee Payment"). The City shall have the option to use the Initial DA Fee Payment in whole or in part for low income housing including but not limited to maintenance and upgrades to, and assistance with the preservation of, existing mobilehome parks located throughout the City.

3.1.3. Five million dollars ($5,000,000.00) shall be due prior to issuance of a building permit for the first Townhome to be constructed within the Project.

3.1.4. Six million dollars ($6,000,000.00) shall be due prior to issuance of a certificate of occupancy for the first Apartment building to be constructed within the Project, and another six million dollars ($6,000,000.00) shall be due upon issuance of a certificate of occupancy for the second Apartment building to be constructed within the Project..

3.1.5 Five million dollars ($5,000,000.00) shall be due within six months following issuance of a certificate of occupancy for the first Apartment building to be constructed within the Project.

3.1.6. Two million seven hundred fifteen thousand three hundred and seventy-six dollars ($2,715,376.00) shall be due prior to issuance of a building permit for the 150th Townhome to be constructed within the Project.

3.2 Nonprofit Entity

In the event that the payments outlined in Section 3.1 are made by a nonprofit, such nonprofit will be formed pursuant to Internal Revenue Code Section 501(c)(3) and will be authorized to manage and distribute Development Agreement Fee funds for the purposes described in Section 3.1 ("Nonprofit"). Developer shall provide City with copies of all documents related to

the creation and ongoing operation of the Nonprofit, including but not limited to the governing instruments, the application(s) for tax exemption under federal and state law, any exemption approvals, and annual tax forms. City shall not be obligated to review and/or approve any such documents or filings. Developer is solely responsible for the accuracy and timely filing of all such documents and shall obtain its own tax advice.

Developer shall comply with all federal and state laws governing the creation and operation of the Nonprofit. If Developer receives notice from the IRS or State of a suspension or revocation of nonprofit status or any other issue, Developer shall inform City immediately of the notice and the affirmative steps Developer will take to cure any suspension or revocation or other issue.

City does not represent or warrant that the management and distribution of Development Agreement Fee funds by the Nonprofit is authorized by federal or state law. Developer and its successors shall be jointly and severally liable with the Nonprofit for payment of the Development Agreement Fee in accordance with this Agreement. If the Nonprofit fails to make Development Agreement Fee payments, or if the Nonprofit's exempt status is suspended or revoked, Developer shall make the Development Agreement Fee payments prior to the issuance of the permits and certificates described in Section 3.1.

3.3 Affordable Housing Benefit

The City, by its General Plan and state law, is committed to increasing its supply of affordable housing. Prior to the issuance of a certificate of occupancy for the first Apartment building constructed on the Property, the Developer, or a related/affiliated entity approved by the Director and jointly and severally liable with Developer (and subject to Section 3.3.4 below), shall perform one of the following affordable housing public benefit options, the selection of which shall be in its sole and absolute discretion: (i) commit, via execution and recordation on title to the Property of a deed restriction in a form acceptable to the City Attorney, to reserve at least 125 units of lower income housing, including 41 units of Extremely Low Income (<30% of Area Median Income ["**AMI**"]), 41 units of Very Low Income (30-50% AMI), and 43 units of Low Income (51-80% AMI) (all of the foregoing affordable housing categories collectively, "**Lower Income Housing**," or "**LIH**"), onsite within the Project; (ii) commit, via execution and recordation on title to the below-referenced (in this Section and Sections 3.3.1 - 3.3.2) offsite-location of a deed restriction in a form acceptable to the City Attorney, to construct or convert (from existing units) 125 units of new LIH at an off-site location elsewhere in the City, which off-site location is subject to approval of the Director, and which units must be in excess of any affordable housing requirements otherwise required for the project site within which they will be constructed; or (iii) pay an in lieu affordable housing fee equal to $11.61 per square foot of the Project's gross residential floor area for the Apartments and Townhomes.

3.3.1 Should Developer or the related/affiliated entity elect to satisfy the affordable housing obligation set forth in Section 3.3(ii) above by constructing or converting 125 units of new LIH offsite at another Director-approved location within the City ("**Offsite Affordable Units**"), Developer or the affiliated/related entity shall have five years from the Effective Date of this Agreement to either: (i) in the case of construction, obtain a building permit and commence construction within said timeframe, and thereafter diligently pursue the construction to completion as determined by the Director in his reasonable discretion; or (ii) in the case of conversion, fully complete the conversion of the Offsite Affordable Units such that the units are ready and approved

for occupancy (with the deed restriction in place as required above). Developer shall not satisfy this obligation by converting any existing housing units that are rented at or below Lower Income Housing levels (i.e., that are already affordable to any household at or below 80% AMI), even if such existing units are not deed restricted. If Developer elects to convert existing units, evidence must be provided to the Director for approval in the form of rent history demonstrating that the existing units to be converted are all above all the Lower Income Housing restricted rent levels at the time of conversion.

3.3.2 For any avoidance of doubt, if Developer or its related/affiliated entity elects to construct the Offsite Affordable Units within "Cell 1" of the District at South Bay Specific Plan area, then the 125 Offsite Affordable Units must be in excess of the current State Surplus Land Act requirement that 25 percent of the total number of units be constructed on that property for affordable housing. Should Developer or the related/affiliated entity elect to provide Section 3.3(ii) OffSite Affordable Units but fail to comply with any of the applicable timing requirements set forth in Section 3.3.1, then Developer or the related/affiliated entity shall, within thirty (30) days of such failure, pay the City the applicable affordable housing in lieu fee set forth in Section 3.3(iii) above.

3.3.3 If the Developer ever fails to pay the in-lieu affordable housing fee within thirty (30) days of it becoming due, whether such fee becomes due pursuant to Section 3.3(iii) or Section 3.3.2, a daily penalty of one thousand dollars ($1,000.00) shall be assessed subject to the notice and cure provisions of Section 7.2 of this Agreement.

3.3.4 The Developer shall remain fully and ultimately responsible to perform any obligation undertaken by a related/affiliated entity pursuant to this Section 3.3.

3.4 Senior and Veteran Housing.

3.4.1. Prior to issuance of a Certificate of Occupancy, the Developer shall prepare, submit to the City for review, and implement a veterans and senior citizen marketing and outreach program for the Project's Apartment units, subject to the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed. Developer shall exclusively market the Project's Apartment units to veterans and their families as well as senior citizens (over the age of 55) who currently reside within the City or the general South Bay area for a period of sixty (60) days prior to the units being offered for rent to the general public ("Exclusive Pre-Lease Period"). During this Exclusive Pre-Lease Period, Developer shall make best efforts to lease units to local veterans and their family members and senior citizens provided that all such applicants meet generally applicable leasing qualifications and criteria imposed by Developer. Nothing in this Agreement shall require that any of the Project Apartment units be actually occupied by local veterans or their family members. Further, nothing in this Agreement requires more than 83 of the total 1,115 units to be leased to senior citizens at a given time .

3.4.2. Commencing two years after issuance of a certificate of occupancy for the second Apartment building, Developer shall demonstrate to the City on an annual basis that at least eighty-three (83) of the Project's Apartment units are rented to senior citizens (defined as fifty-five (55) years or older) ("Project Senior Obligation"). The Developer shall demonstrate it is meeting the Project Senior Obligation by providing rental information or other form of occupancy verification confirming that seniors are renting at least 83 of the Project Apartment units. For every unit less

than 83 that is not rented to a senior citizen as defined in this Section 3.4.2, Developer shall provide the City a payment equivalent to the average in place amount of an equivalent floorplan market rate unit occupied in the Project ("Project Senior Obligation Payment"). The Project Senior Obligation Payment shall be used for low income and senior housing services throughout the City.

3.5 Apartment and Townhome Enhanced Sustainability and Environmental Benefits. Developer shall agree to incorporate the following enhanced sustainability and environmental benefits into construction of the Apartments and Townhomes for the Project. In recognition of the enhanced environmental benefits provided by the Project Apartments and Townhomes through this Section 3.5, the City shall subject the Project Apartments and Townhomes to the 2019 California Building Standards Code as applicable to and/or adopted by the City pursuant to CMC Article VIII, provided Developer submits a conceptual design package to the City's Building & Safety Department on the City Building & Safety Department's Online Plan check (BSOP) website prior to January 1, 2023. The conceptual design package shall consist of a schematic set of development and design plans for all disciplines with sufficient detail for the City to undertake zoning compliance review, but shall not be required to include landscaping, structural, energy, accessibility, mechanical, electrical and/or plumbing related plans and design, provided it is within the City's legal discretion to deem such submittal complete as necessary to facilitate such grandfathering under applicable state and local law. A full set of construction plans with all disciplines shall be submitted prior to January 1, 2024 for the Apartments and Townhomes. If the Building & Safety plan check application validity period of one year plus the two six-month extension periods thereafter expire prior to issuance of the required permits/approvals (expected to include, without limitation, rough grading approval and building pad/foundation permits), then the plans will expire and will be required to meet the code in effect at the time of such expiration, and new plan check fees will be required.

a. **Photovoltaic Panels.** Developer shall incorporate approximately 35,000 square feet (total) photovoltaic panels located on the rooftop of the Project parking structure for the Apartments and shall provide conduit and wiring for an additional twenty thousand (20,000) square feet of Apartment building rooftop to accommodate potential future solar panel installation.

b. **Enhanced Electric Vehicle Charging Stations ("EVCS").** Developer shall equip a total of fifty percent (50%) of the Project parking spaces with an EVCS benefit, as follows: (a) fifteen percent (15%) of the total Project parking spaces shall be full EVCS, with EV chargers installed; and (b) thirty-five percent (35%) of the total Project parking spaces shall have conduit and wiring to allow for future EVCS installation. The electrical panel for all buildings shall be designed such that it can accommodate full EVCS for 50% of parking spaces for the Project. EVCS spaces shall be assigned and managed in accordance with the parking management plan required per the Conditions of Approval, which may require the Developer to convert the EVCS parking spaces that are initially only provided with conduit and wiring into full EVCS parking spaces (with chargers installed) incrementally over time based on tenant need. All Townhomes shall have 240 volt NEMA 14-50 installed in the garage. All Townhomes shall be have conduit and wiring for future solar installations.

c. **Mechanical Dwelling Unit System Efficiency Benefit.** The Project provides a mechanical dwelling unit system with a Seasonal Energy Efficiency Ratio ("SEER") of 15.

d. Lighting Occupancy Sensors and Fenestration Energy Efficiency. Notwithstanding any other provision of this Section 3.5, the Project shall: (i) provide state of the art occupancy sensors consistent with the California Energy Code in place at the time the time of Project permitting; and (ii) purchase and install windows and exterior façade materials consistent with the California Energy Code requirements in place at the time of Project permitting.

3.6. Publicly Accessible, Privately Maintained Open Space. Developer shall make the Project open space areas identified on Exhibit C attached to this Agreement ("**Public Open Space Areas**"), which total approximately 111,581 square feet, accessible to the public during the hours of 7:00 a.m. to 7:00 p.m. Developer shall be fully responsible for all maintenance, care and upkeep of the Public Open Space Areas through the life of the Project; this obligation shall survive any termination or expiration of this Agreement.

3.7. Publicly Accessible Pedestrian Bridge. Developer shall construct and maintain the pedestrian bridge identified on Exhibit D attached to this Agreement, subject to City Engineer approval, to allow for pedestrian and bicycle access over the Torrance Lateral Flood Control Channel (BI 1232–Line A) from the Project to the District at South Bay Specific Plan area. The pedestrian bridge will be accessible to the public at all times. The requirement to construct the pedestrian bridge is contingent upon Developer's ability to obtain all necessary approvals and permits from any Federal, State or local governmental agency with permitting or approval authority over the pedestrian bridge, including but not limited to the Los Angeles County Flood Control District and the United States Army Corps of Engineers. Developer shall make, and shall demonstrate to the Director upon request, reasonable best efforts to obtain the required approvals and permits and to construct the pedestrian bridge prior to issuance of the first certificate of occupancy for the Project. If, by such time, Developer has secured the necessary approvals and has made substantial progress with construction of the bridge, as determined by the Director, the Director may grant extensions of time as may be necessary to allow for completion of the bridge, provided Director determines for each extension that Developer has been diligently pursuing completion of construction without delay and is continuing to make substantial progress. If the Developer is unable to obtain all necessary approvals and permits in order to construct the pedestrian bridge or fails to complete construction of the bridge timely in accordance with this provision, then the Developer (or its nonprofit entity described in Section 3.1, subject to the requirements of Section 3.2), prior to issuance of a certificate of occupancy for the 150th Townhome or the occupancy permit for the second Apartment building, whichever is sooner, constructed as part of the Project, shall make a cash contribution of four million dollars ($4,000,000) to City, to be used for the purpose of providing an enhanced art walk leading from the Project site to the District at South Bay Specific Plan and/or other making other pedestrian improvements in the vicinity of the Project site as determined by the City. This sum shall be additional to the Development Agreement Fee. Developer shall be fully responsible for all maintenance, care, and upkeep of the pedestrian bridge through the life of the Project; this obligation shall survive any termination or expiration of this Agreement.

3.8 Restaurant and Kitchen Timing. Developer agrees that the restaurant space to be included in the Project's approximately 10,000 square feet (including outdoor/patio space) of ground floor commercial area must include a fully built out kitchen prior to issuance of a certificate of occupancy for the last residential building constructed within the Project.

3.9 Art Benefit. Prior to issuance of the first building permit for the Townhomes and prior to issuance of building permits for each of the two Apartment buildings, the Developer shall pay a public art fee equal to one percent (1%) of the total building valuation for all Townhomes and each of the two Apartment buildings (i.e., all Project buildings) as determined by the City's Building Official in accordance with the Marshall-Swift Valuation Guide per the City Building Official's standard practice ("**Project Art Fee**").

In lieu of paying the Project Art Fee, Developer may incorporate on-site art, including but not limited to art within the exterior north side of the Project facing the 405 freeway, to the satisfaction of the Director, in which case Developer shall submit a Project art plan, valuation, and implementation plan to the Director prior to issuance of the first Project building permit. Unless otherwise approved by the Director pursuant to the art implementation plan, Developer's on-site art which corresponds to a particular building shall be installed prior to issuance of a certificate of occupancy for the corresponding building, and art that does not correspond to any particular building shall be installed within six months following issuance of the certificate of occupancy for the first Apartment building constructed as part of the Project. Individual art valuations shall be submitted for each Project building prior to issuance of building permits for the respective buildings. Should the value of Developer's onsite art be less than one percent (1%) of the total building valuation for the entire Project as described above, then Developer shall pay the City the difference in its entirety prior to issuance of the certificate of occupancy for the 150th Townhome constructed as part of the Project.

3.10 Traffic Signal. Developer shall fund and install a new traffic signal at the Project entry location on Avalon Boulevard between the I-405 interchange and 213th Street, in accordance with plans approved by the City's Director of Public Works or his or her designee, which shall include approval of the projected costs. Developer will be eligible for reimbursement of up to 50% of the approved costs of the new traffic signal by City upon completion of the comprehensive redevelopment of the Kott site (located to the east of the Property, north of E. 213th St. and east of Avalon Blvd. to the I-405 freeway). Developer shall submit plans for the traffic signal with an estimate of the cost prior to issuance of the first building permit issued for the Project and shall complete installation prior to issuance of the first Project certificate of occupancy.

3.11 Carson and Avalon 405 Interchange Landscaping Improvement. Prior to issuance of the certificate of occupancy for the second Apartment building or any Townhome, Developer or Developer's Nonprofit identified in Section 3.2 shall provide up to one million dollars ($1,000,000.00) in matching funds ("Matching Funds") for landscaping upgrades and improvements for the I-405 interchange at Carson Street and Avalon Boulevard ("I-405 Interchange Upgrades"). Prior to receiving the Matching Funds, the City must provide Developer a concept plan detailing how the I-405 Interchange Upgrades will be implemented, a budget and evidence that the City is in possession dedicated funds equal or greater than the Matching Funds.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Scope of Developer's Vested Right. Subject to the Reservation of Authority set forth in Article 5, Developer shall have the vested right to develop the Project in accordance with and to the full extent permitted under the Applicable Laws and this Agreement ("**Developer's Vested Right**").

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

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

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

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

4.6 Project Development Approvals; Subsequent Development Approvals. The Project Development Approvals for the Project may require the processing of Subsequent Development Approvals. Subject to the provisions of Section 4.7 below, the City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition. However, unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in the Project Development Approvals made pursuant to Developer's application shall not require an amendment to this Agreement. This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.

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

as amended by the Project Development Approvals. In addition, Developer shall have the right to commence Project construction of both Apartment buildings within the Project prior to the recordation of an approved final subdivision map No. 83157. However, the approved final subdivision map must be recorded prior to occurrence of either of the following: (i) issuance of any building permits for the Townhomes; (ii) issuance of a certificate of occupancy for either of the Apartment buildings. Neither the Apartment lots nor the Apartment buildings may be individually sold prior recordation of the approved final subdivision map No. 83157.

4.8 Moratorium. Notwithstanding any other provision of this Agreement, no future amendment of any existing City ordinance or resolution or any subsequent ordinance, resolution or moratorium, enacted either by the City Council or by voter approved initiative, that purports to impose or result in a limitation on the Project, imposed by City, shall apply to govern, or regulate the Project or development or use of the Property during the Term. In the event of any such subsequent action by City, Developer shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the City's Reservation of Authority set forth herein.

4.9 Maintaining Property. The Property must at all times be maintained and generally kept in a clean condition, in accordance with the CMC and the City's code enforcement regulations.

5. CITY'S RESERVATION OF AUTHORITY.

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

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

5.2 Uniform Codes. Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, or other such Uniform Codes, and also adopted by City as Subsequent Land Use Regulations, but only if: (i) the Project is not subjected to the 2019 codes pursuant to Section 3.5 of this Agreement; and (ii) such changes are applicable City-wide.

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

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

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

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

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

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

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

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

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

5.5 Modification or Suspension by Federal or State Laws. In the event that Federal or State laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.

5.6 Employment Outreach for Local Residents. A goal of the City with respect to this Project and other major projects within the City is to foster employment opportunities for Carson residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, the Developer shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction, operation and maintenance of the Project to be advertised in such a manner as to

target local City residents and shall make other reasonable efforts at local employment outreach as the City shall approve. Developer shall also notify the City of jobs available at the Project such that the City may inform City residents of job availability at the Project. Developer will inform its purchasers and lessees of the provisions of these requirements. Nothing in this paragraph shall require Developer to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 5.6 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

5.7 Prevailing Wages. Developer's cost of developing the Project and constructing all of the on-site and off-site improvements, if any, at or about the Property required to be constructed for the Project shall be borne by Developer. Developer is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will defend, hold harmless, and indemnify City in the event Developer fails to do so. As the City is not providing any direct or indirect financial assistance to Developer, the Project should not be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720. Accordingly, it is believed by the parties that Developer is not required to pay prevailing wages in connection with any aspect of the Development or the construction of the Project. However, to the extent that (contrary to the parties' intent) it is determined that Developer was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, Developer shall defend, indemnify, and hold the City (which, for purposes of this section, shall include its related agencies, officers, employees, agents and assigns) harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

5.8 Fees, Taxes, and Assessments.

a. **Processing Fees**. The Developer shall pay all processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Project Development Approvals, including but not limited to, City Attorney fees incurred by City for the review, preparation and negotiation of the Entitlements, inclusive of this Agreement, at a rate of $495 per hour for partners and $395 per hour for associates, and for monitoring compliance with any Project Development Approvals granted or issued, in accordance with the Reimbursement and Indemnification Agreement entered into by and between the Parties effective December 16, 2019, and as amended and restated pursuant to the First Amended Reimbursement and Indemnification Agreement entered into by and between the Parties effective June 1, 2022, and as the same may be amended from time to time by mutual agreement of the Parties.

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

c. **Master Community Facilities District.** On November 7, 2018, the City formed a Master CFD entitled City of Carson Community Facilities District No. 2018-01 (Maintenance and Services) (the "**Master CFD**") for the purpose of funding the maintenance of public infrastructure within the area of the Master CFD which is within the City's jurisdictional boundaries (the "**Services**"). In light of the substantial Developer contributions towards infrastructure, parks and other public benefits as set forth in Article 3 of this Agreement secured through payment of the Development Agreement Fee, it is understood that the City will not annex the Property or the Project into the Master CFD for the life of the Project. This provision shall survive the Term of the Agreement.

d. **Development Impact Fee.** In light of the substantial Developer contributions towards infrastructure, parks and other public benefits as set forth in Article 3 of this Agreement secured through payment of the Development Agreement Fee, it is understood that the City will not assess Development Impact Fees pursuant to Ordinance No. 19-1931. Accordingly, the Parties understand, acknowledge and agree that no credits or reimbursements will be available to Developer pursuant to Ordinance No. 19-1931 or any provision of the CMC (as may be amended) to offset, reduce or refund any portion of the Development Agreement Fee.

e. **General Charges**. Nothing herein shall prohibit the application of the following, if lawfully imposed upon the Property, excluding any existing or future CFD:

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

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

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

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

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

6. ANNUAL REVIEW.

6.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Developer with the terms of this Agreement ("**Annual Review**"). No failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement, nor shall it be deemed a breach on the part of Developer. The cost of the Annual Review shall be borne by Developer and Developer shall pay the actual and reasonable costs incurred by the City for such review.

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

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

6.4 Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. The procedure for an Annual Review or Special Review shall be as follows:

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

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

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

d. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 13.11.

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

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

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

notice/cure process (Section 7.2) and the termination hearing process (Section 7.4) before terminating this Agreement.

7. DEFAULTS AND REMEDIES.

7.1 Remedies Available. The parties acknowledge and agree that other than the termination of this Agreement pursuant to Article 7, specific performance, injunctive and declaratory relief are the only remedies available for the enforcement of this Agreement and knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, Developer shall not be entitled to any money damages from City by reason of any default under this Agreement. Further, Developer shall not bring an action against City nor obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which the Developer knew of or should have known of prior to the time of entering into this Agreement, Developer's sole remedies being as specifically provided above. Developer acknowledges that such remedies are adequate to protect Developer's interest hereunder and the waiver made herein is made in consideration of the obligations assumed by the City hereunder.

7.2 Declaration of Default & Opportunity to Cure.

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

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

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

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

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

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

(v) Diligently prosecutes such cure to completion.

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

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

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

a. Decide to terminate this Agreement; or

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

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

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

7.5 Rights and Duties Following Termination. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (iii) the indemnification provisions of Article 8. Termination of this Agreement pursuant to this Section 7 shall automatically terminate the Project Development Approvals.

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

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

8. THIRD PARTY LITIGATION.

8.1 Indemnity Obligations on Third-Party Claims

a. Developer hereby agrees to indemnify, defend, and hold City, its officers, agents, employees, members of its City Council and any commission, partners and representatives ("**City Indemnitees**") harmless from any and all claims, actions, suits, damages, liabilities, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature) (collectively, "**Claims**"), asserted against City or City Indemnitees arising out of or in connection with this Agreement, including, without limitation, (i) City's approval of this Agreement and all documents related to any of the Project Development Approvals, Conditions of Approval, permits, or other entitlements for the Project and issues related thereto (including, without limitation, City's determinations regarding CEQA compliance and/or any other development incentives granted to the Project), (ii) the development of the Project, (iii) liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from, or are attributable to, Developer's (or Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf ("**Developer's Representatives**")) performance of its obligations under this Agreement and/or the negligence or misconduct of Developer or of Developer's Representatives which relate to the Project or the Property, and (iv) Developer's failure to comply with any applicable federal, state or local law, rule, or regulation, including, but not limited to, those relating to industrial hygiene or to environmental conditions on, under or about the Property, such as (without limitation) soil and groundwater conditions.

b. The City shall provide the Developer with notice of the pendency of such Claims within ten (10) days of being served or otherwise notified of such Claims and shall request that the Developer defend such action. The

Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. In all cases, City shall have the right to utilize the City Attorney's office in any legal action. The Developer shall provide a deposit in the amount of 100% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorney's fees. If the Developer fails to provide the deposit, and after compliance with the provisions of this Section 8.1, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. City agrees that it shall fully cooperate with the Developer in the defense of any matter in which the Developer is defending and/or holding the City harmless.

8.2 Hold Harmless: Developer's Construction, and Other Activities. The Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' Project construction activities and operations under this Agreement, whether such Project construction activities and operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein shall be construed to mean that the Developer shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

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

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

8.5 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee

participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

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

9. INSURANCE.

9.1 Types of Insurance.

a. **Public Liability Insurance**. Prior to commencement and until completion of construction of improvements by Developer on the Property, Developer shall, at its sole cost and expense, keep or cause to be kept in force, for the mutual benefit of City and Developer, comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage. Such policy shall provide protection of at least $5,000,000 for bodily injury or death to any one person, at least $5,000,000 for any one accident or occurrence, and at least $5,000,000 for property damage, and $10,000,000 in the aggregate.

b. **Worker's Compensation**. To the extent Developer and its contractors utilize employees for any portion of the Project, Developer and such contractors shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that Developer and any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

c. **Automobile Liability Insurance**. Developer shall ensure that all contractors with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder maintains automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Developer arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $5,000,000 combined single limit for each accident.

d. **Pollution Liability Insurance**. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than $5,000,000 dollars per claim and $10,000,000 in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy

shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

e. **Builder's Risk Insurance.** Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site or any staging area**.** The City and Developer shall each be included as Loss Payee for their respective insurable interest.

f. **Professional Liability Insurance.** Professional liability insurance appropriate to the profession for any design work. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of the services or the termination of this Agreement. During this additional 5-year period, Developer shall annually and upon request of the City submit written evidence of this continuous coverage.

g. **Other Insurance**. Developer may procure and maintain any insurance not required by this Agreement, but all such insurance shall be subject to all of the provisions hereof pertaining to insurance and shall be for the benefit of City and Developer. Developer shall ensure that all contractors and sub-contractors maintain the required minimum insurance coverages, or shall include the contractors and subcontractors under its insurance.

h. **Renegotiation of Policy Limits.** In the event the Developer in good faith determines and submits substantial evidence to the City that any of the foregoing policy limits or required coverage provisions are unreasonable and not consistent with the prevailing insurance market at the relevant time, the City will reconsider such policy limit(s) or required coverage provision(s) in good faith, and may, but is not required to, approve a modification to same, which approval may be given by the City Manager or designee.

9.2 Insurance Policy Form, Sufficiency, Content, and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement, except for all insurance required by Developer's contractors, both City and Developer shall be named as an additional insured. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. In the event the City's Risk Manager determines that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates an increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the insurance policies required by Section 9.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that Developer shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.

9.3 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies together with endorsements required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

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

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

c. If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

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

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

10. MORTGAGEE PROTECTION.

10.1 Except as otherwise provided by Applicable Laws and this Agreement, the Parties agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed, of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations, modifications, and estoppel certificates and City agrees upon request, from time to time, to communicate and meet with Developer and representatives of such lenders to negotiate in good faith any such estoppel certificates and/or requests for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested estoppel certificate, interpretation or modification provided City determines such estoppel certificate, interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the rights and privileges set forth in this Article 10.

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

10.3 The Mortgagee of any Mortgage or deed of trust encumbering the Property, or any part thereof, where Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

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

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

11. ASSIGNMENTS.

11.1 The experience, knowledge, capability and reputation of Developer, its principals, employees and affiliates were a substantial inducement for the City to enter into this Agreement. The Developer may sell, transfer, lease or assign this Agreement, the Property, or any part thereof (such sale, transfer, lease or assignment shall be referred to as an "**Assignment**") with the prior written consent of the Community Development Director, which consent may not be unreasonably withheld, after providing reasonable documentation and evidence

demonstrating that the person or entity to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated, meets the following criteria: (i) the transferee has the financial strength and capability to perform its obligations under the Agreement, (ii) reasonably satisfactory evidence that the transferee has the experience and expertise to operate the Project, including reasonably satisfactory evidence that the transferee has experience with operations and projects with a similar scale of this Project; and (iii) reasonably satisfactory evidence that the transferee's key principals have no felony convictions. The proposed transferee shall execute and deliver to the City an assumption agreement assuming Developer's Project obligations, which assumption agreement shall be in a form approved by the City Manager and City Attorney.

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

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

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

c. The Consent Request shall be accompanied by (i) a proposed draft of the Assignment and Assumption Agreement described in Section 11.3, in a form acceptable to the City Attorney and City Manager, and (ii) evidence regarding the proposed assignee's development and/or operational qualifications and experience and its financial commitments and resources in sufficient detail to enable the City to evaluate the proposed assignee's ability to complete the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

12. AMENDMENT AND MODIFICATION.

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

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

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

12.4 Administrative Minor Project Modifications. Notwithstanding any other provision and/or condition of approval contained in any Development Approvals, including any processes set forth in Chapter 5 of the Specific Plan, Minor Modifications to this Agreement, the Project, and/or the Development plans shall be made ministerially, with the approval of the Director. Such "**Minor Modifications**" shall be defined as any modifications to this Agreement, the Project and/or the Development plans that do not (i) change the proposed uses analyzed for the Project in the EIR or permitted for the Project in the Project Development Approvals and this Agreement, (ii) constitute a prohibited modification under Section 12.5, (iii) increase building heights within the Property in comparison to what is identified in the Project Development Approvals and this Agreement, (iv) reduce the number of parking stalls identified in the Project Development Approvals by more than five (5) percent, (v) substantially deviate from the approved architectural design, as determined by the Community Development Director in his or her reasonable discretion, and/or (vi) reduce the amount of publicly accessible open space below 111,581 square feet.

12.5 Prohibited Modifications. Notwithstanding any provision of this Agreement or the Specific Plan, none of the following shall be permitted with respect to the Project during the Term of this Agreement:; (i) any modification to the square footage of the commercial space (10,000); (ii) any use of the commercial space other than restaurant space; or (iii) any reduction in the amount of publicly accessible open space below 111,581 square feet, except that a reduction of no more than 2.5% of the non-park open space area may be permitted if necessary based on Building Standards Code requirements as identified/required during the plan check process. No reduction to the square footage of the park (22,859 sq. ft.) shall be permitted.

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

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

12.8 Timing of Development. The California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over the parties' agreement. It is the intent of Developer and City to cure that deficiency by expressly acknowledging and providing that any Subsequent Land Use Regulations that purports to limit over time the rate or timing of development or to alter the

sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall not apply to the Property or the Project and shall not prevail over this Agreement. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by the City on the amount of total square feet or the number of buildings, structures, residential units that can be built each year on the Property except as expressly provided in this Agreement.

13. MISCELLANEOUS PROVISIONS.

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

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

To City:	City of Carson 701 East Carson Street Carson, California 90745 Attn: Planning Manager
With copy to:	Aleshire & Wynder 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 Fax: 949-223-1180 Attn: Sunny Soltani
To Developer:	Imperial Avalon, LLC 4276 Katella Avenue, #231 Los Alamitos, CA 90720 Attn: Darren Embry
	Rand, Paster & Nelson, LLP 633 W. Fifth Street, 64th Floor Los Angeles, CA 90071 Attn: Dave Rand

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

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

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

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

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

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

13.4 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer. During the Term of this Agreement, clarifications to this Agreement and the Applicable Laws may be appropriate with respect to the details of performance of the City and Developer. If and when from time to time during the Term of this Agreement, the City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by the City and Developer, which after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by the City and Developer. Operating memoranda are mere ministerial clarifications and therefore public notices, hearings and CEQA compliance shall not be required unless otherwise provided by applicable law. The authority to enter into such operating memoranda is delegated to the Community Development Director who is hereby authorized to execute any operating memoranda hereunder without future action or approval by the City Council.

13.5 Project as a Private Undertaking. It is specifically understood and agreed by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect, and that each Party is an independent contracting entity with respect to this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of property owned by a private party. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the public improvements set forth herein.

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

13.7 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. No testimony or evidence of any

such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

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

13.9 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

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

13.11 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes, and other labor difficulties beyond the Party's control, government regulations, pandemics, government-ordered quarantine, court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of the impacts on the Project of each such event.

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

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

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

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

13.16 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly

organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

13.17 Attorneys' Fees. If either party to this Agreement is required to initiate or defend litigation against the other party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE(S)]

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

CITY

CITY OF CARSON a municipal corporation

_____

Lula Davis-Holmes, Mayor

ATTEST

_____

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

_____

Sunny K. Soltani, City Attorney

DEVELOPER

IMPERIAL AVALON, LLC, a California limited liability company

By:_____
Name:
Title:

By:_____
Name:
Title:

If Developer is a limited liability company, any one of the following options will satisfy City's signature requirements pursuant to the Corporations Code. Option A: One signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. Option B: Signatures required from two managers unless the LLC is managed by one manager per its articles of organization, in which case only one signature from that manager is required. Option C: One signature required from any member unless the LLC is manager-managed per its articles of organization. Option D: One signature required from any manager if the LLC is manager-managed per its articles of organization. DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF ORGANIZATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

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.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL

☐ CORPORATE OFFICER

_____

TITLE(S)

☐ PARTNER(S) ☐ LIMITED

☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER_____

_____

SIGNER IS REPRESENTING:

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL

☐ CORPORATE OFFICER

_____

TITLE(S)

☐ PARTNER(S) ☐ LIMITED

☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER_____

_____

SIGNER IS REPRESENTING:

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____

TITLE OR TYPE OF DOCUMENT

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NUMBER OF PAGES

_____

DATE OF DOCUMENT

_____

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

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

LOT 1 OF TRACT NO. 71206, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1400, PAGES 1 TO 6 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM PORTIONS OF SAID LAND ALL MINERALS, OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID LAND, AS EXCEPTED IN DEED RECORDED DECEMBER 08, 1960 AS INSTRUMENT NO. 1520 OFFICIAL RECORDS, AND IN DEED RECORDED MAY 18, 1959 AS INSTRUMENT NO. 590 OFFICIAL RECORDS.

APN: 7337-001-025
APN: 7337-001-026
APN: 7337-001-027
APN: 7337-001-028
APN: 7337-001-029

EXHIBIT "B"

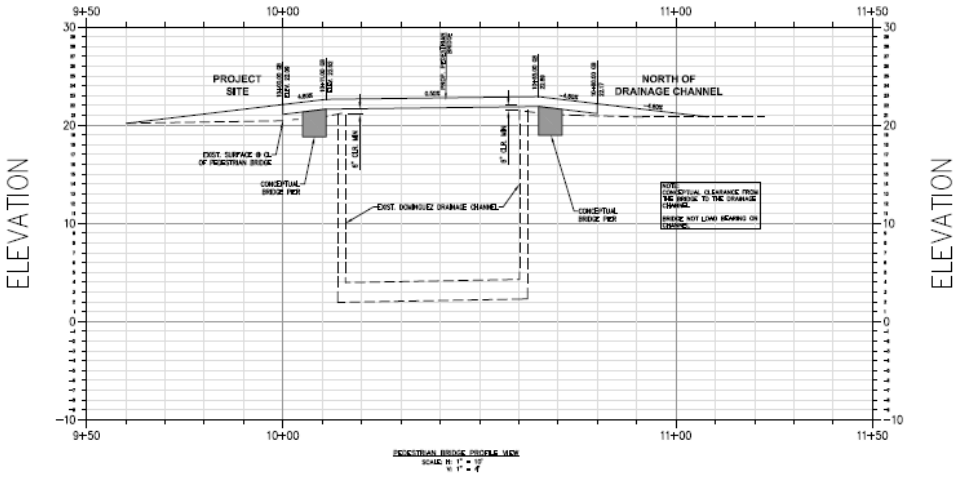
DEPICTION OF THE PROPERTY

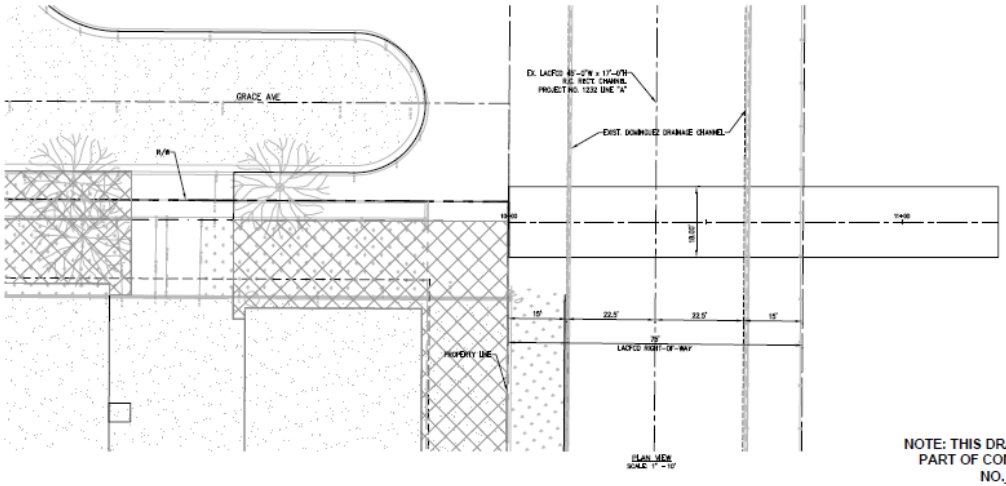
EXHIBIT "C"

PUBLIC OPEN SPACE AREAS

EXHIBIT "D"

PEDESTRIAN BRIDGE





NOTE: THIS DRAWING IS ATTACHED TO AND MADE PART OF CONCEPTUAL APPROVAL TRACKING NO. FCDP2021000318, 08/18/2021.