



CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING: March 21, 2018
SUBJECT: Development Agreement No. 13-17
APPLICANT: CAM-CARSON, LLC
REQUEST: TO CONSIDER A DEVELOPMENT AGREEMENT WITH CAM-CARSON, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND AN AFFILIATED ENTITY OF MACERICH, FOR THE DEVELOPMENT OF A FASHION OUTLET AND RETAIL CENTER ON CELL 2 OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL

PROPERTY INVOLVED: Southwest of I-405 and Del Amo Boulevard

COMMISSION ACTION

AYE	NO		AYE	NO	
		Chairman Diaz			Guidry
		Vice-Chair Pimentel			Mitoma
		Andrews			Post
		Cainglet			Thomas
		Fe'esago, Jr.			Alt. Osuna/ Alt. Palmer

I. Introduction

Applicant

CAM-CARSON, LLC, c/o The Macerich Company, Attn: Ann C. Menard, Esq.
401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401

The Planning Commission is being asked to review and make recommendation to the City Council regarding a Development Agreement (“Agreement”) with CAM-CARSON, LLC, a Delaware limited liability company (“Developer”), an affiliate of The Macerich Company, which is headquartered in Santa Monica, California, for the development of a high end fashion outlet mall on a portion of a property currently owned by the Carson Reclamation Authority (“Authority”) and which will be conveyed to the Developer through the agreements described below.

Portions of the Project described below have previously been considered by the Planning Commission. On January 23, 2018, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, (i) held a public hearing on Authority’s application for amendment of the Boulevards Specific Plan and Developer’s application for Site Plan and Design Review and Comprehensive Sign Program,” (ii) recommended to the City Council certification of the Supplemental Environmental Impact Report for The District at South Bay Specific Plan, State Clearinghouse No. 2005051059 (the “SEIR”) pursuant to Resolution No. 18-2620 and the adoption of the Specific Plan pursuant to Resolution No. 8-2621 and adopted the Site Plan and Design Review (DOR) and Comprehensive Sign Program, pursuant to Resolution No. 18-2622.

Concurrently with consideration of the Agreement by the City Council, it is anticipated that (1) Authority will consider entering into a Conveyancing Agreement with Developer whereby Authority will convey and Developer will acquire the Developer Property (described below) and (2) City and Authority will consider entering into a Cooperation Agreement whereby Authority would agree to construct certain public infrastructure on behalf of City and City would agree to provide sales tax proceeds to Authority to enable Authority to meet its obligations to, among other things, remediate Cell 2 and construct certain Offsite Improvements (as defined in the Agreement). The effectiveness of the Development Agreement, the Cooperation Agreement and the Conveyancing Agreement are contingent, one on the other and the priority of various agreements is further described in Section 16.3.2 of the Agreement. As required by the “Development Agreement Statute,” Sections 65864 through 65869.5 of the Government Code as a condition to execution by City of the Development Agreement, the Conveyancing Agreement provides Developer with a legal or equitable interest in the Developer Property.

See page 11 through 14 of this staff report for a summary of the deal terms and public benefits of the Development Agreement and other related agreements.

II. 157 Acre Site and Surrounding Land Uses

On May 18, 2015, the Authority acquired approximately 157 gross acres of real property in the City of Carson, as shown on the Site Map attached hereto as Exhibit “A” of the Agreement (the “157 Acre Site”), known as the Former Cal-Compact Landfill. The 157 Acre Site is divided into five (5) Cells as shown on Exhibit “A” and is subject to The Boulevards at South Bay Specific Plan, approved on February 8, 2006, and amended on April 5, 2011 (the “Specific Plan”). The 157 Acre Site is a former landfill site, and on October 25, 1995, the California Department of Toxic Substances Control (“DTSC”) approved a Remedial Action Plan (“RAP”) for portions of the 157 Acre Site, which RAP requires the installation, operation and maintenance of certain remedial systems, including a landfill liner and cap, gas collection and control system, and groundwater extraction and treatment system on the 157 Acre Site (“Remedial Systems”). Implementation of the Remediation Systems is subject to oversight by DTSC.

The 157 Acre Site has been subdivided into a surface lot (the “Surface Lot”) and a subsurface lot (the “Subsurface Lot”) by Parcel Map No. 70372 as described on Exhibit “B” of the Agreement. The portion of the Surface Lot within Cell 2 is approximately 46.33 gross acres.

Under the terms of the Conveyancing Agreement (described below), the Authority will convey to Developer approximately 41 net acres of the Surface Lot of Cell 2 and certain easement areas therein legally described in Exhibit “C-1” of the Agreement (“Cell 2 Surface Lot”), and will retain approximately 5.3 acres lying along the I-405 Freeway and between the freeway and the Cell 2 Surface Lot (“Embankment Lot”). The Authority will also convey certain easement rights to Developer for purposes of construction, operation and use of the Project and Project signage, including an easement in the Embankment Lot for the Developer Pylon Sign described below. The property and easement rights to be conveyed by the Authority to Developer are referred to in the DA as the “Developer Property.”

The Project Site is surrounded by multiple uses. East of the I-405 Freeway, land uses include neighborhood and regional retail, most notably the South Bay Pavilion at Carson. To the north and east of the Project Site are the Porsche Experience Center and the Victoria Golf Course, respectively. Residential areas, consisting of one-story and two-story detached residences and mobile homes, are located to the south and west. The residences are separated from the Project Site by the Torrance Lateral Flood Control Channel (Torrance Lateral), a concrete-lined drainage channel which parallels the southern and western border of the Project Site. To the west of the Project Site, extending away from the site on Torrance and Del Amo Boulevards, are commercial and light industrial uses. Further north on the west side of Main Street are light industrial uses, with the StubHub Center and California State University, Dominguez Hills, located northeast of the Project Site along Avalon Boulevard.

III. Project Description

The Developer has proposed developing a “Project” on the Developer Property. The Project will consist of development of a high-quality, state of the art, fashion outlet retail center of not less than 450,000 GBA square feet (for Phase I only) and up to 711,500 GBA square feet (taking into account Phase I and Phase II, which may be developed separately or concurrently), which may include, at the sole discretion of Developer, sit-down restaurant space of up to 15,000 GBA square feet, a VIP lounge, and the various take-out and on-site food and alcohol service uses permitted by right or with an administrative use permit or conditional use permit (in each case upon the approval by City of such permit) in the Specific Plan, and related signage on the Developer Property pursuant to the Agreement and the Development Plan, as described more specifically in the Scope of Development attached to the DA as Exhibit “D”. The definition of Project in the Agreement includes the preparation of designs for, and improvement of, the Developer Property for purposes of effecting the structures and improvements comprising the Project including, without limitation: design, grading, the construction of infrastructure related to the Project, whether located within or outside the Developer Property; the construction of structures and buildings; construction in connection with leasing of the Project, including, without limitation, installation of tenant improvements; installation of landscaping; installation of signs, including, without limitation, the Developer Pylon Sign, certain Entry Signs and other signs described in the Development Plan; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, sign, improvement, leased premises or facility after the construction and completion thereof.

IV. Background

Prior development projects have been proposed on the 157 Acre Site, including the mixed-use regional retail and entertainment project described by the Boulevards Specific Plan and a 75,000-seat NFL Stadium. These Projects have not proceeded.

Cell 2 of the 157 Acre Site, upon which the Project is proposed, is located directly southwest of the I-405 Freeway, and is uniquely positioned to attract retail and commercial business from Orange County, Long Beach, and Los Angeles. This creates a prime location for development of large-scale retail uses. Developer previously investigated the development of a portion of the 157 Acre Site when it was owned by a prior entity, and consequently has a working understanding of the development constraints and environmental conditions, and continues to conduct its due diligence investigations thereof. Developer has proposed a unique project with components which have the financial strength to generate a reasonable share of the significant remediation and infrastructure costs of development, and Developer has the financial strength to meet its financial obligations hereunder. Developer and its affiliates currently own and manage over 50 million square feet of regional shopping centers across the United States. Developer and its affiliates have demonstrated skill and expertise in retail and mixed-use real estate development, and the ability to

attract reputable commercial tenants. Developer, headquartered in Santa Monica, has substantial Southern California experience.

The 157 Acre Site presents the largest undeveloped tract of land remaining in Carson and, if developed, could generate substantial property tax increment and sales tax revenues for the benefit of the City and other local taxing entities.

V. Analysis

City Role in the Project

The City has no real property interest in the 157 Acre Site, which is wholly-owned by Authority. However, the City possesses the legal authority to regulate the zoning of the 157 Acre Site, to approve and modify the general plan designation and specific plans, to approve development agreements, all pursuant to state law, and to undertake environmental review and approve mitigation programs and development applications for specific projects including the Project (the “Entitlement Obligations”). In addition to such regulatory authority, City provides public infrastructure and services to the 157 Acre Site, including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities, and must assure public accessibility to the 157 Acre Site including, without limitation, by assuring construction of the Offsite Improvements (the “Infrastructure Obligations”). Pursuant to the Cooperation Agreement, the City will contract with Authority to cause Authority to construct the Infrastructure Obligations. In addition, in order to make the Project feasible and thereby realize the many benefits to City of the Project, City and Authority have negotiated a sales tax sharing agreement and provided for certain other related financial obligations of City as further described in the Cooperation Agreement to provide a revenue stream to Authority for repayment of Developer’s Advances.

Role of Development Agreement

Under the Development Agreement Statute, cities have a right to enter agreements with private parties to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development. The Statute authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. Development agreements are often used in large, complex projects and in projects that have a long lead time, multiple phases, or a long development period, in order to give the developer certainty in regards to the entitlements and other governmental actions. There may also be a “business deal” component to a DA, where a city may agree to undertake certain actions to help a project in return for other considerations from a developer, sometimes financial.

The Agreement addresses Existing Development Approvals and Existing Land Use Regulations, as well as Future Development Approvals and Future Land Use Regulations (each as defined in the Agreement). Collectively, these constitute the approvals of the Project and are the regulations (with the Reservation of Authority by

City for future regulatory changes discussed in Article 8) in which the vested right to develop the Project under the Agreement exists.

Vested Right to Develop and Term of Agreement

During the Term, subject to the Reservation of Authority by City contained in Article 8 of the Agreement, Developer shall have a vested right to develop the Project on the Developer Property in accordance with and to the full extent permitted by the Development Plan which shall exclusively control the development of the Project (including, without limitation, the uses, the density or intensity of use, architectural review, 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 or the Developer Property), including the vested right to construct the Project in two Phases and for a total of 711,500 GBA square feet of development rights.

To carry out the Project, Developer anticipates making capital expenditures or causing capital expenditures to be made in reliance upon this Agreement and the Project Agreements. In the absence of this Agreement, Developer would not have assurance that it can complete and utilize the Project for the uses and to the density and intensity of development set forth in this Agreement and the Existing Development Approvals. This Agreement is necessary to assure Developer that the Project will not be (i) reduced or otherwise modified in density, intensity or use, maximum height and size of proposed buildings and the design standards applicable to the Project and the Developer Property, from what is set forth in the Existing Land Use Regulations and Existing Development Approvals, or (ii) subjected to new rules, regulations, ordinances or official policies or plans except (1) Applicable Future Rules; and (2) Future Development Approvals made applicable to the Project and/or the Developer Property consistent with the terms of this Agreement. Accordingly, Future Development Approvals shall apply to the Project and the Developer Property only to the extent that they are not in conflict with the then-applicable Development Plan or are not contrary to the terms of this Agreement. Land Use Regulations enacted after the date this Agreement is approved by the City Council shall apply to Application(s) only to the extent such Applications do not relate to Existing Development Approvals and application of such Land Use Regulations is approved by Developer or is made applicable to the Project or the Developer Property pursuant to the Reservation of Authority of City in Article 8 of this Agreement.

The term of the Agreement (“Term”) is tied in some respects to the Term of the Conveyance Agreement and Cooperation Agreement and shall commence on the Effective Date and, unless earlier terminated pursuant to Article 11, shall continue until the earlier of the date (i) that is twenty-five (25) years from the date the first Sales Tax Assistance payment is made to Developer or (ii) upon which the full Total Recovery Amount (as such term is defined in the Conveyancing Agreement) is paid.

Other Provisions of the Development Agreement

The Agreement describes the Scope of Development in more extensive detail and imposes constraints on how significantly the Project may deviate from the

Development Plan and the process for handling amendments and revisions to the Project. In addition, the Agreement contains some other provisions. This is a partial summary of these provisions:

Certain changes to the design and development criteria contained in the Specific Plan, including a waiver of the Public Art Fee, specific provisions of security and Sheriff's services, and payment as a shuttle fee as a mitigation measure. Section 4.4 describes the nature of the City's infrastructure obligations, the nature of the work to be performed by the Authority, and the Cooperation Agreement that contractually binds the City and Authority together for those specific obligations, primarily infrastructure and site preparation. Later sections (mainly 4.6 and 4.7) have detailed provisions about the sign program, including the Developer Pylon Sign and certain other Pylon Signs to be constructed on the embankment facing the 405 Freeway, participation in the Authority-constructed Entry Signs, and the Master Sign Program for the 157 Acre Site.

Other portions of Section 4 specify the hierarchy of documents controlling future development rights. If approved by the City, the City will have determined that the Agreement is consistent with the General Plan, the Specific Plan and the Zoning Code, as such, the Agreement, its exhibits, and the Project Agreements shall be the primary documents governing the use and Development of the Developer Property, and, in the event of a conflict, shall prevail over the Existing Land Use Regulations. The SEIR and its mitigation measures have the highest priority, followed by the Agreement, and then the Existing Zoning Approvals and Land Use Regulations.

Other community benefit provisions include a provision that requires the Developer to 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 City shall approve. Additionally, the Agreement requires that all Project buildings shall promote sustainable and energy efficient practices through compliance with California Code of Regulations, Title 24 and that the Project be designed to meet the standards for a LEED Silver Certified building or equivalent and Developer shall use commercially reasonable efforts to exceed such standards.

In addition to specific provisions related to this project, such as Phasing and Schedule in Article 5, processing future development permits in Article 6, and the City Sales Tax provisions in Article 9, there are more typical agreement provisions as well, including the Amendment and Modification provisions in Article 7, the above-referenced Reservation of Authority in Article 8, Annual Review in Article 10, Default and Termination provisions in Article 11, and Assignment and Covenants in Articles 12 and 14.

Comprehensive Insurance Program

Article 13 references the Authority's Comprehensive Insurance Program. The Project contributes to a robust insurance program for the 157 Acre Site to provide coverage

against environmental claims and provides protection to the public entities, developers, property owners and contractors carrying out construction on the 157 Acre Site, including coverage for general liability, personal injury, property damage and other claims and to which Developer pays its fair share as provided in Article 13. Total insurance coverage provided is almost One Billion Dollars (\$1,000,000,000) for all types of insurance provided by the program. This program also includes a comprehensive pollution legal liability (“PLL”) program that provides coverage for costs that the Authority is obligated to pay as a result of a pollution condition at, on, under, or migrating from the Property. A similar program exists for Contractors Pollution Liability and Professional Liability Insurance (“CPL/PLI”) and with a master Comprehensive General Liability and Builder’s Risk Program. The Developer will participate in the program on a pro rata basis with the Authority.

As noted above, the Planning Commission has previously considered various other entitlements related to the Project. This Planning Commission public hearing is on Developer’s application for the Development Agreement. If recommended by the Planning Commission the City Council, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, will conduct a public hearing on the proposed amendment to the Specific Plan and the Agreement, and after making appropriate findings, (i) certify the SEIR as in compliance with CEQA, adopt a statement of overriding considerations and adopt a mitigation monitoring and reporting program for the SEIR (“MMRP”), (ii) adopt the Specific Plan amendment, (iii) approve the Site Plan and Design Review and Comprehensive Sign Program, and (iv) adopt an Ordinance approving the Agreement. The Planning Commission and the City Council must find on the basis of substantial evidence based on the entire administrative record, that the Agreement is consistent with all applicable plans, rules, regulations and official policies of City.

Community Facilities Districts

Two (2) Community Facility Districts have been established by City under statutory authority to pay for, respectively (i) O&M for Remedial Systems (CFD 2012-1) (“Remediation CFD”) costs and (ii) the costs of installation, operation and maintenance of Entry Signs and Entry Plazas and the costs of operation and maintenance of public infrastructure within the 157 Acre Site (CFD 2012-2). These CFDs will be restructured by the City such that the Project will be charged only such annual amounts as are necessary to pay the Project’s pro rata share, (i) for the Remediation CFD, of only those line items for operation and maintenance of the Remedial Systems set forth on Exhibit “F” required in connection with the 157 Acre Site (the “O&M”) and (ii) for the Infrastructure CFD, (1) costs of operation and maintenance of public infrastructure within the 157 Acre Site and (2) costs of installation, operation and maintenance of the Entry Plazas, including Entry Signs as set forth in Article 13. Actual CFD assessments can rise or fall due to the actual costs of such line items; the current maximum assessment for the Remediation CFD is One Dollar and Seventy-Five Cents (\$1.75) per square foot of GBA on an annual basis, which shall not increase during the first ten years of effectiveness and only after subject to a property owner vote. In addition, Developer shall be responsible to pay its pro rata share of the costs of installation, operation and maintenance of the

Entry Plazas, including Entry Signs, which shall be equal to thirty percent (30%) of the reasonable costs incurred by the City in each year for such purpose. There shall be no tax or other financial burden imposed on the Developer Property or the improvements thereon on account of the CFD or any similar taxing authority of City or any agency or instrumentality of City or controlled by City, other than as set forth in this Section and the CFD shall be in lieu of any other assessments, special taxes, fees or charges that may otherwise be charged on account of the types of services covered thereby.

The City has also previously created or commenced creation of CFD 95-1, which continues to appear on title reports for the Cell 2 Surface Lot. City agrees to determine whether CFD 95-1 was formed, and if formed and not previously terminated, to terminate such CFD prior to transfer of the Developer Property by Authority to Developer. In all events, prior to the conveyance of the Cell 2 Surface Lot to Developer, the City shall demonstrate to the satisfaction of Developer and the title company that CFD 95-1 does not affect the Cell 2 Surface Lot.

Summary of Related Agreements

Because the entire 157 Acre Site, including the Cell 2 Subsurface Lot, is a contaminated landfill, the parties acknowledge that the cost to develop the Project on the Cell 2 Surface Lot could greatly exceed the cost to develop the Project on an uncontaminated parcel of native soil, and that therefore development of the Project on the Cell 2 Surface Lot may be financially infeasible without substantial financial participation by the Authority. However, the City and Authority believe the benefits of economic development justify such investment.

The division of responsibility on the 157 Acre Site is driven in part by the environmental liability, as well as developing a manageable and equitable business deal for both sides. The Authority will (i) construct the Remedial Systems and Building Protection Systems (“BPS”) in accordance with applicable governmental requirements, (ii) deliver foundation systems within the subsurface lot and a structural slab upon which Developer can construct, (iii) the Developer will not have to undertake construction or maintenance within the contaminated soils or groundwater of the Subsurface Lot, and (iv) these mechanisms in accordance with the insurance provided for in the Agreements will limit Developer’s exposure to environmental liability in the undertaking of the Project.

Due to the contaminated condition of the 157 Acre Site, the intent of Developer to acquire only non-contaminated property and the likelihood of settlement of the former landfill contents over time, it is intended by Authority and Developer that Authority retain the Subsurface Lot and the Embankment Lot. The vertical lot lines are being revised based on new grading plans and updated approval by DTSC of the location of the vertical lot separation. It is anticipated in the Agreement that Authority will convey the various components of the Developer Property pursuant to metes and bounds description and that the City will, upon due consideration of same, provide a certificate of compliance pursuant to the Subdivision Map Act as to each parcel so created.

The Authority has contracted with third parties to construct the Remedial Systems and perform its related obligations, to operate remedial systems, to manage the construction process and remedial systems, and provide various related expert services (the “Horizontal Master Developer”) for the entire 157 Acre Site. The Authority and Developer have worked together to coordinate and share information with respect to plans and specifications, bidding materials, insurance, phasing, scheduling and consultants and contractors for the foregoing. Until completion by the Authority of its work on the Cell 2 Subsurface Lot, the Authority retains site control over Cell 2 except for the equitable interest provided to the Developer to allow for the effectiveness of the Agreement.

Working through its Horizontal Master Developer, the Authority will undertake all of the work on the site that involves environmental liability. Some, such as installing the piles or the structural slab, will be funded by advances from the Developer. Work falls on a spectrum from clearly environmental (the remedial systems) to purely vertical (the vertical development and core and shell of the mall). Some work undertaken by the Authority will be paid for by funds advanced by the Developer.

These obligations are documented in the Conveyancing Agreement and the Cooperation Agreement. In addition to the conveyance of the Developer Property pursuant to the Conveyancing Agreement, Authority will agree to carry out the following work and to provide the following assurances to City and Developer:

1. Remedial Systems. The Remedial Action Plan (“RAP”) requires that the Remedial Systems be constructed and operated and maintained for many years to cap the landfill and remove gas and contaminants which would pollute groundwater. This work includes excavation and grading necessary to install such systems. Authority will cause the construction and operation of (i) the Remedial Systems other than the Building Protection System (“BPS”) at its sole cost, and (ii) the BPS, which shall be funded by Authority up to an agreed upon dollar cap.
2. Infrastructure. Under the terms of the Conveyance Agreement, the Authority will construct required public offsite infrastructure and other improvements (the “Offsite Improvements”). Due to Authority’s shortage of resources to complete all of its necessary work, Developer will advance Ten Million Dollars (\$10,000,000) to the Authority for this purpose.
3. Excess Development Costs. Due to the contaminated condition of the 157 Acre Site and uncompacted condition of the soils thereon, resulting in excessive development costs, the 157 Acre Site has been undevelopable despite the interest of numerous developers over decades. These costs include grading and site work, and installing structural sub-foundation systems including piles, all of which must be done in contaminated soils using special safeguards. More specifically, prior to conveyance of the Developer Property to Developer, Authority shall carry out the work defined in the Conveyancing Agreement as the “Site Development Improvements”, which includes the following: (i) site grading, the

excavation of soil and relocation and mitigation of trash layers (“Site Preparation Work”); (ii) installation of piles and pile caps, vaults, under-slab utilities (“Sub-Foundation Work”); (iii) establishing underground utility runs from the property lines (“Utility Work”); (iv) constructing the structural slab for the foundation of the buildings (“Foundation Work”). Developer shall advance certain additional funds to Authority for purposes of performing the Site Development Improvements and the \$10,000,000 for the Offsite Improvements (collectively referred to herein as the “Authority Work”) which amounts shall be advanced by Developer to Authority and repaid by Authority to Developer over a twenty-five (25) year period upon terms and conditions as further set forth in the Conveyancing Agreement. While the Authority shall perform the maintenance of the Site Development Improvements, Developer shall be responsible for the cost of such maintenance as set forth in the Conveyancing Agreement.

4. **Marketability of Property.** To remediate contamination of the 157 Acre Site and to make the property marketable in order to create economic development opportunities for the benefit of City and its residents, City caused Authority to be formed and is providing funding to Authority fifty percent (50%) of sales taxes generated by the Project and received by City upon the terms and conditions and for the term set forth in the Cooperation Agreement and Conveyancing Agreement. This assistance will allow Authority to perform the Authority Work. In the absence of performance of the Authority Work by Authority, the landfill would remain contaminated brownfields property and would not be marketable.
5. **Schedule.** The Agreement requires the Project as approved to be developed in accordance with a Schedule.
6. **Annual Review.** There is a requirement for annual review of Project performance and a five-year Major Review including public hearings as provided in Article 10.
7. **Insurance.** The Project contributes to a robust insurance program, described above, for which Developer is required to make a fair share contribution as described in the Conveyancing Agreement.
8. **Indemnity.** Developer is covering a proportional share of the Carry Cost of the 157 Acre Site as set forth in the Conveyancing Agreement and pays for defense of any challenges to Project entitlements, as provided in Article 13.

Development Agreement Deal Points

The most important parts of DAs are the financial and non-financial deal points that are agreed upon between the City and the applicant. There are no established rules or policies when negotiating these deal points as each proposal is unique and should be considered on its own merits. This DA includes four basic deal points including the term or length of the DA, the fees the developer must pay to the City, public benefits, and fiscal impact. The following provides a brief discussion of each of these deal points:

Term

As noted above, the term of the Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to Article 11, shall continue until the earlier of the date (i) that is twenty-five (25) years from the date the first Sales Tax payment is made to Developer or (ii) upon which the full Total Recovery Amount (as such term is defined in the Conveyancing Agreement) is paid.

Fees

The financial deal terms have been structured in such way that monies the Developer advances for the Project are not referred to as "Development Impact Fees." The Development Agreement and the Related Agreements set forth the monetary obligations of the Developer related to the Project and the development of the Property for the life of the Development Agreement.

Public Benefits of the Development Agreement and the Related Agreements

Appropriate development of the 157 Acre Site is expected to realize significant regional and community public benefits, including:

- *Increased Tax Revenues.* Due to the strategic location at the meeting place between Orange County, Long Beach, and Los Angeles, there is great potential for increased revenue through proper site development. The Project is estimated to produce over Three Million (\$3,000,000) in annual sales taxes. The development of the entire 157 Acre Site as planned could result in increased real property taxes, sales taxes, transient occupancy taxes, and other revenues to City exceeding Five Million Dollars (\$5,000,000) to Seven Million Dollars (\$7,000,000) per year.
- *Overcoming Constraint of Remediation Cost. \$60M advancement by Developer towards Remediation Cost.* The 157 Acre Site is the only major undeveloped property exceeding 100 acres along the I-405 Freeway in an approximately 75-mile run. This is due to the extraordinary remediation costs, estimated to exceed One Hundred Fifty Million Dollars (\$150,000,000), necessary to develop the 157 Acre Site. Many development projects have been proposed for this site over some four decades, but none have been financially feasible because of the environmental and soils condition of the 157 Acre Site. This Project represents a unique opportunity to develop the first portion of the 157 Acre Site. Developer has agreed to advance approximately Sixty Million Dollars (\$60,000,000) towards the Remediation Cost without which advance this development could not be realized.
- *\$10,000,000 Infrastructure Cost Advancement by Developer.* Due to Authority's shortage of resources to complete all of its necessary Offsite Improvements work, Developer will advance Ten Million Dollars (\$10,000,000) to the Authority for purpose construction of required public offsite infrastructure and other improvements.

- *Community Focal Point.* The unique development proposed promises to be a community and regional focus of economic and social activity helping, along with the South Bay Pavilion, to provide a new community center for Carson, and giving it a regional presence competitive with other major regional centers in the highly competitive Los Angeles market area.
- *Job Generation.* The Project entails a land use and infrastructure plan that will support the creation of a major job center in City and significantly improve City's jobs to housing balance. The Project is proposed to provide substantial economic and employment opportunities for the community, with a goal of generating at least 1,600 new direct construction jobs, with another 1,000 indirect and induced, as well as 1,500 new permanent jobs.
- *Insurance – Developer paying for 40% of all Insurance Program premiums for the entire 157 Acre Site (valued at approximately Five Million Dollars (\$5,000,000)).* The Project contributes to a robust insurance program to provide coverage against environmental claims against the developers and property owners and contractors developing the 157 Acre Site, as well as business operations, general liability, personal injury, property damage and other claims. Total insurance coverage for all types is almost One Billion Dollars (\$1,000,000,000) of coverage.
- *Carry Costs.* As part of Developer's agreement with Authority to acquire the Developer Property, Developer will agree to reimburse Authority for its proportional share of the operation and maintenance costs of the 157 Acre Site during the development period, in an amount exceeding One Hundred Twenty-Five Thousand Dollars (\$125,000) per month. In the next *approximately 2 years estimated time for completion of the subsurface development*, this contribution by the Developer towards the carry costs of the 157 acres site is estimated to be Three Million Dollars (\$3,000,000).
- *\$4,000,000 Deposit for the Right to Negotiate.* In June of 2017 Developer deposited with the City Four Million Dollars (\$4,000,000) for the right to negotiate. Two Million Dollars (\$2,000,000) of that amount became nonrefundable immediately in June of 2017 and will only be refundable in the event of Authority default. One Million Three Hundred Thousand Dollars (\$1,300,000) is refundable upon timely grand opening of phase I of the Project. Another Seven Hundred Thousand Dollars (\$700,000) will become refundable upon timely grand opening of phase II of the Project.
- *Reimbursement of All City Costs and Expenses by Developer.* To date the Developer has paid in excess of One Million Dollar (\$1,000,000) towards the City's costs, including for all consultants and Attorney time.
- *\$11,000,000 Penalty if Developer Does Not Timely Develop Site.* If due to Developer fault the Project is not completed within timelines set forth in the

Agreements, Developer shall pay the City Eleven Million Dollars (\$11,000,000) in liquidated damages.

- *Sheriff.* Developer will provide substantial private security and will coordinate with the Los Angeles County Sheriff's Department to establish a Sheriff's substation in the Project. Developer will also contribute equally towards sharing the costs of staffing one full time deputy for Cell 2 of the 157 Acre Site.

In exchange for these benefits to City and the other public benefits described in the DA, the Developer shall have a vested right to develop the Project on the Developer Property in accordance with and to the full extent permitted by the Development Plan which shall exclusively control the development of the Project (including, without limitation, the uses, the density or intensity of use, architectural review, 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 or the Developer Property), including the vested right to construct the Project in two Phases and for a total of 711,500 GBA square feet of development rights.

Fiscal Impact

The Project is estimated to produce over Three Million (\$3,000,000) in annual sales taxes. The development of the 157 Acre Site as planned could result in increased real property taxes, sales taxes, transient occupancy taxes, and other revenues to City exceeding Five Million Dollars (\$5,000,000) to Seven Million Dollars (\$7,000,000) per year.

VI. General Plan and Specific Plan Consistency

The proposed ordinance for a DA between the applicant and the City is compatible with the General Plan and associated District at South Bay Specific Plan. The proposed DA provides for the development of Planning Area 2, including a regional fashion outlet mall, which is a permitted use within The District at South Bay Specific Plan, and consistent with the General Plan Land Use designation of Mixed-Use Residential.

VII. Environmental Review.

The original Carson Marketplace Specific Plan was subject to extensive environmental review with a Final EIR certified by the City Council on February 8, 2006, and was thereafter subject to legal challenge in Carson Coalition for Healthy Families v. City of Carson/Carson RDA, LASC Case No. BS102076, in which case the City and former Carson Redevelopment Agency prevailed on both in the trial court and the Court of Appeals (Appellate Case No. B194923). An addendum to the Final EIR was approved by City in 2009. The District at South Bay Specific Plan and the Project has been subject to further environmental review including preparation of a final supplemental EIR.

VIII. Public Notice

Public notice was posted to the project site on January 3, 2018. Notices were mailed to property owners and occupants on January 4, 2018. On January 23, 2018 the Planning Commission continued this item to the February 13th meeting, and then subsequently continued to February 27th, then March 13th, and is now scheduled to be heard by the Planning Commission on March 21, 2018. The agenda was posted at City Hall 72 hours prior to the Planning Commission meeting.

IX. Recommendation

That the Planning Commission:

- **WAIVE** further reading;

- **RECOMMEND APPROVAL** the proposed project subject to the conditions of approval attached as Exhibit "B" to the Resolution; and

- **ADOPT** Resolution No. 18-1635 A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMENDING CITY COUNCIL ADOPTION OF ORDINANCE NO. _____ TO APPROVE DEVELOPMENT AGREEMENT No. 13-17 BETWEEN THE CITY OF CARSON AND CAM-CARSON, LLC FOR THE DISTRICT AT SOUTH BAY SPECIFIC PLAN PROJECT, AN APPROXIMATE 711,000 GBA SQUARE FOOT FIRST CLASS REGIONAL FASHION OUTLET MALL; FINDINGS OF GENERAL PLAN CONSISTENCY

X. Exhibits

1. Draft Resolution
2. Ordinance/Development Agreement

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