



CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

H-1

333 West Ocean Blvd., 3rd Floor, Long Beach, CA 90802 (562) 570-5237

July 7, 2015

HONORABLE MAYOR AND CITY COUNCIL

City of Long Beach

California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the public hearing, and declare the Ordinance approving the Golden Shore Development Agreement, read the first time and laid over to the next regular meeting of the City Council for final reading; and authorize the City Manager to execute the Development Agreement, on behalf of the City; and

Accept the Categorical Exemption (CE-15-049). (District 2)

DISCUSSION

The 5.87-acre project site is located on the south side of Ocean Boulevard at Golden Shore. The subject site extends from Ocean Boulevard to Shoreline Drive and includes parcels totaling 4.31 acres west of Golden Shore and a 1.56-acre parcel east of Golden Shore (Exhibit A – Location Map).

On March 18, 2010, the Planning Commission certified an Environmental Impact Report and adopted a Resolution with Findings of Fact and a Statement of Overriding Considerations; recommended approval of a Local Coastal Program Amendment and an Amendment to PD-6 to the City Council; and approved a Master Plan for the Golden Shore Project consisting of three development options with a maximum of 1,370 residential condominiums, 340,000 square feet of office space, 28,000 square feet of retail space, a 400-room hotel, 27,000 square feet of conference and banquet facilities, and up to 3,430 parking spaces (Exhibit B – Master Plan).

On April 20, 2010, the City Council adopted an Ordinance amending the Local Coastal Program and the Downtown Shoreline Planned Development District (PD-6) and approved the Golden Shore Master Plan that was forwarded to the California Coastal Commission (CCC) for consideration. At its June 16, 2011 meeting, the CCC approved the Local Coastal Program Amendment and Golden Shore Master Plan with suggested modifications that were subsequently approved by the City Council on August 9, 2011. As such, the project has been granted full Master Plan entitlements.

The applicant is now requesting approval of a Development Agreement (Exhibit C – Development Agreement) to protect the entitlements associated with the Master Plan for a period of 20 years. The City has the authority to enter into a Development Agreement with a person having legal or equitable interest in property per Sections 65884-65869.5 of the California Government Code. The intent of this proposed Development Agreement is to benefit both the City and the Developer by (1) creating significant opportunities for economic growth in the City, the Southern California Region, and the State of California; (2) allowing the Developer the opportunity to realize increased value and returns from the property; (3) creating additional housing units in the City; and (4) providing a high-quality, mixed-use project which will provide the City with a strong entry statement for the western gateway to the City's Downtown.

There is no specific development project proposed in conjunction with the approved Golden Shore Master Plan at this time. The Master Plan allows for different development options in order to provide the developer with flexibility to quickly respond to market conditions. Once the developer chooses an option, they will be required to submit a Site Plan Review application for Planning Commission consideration prior to any development proceeding at the site.

Due to the scope and complexity of the project, together with the associated benefits for the City of Long Beach, staff recommends that the City Council adopt the Ordinance approving the Golden Shore Development Agreement.

On June 4, 2015, the Planning Commission considered the request and unanimously recommended approval of the Development Agreement to the City Council subject to amending Section 3.1.1 to include the following language: "Developer agrees to work with the City to incorporate a local hire component in its construction contracts." (Exhibit D - Planning Commission Staff Report from June 4, 2015).

In accordance with the Guidelines for Implementation of the California Environmental Quality Act, a Categorical Exemption (CE 15-051) was issued for the proposed project (Exhibit E - Categorical Exemption).

This matter was reviewed by Assistant City Attorney Michael J. Mais on June 12, 2015 and by Budget Management Officer Victoria Bell on June 15, 2015.

TIMING CONSIDERATIONS

City Council action is requested on July 7, 2015, to comply with Section 21.29.030(B) of the Long Beach Municipal Code which contains specific timing requirements for Development Agreements.

FISCAL IMPACT

There will be no fiscal impact as a result of the recommended action.

HONORABLE MAYOR AND CITY COUNCIL

July 7, 2015

Page 3 of 3

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



AMY J. BODEK, AICP
DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:



PATRICK H. WEST
CITY MANAGER

AJB:LT:JW

P:\Planning\City Council Items (Pending)\Council Letters\2015\2015-07-07\Golden Shore DA Council Letter v3.docx

Attachments: City Council Ordinance
Exhibit A – Location Map
Exhibit B – Master Plan
Exhibit C – Development Agreement
Exhibit D – Planning Commission Staff Report from June 4, 2015
Exhibit E – Categorical Exemption

OFFICE OF THE CITY ATTORNEY
CHARLES P. A. ...N, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH APPROVING AN APPLICATION FOR
A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER
21.29 OF THE LONG BEACH MUNICIPAL CODE;
DIRECTING THE CITY ATTORNEY TO PREPARE A
DEVELOPMENT AGREEMENT EMBODYING THE
APPLICATION AND KEY TERMS OF THE DEVELOPMENT
AGREEMENT AS APPROVED BY THE CITY COUNCIL; AND
AUTHORIZING AND DIRECTING THE CITY MANAGER TO
EXECUTE, ON BEHALF OF THE CITY OF LONG BEACH, A
DEVELOPMENT AGREEMENT WITH 400 OCEANGATE,
LTD, ELEVEN GOLDEN SHORE, L.P., AND ONE GOLDEN
SHORE, L.P. FOR THE GOLDEN SHORE DEVELOPMENT
PROJECT

The City Council of the City of Long Beach ordains as follows:

Section 1. Recitals.

A. In response to requirements of State law, the City Council has
enacted Chapter 21.29 of the Long Beach Municipal Code to establish procedures and
requirements for the consideration of Developments Agreements upon application of
persons having a legal or equitable interest in property proposed to be subject to such an
Agreement.

B. The City has conducted discussions initiated by property interest-
holders relating to their Application for a Development Agreement in that development
commonly known as the Golden Shore Development located on a 5.87 acre site on the

1 south side of Ocean Boulevard at Golden Shore, which site extends from Ocean
2 Boulevard and Shoreline Drive and includes parcels totaling 4.31 acres west of Golden
3 Shore and a 1.56 acre parcel east of Golden Shore.

4 C. The application having been deemed complete by the Director of
5 Development Services, and environmental review having been prepared as required by
6 law, the Long Beach Planning Commission conducted a public hearing on this matter on
7 June 4, 2015. Following that hearing, the Planning Commission recommended to the City
8 Council that it approve the application for said Development Agreement.

9 D. Following receipt of a written report of such action by the Planning
10 Commission, and notice having been duly given by the City Clerk in accordance with State
11 law, the City Council conducted a public hearing on this matter on July 7, 2015. At such
12 public hearing, all persons were given a full and fair opportunity to be heard and to present
13 written or oral testimony.

14 E. Following such public hearing, the City Council deliberated,
15 considered and acted upon the application in accordance with provisions of law and as set
16 forth in this Ordinance.

17 Section 2. Development Agreement Incorporated by Reference

18 A. An application for a Development Agreement has been filed with the
19 Director of Development Services by 400 Oceangate, Ltd.

20 B. The application, along with the draft of the proposed terms and
21 conditions of the Development Agreement and relevant exhibits relating to the application
22 and Development Agreement, is hereby incorporated into this Ordinance as Attachment 1.

23 Section 3. Findings

24 A. Based on facts supporting such findings as set forth in the record of
25 the public hearing conducted by the City Council on July 7, 2015, and incorporated herein
26 by reference, relating to the Development Agreement listed and incorporated in Section 2
27 of this Ordinance, the City Council hereby finds:
28

1 1. That the Development Agreement is consistent with the Long
2 Beach General Plan and any and all applicable specific plans, and

3 2. That the Agreement will promote the general welfare and
4 public interest of the City of Long Beach.

5 Section 4. Application Approval

6 A. Based upon such findings and upon recommendation of the Long
7 Beach Planning Commission, and after a full, fair and duly noticed public hearing as
8 required by law, the City Council hereby approves the application for Development
9 Agreement as such application is incorporated into this ordinance by reference as set forth
10 in Subsection 2.B. of this Ordinance.

11 B. Accordingly, the City Attorney is directed to prepare the Development
12 Agreement embodying the terms and conditions of the application by 400 Oceangate,
13 Ltd., Eleven Golden Shore, L.P., and One Golden Shore, L.P. as approved by the City
14 Council on the condition that such Development Agreement and its exhibits shall be in
15 substantially that form and content as is as set forth in Section 2 and Attachment 1 of this
16 Ordinance.

17 C. As thus prepared, and when approved as to form by the City Attorney,
18 the City Manager is hereby authorized and directed to execute the Development
19 Agreement on behalf of the City.

20 D. The City Clerk shall cause a copy of said Development Agreement to
21 be recorded in the office of the Registrar/Recorder of the County of Los Angeles no later
22 than ten (10) days after its execution.

23 Section 5. As provided in Subsection 21.29.030.F of the Long Beach
24 Municipal Code, this ordinance may be subjected to referendum in the manner provided
25 by law.

26 Section 6. The City Clerk shall certify to the passage of this ordinance by
27 the City Council and cause it to be posted in three (3) conspicuous places in the City of
28

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
2 Mayor.

3 I hereby certify that the foregoing ordinance was adopted by the City Council
4 of the City of Long Beach at its meeting of _____, 20____, by the following vote:

5
6 Ayes: Councilmembers: _____

7 _____

8 _____

9 _____

10 Noes: Councilmembers: _____

11 _____

12 Absent: Councilmembers: _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 Approved: _____

19 (Date) _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

26 _____

27 _____

28 _____

City Clerk

Mayor



PLANNING PERMIT APPLICATION

DEPARTMENT OF DEVELOPMENT SERVICES | PLANNING BUREAU
333 W. OCEAN BLVD., 5TH FLOOR, LONG BEACH, CA 90802
(562) 570-6194 FAX: (562) 570-6068 lbdslongbeach.gov

Project Address: 400 OCEANGATE / 1 + 11 GOLDEN SHORE Long Beach, CA 908 02
Applicant Name: 400 OCEANGATE, LTD Ph.: (562) 436-2000 Fax: (562) 436-7416
Mailing Address: 400 OCEANGATE
City: LONG BEACH State: CA ZIP 90802 Email: MARILYN.WHITCOMBE@LVL.COM
Applicant Signature: [Signature] Title: _____
Contact Person: GEORGE MEDAK Ph.: (562) 597-6523 Fax: (562) 593-0670
Mailing Address: 400 OCEANGATE
City: LONG BEACH State: CA ZIP 90802 Email: GMEDEAK@DOMARPERMITS.COM
Property Owner: 400 OCEANGATE, LTD Ph.: (562) 436-2000 Fax: (562) 436-7416
Address: 400 OCEANGATE City: LONG BEACH State: CA ZIP 90802
(I/We, the undersigned, declare under penalty of perjury under the laws of the State of California that I am/We are the owner(s) of the property involved in this application; that the information on all plans, drawings and sketches attached hereto and all the statements and answers contained herein are in all respects true and correct.
Property Owner Signature: [Signature] Date: 3/26/14

Permit(s) Requested:

- ☐ Administrative Use Permit (AUP)
- ☐ Conditional Use Permit (CUP)
- ☐ Standards Variance (SV)
- ☐ Fence Height Exception (AUP or SV)
- ☐ Modification of Approved Permit
- ☐ Time Extension
- ☐ Local Coastal Development Permit
- ☐ Condo Conversion Exclusion

- ☐ Subdivision Map
- ☐ Lot Merger/Lot Line Adjustment
- ☐ Certificate of Compliance
- ☐ Condominium Conversion
- ☐ Zoning Change and/or Amendment
- ☐ Local Coastal Program Amendment
- ☐ General Plan Amendment
- ☐ General Plan Conformity Finding

- ☐ Site Plan Review (SPR)
- ☐ Conceptual only
- ☐ Pre-Application only
- ☐ Wireless Telecom
- ☐ Creative Sign Permit
- ☐ Sign Program
- ☒ Other: DEVELOPMENT AGREEMENT

Project Description: DEVELOPMENT AGREEMENT TO MEMORIALIZE
CURRENT ESTABLISHMENTS. NO ADDITIONAL REQUESTS

BELOW THIS LINE FOR STAFF USE ONLY

Filing Date: <u>4/1/14</u>	Case No.: <u>0712-01 (DA)</u>	Assigned Planner: <u>JH</u>
Accepted by: <u>[Signature]</u>	CEQA No.: <u>15-049</u>	Related Cases: <u>0712-01</u>
Council District: <u>2</u>	Project No. _____	

Applications are accepted Tuesday–Thursday by appointment only.

Call (562) 570-6194 to schedule an appointment. *Incomplete applications will not be accepted.*

FY14 Version – Revised December 2013

ATTACHMENT 1

GOLDEN SHORE PROJECT

DEVELOPMENT AGREEMENT

BY AND AMONG

**THE CITY OF LONG BEACH,
A CHARTER CITY AND MUNICIPAL CORPORATION**

("CITY")

AND

**400 OCEANGATE, LTD.,
A CALIFORNIA LIMITED PARTNERSHIP**

**ELEVEN GOLDEN SHORE, L.P.
A CALIFORNIA LIMITED PARTNERSHIP**

AND

**ONE GOLDEN SHORE, L.P.
A CALIFORNIA LIMITED PARTNERSHIP**

("DEVELOPER")

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS	2
2. RECITALS OF PREMISES, PURPOSES AND INTENT	8
2.1 State Enabling Statute	8
2.2 City Procedures and Actions.	9
2.3 The Property.	9
2.4 The Project.	9
2.5 Public Objectives.	10
2.5.1 Comprehensive Planning Objectives.	10
2.5.2 City Development Objectives.	11
2.6 Developer Objectives.	11
2.7 Applicability of the Agreement.	12
3. AGREEMENT AND ASSURANCES	12
3.1 Agreement and Assurances on the Part of Developer.	12
3.1.1 Project Development.	12
3.1.2 Timing of Development.	13
3.2 Agreement and Assurances on the Part of City.	13
3.2.1 Entitlement to Develop.	14
3.2.1.1 Project Entitlement.	14
3.2.1.2 Nonapplication of Subsequent Land Use Regulations.	14
3.2.1.3 Changes In California Building Standards Codes.	14
3.2.1.4 Changes Mandated by Federal or State Law.	14
3.2.1.5 Health and Safety Emergencies.	15
3.2.1.6 Agreed Changes and Other Reserved Powers.	15
3.2.2 Subsequent Discretionary Project Approvals; Consistent Subsequent Requirements.	16
3.2.3 Consistency with Land Use Regulations.	16
3.2.4 Moratoria.	16
3.2.5 Standard City Services.	17
3.2.6 No Limitation on Fees.	17
4. TERM	17
4.1 Basic Term.	17

4.2	Early Full Termination of Agreement.	18
5.	ANNUAL REVIEW.	18
5.1	Annual Review Procedure.	18
5.2	Termination or Modification of Agreement.	18
5.3	Certificate of Agreement Compliance.	19
5.4	Failure of Annual Review.	19
5.5	Annual Review Fee.	19
6.	VESTED RIGHTS TO DEVELOP.	19
7.	DEFAULT, REMEDIES AND DISPUTE RESOLUTION.	20
7.1	Intent.	20
7.2	City's Remedies.	20
7.2.1	Default by Developer.	20
7.2.2	Notice of Default.	21
7.2.3	Failure to Cure Default Procedure.	21
7.2.4	Termination or Modification of Agreement.	21
7.2.5	Specific Performance.	22
7.3	Developer's Remedies.	22
7.3.1	Default and Notice of Default.	22
7.3.2	Specific Performance; Waiver of Damage Remedies.	23
7.4	Rights and Duties Following Termination.	24
7.5	Developer's Right To Terminate Upon Specified Events.	24
7.6	Legal Actions.	24
8.	GENERAL PROVISIONS.	25
8.1	Effective Date.	25
8.2	Appeals to City Council.	25
8.3	Cooperation and Implementation.	25
8.3.1	Processing.	25
8.3.2	Other Governmental Permits.	26
8.3.3	Cooperation in the Event of Legal Challenge by Third Party.	26
8.3.3.1	Developer and City Legal Counsel.	26
8.3.3.2	Reimbursement of Attorneys' Fees.	27
8.3.3.3	Indemnification.	27
8.3.3.4	Joint Defense.	28

8.3.3.5 Continuing Obligations.....	28
8.4 Relationship of Parties.....	29
8.5 Notices.....	29
8.6 Developer Hold Harmless.....	30
8.7 Insurance.....	31
8.8 Severability and Termination.....	31
8.9 Time is of Essence.....	31
8.10 Modification or Amendment.....	31
8.11 Waiver.....	31
8.12 Equitable Servitudes and Covenants Running with the Land.....	32
8.13 Governing State Law; Compliance with Applicable Law.....	32
8.14 Constructive Notice and Acceptance.....	33
8.15 Assignment.....	34
8.15.1 Right to Assign.....	34
8.15.2 Release of Transferring Owner; Non-Severable and Severable Obligations.....	35
8.16 Tentative Subdivision Maps.....	36
8.17 Water Availability.....	36
8.18 Regulation by Other Public Agencies.....	36
8.19 Vesting Tentative Maps.....	36
8.20 Binding Effect of Agreement.....	37
8.21 Statute of Limitation and Laches.....	37
8.22 Entire Agreement.....	37
8.23 Legal Advice; Neutral Interpretation; Headings; Table of Contents.....	37
8.24 Singular and Plural.....	38
8.25 No Third Party Beneficiaries.....	38
8.26 Eminent Domain.....	38
8.27 Authority to Execute.....	38
8.28 Force Majeure.....	38
8.29 Estoppel Certificate.....	38
8.30 Mortgagee Protection.....	39

EXHIBITS

Exhibit A	Legal Description
Exhibit B	Project Vicinity Map
Exhibit C	Assignment and Assumption Agreement

**DEVELOPMENT AGREEMENT
BY AND AMONG
THE CITY OF LONG BEACH
AND
400 OCEANGATE, LTD., ELEVEN GOLDEN SHORE, L.P.,
AND ONE GOLDEN SHORE, L.P.**

THIS DEVELOPMENT AGREEMENT, dated as of _____, 2015, by and among the CITY OF LONG BEACH, a charter city and municipal corporation of the State of California, on the one hand, and 400 OCEANGATE, LTD., a California limited partnership, ELEVEN GOLDEN SHORE, L.P., a California limited partnership, and ONE GOLDEN SHORE, L.P., a California limited partnership, on the other hand, pursuant to the authority set forth in the Development Agreement Act, the City's inherent power as a charter city, and the Enabling Ordinance.

RECITALS

WHEREAS, the City and Developer recognize that construction and development of the Project (consisting of a mixed-use complex and other related facilities described herein) will benefit both Parties by (1) creating significant opportunities for economic growth in the City, the Southern California region and the State of California, (2) allowing the Developer the opportunity to realize increased value and returns from its Property, (3) creating additional housing in the City, (4) providing a high quality, mixed-use project which will provide the City with a strong entry statement for the western gateway to the City's downtown and (5) generating significant economic benefits to the State, the Southern California region, the City and Developer; and

WHEREAS, the Project will be consistent with and will be designed and implemented to further numerous comprehensive planning objectives contained within the City's General Plan; and

WHEREAS, the Project will provide opportunities for new office, hotel, retail and housing growth in the City which will provide new general fund revenues; and

WHEREAS, in order to provide certainty and render the Project development more feasible in light of the capital investment necessary to implement the Project and the extended planning horizon necessary to coordinate a project of such scope and complexity, and in order to realize the benefits contemplated to result from the development of the Project, the City is

willing to agree with the Developer that, with respect to the Property, certain existing governmental entitlements shall, to the extent specified herein, not be changed or supplemented with inconsistent burdens and exactions during the Term of this Agreement; and

WHEREAS, Developer also recognizes and agrees that in extending these benefits to Developer, the City will reserve certain legislative powers to protect the interests and responsibilities of the City and to ensure that the benefits contemplated by this Agreement are received; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Project pursuant to the Development Agreement Act and the procedures and requirements established by the Enabling Ordinance upon the terms set forth herein.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, the City's inherent powers as a charter city, and the Enabling Ordinance, and in consideration of the premises and mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto agree as follows:

1. DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

1.1 "Agreement" means Development Agreement.

1.2 "Attorneys' Fees" means and shall be limited to (a) attorneys' fees, if any, awarded to a plaintiff by a court of competent jurisdiction pursuant to a final judgment in connection with any Litigation, or (b) the amount required to be paid, if any, to reimburse any plaintiff for the plaintiff's attorneys' fees as provided in a settlement agreement approved by City and Developer in connection with any Litigation, as provided in Section 8.3.3 of this Agreement.

1.3 "California Building Standards Codes" means those building, electrical, mechanical, fire and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California

codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

1.4 **"City"** means the City of Long Beach, a charter city and municipal corporation of the State of California duly organized and existing under the Constitution and the laws of the State of California.

1.5 **"City Agency"** means each and every agency, department, board, and/or commission acting under the authority of the City, including, without limitation, the City Council and the Planning Commission.

1.6 **"City Attorney"** means the city attorney of City.

1.7 **"City Council"** means the city council of City and the legislative body of the City pursuant to section 65867 of the Development Agreement Act.

1.8 **"City Funds"** means any City general fund monies, any tax increment monies, and/or any transportation improvement or capital fund monies.

1.9 **"City Manager"** means the chief executive officer of City.

1.10 **"City Representatives"** means all officials, advisory commissioners, agents, staff, employees, contractors, council members, planning commissioners, representatives, authorities, managers, affiliates, successors and assigns of the City or any City Agency.

1.11 **"Code"** means the City of Long Beach Municipal Code.

1.12 **"Commercial Districts"** means Sub Areas 7, 8A, and 8B, as defined by the Development Standards.

1.13 **"Developer"** means and collectively refers to 400 Oceangate, Ltd., Eleven Golden Shore, L.P., a California limited partnership, and One Golden Shore, L.P., a California limited partnership and their successors and assigns.

1.14 **"Conditions of Approval"** means any conditions, restrictions, or requirements imposed by the Project Approvals, including, without limitation, any Development Standards and Design Guidelines.

1.15 **"Design Guidelines"** means the Master Plan and Design Guidelines for Development of the Project, dated March 5, 2010, and adopted by the City prior to or concurrently with the approval of the other Project Approvals.

1.16 **"Development,"** whether or not capitalized, 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 buildings and structures; and the installation of landscaping.

1.17 “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (sections 65864 through 65869.5) of the California Government Code.

1.18 “Development Requirements” means the requirements of City imposed in connection with or pursuant to any Project Approval for the dedication of land, the construction or improvement of public facilities, or the payment of fees or assessments in order to lessen, offset, mitigate, or compensate for the impacts of Development on the environment or other public interests.

1.19 “Development Standards” means only those development standards, requirements, limitations, and provisions in effect as of the Effective Date, as hereinafter defined, including, without limitation, height, density, setback, sideyards, lot sizes, and other zoning standards incorporated into PD-6 Sub Area 1, as the foregoing may be hereafter modified or amended consistent with the limitations and provisions of this Agreement, including the vested rights of Developer set forth herein.

1.20 “Director” means the Director of Development Services of the City.

1.21 “Discretionary Action” or “Discretionary Approval” means an action which requires the exercise of judgment, deliberation, or discretion on the part of City, including any City Agency and City Representatives, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires a City Agency or City Representative to determine whether there has been compliance with applicable statutes, ordinances, regulations, or requirements.

1.22 “Effective Date” means the date this Agreement, fully executed by the Parties, is recorded in the office of the Recorder of Los Angeles County.

1.23 “Enabling Ordinance” means Ordinance C-6533 § I adopted by the City Council on October 4, 1988, which established Chapter 21.29 of the Code, which authorizes and enables the City to enter into development agreements in accordance with the Development Agreement Act.

1.24 “Environmental Impact Report” means Volume I Draft Environmental Impact Report, Golden Shore Master Plan, October, 2009; Volume II Draft Environmental Impact Report, Golden Shore Master Plan, October, 2009; and Volume III Final Environmental Impact

Report, Golden Shore Master Plan, January, 2010 prepared pursuant to California Public Resources Code section 21000 *et seq.* covering the Project and assigned State Clearinghouse Number 2008111094.

1.25 “**General Plan**” means the General Plan of the City of Long Beach.

1.26 “**Impact Fees**” means impact fees, linkage fees, exactions, assessments or fair share charges, or other similar impact fees or charges imposed by the City on or in connection with the impacts of new development pursuant to rules, regulations, ordinances, and policies of the City.

1.27 “**Inspections**” means all field inspections and reviews by City Agencies or City Representatives during the course of construction of the Project and the processing of certificates of occupancy (permanent or temporary).

1.28 “**Land Use Regulations**” means all ordinances, resolutions, codes, rules, regulations, guidelines, and official policies of the City in force as of the Effective Date governing the permitted uses 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 guidelines, standards, and specifications applicable to the Development of the Property. “**Land Use Regulations**” includes, without limitation, the General Plan and Project Approvals. Notwithstanding the language of this Section or any other language in this Agreement, all duly adopted codes, regulations, specifications and standards regarding the initial design and construction of any public improvements or improvements to be dedicated to the public shall be those in effect at the time the construction plans for such public improvements are approved by the City. In any event, the term “**Land Use Regulations**” does not refer to or include any City ordinance, resolution, code, rule, regulation, or official policy governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and
- (e) the exercise of the power of eminent domain.

1.29 ***"Liabilities"*** means all liabilities, losses, damages (including, without limitation, penalties, fines, and monetary sanctions), expenses, charges, or costs of whatsoever character, nature, and kind, including reasonable attorneys' fees and costs incurred by the indemnified Party with respect to counsel of its choice.

1.30 ***"Litigation"*** means any legal action instituted by any third party challenging any aspect of this Agreement or the Project Approvals, including, without limitation, the adoption, validity, or application of any provision of this Agreement, or the Project's compliance with all applicable federal and state prevailing wage requirements, including the requirements of California Labor Code section 1720 *et seq.*

1.31 ***"Ministerial Permits and Approvals"*** means the non-discretionary permits, approvals, plans, Inspections, certificates, documents, licenses, and all other non-discretionary actions required to be taken by the City in order for Developer to implement, develop, and construct the Project, including, without limitation, building permits, public works permits, grading permits, encroachment permits, permanent certificates of occupancy, and other similar permits and approvals which are required by the Code to implement the Project in accordance with the Project Approvals. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.32 ***"Mitigation Monitoring Program"*** means the mitigation monitoring program adopted in connection with the City's approval of the Project Approvals and the certification of the Environmental Impact Report.

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

1.34 ***"Parties"*** means collectively Developer and City.

1.35 ***"Party"*** means anyone of Developer or City.

1.36 ***"Planning Commission"*** means the Planning Commission of the City and the planning agency of the City pursuant to section 65867 of the Development Agreement Act.

1.37 ***"Processing Fees and Charges"*** means all current and future processing fees and charges required by the City in connection with the Development of the Project, and which apply City-wide, including, but not limited to, fees for Ministerial Permits and Approvals, land use applications, tract or parcel maps, lot line adjustments, air rights lots, street vacations, certificates

of occupancy, and other similar permits. Processing Fees and Charges shall not include Impact Fees.

1.38 *“Project”* means the Development of the Property as contemplated by Section 2.4 of this Agreement.

1.39 *“Project Approvals”* means the Discretionary Approvals for the Project that were approved by the City prior to the approval of the ordinance approving this Agreement and authorizing the execution of this Agreement by the City Manager on behalf of the City, which include, without limitation: (1) Resolution No. R-1145 certifying the Environmental Impact Report and the Mitigation Monitoring Program; (2) Ordinance No. 09-0023; (3) Ordinance No. ORD-11-1107 (PD-6), and (4) the Design Guidelines. References to the Project Approvals herein also shall be deemed to refer to and to incorporate the Development Requirements, Design Guidelines and Conditions of Approval imposed in connection with the Project Approvals and all Subsequent Discretionary Project Approvals that may hereafter be obtained.

1.40 *“Property”* means the real property legally described in Exhibit “A” and located in the area shown on the Project Vicinity Map attached as Exhibit “B” to this Agreement.

1.41 *“Reserved Powers”* means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date with respect to Development of the Project that may be in conflict with the Land Use Regulations, but: (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are California Building Standards Codes; (3) are necessary to comply with state or federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) are agreed to or consented to by Developer; (5) are City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called “sustainability” or “green building” laws, regulations, or ordinances); or (6) are actions to adopt or increase any Impact Fees, Processing Fees and Charges, or other City-wide fees or charges of general applicability throughout the City.

1.42 *“Section”* means the indicated section or subsection number of this Agreement.

1.43 *“Subsequent Discretionary Project Approvals”* means all Discretionary Actions or Discretionary Approvals applicable to the Project or the Property that are required to

implement the Project in accordance with this Agreement and that are approved by the City after the Effective Date.

1.44 “*Subsequent Land Use Regulations*” means any change in or addition to the Land Use Regulations adopted and effective after the Effective Date, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of an ordinance, City Charter amendment, initiative, resolution, policy, order, or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission, or any other City Agency, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which conflicts with the rights granted to Developer by this Agreement.

1.45 “*Term*” means the period of time from the Effective Date until the termination of this Agreement as provided in Section 4 of this Agreement.

2. **RECITALS OF PREMISES, PURPOSES AND INTENT**

2.1 **State Enabling Statute.**

To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act, which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties as further set forth herein.

2.2 City Procedures and Actions.

Pursuant to the authorization set forth in section 65865 of the Development Act, the City has established, by ordinance, procedures and requirements for the consideration of development agreements. Such procedures and requirements are set forth in Chapter 21.29, sections 21.29.010 through 21.29.090 of the Code.

In accordance with Chapter 21.29 of the Code, City has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the General Plan, and has adopted Ordinance No. _____ approving the application for this Agreement, directing the City Attorney to prepare this Agreement and authorizing the execution of this Agreement by the City Manager on behalf of the City.

2.3 The Property.

Developer is the owner of approximately 6.32 acres located in City, as more particularly described in Exhibit "A" attached hereto and shown on the Project Vicinity Map attached hereto as Exhibit "B."

2.4 The Project.

It is the Developer's intent to develop the Property as currently approved by the City as set forth in the Land Use Regulations and the Project Approvals. The major components of the Project are more fully described by said Land Use Regulations and Project Approvals and must comply with all requirements set forth in said Land Use Regulations and Project Approvals, which shall be construed together with this Agreement. The requirements set forth in the Land Use Regulations and Project Approvals, including the provisions of PD-6 Sub Area 1, and this Agreement are cumulative, and the requirements of both the Land Use Regulations and Project Approvals, including the requirements of PD-6 Sub Area 1, and this Agreement shall each be met. Subject to the Reserved Powers and compliance with all requirements of the Land Use Regulations and Project Approvals, it is the understanding of the Parties to this Agreement that Developer will have the right to proceed with completion and occupancy of the Project in

accordance with the uses, densities, design and heights set forth in the Project Approvals incorporated herein.

2.5 Public Objectives.

In accordance with the legislative findings set forth in section 65864 of the Development Agreement Act, City wishes to attain certain public objectives that will be furthered by this Agreement, including the orderly development of the Property in accordance with the Land Use Regulations and Project Approvals. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. Additionally, although Development in accordance with this Agreement will restrain the City's land use and other relevant police powers to the extent expressly set forth herein, the Agreement will provide City with sufficient Reserved Powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Developer will receive assurances that the Project may be developed during the Term of this Agreement in accordance with the Land Use Regulations and Project Approvals, subject to the terms and conditions of this Agreement and the Conditions of Approval.

The Parties believe that such orderly Development of the Project will provide many benefits to the Parties, including, without limitation, the following:

2.5.1 Comprehensive Planning Objectives.

The Development of the Property pursuant to this Agreement will facilitate the implementation of the General Plan, and will further the comprehensive planning objectives contained within the General Plan, including the following:

- (a) Expanding and attracting new business to the City;
- (b) Locating new multi-family housing in proximity to growing employment centers to decrease travel time, reduce traffic congestion, lessen energy consumption, and improve air quality;
- (c) Assisting in improving the quality and availability of neighborhood housing and in building a strong network of healthy neighborhoods;
- (d) Redirecting growth to major employment/activity centers, such as the Project area; and

(e) Improving the urban environment in order to make Long Beach a more pleasant place to live, work, play, and raise a family.

2.5.2 City Development Objectives.

The public benefits to be received as a result of the development of the Project through this Agreement include, among others:

(a) Development of a major business center within the City providing: opportunities for temporary employment during construction for up to an estimated two thousand five hundred fifty (2,550) persons per year for eight (8) years and, at build-out, permanent local long-term employment for up to an estimated four hundred eighty (480) persons with an estimated annual direct and indirect payroll of over six million dollars (\$6,000,000); if a hotel is built on the site, approximately two million five hundred fifty thousand dollars (\$2,550,000) in annual Transient Occupancy Tax; and more than two million six hundred thousand dollars (\$2,600,000) as the City's portion of increased annual property taxes; and

(b) Assurance that development of the Project will proceed in accordance with the Golden Shore Master Plan and Design Guidelines which were the result of a comprehensive and coordinated planning process by and among Developer, City, and the community, in which private and public goals, objectives, and interests were thoughtfully integrated and resolved in an optimal fashion.

2.6 Developer Objectives.

In accordance with the legislative findings set forth in section 65864 of the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that, following receipt of all necessary discretionary approvals for the Project (i.e., the Project Approvals and the Subsequent Discretionary Project Approvals), Developer will be able to develop the Project in accordance with the Land Use Regulations and with the Project Approvals. Because of the nature of the Project, the Development of the Project will take a long period of time to complete. In the absence of this Agreement, Developer would have no assurance that it can complete the Project. For any number of currently foreseeable and unforeseeable reasons, including, without limitation, regional traffic and related impacts (such as impacts on air quality) resulting from development outside the jurisdiction of City, pressures on the City could be created (a) to halt the Project at a point short of total build-out, (b) to defer or delay completion of the Project, or (c) to

apply new rules, regulations or official policies to the Project inconsistent with this Agreement in such a manner as to significantly increase the cost or reduce the size of the Project. The potential loss of anticipated revenue associated with these development risks and uncertainties would, in the absence of this Agreement, deter and discourage Developer from making a long-term commitment to the implementation of the Project. Accordingly, Developer cannot prudently continue the development of the Project without reasonable assurance that, subject to the terms of this Agreement and the Reserved Powers, it will be able to complete the Project in accordance with the Project Approvals and the Land Use Regulations.

2.7 Applicability of the Agreement.

This Agreement does not: (a) grant density, intensity or uses in excess of that otherwise established in the Project Approvals and the Land Use Regulations; (b) supersede, nullify or amend any condition imposed in the Project Approvals; (c) eliminate City discretion with respect to future Discretionary Actions relating to the Project if such Discretionary Actions are initiated and submitted by Developer or any other owner of the Property or any portion thereof after the Effective Date; (d) guarantee that Developer will receive any profits from the Project; or (e) amend the City's General Plan. This Agreement has a fixed Term and is not permanent. Subject to the Reserved Powers and compliance with all requirements of the Land Use Regulations and Project Approvals, it is the understanding of the Parties to this Agreement that Developer will have the right to proceed with completion and occupancy of the Project in accordance with the uses, densities, design and heights set forth in the Project Approvals incorporated herein.

3. AGREEMENT AND ASSURANCES

3.1 Agreement and Assurances on the Part of Developer.

In consideration of the covenants and agreements of City set forth herein, and in consideration of City's assurances with respect to Developer's right to complete the Project set forth in Section 3.2 below, Developer hereby agrees as follows:

3.1.1 Project Development.

Developer agrees that it will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decisions concerning timing of the commencement or continuation of development, to develop the Project in accordance with the

terms and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations, including: as more fully described in PD-6 Sub Area 1, an integrated mixed use development comprised of housing and commercial uses. Developer agrees to work with the City to incorporate a local hire component in its construction contracts.

3.1.2 Timing of Development.

The Parties acknowledge that Developer cannot predict when or the rate at which the Project will be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, interest rates, absorption, availability of financing, and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intent of Developer and City to hereby cure that defect by acknowledging and providing that, subject to the limitations expressly set forth in this Agreement, Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its business judgment. City acknowledges that such a right is consistent with the intent, purpose, and understanding of the Parties to this Agreement. Developer will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decisions, to develop the Project in accordance with the provisions and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations. Nothing in this Section is intended to alter the standard durational limits of any applicable permits issued to Developer.

3.2 Agreement and Assurances on the Part of City.

In order to effectuate the premises, purposes and intent set forth in Section 2 above, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, including the preceding Section 3.1 of this Agreement, City hereby agrees that Developer shall have a vested right to carry out and complete the entire Project, as specifically described and set forth in this Agreement, subject to the terms and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations. In furtherance of such agreement and assurance, and pursuant to the authority

and provisions set forth in the Development Agreement Act and Chapter 21.29 of the Code, City, in entering into this Agreement, hereby agrees and acknowledges that:

3.2.1 Entitlement to Develop.

3.2.1.1 Project Entitlement.

Developer has the vested right, to the fullest extent allowed under the Development Agreement Act, to develop the Project, in accordance with and subject to the Project Approvals and the Land Use Regulations without any further Discretionary Action being obtained from the City other than any applicable Subsequent Discretionary Project Approvals, and City finds and certifies that the Project is consistent with the General Plan and the applicable Land Use Regulations. This Agreement shall vest the right to develop the Property with the permitted uses of land, and with the density and intensity of uses specifically set forth in the Project Approvals.

3.2.1.2 Nonapplication of Subsequent Land Use Regulations.

Except as otherwise provided by this Agreement with respect to the Reserved Powers, any Subsequent Land Use Regulations shall not be applied by City to the Project.

3.2.1.3 Changes In California Building Standards Codes.

Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the California Building Standards Codes pursuant to the Reserved Powers.

3.2.1.4 Changes Mandated by Federal or State Law.

Notwithstanding any provision of this Agreement to the contrary, the Property shall also be subject to subsequently enacted state or federal laws or regulations which preempt local regulations, or mandate the adoption of local regulations, or are in conflict with local regulations or with the Project Approvals and this Agreement. As provided in section 65869.5 of the Development Agreement Act, in the event that state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or

regulation, and a written statement of the conflicts thereby raised with the provisions of local regulations or this Agreement. Promptly thereafter City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer as derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, it shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so.

3.2.1.5 Health and Safety Emergencies.

In the event that any future public health or safety emergencies arise with respect to the Development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by the City in its discretion, to address such emergency in a way that does not have a material adverse impact on Development of the Property in accordance with the Project Approvals and the Land Use Regulations, and if the City determines, in its discretion, that it is not reasonably possible to so address such health or safety emergency, to select that option for addressing the situation which, in the City's discretion, minimizes, so far as reasonably possible, the impact on Development of the Property in accordance with the Project Approvals and the Land Use Regulations while still addressing such health or safety emergency in a manner acceptable to the City.

3.2.1.6 Agreed Changes and Other Reserved Powers.

This Agreement shall not preclude application to the Project of rules, regulations, ordinances, and officially adopted plans and policies in conflict with the Land Use Regulations or the Project Approvals where such additional rules, regulations, ordinances, and officially adopted plans and policies (a) are mutually agreed to in writing by Developer and City in accordance with the requirements of Section 8.10 of this Agreement or (b) result from the Reserved Powers.

3.2.2 Subsequent Discretionary Project Approvals; Consistent Subsequent Requirements.

In accordance with California Government Code section 65865.2, City hereby agrees that it will not withhold or condition any Subsequent Discretionary Project Approval in a manner which would prevent Development of the Property for the uses and to the density or intensity of Development set forth in this Agreement, provided that Developer reasonably and satisfactorily complies with all procedures, actions, payment of Processing Fees and Charges, conditions, and criteria generally required of developers by City for processing applications for development, consistent with this Agreement. During the Term of this Agreement, City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with the terms of this Agreement other than those permits or approvals which are required by the Land Use Regulations or Property Approvals and any other governmental requirements applicable to the Project in accordance with the terms of this Agreement. All Subsequent Discretionary Project Approvals shall be subject to the terms and conditions of this Agreement. Any Subsequent Discretionary Project Approval, or any conditions, terms, restrictions, and requirements of any such Subsequent Discretionary Project Approval, shall not prevent development of the Project for the uses and to the maximum density or intensity of development set forth in this Agreement.

In accordance with Government Code section 65866, nothing in this Agreement shall prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations, and policies which do not conflict with the Property Approvals and Land Use Regulations applicable to the Property under this Agreement and such new rules, regulations, and policies shall be applicable to the Property.

3.2.3 Consistency with Land Use Regulations.

City finds, based upon all information made available to City prior to or concurrently with the execution of this Agreement, that there are no Land Use Regulations that would prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, Project design, and heights incorporated and agreed to herein.

3.2.4 Moratoria.

In the event an ordinance, resolution, or other measure is hereafter enacted, whether by action of City, by initiative, or otherwise, which affects the rate, timing, or

sequencing of the Development of all or any part of the Project, or implementation or construction of any Condition of Approval ("**Moratorium**"), City agrees that the changes imposed by such Moratorium shall not apply to the Project or this Agreement, unless such changes are applied pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement, and, if applicable to the Project, shall toll the Term for the period of time that such Moratorium actually delays the rate or timing or affects the sequencing of the Development of all or any part of the Project. Developer shall not request or, unless requested or permitted to do so by the City, support adoption of any such Moratorium during the Term.

3.2.5 Standard City Services.

The City agrees to provide generally applicable standard municipal services to the Project upon the same terms as provided elsewhere in the City; provided, however, the City does not guarantee any particular level of municipal service to Developer or the Property.

3.2.6 No Limitation on Fees.

Nothing in this Agreement shall be interpreted or applied to limit or restrict the application of any new Impact Fees, Processing Fees and Charges, or other fees applicable to the Project, or any increase in any such existing fees, and Developer waives any right to object thereto.

4. TERM

4.1 Basic Term.

The Project is a multi-phased Development which will occur over many years, the exact number of which will be determined ultimately by market conditions and other business factors. It is the intent of the Parties to establish as the Term of this Agreement more than sufficient time to complete the Project, so that if current expectations prove to be unrealistic, Developer will have additional time in which to complete the Project in an economically sound manner. Therefore, this Agreement shall commence upon the Effective Date and shall remain in effect until completion of the development of the Property as contemplated by Section 2.4 of this Agreement or for a term of twenty (20) years after the Effective Date, whichever is earlier, unless said Term is terminated, modified, or extended pursuant to the express provisions set forth in this Agreement or by mutual written consent of the Parties hereto. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect;

provided, however, such termination shall not affect any right or duty arising from City entitlements or approvals, including the Project Approvals, approved prior to, concurrently with or subsequent to the Effective Date or any right or duty of Developer which has accrued as of the date of such termination or which, by its terms, expressly survives such termination. As provided in Section 3.2.4 of this Agreement, the Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any Moratorium.

4.2 Early Full Termination of Agreement.

The Agreement is terminable: (a) by both Parties, with mutual written consent of the Parties, or (b) by City, following an uncured material default by the Developer as set forth in Section 7, or (c) by Developer, following an uncured material default by City as set forth in Section 7.

5. ANNUAL REVIEW.

5.1 Annual Review Procedure.

During the Term of this Agreement, the Developer shall initiate and the City shall conduct an annual review of the Developer's compliance with this Agreement. As provided in the Development Agreement Act, such annual review shall be limited in scope to determining good faith compliance with the provisions of this Agreement. As part of that review, Developer shall submit an annual monitoring review statement to the Planning Commission describing its actions in compliance with this Agreement, in a form acceptable to the City, within forty-five (45) days prior to each anniversary of the Effective Date of this Agreement. The Planning Commission shall receive and review such statement and notify Developer of any non-compliance within forty-five (45) days of receipt of the statement. Upon notification of any non-compliance, Developer shall have the opportunity to cure any non-compliance within sixty (60) days or such longer period as is reasonably necessary to cure such non-compliance, provided that Developer shall continuously and diligently pursue such cure at all times until such non-compliance is cured. If Developer fails to timely cure such non-compliance, as determined by City in City's reasonable discretion, then the City Council shall review the matter within thirty (30) days thereafter.

5.2 Termination or Modification of Agreement.

In the event the City Council determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms of this Agreement, the City may

modify or terminate this Agreement in accordance with the Development Agreement Act and Chapter 21.29.070 of the Code. Notwithstanding any provision to the contrary in any City procedures, there shall be no modification of this Agreement unless the City Council acts pursuant to sections 65867 and 65868 of the Development Agreement Act.

5.3 Certificate of Agreement Compliance.

If, at the conclusion of an annual review, Developer is found to be in good faith compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("*Certificate*") to Developer stating that, after the most recent annual review and based upon the information then known to the City, (a) this Agreement remains in effect and (b) Developer is, to the current actual knowledge of the City, in good faith compliance with the Agreement as required by section 65865.1 of the Development Agreement Act. Additionally, as set forth in Section 8.29, either Party may at any time request from the other an estoppel certificate confirming, in addition to the foregoing, the status of the other Party's performance of its obligations under this Agreement to the actual knowledge of the certifying Party. Any such Certificate delivered pursuant to this Section shall not estop the Party delivering the Certificate from asserting a breach or default, or pursuing any rights arising therefrom, with respect to any matter which may be subsequently discovered by the certifying Party or which may occur subsequent to the date of such Certificate.

5.4 Failure of Annual Review.

City's failure to conduct a review at least annually of Developer's compliance with the terms and conditions of this Agreement shall not constitute or be construed by City or Developer as a breach of or a default under this Agreement by City.

5.5 Annual Review Fee.

Developer shall pay the applicable annual review fee imposed for annual review of development agreements pursuant to Resolution No. C-28494 adopted by the City Council on December 14, 2004.

6. VESTED RIGHTS TO DEVELOP

Subject to the terms of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Project Approvals and the Land Use Regulations. City and Developer hereby acknowledge and agree that all of the Development allowed under the Project Approvals is vested specifically with Developer, and may not be

utilized by any other subsequent owner or lessee of a parcel or parcels of the Property except with the express written assignment by Developer pursuant to Section 8.15, and then only to the extent of such assignment; provided, however, that nothing herein shall be deemed to preclude a subsequent owner or lessee of a parcel or parcels of the Property from seeking additional entitlements to Development to the extent that such entitlements are additive to, and not a reduction of, the Development rights hereby vested with Developer, but any such additional entitlements shall be subject to the full discretion of the City without limitation or qualification by this Agreement or any provision thereof.

7. DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Intent.

Under this Agreement, Developer's obligation to City is to attempt to develop the Project, subject to the conditions established in the Project Approvals and the terms of this Agreement and in accordance with the Land Use Regulations and City's obligation to Developer is to permit Developer to complete the Project in accordance with and subject to the Project Approvals, the Land Use Regulations, and the terms of this Agreement. The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

7.2 City's Remedies.

7.2.1 Default by Developer.

In addition to the general review process under Section 5 above, in the event Developer does not perform its obligations under this Agreement in a timely manner, the City shall have those rights and remedies provided for in this Agreement, including, without limitation, Section 7.6; provided, that the City's right to compel specific performance of the obligations of Developer shall be subject to the limitations set forth in Section 7.2.5 of this Agreement; and provided, further, the City shall have no right to monetary damages as a result of any failure by Developer to start or complete the Project (other than to the extent arising from the Company's failure to complete, remove or secure improvements as required by Section 7.2.5 below or to pay any amounts due to City under the terms of this Agreement). Nothing in this Section 7.2.1 shall limit the City's right to terminate this Agreement in accordance with Section 7.2.4.

7.2.2 Notice of Default.

With respect to a default by the Developer under this Agreement, the City shall first submit to Developer a written notice of default in the manner prescribed in Section 8.5, identifying with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

7.2.3 Failure to Cure Default Procedure.

If, after the cure period has elapsed, the City finds and determines that Developer remains in default and the City wishes to terminate or modify this Agreement, the Director shall make a report to that effect to the Planning Commission and set a public hearing before the Commission in accordance with the notice and hearing requirements of sections 65867 and 65868 of the Development Agreement Act. If, after public hearing, the Planning Commission finds and determines that Developer has not cured the default pursuant to this Section 7.2, and that the City is entitled to terminate or modify this Agreement, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 8.2. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

7.2.4 Termination or Modification of Agreement.

If it is determined pursuant to the above-described procedures that the Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement as provided in Chapter 21.29.070C of the Code; provided, however, that with respect to a material breach of a Severable Obligation, as defined in Section 8.15.2, any such termination (as opposed to a modification) of this Agreement may only affect the portion of the Property affected by such breach; and further provided that with respect to a modification (as opposed to termination) of this Agreement, any modification that would materially increase the Developer's obligations

under this Agreement may not be made unilaterally by City and shall require the consent of Developer.

7.2.5 Specific Performance.

Except as provided in this Section, the City shall have no right to seek a remedy of specific performance with respect to the Development of the Project. The City's right to seek specific performance in connection with the Development of the Project shall be specifically limited to compelling Developer to (a) complete or demolish any uncompleted improvements initiated in connection with the Project which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion, (b) compelling Developer to dedicate and properly complete any public improvements which are required by the Project Approvals or the Land Use Regulations to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement, and (c) compelling the Developer to complete, demolish, or make safe and secure any uncompleted private improvements located on the Property with the choice of whether to demolish, complete, or secure such private improvements and the method of such demolition, completion, and securing of such private improvements to be selected by Developer in its sole discretion. Notwithstanding anything in Section 7.2 to the contrary and notwithstanding any termination of this Agreement, the City shall have the right to enforce all applicable provisions of the Land Use Regulations and the Project Approvals for any portion of the Project actually constructed and to collect all payments and reimbursements due to City under the express terms of this Agreement. Nothing in this Section 7.2.5 or the limitations on the City's rights of specific performance set forth herein shall be construed to prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, Project design, and heights set forth in the Project Approvals incorporated herein.

7.3 Developer's Remedies.

7.3.1 Default and Notice of Default.

With respect to a default by the City under this Agreement, Developer shall first submit to the City a written notice of default in the manner prescribed in Section 8.5, identifying with specificity those obligations of the City which have not been performed. Upon

receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

7.3.2 Specific Performance; Waiver of Damage Remedies.

Both Parties agree and recognize that, due to the size, scope, and nature of the Project, including the design and placement of various discrete uses and structures, and the functional and economic interrelationships of the various components of the Project, as a practical matter it will not be possible physically, financially, and as a matter of land use planning, to restore the Project to its former state once any significant portion of the Project is developed. Further, the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive, or otherwise) in the event of a breach by City hereunder. For the above reasons, the Parties agree that specific performance is the proper remedy and shall be the only remedy available to Developer in the event of the City's failure to carry out its obligations hereunder. Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and Developer hereby waives, relinquishes, and surrenders any right to any such monetary remedies. Developer covenants not to sue for or claim any monetary damages for the breach by the City of any provision of this Agreement and hereby agrees to indemnify, defend, and hold the City and all City Representatives harmless from any cost, loss, liability, expense, or claim (including Attorneys' Fees) arising from or related to any claim brought by Developer inconsistent with the foregoing waivers. The Developer may also, in its discretion, terminate this Agreement upon occurrence of specified events, as provided in Section 7.5. Without limitation of the foregoing, any and all claims against the City arising under this Agreement and falling within the scope of the California Tort Claims Act shall be made in accordance with the requirements of the California Tort Claims Act (or any successor statute) set forth in California Government Code section 810 *et seq.*

7.4 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 (a) any obligations to have been performed or which have accrued prior to said termination, (b) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (c) any obligations arising under a provision of this Agreement which expressly provides that it survives the termination of this Agreement.

7.5 Developer's Right To Terminate Upon Specified Events.

Notwithstanding any other provisions of this Agreement to the contrary, Developer retains the right to terminate this Agreement upon thirty (30) days' written notice to City in the event that Developer reasonably determines that continued Development of the Project has become economically infeasible due to (i) changed market conditions, (ii) increased Development costs, (iii) burdens imposed, consistent with this Agreement, by the City as conditions to Subsequent Discretionary Project Approvals, (iv) the City's exercise of its Reserved Powers in a way deemed by Developer to be inconsistent with the Development of the Project, or (v) upon the City's failure to perform any material duty or obligation hereunder which is not cured within the applicable cure period set forth herein. In the event Developer exercises this right, it shall nonetheless be responsible for (a) the completion, as soon thereafter as reasonably possible, of all public improvement work that has been commenced at the time that Developer exercises such rights, (b) performance of the obligations of the Developer set forth in Section 7.2.5 above, and (c) to the extent not covered by (a) and (b) above, mitigation of impacts to City resulting from Development that may have occurred on the Property prior to the notice of termination on a fair share or nexus basis. Within the thirty (30) day notice period City and Developer shall meet to identify any mitigation obligation described in subsection (c) of this Section that may remain to be satisfied. If the Parties are in disagreement at the end of the thirty (30) day notice period, the Agreement shall nevertheless be terminated and the dispute over any remaining mitigation obligation shall thereafter be resolved pursuant to Section 7.6.

7.6 Legal Actions.

Subject to the limitations on remedies imposed by this Agreement, either Party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, enforce by specific performance

the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations, or interpretations of this Agreement. The limitation of remedies set forth herein shall not limit any provisional remedies, including, without limitation, injunctive or similar relief, from any court of competent jurisdiction as may be necessary to protect the benefit to a Party of its rights and permitted remedies hereunder.

8. GENERAL PROVISIONS

8.1 Effective Date.

This Agreement shall be effective upon its execution by a duly authorized representative of each Party hereto and recordation with the Los Angeles County Recorder, as hereinafter provided. As provided in section 65868.5 of the Development Agreement Act, a copy of this Agreement shall be recorded with the Los Angeles County Recorder within ten (10) days after its execution by both Parties. Amendments to this Agreement approved by the Parties pursuant to Section 8.10 of this Agreement shall also be recorded.

8.2 Appeals to City Council.

Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Commission or any other City Agency is created by this Agreement, such appeal shall be filed, if at all, within twenty (20) days after the delivery of notice in accordance with Section 8.5 of such finding and/or determination to Developer. The City Council shall act on the appeal within ninety (90) days after such delivery of notice, or within such additional period as may be agreed to by the Developer, which agreement shall not be unreasonably withheld, conditioned, or delayed. In the event that the City Council fails to act within said ninety (90)-day period, or such additional period as may be agreed to by the Developer, Developer may seek remedies under Section 7.6.

8.3 Cooperation and Implementation

8.3.1 Processing.

Upon satisfactory completion by Developer of all required preliminary actions and payment of applicable Processing Fees and Charges, including the fee for processing this Agreement, City shall process all required steps necessary for the implementation of this Agreement and development of the Project in accordance with the terms of this Agreement. Developer shall, in a timely manner, provide City with all documents, plans, and other information necessary for City to carry out such processing.

8.3.2 Other Governmental Permits.

Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City, at no out-of-pocket cost or expense to the City, shall reasonably cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Developer, consider, in good faith and in the City's sole discretion, agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and do not result in any additional cost or expense or other adverse impact to City. Such entities may include, but are not limited to, utility districts or providers, and the California Coastal Commission. Developer shall reimburse City for all costs and expenses incurred in connection with reviewing, negotiating or entering into any such agreement provided that Developer has requested the City to do so. Developer shall indemnify, defend (with counsel selected by the indemnified Party), and hold harmless City, all City Agencies, and each City Representative from and against any and all claims, causes of action and Liabilities incurred by the indemnified Party arising from or related to any challenge by any person or entity to any such agreement, and shall reimburse City for any costs and expenses incurred by City in defending such claims or any other claims arising from the implementation of such agreement. Any fees, assessments, or other amounts payable by City under any such agreement shall be borne by Developer.

8.3.3 Cooperation in the Event of Legal Challenge by Third Party.

In the event of any Litigation, the Parties hereby agree to affirmatively cooperate in defending said action.

8.3.3.1 Developer and City Legal Counsel.

In the event any Litigation (including any cross-action) is filed against the City and/or Developer, the Party receiving service of such action shall notify the other in writing of such Litigation promptly after service upon it and shall transmit to the other any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, it in connection with such Litigation. Within ten (10) days after delivery of such notice, Developer shall retain and appoint legal counsel selected by City and reasonably acceptable to Developer ("*Counsel*" for purposes of this Section 8.3.3) with respect to the

Litigation to jointly represent both Developer and City. The Parties acknowledge that Counsel will appear and represent both Developer and City in connection with such Litigation and such Counsel shall, at the request of the City Attorney, cooperate with the City Attorney, shall prepare drafts, for review by the City Attorney, of all pleadings, motions, and other Litigation-related documents, and shall coordinate legal strategy and otherwise cooperate with City in connection with the Litigation, all at Developer's cost and expense. Developer shall also pay all filing fees, court costs, and similar out-of-pocket expenses required for the City to defend the Litigation. The City Attorney or his designee shall appear on behalf of the City in any such Litigation and shall at all times retain final authority and control over all documents to be filed on the City's behalf and all actions to be taken by the City with respect to Litigation. The Developer shall not be responsible for reimbursing the City for fees or costs of any attorneys hired by the City in connection with such Litigation so long as Developer timely provides and funds the defense of such Litigation by Counsel pursuant to its obligations above; provided that, if Developer fails to provide the defense by Counsel as provided above, then City may retain its own outside counsel and, in that event, Developer shall be responsible for paying all fees, costs, Attorneys' Fees, or other expenses resulting from actions taken by the City in connection with the defense of such Litigation. The City shall cooperate with Counsel's defense of the Litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to Counsel as may be reasonably requested by Counsel in connection with the Litigation.

8.3.3.2 Reimbursement of Attorneys' Fees.

Within thirty (30) days after delivery of a final judgment awarding Attorneys' Fees or costs to a plaintiff or upon execution of a written settlement agreement by and between the City and a plaintiff which requires the City to pay Attorneys' Fees or costs to a plaintiff, Developer shall pay such Attorneys' Fees and costs to the plaintiff as required unless the City settles any Litigation, in whole or in part, without Developer's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed and which approval shall not be required if Developer has failed to provide Counsel for joint defense of the Litigation as required above.

8.3.3.3 Indemnification.

Developer shall indemnify, save and hold the City, City Agencies, and City Representatives (collectively, "*the City*" in this Section 8.3.3.3) harmless from any and all

Liabilities to the extent they arise from or are related to any Litigation. Notwithstanding any other provision of this Section 8.3.3, the City's sole right under this Agreement to reimbursement of Attorneys' Fees awarded in connection with the defense of Litigation is that set forth in Section 8.3.3.2. Furthermore, City shall be deemed to have waived its right to any further reimbursement or indemnification with respect to an individual Litigation matter under this Section 8.3.3 if the City settles such Litigation, in whole or in part, without Developer's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed and which approval shall not be required if Developer has failed to provide Counsel for joint defense of the Litigation as required above. Notwithstanding any provision to the contrary, if the City is indemnified with respect to a Litigation matter pursuant to this Section 8.3.3.3, Developer, as the indemnifying Party, shall at all times retain final authority and control over all documents to be filed in such Litigation by the Developer subject to the City's review and approval thereof, which approval shall not be unreasonably withheld, conditioned, or delayed. Nothing in this Section 8.3.3 shall waive or limit any obligations of the Developer or rights and protections of the City set forth in any Project Approvals.

8.3.3.4 Joint Defense.

It is understood and agreed that Counsel shall represent both Developer and City; provided that Developer alone shall be responsible for the fees of Counsel. Both Developer and the City agree to cooperate in the Litigation as reasonably necessary for the accomplishment of the defense of the Litigation and, in connection therewith, both parties acknowledge that shared information between the parties is intended to be, and must be, kept confidential. In the event of any conflict between the covenants of cooperation set forth in this Section and any legal obligations imposed upon City, those legal obligations shall control and the City's compliance therewith shall not constitute a breach or violation of any provisions of this Section 8.3. Without limitation of the foregoing, nothing in this Agreement shall limit the City's discretion in responding to any California Public Records Act request it may receive, and the City shall have the absolute right to respond to such request in such manner as it determines legally necessary or appropriate without restriction or limitation by this Agreement.

8.3.3.5 Continuing Obligations.

This Section 8.3.3 shall survive termination of this Agreement.

8.4 Relationship of Parties.

It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that of independent contracting parties and not an agency relationship. City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

8.5 Notices.

Any notice or communication required under this Agreement between the City or Developer shall be in writing and shall be effective when delivered by registered or certified mail, postage prepaid, return receipt requested; when delivered personally; or when delivered by courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or delivered by courier, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address set forth herein, or any additional address, to which such notice or communication shall be given. Until notified under the preceding sentence, such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: Director of Development Services
 City of Long Beach
 333 W. Ocean Boulevard, Fourth Floor
 Long Beach, California 90802

With Copies to: City Manager
 City of Long Beach
 333 W. Ocean Boulevard, Thirteenth Floor
 Long Beach, California 90802

 City Attorney
 City of Long Beach
 333 W. Ocean Boulevard, Eleventh Floor
 Long Beach, California 90802

If to Developer: 400 Oceangate, Ltd.
400 Oceangate
Long Beach, California 90802
Attn: Marilyn A. Whitcomb

With Copies to: _____

8.6 Developer Hold Harmless.

Developer hereby agrees to and shall indemnify, save, hold harmless and defend the City, the City Agencies and the City Representatives (collectively, "***the City***" in this Section), from any and all claims, causes of action and Liabilities which may arise, directly or indirectly, from Developer's or its representatives', consultants', contractors', subcontractors', agents', or employees' operations, acts, or omissions in connection with the Development of the Project, whether such operations, acts, or omissions be by Developer or any of Developer's representatives, consultants, contractors, subcontractors, or by anyone or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's representatives, consultants, contractors, or subcontractors. Nothing in this Section shall be construed to mean that Developer shall hold the City harmless and/or defend it to the extent that such claims, causes of action, or Liabilities arise from the negligent acts, grossly negligent acts or intentional wrongful acts of the City or any person or entity acting on City's behalf; provided that the foregoing limitation shall not be construed to apply to Developer or its successors or assigns or their agents, employees, representatives, consultants, contractors, or subcontractors, to the extent acting on City's behalf pursuant to the terms of this Agreement. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless. Developer shall be relieved from any further liability under this Section with respect to any portion of the Property transferred to another party where such transferee assumes Developer's rights and obligations under this Agreement pursuant to Section 8.15 with respect to such portion of the Property transferred; provided that upon such transfer, the indemnity set forth herein shall automatically apply to such transferee, with all references herein to "***Developer***" deemed references to such transferee, and further provided that such transferee assumes the obligations under this Section 8.6 in writing and reaffirms its indemnity of City pursuant to this Section.

8.7 Insurance.

To the extent that the Developer carries commercial general liability (or equivalent) insurance with respect to the Project, or a portion thereof, during the Term, Developer shall name the City as an additional insured on all policies evidencing such insurance.

8.8 Severability and Termination.

If any provision of this Agreement should be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to the terms of any law which becomes effective after the date of this Agreement, the unenforceable provision shall be deemed severable and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding on both Parties.

8.9 Time is of Essence.

Time is of the essence for each provision of this Agreement in which time is an element.

8.10 Modification or Amendment.

Subject to meeting the notice and hearing requirements of section 65867 of the Development Agreement Act, this Agreement may be modified or amended from time to time by mutual consent of the Parties or their successors in interest in accordance with the provisions of section 65858 of the Development Agreement Act. If approved in a form to which Developer and City have consented in writing, any change in the Project Approvals or Project after the Effective Date shall be incorporated herein as an addendum, and may be further changed from time to time only as provided in this Section. Any change in the Project Approvals or Project made in accordance with the procedures required by the Land Use Regulations and with the written consent of the Developer and City as required by this Agreement shall be conclusively deemed to be consistent with this Agreement, without any further need for any amendment to this Agreement or any of its Exhibits.

8.11 Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and referring expressly to the provisions to be waived. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

8.12 Equitable Servitudes and Covenants Running with the Land.

Any successors in interest to the City and Developer shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the Development Agreement Act. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 6 or Section 8.15, and no successor owner of the Property, any portion thereof or any interest therein shall have any rights hereunder except and to the extent assigned to them by Developer in writing pursuant to Section 8.15.

8.13 Governing State Law; Compliance with Applicable Law.

This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions. Developer agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* City and the City Representatives make no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

In all bid specifications, contracts and subcontracts for any such Public Work, Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."

Each portion of the Project shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, in such form as may be required of the Developer and all entities engaged in work on the Property by applicable law. Except with respect to the portion of the indemnity set forth above in this Section 8.13 applicable to compliance of the Project with all prevailing wage requirements, Developer shall be relieved from any further liability under this Section with respect to any portion of the Property transferred to another party where such transferee assumes Developer's rights and obligations under this Agreement pursuant to Section 8.16 with respect to such portion of the Property transferred; provided that upon such transfer, the covenants and indemnity set forth herein shall automatically apply to such transferee, with all references herein to "Developer" deemed references to such transferee, and further provided that such transferee assumes the obligations under this Section 8.13 in writing and reaffirms its indemnity of the City, the City Agencies and the City Representatives pursuant to this Section. With respect to the portion of the above indemnity concerning compliance with all prevailing wage requirements, each transferee of Developer shall assume in writing and expressly reaffirm that assignee's indemnity of the City, the City Agencies and the City Representatives with respect to compliance with such prevailing wage requirements to the extent applicable to the portion of the Property acquired by said transferee, but such assumption shall not release or relieve Developer from its liability under such portion of that indemnity and Developer shall remain jointly and severally liable with such transferee for said indemnity; provided, that, at the time of such transfer by Developer, it may request that City agree to release Developer from such continuing liability under its indemnity based upon the financial capacity of the Developer's proposed transferee, but any such release shall be at the City's sole discretion and election and, to be effective, shall be in writing.

8.14 Constructive Notice and Acceptance.

Every person who after the Effective Date of this Agreement owns or acquires any right, title, or interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an

interest in the Property, and all rights and interests of such person in the Property shall be subject to the terms, requirements and provisions of this Agreement.

8.15 Assignment.

8.15.1 Right to Assign.

Developer shall have the right to sell, encumber, convey, assign or otherwise transfer, in whole or in part, directly or indirectly, its rights, interests and obligations under this Agreement, to any person or entity at any time during the Term of this Agreement, provided that Developer first obtains the written consent of the City. Such consent may not be unreasonably withheld or conditioned upon demonstration by Developer to the reasonable satisfaction of the City Manager that the assignee (or any guarantor of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the portion of the Project affected by such assignment and that the proposed assignee has adequate experience with developments of comparable scope and complexity and has successfully completed such developments. Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided, that, any such request for additional information by the City shall be made, if at all, within ten (10) business days after City's receipt of the request for approval of the proposed assignment. If City wishes to disapprove any proposed assignment, City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) days after receipt of written request for such approval delivered in the manner set forth in Section 8.5 and delivery of the required and requested additional information, if any, described above, such proposed assignment shall be deemed to be approved. Any attempted transfer in violation of this provision shall be void *ab initio*, and shall constitute a breach of this Agreement. All successors and assigns of Developer that wish to assign any rights under this Agreement shall also be bound by the terms of this Section 8.15 and each successive assignment of the rights hereunder shall also be subject to the requirements of this Agreement. Any assignment shall be documented by and shall require a written Assignment and Assumption Agreement in the form attached hereto as Exhibit "C" or another form acceptable to City. Any approval required of the City under this Section 8.15 may be provided by the City Manager and

the City Manager is hereby delegated the authority to provide such approval; provided that nothing herein shall require the City Manager to act prior to submission of such matter to the City Council if the City Manager considers that review necessary or helpful in the City Manager's sole discretion. Any such submission of the City Manager to the City Council shall not extend the forty-five (45) day period to disapprove the assignment set forth in this Section.

8.15.2 Release of Transferring Owner; Non-Severable and Severable Obligations.

Except as otherwise provided in this Agreement, upon the sale, transfer, or assignment of all or a portion of the Property by the Developer or any successor transferor or assignor and the assignment to and assumption by its assignee of the rights and obligations of this Agreement applicable to the portion of the Property transferred, the Developer or any such successor transferor or assignor shall be released of those obligations under this Agreement first arising after the effective date of that assignment that are so assigned by the Developer or such successor, transferor, or assignor and assumed by its assignee; provided that the obligations under this Agreement that are so assigned are assumed in writing by the buyer, transferee, or assignee and are enforceable by the City against said buyer, transferee, or assignee.

Upon the conveyance of a portion of the Property and the assignment and assumption of the rights and obligations under the Agreement with respect thereto, the failure to perform the following obligations under this Agreement (herein referred to as a "**Severable Obligation**") shall be deemed severable with respect to the assigned portion of the Property and this Agreement, and, following such a conveyance and assignment, a default under this Agreement with respect to any such Severable Obligation shall constitute a default only by the defaulting party (and shall not constitute a default under this entire Agreement) and shall only entitle the City to exercise its rights and to pursue the remedies hereunder with respect to the portion of the Property owned by the defaulting party and to which such default relates, including termination of this Agreement with respect to such portion of the Property, as provided for in Section 7.2.4:

- (a) Failure to pay Impact Fees pursuant to Section 3.2.6;
- (b) Violation of the Project Approvals or the Land Use Regulations pursuant to Section 3.1.1;
- (c) Failure to indemnify the City as required by Section 8.6; and

(d) Failure to name the City as an additional insured pursuant to Section 8.7.

Except as expressly provided above, all obligations under this Agreement shall be and remain non-severable.

8.16 Tentative Subdivision Maps.

Pursuant to California Government Code section 66452(a), the duration of any tentative subdivision map approved for the Property, or any portion thereof, subsequent to the Effective Date shall automatically be extended for a period equal to the Term of this Agreement.

8.17 Water Availability.

The residential component of the Project is proposed for a site that is within an urbanized area and has been previously developed for urban uses, and the immediate contiguous properties surrounding the residential project site are, and previously have been, developed for urban uses. For these reasons, any tentative map prepared for the Project is exempt from the written verification of water availability requirements contained in section 66473.7 of the Development Agreement Act. This Section satisfies the requirement set forth in California Government Code section 65867.5(c).

8.18 Regulation by Other Public Agencies.

It is acknowledged by the Parties that other public agencies not subject to control by City possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies.

8.19 Vesting Tentative Maps.

If any tentative or final map, or tentative or final parcel map, heretofore or hereafter approved in connection with Development of the Property, is a vesting map under the Subdivision Map Act (Government Code section 66410, *et seq.*), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants to Developer a vested right to develop, then and to that extent the rights and protection afforded Developer under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above, Development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

8.20 Binding Effect of Agreement.

From and following the Effective Date, Development of the Property and City actions on applications for Ministerial Permits and Approvals and Subsequent Discretionary Project Approvals respecting the Property shall be subject to the terms and provisions of this Agreement.

8.21 Statute of Limitation and Laches.

City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(d) of the Government Code, which provides for a ninety (90)-day statute of limitation to challenge this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses.

8.22 Entire Agreement.

This Agreement and the Project Approvals referenced herein set forth and contain the entire understanding and agreement of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings, or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings, covenants, undertakings, or agreements shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

8.23 Legal Advice; Neutral Interpretation; Headings; Table of Contents.

Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. 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 shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and

preparation thereof. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

8.24 Singular and Plural.

As used herein, the singular of any word includes the plural.

8.25 No Third Party Beneficiaries.

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

8.26 Eminent Domain.

No provision of this Agreement shall be construed, understood, or applied to limit, restrict, or waive in any manner any eminent domain powers of the City or any City Agency.

8.27 Authority to Execute.

The person or persons executing this Agreement on behalf of Developer warrants and represents that he/they have the authority to execute this Agreement on behalf of Developer and warrants and represents that he/they has/have the authority to bind Developer to the performance of its obligations hereunder.

8.28 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, riots or similar hostilities, strikes, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control; provided, that, the foregoing shall not apply to, and a Party's performance shall not be excused for, lack of financing or availability of financial resources to a Party. If any such events shall occur, the Term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the Term of this Agreement shall not, under any circumstances, be cumulatively extended under this Section for more than a total of five (5) years and, in no event, may the Term of this Agreement, as so extended, exceed twenty-five (25) years from the Effective Date of this Agreement.

8.29 Estoppel Certificate.

Within thirty (30) business days following a written request by either of the Parties, the other Party to this Agreement shall execute and deliver to the requesting Party a

statement certifying (a) that this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (b) that there are no known current uncured defaults under this Agreement or specifying the dates and nature of any such known default; and (c) as to any other reasonable information requested.

8.30 Mortgagee Protection.

The Parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the 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 and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification; provided, that City shall have no obligation to agree to any interpretation or modification that would adversely affect its rights or increase its obligations under this Agreement or if such interpretation or modification is inconsistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

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

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall 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 remaining cure period allowed Developer under this Agreement, except that as to a default requiring title or possession of the Property or any portion thereof to effectuate a

cure, if the Mortgagee timely cures all defaults which do not require possession to effectuate a cure and commences foreclosure proceedings to acquire title to the Property or applicable portion thereof within ninety (90) days after receipt from City of the written notice of default and thereafter diligently and continuously prosecutes such foreclosure to completion, the Mortgagee shall be entitled to cure such default after obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession. 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. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, or assert any rights of Developer hereunder, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and shall be subject thereto and bound thereby and shall comply with the terms, conditions and requirements of the Project Approvals applicable to the Property or such part thereof so acquired by the Mortgagee.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have each executed this Agreement on the date first above written.

"CITY"

THE CITY OF LONG BEACH,
a charter city and municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

"DEVELOPER"

400 OCEANGATE, LTD,
a California limited partnership

By: _____
Name: _____
Title: _____

ELEVEN GOLDEN SHORE, L.P.,
a California limited partnership

By: _____
Name: _____
Title: _____

ONE GOLDEN SHORE, L.P.,
a California limited partnership

By: _____
Name: _____
Title: _____

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA)
)
COUNTY OF)

WITNESS my hand and official seal.

Signature _____

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"
PROJECT VICINITY MAP

EXHIBIT "C"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

Attn: _____

(Space above for Recorder's Use)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment"), is made and entered into as of _____, by and between _____ ("Assignor") and _____, a _____ ("Assignee"), with reference to the following:

A. Pursuant to that certain Purchase Agreement And Escrow Instructions dated as of _____ (the "Purchase Agreement"), Assignor is selling to Assignee certain real property (the "Property") located within the area commonly known as Golden Shore and more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. Assignor heretofore entered into that certain Golden Shore Project Development Agreement dated _____ by and between Assignor and the City of Long Beach (the "Development Agreement"), which was recorded on _____ as Instrument No. _____ in the Official Records of the Recorder's Office of Los Angeles County, California.

C. In connection with the sale of the Property pursuant to the Purchase Agreement, Assignor now desires to assign and convey, and Assignee desires to accept and assume, all of Assignor's interest in and all of Assignor's obligations under the Development Agreement, subject to the conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **ASSIGNMENT.** Assignor hereby assigns, transfers, sets-over and delivers unto Assignee all of the following rights, interests, benefits and privileges of Assignor under the Development Agreement:

[LIST OF RIGHTS, INTERESTS, BENEFITS AND PRIVILEGES BEING ASSIGNED.]

2. ASSUMPTION. Assignee hereby accepts the foregoing assignment and agrees to assume, discharge, keep, perform and fulfill all of the following terms, conditions, duties and obligations arising on or after [DATE OF ASSIGNMENT] to be performed and fulfilled by Assignor under the Development Agreement, for the duration thereof:

[LIST OF TERMS, CONDITIONS, DUTIES, INDEMNITIES AND OBLIGATIONS BEING ASSUMED, E.G., PREVAILING WAGE INDEMNITY.]

3. REPRESENTATION OF ASSIGNEE. Assignee hereby acknowledges receipt of a copy of the Development Agreement and represents and warrants that it has knowledge of its terms, covenants, conditions, duties and obligations.

4. COVENANTS OF FURTHER ASSURANCES. Assignor and Assignee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment.

5. COUNTERPARTS. This Assignment may be signed in multiple counterparts which, when taken together and signed by all parties and recorded as provided in Section 9 hereof, shall constitute a binding Assignment between the parties.

6. SUCCESSORS AND ASSIGNS. All of the terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

7. EFFECTIVENESS. The effective date of this Assignment shall be the date upon which this instrument is recorded in the Official Records of the Recorder's Office of Los Angeles County, notwithstanding a prior execution date.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first set forth above.

ASSIGNOR:

a _____

By: _____

Its: _____

ASSIGNEE:

a _____

By: _____
Its: _____

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

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.

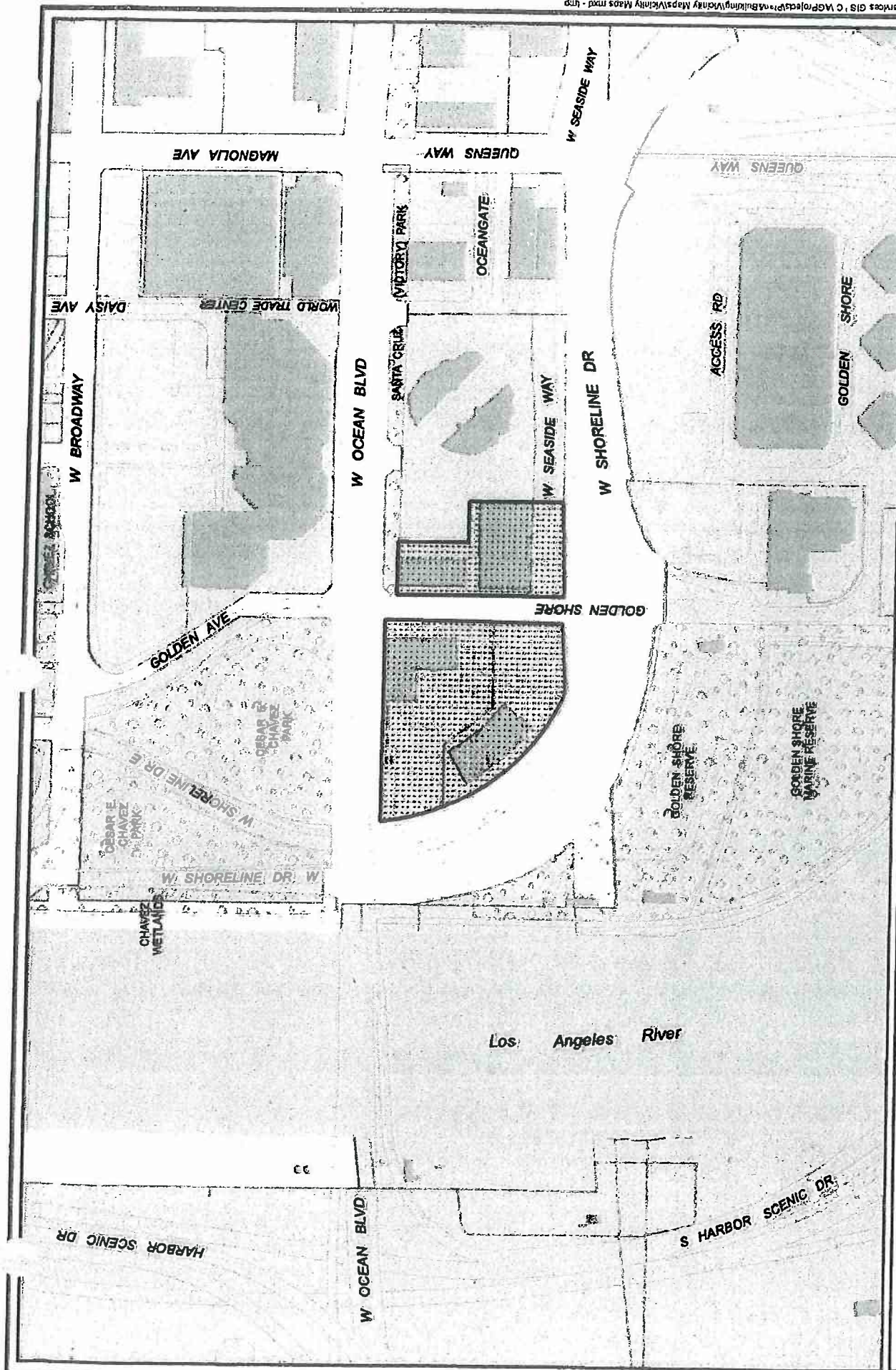
State of California)
County of _____)

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

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

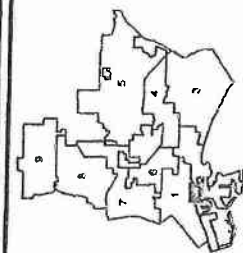
WITNESS my hand and official seal.

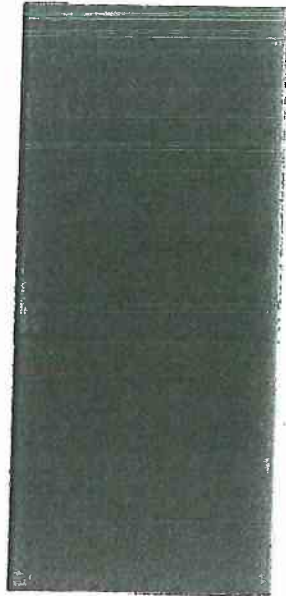
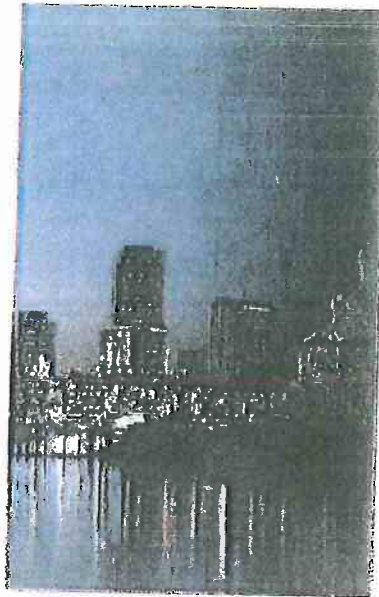
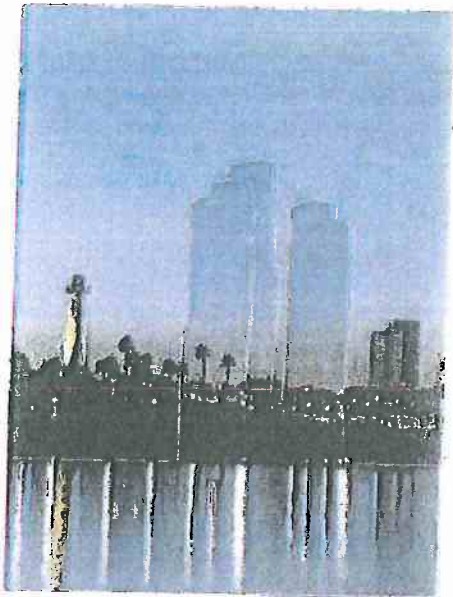
Signature _____



Subject Property:
 11 Golden Shore
 Application No. 0712-01
 Council District 2
 Zoning Code : PD-6 (SubArea1)

Exhibit A





GOLDEN SHORE

Master Plan and Design Guidelines

CERTIFY THAT THIS IS
A TRUE COPY OF THE
ORIGINAL

CITY OF LONG BEACH
DEPT. OF PLANNING & EDC
FINAL VERSION

GOLDEN SHORE DEVELOPMENT AREA
400 Oceangate, Ltd.
Molina Healthcare, Inc.

CITY OF LONG BEACH
Department of Development
Services

05 March 2010
Daniel E. Clark, AIA, NCARB



GOLDEN SHORE DEVELOPMENT AREA

Table of Contents

Introduction	5
Organization	7
Site Context	9
Master Site Plan	11
Streets, Park and Plazas	
Residential Development	
Hotel / Retail Development	
Pedestrian Circulation	
Urban Design Philosophy	
Parking	
Infrastructure	
Architectural and Site Design Guidelines	23
Building Design	
CPTED Design Principles	
Trash Collection and Design Criteria (Wet and Dry)	
Building Utilities	
Use	
Rooftop Design	
Exposed Parking	
Orientation and Screening	
Open Space Guidelines	32
Landscape Overview	
Santa Cruz Park (Grand Linear Park)	
Planting	
Planting Materials	
Hardscape	
Lighting	
Signage	
Seating	
Exhausts	
Maintenance	
Access for the Physically Disabled	
Pedestrian Plazas and Courtyards	
Garden and Courtyard Lighting Elements	
Sustainability	36
Green Building Development Standards	
Processing and Administration	36
Applicability	
Review and Submissions	
Effectiveness and Cancellation	

GOLDEN SHORE DEVELOPMENT AREA

List of Figures

Figure 1 Vicinity Map	6
Figure 2 Site Context Map	8
Figure 3 Site Connectivity Map	10
Figure 4 Master Plan & Site Layout Options	13
Figure 5 Public Realm and Open Space	21
Figure 6 Building Precedent Images	25

List of Exhibits

Exhibit 1 Green Building Development Standards	38
Exhibit 2 Crime Prevention Through Environmental Design	43
Exhibit 3 Species Evaluations	48

GOLDEN SHORE DEVELOPMENT AREA

INTRODUCTION

Purpose

The purpose of the Master Plan and Design Guidelines is to establish long-term development standards for the Golden Shore Development Area which will create a high quality environment for living and working in downtown Long Beach. The Master Plan and Design Guidelines will serve several purposes.

- Establish a large-scale planning vision.

The Master Plan and Design Guidelines will establish a broad framework of public and private design standards which will lead to a cohesive and attractive community image.

- Point of reference for the owner and architect.

The Master Plan and Design Guidelines will create clear and definitive standards for site engineering, architecture, landscape, and sustainable design that can be used for detail design work leading to construction of public and private developments.

- Public design review.

The Master Plan and Design Guidelines will establish a process to give maximum public access to the review and approval of future development projects.

The Golden Shore Design Guidelines are recommendations for both private and public design and construction, and are supplement to the California Building Code, Long Beach Municipal Code (LBMC), Local Coastal Plan (LCP), and Downtown Shoreline Planned Development (PD-6).

In processing project applications within the Golden Shore Development Area, the Design Guidelines are to be consulted to determine compliance with the goals of PD-6 Development Standards and the intent of the Design Guidelines. The property owner or their authorized agent is the only entity authorized to submit applications to the City. All of the requirements by the City of Long Beach must be met prior to application for Site Plan Review, and for ensuing development permit applications (See Processing and Administration Section).

FIGURE 1
VICINITY MAP



GOLDEN SHORE DEVELOPMENT AREA

ORGANIZATION

The Master Plan and Design Guidelines are organized to explain those influences on individual developments from the broadest scope down to the more specific criteria. The document is divided into the following sections:

Site Context describes the intent of the design guidelines and the project site within the context of the downtown area.

Master Site Plan illustrates the sub area's specific uses and design features of the Golden Shore Development Area. The Master Site Plan focuses on the architectural design features and public amenities that form the basis of the architectural and site design guidelines.

Architectural and Site Design Guidelines address the two major design aspects of the Master Plan: Buildings and Open Space. The guidelines are presented in two parts.

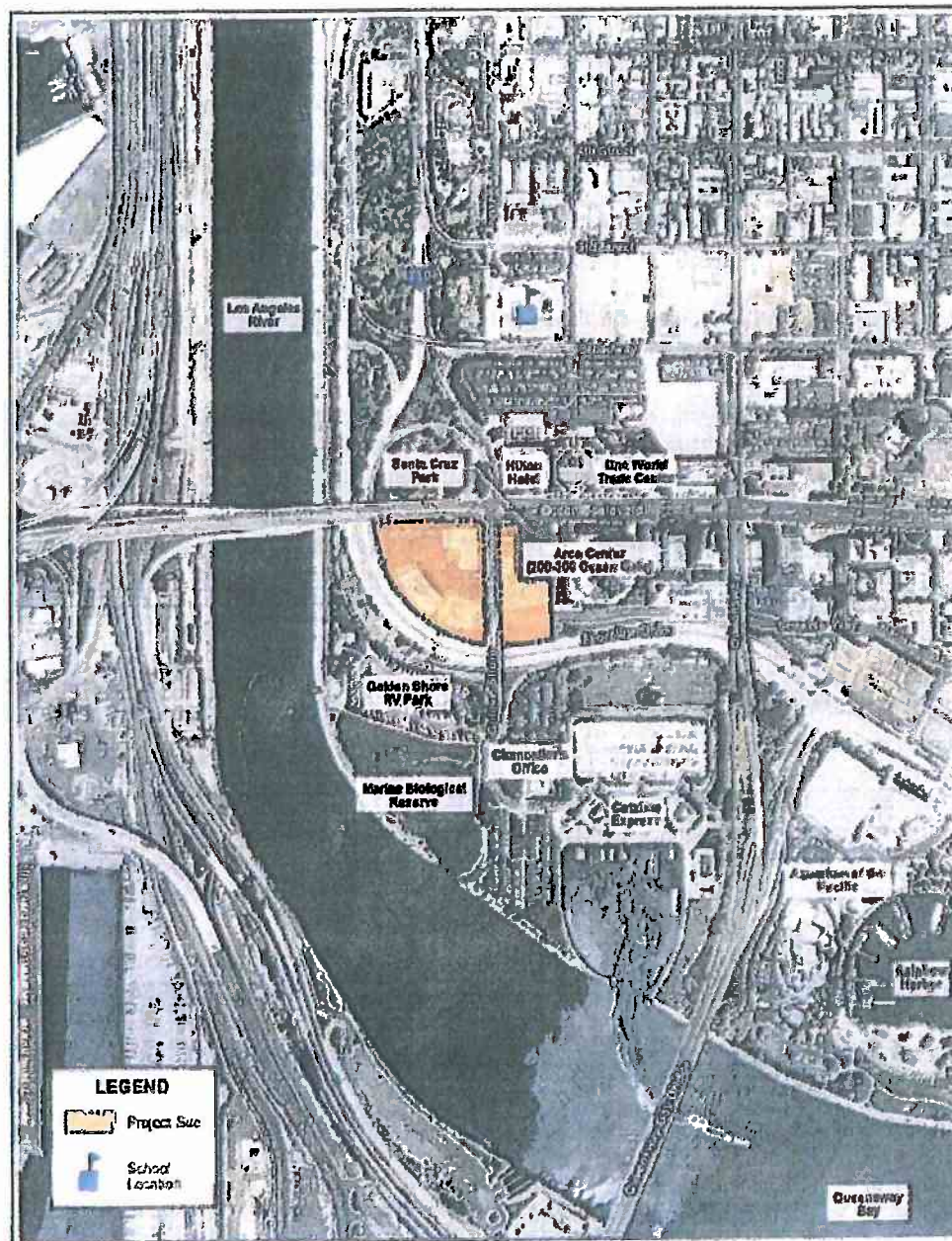
- Building Guidelines present the overall direction related to the vertical design elements of the buildings, site works and parking, both general and specific design controls, design features, and architectural details that are intended to set the standard for development.
- Open Space Guidelines describe the intent of the open space design and provide criteria for plant material, paving, lighting, and other features that define the public open space.

Processing and Administration address the application of the guidelines and the review procedure to be followed by the developers of any parcel.

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 2

SITE CONTEXT MAP



GOLDEN SHORE DEVELOPMENT AREA

SITE CONTEXT

The Golden Shore Development Area is a planned 5.87 acre mixed-use development located within downtown Long Beach. When fully developed, the Golden Shore Development Area will provide opportunities for commercial office, housing, lodging, shopping, dining and recreation, all within convenient walking distance to major downtown attractions. The site's prominent location near the City's waterfront will guarantee a lively and animated atmosphere for residents, tenants and visitors alike. West Ocean Boulevard, Seaside Way, and Shoreline Drive, bound the site which is bisected by Golden Shore Street. Ocean Boulevard is the principal downtown address. Figure 1 illustrates the project general vicinity and Figure 2 the site context within the downtown area.

The site, which has been designated sub area 1, is part of the Downtown Shoreline Planned Development District (PD-6). The Downtown Shoreline Planned Development District is an approximately 450 acre urban area containing both public and private property, with some existing major land uses, but with some undeveloped and underdeveloped property. As part of the overall planned development district the Golden Shore Development Area must adhere to the six overriding standards established for all developments. The standards are as follows.

- Provide a mixture of public and private land use types.
- Incorporate significant public access through and around uses, whether public or private, and to coastal resources.
- Emphasize uses of a recreational or recreational access nature.
- Initiate strong land use interactions and access connections with the downtown.
- Design public spaces in an urban park-like setting with a variety of strolling, bicycling, and active / passive recreational areas, public art, water features and abundant landscaping.
- Construct a development of high quality.

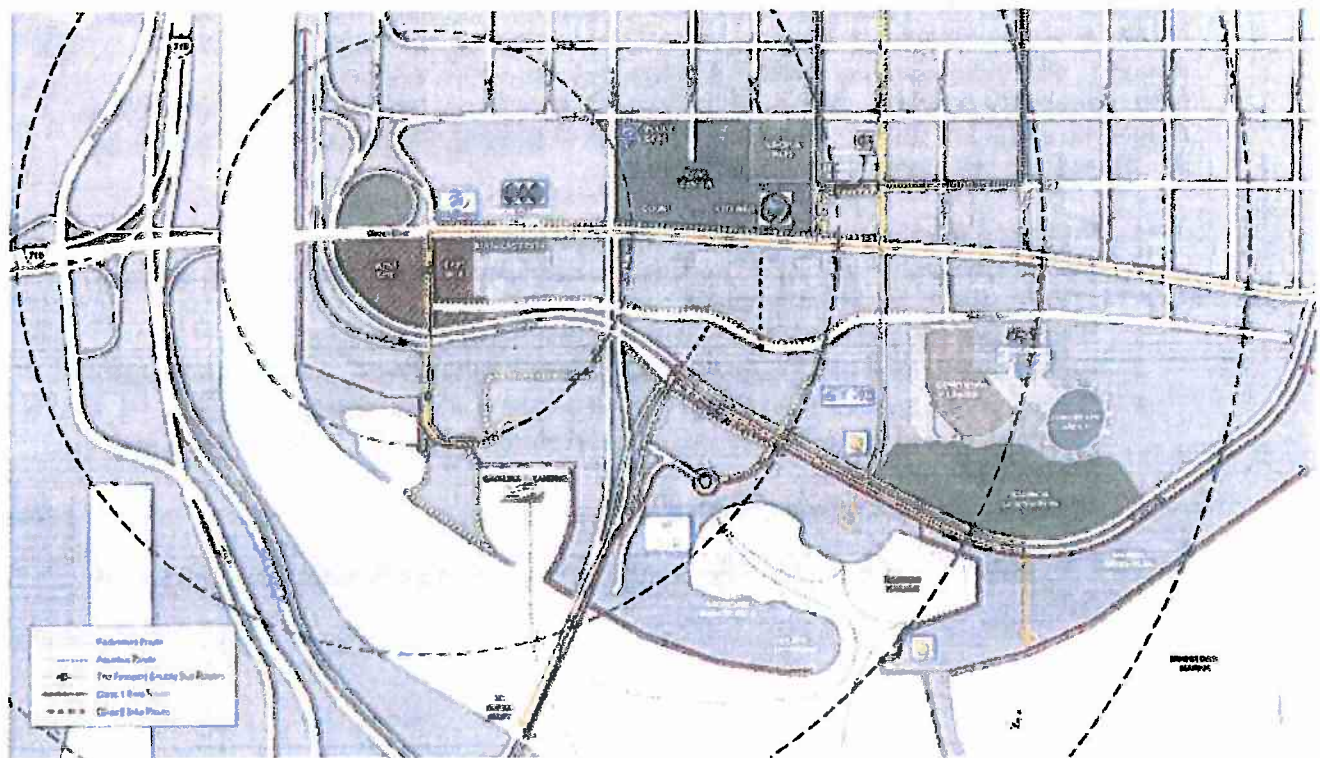
Figure 3 illustrates the site connectivity in relation to public transit, pedestrian ways, and bicycle paths.

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 3

SITE CONNECTIVITY MAP

NOTE: Concentric circles at .25 mile intervals



GOLDEN SHORE DEVELOPMENT AREA

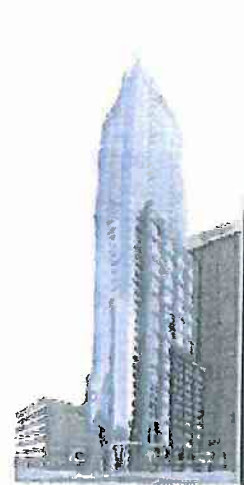
MASTER SITE PLAN

The Golden Shore Development Area site has always figured prominently in Long Beach waterfront history. Once part of the Long Beach seaside, it evolved from a recreation area with seasonal housing to a busy commercial zone at the western gateway to the City. The site is currently developed with commercial uses that contain density determined to be appropriate in the 1970's.

The project site currently contains a mixture of office uses and two retail banking operations. The three buildings that currently exist on site are anticipated to be demolished. Included among those structures are the Union Bank of California Building, City National Bank Building and the Molina Healthcare Building.

Surrounding the site are several distinct use districts, which influence the character and design of the Golden Shore Development Area. Further to the east of the site is the twin tower Arco Towers, to the north a Hilton Hotel and World Trade Center are located and to the south is the California State University Headquarters, Catalina Landing and recreational facilities. To the east is the Federal Building, City Hall, Main Branch Library along with a large corporate business district. To the west across the river channel is the Port of Long Beach. (See Figure 2 – Site Context Map)

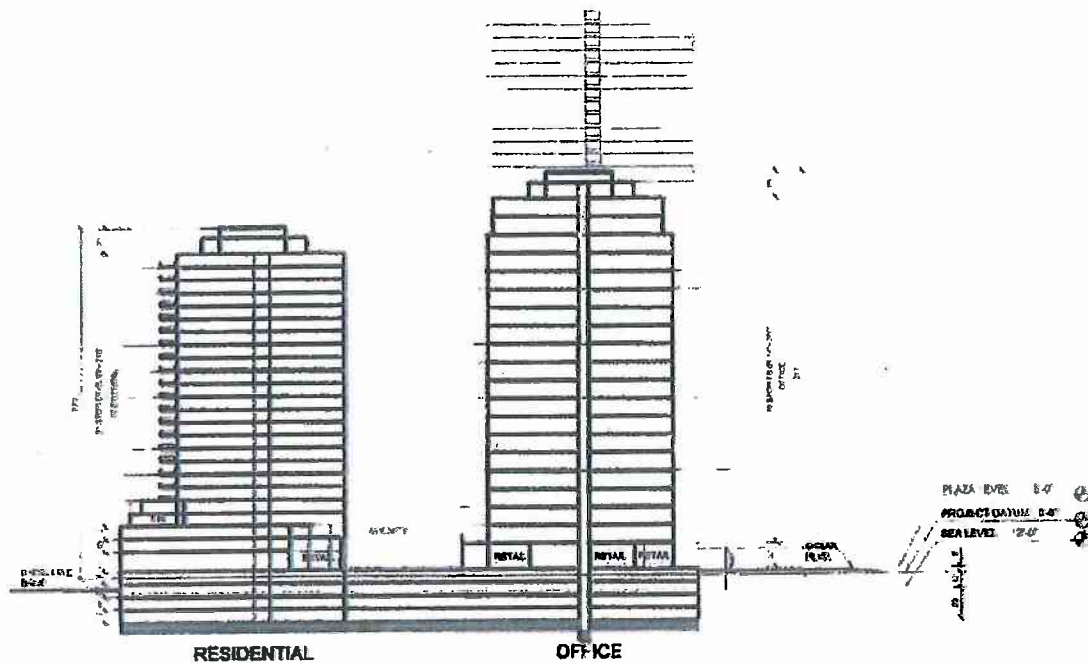
Because of its size, the site itself can be thought of as being a somewhat self contained high density development area adjacent to other high rise structures immediately to the east. Along West Ocean Boulevard, the project's east end is high to mid-scale, in keeping with the heights and architectural character of existing buildings and respecting the massing of the adjacent structures. Since there is no development on the west except for Port activities, there is a need for the Golden Shore Development Area to be iconic in nature making a statement as the western gateway to the City of Long Beach.



Vehicular circulation and access have been designed to minimize impact on downtown streets and to create the best possible environment for pedestrians. The predominantly pedestrian character of the site is preserved by not locating major parking entrances on West Ocean Boulevard. Self-parking entrances are located on Seaside Way and on Golden Shore. Bicycle paths connecting to the downtown and shoreline recreation areas will be integrated into the site and provisions will be made to maximize use of the current downtown transit systems provided by the Long Beach Public Transit.

Given the topography of the site, multi-level parking garages will be primarily developed sub-grade along the north and east sides, and open to the air along the south and west sides. Cars parked in the north section of garages should not be visible from street level as they are below grade relative to the view corridors along West Ocean Boulevard. Major services are accessed from the lower level at the southern end of the property.

GOLDEN SHORE DEVELOPMENT AREA



The plan is organized around special pedestrian-oriented places and open areas, each with a distinct identity. These walks and courts define the character of the perimeter and access, providing continuous public pedestrian access throughout the project. Connectivity to all interior spaces, adjoining walks and trails, and public transit should be enhanced and encouraged throughout the design.

As prescribed by PD-6 the Golden Shore Development Area will be a mixed-use development of residential, office, hotel, retail and ancillary supportive uses. Figure 4, Pages 13 - 16 illustrate the general site layout for each option. The pattern of land use has been greatly influenced by the current street grid and maintaining visual and vehicular/pedestrian access through the site, optimizing the potential for incremental development of the Golden Shore Development Area.

MULTI-STORY OFFICE TOWER
W/ EMBEDDED RETAIL

PLAZA
W/ BELOW GRADE PARKING

MULTI-STORY MIXED-USE TOWER
OFFICE, CONDOS AND HOTEL
ABOVE PODIUM

KEY NOTES

GENERAL:

THE SHAPES, PLACEMENT AND FOOTPRINTS
ARE FOR ILLUSTRATION PURPOSES ONLY

- 1 PROVIDE RACKS FOR BICYCLE PARKING IN
MAJOR OPEN SPACES AND PARKING AREAS
- 2 PROVIDE NORTH AND SOUTH BICYCLE LANES ON
GOLDEN SHORE AVENUE AND EAST AND WEST
BICYCLE LANES ON SEASIDE WAY.
- 3 PROVIDE A MINIMUM OF TEN (10) FEET WIDE
SIDEWALK ALONG EACH SIDE OF GOLDEN SHORE
AVENUE AND ALONG THE NORTH SIDE OF
SEASIDE WAY.
- 4 PROVIDE A MINIMUM TWENTY (20) FEET WIDE
PUBLIC WALKWAY IN AN EAST-WEST DIRECTION
AND CONNECT TO THE PLAZA LEVEL OF THE
BUILDINGS IN SUBAREA 1.
- 5 PROVIDE A PUBLIC STARWAY OR ELEVATOR
FROM PLAZA LEVEL TO SEASIDE WAY.
- 6 PROVIDE A MINIMUM OF FORTY (40) FEET
OVERHEAD CLEARANCE ABOVE STREET LEVEL
AT SEASIDE WAY. SIDE ELEMENTS TO REMAIN
OPEN TO AIR AND LIGHT.
- 7 PROVIDE A MINIMUM OF EIGHTY (80) FEET
HORIZONTAL DISTANCES BETWEEN BUILDINGS
THAT ARE OVER SEVENTY FIVE (75) FEET TALL.

MULTI-STORY RESIDENTIAL
TOWER ABOVE PODIUM

PODIUM
W/ EMBEDDED RETAIL

PODIUM
W/ EMBEDDED
RETAIL AT PLAZA AND
EMBEDDED TOWNHOUSES

AMENITY AREA

MULTI-STORY RESIDENTIAL
TOWER ABOVE PODIUM

TOWNHOUSES ABOVE PODIUM

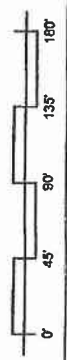
TOWNHOUSES
ON PODIUM

SEASIDE WAY

GOLDEN SHORE

OCEAN BLVD.

SHORELINE DR.



GOLDEN SHORE MASTER PLAN

LONG BEACH, CALIFORNIA

URS CORPORATION

10 AUG '11

GOLDEN SHORE DEVELOPMENT AREA

19-Story Office Tower
(Embedded Retail)

Plaza
6-Stories Below Grade
Parking

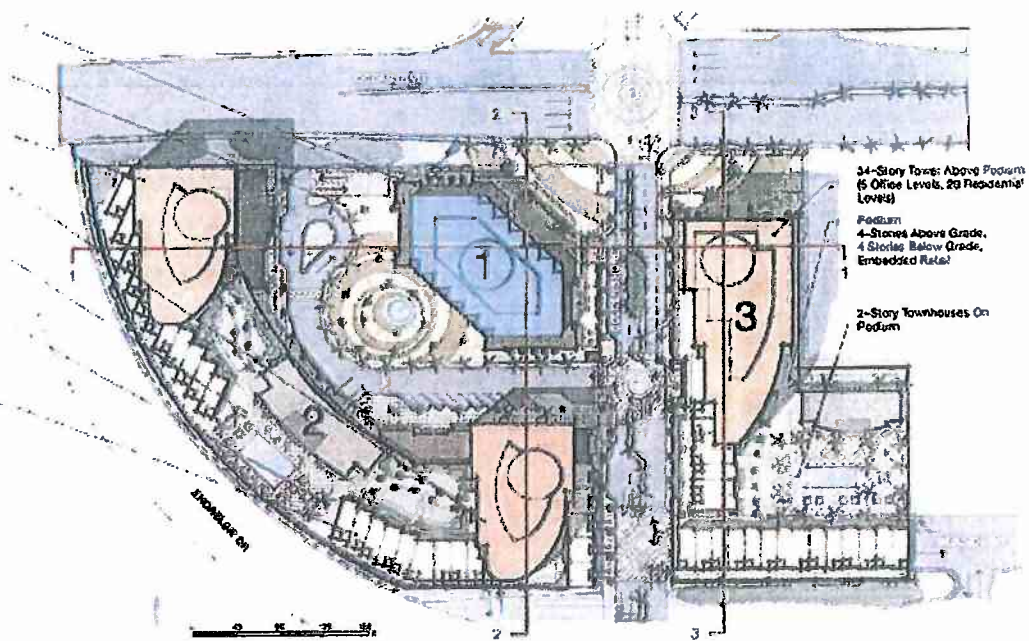
40-Story Residential
Tower Above Podium

32-Story Residential
Tower Above Podium

Ampley Area

Podium:
3-Stories Above Grade
4-Stories Below Grade
Embedded Retail At
Plaza, Embedded
Townhouse

2-Story Townhouses
On Podium



34-Story Tower Above Podium
(6 Office Levels, 28 Residential
Levels)

Podium:
4-Stories Above Grade,
4-Stories Below Grade,
Embedded Retail

2-Story Townhouses On
Podium

Option A

	West Site		East Site	
	Parcel 1	Parcel 2	Parcel 3	Total
No. of Dwelling Units		918	452	1,370
No. of Bedrooms		1,515	745	2,260
Residential GFA (SF)		1,004,471	494,235	1,498,706
Office Rentable Area (SF)	260,000		80,000	340,000
Hotel Guestrooms				0
Banquet Area (SF)				0
Retail Area (SF)	6,000	14,000	8,000	28,000

Parking Spaces Required	780	1,529	987	3,296
Parking Spaces Provided	740	1,575	1,040	3,355

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 4

SITE LAYOUT OPTIONS (continued)

19-Story Office Tower
Embedded Retail

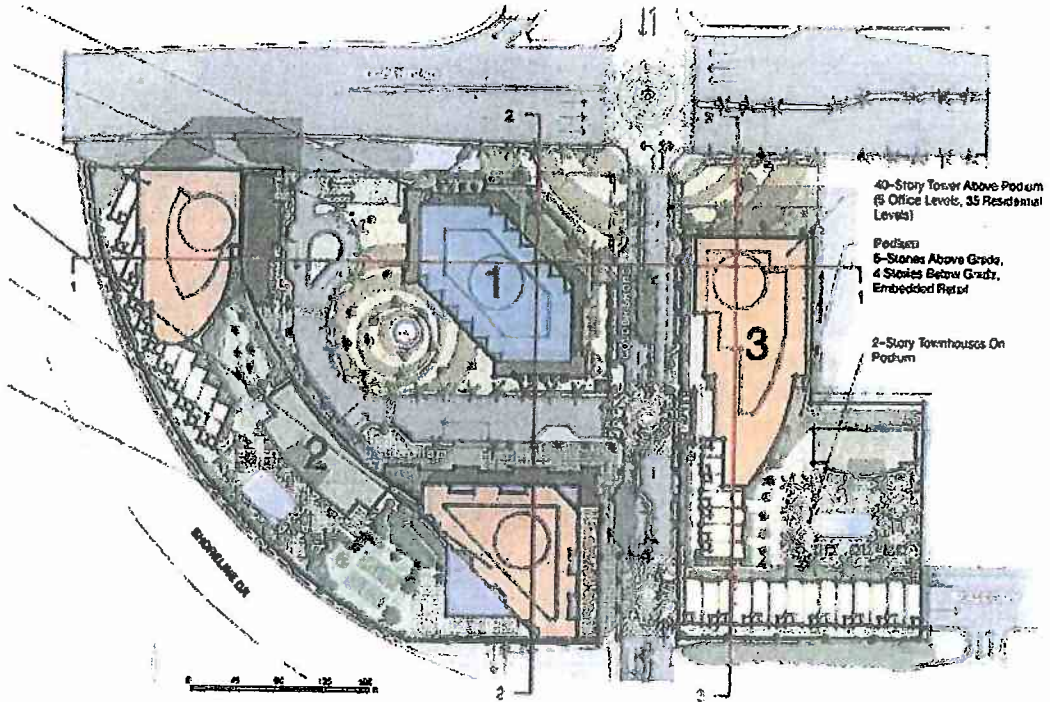
Piazza
4-Stories Below Grade
Parking

40-Story Residential
Tower Above Podium

27-Story Mixed Use
Tower Above Podium
(15 Hotel Levels, 12
Residential Levels)

Amphitheater Area

Podium
2-Stories Above Grade,
4 Stories Below Grade,
Embedded Retail At
Plaza, Embedded
Townhouses



40-Story Tower Above Podium
(5 Office Levels, 35 Residential
Levels)

Podium
5-Stories Above Grade,
4 Stories Below Grade,
Embedded Retail

2-Story Townhouses On
Podium

Option B1

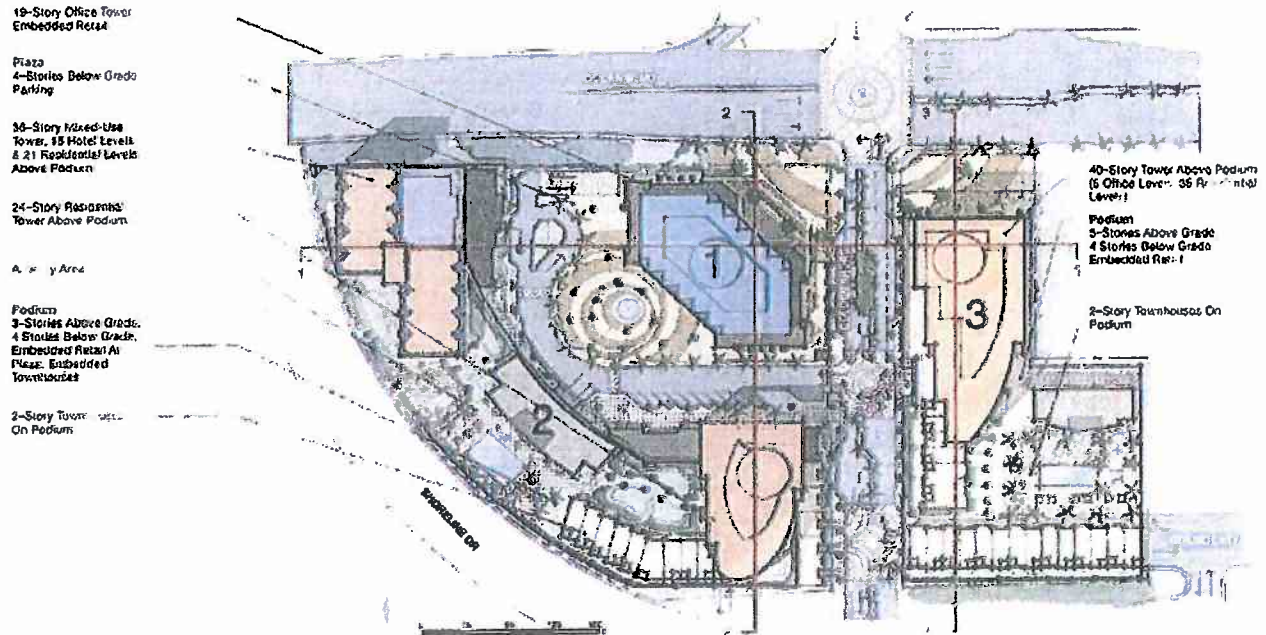
	West Site		East Site	Total
	Parcel 1	Parcel 2	Parcel 3	
No. of Dwelling Units		574	536	1,110
No. of Bedrooms		948	884	1,832
Residential GFA (SF)		628,353	586,353	1,214,706
Office Rentable Area (SF)	260,000		80,000	340,000
Hotel Guestrooms		400		400
Banquet Area (SF)		27,000		27,000
Retail Area (SF)	6,000	13,000	8,000	27,000

Parking Spaces Required	780	1,473	1,148	3,401
Parking Spaces Provided	740	1,525	1,165	3,430

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 4

SITE LAYOUT OPTIONS (continued)



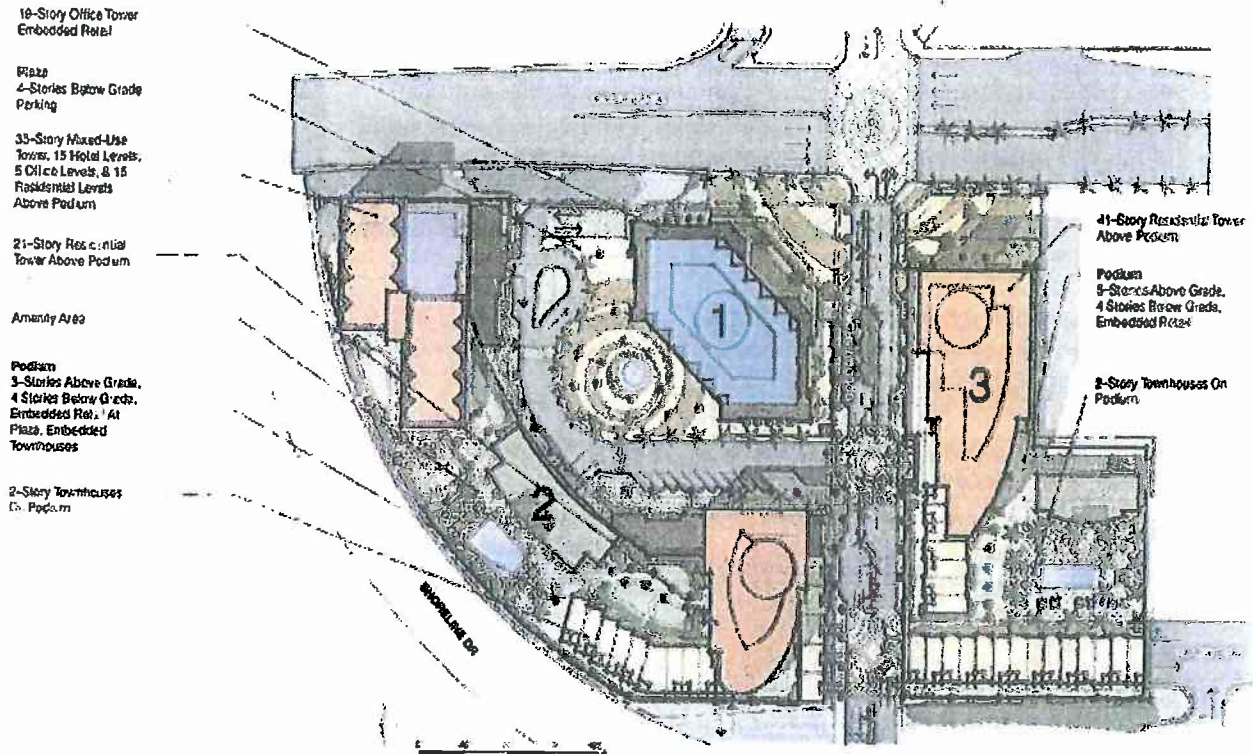
Option B2

	West Site		East Site	Total
	Parcel 1	Parcel 2	Parcel 3	
No. of Dwelling Units		574	536	1,110
No. of Bedrooms		948	884	1,832
Residential GFA (SF)		628,353	586,353	1,214,706
Office Rentable Area (SF)	260,000		80,000	340,000
Hotel Guestrooms		400		400
Banquet Area (SF)		27,000		27,000
Retail Area (SF)	6,000	13,000	8,000	27,000
Parking Spaces Required	780	1,473	1,148	3,401
Parking Spaces Provided	740	1,525	1,165	3,430

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 4

SITE LAYOUT OPTIONS (continued)



Option C

	West Site		East Site	Total
	Parcel 1	Parcel 2	Parcel 3	
No. of Dwelling Units		442	668	1,110
No. of Bedrooms		730	1,101	1,831
Residential GFA (SF)		483,882	730,471	1,214,353
Office Rentable Area (SF)	260,000	80,000		340,000
Hotel Guestrooms		400		400
Banquet Area (SF)		27,000		27,000
Retail Area (SF)	6,000	13,000	8,000	27,000

Parking Spaces Required	780	1,502	1,093	3,375
Parking Spaces Provided	740	1,525	1,165	3,430

GOLDEN SHORE DEVELOPMENT AREA

Streets, Parks and Plazas

The greatest asset for residents and visitors of the Golden Shore Development Area will be an open space pedestrian friendly system among the high rise structures where people can walk to shops, restaurants and nearby parks and live where a high standard of contemporary architecture and public realm design work together to create a unique district for Golden Shore. Streets and access ways have been designed with walkability and the pedestrian in mind. Several interior lanes maintain the sites small block like pattern while allowing pedestrian movement to all parts of the development. Numerous small public plazas are located within the interior creating areas that encourage congregation and recreation.



Pedestrian access from Golden Shore is envisioned to be a mid block crossing with vehicular access to the garage located at the southeast corner of Parcel 1 (See Figure 4 – Site Layout Options).

The Master Plan is intended to make a strong statement at the western gateway into Long Beach and establish West Ocean Boulevard as the principal street in downtown Long Beach. The intersection of Golden Shore and West Ocean Boulevard will have enhanced



pedestrian textures and treatment highlighting the importance of the intersection and introducing Santa Cruz Park on the eastern edge of the Golden Shore Development extending from Golden Shore to Cedar Avenue. Further to the east is the beginning of the palm-lined boulevard and Victory Park with rows of stately palm trees closest to the street. Specimen trees will be placed near buildings and will fill in the irregular areas along the edges. The design will be consistent with the Downtown Community Plan and subject to City review and approval at each stage.

Residential Development

The residential component on the site will be a mix of different buildings of varying mass and height. The residential units are located within one to two residential towers, with both having the potential of being a vertical mixed use building combining office and residential, and/or hotel, office, and residential. All residential units will be accessed from Golden Shore.

GOLDEN SHORE DEVELOPMENT AREA

An open plaza would be a prominent feature of the development west of Golden Shore and forms a large central open space between the three towers. Pedestrian access to the lobbies of each residential tower and the clubhouse would be available from the plaza, street level, and from elevators in the parking garage.

The residential entrance plazas are envisioned to be different from the public plaza entrances. The design intent for the residential entry plazas is to create a definitive sense of arrival for residents and visitors.

Parking for tenants is accessed from Golden Shore. Service, loading and unloading zones will be sufficiently hidden from view using landscape walls and shrubs. A series of "Private Courtyards" featuring resort quality recreational amenities such as swimming pools, spas and fountains these courtyards will be improved with richly detailed landscape and finish materials will be provided throughout the residential development.

Hotel/Retail Development

Master Planned for Parcel 2 and located either in the northwest or southeast corner is the mixed use hotel/retail/residential component which further enlivens and activates the site and will bring many activities to the plaza/street level.

Pedestrian walkability within the site and connectivity to surrounding trails, nearby bus stops, and Shoreline Drive is paramount.

Parking is accessed from Golden Shore Street and will be open air relative to the south property line as described in the previous section.

Pedestrian Circulation

Pedestrian access to the lobbies of each residential tower and the amenity space would be available from the plaza with access from the street level provided via sidewalks and open staircases along both sides of the office tower leading from West Ocean Boulevard and Golden Shore Street respectively. Pedestrian access to the office tower would be at street level along West Ocean Boulevard and Golden Shore Street. A recessed drive-through would be provided along Golden Shore Street to allow pedestrian pick-up and drop-off near the street entrance to the office tower. (See Figure 4 -- Site Layout Options).

Walkways for pedestrians, at least ten feet (10') wide, shall be provided along each side of Golden Shore Avenue between Ocean Boulevard and the bridge over Shoreline Drive. The sidewalks on the bridge over Shoreline Drive shall be widened to the extent feasible. A walkway for pedestrians, at least ten feet (10') wide, shall be provided along the north side of Seaside Way, east of the intersection with Golden Shore Avenue. An east-west public walkway, at least twenty feet (20') in width, shall be provided to connect the plaza level of the buildings in Subarea 1 to the Golden Shore Avenue sidewalk. This east-west public walkway shall be located south of the main tower and shall be uncovered and designed to maximize public views to the shoreline areas situated to the east, south and west subarea. Public stairways and elevators shall be provided to connect the east-west public walkway to Seaside Way.

GOLDEN SHORE DEVELOPMENT AREA

Urban Design Philosophy

While most great urban areas evolve over time, The Golden Shore Development Area has the ability to create a unique place from its inception. If "urban design" is defined as the space between the architecture, then the successful articulation of the landscape and hardscape elements, the streetscape and other aspects of the public realm is essential to creating meaningful experiences.

The public realm is the framework around which the community develops and it should be well connected, legible, comfortable, safe and attractive. It should be made up of appropriately proportioned public streets, parks and accessible open spaces. Buildings and landscape help define the edge of the public realm and should create amenable, safe and inviting spaces for residents and visitors alike. One key ingredient to successful urban design is the articulation of spaces and forms. Another is the manner in which people experience them. The use of textures, accents, art, water features, lighting, signage and street furniture are key in creating pedestrian friendly neighborhoods and a rich urban landscape. Figure 5 illustrates precedent images for public realm and open space.

Graphics and signage systems, ground level base lighting, and architectural and landscape materials which are tangible and can be touched and experienced up close create a level of detail and intimacy of craft which animate the ground plane and pedestrian environment.

Public plazas add visual elegance and interest to the streetscape and improve the pedestrian experience. They also serve as gathering places and focal points for the architecture and streets around them. Finally, they add a visual amenity when viewed from upper stories of surrounding residential towers.

Creating interesting urban streets with higher buildings and mixed uses, coupled with more intimately scaled residential streets can be an effective way of creating unique environments within the larger neighborhood. Pedestrians are naturally drawn to places that accommodate their mood – whether it is a high energy social gathering or a calming walk through the park or residential lane.

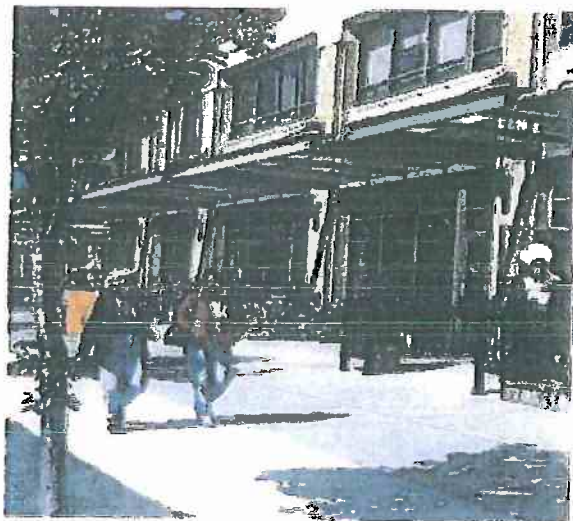
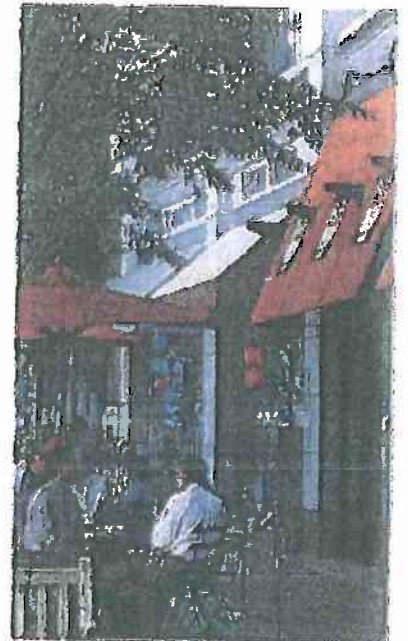
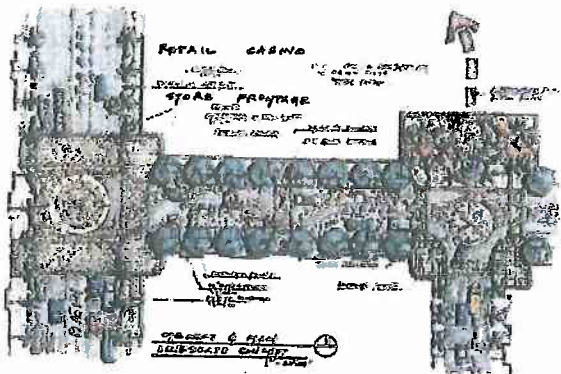
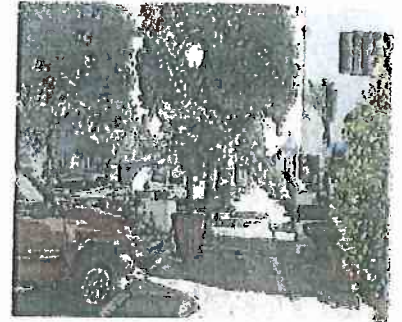
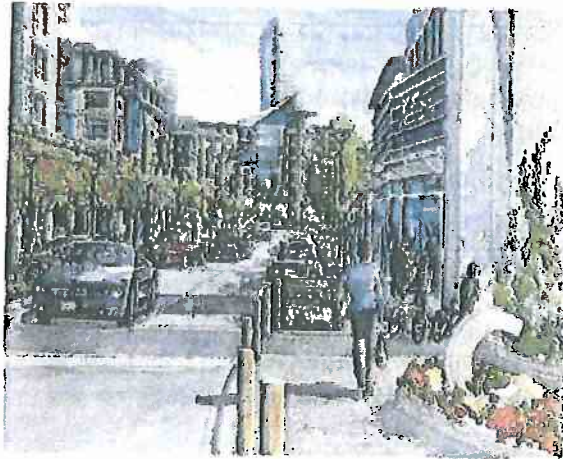
Parking

Depending on which option is chosen, the project proposes parking spaces in two to four levels of parking structure. The parking spaces and driving isles are to be designed in full compliance with current City of Long Beach engineering and public works standards in effect at the time of submission.

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 5

PUBLIC REALM AND OPEN SPACE



GOLDEN SHORE DEVELOPMENT AREA

Infrastructure

Grading

The plaza is at grade at the intersection of West Ocean Boulevard and Golden Shore Street at the northeast corner of Parcel 1. The slope of West Ocean Boulevard increases as you head westward, as it rises up to meet the Gerald Desmond Bridge and eventually the Vincent Thomas Bridge. The average elevation at Shoreline Drive is approximately +3 feet. Taking advantage of the difference in grade between Shoreline Drive, West Ocean Boulevard, and Golden Shore Street, parking and service access are tucked into the site, while allowing for natural ventilation along the south and west faces.

Utilities

For the most part, utility service to the site is able to use major utility lines within West Ocean Boulevard and Golden Shore Street. In the future, new utility lines will be routed to Golden Shore Street connecting to existing lines in the area. Connections are brought in to the site within utility easements at service areas, from which building connections are made.

Transformers, utility box locations, and all at grade service 'point of connection(s)' should be screened from view. Natural screening achieved by landscaping is always preferred. See Landscape Section for planting suggestions and lists.

Vehicular Circulation

Vehicular access is designed to minimize impact on downtown traffic patterns and to create an environment that is pedestrian-friendly. Overall, the site has excellent access from Golden Shore Street and West Ocean Boulevard (signalized intersection), and Shoreline Drive. Golden Shore Street and Shoreline Drive offer areas for drop-off and short term parking.

Vehicular driveway access is prohibited along frontages which require pedestrian oriented uses. Vehicular access shall not disrupt pedestrian circulation.

GOLDEN SHORE DEVELOPMENT AREA

ARCHITECTURAL AND SITE DESIGN GUIDELINES

This section provides general guidelines for the vertical plane, or the architectural character of the buildings – from a both stylistic view point and additional guidance with respect to built form. All buildings are required to meet those standards which include: coverage, setbacks, building orientation, leisure space, parking, solid waste and design.

Building Design

Create a sophisticated and upscale environment through use of a consistent rhythm, proportion and materials.

Tower Building Design

High Rise Towers need consideration in so far as the relationship of high rise residential buildings to other buildings and open spaces at Golden Shore. The towers should be well-composed and well-articulated to create a skyline impression and the statement of a contemporary urban neighborhood.

Towers will be constructed as part of a development that includes office, retail, and residential/hotel/condos. The tower(s) should be designed and located on the development site(s) so that views can be maximized. Each developer should attempt to anticipate the location of surrounding towers and site the tower buildings accordingly. The minimum distance between two highrise buildings (more than 75' tall) should be 80 feet to allow for adequate light and views.

Towers should minimize shadow impacts on the Golden shore site, Golden Shore Street, and the development site to the east. Site Plan Review applications will need to prepare a shadow impact study. Articulation of the tower zone should be optimized where appropriate. Articulation can be achieved with the shape of the building, balcony recesses or projections, façade forms and glazing.

Entrances should be enhanced through the use of special design elements such as paving, canopies, special lighting and landscaping features. Balconies should be designed as architecturally integrated components of the building.

Materials

The combination of materials on towers should be as clean as possible to create a modern architectural style. Towers will be glass buildings constructed of a combination of window wall and curtain wall. Tower glass tints will vary from building to building and energy saving windows will be used (See Exhibit 1 – Green Building Development Standards). The use of glass with over 25% reflectivity is prohibited.

Balcony materials will be concrete with color concrete bands. Balcony railing materials will be a combination of structural clear glass or pony wall. (See Figure 6 for building precedent images).

GOLDEN SHORE DEVELOPMENT AREA

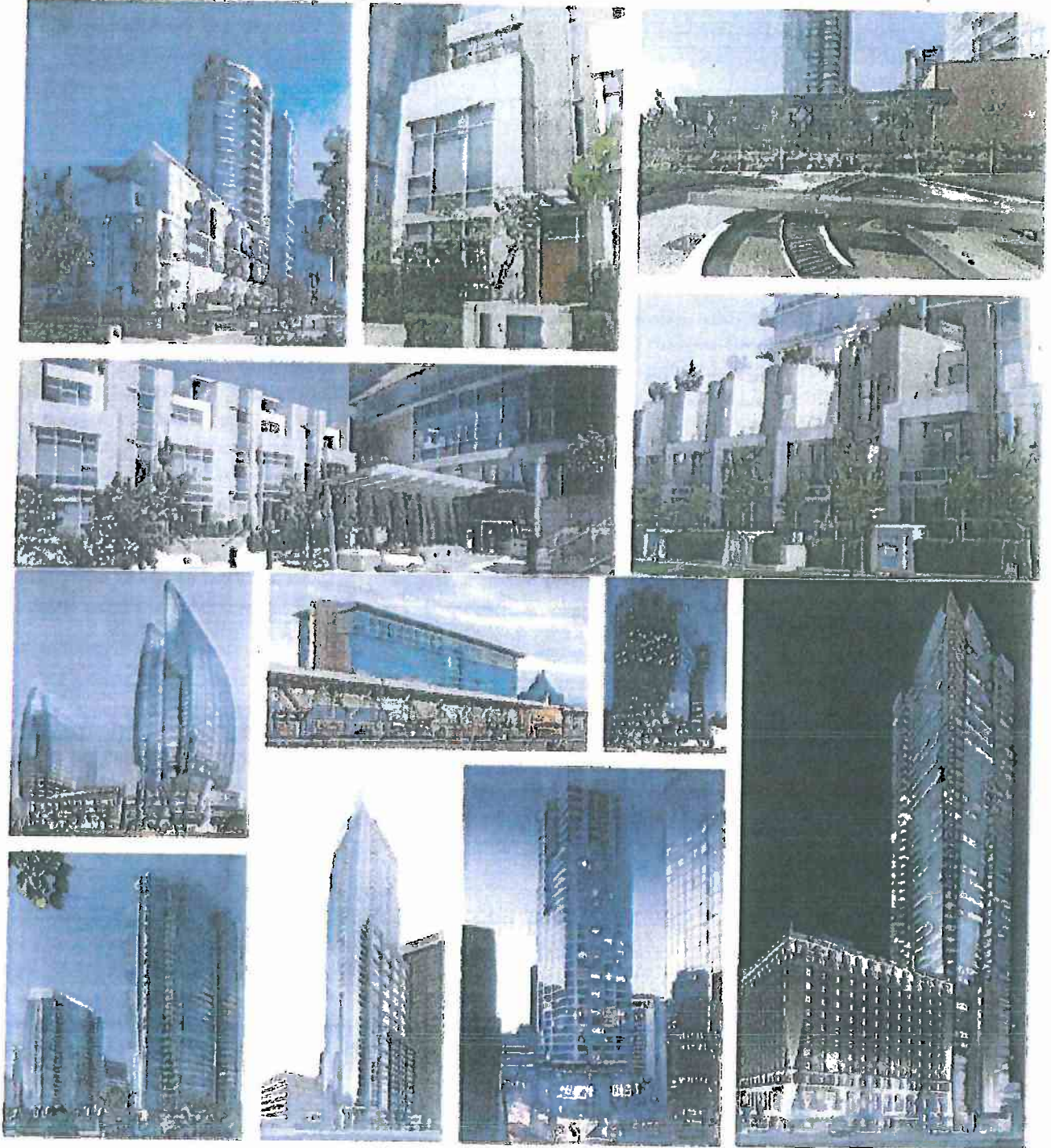
Seaside Way

Seaside Way shall be preserved for automobile, bicycle and pedestrian circulation. Any building permitted to encroach over Seaside Way shall provide a minimum of forty feet (40') overhead clearance above street level, and shall be designed to remain open to air and light. Where buildings are permitted over Seaside Way, the southern side at the lower level adjacent to Seaside Way shall remain open to air and light (i.e., structural development at the Seaside Way level shall be limited to the minimum necessary to provide building support). To the extent feasible to allow for automobile, bicycle, and pedestrian circulation, Seaside Way shall be improved with landscaping, planters, or other features designed to enhance the visual appearance along the street.

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 6

BUILDING PRECEDENT IMAGES



GOLDEN SHORE DEVELOPMENT AREA

A series of unique retail facades that contribute to continuous built fabric with a modern interpretation are proposed. The development of strong, high quality store presentations will occur within the 60' grid or variation thereof that provides the frame for the retail space. Storefront displays must be visually exciting and inviting to pedestrian traffic to stimulate consumer interest in the recreation of shopping. Tenants will be required to utilize their storefronts to the maximum potential in order to project their own unique image.

Entrance Doors

Entrance doors and facade materials and colors will be provided in the base building construction. Entrance doors must match facade materials and construction type.

Retail Design

An appropriate retail mix is important to the long term success of the urban environment. The type and articulation of retail stores and physical spaces should be consistent with the rhythm set by the building's vertical datum line and the variation of space widths. The retail spaces themselves will be contained within the footprint of the main structures, but 'spill out' for eating areas with awnings and umbrellas that allow them to become a part of the public plazas. Graphics and signage systems, ground level base lighting, and architectural and landscape materials which are tangible and can be touched and experienced up close create a level of detail and intimacy of craft which animate the ground plane and pedestrian environment.

Storefront displays must be visually exciting and inviting to pedestrian traffic to stimulate consumer interest in the recreation of shopping. Tenants will be required to utilize their storefronts to the maximum potential in order to project their own unique image.

Canopies

Retail canopies would be located at the 10' to 14' elevation with the highest articulation occurring at corners. They can serve as the armature for retail lighting and signage and to add color to the buildings. A series of unique retail facades that contribute to continuous built fabric that exhibit a modern interpretation of traditional main streets are proposed.

Materials

A variety of texture (polished, honed, bush hammered), color and dimension is possible; however, lighter colors are recommended. An aluminum storefront glazing system will be utilized. Clear, antireflective glass is proposed for retail windows with low e-values for the south-facing storefronts. Stores will have either seamless glass or mullions (colors could be black, silver, or champagne). Frames will be an aluminum commercial window system (black or clear in color). Canopy material requirements are discussed in a later section of these guidelines.

GOLDEN SHORE DEVELOPMENT AREA

Signage

A comprehensive Master Sign Program will be developed in order to provide a cohesive design vocabulary while still allowing for the individual expression and/or branding of each tenant.

Parking Entries

Parking entries shall be integrated into building design with care given to maintaining adequate line of sight for pedestrian safety and shall not cause long queue lines on public streets nor interfere with bicycle travel. Parking entries shall be clearly signed and designated for public, private, residential or retail uses.

Parking Interiors

Interior walls and ceilings of parking structures shall be painted in light colors, preferably white, and well-lit to improve visibility and provide a sense of security.

Parking Lighting

For development areas with open parking structures, parking entry and garage lighting should be designed to eliminate light spillage from the structure through either the selection of fixtures and/or the use of other light control devices, such as shields, baffles and louvers. Rooftop lighting shall be pointed inward and downward to prevent light pollution and glare on surrounding properties.

Parking Screening

Above ground structured parking should be screened from the street (southwest quadrant). The use of 'greenwall' type landscape screening is highly encouraged.

Ramps, cars, and sources of artificial lighting in parking structures should not be visible from public streets and sidewalks at ground level. Ramp openings at parking entrances are not required to be screened.

Open Storage

Open storage shall be prohibited. Merchandise is not permitted to be displayed outdoors, unless specifically granted through Site Plan Review.

GOLDEN SHORE DEVELOPMENT AREA

Loading and Delivery Areas

Loading zones or docks shall be located in service areas off the street and concealed from public view. Service bays are to be located within the building or parking structure.

Loading spaces should have a solid roof covering to avoid noise and visual impacts from above. Negative impacts should be avoided through appropriate height, lighting, painting and finishes and screening.

If exterior service bays are necessary, locations visible to residences or commercial businesses should be avoided. Permanent visual screening for exterior service bays must be provided.

All maneuvering of service vehicles should be within property boundaries wherever possible.

Private Recreation Areas

Golden Shore will be a vibrant, urban neighborhood, rich with amenities, at densities higher than typical suburban areas, in keeping with the livelier, intense urban character. The site will offer recreational-leisure amenities which may include on-site open space, balconies and terraces, pool areas, indoor exercise and lounging facilities.

The amount of private recreation space provided will meet or exceed standards identified by the City of Long Beach. The type of facilities provided will be driven by the residential product array.

Crime Prevention through Environmental Design (CPTED)

CPTED is design that eliminates or reduces criminal behavior and encourages people to "keep an eye out" for each other. CPTED strategies are guidelines which, when properly applied, can reduce the fear and incidence of crime and improve the quality of life. There are four overlapping CPTED strategies that will be employed to create a safe, comfortable neighborhood. These are:

- Natural Surveillance
- Territorial Reinforcement
- Natural Access Control
- Target Hardening

Residential privacy and security area especially important and additional focus will be placed on achieving this. Dwelling unit placement, orientation and screening should be used to enhance privacy. Street level units should ensure privacy through the use of setbacks, level changes, landscaping, fences and gates.

The principle of "eyes on the street" should be implemented to ensure that many residences have visual access to the street. This is accomplished by locating front doors and windows to face the street to promote casual supervision of the street by residents.

GOLDEN SHORE DEVELOPMENT AREA

(See Exhibit 2 for CPTED design requirements).

Trash Collection and Design Criteria

Adequate trash receptacles shall be provided to accommodate all refuse generated on site. Recycling material containers must also be accommodated. Locate the solid waste (wet and dry) storage location behind solid walls or gates and/or landscaping.

All trash areas shall have a roof canopy and shall conform to the development standards contained in LBMC Sections 18.95 and 21.45. Design storage enclosures and containers to block all public view of waste containers and materials. Enclosures shall be designed to be compatible in color, material, and architectural treatment and detail with the building(s) it serves.

Locate waste storage areas within buildings and provide adequate overhead clearance to safely load containers. In cases where collection must be accomplished in a city street, provide a "no parking" area at curbside for the collection vehicle to utilize as a temporary parking spot for the express purpose of servicing the containers at trash collection times.

Building Utilities

Confirm electrical and water utility locations including transformers, backflow preventers, meters, etc, at an early stage of design process in order to minimize its visual impact, especially with reference to adjacent properties. Utility location and screening shall be reviewed and approved prior to site plan approval.

Air conditioning cooling towers are to be located within the building or concealed in the roof space. Air conditioning units cannot be installed in windows. Through wall air conditioning is prohibited.

Use

Mixed-use development of residential, retail, office, hotel and complementary uses is permitted. See tables in the Master Site Plan section for an analysis and summary of proposed uses.

Minimum Distance between Buildings

The minimum distance between buildings or portions of buildings shall follow the requirements and regulations of building codes. In addition, buildings over 12 stories in height shall be separated a minimum of 80 feet based upon shade and shadow studies.

Landscaped streets and graceful vehicular drop-offs are to be incorporated into the building design themes. Grade changes are seen as opportunities to enhance the architectural variety of the north-south streets, especially at Golden Shore Street and Shoreline Drive.

The design of buildings fronting West Ocean Boulevard shall be more formal and have consistent vertical articulation. Buildings along Golden Shore Street and Shoreline Drive (excluding parking garages) can have more individual expressions consistent with the character of the area.

GOLDEN SHORE DEVELOPMENT AREA

Rooftop Design

Rooftops shall be considered as a design opportunity and shall be attractively treated if viewed from adjacent buildings.

Use

Rooftops may be used for gardens, dining areas, pools, and recreation. Rooftop parking is allowed if attractively treated for views from higher buildings. Provision for helicopter landing pads shall be made in accordance with local requirements.

Screening

Rooftop mechanical equipment, except solar collectors and rain gutters, shall be screened on all sides by screening not less than the height of the tallest equipment being screened. Such equipment shall also be screened from view from higher buildings in the zone to the satisfaction of the Site Plan Review Committee and the Director of the Development Services.

Materials

All rooftop mechanical equipment screening devices shall be of a material requiring a low degree of maintenance. Wood shall not be utilized. All screening devices shall be well integrated into the design of the building through such items as parapet walls continuous with the walls of the structure, architecture roof features, or equipment rooms. Louvered designs are acceptable if consistent with the building design style.

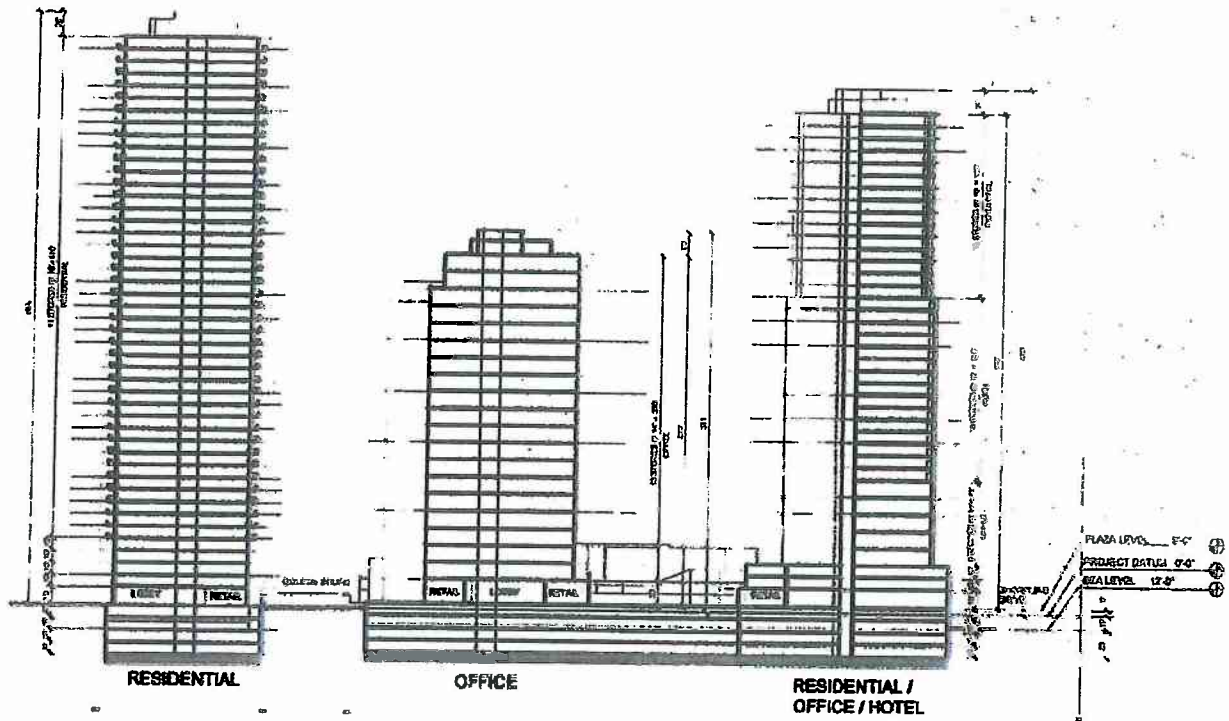
Exposed Parking

General

Where parking areas are visible from the street, screening, including landscaping, shall be required to screen the view of parked cars from the ground level.

Parking entrances should be associated with lobby entrances, drop-offs, or porte-cochères wherever possible to enhance security and visibility.

GOLDEN SHORE DEVELOPMENT AREA



Shoreline Drive

Where there is parking or no active use along Shoreline Drive. The facade treatment below the top of the podium shall be integrated to the extent possible with the architectural character of the buildings above.

West Ocean Boulevard

All parking structures should not exceed the height of the West Ocean Boulevard sidewalk grade. East of Golden Shore Street parking structures may exceed the West Ocean Boulevard sidewalk grade if screened from West Ocean Boulevard by a building or facade. North of Shoreline Drive a parking structure may be visible from West Ocean Boulevard provided that building façade or heavy landscaping obscures the structure.

GOLDEN SHORE DEVELOPMENT AREA

OPEN SPACE GUIDELINES

Open Space Areas

Landscape Overview

Landscaping for the Golden Shore Area will create a delightful setting through a subtle mix of plant materials, hardscape, water features, and night lighting. Long Beach enjoys a special climatic setting, which allows virtually an unlimited plant palette to be utilized within the framework of the theme for this special project within the Long Beach Community setting.

Project Perimeter Edges

The perimeter of the project will utilize rows of *Washingtonia robusta* palms lining driveways and street settings to blend the site with the downtown areas of Long Beach. (See Figure 4 - Site Layout Options). Accent flowering trees will be utilized to demarcate key accent areas at entries, softening of architectural transitions, and to accent pedestrian plazas and pedestrian use areas. Softly contoured turf will form the perimeter of the project to create a park like setting and blend Victory Park into the project itself. Low planters with flowering shrubs, and different textured plant materials will enhance the ground plane and create pedestrian interest through the use of color, contrast, fragrance, and texture. Taller plantings of shrubs and tall screening trees shall be used to visually soften retaining walls and screen parking structure walls from off site views. The use of 'greenwall' with hanging plants and vines is encouraged.

Project Internal Streetscape Areas

The internal streets of the project will be enjoyed by the residents and public alike, and will be designed to create a pedestrian friendly setting. Subtle changes in paving textures will define pedestrian use areas, while the use of large pots with small trees and colorful shrubs will introduce the softness of the landscape into the urban village street settings. Tall narrow trees such as *Tristania*, or *Hymenosporum* will soften and articulate architectural features of the buildings, with the occasional cluster or bosque of palms to enhance the pedestrian character of the setting. Rich colors and textures will enliven the walkway system and create rich pedestrian nodes for people to stop and enjoy the setting. Low planters will allow landscaping to be incorporated into the areas of the development,

which are built upon a structural podium deck, to create a seamless blend of landscape from the internal streetscapes and courtyard plazas.



Santa Cruz Park (Grand Linear Park)

Planting in Santa Cruz Park shall generally conform to the Victory Park Design Guidelines of the City of Long Beach and the Long Beach Municipal Code

Landscape and Sustainable Development Ordinance. (See Exhibit 3 - Species Evaluations).

GOLDEN SHORE DEVELOPMENT AREA

Planting

General

Plants shall be selected to optimize design objectives and satisfy concerns of coastal adaptability, water conservation, and site conditions as required by current ordinances. The use of drought sensitive design, heat island reducing planting, water efficient irrigation, and maintenance is highly encouraged utilizing the City's most recent design and planting guidelines. Landscape plans shall comply with the City's Landscape and Sustainable Development Ordinance.

All plant materials shall be nursery grown unless otherwise noted.

An interim landscaping plan shall be provided for the entire site (including the Santa Cruz Grand Linear and Santa Clara Park areas) prior to obtaining any building permits, to the satisfaction of the City.

Planting On-Grade

All plant pits shall be a minimum of 2 ½ times the size of rootball dimensions. All planting areas to have subdrainage as required.

Planting on Structure

Planting mix shall be relatively free draining and high in organic content. Large trees and palms will require a minimum container size of 5'x5'x5', drainage included. Large shrubs and small trees will require a minimum container size of 4'x4'x4', drainage included. Small shrubs, groundcover, and vines will require a minimum container depth of 24", drainage included.

Turf areas will require a minimum container depth of 18", drainage included.

Irrigation On Grade and On Structure

All plant areas shall be irrigated with an underground water efficient irrigation system with automatic controllers. Irrigation systems shall be designed to prevent over-spray onto hardscape and buildings and incorporate the use of bubblers and drip irrigation to conserve water.

A fertilizer injection method may be incorporated into the irrigation system if desired.

Coordination

Close coordination with structural, mechanical, and electrical requirements shall be necessary to ensure that all weight, waterproofing, drainage, and electrical requirements associated with on-structure landscape development are provided for.

GOLDEN SHORE DEVELOPMENT AREA

Planting Materials

Planting materials and design will comply with all current City standards and requirements. The use of drought tolerant and native materials is of highest importance. (See Exhibit 3 for list of approved planting materials).

Hardscape

Sidewalks

Sidewalks, where provided within the right-of-way, shall be standard City of Long Beach concrete sidewalks with concrete curbs, except as specifically permitted herein. Decorative scoring and finishing of concrete, permeable surfaces, as well as other techniques and effects with other materials may be utilized subject to City approval.

Paving

Special paving shall be used in each of the open spaces. Materials within each space shall be generally consistent in type, color, and quality; however, a great variety is permitted in the court. Materials may include bricks or precast unit pavers, turfblock, and stone. Efforts shall be made to incorporate permeable and finer materials into fields of more common materials. Minimize the use of high heat absorbent (heat sink) materials.

Lighting

Lighting shall vary with each open space, but shall be consistent in any one open space.

Wherever possible, lighting shall be of pedestrian scale, and a maximum of 20 feet above the walking surface.

The lighting system for public parks is subject to review and approval by the City of Long Beach. Palm trees in Victory Park shall have up-lights as required by the Victory Park Design Guidelines. Other than City standard street lighting may be provided for public parks if approved by the appropriate agencies.

Special features on buildings and within open space and landscape areas may be lighted.

Signage

A Master Sign Program shall be developed for directional, informational, building, and parking signage. The design of the system shall be submitted concurrent with the initial site plan approval for the first development in the project. Only directional signs are permitted for parking signage (e.g., "Parking Entrance").

GOLDEN SHORE DEVELOPMENT AREA

Seating

Permanent or movable seating shall be provided in Santa Cruz Park.

Furniture

Bollards, kiosks, railings, telephones, trash receptacles, plant pots, and other such elements shall contribute to the open space environment without dominating the view. The designs of these elements shall vary throughout, but shall follow an overall coordinated system.

Exhausts

If exhausts are located in open spaces, they shall be treated as design elements in the landscape. Screening or landscaping is required, and architectural or sculptural treatment is encouraged. Exhausts should not interfere with pedestrians.

Maintenance

The Owner or Owner's Association shall be responsible for the maintenance of all private open spaces and Santa Cruz Park.

Access for the Physically Disabled

All open spaces shall be accessible to the physically disabled in accordance with State and City requirements.

Pedestrian Plazas and Courtyards

The rich layout of the buildings on the site has created a variety of unique public and private use courtyard and plaza areas. The courtyards will be designed to create a rich composition to be enjoyed by the pedestrian in the space, and when viewed from above in the residential apartments. A careful composition of hardscape, trellage elements, art elements, water features, and landscape features will create a delightful sequence of spaces to be enjoyed by the guests and residents, oriented to capture views, and take advantage of the sunlight and shadows. Public use plazas and courtyards will feature outdoor furniture and open hardscape areas to create the possibility of outdoor dining, events, art shows, and gathering spaces, whereas the private courtyards and plazas will be oriented to pools and recreation uses, quiet gardens and small seating areas.

Garden and Courtyard Lighting Elements

Lighting will be an important component of the landscape setting to create drama, beauty, and provide a safe and comfortable environment to allow the project to be enjoyed during the day and at night by residents and guests. Lighting will be a blend of tree uplights and down lights, low pedestrian bollards, themed street light fixtures, and other lighting fixtures, which articulate the architecture and art pieces throughout the project.

GOLDEN SHORE DEVELOPMENT AREA

Sustainability

Green Building Development Standards

Environmental sustainability is an important objective at the Golden Shore Development Area. Pursuit of good Green Building practices will be utilized in aspects of site and building design consistent with the standards and guidelines established by the US Green Building Council (www.usgbc.org).

All development that meets or exceeds a threshold of 25,000 square feet of gross conditioned floor area shall fully comply with Golden Shore Development Area's Green Standards by obtaining Leadership in Energy and Environmental Design (LEED) – NC (New Construction) at the "Certified" level or higher prior to issuance of the Temporary or Final Certificate of Occupancy, whichever comes first.

Projects not registered with the GBCI (Green Building Certification Institute) may use a LEED equivalent alternative green building performance rating system to the satisfaction of the Director of Development Services.

The applicant shall pay for the cost of LEED certification or verification.

Projects committing to achieve at the LEED Silver level or higher qualify for expedited services.

Steps to minimize development impacts are described in detail in Exhibit 1.

PROCESSING AND ADMINISTRATION

Applicability

These Guidelines define the standards that meet the intent and quality established in the Downtown Shoreline Planned Development District (PD-6) and the Local Coastal Program (LCP). The Guidelines are intended to be in concert with all other regulatory documents governing the property, including the PD, LCP, and other applicable requirements of the Long Beach Municipal Code, State, and Federal agencies.

Where a conflict exists between drawings and text, the text shall govern. Where a conflict exists between the text and City of Long Beach and/or other governmental standards and regulations, such standards and regulations shall govern (unless other specific approval or permits provide otherwise).

Review and Submissions

Internal Design Review Committee (IDRC)

As each site and building design is finalized, the IDRC acting on behalf of Ownership will perform an internal review of all design documents prior to submittal to the City. At a minimum the IDRC will be composed of the site master architect, a landscape architect, a representative from Molina Healthcare, a representative from 400 Oceangate, Ltd., and the Owner's representative.

GOLDEN SHORE DEVELOPMENT AREA

The main purpose of the IRDC is to ensure that all submitted plans are consistent with the vision for the site, comply with these design guidelines, and are in conformance with all drawings and documents approved by the City.

The secondary purpose is to perform a check of the submittal package against the City's checklist to make sure that all the information required by the City for site plan approval is indeed contained in the package.

In order to maintain consistency with the maximum density thresholds stipulated in the Environmental Impact Report and the Development Agreement for the project, a written approval by the IRDC shall include a summary of the total number of residential units and commercial density (building area or hotel rooms) approved and remaining to date.

City Review

The design review process with the City shall be governed by the Site Plan Review process contained in Division V of LBMC 21.25. The City shall review all project submissions for the Golden Shore Development Area for compliance with these Guidelines in accordance with their respective agency review processes and site plan requirements. The developer shall be responsible for obtaining site plan approval from the Department of Development Services and other relevant City agencies.

The developer shall be responsible for obtaining a Local Coastal Development Permit from the Department of Development Services prior to the commencement of any demolition and/or construction.

GOLDEN SHORE DEVELOPMENT AREA

EXHIBIT 1

Green Building Development Standards

All development that meets or exceeds a threshold of 25,000 square feet of gross conditioned floor area shall fully comply with Golden Shore Development Area's Green Standards by obtaining Leadership in Energy and Environmental Design (LEED) – NC (New Construction) at the "Certified" level or higher prior to issuance of the Temporary or Final Certificate of Occupancy, whichever comes first.

Projects not registered with the GBCI (Green Building Certification Institute) may use a LEED equivalent alternative green building performance rating system to the satisfaction of the Director of Development Services.

The applicant shall pay for the cost of LEED certification or verification.

Projects committing to achieve at the LEED Silver level or higher qualify for expedited services.

All parking lots shall either be 50% shaded by canopy trees after five years of growth or be completely surfaced with paving with a Solar Reflectance Index (SRI) of at least 29. At a minimum, canopy trees shall provide shade coverage, after five years of growth, of 40% of the total area dedicated to parking stalls and associated vehicular circulation. Because trees may reduce the visibility of signs, the City shall consider applications for the relocation of signs and/or the installation of additional signs as necessary. Tree wells required for proper planting and maintenance may be included in the calculated shade area.

All parkway landscaping shall comply with the following requirements:

Use canopy trees that provide shade coverage, after five years of growth, of at least 40% of the total area designated for street right of way (curb face to curb face).

Use drought and foot tolerant ground cover without thorns or stickers, etc. where turf is not used. Hard pavement may be used in areas next to parking.

Allow taller (up to 24" high) and hardy drought tolerant plants in groupings not less than four feet long (measured parallel to the sidewalk) separated by decomposed granite or hard pavement material connections of 30"-36".

No fencing shall be allowed to protect plants.

The Project site shall include stormwater management practices that treat stormwater runoff from 90% of the average annual rainfall on the site using structural and non-structural management measures. The Best Management Practices (BMPs) used to treat the runoff must be capable of removing 80% of the average annual post development total suspended solids (TSS) load. Additional permanent BMPs would be selected for individual

GOLDEN SHORE DEVELOPMENT AREA

lot development and shall be addressed in future SUSMPs to be submitted at the time of lot development. Use of these BMPs would minimize surface water quality impacts.

Provide a system to capture the first three-quarter inch of rainfall. Create a rainwater retention system for on-site reuse.

Preferential parking shall be provided for carpools and vanpools at the rate of not less than 10 percent of the total employee parking.

Not less than ten percent of employee parking area shall be located as close as is practical to the employee entrance(s), and shall be reserved for use by potential carpool/vanpool vehicles, without displacing handicapped and customer parking needs. This preferential carpool/vanpool parking area shall be identified on the site plan upon application for building permit, to the satisfaction of the City. A statement that preferential carpool/vanpool spaces for employees are available and a description of the method for obtaining such spaces must be included on the required transportation information board. Spaces will be signed/stripped as demand warrants; provided, that at all times at least one space for projects of twenty-five thousand square feet to fifty thousand square feet and two spaces for projects over fifty thousand square feet will be signed/stripped for carpool/vanpool vehicles.

Preferential parking spaces reserved for vanpools must be accessible to vanpool vehicles. When located within a parking structure, a minimum vertical interior clearance of seven feet two inches shall be provided for those spaces and accessways to be used by such vehicles. Adequate turning radii and parking space dimensions shall also be included in vanpool parking areas.

"Employee parking area" means the portion of total required parking at a development used by on-site employees. Employee parking shall be calculated as follows:

Type of Use	Percent of Total Required Parking Devoted to Employees
Commercial/Hotel	30%
Office/Professional	85%

Bicycle parking shall be provided at a minimum of one space for each 5,000 sq. ft. of commercial and retail building area. Fractions shall be rounded up to the next whole number.

Shower facilities shall be provided for buildings of 25,000 SF or greater for occupants of that building. For office buildings, showers shall be provided at the rate of one shower per each 40,000 sq. ft. of building area. Showers shall be located within 200 yards of the building's main entrance. The shower requirement shall be specified in the project "Conditions, Covenants and Restrictions" (CC&R) to the satisfaction of the Director of Long Beach Development Services, and a recorded copy of said document shall be provided to the Planning Bureau prior to the issuance of the Temporary or Final Certificate of Occupancy, whichever comes first, for the structure housing the shower facility.

GOLDEN SHORE DEVELOPMENT AREA

Exterior lighting shall be energy efficient and designed to minimize light pollution. The key criteria are 1.25 footcandles minimum with a uniformity ratio of 4 to 1 average to minimum or better.

Roofing material shall have a minimum Solar Reflectance Index (SRI) of 78 for 75% of low-sloped building roofs (less than or equal to 2:12) and a minimum SRI of 29 for 75% of steep-sloped roofs (greater than or equal to 2:12), or a green roof shall be installed for 50% of the roof surface.

Indoor water shall either be reduced by 20% as compared to the 1992 Federal Energy Policy Act baseline or the plumbing fixtures shall meet the following minimum standards:

- a. urinals: 0.25 gallons per flush or less
- b. toilets: 1.28 gallons per flush or less
- c. faucets: 1.00 gallons per minute or less
- d. showerheads: 1.50 gallons per minute or less

Mechanical equipment with HCFC-free refrigerants shall be specified whenever such units are available for the chosen application.

All roof structures shall be designed to support an additional eight (8) pounds per square foot of dead load for future photovoltaic systems and conduit shall be provided from the roof to the utility room. The utility room shall be sized to provide sufficient space for the future installation of inverters with the required clearances.

Low-emitting materials shall meet the minimum requirements below:

Architectural paints, paints, coatings and primers applied to interior walls and ceilings consistent with the Green Seal Standard GS-11.

Anti-corrosive and anti-rust paints applied to interior ferrous metal substrates compliant with Green Seal Standard GS-03.

Clear wood finishes, floor coatings, stains, and shellacs applied to interior elements that do not exceed the VOC content limits established in South Coast Air Quality Management District (SCAQMD) Rule 1113.

Adhesives, sealants and sealant primers that meet SCAQMD Rule 1168.

Aerosol adhesives compliant with Green Seal Standard for Commercial Adhesives GS-36.

Carpet shall meet the CRI Green Label Plus criteria or the State of California Standard 1350.

Resilient flooring shall meet the Floor Score criteria or the State of California Standard 1350.

GOLDEN SHORE DEVELOPMENT AREA

Permanent walk off mats or grilles shall be installed at the major entries of each building. For retail with frontage directly at the property line, interior non-permanent, washable walk off mats are acceptable.

All required yards and setback areas shall be attractively landscaped primarily with California native and drought tolerant plants. A majority of the proposed plants shall be low to very low water usage. Final planting plan subject to approval of Director of Long Beach Development Services prior to issuance of a building permit.

Include in the Planting Legend a category for Water Needs for the proposed planting using the most recent edition of A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California, California Department Water Resource for Region 3 (South Coastal).

Comply with the State's "Model Water Efficient Landscape Ordinance" (MLO) or the City's Landscape Ordinance. Refer to <http://www.owue.water.ca.gov/landscape/ord/ord.cfm> for details.

All landscaped areas shall be provided with water conserving automatic irrigation systems designed to provide complete and adequate coverage to sustain and promote healthy plant life. The irrigation system shall not cause water to spray or flow across a public sidewalk.

Reclaimed water shall be used for all landscaped areas.

When new equipment is being installed for use in manufacturing or service process and readily-available and compatible alternatives exist in the same marketplace that offer greater water efficiency, the owner or occupant shall use the alternative that offers the better water efficiency.

Prior to approval of the Site Plan Review, the allocation of adequate storage space for the collection and loading of recyclable materials shall be included in the design of buildings and waste collection points shall be established throughout Downtown Shoreline Planned Development District to encourage recycling.

All projects shall comply with the City's Construction and Demolition Debris Recycling Ordinance.

An operations waste management plan shall be implemented by the City or private hauler to divert at least 50 percent of the waste generated by the project. The precise percentage to be diverted will depend on the specific use to be implemented and will be defined by the City of Long Beach Environmental Services Bureau. Waste disposal allocation shall be properly assigned to its original source City. Annual reports shall be submitted to the City of Long Environmental Services Bureau and Development Services for compliance.

A LEED Checklist indicating the project's proposed green building strategy and signed by the project's LEED AP shall be submitted with the Planning application of projects that meet the Downtown Shoreline Planned Development District LEED threshold. The

GOLDEN SHORE DEVELOPMENT AREA

Developer shall not be bound to follow the credit strategy described on said LEED Checklist and may revise its credit strategy from time to time as it deems appropriate in its sole discretion given project issues including, but not limited to, cost, feasibility, constructability, material availability, and/or other developer limitations while still fulfilling the developer's obligation for the original LEED certification level or higher.

Projects that must obtain LEED certification shall register for LEED with the Green Building Certification Institute prior to approval of Site Plan Review. When projects register, they shall NOT designate that the project is "confidential" in order to permit City staff to verify the registration.

These Guidelines may be superseded by Federal, State and County regulations.

GOLDEN SHORE DEVELOPMENT AREA

EXHIBIT 2

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

The Long Beach Police Department has made the following recommendations for public safety and crime prevention.

Exterior Lighting

- All pedestrian pathways shall include human scale lighting with a minimum maintained 1.25 foot-candle.
- Wall pack lighting shall be placed on each side of the buildings and above exterior doors.
- Light alcoves to discourage homeless people from sleeping there.
- Lighting shall clearly illuminate the building addresses.
- Foot-candles shall be measured on a horizontal plane and conform to a uniformity ratio of 4:1 average/minimum.
- Landscaping shall not be planted so as to obscure required light levels.
- Metal halide or other similar bulbs, which emit a "white light", shall be used. Avoid yellow sodium lighting.
- All light fixtures shall be the type with proper cut-offs to avoid glare and night sky glow.
- All light fixtures shall be vandal resistant.
- Install lights on building exterior walls.
- Activation of the required exterior lighting shall be either by a photocell device or a time clock with an astronomic clock feature.
- A photometric report and electrical plan shall identify all lighting requirements.

Other Lighting

- All parking, driving, and walking surfaces, except stairways, shall be illuminated at all times with a minimum maintained 1.25 foot-candle of light.
- All common area exterior doors shall be illuminated, during the hours of darkness, with a minimum maintained one foot-candle of light, measured within a five-foot radius of each side of the door at ground level.
- Recessed areas of buildings or fences, which have a minimum depth of two feet, a minimum height of five feet, and do not exceed six feet in width and are capable of human concealment, shall be illuminated with a minimum maintained 0.25 foot-candles of light at ground level.
- All luminaries utilized to meet the requirements of this section shall have vandal resistant light fixtures, if on the exterior, with no portion of the fixture placed less than 72 inches above the walking or driving surface.
- A site plan shall be provided showing buildings' parking area, walkways, detailed landscaping and a point-by-point photometric calculation of the required light levels. Foot-candles shall be measured on a horizontal plane and conform to a uniformity ratio of 4:1 average/minimum.
- Landscaping shall not be planted so as to obscure required light levels.
- A photocell device or a timeclock shall control the light source.

GOLDEN SHORE DEVELOPMENT AREA

- Lighting elements shall be included with all colonnades, arbors, canopies and trellis structures to ensure pedestrian pathways are properly lit.

Other Business Considerations

- Entry areas should be gated with keypad or voice activated secured entry pads.
- Businesses shall be clearly marked and directional maps shall be placed at all access points, stairwells, and elevator lobby areas (if applicable).
- Mailboxes shall be located within a secure area (include appropriate lighting). An additional locking box for all outgoing mail shall be installed to help prevent mail and identity theft.
- Each business shall be individually equipped with an audible burglar alarm system with window and door contacts for added security.
- The doors to common-area rooms and trash rooms shall have a minimum 600 square-inch clear vision panel, in the upper half of the door, automatic, hydraulic door closures and self-locking door locks equipped with a dead-locking latch, allowing exiting by a single motion and operable from the inside without the use of a key or any special knowledge or effort.
- Lobby should have a security kiosk/reception desk for access control.
- Display shall not block visibility into and out of the stores.

Addressing General

- Street address shall be clearly posted on the street sides of the main buildings and clearly visible from the street with the address and street name.
- Address shall be painted on rooftop (in 4' strokes) for emergency helicopter response. Rooftop addresses must be visible only to aircraft and not from ground level.
- All address signs shall be well lit and remain free from any obstructions, such as overhangs, awnings and/or landscaping.
- Individual unit numbers shall be placed near but not on the main entry doors. Each unit shall have its address/number clearly marked and illuminated in clear view. The numbers should be of a contrasting color to the background where it will be placed.
- Pedestrian pathways and side yards shall be viewable by as many windows of surrounding structures as possible to increase visibility.
- Coordination of pedestrian pathways between adjacent blocks is encourage. Coordinating adjacent blocks create clear paths of vision and sight lines through common areas.
- Canopies, awnings and overhangs should have lighting elements underneath and care should be taken to ensure the canopy does not block the address from view of the street.
- Screened utilities shall be designed so that they do not become hiding places or weather shelters for criminal behavior.

Landscape General

- Ensure landscaping does not block lighting fixtures or visibility to and from windows and doors.

GOLDEN SHORE DEVELOPMENT AREA

- Care shall be taken in the selection and placement of landscape to prevent the creation of hiding places near entries and exits.

Video Surveillance System Guidelines

A video surveillance system shall be installed to assist with monitoring the property. However, it must be understood that a video surveillance system shall not take the place of good security practices. Most outdoor surveillance systems are useful in assisting with the remote monitoring of an area, but less effective in helping with the identification of suspects. This is due to the greater distance involved and lack of adequate light available after dark. Therefore, the cameras shall be positioned to monitor more narrow and controlled areas such as indoor applications and doorways.

The purpose of the following guidelines are to increase the likelihood that images captured will assist in the apprehension of suspects. The following guidelines are not all-inclusive, and a licensed video surveillance expert should be consulted to assist in designing and installing the system.

Camera Locations

- All main commercial/office space entries and exits
- Parking lots, garages and loading docks
- Elevator lobbies

Camera Specifications

- Record in color with output of at least 480 lines resolution.
- Automatic exposure for day/night conditions.
- Positioned where they are vandal and tamper resistant.
- Use vandal resistant housings where necessary.

Video Recording Equipment Specifications

- A Digital Video Recorder (DVR) should be used.
- Capable of exporting images in TIFF, BMP or JPG format.
- DVR capable of exporting video to uncompressed non-proprietary AVI file, maintaining original aspect ratios.
- Recordings shall be retained for no less than 10 days.
- Use the least amount of compression possible to maintain high-resolution image quality. A lower quality image to save storage space is highly discouraged, as the low quality images will be useless to law enforcement.
- The DVR units must be stored in a secure place.

Parking Garages/Parking Lots

- Garage walls and ceiling should be painted white to maximize light.
- The design of parking garages should be such that there are minimum solid interior walls to maximize visibility, as allowable by code.

GOLDEN SHORE DEVELOPMENT AREA

- Secure access with CCTV or roving security to protect against stolen vehicles and vandalism.
- Trash containers shall be properly secured. Lighting should also be located above the enclosure for safety.
- A minimum maintained 2 foot-candle of light is recommended for open parking lots.
- Enclosed parking garages shall be lit to a minimum of 3 foot-candle.
- Foot-candles shall be measured on a horizontal plane and conform to a uniformity ratio of 4:1 average/minimum.
- A photometric report shall be submitted to the Police Department Support Bureau for approval.
- Bicycle storage units or racks shall be located in high visibility areas.
- Emergency "call boxes" shall be placed in a prominent area on each level of the parking structure.
- Access to parking garages should be controlled by automatic tubular steel gates and not solid steel.
- Rear parking lots should include extra lighting and windows facing the lots.

Stairways and Stairwells

- Interior doors shall have glazing panels a minimum of five inches wide and 20 inches in height and meet requirements of the Uniform Building Code.
- Areas beneath stairways at or below ground level shall be fully enclosed or access to them restricted.
- Stairways should be designed to be completely visible from either the interior or exterior or both, unless mandated by the Uniform Building Code to be enclosed.
- Stairwells shall exit into a highly visible area for enhanced safety and security.
- Fully enclosed interior or exterior stairways with solid walls, when required, should have shatter resistant mirrors or other equally reflective material at each level and landing and be designed or placed in such a manner as to provide visibility around corners.
- Stairways shall be illuminated at all times with a minimum maintained 2 foot-candle of light on all landings and stair treads.

Elevator Cabs and Lobbies

- Elevators, which serve more than two floors, above ground level, with at least one shaft wall exposed to the exterior or interior, should have clear glazing installed in one wall to provide visibility into the elevator cab.
- Elevator cabs, the interiors of which are not completely visible when the door is open from a point centered on and 36 inches away from the door, should have shatter resistant mirrors or other equally reflective material so placed as to make visible the entire elevator cab from this point. The elevator cab shall be illuminated at all times with a minimum maintained two foot-candles of light at floor level.
- Elevator emergency stop buttons shall be so installed and connected as to activate the elevator alarm when utilized.
- Elevator lobbies shall be placed in a high-traffic area for enhanced visibility.

GOLDEN SHORE DEVELOPMENT AREA

Building Design

- Eliminate the entry "landings" as they will be a place where unauthorized people will loiter. Another option would be to create small courtyards with access controlled by low gates.
- Property access control should be built in using decorative tubular steel fencing.
- Screening devices should be designed so the screened area does not provide niche or weather shelter.
- Caution should be used when designing separate trash enclosures, utility areas, loading docks and other required "screened" areas so that niches, hiding spots and weather shelters are not created.
- Loading facilities shall be secured after hours and well-lit if hidden from view.
- All rooftop mechanical equipment shall be secured from unauthorized entry to the satisfaction of the City.
- No exterior roof access allowed.

Fencing General

- All fencing and gates shall be decorative wrought iron or tubular steel style to maintain visibility while controlling access.
- The design of fence shall be such that no vertical bars extend above the top most horizontal bar.

Graffiti Deterrents

Due to the location and design, there is a risk that the buildings may be vandalized by graffiti. It is important to design in deterrents to minimize this risk. The following are some suggestions to be considered to help prevent graffiti:

- Plant a landscape buffer with low growing shrubs and trees with lacey foliage along the street frontage to partially screen the walls.
- Utilize graffiti resistant paint on the outside building surfaces which are not covered by brick or stone veneer.
- Graffiti shall be painted out within 24 hours. Paint color shall match existing color. All graffiti occurrences shall be reported to the Police Department to determine what additional deterrence may be available. Request crime prevention survey to determine if the environmental conditions may be contributing to the graffiti.

GOLDEN SHORE DEVELOPMENT AREA

EXHIBIT 3

Species Evaluations

The three plant species listed below are examples of entries on the Species Evaluation List. As a quick reference, a key to symbols is included below.

T	<i>Abies pinsapo</i> Spanish fir	L
S	<i>Abutilon palmeri</i> indian mallow	L
T	<i>Acacia boormanii</i> Snowy River wattle	L
T S	<i>Acacia constricta</i> whitethorn acacia	L
T	<i>Acacia cultriformis</i> knife acacia	L
T	<i>Acacia farnesiana</i> sweet acacia	L
S	<i>Acacia glaucoptera</i> clay wattle	L
T S	<i>Acacia greggii</i> catclaw acacia	L
T S	<i>Acacia podalyriifolia</i> pearl acacia	L
S Gc	<i>Acacia redolens</i> prostrate acacia	L
T S	<i>Acacia saligna</i> blue leaf wattle	L
T	<i>Acacia stenophylla</i> eumong/shoestring acacia	L
T S	<i>Acacia subporosa</i> subporosa acacia	L
S	<i>Acacia vestita</i> hairy wattle	L
T S	<i>Acca sellowiana</i> (Feijoa sellowiana) pineapple guava	L
P	<i>Achillea clavennae</i> silvery yarrow	L
P	<i>Achillea filipendulina</i> fern leaf yarrow	L
P	<i>Achillea X kellerii</i> kellerii achillea	L
Gc P	<i>Achillea tomentosa</i> woolly yarrow	L
S	<i>Adenanthos drummondii</i> woolly bush	L
S P	<i>Aeonium</i> spp. Canary Island rose	L
S P	<i>Agave</i> spp. agave	L
T	<i>Agonis flexuosa</i> peppermint tree	L
T	<i>Allocasuarina verticillata</i> (<i>Casuarina stricta</i>) coast beefwood	L
T S	<i>Aloe</i> spp. aloe	L
S	<i>Aloysia triphylla</i> lemon verbena	L
S	<i>Alyogyne hakeifolia</i> red centered hibiscus	L
S	<i>Alyogyne huegelii</i> blue hibiscus	L
T	<i>Angophora cordifolia</i> (<i>Angophora costata</i>) gum myrtle	L
P	<i>Anigozanthos flavidus</i> kangaroo paw	L
P	<i>Anigozanthos viridis</i> green kangaroo paw	L
S	<i>Anisacanthus</i> spp. desert honeysuckle	L
Gc V	<i>Antigonon leptopus</i> coral vine	L
Gc	<i>Aptenia cordifolia</i> ice plant (<i>Aptenia</i>)	L
V	<i>Araujia sericifera</i> cruel vine	L
T S	<i>Arbutus unedo</i> strawberry tree	L
S Gc	<i>Arctostaphylos</i> cultivars manzanita cultivars	L

GOLDEN SHORE DEVELOPMENT AREA

S Gc	Arctostaphylos spp. manzanita	L
P	Arctotis hybrids African daisy	L
S Gc	Artemisia spp. (shrubby) sagebrush	L
Gc P	Artemisia spp. (herbaceous) tarragon/angel's hair etc.	L
P	Asclepias (wild species) milk/silk weed	L
P	Asplenium scolopendrium (Phyllitis) Hart's tongue fern	L
P	Asteriscus maritimus gold coin, Canary Island daisy	L
P	Babiana stricta hybrids baboon flower	L
S	Baccharis pilularis consanguinea coyote brush	L
S	Baccharis pilularis cvs. dwarf coyote brush	L
T S	Beaucarnea recurvata	L
S Gc	Berberis spp. barberry	L
S	Bougainvillea spp. bougainvillea	L
T	Brachychiton acerifolius flame tree	L
T	Brachychiton discolor Queensland lace bark	L
T	Brachychiton populneus bottle tree	L
T	Brachychiton rupestris Queensland bottle tree	L
T	Brahea armata blue hesper palm	L
T	Brahea edulis Guadalupe palm	L
P	Brodiaea spp. brodiaea	L
P	Bulbine frutescens stalked bulbine	L
T	Butia capitata pindo palm	L
S	Caesalpineia gilliesii desert bird of paradise	L
T S	Callistemon citrinus bottle brush	L
T S	Callistemon pinifolius pine-leafed bottlebrush	L
T S	Callistemon subulatus callistemon (subulatus)	L
S	Calocephalus brownii cushion bush	L
P	Camissonia cherianthifolia (Oenothera) beach evening primrose	L
S	Capparis spinosa caper bush L	L
S	Carpenteria californica bush anemone	L
S	Cassia artemesioides	L
S	Cassia bicapsularis (Cassia candolleana)	L
S	Cassia didymobotria	L
S	Cassia eremophila (Cassia nemophila) desert cassia	L
S	Cassia goldmanii	L
S	Cassia odorata	L
S	Cassia phyllodenia	L
	Cassia spectabilis (Cassia excelsa)	L
S	Cassia splendida	L
S	Cassia sturtii	L
S	Cassia tomentosa	L
S	Cassia wizlizeni shrubby cassia	L
T	Casuarina cunninghamiana river she-oak	L
T	Casuarina stricta	L
S Gc	Ceanothus cultivars ceanothus	L
T	Cedrus atlantica Atlas cedar	L
T	Cedrus deodora deodar cedar	L
T	Cedrus libani cedar of Lebanon	L

GOLDEN SHORE DEVELOPMENT AREA

Gc	Cephalophyllum spp. ice plant (Cephalophyllum)	L
T	Ceratonia siliqua carob	L
T S	Cercis occidentalis western redbud	L
S	Cereus peruvianus Peruvian apple cactus	L
S	Chamelaucium uncinatum Geraldton wax flower	L
P	Chasmanthe aethiopica chasmanthe	L
P	Cheiranthus cheiri	L
T	X Chitalpa tashkentensis chitalpa	L
T	Chorisia speciosa floss silk tree	L
P	Clivia miniata Kaffir lily	L
S T	Comarostaphylis diversifolia	L
S	Convolvulus cneorum bush morning glory	L
Gc P	Convolvulus sabatius ground morning glory	L
S	Cordia parvifolia little leaf cordia	L
T	Cordyline australis New Zealand cabbage tree	L
P	Coreopsis auriculata 'Nana' dwarf coreopsis	L
P	Coreopsis lanceolata coreopsis	L
P	Coreopsis verticillata cvs. threadleaf coreopsis	L
S	Correa spp. Australian fuchsia	L
T S	Cotinus coggygria smoke tree	L
S P	Cotyledon spp. cotyledon	L
S P	Crassula spp. crassula	L
P	Crocsmia hybrids (Tritonia) montbrieta	L
T	Cupresses semervirens Italian cypress	L
S	Dalea bicolor dalea (bicolor)	L
Gc	Dalea greggii trailing indigo bush	L
Gc	Dalea orcutii Baja indigo bush	L
S	Dasyliirion spp. desert spoon	L
P	Deschampsia caespitosa tufted hairgrass	L
	Diplacus	L
Gc	Dodonaea procumbens hopseed bush (procumbens)	L
S	Dodonaea viscosa hopseed bush	L
S	Dodonaea viscosa 'Purpurea' purple hopseed bush	L
S	Doryanthes palmeri spear lily	L
S	Dorycnium hirsutum hairy canary clover	L
Gc	Drosanthemum spp. ice plant (Drosanthemum)	L
P	Dyckia spp. dyckia	L
P Gc	Dymondia margaretae dymondia	L
S P	Echeveria spp. hens and chickens	L
S	Echinocactus spp. barrel cactus	L
P	Echinopsis spp. (Trichocereus spp.) torch cactus	L
S	Elaeagnus pungens silverberry	L
P	Elymus spp. wild rye	L
S	Eremophila glabra emu bush L	L
S	Eremophila maculata spotted emu bush	L
S	Eremophila racemosa Easter egg bush	L
P	Erysimum hyeracifolium Siberian wallflower	L
P	Erysimum 'Jubilee' jubilee wallflower	L

GOLDEN SHORE DEVELOPMENT AREA

P	<i>Erysimum linifolium</i> wallflower	L
P	<i>Erysimum menziesii</i> wallflower	L
P	<i>Erysimum pulchellum</i> wallflower	L
P	<i>Erysimum</i> 'Wenlock Beauty' Wenlock beauty wallflower	L
T	<i>Erythrina americana</i> (E.coralloides) naked coral tree	L
T	<i>Erythrina</i> X <i>bidwillii</i> coral tree	L
T	<i>Erythrina caffra</i> Kaffir bloom coral tree	L
T S	<i>Erythrina crista-galli</i> cockspur coral tree	L
T	<i>Erythrina falcata</i> coral tree (falcata)	L
T	<i>Erythrina</i> X <i>sykesii</i> Sykes coral tree	L
P	<i>Eschscholzia californica</i> California poppy	L
S	<i>Espostoa lantana</i> Peruvian old man cactus	L
T	<i>Eucalyptus cinerea</i> ash leaved gum, silver dollar tree	L
T	<i>Eucalyptus citriodora</i> lemon scented gum	L
T	<i>Eucalyptus cladocalyx</i> sugar gum	L
T	<i>Eucalyptus formanii</i> Forman's mallee	L
T	<i>Eucalyptus gunnii</i> cider gum	L
T	<i>Eucalyptus kruseana</i> book-leaf mallee	L
T	<i>Eucalyptus lehmannii</i> bushy yate	L
T	<i>Eucalyptus leucoxylon</i> white ironbark	L
T	<i>Eucalyptus microtheca</i> coolibah L	L
T	<i>Eucalyptus polyanthemos</i> silver dollar gum	L
T	<i>Eucalyptus preissiana</i> bell mallee	L
T	<i>Eucalyptus robusta</i> swamp mahogany	L
T	<i>Eucalyptus rudis</i> flooded gum	L
T	<i>Eucalyptus sideroxylon</i> red iron bark	L
T	<i>Eucalyptus spathulata</i> swamp mallee	L
T	<i>Eucalyptus torquata</i> coral gum	L
T	<i>Eucalyptus viminalis</i> manna gum	L
T	<i>Eucalyptus woodwardii</i> lemon flowered gum	L
P	<i>Euphorbia characias</i> euphorbia	L
S	<i>Euphorbia millii</i> crown of thorns	L
P	<i>Euphorbia myrsinites</i> euphorbia	L
S	<i>Euphorbia pulcherrima</i> poinsettia	L
S	<i>Euryops pectinatus</i> euryops/shrub daisy	L
P	<i>Fascicularia pitcairniifolia</i> fascicularia	L
T S	<i>Feijoa sellowiana</i>	L
S	<i>Felicia fruticosa</i> shrub aster	L
T	<i>Ficus microcarpa</i> 'Green Gem' green gem ficus	L
T	<i>Ficus retusa nitida</i>	L
S	<i>Forestiera neomexicana</i> desert olive	L
S	<i>Garrya elliptica</i> coast silktassel	L
S	<i>Garrya flavescens</i> ashy silktassel	L
P	<i>Gasteria</i> spp. mother-in-law's tongue etc.	L
T	<i>Geliera parviflora</i> Australian willow	L
P	<i>Gladiolus</i> spp. gladiolus	L
P	<i>Goniolimon incanum</i> (<i>Limonium speciosum</i>) statice	L
S	<i>Graptopetalum</i> spp. graptopetalum	L

GOLDEN SHORE DEVELOPMENT AREA

S	Grevillea spp. grevillea	L
T	Grevillea robusta silk oak	L
P	Grindelia camporum gum plant	L
S	Hakea laurina sea urchin tree	L
S	Hakea suaveolens sweet hakea	L
S	X Halmiocius B866sahucci halmiocius	L
S	X Halmiocius wintonensis halmiocius	L
S	Halimium lasianthum sun rose	L
P	Haworthia spp. haworthia	L
P	Helianthemum nummularium helianthemum	L
S	Helichrysum rosemarinifolium	L
S	Heteromeles arbutifolia toyon	L
P	Homoglossum watsonium	L
S	Ilex vomitoria yaupon	L
P	Ipheion uniflorum (Tritelia) spring star flower	L
V	Ipomea indica (acuminata) blue dawn flower	L
T	Jatropha integerrima spicy jatropha	L
T	Jubaea chilensis Chilean wine palm	L
T	Juglans californica S. California black walnut	L
P	Juniperus californica California juniper	L
T	Juniperus spp. juniper	L
S	Justicia spicigera Mexican honeysuckle	L
P	Kalanchoe spp. kalanchoe	L
Gc P	Kecklilla antirrhinoides yellow penstemmon	L
P	Kniphofia triangularis (galpinii) coral poker	L
P	Kniphofia uvaria red hot poker	L
T	Koelreuteria paniculata golden rain tree	L
T	Lagunaria patersonii primrose tree	L
Gc	Lampranthus spp. ice plant (Lampranthus)	L
S	Lantana camara lantana	L
S	Lantana montevidensis (sellowiana) trailing lantana	L
T S	Laurus nobilis sweet bay	L
T	Laurus 'Saratoga' Saratoga laurel	L
S	Lavandula spp. lavender	L
S	Lavatera assurgentiflora tree mallow	L
S	Leonotis leonurus lion's tail	L
T S	Leptospermum laevigatum Australian tea tree	L
T	Leucadendron argenteum Silver tree	L
S	Leucophyllum spp. purple sage, Texas ranger etc.	L
S	Leucospermum cordifolium nodding pincushion	L
P	Limonium commune var. californicum coastal statice	L
P	Limonium speciosum	L
P	Linaria purpurea toadflax	L
T	Lithocarpus densiflorus tanbark oak	L
S	Lobostemon fruticosus eight-day-healing bush	L
S	Lonicera hispidula honeysuckle (hispidula)	L
S	Lonicera subspicata chaparral honeysuckle	L
S	Lupinus arboreus coastal bush lupine	L

GOLDEN SHORE DEVELOPMENT AREA

P	<i>Lychnis coronaria</i> rose campion/crown pink	L
S	<i>Lycium fremontii</i> wolfberry	L
T	<i>Lysiloma microphylla</i> var. <i>thornberi</i> feather bush	L
V	<i>Macfadyena unguis-cati</i> cat's claw	L
S	<i>Mahonia 'Golden Abundance'</i> golden abundance mahonia	L
S	<i>Mahonia lomariifolia</i> Chinese holly grape	L
S	<i>Mahonia nevinii</i> Nevin mahonia	L
Gc	<i>Mahonia repens</i> creeping mahonia	L
S	<i>Maireana sedifolia</i> pearl bluebush	L
T S	<i>Melaleuca armillaris</i> bracelet honey-myrtle	L
T S	<i>Melaleuca decussata</i> totem poles (lilac melaleuca)	L
T S	<i>Melaleuca elliptica</i> granite honey-myrtle	L
S	<i>Melaleuca fulgens</i> melaleuca (fulgens)	L
S	<i>Melaleuca huegelii</i> chenille honey-myrtle	L
S	<i>Melaleuca incana</i> grey honey-myrtle	L
T	<i>Melaleuca linariifolia</i> flax leaf paper bark	L
T	<i>Melaleuca nesophila</i> pink melaleuca	L
T	<i>Melaleuca squamea</i> swamp honey-myrtle	L
T	<i>Melaleuca styphelioides</i> prickly-leaved paperback	L
S	<i>Mimulus</i> spp. (shrubby) monkey flower	L
P	<i>Muhlenbergia rigens</i> deer grass	L
S Gc	<i>Myoporum</i> X ' <i>Pacificum</i> ' <i>pacifica</i> saltbush	L
S Gc	<i>Myoporum parvifolium</i> & cvs. <i>myoporum</i>	L
S	<i>Myrica californica</i> Pacific wax myrtle	L
S	<i>Myrsine africana</i> African boxwood	L
S	<i>Myrtus communis</i> true myrtle	L
S	<i>Nandina domestica</i> heavenly bamboo	L
P	<i>Narcissus</i> spp. daffodil	L
P	<i>Nerine</i> spp. <i>nerine</i>	L
T S	<i>Nolina recurvata</i> (<i>Beaucamea recurvata</i>) bottle palm	L
Gc P	<i>Oenothera berlandieri</i>	L
P	<i>Oenothera cherianthifolia</i>	L
P Gc	<i>Oenothera missouriensis</i>	L
P Gc	<i>Oenothera macrocarpa</i> Ozark sundrops	L
P	<i>Oenothera pallida</i> evening primrose (<i>pallida</i>)	L
P	<i>Oenothera rosea</i> evening primrose (<i>rosea</i>)	L
Gc P	<i>Oenothera speciosa</i> Mexican/white evening primrose	L
Gc P	<i>Oenothera speciosa</i> 'Rosea' pink evening primrose	L
Gc P	<i>Oenothera stubbei</i> Baja evening primrose	L
P	<i>Origanum</i> spp. <i>dittany</i> / <i>oregano</i> etc.	L
P	<i>Ornithogalum thyrsoides</i> chinchinchee	L
Gc	<i>Osteospermum</i> spp. African daisy	L
S	<i>Ozothamnus rosemarinifolius</i> (<i>Helichrysum</i>) <i>ozothamnus</i>	L
T	<i>Pachycormis discolor</i> elephant tree	L
T	<i>Pachypodium lamerei</i> Madagascar palm	L
P	<i>Panicum</i> (native spp.) switch grass	L
T	<i>Parkinsonia aculeata</i> Mexican palo verde/ Jerusalem thorn	L
P Gc	<i>Pelargonium sidoides</i> geranium (<i>sidoides</i>)	L

GOLDEN SHORE DEVELOPMENT AREA

P	<i>Pelargonium tomentosum</i> peppermint-scented geranium	L
P	<i>Pennisetum alopecuroides</i> black pennisetum	L
P	<i>Pennisetum orientale</i> Chinese fountain grass	L
P	<i>Penstemon</i> wild spp. penstemon (wild)	L
P	<i>Phlomis caballeri</i> phlomis (caballeri)	L
S P	<i>Phlomis cashmeriana</i> phlomis (cashmeriana)	L
P	<i>Phlomis cretica</i> phlomis (cretica)	L
S P	<i>Phlomis fruticosa</i> Jerusalem sage	L
S P	<i>Phlomis italica</i> phlomis (italica)	L
P	<i>Phlomis lanata</i> phlomis (lanata)	L
P	<i>Phlomis purpurea</i> phlomis (purpurea)	L
S	<i>Phlomis tuberosa</i> phlomis (tuberosa)	L
T	<i>Phoenix canariensis</i> Canary Island date palm	L
T	<i>Phoenix dactylifera</i> date palm	L
S	<i>Phormium tenax</i> New Zealand flax	L
P	<i>Phyllitis scolopendrium</i>	L
T	<i>Pinus attenuata</i> knobcone pine	L
T	<i>Pinus X attenuata</i> knobcone-Monterey pine	L
T	<i>Pinus brutia</i> Calabrian pine	L
T	<i>Pinus brutia</i> ssp. <i>eldarica</i> eldarica pine	L
T	<i>Pinus canariensis</i> Canary Island pine	L
T	<i>Pinus coulteri</i> Coulter pine	L
T	<i>Pinus eldarica</i>	L
T	<i>Pinus flexilis</i> limber pine	L
T	<i>Pinus halepensis</i> Aleppo pine	L
T	<i>Pinus monophylla</i> single leaf pinyon pine	L
T	<i>Pinus montezumae</i> Montezuma pine	L
T	<i>Pinus muricata</i> bishop pine	L
T	<i>Pinus torreyana</i> Torrey pine	L
T	<i>Pittosporum phyllifolium</i> willow pittosporum	L
S	<i>Plecostachys serpyllifolia</i> (Helichrysum) straw flower	L
S	<i>Plumeria rubra</i> frangipani	L
P	<i>Polyanthes tuberosa</i> tuberose	L
V	<i>Polygonum aubertii</i> silver lace vine	L
S P	<i>Portulacaria afra</i> elephant's food	L
T	<i>Prosopis alba</i> Argentine mesquite	L
T	<i>Prosopis chilensis</i>	L
T	<i>Prosopis glandulosa</i> Chilean mesquite	L
T	<i>Prosopis glandulosa</i> glandulosa Honey mesquite	L
T	<i>Prosopis juliflora</i> Arizona mesquite	L
T	<i>Prosopis pubescens</i> screwbean mesquite	L
T	<i>Prosopis velutina</i> velvet mesquite	L
S	<i>Prostanthera rotundifolia</i> round leaf mint bush	L
T S	<i>Prunus lyonii</i> Catalina cherry	L
T	<i>Pseudobomax ellipticum</i> shaving brush	L
V	<i>Pseudogynoxys chenopodioides</i> (Senecio)	L
S	<i>Psoralea pinnata</i> blue pea	L
P	<i>Puya</i> spp. puya	L

GOLDEN SHORE DEVELOPMENT AREA

P	Pyrethropsis hosmariense Moroccan daisy	L
T S	Pyrethrum roseum	L
P	Pyrrosia spp. felt fern	L
T	Quercus agrifolia coast live oak	L
T	Quercus chrysolepis canyon live oak	L
T	Quercus engelmannii mesa oak	L
T	Quercus ilex holly oak	L
T	Quercus suber cork oak	L
T	Quercus tomentella island oak	L
T	Quillaja saponaria soapbark tree	L
P	Ranunculus cortusaefolius buttercup	L
P	Ranunculus repens creeping buttercup	L
P	Ratibida columnifera Mexican hat	L
S	Rhamnus alaternus Italian buckthorn	L
S	Rhamnus californicus coffeeberry	L
P	Rhodohypoxis spp. rose grass	L
T	Rhus lancea African sumac	L
S	Rhus lentii pink-flowering sumac	L
S	Rhus trilobata squawbush	L
S	Rhus typhina staghorn sumac	L
S	Ribes aureum golden currant	L
S	Ribes indecorum white flowering currant	L
S	Ribes sanguineum red flowering currant	L
S	Ribes speciosum fuchsia flowering gooseberry	L
S Gc	Ribes viburnifolium evergreen currant	L
T	Robinia X ambigua locust	L
S	Rosa californica California wild rose	L
S	Rosa minutifolia Baja California wild rose	L
S P	Rosmarinus officinalis rosemary	L
P Gc	Rosemarinus 'Prostratus' trailing rosemary	L
S	Ruellia X brittoniana dwarf ruellia	L
P	Ruscus spp. butcher's broom	L
S	Salvia argentea silver sage	L
P	Salvia azurea grandiflora prairie sage	L
P	Salvia 'Bee's Bliss' bee's bliss sage	L
P	Salvia chamaedryoides blue sage	L
S P	Salvia coahuilensis Coahuila sage	L
P	Salvia 'Dara's Choice' Sonoma sage	L
P	Salvia dorrii purple sage	L
S	Salvia grahamii	L
S	Salvia greggii & hybrids autumn sage	L
S P	Salvia leucantha Mexican bush sage	L
S	Salvia leucophylla purple sage	L
S	Salvia mellifera black/green sage	L
S	Microphylla cherry/Graham sage	L
P S	Salvia muelleri royal purple autumn sage	L
P S	Salvia spathacea hummingbird/pitcher sage	L
P	Salvia thymoides blue salvia	L

GOLDEN SHORE DEVELOPMENT AREA

T S	<i>Sambucus</i> spp. elderberry	L
S P	<i>Santolina</i> spp. lavender cotton	L
T	<i>Schinus polygamus</i> Peruvian pepper tree	L
P Gc	<i>Sedum</i> spp. stone crop	L
P	<i>Sempervivum</i> spp. house leek	L
P	<i>Senecio cineraria</i> dusty miller	L
S	<i>Senecio flaccidus</i> var. <i>douglasii</i> bush groundsel	L
Gc	<i>Senecio mandraliscae</i> kleinia	L
S	<i>Senna artemesioides</i> (<i>Cassia artemesioides</i>) feathery cassia/senna	L
S	<i>Senna bicapsularis</i> (<i>Cassia candolleana</i>) New Zealand cassia/senna	L
S	<i>Senna didymobotrya</i> (<i>Cassia didymobotrya</i>) senna/cassia <i>didymobotrya</i>	L
S	<i>Senna multiglandulosa</i> (<i>Cassia tomentosa</i>) wooly senna	L
S	<i>Senna odorata</i> (<i>Cassia odorata</i>) senna/cassia (<i>odorata</i>)	L
S	<i>Senna polyantha</i> (<i>Cassia goldmanii</i>) Goldman's senna/cassia	L
S	<i>Senna phyllodenia</i> (<i>Cassia phyllodenia</i>) silver cassia/senna	L
S	<i>Senna spectabilis</i> (<i>Cassia excelsa</i>) senna/cassia (<i>spectabilis/excelsa</i>)	L
S	<i>Senna splendida</i> (<i>Cassia splendida</i>) golden wonder	L
S	<i>Senna sturtii</i> (<i>Cassia sturtii</i>) Sturt's cassia/senna	L
P	<i>Silene</i> spp. moss pink/campion	L
P	<i>Sinningia tubiflora</i> velvet slipper	L
P	<i>Sisyrinchium bellum</i> blue-eyed grass	L
V	<i>Solanum xanthii</i> purple nightshade	L
S Gc	<i>Sollya heterophylla</i> Australian bluebell creeper	L
T S	<i>Sophora secundiflora</i> Texas mountain laurel	L
P	<i>Sphaeralcea</i> spp. desert/globe mallow	L
P	<i>Sprekelia formosissima</i> Aztec lily	L
P	<i>Stachys albotomentosa</i> betony	L
P	<i>Stipa cernua</i> nodding feather grass	L
P	<i>Stipa gigantea</i> giant needle grass	L
P	<i>Stipa lepida</i> foothill stipa	L
P	<i>Stipa stipa spinosa</i> desert bunch grass	L
P	<i>Stipa tenuissima</i> Mexican feather grass	L
S	<i>Styrax officinale californicum</i> California storax	L
P S	<i>Sutera</i> spp. sutera	L
S	<i>Symphoricarpos albus</i> snowberry	L
T	<i>Tagetes lemmoni</i> mountain marigold	L
T S	<i>Tanacetum coccinium</i> (<i>Pyrethrum roseum</i>) painted daisy	L
P	<i>Tanacetum haradjanii</i> tansy	L
T S	<i>Tecoma stans</i> yellow bells	L
P Gc	<i>Teucrium chamaedrys</i> germander	L
S Gc	<i>Teucrium cossonii</i> Majorcan germander	L
S	<i>Teucrium fruticans</i> bush germander	L
S	<i>Teucrium marum</i> cat thyme	L
P	<i>Thalictrum fendleri</i> var. <i>polycarpum</i> meadow rue	L
T	<i>Toona sinensis</i> (<i>Cedrela sinensis</i>) Chinese toon	L
P	<i>Trichocereus</i> spp.	L
P	<i>Tricyrtis hirta</i> toad lily	L
Gc	<i>Trifolium fragiferum</i> O'Connor O'Connors legume (revegetation use)	L

GOLDEN SHORE DEVELOPMENT AREA

P	<i>Tritelia laxa</i> lthuriel's spear	L
P	<i>Urginea maritima</i> sea squill	L
P	<i>Verbascum bombiciferum</i> mullein	L
P	<i>Verbascum phoeniceum</i> purple mullein	L
Gc P	<i>Verbena gooddingii</i> Goodding verbena	L
Gc P	<i>Verbena lilacina</i> lilac verbena	L
Gc P	<i>Verbena peruviana</i> Peruvian verbena	L
Gc P	<i>Verbena tenuisecta</i> moss verbena	L
T	<i>Vitex agnus-castus</i> chaste tree	L
V	<i>Vitis californica</i> California wild grape	L
V	<i>Vitis girdiana</i> desert grape	L
T	<i>Washingtonia filifera</i> California fan palm	L
T	<i>Washingtonia robusta</i> Mexican fan palm	L
S	<i>Westringia fruticosa</i> (rosmariniformis) coast rosemary	L
S	<i>Westringia glabra</i> violet westringia	L
S	<i>Westringia longifolia</i> westringia (longifolia)	L
S	<i>Westringia raleighi</i> Raleigh westringia	L
S	<i>Westringia 'Wynyabbie Gem'</i> Wynyabbie gem westringia	L
P	<i>Xanthorrhoea</i> spp. grass tree	L
S T	<i>Yucca</i> spp. yucca	L
T	<i>Zelkova serrata</i> saw leaf zelkova	L
T	<i>Ziziphus jujuba</i> Chinese jujube	L

T	<i>Acacia pennatula</i> pennatula acacia	VL
T	<i>Acacia smallii</i> desert sweet acacia	VL
S	<i>Adenostoma fasciculatum</i> chamise	VL
T S	<i>Adenostoma sparsifolium</i> red shanks/ribbonwood	VL
T	<i>Aesculus californica</i> California buckeye	VL
P	<i>Amaryllis belladonna</i> naked lady	VL
S T	<i>Arctostaphylos diversiloba</i> (<i>Comarostaphylis diversiloba</i>) summer holly	VL
P	<i>Arum italicum</i> Italian Arum	VL
P	<i>Asteriscus sericeus</i>	VL
S Gc	<i>Atriplex</i> spp. saltbush	VL
S	<i>Baccharis sarothroides</i> desert broom	VL
S Gc	<i>Baccharis 'Centennial'</i> bentennial baccharis	VL
S	<i>Calliandra californica</i> Baja fairy duster	VL
S	<i>Calliandra eriophylla</i> fairy duster	VL
S	<i>Carnegiea gigantea</i> saguaro	VL
S Gc	<i>Ceanothus</i> spp. California lilac	VL
S	<i>Cephalocereus</i> spp. old man cactus	VL
T	<i>Cercidium floridum</i>	VL
T	<i>Cercidium microphyllum</i> little leaf palo verde	VL
T	<i>Cercidium praecox</i> Sonoran palo verde	VL
S	<i>Cercocarpus betuloides</i> mountain ironwood	VL
S	<i>Cercocarpus minutiflorus</i> San Diego mountain mahogany	VL
T	<i>Chilopsis linearis</i> desert willow	VL
V	<i>Clematis lasiantha</i> pipestem clematis	VL
V	<i>Clematis pauciflora</i> small flowered clematis	VL

GOLDEN SHORE DEVELOPMENT AREA

S	Cleome isomeris bladder pod	VL
P	Coreopsis gigantea giant coreopsis	VL
P	Coreopsis maritima sea dahlia	VL
T	Cupressus arizonica ssp. arizonica Cuayamaca cypress	VL
T	Cupressus arizonica var. glabra smooth Arizona cypress	VL
T	Cupressus guadalupensis forbesii tecate cypress	VL
S	Dendromecon spp. bush poppy	VL
T	Dracaena draco dragon tree	VL
P	Dudleya spp. dudleya, live forever	VL
P	Encelia californica California encelia	VL
S	Encelia farinosa brittle bush	VL
P	Epilobium spp. (Zauchneria) California fuchsia	VL
S P	Eriogonum spp. buckwheat	VL
P	Eriophyllum confertiflorum golden yarrow	VL
T	Eucalyptus macranda long flowered marlock	VL
S	Euphorbia rigida euphorbia	VL
S	Euphorbia tirucalli milk bush	VL
S	Fallugia paradoxa Apache plume	VL
S	Ferocactus spp. barrel cactus	VL
S	Fouquieria splendens ocotillo	VL
S	Fremontodendron spp. flannel bush	VL
S	Galvesia juncea Baja bush-snapdragon	VL
S	Galvesia speciosa island bush snapdragon	VL
S	Garrya fremontii Fremont silktassel	VL
S	Hesperaloe funifera Coahuilan hesperaloe	VL
S	Hesperaloe parviflora red/ yellow yucca	VL
S	Isocoma spp. (Haplopappus) goldenbush	VL
Gc	Iva hayesiana poverty weed	VL
S	Justicia californica chuparosa	VL
Gc P	Keckiella cordifolia heart-leaved penstemmon	VL
P	Larrea tridentata creosote	VL
P	Lemaireocereus thurberi	VL
S P	Lobelia laxiflora Mexican bush lobelia	VL
P	Lotus scoparius deer weed	VL
T	Lyonothamnus floribundus Catalina ironwood	VL
S	Malacothamnus fasciculatus bush mallow	VL
S	Malosma laurina (Rhus laurina) laurel sumac	VL
T	Melia azedarach chinaberry	VL
P	Monardella villosa coyote mint	VL
P	Muscari macrocarpum grape hyacinth	VL
P	Nassella cernua nodding needlegrass	VL
P	Nassella lepida foothill needlegrass	VL
P	Nassella pulchra purple needlegrass	VL
P	Nassella tenuissima Texas needle grass	VL
P	Nauplius sericeus (Asteriscus sericeus) Canary island daisy	VL
S P	Nolina spp. bear grass	VL
P	Oenothera fruiticosa golden sundrops	VL
S	Opuntia spp. prickly pear/cholla	VL

GOLDEN SHORE DEVELOPMENT AREA

T	Parkinsonia florida (Cercidium floridum) blue palo verde	VL
T	Pinus edulis pinyon pine	VL
T	Pinus sabiniana foothill/Gray pine	VL
T S	Prunus ilicifolia holly leaf cherry	VL
T S	Quercus berberidifolia California scrub oak	VL
T	Quercus douglasii blue oak	VL
T S	Quercus dumosa Nutall's scrub oak	VL
T	Quercus wislizeni interior live oak	VL
P	Ranunculus californicus California buttercup	VL
Gc	Rhagodia deltophylla rhagodia	VL
S	Rhamnus croceus redberry	VL
S	Rhamnus croceus ilicifolia hollyleaf redberry	VL
S	Rhus integrifolia lemonade berry	VL
S	Rhus laurina	VL
S	Rhus ovata sugar bush	VL
S	Ribes malvaceum chaparral currant	VL
S P	Romneya coulteri Matilija poppy	VL
S	Ruellia californica rama parda	VL
S	Salvia apiana white sage	VL
P	Salvia californica Baja California sage	VL
S	Salvia clevelandii & hybrids Cleveland/Alan Chickering etc.	VL
S	Salvia munzii San Miguel Mountain sage	VL
T	Schinus molle California pepper tree	VL
S	Shepherdia argentea silver buffaloberry	VL
S	Simmondsia chinensis jojoba	VL
P	Stenocereus thurberi (Lemaireocereus) organ pipe cactus	VL
P	Stipa pulchra feather grass	VL
S P	Trichostema lanatum woolly/mountain blue curls	VL
S P	Trichostema parishii	VL
S	Viguiera laciniata San Diego County viguiera	VL
S P	Xylococcus bicolor mission manzanita	VL
P	Zauschneria spp.	VL
	Note: Many Echinocactus spp. are now in other genera including Ferrocactus, Echinopsis, Parodia, Sclerocactus and others	

GOLDEN SHORE PROJECT

DEVELOPMENT AGREEMENT

BY AND AMONG

**THE CITY OF LONG BEACH,
A CHARTER CITY AND MUNICIPAL CORPORATION
("CITY")**

AND

**400 OCEANGATE, LTD.,
A CALIFORNIA LIMITED PARTNERSHIP**

**ELEVEN GOLDEN SHORE, L.P.
A CALIFORNIA LIMITED PARTNERSHIP**

AND

**ONE GOLDEN SHORE, L.P.
A CALIFORNIA LIMITED PARTNERSHIP**

("DEVELOPER")

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	2
2. RECITALS OF PREMISES, PURPOSES AND INTENT	8
2.1 State Enabling Statute.	8
2.2 City Procedures and Actions.....	9
2.3 The Property.....	9
2.4 The Project.	9
2.5 Public Objectives.	10
2.5.1 Comprehensive Planning Objectives.	10
2.5.2 City Development Objectives.	11
2.6 Developer Objectives.....	11
2.7 Applicability of the Agreement.	12
3. AGREEMENT AND ASSURANCES	12
3.1 Agreement and Assurances on the Part of Developer.	12
3.1.1 Project Development.....	12
3.1.2 Timing of Development.....	13
3.2 Agreement and Assurances on the Part of City.	13
3.2.1 Entitlement to Develop.	14
3.2.1.1 Project Entitlement.....	14
3.2.1.2 Nonapplication of Subsequent Land Use Regulations.....	14
3.2.1.3 Changes In California Building Standards Codes.	14
3.2.1.4 Changes Mandated by Federal or State Law.	14
3.2.1.5 Health and Safety Emergencies.	15
3.2.1.6 Agreed Changes and Other Reserved Powers.	15
3.2.2 Subsequent Discretionary Project Approvals; Consistent Subsequent Requirements.....	16
3.2.3 Consistency with Land Use Regulations.	16
3.2.4 Moratoria.....	16
3.2.5 Standard City Services.....	17
3.2.6 No Limitation on Fees.	17
4. TERM	17
4.1 Basic Term.....	17

4.2	Early Full Termination of Agreement.....	18
5.	ANNUAL REVIEW.....	18
5.1	Annual Review Procedure.....	18
5.2	Termination or Modification of Agreement.....	18
5.3	Certificate of Agreement Compliance.....	19
5.4	Failure of Annual Review.....	19
5.5	Annual Review Fee.....	19
6.	VESTED RIGHTS TO DEVELOP.....	19
7.	DEFAULT, REMEDIES AND DISPUTE RESOLUTION.....	20
7.1	Intent.....	20
7.2	City's Remedies.....	20
7.2.1	Default by Developer.....	20
7.2.2	Notice of Default.....	21
7.2.3	Failure to Cure Default Procedure.....	21
7.2.4	Termination or Modification of Agreement.....	21
7.2.5	Specific Performance.....	22
7.3	Developer's Remedies.....	22
7.3.1	Default and Notice of Default.....	22
7.3.2	Specific Performance; Waiver of Damage Remedies.....	23
7.4	Rights and Duties Following Termination.....	24
7.5	Developer's Right To Terminate Upon Specified Events.....	24
7.6	Legal Actions.....	24
8.	GENERAL PROVISIONS.....	25
8.1	Effective Date.....	25
8.2	Appeals to City Council.....	25
8.3	Cooperation and Implementation.....	25
8.3.1	Processing.....	25
8.3.2	Other Governmental Permits.....	26
8.3.3	Cooperation in the Event of Legal Challenge by Third Party.....	26
8.3.3.1	Developer and City Legal Counsel.....	26
8.3.3.2	Reimbursement of Attorneys' Fees.....	27
8.3.3.3	Indemnification.....	27
8.3.3.4	Joint Defense.....	28

8.3.3.5 Continuing Obligations	28
8.4 Relationship of Parties.	29
8.5 Notices.	29
8.6 Developer Hold Harmless.....	30
8.7 Insurance.	31
8.8 Severability and Termination.....	31
8.9 Time is of Essence.	31
8.10 Modification or Amendment.....	31
8.11 Waiver.....	31
8.12 Equitable Servitudes and Covenants Running with the Land.....	32
8.13 Governing State Law; Compliance with Applicable Law.	32
8.14 Constructive Notice and Acceptance.	33
8.15 Assignment.	34
8.15.1 Right to Assign.	34
8.15.2 Release of Transferring Owner; Non-Severable and Severable Obligations.....	35
8.16 Tentative Subdivision Maps.	36
8.17 Water Availability.....	36
8.18 Regulation by Other Public Agencies.....	36
8.19 Vesting Tentative Maps.	36
8.20 Binding Effect of Agreement.....	37
8.21 Statute of Limitation and Laches.	37
8.22 Entire Agreement.	37
8.23 Legal Advice; Neutral Interpretation; Headings; Table of Contents.	37
8.24 Singular and Plural.....	38
8.25 No Third Party Beneficiaries.	38
8.26 Eminent Domain.	38
8.27 Authority to Execute.	38
8.28 Force Majeure.	38
8.29 Estoppel Certificate.....	38
8.30 Mortgagee Protection.....	39

EXHIBITS

Exhibit A	Legal Description
Exhibit B	Project Vicinity Map
Exhibit C	Assignment and Assumption Agreement

**DEVELOPMENT AGREEMENT
BY AND AMONG
THE CITY OF LONG BEACH
AND
400 OCEANGATE, LTD., ELEVEN GOLDEN SHORE, L.P.,
AND ONE GOLDEN SHORE, L.P.**

THIS DEVELOPMENT AGREEMENT, dated as of _____, 2015, by and among the CITY OF LONG BEACH, a charter city and municipal corporation of the State of California, on the one hand, and 400 OCEANGATE, LTD., a California limited partnership, ELEVEN GOLDEN SHORE, L.P., a California limited partnership, and ONE GOLDEN SHORE, L.P., a California limited partnership, on the other hand, pursuant to the authority set forth in the Development Agreement Act, the City's inherent power as a charter city, and the Enabling Ordinance.

RECITALS

WHEREAS, the City and Developer recognize that construction and development of the Project (consisting of a mixed-use complex and other related facilities described herein) will benefit both Parties by (1) creating significant opportunities for economic growth in the City, the Southern California region and the State of California, (2) allowing the Developer the opportunity to realize increased value and returns from its Property, (3) creating additional housing in the City, (4) providing a high quality, mixed-use project which will provide the City with a strong entry statement for the western gateway to the City's downtown and (5) generating significant economic benefits to the State, the Southern California region, the City and Developer; and

WHEREAS, the Project will be consistent with and will be designed and implemented to further numerous comprehensive planning objectives contained within the City's General Plan; and

WHEREAS, the Project will provide opportunities for new office, hotel, retail and housing growth in the City which will provide new general fund revenues; and

WHEREAS, in order to provide certainty and render the Project development more feasible in light of the capital investment necessary to implement the Project and the extended planning horizon necessary to coordinate a project of such scope and complexity, and in order to realize the benefits contemplated to result from the development of the Project, the City is

willing to agree with the Developer that, with respect to the Property, certain existing governmental entitlements shall, to the extent specified herein, not be changed or supplemented with inconsistent burdens and exactions during the Term of this Agreement; and

WHEREAS, Developer also recognizes and agrees that in extending these benefits to Developer, the City will reserve certain legislative powers to protect the interests and responsibilities of the City and to ensure that the benefits contemplated by this Agreement are received; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Project pursuant to the Development Agreement Act and the procedures and requirements established by the Enabling Ordinance upon the terms set forth herein.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, the City's inherent powers as a charter city, and the Enabling Ordinance, and in consideration of the premises and mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto agree as follows:

1. DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

1.1 "*Agreement*" means Development Agreement.

1.2 "*Attorneys' Fees*" means and shall be limited to (a) attorneys' fees, if any, awarded to a plaintiff by a court of competent jurisdiction pursuant to a final judgment in connection with any Litigation, or (b) the amount required to be paid, if any, to reimburse any plaintiff for the plaintiff's attorneys' fees as provided in a settlement agreement approved by City and Developer in connection with any Litigation, as provided in Section 8.3.3 of this Agreement.

1.3 "*California Building Standards Codes*" means those building, electrical, mechanical, fire and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California

codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

1.4 “**City**” means the City of Long Beach, a charter city and municipal corporation of the State of California duly organized and existing under the Constitution and the laws of the State of California.

1.5 “**City Agency**” means each and every agency, department, board, and/or commission acting under the authority of the City, including, without limitation, the City Council and the Planning Commission.

1.6 “**City Attorney**” means the city attorney of City.

1.7 “**City Council**” means the city council of City and the legislative body of the City pursuant to section 65867 of the Development Agreement Act.

1.8 “**City Funds**” means any City general fund monies, any tax increment monies, and/or any transportation improvement or capital fund monies.

1.9 “**City Manager**” means the chief executive officer of City.

1.10 “**City Representatives**” means all officials, advisory commissioners, agents, staff, employees, contractors, council members, planning commissioners, representatives, authorities, managers, affiliates, successors and assigns of the City or any City Agency.

1.11 “**Code**” means the City of Long Beach Municipal Code.

1.12 “**Commercial Districts**” means Sub Areas 7, 8A, and 8B, as defined by the Development Standards.

1.13 “**Developer**” means and collectively refers to 400 Oceangate, Ltd., Eleven Golden Shore, L.P., a California limited partnership, and One Golden Shore, L.P., a California limited partnership and their successors and assigns.

1.14 “**Conditions of Approval**” means any conditions, restrictions, or requirements imposed by the Project Approvals, including, without limitation, any Development Standards and Design Guidelines.

1.15 “**Design Guidelines**” means the Master Plan and Design Guidelines for Development of the Project, dated March 5, 2010, and adopted by the City prior to or concurrently with the approval of the other Project Approvals.

1.16 “**Development**,” whether or not capitalized, 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 buildings and structures; and the installation of landscaping.

1.17 “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (sections 65864 through 65869.5) of the California Government Code.

1.18 “Development Requirements” means the requirements of City imposed in connection with or pursuant to any Project Approval for the dedication of land, the construction or improvement of public facilities, or the payment of fees or assessments in order to lessen, offset, mitigate, or compensate for the impacts of Development on the environment or other public interests.

1.19 “Development Standards” means only those development standards, requirements, limitations, and provisions in effect as of the Effective Date, as hereinafter defined, including, without limitation, height, density, setback, sideyards, lot sizes, and other zoning standards incorporated into PD-6 Sub Area 1, as the foregoing may be hereafter modified or amended consistent with the limitations and provisions of this Agreement, including the vested rights of Developer set forth herein.

1.20 “Director” means the Director of Development Services of the City.

1.21 “Discretionary Action” or “Discretionary Approval” means an action which requires the exercise of judgment, deliberation, or discretion on the part of City, including any City Agency and City Representatives, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires a City Agency or City Representative to determine whether there has been compliance with applicable statutes, ordinances, regulations, or requirements.

1.22 “Effective Date” means the date this Agreement, fully executed by the Parties, is recorded in the office of the Recorder of Los Angeles County.

1.23 “Enabling Ordinance” means Ordinance C-6533 § I adopted by the City Council on October 4, 1988, which established Chapter 21.29 of the Code, which authorizes and enables the City to enter into development agreements in accordance with the Development Agreement Act.

1.24 “Environmental Impact Report” means Volume I Draft Environmental Impact Report, Golden Shore Master Plan, October, 2009; Volume II Draft Environmental Impact Report, Golden Shore Master Plan, October, 2009; and Volume III Final Environmental Impact

Report, Golden Shore Master Plan, January, 2010 prepared pursuant to California Public Resources Code section 21000 *et seq.* covering the Project and assigned State Clearinghouse Number 2008111094.

1.25 “**General Plan**” means the General Plan of the City of Long Beach.

1.26 “**Impact Fees**” means impact fees, linkage fees, exactions, assessments or fair share charges, or other similar impact fees or charges imposed by the City on or in connection with the impacts of new development pursuant to rules, regulations, ordinances, and policies of the City.

1.27 “**Inspections**” means all field inspections and reviews by City Agencies or City Representatives during the course of construction of the Project and the processing of certificates of occupancy (permanent or temporary).

1.28 “**Land Use Regulations**” means all ordinances, resolutions, codes, rules, regulations, guidelines, and official policies of the City in force as of the Effective Date governing the permitted uses 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 guidelines, standards, and specifications applicable to the Development of the Property. “**Land Use Regulations**” includes, without limitation, the General Plan and Project Approvals. Notwithstanding the language of this Section or any other language in this Agreement, all duly adopted codes, regulations, specifications and standards regarding the initial design and construction of any public improvements or improvements to be dedicated to the public shall be those in effect at the time the construction plans for such public improvements are approved by the City. In any event, the term “**Land Use Regulations**” does not refer to or include any City ordinance, resolution, code, rule, regulation, or official policy governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and
- (e) the exercise of the power of eminent domain.

1.29 “**Liabilities**” means all liabilities, losses, damages (including, without limitation, penalties, fines, and monetary sanctions), expenses, charges, or costs of whatsoever character, nature, and kind, including reasonable attorneys’ fees and costs incurred by the indemnified Party with respect to counsel of its choice.

1.30 “**Litigation**” means any legal action instituted by any third party challenging any aspect of this Agreement or the Project Approvals, including, without limitation, the adoption, validity, or application of any provision of this Agreement, or the Project’s compliance with all applicable federal and state prevailing wage requirements, including the requirements of California Labor Code section 1720 *et seq.*

1.31 “**Ministerial Permits and Approvals**” means the non-discretionary permits, approvals, plans, Inspections, certificates, documents, licenses, and all other non-discretionary actions required to be taken by the City in order for Developer to implement, develop, and construct the Project, including, without limitation, building permits, public works permits, grading permits, encroachment permits, permanent certificates of occupancy, and other similar permits and approvals which are required by the Code to implement the Project in accordance with the Project Approvals. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.32 “**Mitigation Monitoring Program**” means the mitigation monitoring program adopted in connection with the City’s approval of the Project Approvals and the certification of the Environmental Impact Report.

1.33 “**Mortgagee**” means a mortgagee of a mortgage, a beneficiary under a deed of trust or a lender under any other like security-device, and their successors and assigns.

1.34 “**Parties**” means collectively Developer and City.

1.35 “**Party**” means anyone of Developer or City.

1.36 “**Planning Commission**” means the Planning Commission of the City and the planning agency of the City pursuant to section 65867 of the Development Agreement Act.

1.37 “**Processing Fees and Charges**” means all current and future processing fees and charges required by the City in connection with the Development of the Project, and which apply City-wide, including, but not limited to, fees for Ministerial Permits and Approvals, land use applications, tract or parcel maps, lot line adjustments, air rights lots, street vacations, certificates

of occupancy, and other similar permits. Processing Fees and Charges shall not include Impact Fees.

1.38 “*Project*” means the Development of the Property as contemplated by Section 2.4 of this Agreement.

1.39 “*Project Approvals*” means the Discretionary Approvals for the Project that were approved by the City prior to the approval of the ordinance approving this Agreement and authorizing the execution of this Agreement by the City Manager on behalf of the City, which include, without limitation: (1) Resolution No. R-1145 certifying the Environmental Impact Report and the Mitigation Monitoring Program; (2) Ordinance No. 09-0023; (3) Ordinance No. ORD-11-1107 (PD-6), and (4) the Design Guidelines. References to the Project Approvals herein also shall be deemed to refer to and to incorporate the Development Requirements, Design Guidelines and Conditions of Approval imposed in connection with the Project Approvals and all Subsequent Discretionary Project Approvals that may hereafter be obtained.

1.40 “*Property*” means the real property legally described in Exhibit “A” and located in the area shown on the Project Vicinity Map attached as Exhibit “B” to this Agreement.

1.41 “*Reserved Powers*” means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date with respect to Development of the Project that may be in conflict with the Land Use Regulations, but: (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are California Building Standards Codes; (3) are necessary to comply with state or federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) are agreed to or consented to by Developer; (5) are City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called “sustainability” or “green building” laws, regulations, or ordinances); or (6) are actions to adopt or increase any Impact Fees, Processing Fees and Charges, or other City-wide fees or charges of general applicability throughout the City.

1.42 “*Section*” means the indicated section or subsection number of this Agreement.

1.43 “*Subsequent Discretionary Project Approvals*” means all Discretionary Actions or Discretionary Approvals applicable to the Project or the Property that are required to

implement the Project in accordance with this Agreement and that are approved by the City after the Effective Date.

1.44 “*Subsequent Land Use Regulations*” means any change in or addition to the Land Use Regulations adopted and effective after the Effective Date, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of an ordinance, City Charter amendment, initiative, resolution, policy, order, or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission, or any other City Agency, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which conflicts with the rights granted to Developer by this Agreement.

1.45 “*Term*” means the period of time from the Effective Date until the termination of this Agreement as provided in Section 4 of this Agreement.

2. RECITALS OF PREMISES, PURPOSES AND INTENT

2.1 State Enabling Statute.

To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act, which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties as further set forth herein.

2.2 City Procedures and Actions.

Pursuant to the authorization set forth in section 65865 of the Development Act, the City has established, by ordinance, procedures and requirements for the consideration of development agreements. Such procedures and requirements are set forth in Chapter 21.29, sections 21.29.010 through 21.29.090 of the Code.

In accordance with Chapter 21.29 of the Code, City has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the General Plan, and has adopted Ordinance No. _____ approving the application for this Agreement, directing the City Attorney to prepare this Agreement and authorizing the execution of this Agreement by the City Manager on behalf of the City.

2.3 The Property.

Developer is the owner of approximately 6.32 acres located in City, as more particularly described in Exhibit "A" attached hereto and shown on the Project Vicinity Map attached hereto as Exhibit "B."

2.4 The Project.

It is the Developer's intent to develop the Property as currently approved by the City as set forth in the Land Use Regulations and the Project Approvals. The major components of the Project are more fully described by said Land Use Regulations and Project Approvals and must comply with all requirements set forth in said Land Use Regulations and Project Approvals, which shall be construed together with this Agreement. The requirements set forth in the Land Use Regulations and Project Approvals, including the provisions of PD-6 Sub Area 1, and this Agreement are cumulative, and the requirements of both the Land Use Regulations and Project Approvals, including the requirements of PD-6 Sub Area 1, and this Agreement shall each be met. Subject to the Reserved Powers and compliance with all requirements of the Land Use Regulations and Project Approvals, it is the understanding of the Parties to this Agreement that Developer will have the right to proceed with completion and occupancy of the Project in

accordance with the uses, densities, design and heights set forth in the Project Approvals incorporated herein.

2.5 Public Objectives.

In accordance with the legislative findings set forth in section 65864 of the Development Agreement Act, City wishes to attain certain public objectives that will be furthered by this Agreement, including the orderly development of the Property in accordance with the Land Use Regulations and Project Approvals. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. Additionally, although Development in accordance with this Agreement will restrain the City's land use and other relevant police powers to the extent expressly set forth herein, the Agreement will provide City with sufficient Reserved Powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Developer will receive assurances that the Project may be developed during the Term of this Agreement in accordance with the Land Use Regulations and Project Approvals, subject to the terms and conditions of this Agreement and the Conditions of Approval.

The Parties believe that such orderly Development of the Project will provide many benefits to the Parties, including, without limitation, the following:

2.5.1 Comprehensive Planning Objectives.

The Development of the Property pursuant to this Agreement will facilitate the implementation of the General Plan, and will further the comprehensive planning objectives contained within the General Plan, including the following:

- (a) Expanding and attracting new business to the City;
- (b) Locating new multi-family housing in proximity to growing employment centers to decrease travel time, reduce traffic congestion, lessen energy consumption, and improve air quality;
- (c) Assisting in improving the quality and availability of neighborhood housing and in building a strong network of healthy neighborhoods;
- (d) Redirecting growth to major employment/activity centers, such as the Project area; and

(e) Improving the urban environment in order to make Long Beach a more pleasant place to live, work, play, and raise a family.

2.5.2 City Development Objectives.

The public benefits to be received as a result of the development of the Project through this Agreement include, among others:

(a) Development of a major business center within the City providing: opportunities for temporary employment during construction for up to an estimated two thousand five hundred fifty (2,550) persons per year for eight (8) years and, at build-out, permanent local long-term employment for up to an estimated four hundred eighty (480) persons with an estimated annual direct and indirect payroll of over six million dollars (\$6,000,000); if a hotel is built on the site, approximately two million five hundred fifty thousand dollars (\$2,550,000) in annual Transient Occupancy Tax; and more than two million six hundred thousand dollars (\$2,600,000) as the City's portion of increased annual property taxes; and

(b) Assurance that development of the Project will proceed in accordance with the Golden Shore Master Plan and Design Guidelines which were the result of a comprehensive and coordinated planning process by and among Developer, City, and the community, in which private and public goals, objectives, and interests were thoughtfully integrated and resolved in an optimal fashion.

2.6 Developer Objectives.

In accordance with the legislative findings set forth in section 65864 of the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that, following receipt of all necessary discretionary approvals for the Project (i.e., the Project Approvals and the Subsequent Discretionary Project Approvals), Developer will be able to develop the Project in accordance with the Land Use Regulations and with the Project Approvals. Because of the nature of the Project, the Development of the Project will take a long period of time to complete. In the absence of this Agreement, Developer would have no assurance that it can complete the Project. For any number of currently foreseeable and unforeseeable reasons, including, without limitation, regional traffic and related impacts (such as impacts on air quality) resulting from development outside the jurisdiction of City, pressures on the City could be created (a) to halt the Project at a point short of total build-out, (b) to defer or delay completion of the Project, or (c) to

apply new rules, regulations or official policies to the Project inconsistent with this Agreement in such a manner as to significantly increase the cost or reduce the size of the Project. The potential loss of anticipated revenue associated with these development risks and uncertainties would, in the absence of this Agreement, deter and discourage Developer from making a long-term commitment to the implementation of the Project. Accordingly, Developer cannot prudently continue the development of the Project without reasonable assurance that, subject to the terms of this Agreement and the Reserved Powers, it will be able to complete the Project in accordance with the Project Approvals and the Land Use Regulations.

2.7 Applicability of the Agreement.

This Agreement does not: (a) grant density, intensity or uses in excess of that otherwise established in the Project Approvals and the Land Use Regulations; (b) supersede, nullify or amend any condition imposed in the Project Approvals; (c) eliminate City discretion with respect to future Discretionary Actions relating to the Project if such Discretionary Actions are initiated and submitted by Developer or any other owner of the Property or any portion thereof after the Effective Date; (d) guarantee that Developer will receive any profits from the Project; or (e) amend the City's General Plan. This Agreement has a fixed Term and is not permanent. Subject to the Reserved Powers and compliance with all requirements of the Land Use Regulations and Project Approvals, it is the understanding of the Parties to this Agreement that Developer will have the right to proceed with completion and occupancy of the Project in accordance with the uses, densities, design and heights set forth in the Project Approvals incorporated herein.

3. AGREEMENT AND ASSURANCES

3.1 Agreement and Assurances on the Part of Developer.

In consideration of the covenants and agreements of City set forth herein, and in consideration of City's assurances with respect to Developer's right to complete the Project set forth in Section 3.2 below, Developer hereby agrees as follows:

3.1.1 Project Development.

Developer agrees that it will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decisions concerning timing of the commencement or continuation of development, to develop the Project in accordance with the

terms and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations, including: as more fully described in PD-6 Sub Area 1, an integrated mixed use development comprised of housing and commercial uses.

3.1.2 Timing of Development.

The Parties acknowledge that Developer cannot predict when or the rate at which the Project will be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, interest rates, absorption, availability of financing, and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intent of Developer and City to hereby cure that defect by acknowledging and providing that, subject to the limitations expressly set forth in this Agreement, Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its business judgment. City acknowledges that such a right is consistent with the intent, purpose, and understanding of the Parties to this Agreement. Developer will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decisions, to develop the Project in accordance with the provisions and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations. Nothing in this Section is intended to alter the standard durational limits of any applicable permits issued to Developer.

3.2 Agreement and Assurances on the Part of City.

In order to effectuate the premises, purposes and intent set forth in Section 2 above, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, including the preceding Section 3.1 of this Agreement, City hereby agrees that Developer shall have a vested right to carry out and complete the entire Project, as specifically described and set forth in this Agreement, subject to the terms and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations. In furtherance of such agreement and assurance, and pursuant to the authority

and provisions set forth in the Development Agreement Act and Chapter 21.29 of the Code, City, in entering into this Agreement, hereby agrees and acknowledges that:

3.2.1 Entitlement to Develop.

3.2.1.1 Project Entitlement.

Developer has the vested right, to the fullest extent allowed under the Development Agreement Act, to develop the Project, in accordance with and subject to the Project Approvals and the Land Use Regulations without any further Discretionary Action being obtained from the City other than any applicable Subsequent Discretionary Project Approvals, and City finds and certifies that the Project is consistent with the General Plan and the applicable Land Use Regulations. This Agreement shall vest the right to develop the Property with the permitted uses of land, and with the density and intensity of uses specifically set forth in the Project Approvals.

3.2.1.2 Nonapplication of Subsequent Land Use Regulations.

Except as otherwise provided by this Agreement with respect to the Reserved Powers, any Subsequent Land Use Regulations shall not be applied by City to the Project.

3.2.1.3 Changes In California Building Standards Codes.

Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the California Building Standards Codes pursuant to the Reserved Powers.

3.2.1.4 Changes Mandated by Federal or State Law.

Notwithstanding any provision of this Agreement to the contrary, the Property shall also be subject to subsequently enacted state or federal laws or regulations which preempt local regulations, or mandate the adoption of local regulations, or are in conflict with local regulations or with the Project Approvals and this Agreement. As provided in section 65869.5 of the Development Agreement Act, in the event that state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or

regulation, and a written statement of the conflicts thereby raised with the provisions of local regulations or this Agreement. Promptly thereafter City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer as derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, it shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so.

3.2.1.5 Health and Safety Emergencies.

In the event that any future public health or safety emergencies arise with respect to the Development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by the City in its discretion, to address such emergency in a way that does not have a material adverse impact on Development of the Property in accordance with the Project Approvals and the Land Use Regulations, and if the City determines, in its discretion, that it is not reasonably possible to so address such health or safety emergency, to select that option for addressing the situation which, in the City's discretion, minimizes, so far as reasonably possible, the impact on Development of the Property in accordance with the Project Approvals and the Land Use Regulations while still addressing such health or safety emergency in a manner acceptable to the City.

3.2.1.6 Agreed Changes and Other Reserved Powers.

This Agreement shall not preclude application to the Project of rules, regulations, ordinances, and officially adopted plans and policies in conflict with the Land Use Regulations or the Project Approvals where such additional rules, regulations, ordinances, and officially adopted plans and policies (a) are mutually agreed to in writing by Developer and City in accordance with the requirements of Section 8.10 of this Agreement or (b) result from the Reserved Powers.

3.2.2 Subsequent Discretionary Project Approvals; Consistent Subsequent Requirements.

In accordance with California Government Code section 65865.2, City hereby agrees that it will not withhold or condition any Subsequent Discretionary Project Approval in a manner which would prevent Development of the Property for the uses and to the density or intensity of Development set forth in this Agreement, provided that Developer reasonably and satisfactorily complies with all procedures, actions, payment of Processing Fees and Charges, conditions, and criteria generally required of developers by City for processing applications for development, consistent with this Agreement. During the Term of this Agreement, City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with the terms of this Agreement other than those permits or approvals which are required by the Land Use Regulations or Property Approvals and any other governmental requirements applicable to the Project in accordance with the terms of this Agreement. All Subsequent Discretionary Project Approvals shall be subject to the terms and conditions of this Agreement. Any Subsequent Discretionary Project Approval, or any conditions, terms, restrictions, and requirements of any such Subsequent Discretionary Project Approval, shall not prevent development of the Project for the uses and to the maximum density or intensity of development set forth in this Agreement.

In accordance with Government Code section 65866, nothing in this Agreement shall prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations, and policies which do not conflict with the Property Approvals and Land Use Regulations applicable to the Property under this Agreement and such new rules, regulations, and policies shall be applicable to the Property.

3.2.3 Consistency with Land Use Regulations.

City finds, based upon all information made available to City prior to or concurrently with the execution of this Agreement, that there are no Land Use Regulations that would prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, Project design, and heights incorporated and agreed to herein.

3.2.4 Moratoria.

In the event an ordinance, resolution, or other measure is hereafter enacted, whether by action of City, by initiative, or otherwise, which affects the rate, timing, or

sequencing of the Development of all or any part of the Project, or implementation or construction of any Condition of Approval ("*Moratorium*"), City agrees that the changes imposed by such Moratorium shall not apply to the Project or this Agreement, unless such changes are applied pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement, and, if applicable to the Project, shall toll the Term for the period of time that such Moratorium actually delays the rate or timing or affects the sequencing of the Development of all or any part of the Project. Developer shall not request or, unless requested or permitted to do so by the City, support adoption of any such Moratorium during the Term.

3.2.5 Standard City Services.

The City agrees to provide generally applicable standard municipal services to the Project upon the same terms as provided elsewhere in the City; provided, however, the City does not guarantee any particular level of municipal service to Developer or the Property.

3.2.6 No Limitation on Fees.

Nothing in this Agreement shall be interpreted or applied to limit or restrict the application of any new Impact Fees, Processing Fees and Charges, or other fees applicable to the Project, or any increase in any such existing fees, and Developer waives any right to object thereto.

4. TERM

4.1 Basic Term.

The Project is a multi-phased Development which will occur over many years, the exact number of which will be determined ultimately by market conditions and other business factors. It is the intent of the Parties to establish as the Term of this Agreement more than sufficient time to complete the Project, so that if current expectations prove to be unrealistic, Developer will have additional time in which to complete the Project in an economically sound manner. Therefore, this Agreement shall commence upon the Effective Date and shall remain in effect until completion of the development of the Property as contemplated by Section 2.4 of this Agreement or for a term of twenty (20) years after the Effective Date, whichever is earlier, unless said Term is terminated, modified, or extended pursuant to the express provisions set forth in this Agreement or by mutual written consent of the Parties hereto. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect;

provided, however, such termination shall not affect any right or duty arising from City entitlements or approvals, including the Project Approvals, approved prior to, concurrently with or subsequent to the Effective Date or any right or duty of Developer which has accrued as of the date of such termination or which, by its terms, expressly survives such termination. As provided in Section 3.2.4 of this Agreement, the Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any Moratorium.

4.2 Early Full Termination of Agreement.

The Agreement is terminable: (a) by both Parties, with mutual written consent of the Parties, or (b) by City, following an uncured material default by the Developer as set forth in Section 7, or (c) by Developer, following an uncured material default by City as set forth in Section 7.

5. ANNUAL REVIEW.

5.1 Annual Review Procedure.

During the Term of this Agreement, the Developer shall initiate and the City shall conduct an annual review of the Developer's compliance with this Agreement. As provided in the Development Agreement Act, such annual review shall be limited in scope to determining good faith compliance with the provisions of this Agreement. As part of that review, Developer shall submit an annual monitoring review statement to the Planning Commission describing its actions in compliance with this Agreement, in a form acceptable to the City, within forty-five (45) days prior to each anniversary of the Effective Date of this Agreement. The Planning Commission shall receive and review such statement and notify Developer of any non-compliance within forty-five (45) days of receipt of the statement. Upon notification of any non-compliance, Developer shall have the opportunity to cure any non-compliance within sixty (60) days or such longer period as is reasonably necessary to cure such non-compliance, provided that Developer shall continuously and diligently pursue such cure at all times until such non-compliance is cured. If Developer fails to timely cure such non-compliance, as determined by City in City's reasonable discretion, then the City Council shall review the matter within thirty (30) days thereafter.

5.2 Termination or Modification of Agreement.

In the event the City Council determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms of this Agreement, the City may

modify or terminate this Agreement in accordance with the Development Agreement Act and Chapter 21.29.070 of the Code. Notwithstanding any provision to the contrary in any City procedures, there shall be no modification of this Agreement unless the City Council acts pursuant to sections 65867 and 65868 of the Development Agreement Act.

5.3 Certificate of Agreement Compliance.

If, at the conclusion of an annual review, Developer is found to be in good faith compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("***Certificate***") to Developer stating that, after the most recent annual review and based upon the information then known to the City, (a) this Agreement remains in effect and (b) Developer is, to the current actual knowledge of the City, in good faith compliance with the Agreement as required by section 65865.1 of the Development Agreement Act. Additionally, as set forth in Section 8.29, either Party may at any time request from the other an estoppel certificate confirming, in addition to the foregoing, the status of the other Party's performance of its obligations under this Agreement to the actual knowledge of the certifying Party. Any such Certificate delivered pursuant to this Section shall not estop the Party delivering the Certificate from asserting a breach or default, or pursuing any rights arising therefrom, with respect to any matter which may be subsequently discovered by the certifying Party or which may occur subsequent to the date of such Certificate.

5.4 Failure of Annual Review.

City's failure to conduct a review at least annually of Developer's compliance with the terms and conditions of this Agreement shall not constitute or be construed by City or Developer as a breach of or a default under this Agreement by City.

5.5 Annual Review Fee.

Developer shall pay the applicable annual review fee imposed for annual review of development agreements pursuant to Resolution No. C-28494 adopted by the City Council on December 14, 2004.

6. VESTED RIGHTS TO DEVELOP

Subject to the terms of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Project Approvals and the Land Use Regulations. City and Developer hereby acknowledge and agree that all of the Development allowed under the Project Approvals is vested specifically with Developer, and may not be

utilized by any other subsequent owner or lessee of a parcel or parcels of the Property except with the express written assignment by Developer pursuant to Section 8.15, and then only to the extent of such assignment; provided, however, that nothing herein shall be deemed to preclude a subsequent owner or lessee of a parcel or parcels of the Property from seeking additional entitlements to Development to the extent that such entitlements are additive to, and not a reduction of, the Development rights hereby vested with Developer, but any such additional entitlements shall be subject to the full discretion of the City without limitation or qualification by this Agreement or any provision thereof.

7. DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Intent.

Under this Agreement, Developer's obligation to City is to attempt to develop the Project, subject to the conditions established in the Project Approvals and the terms of this Agreement and in accordance with the Land Use Regulations and City's obligation to Developer is to permit Developer to complete the Project in accordance with and subject to the Project Approvals, the Land Use Regulations, and the terms of this Agreement. The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

7.2 City's Remedies.

7.2.1 Default by Developer.

In addition to the general review process under Section 5 above, in the event Developer does not perform its obligations under this Agreement in a timely manner, the City shall have those rights and remedies provided for in this Agreement, including, without limitation, Section 7.6; provided, that the City's right to compel specific performance of the obligations of Developer shall be subject to the limitations set forth in Section 7.2.5 of this Agreement; and provided, further, the City shall have no right to monetary damages as a result of any failure by Developer to start or complete the Project (other than to the extent arising from the Company's failure to complete, remove or secure improvements as required by Section 7.2.5 below or to pay any amounts due to City under the terms of this Agreement). Nothing in this Section 7.2.1 shall limit the City's right to terminate this Agreement in accordance with Section 7.2.4.

7.2.2 Notice of Default.

With respect to a default by the Developer under this Agreement, the City shall first submit to Developer a written notice of default in the manner prescribed in Section 8.5, identifying with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

7.2.3 Failure to Cure Default Procedure.

If, after the cure period has elapsed, the City finds and determines that Developer remains in default and the City wishes to terminate or modify this Agreement, the Director shall make a report to that effect to the Planning Commission and set a public hearing before the Commission in accordance with the notice and hearing requirements of sections 65867 and 65868 of the Development Agreement Act. If, after public hearing, the Planning Commission finds and determines that Developer has not cured the default pursuant to this Section 7.2, and that the City is entitled to terminate or modify this Agreement, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 8.2. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

7.2.4 Termination or Modification of Agreement.

If it is determined pursuant to the above-described procedures that the Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement as provided in Chapter 21.29.070C of the Code; provided, however, that with respect to a material breach of a Severable Obligation, as defined in Section 8.15.2, any such termination (as opposed to a modification) of this Agreement may only affect the portion of the Property affected by such breach; and further provided that with respect to a modification (as opposed to termination) of this Agreement, any modification that would materially increase the Developer's obligations

under this Agreement may not be made unilaterally by City and shall require the consent of Developer.

7.2.5 Specific Performance.

Except as provided in this Section, the City shall have no right to seek a remedy of specific performance with respect to the Development of the Project. The City's right to seek specific performance in connection with the Development of the Project shall be specifically limited to compelling Developer to (a) complete or demolish any uncompleted improvements initiated in connection with the Project which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion, (b) compelling Developer to dedicate and properly complete any public improvements which are required by the Project Approvals or the Land Use Regulations to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement, and (c) compelling the Developer to complete, demolish, or make safe and secure any uncompleted private improvements located on the Property with the choice of whether to demolish, complete, or secure such private improvements and the method of such demolition, completion, and securing of such private improvements to be selected by Developer in its sole discretion. Notwithstanding anything in Section 7.2 to the contrary and notwithstanding any termination of this Agreement, the City shall have the right to enforce all applicable provisions of the Land Use Regulations and the Project Approvals for any portion of the Project actually constructed and to collect all payments and reimbursements due to City under the express terms of this Agreement. Nothing in this Section 7.2.5 or the limitations on the City's rights of specific performance set forth herein shall be construed to prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, Project design, and heights set forth in the Project Approvals incorporated herein.

7.3 Developer's Remedies.

7.3.1 Default and Notice of Default.

With respect to a default by the City under this Agreement, Developer shall first submit to the City a written notice of default in the manner prescribed in Section 8.5, identifying with specificity those obligations of the City which have not been performed. Upon

receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

7.3.2 Specific Performance; Waiver of Damage Remedies.

Both Parties agree and recognize that, due to the size, scope, and nature of the Project, including the design and placement of various discrete uses and structures, and the functional and economic interrelationships of the various components of the Project, as a practical matter it will not be possible physically, financially, and as a matter of land use planning, to restore the Project to its former state once any significant portion of the Project is developed. Further, the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive, or otherwise) in the event of a breach by City hereunder. For the above reasons, the Parties agree that specific performance is the proper remedy and shall be the only remedy available to Developer in the event of the City's failure to carry out its obligations hereunder. Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and Developer hereby waives, relinquishes, and surrenders any right to any such monetary remedies. Developer covenants not to sue for or claim any monetary damages for the breach by the City of any provision of this Agreement and hereby agrees to indemnify, defend, and hold the City and all City Representatives harmless from any cost, loss, liability, expense, or claim (including Attorneys' Fees) arising from or related to any claim brought by Developer inconsistent with the foregoing waivers. The Developer may also, in its discretion, terminate this Agreement upon occurrence of specified events, as provided in Section 7.5. Without limitation of the foregoing, any and all claims against the City arising under this Agreement and falling within the scope of the California Tort Claims Act shall be made in accordance with the requirements of the California Tort Claims Act (or any successor statute) set forth in California Government Code section 810 *et seq.*

7.4 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 (a) any obligations to have been performed or which have accrued prior to said termination, (b) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (c) any obligations arising under a provision of this Agreement which expressly provides that it survives the termination of this Agreement.

7.5 Developer's Right To Terminate Upon Specified Events.

Notwithstanding any other provisions of this Agreement to the contrary, Developer retains the right to terminate this Agreement upon thirty (30) days' written notice to City in the event that Developer reasonably determines that continued Development of the Project has become economically infeasible due to (i) changed market conditions, (ii) increased Development costs, (iii) burdens imposed, consistent with this Agreement, by the City as conditions to Subsequent Discretionary Project Approvals, (iv) the City's exercise of its Reserved Powers in a way deemed by Developer to be inconsistent with the Development of the Project, or (v) upon the City's failure to perform any material duty or obligation hereunder which is not cured within the applicable cure period set forth herein. In the event Developer exercises this right, it shall nonetheless be responsible for (a) the completion, as soon thereafter as reasonably possible, of all public improvement work that has been commenced at the time that Developer exercises such rights, (b) performance of the obligations of the Developer set forth in Section 7.2.5 above, and (c) to the extent not covered by (a) and (b) above, mitigation of impacts to City resulting from Development that may have occurred on the Property prior to the notice of termination on a fair share or nexus basis. Within the thirty (30) day notice period City and Developer shall meet to identify any mitigation obligation described in subsection (c) of this Section that may remain to be satisfied. If the Parties are in disagreement at the end of the thirty (30) day notice period, the Agreement shall nevertheless be terminated and the dispute over any remaining mitigation obligation shall thereafter be resolved pursuant to Section 7.6.

7.6 Legal Actions.

Subject to the limitations on remedies imposed by this Agreement, either Party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, enforce by specific performance

the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations, or interpretations of this Agreement. The limitation of remedies set forth herein shall not limit any provisional remedies, including, without limitation, injunctive or similar relief, from any court of competent jurisdiction as may be necessary to protect the benefit to a Party of its rights and permitted remedies hereunder.

8. GENERAL PROVISIONS

8.1 Effective Date.

This Agreement shall be effective upon its execution by a duly authorized representative of each Party hereto and recordation with the Los Angeles County Recorder, as hereinafter provided. As provided in section 65868.5 of the Development Agreement Act, a copy of this Agreement shall be recorded with the Los Angeles County Recorder within ten (10) days after its execution by both Parties. Amendments to this Agreement approved by the Parties pursuant to Section 8.10 of this Agreement shall also be recorded.

8.2 Appeals to City Council.

Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Commission or any other City Agency is created by this Agreement, such appeal shall be filed, if at all, within twenty (20) days after the delivery of notice in accordance with Section 8.5 of such finding and/or determination to Developer. The City Council shall act on the appeal within ninety (90) days after such delivery of notice, or within such additional period as may be agreed to by the Developer, which agreement shall not be unreasonably withheld, conditioned, or delayed. In the event that the City Council fails to act within said ninety (90)-day period, or such additional period as may be agreed to by the Developer, Developer may seek remedies under Section 7.6.

8.3 Cooperation and Implementation

8.3.1 Processing.

Upon satisfactory completion by Developer of all required preliminary actions and payment of applicable Processing Fees and Charges, including the fee for processing this Agreement, City shall process all required steps necessary for the implementation of this Agreement and development of the Project in accordance with the terms of this Agreement. Developer shall, in a timely manner, provide City with all documents, plans, and other information necessary for City to carry out such processing.

8.3.2 Other Governmental Permits.

Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City, at no out-of-pocket cost or expense to the City, shall reasonably cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Developer, consider, in good faith and in the City's sole discretion, agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and do not result in any additional cost or expense or other adverse impact to City. Such entities may include, but are not limited to, utility districts or providers, and the California Coastal Commission. Developer shall reimburse City for all costs and expenses incurred in connection with reviewing, negotiating or entering into any such agreement provided that Developer has requested the City to do so. Developer shall indemnify, defend (with counsel selected by the indemnified Party), and hold harmless City, all City Agencies, and each City Representative from and against any and all claims, causes of action and Liabilities incurred by the indemnified Party arising from or related to any challenge by any person or entity to any such agreement, and shall reimburse City for any costs and expenses incurred by City in defending such claims or any other claims arising from the implementation of such agreement. Any fees, assessments, or other amounts payable by City under any such agreement shall be borne by Developer.

8.3.3 Cooperation in the Event of Legal Challenge by Third Party.

In the event of any Litigation, the Parties hereby agree to affirmatively cooperate in defending said action.

8.3.3.1 Developer and City Legal Counsel.

In the event any Litigation (including any cross-action) is filed against the City and/or Developer, the Party receiving service of such action shall notify the other in writing of such Litigation promptly after service upon it and shall transmit to the other any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, it in connection with such Litigation. Within ten (10) days after delivery of such notice, Developer shall retain and appoint legal counsel selected by City and reasonably acceptable to Developer ("*Counsel*" for purposes of this Section 8.3.3) with respect to the

Litigation to jointly represent both Developer and City. The Parties acknowledge that Counsel will appear and represent both Developer and City in connection with such Litigation and such Counsel shall, at the request of the City Attorney, cooperate with the City Attorney, shall prepare drafts, for review by the City Attorney, of all pleadings, motions, and other Litigation-related documents, and shall coordinate legal strategy and otherwise cooperate with City in connection with the Litigation, all at Developer's cost and expense. Developer shall also pay all filing fees, court costs, and similar out-of-pocket expenses required for the City to defend the Litigation. The City Attorney or his designee shall appear on behalf of the City in any such Litigation and shall at all times retain final authority and control over all documents to be filed on the City's behalf and all actions to be taken by the City with respect to Litigation. The Developer shall not be responsible for reimbursing the City for fees or costs of any attorneys hired by the City in connection with such Litigation so long as Developer timely provides and funds the defense of such Litigation by Counsel pursuant to its obligations above; provided that, if Developer fails to provide the defense by Counsel as provided above, then City may retain its own outside counsel and, in that event, Developer shall be responsible for paying all fees, costs, Attorneys' Fees, or other expenses resulting from actions taken by the City in connection with the defense of such Litigation. The City shall cooperate with Counsel's defense of the Litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to Counsel as may be reasonably requested by Counsel in connection with the Litigation.

8.3.3.2 Reimbursement of Attorneys' Fees.

Within thirty (30) days after delivery of a final judgment awarding Attorneys' Fees or costs to a plaintiff or upon execution of a written settlement agreement by and between the City and a plaintiff which requires the City to pay Attorneys' Fees or costs to a plaintiff, Developer shall pay such Attorneys' Fees and costs to the plaintiff as required unless the City settles any Litigation, in whole or in part, without Developer's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed and which approval shall not be required if Developer has failed to provide Counsel for joint defense of the Litigation as required above.

8.3.3.3 Indemnification.

Developer shall indemnify, save and hold the City, City Agencies, and City Representatives (collectively, "*the City*" in this Section 8.3.3.3) harmless from any and all

Liabilities to the extent they arise from or are related to any Litigation. Notwithstanding any other provision of this Section 8.3.3, the City's sole right under this Agreement to reimbursement of Attorneys' Fees awarded in connection with the defense of Litigation is that set forth in Section 8.3.3.2. Furthermore, City shall be deemed to have waived its right to any further reimbursement or indemnification with respect to an individual Litigation matter under this Section 8.3.3 if the City settles such Litigation, in whole or in part, without Developer's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed and which approval shall not be required if Developer has failed to provide Counsel for joint defense of the Litigation as required above. Notwithstanding any provision to the contrary, if the City is indemnified with respect to a Litigation matter pursuant to this Section 8.3.3.3, Developer, as the indemnifying Party, shall at all times retain final authority and control over all documents to be filed in such Litigation by the Developer subject to the City's review and approval thereof, which approval shall not be unreasonably withheld, conditioned, or delayed. Nothing in this Section 8.3.3 shall waive or limit any obligations of the Developer or rights and protections of the City set forth in any Project Approvals.

8.3.3.4 Joint Defense.

It is understood and agreed that Counsel shall represent both Developer and City; provided that Developer alone shall be responsible for the fees of Counsel. Both Developer and the City agree to cooperate in the Litigation as reasonably necessary for the accomplishment of the defense of the Litigation and, in connection therewith, both parties acknowledge that shared information between the parties is intended to be, and must be, kept confidential. In the event of any conflict between the covenants of cooperation set forth in this Section and any legal obligations imposed upon City, those legal obligations shall control and the City's compliance therewith shall not constitute a breach or violation of any provisions of this Section 8.3. Without limitation of the foregoing, nothing in this Agreement shall limit the City's discretion in responding to any California Public Records Act request it may receive, and the City shall have the absolute right to respond to such request in such manner as it determines legally necessary or appropriate without restriction or limitation by this Agreement.

8.3.3.5 Continuing Obligations.

This Section 8.3.3 shall survive termination of this Agreement.

8.4 Relationship of Parties.

It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that of independent contracting parties and not an agency relationship. City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

8.5 Notices.

Any notice or communication required under this Agreement between the City or Developer shall be in writing and shall be effective when delivered by registered or certified mail, postage prepaid, return receipt requested; when delivered personally; or when delivered by courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or delivered by courier, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address set forth herein, or any additional address, to which such notice or communication shall be given. Until notified under the preceding sentence, such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: Director of Development Services
 City of Long Beach
 333 W. Ocean Boulevard, Fourth Floor
 Long Beach, California 90802

With Copies to: City Manager
 City of Long Beach
 333 W. Ocean Boulevard, Thirteenth Floor
 Long Beach, California 90802

 City Attorney
 City of Long Beach
 333 W. Ocean Boulevard, Eleventh Floor
 Long Beach, California 90802

If to Developer: 400 Oceangate, Ltd.
400 Oceangate
Long Beach, California 90802
Attn: Marilyn A. Whitcomb

With Copies to:

8.6 Developer Hold Harmless.

Developer hereby agrees to and shall indemnify, save, hold harmless and defend the City, the City Agencies and the City Representatives (collectively, "***the City***" in this Section), from any and all claims, causes of action and Liabilities which may arise, directly or indirectly, from Developer's or its representatives', consultants', contractors', subcontractors', agents', or employees' operations, acts, or omissions in connection with the Development of the Project, whether such operations, acts, or omissions be by Developer or any of Developer's representatives, consultants, contractors, subcontractors, or by anyone or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's representatives, consultants, contractors, or subcontractors. Nothing in this Section shall be construed to mean that Developer shall hold the City harmless and/or defend it to the extent that such claims, causes of action, or Liabilities arise from the negligent acts, grossly negligent acts or intentional wrongful acts of the City or any person or entity acting on City's behalf; provided that the foregoing limitation shall not be construed to apply to Developer or its successors or assigns or their agents, employees, representatives, consultants, contractors, or subcontractors, to the extent acting on City's behalf pursuant to the terms of this Agreement. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless. Developer shall be relieved from any further liability under this Section with respect to any portion of the Property transferred to another party where such transferee assumes Developer's rights and obligations under this Agreement pursuant to Section 8.15 with respect to such portion of the Property transferred; provided that upon such transfer, the indemnity set forth herein shall automatically apply to such transferee, with all references herein to "***Developer***" deemed references to such transferee, and further provided that such transferee assumes the obligations under this Section 8.6 in writing and reaffirms its indemnity of City pursuant to this Section.

8.7 Insurance.

To the extent that the Developer carries commercial general liability (or equivalent) insurance with respect to the Project, or a portion thereof, during the Term, Developer shall name the City as an additional insured on all policies evidencing such insurance.

8.8 Severability and Termination.

If any provision of this Agreement should be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to the terms of any law which becomes effective after the date of this Agreement, the unenforceable provision shall be deemed severable and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding on both Parties.

8.9 Time is of Essence.

Time is of the essence for each provision of this Agreement in which time is an element.

8.10 Modification or Amendment.

Subject to meeting the notice and hearing requirements of section 65867 of the Development Agreement Act, this Agreement may be modified or amended from time to time by mutual consent of the Parties or their successors in interest in accordance with the provisions of section 65858 of the Development Agreement Act. If approved in a form to which Developer and City have consented in writing, any change in the Project Approvals or Project after the Effective Date shall be incorporated herein as an addendum, and may be further changed from time to time only as provided in this Section. Any change in the Project Approvals or Project made in accordance with the procedures required by the Land Use Regulations and with the written consent of the Developer and City as required by this Agreement shall be conclusively deemed to be consistent with this Agreement, without any further need for any amendment to this Agreement or any of its Exhibits.

8.11 Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and referring expressly to the provisions to be waived. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

8.12 Equitable Servitudes and Covenants Running with the Land.

Any successors in interest to the City and Developer shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the Development Agreement Act. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 6 or Section 8.15, and no successor owner of the Property, any portion thereof or any interest therein shall have any rights hereunder except and to the extent assigned to them by Developer in writing pursuant to Section 8.15.

8.13 Governing State Law; Compliance with Applicable Law.

This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions. Developer agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* City and the City Representatives make no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

In all bid specifications, contracts and subcontracts for any such Public Work, Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."

Each portion of the Project shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, in such form as may be required of the Developer and all entities engaged in work on the Property by applicable law. Except with respect to the portion of the indemnity set forth above in this Section 8.13 applicable to compliance of the Project with all prevailing wage requirements, Developer shall be relieved from any further liability under this Section with respect to any portion of the Property transferred to another party where such transferee assumes Developer's rights and obligations under this Agreement pursuant to Section 8.16 with respect to such portion of the Property transferred; provided that upon such transfer, the covenants and indemnity set forth herein shall automatically apply to such transferee, with all references herein to "Developer" deemed references to such transferee, and further provided that such transferee assumes the obligations under this Section 8.13 in writing and reaffirms its indemnity of the City, the City Agencies and the City Representatives pursuant to this Section. With respect to the portion of the above indemnity concerning compliance with all prevailing wage requirements, each transferee of Developer shall assume in writing and expressly reaffirm that assignee's indemnity of the City, the City Agencies and the City Representatives with respect to compliance with such prevailing wage requirements to the extent applicable to the portion of the Property acquired by said transferee, but such assumption shall not release or relieve Developer from its liability under such portion of that indemnity and Developer shall remain jointly and severally liable with such transferee for said indemnity; provided, that, at the time of such transfer by Developer, it may request that City agree to release Developer from such continuing liability under its indemnity based upon the financial capacity of the Developer's proposed transferee, but any such release shall be at the City's sole discretion and election and, to be effective, shall be in writing.

8.14 Constructive Notice and Acceptance.

Every person who after the Effective Date of this Agreement owns or acquires any right, title, or interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an

interest in the Property, and all rights and interests of such person in the Property shall be subject to the terms, requirements and provisions of this Agreement.

8.15 Assignment.

8.15.1 Right to Assign.

Developer shall have the right to sell, encumber, convey, assign or otherwise transfer, in whole or in part, directly or indirectly, its rights, interests and obligations under this Agreement, to any person or entity at any time during the Term of this Agreement, provided that Developer first obtains the written consent of the City. Such consent may not be unreasonably withheld or conditioned upon demonstration by Developer to the reasonable satisfaction of the City Manager that the assignee (or any guarantor of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the portion of the Project affected by such assignment and that the proposed assignee has adequate experience with developments of comparable scope and complexity and has successfully completed such developments. Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided, that, any such request for additional information by the City shall be made, if at all, within ten (10) business days after City's receipt of the request for approval of the proposed assignment. If City wishes to disapprove any proposed assignment, City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) days after receipt of written request for such approval delivered in the manner set forth in Section 8.5 and delivery of the required and requested additional information, if any, described above, such proposed assignment shall be deemed to be approved. Any attempted transfer in violation of this provision shall be void *ab initio*, and shall constitute a breach of this Agreement. All successors and assigns of Developer that wish to assign any rights under this Agreement shall also be bound by the terms of this Section 8.15 and each successive assignment of the rights hereunder shall also be subject to the requirements of this Agreement. Any assignment shall be documented by and shall require a written Assignment and Assumption Agreement in the form attached hereto as Exhibit "C" or another form acceptable to City. Any approval required of the City under this Section 8.15 may be provided by the City Manager and

the City Manager is hereby delegated the authority to provide such approval; provided that nothing herein shall require the City Manager to act prior to submission of such matter to the City Council if the City Manager considers that review necessary or helpful in the City Manager's sole discretion. Any such submission of the City Manager to the City Council shall not extend the forty-five (45) day period to disapprove the assignment set forth in this Section.

8.15.2 Release of Transferring Owner; Non-Severable and Severable Obligations.

Except as otherwise provided in this Agreement, upon the sale, transfer, or assignment of all or a portion of the Property by the Developer or any successor transferor or assignor and the assignment to and assumption by its assignee of the rights and obligations of this Agreement applicable to the portion of the Property transferred, the Developer or any such successor transferor or assignor shall be released of those obligations under this Agreement first arising after the effective date of that assignment that are so assigned by the Developer or such successor, transferor, or assignor and assumed by its assignee; provided that the obligations under this Agreement that are so assigned are assumed in writing by the buyer, transferee, or assignee and are enforceable by the City against said buyer, transferee, or assignee.

Upon the conveyance of a portion of the Property and the assignment and assumption of the rights and obligations under the Agreement with respect thereto, the failure to perform the following obligations under this Agreement (herein referred to as a "***Severable Obligation***") shall be deemed severable with respect to the assigned portion of the Property and this Agreement, and, following such a conveyance and assignment, a default under this Agreement with respect to any such Severable Obligation shall constitute a default only by the defaulting party (and shall not constitute a default under this entire Agreement) and shall only entitle the City to exercise its rights and to pursue the remedies hereunder with respect to the portion of the Property owned by the defaulting party and to which such default relates, including termination of this Agreement with respect to such portion of the Property, as provided for in Section 7.2.4:

- (a) Failure to pay Impact Fees pursuant to Section 3.2.6;
- (b) Violation of the Project Approvals or the Land Use Regulations pursuant to Section 3.1.1;
- (c) Failure to indemnify the City as required by Section 8.6; and

(d) Failure to name the City as an additional insured pursuant to Section 8.7.

Except as expressly provided above, all obligations under this Agreement shall be and remain non-severable.

8.16 Tentative Subdivision Maps.

Pursuant to California Government Code section 66452(a), the duration of any tentative subdivision map approved for the Property, or any portion thereof, subsequent to the Effective Date shall automatically be extended for a period equal to the Term of this Agreement.

8.17 Water Availability.

The residential component of the Project is proposed for a site that is within an urbanized area and has been previously developed for urban uses, and the immediate contiguous properties surrounding the residential project site are, and previously have been, developed for urban uses. For these reasons, any tentative map prepared for the Project is exempt from the written verification of water availability requirements contained in section 66473.7 of the Development Agreement Act. This Section satisfies the requirement set forth in California Government Code section 65867.5(c).

8.18 Regulation by Other Public Agencies.

It is acknowledged by the Parties that other public agencies not subject to control by City possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies.

8.19 Vesting Tentative Maps.

If any tentative or final map, or tentative or final parcel map, heretofore or hereafter approved in connection with Development of the Property, is a vesting map under the Subdivision Map Act (Government Code section 66410, *et seq.*), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants to Developer a vested right to develop, then and to that extent the rights and protection afforded Developer under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above, Development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

8.20 Binding Effect of Agreement.

From and following the Effective Date, Development of the Property and City actions on applications for Ministerial Permits and Approvals and Subsequent Discretionary Project Approvals respecting the Property shall be subject to the terms and provisions of this Agreement.

8.21 Statute of Limitation and Laches.

City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(d) of the Government Code, which provides for a ninety (90)-day statute of limitation to challenge this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses.

8.22 Entire Agreement.

This Agreement and the Project Approvals referenced herein set forth and contain the entire understanding and agreement of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings, or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings, covenants, undertakings, or agreements shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

8.23 Legal Advice; Neutral Interpretation; Headings; Table of Contents.

Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. 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 shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and

preparation thereof. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

8.24 Singular and Plural.

As used herein, the singular of any word includes the plural.

8.25 No Third Party Beneficiaries.

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

8.26 Eminent Domain.

No provision of this Agreement shall be construed, understood, or applied to limit, restrict, or waive in any manner any eminent domain powers of the City or any City Agency.

8.27 Authority to Execute.

The person or persons executing this Agreement on behalf of Developer warrants and represents that he/they have the authority to execute this Agreement on behalf of Developer and warrants and represents that he/they has/have the authority to bind Developer to the performance of its obligations hereunder.

8.28 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, riots or similar hostilities, strikes, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control; provided, that, the foregoing shall not apply to, and a Party's performance shall not be excused for, lack of financing or availability of financial resources to a Party. If any such events shall occur, the Term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the Term of this Agreement shall not, under any circumstances, be cumulatively extended under this Section for more than a total of five (5) years and, in no event, may the Term of this Agreement, as so extended, exceed twenty-five (25) years from the Effective Date of this Agreement.

8.29 Estoppel Certificate.

Within thirty (30) business days following a written request by either of the Parties, the other Party to this Agreement shall execute and deliver to the requesting Party a

statement certifying (a) that this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (b) that there are no known current uncured defaults under this Agreement or specifying the dates and nature of any such known default; and (c) as to any other reasonable information requested.

8.30 Mortgagee Protection.

The Parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the 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 and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification; provided, that City shall have no obligation to agree to any interpretation or modification that would adversely affect its rights or increase its obligations under this Agreement or if such interpretation or modification is inconsistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

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

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall 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 remaining cure period allowed Developer under this Agreement, except that as to a default requiring title or possession of the Property or any portion thereof to effectuate a

cure, if the Mortgagee timely cures all defaults which do not require possession to effectuate a cure and commences foreclosure proceedings to acquire title to the Property or applicable portion thereof within ninety (90) days after receipt from City of the written notice of default and thereafter diligently and continuously prosecutes such foreclosure to completion, the Mortgagee shall be entitled to cure such default after obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession. 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. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, or assert any rights of Developer hereunder, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and shall be subject thereto and bound thereby and shall comply with the terms, conditions and requirements of the Project Approvals applicable to the Property or such part thereof so acquired by the Mortgagee.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have each executed this Agreement on the date first above written.

"CITY"

THE CITY OF LONG BEACH,
a charter city and municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

“DEVELOPER”

400 OCEANGATE, LTD,
a California limited partnership

By: _____
Name: _____
Title: _____

ELEVEN GOLDEN SHORE, L.P.,
a California limited partnership

By: _____
Name: _____
Title: _____

ONE GOLDEN SHORE, L.P.,
a California limited partnership

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

Signature _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

Signature _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

Signature _____

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
PROJECT VICINITY MAP

EXHIBIT "C"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

Attn: _____

(Space above for Recorder's Use)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment"), is made and entered into as of _____, by and between _____ ("Assignor") and _____, a _____ ("Assignee"), with reference to the following:

A. Pursuant to that certain Purchase Agreement And Escrow Instructions dated as of _____ (the "Purchase Agreement"), Assignor is selling to Assignee certain real property (the "Property") located within the area commonly known as Golden Shore and more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. Assignor heretofore entered into that certain Golden Shore Project Development Agreement dated _____ by and between Assignor and the City of Long Beach (the "Development Agreement"), which was recorded on _____ as Instrument No. _____ in the Official Records of the Recorder's Office of Los Angeles County, California.

C. In connection with the sale of the Property pursuant to the Purchase Agreement, Assignor now desires to assign and convey, and Assignee desires to accept and assume, all of Assignor's interest in and all of Assignor's obligations under the Development Agreement, subject to the conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **ASSIGNMENT.** Assignor hereby assigns, transfers, sets-over and delivers unto Assignee all of the following rights, interests, benefits and privileges of Assignor under the Development Agreement:

[LIST OF RIGHTS, INTERESTS, BENEFITS AND PRIVILEGES BEING ASSIGNED.]

2. ASSUMPTION. Assignee hereby accepts the foregoing assignment and agrees to assume, discharge, keep, perform and fulfill all of the following terms, conditions, duties and obligations arising on or after [DATE OF ASSIGNMENT] to be performed and fulfilled by Assignor under the Development Agreement, for the duration thereof:

[LIST OF TERMS, CONDITIONS, DUTIES, INDEMNITIES AND OBLIGATIONS BEING ASSUMED, E.G., PREVAILING WAGE INDEMNITY.]

3. ASSIGNOR'S INDEMNITY. Assignor shall fully and completely defend, indemnify and hold harmless Assignee and each and all of its successors, assigns, employees, officers, shareholders, directors, agents, servants and legal representatives from and against any and all manner of action or actions, cause or causes of action, in law or in equity, promises, liabilities, claims, demands, damages, loss, cost or expense (including without limitation attorney's fees and expenses) of any nature whatsoever (hereinafter collectively referred to as "Claims") arising out of, based upon or relating in any way to the Development Agreement, and which Claims arise out of any act, omission, event or circumstances existing or occurring prior to [DATE OF ASSIGNMENT]. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery under this indemnity.

4. ASSIGNEE'S INDEMNITY. Assignee shall fully and completely defend, indemnify and hold harmless Assignor and each and all of its successors, assigns, employees, officers, partners, directors, agents, servants and legal representatives from and against any and all Claims arising out of, based upon or relating in any way to the Development Agreement, and which Claims arise out of any act, omission, event or circumstance existing or occurring on or after [DATE OF ASSIGNMENT]. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery under this indemnity.

5. REPRESENTATION OF ASSIGNEE. Assignee hereby acknowledges receipt of a copy of the Development Agreement and represents and warrants that it has knowledge of its terms, covenants, conditions, duties and obligations.

6. COVENANTS OF FURTHER ASSURANCES. Assignor and Assignee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment.

7. COUNTERPARTS. This Assignment may be signed in multiple counterparts which, when taken together and signed by all parties and recorded as provided in Section 9 hereof, shall constitute a binding Assignment between the parties.

8. SUCCESSORS AND ASSIGNS. All of the terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

9. EFFECTIVENESS. The effective date of this Assignment shall be the date upon which this instrument is recorded in the Official Records of the Recorder's Office of Los Angeles County, notwithstanding a prior execution date.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first set forth above.

ASSIGNOR:

a _____

By: _____
Its: _____

ASSIGNEE:

_____,
a _____

By: _____
Its: _____

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

**CITY OF LONG BEACH**

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Blvd., 5th Floor

Long Beach, CA 90802

(562) 570-6184

FAX (562) 570-6068

June 4, 2015

CHAIR AND PLANNING COMMISSIONERS
City of Long Beach
California

RECOMMENDATION:

Recommend that the City Council approve a Development Agreement associated with the previously approved Golden Shore Master Plan entitlements (Application No. 0712-01) to secure all necessary discretionary project approvals for a period of 20 years and accept Categorical Exemption 15-049 for the project located at 400 Oceangate/1 and 11 Golden Shore within Subarea 1A of the Downtown Shoreline Planned Development District (PD-6). (District 2)

APPLICANT: 400 Oceangate, Ltd.
400 Oceangate
Long Beach, CA 90802
(Application No. 0712-01A)

DISCUSSION

The 5.87-acre project site is located on the south side of Ocean Boulevard at Golden Shore. The subject site extends from Ocean Boulevard to Shoreline Drive and includes parcels totaling 4.31 acres west of Golden Shore and a 1.56-acre parcel east of Golden Shore (Exhibit A – Location Map).

On March 18, 2010, the Planning Commission certified an Environmental Impact Report and adopted a Resolution with Findings of Fact and a Statement of Overriding Considerations; recommended approval of a Local Coastal Program Amendment and an Amendment to PD-6 to the City Council; and approved a Master Plan for the Golden Shore Project consisting of three development options with a maximum of 1,370 residential condominiums, 340,000 square feet of office space, 28,000 square feet of retail space, a 400-room hotel, 27,000 square feet of conference and banquet facilities, and up to 3,430 parking spaces (Exhibit B – Master Plan).

On April 20, 2010, the City Council adopted an Ordinance amending the Local Coastal Program and the Downtown Shoreline Planned Development District (PD-6) and approved the Golden Shore Master Plan that was forwarded to the California Coastal Commission (CCC) for consideration. At its June 16, 2011 meeting, the CCC approved the Local Coastal Program Amendment and Golden Shore Master Plan with suggested modifications that were subsequently approved by the City Council on August 9, 2011. As such, the project has been granted full master plan entitlements.

CHAIR AND PLANNING COMMISSIONERS

June 4, 2015

Page 2 of 3

The applicant is now requesting approval of a Development Agreement (Exhibit C – Draft Development Agreement) to protect the entitlements associated with the Master Plan for a period of 20 years. The City has the authority to enter into a Development Agreement with a person having legal or equitable interest in property per Sections 65884-65869.5 of the California Government Code. The intent of this proposed Development Agreement is to benefit both the City and the Developer by (1) creating significant opportunities for economic growth in the City, the Southern California Region, and the State of California; (2) allowing the Developer the opportunity to realize increased value and returns from the property; (3) creating additional housing units in the City; (4) providing a high-quality, mixed-use project which will provide the City with a strong entry statement for the western gateway to the City's Downtown; and (5) generating significant economic benefits to the State, Southern California Region, the City and the Developer.

There is no specific development project proposed in conjunction with the approved Golden Shore Master Plan at this time. The Master Plan allows for different development options in order to provide the developer with flexibility to quickly respond to market conditions. Once the developer chooses an option, they will be required to submit a Site Plan Review application for Planning Commission consideration prior to any development proceeding at the site.

Due to the scope and complexity of the project along with the associated benefits for the City of Long Beach, staff recommends that the Planning Commission recommend that the City Council approve the Golden Shore Development Agreement.

PUBLIC HEARING NOTICE

In accordance with the provision of the Zoning Ordinance, Public Hearing Notices were distributed on May 21, 2015. In addition, pursuant to California Government Code Sections 65090 and 65091, the notice was published in a local newspaper of general circulation at least 10 days prior to the hearing.

At the time of writing of this report, staff has received no inquiries on this project.

ENVIRONMENTAL REVIEW

In accordance with the Guidelines for Implementation of the California Environmental Quality Act, Categorical Exemption (CE 15-049) was issued for the proposed project (Exhibit D – Categorical Exemption).

CHAIR AND PLANNING COMMISSIONERS

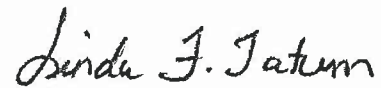
June 4, 2015

Page 3 of 3

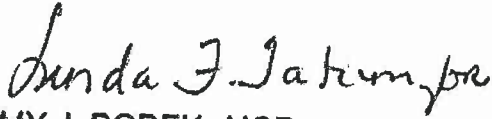
Respectfully submitted,



JEFF WINKLEPLECK
CURRENT PLANNING OFFICER



LINDA F. TATUM, AICP
PLANNING BUREAU MANAGER



AMY J. BODEK, AICP
DIRECTOR OF DEVELOPMENT SERVICES

AJB:LT:JW

Attachments:

- Exhibit A - Location Map
- Exhibit B - Master Plan
- Exhibit C - Draft Development Agreement
- Exhibit D - Categorical Exemption 15-049



NOTICE of EXEMPTION from CEQA

DEPARTMENT OF DEVELOPMENT SERVICES | PLANNING BUREAU
333 W. OCEAN BLVD., 5TH FLOOR, LONG BEACH, CA 90802
(562) 570-6194 FAX: (562) 570-6068
lbs.longbeach.gov

TO: ☐ Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

FROM: Department of Development Services
333 W. Ocean Blvd, 5th Floor
Long Beach, CA 90802

☒ L.A. County Clerk
Environmental Filings
12400 E. Imperial Hwy. 2nd Floor, Room 2001
Norwalk, CA 90650

Categorical Exemption CE- 15-049

Project Location/Address: 400 OCEANVIEW / 1 & 11 GOLDEN SHORES

Project/Activity Description: DEVELOPMENT AGREEMENT

Public Agency Approving Project: City of Long Beach, Los Angeles County, California

Applicant Name: 400 OCEANVIEW, LTD

Mailing Address: 400 OCEANVIEW LONG BEACH, CA 90802

Phone Number: (562) 440-2000

Applicant Signature: [Signature]

BELOW THIS LINE FOR STAFF USE ONLY

Application Number: 0712-a Planner's Initials: JM

Required Permits: DEVELOPMENT AGREEMENT

THE ABOVE PROJECT HAS BEEN FOUND TO BE EXEMPT FROM CEQA IN ACCORDANCE WITH
STATE GUIDELINES SECTION 15321, Class 2, Enforcement Actions by
Regulatory Agencies

Statement of support for this finding: Adoption of local decision
for land use

Contact Person: Craig Chalfant

Contact Phone: 562-570-6368

Signature: [Signature]

Date: 5/14/15