

Recording Requested by And
When Recorded Return to:

City of Long Beach
333 W Ocean Blvd.
Long Beach, CA 90802
Attn: City Clerk

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

DEVELOPMENT AGREEMENT

(Riverwalk)

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of this ____ day of _____, 2015, pursuant to an action taken by the City Council of the City of Long Beach at its meeting held on _____, 2015, by and among the City of Long Beach, a California municipal corporation (“City”), The Long Beach Project Owner, LLC, a Delaware limited liability company, and DEM Investment Company, LLC, a Delaware limited liability company, (collectively, “Owner”). City and Owner hereafter are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

1. City is authorized to enter into development agreements with persons having legal or equitable interests in real property for the development of such property pursuant to Article 2.5 of Chapter 4 of Division I of Title 7 of the California Government Code commencing with Section 65864 (the “Development Agreement Law”), and Article XI, Section 7 of the California Constitution.

2. City has enacted an ordinance, incorporated into the Long Beach Municipal Code as Title 21, Chapter 29 that establishes the procedures and requirements for its consideration of such development agreements upon application by, or on behalf of, persons having legal or equitable interests in real property pursuant to the Development Agreement Law and applicable City General and Specific Plans, policies and regulations.

3. Owner represents that it has an equitable interest in approximately 10.56 acres of real property in north-central Long Beach just north of the Virginia Country Club between Long Beach Blvd. and Interstate 710, as more specifically described in Exhibit “A-1” and as illustrated in the depiction set forth in Exhibit “A-2” (the “Subject Property”).

4. Owner has proposed a project for the Subject Property consisting of approximately 131 residential units, a park and a community center (the “Project”), which requires a General

Plan amendment, zone change, vesting tentative tract map and a site plan. The impacts of the Project have been fully analyzed by the Riverwalk Environmental Impact Report (SCH # 2014031011). On _____, the Planning Commission of City, at a duly noticed public hearing, recommended, in Resolution _____, that the City Council certify the EIR (SCH # 2014031011). The Planning Commission also recommended that the City Council approve the Project's General Plan amendment, vesting tentative tract map, site plan, and other associated approval in Resolution _____.

5. On _____, the City Council of City, at a duly noticed public hearing, adopted Resolution _____ certifying the Final Environmental Impact Report, SCH # 2014031011 (the "Final EIR") for the Project and the related Mitigation Monitoring and Reporting Program and also adopted Resolution No. _____ ("Project Approvals").

6. The Parties concur that all of the requirements of the California Environmental Quality Act, contained in Division 13 of the California Public Resources Code, commencing with Section 21000, and implemented by the Guidelines contained in Chapter 3 of Title 14, commencing with Section 15000, of the California Code of Regulations ("CEQA") have been satisfied with respect to the Project.

7. On _____, after a duly noticed public hearing held pursuant to the Development Agreement Law and City's Municipal Code, the City Council of City approved the introduction of Ordinance No. _____ (the "Enacting Ordinance") that would approve and adopt this Agreement and authorize its execution on behalf of City. On _____ the City Council of City adopted the Enacting Ordinance.

8. The Parties intend that Owner will be permitted to proceed with development of the Subject Property pursuant to the Existing Land Use Regulations and Existing Development Approvals in existence on the Effective Date; provided, however, that the Parties also understand that new or different regulations and other requirements for development of the Subject Property may be imposed by laws or regulations of the Federal and/or State governments and/or various regional governmental agencies or entities with regulatory jurisdiction over aspects of the Project or Subject Property, all of which may, or may not, supersede the provisions of this Agreement.

AGREEMENT

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

ARTICLE I. DEFINITIONS.

The following terms when used in this Agreement shall, unless defined elsewhere in this Agreement, have the meanings set forth below:

1.1 The term "Agreement" shall mean this Development Agreement by and between City and Owner and any subsequent amendments.

1.2 The term “City” shall mean the City of Long Beach, a municipal corporation, organized and existing under the laws of the State of California.

1.3 The term “City Council” shall mean the governing body of City.

1.4 The term “Development” shall mean the improvement of the Subject Property for the purposes of completing the structures, improvements and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Subject Property; the construction of buildings and structures, and the installation of landscaping and public facilities and improvements. “Development” also includes the maintenance, repair, reconstruction, modification, or redevelopment of any building, structure, improvement, landscaping, or facility after the construction and completion thereof on the Subject Property. Attached hereto as Exhibit “B” is a copy of the approved site plan for the Development of the Subject Property.

1.5 The term “Development Director” shall mean City’s Director of Development Services, or designee.

1.6 The term “Development Plan” shall mean the existing plan for Development of the Subject Property, which includes all of the plans, specifications, and conditions of approval for Owner’s entitlement for Development of the Subject Property, the planning and zoning standards, regulations, and criteria for the Development of the Subject Property, including those set forth in this Agreement, and including the Offsite Improvements identified in Exhibit “C” attached hereto.

1.7 The term “Development Requirement” shall mean any requirement of City in connection with or pursuant to any Existing Development Approvals for the construction or improvement of public facilities, the payment of fees or assessments in order to lessen, offset, mitigate or compensate for the impacts of Development on the environment, or the advancement of the public interest.

1.8 The term “Effective Date” shall mean the date on which both parties have executed this Agreement.

1.9 The term “Existing Development Approvals” shall mean any and all permits, licenses, consents, rights and privileges, and other actions approved or issued by City in connection with Development of the Subject Property on or before the Effective Date, including but not limited to, site plans, parcel maps and tentative tract maps, infrastructure improvement plans, approval of a community facilities district, and grading and building-related permits, as well as all associated environmental documentation and mitigation measures pursuant to the California Environmental Quality Act.

1.10 The term “Existing Land Use Regulations” shall mean all ordinances, resolutions, codes, rules, regulations and official policies of City, including but not limited to City’s development impact fees, adopted and effective on or before the Effective Date governing Development and use of the Subject Property, including but not limited to the permitted use of land, the density or intensity of use, the maximum height and size of proposed buildings, and the architectural design, improvement and construction standards and specifications applicable to the Development of the Subject Property including but not limited to, the Development Plan.

1.11 The term “Mortgagee” shall mean a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender, or each of their respective successors and assigns.

1.12 The term “Offsite Improvements” shall mean all offsite improvements required for the Project, including but not limited to roadway improvements along or near Daisy, Oregon, and east of 48th Street, including the intersection of 48th Street and Daisy, any right of way improvements required by Long Beach Municipal Code Section 20.40.040, Oregon Park, and any other offsite improvements contained within Exhibit “C”.

1.13 The term “Oregon Park” shall mean the park that is included as one of the Offsite Improvements, as more specifically described in Exhibits “C”, “D” & “E”.

1.14 The term “Owner” shall mean The Long Beach Project Owner, LLC, a Delaware limited liability company and DEM Investment Company, LLC, a Delaware limited liability company and/or its successors or assigns to any portion of or all of the Subject Property.

1.15 The term “Project” shall mean the Development of the Subject Property as an approximately 131-unit residential development with a community center and public park pursuant to and consistent with the Development Plan and the provisions of this Agreement.

1.16 The term “Site Plan” shall mean the site plan attached hereto as Exhibit “B”.

1.17 The term “Subject Property” shall mean that certain real property more particularly described in Exhibit “A-1” attached hereto and depicted on Exhibit “A-2” attached hereto.

1.18 The term “Subsequent Development Approvals” shall mean any and all permits, licenses, consents, rights and privileges, and other actions approved or issued by City in connection with Development of the Subject Property after the Effective Date, including all associated environmental documentation and mitigation measures pursuant to the California Environmental Quality Act.

1.19 The term “Subsequent Land Use Regulations” shall mean any ordinances, resolutions, codes, rules, regulations and official policies of City adopted and effective after the Effective Date.

1.20 The term “Term” shall mean the period of time during which this Agreement shall be in effect and bind the Parties, as set forth in Section 3.4 of this Agreement, unless earlier terminated as provided in this Agreement.

ARTICLE 2. EXHIBITS.

The following documents are attached to, and by this reference made a part of, this Agreement:

- | | |
|---------------|---|
| Exhibit “A-1” | Legal Description of the Subject Property |
| Exhibit “A-2” | Depiction of the Subject Property |

| | |
|-------------|--|
| Exhibit “B” | Approved Site Plan and Elevations for the Project |
| Exhibit “C” | Offsite Improvements |
| Exhibit “D” | Conceptual Park Design |
| Exhibit “E” | Oregon Park Improvements, 4951 Oregon Avenue, Long Beach, CA |
| Exhibit “F” | City of Long Beach Impact Fee Schedule |
| Exhibit “G” | Assignment and Assumption Agreement |
| Exhibit “H” | Release of Development Agreement |
| Exhibit “I” | Certificate of Compliance with Development Agreement |
| Exhibit “J” | Right-of-Entry Permit |

ARTICLE 3. GENERAL PROVISIONS.

3.1 Binding Effect of Agreement. From and following the Effective Date, Development of the Subject Property and City’s actions on applications for Subsequent Development Approvals affecting the Subject Property and the Development of the Subject Property shall be subject to the terms and conditions of this Agreement.

3.2 Ownership of Subject Property. City and Owner acknowledge and agree that Owner has the requisite legal or equitable interest in the Subject Property, and thus Owner is qualified to enter into and be a party to this Agreement in accordance with Government Code section 65865(b).

3.3 Assignment Rights. Owner shall have the right to sell, transfer, or assign the Subject Property in whole or in part (provided that no such parcel transfer shall violate the Subdivision Map Act, Government Code Section 66410, *et seq.*) and the rights and obligations under this Agreement to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement (collectively, “Assignment”); so long as (i) the assignee is an entity on a list submitted to and approved by City in advance of the Effective Date, as the same may be amended from time to time during the term of this Agreement, and (ii) any such sale, transfer or assignment shall include an assignment and assumption of the rights, duties and obligations arising under or from this Agreement in form and substance reasonably similar to the form attached hereto as Exhibit “G”. Any proposed assignee that does not satisfy clause (i), above, must first be reasonably approved by City after review by City of assignee’s certified financial statements and any other documents City may request pertaining to the proposed assignee’s ability to meet its obligations hereunder.

3.3.1 Release of Transferring Owner. Notwithstanding any Assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of all of the following conditions:

- (a) Owner no longer has a legal or equitable interest in all or any part of the Subject Property;
- (b) Owner is not then in default under this Agreement; and
- (c) The assignee provides City with security equivalent to any security previously provided by Owner to secure performance of its obligations hereunder.

3.3.2 Subsequent Assignment. Any subsequent Assignment after an initial Assignment shall be made only in accordance with and subject to the terms and conditions of this Agreement.

3.3.3 Partial Release of Purchaser, Transferee or Assignee of Parcel. A purchaser, transferee or assignee of a lot which has been finally subdivided and for which a site plan for development of the lot has been finally approved (a "Parcel") may submit a request, in writing, to City to release said lot from the obligations under this Agreement by executing a form of Release of Development Agreement attached hereto as Exhibit "H". Within thirty (30) days following such request, City shall review, and if the conditions contained in Section 3.3.1 are satisfied, shall execute and deliver to the purchaser, transferee or assignee the appropriate form of Release. No such release approved pursuant to this Section 3.3.3 shall cause, or otherwise effect, a release of Owner from its duties and obligations under this Agreement.

3.3.4 Termination of Agreement With Respect to Individual Parcels upon Sale to Public and Completion of Construction. The provisions of Section 3.3 shall not apply to the sale or lease (for a period longer than one year) of any Parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to such Parcel and such Parcel shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

- (a) The Parcel has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,
- (b) A final inspection card has been issued for a building on the Parcel, and the fees set forth under this Agreement have been paid.

For purposes of this Section 3.3.4, a transfer shall be deemed to be "in bulk" if it involves the conveyance of more than one Parcel and the transferee will not be the ultimate user of the Parcels. Notwithstanding the foregoing, Owner acknowledges that Owner is responsible for (i) ensuring the completion of all Project conditions and (ii) the payment of all applicable fees to

the extent any conditions are not satisfied or any fees remain unpaid following the transfer or development of a parcel.

3.4 **Term.** Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of (i) the date of completion of the last portion of the Development and the expiration of the Oregon Park warranty period described in the conditions of approval of the Site Plan, or (ii) the date that is ten (10) years from and after the Effective Date.

3.6 **Waiver of Estoppel Defenses by City.** Notwithstanding any legal authorities to the contrary concerning the doctrines of waiver and estoppel as applied to public entities and the actions or inactions of public agencies or public agency officers and officials, City acknowledges and agrees that Owner and its successors and assigns to all or any interest in the Subject Property is relying upon the contents of this Agreement and City's execution of this Agreement and the recordation hereof, and that in consideration of such material reliance, City shall now and forever be estopped from denying the validity of this Agreement and City knowingly and expressly waives any such claim or defense.

3.7 **No Obligations to Proceed with Project.** Nothing in this Agreement shall obligate Owner to proceed with any part of or the entirety of the Project. Owner maintains sole and absolute discretion over whether to commence and/or complete any portion of the Project or the Project in its entirety and nothing in this Agreement shall be construed to impose upon Owner an obligation to commence the construction of and/or complete the Project.

ARTICLE 4. DEVELOPMENT OF THE SUBJECT PROPERTY

4.1 **Vested Right to Develop.** Subject to and during the term of this Agreement, Owner shall have a vested right to develop the Subject Property in accordance with the Development Plan and this Agreement.

4.2 **Effect of Agreement on Land Use Regulations.** Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Subject Property, the density and intensity of use of the Subject Property, the maximum height and size of proposed buildings, and the design, improvement, and construction standards and specifications applicable to Development of the Subject Property, shall be only the Existing Land Use Regulations and those contained in the Development Plan.

4.3 **Subsequent Development Approvals.** To the extent applicable, City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the manner applicable to other commercial property developments. City further agrees that, unless otherwise requested by Owner and provided that this Agreement has not terminated due to Owner default, City shall not amend or rescind any Subsequent Development Approvals respecting the Subject Property after such approvals have been granted by City.

4.3.1 **Minor Modifications.** City agrees to allow modifications to the type, mix and layout of the Project's 131 residential units ("Minor Modifications") with approval from the Development Director. City further agrees to allow modifications to the Project's Site Plan with

approval from the Development Director, provided that all modifications are in substantial conformance with the approved Site Plan attached to this Agreement as Exhibit "B". The modifications described in this Section 4.3.1 shall not require approval by the Planning Commission or the City Council. Notwithstanding anything to the contrary contained herein, any (1) changes to Oregon Park amenities, programming or size, or (2) changes which modify the Site Plan, shall not constitute "Minor Modifications".

4.4 Timing of Development. The Parties acknowledge that Owner cannot at this time predict when or the rate at which phases of the Subject Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation of demand, interest rates, absorption, completion and other similar factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 455, that the failure of the parties therein to provide for the timing of development resulted in a latter adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by expressly acknowledging and providing that Owner shall have the right to develop the Subject Property, or to not develop the Subject Property, in such order and such rate and at such time as Owner deems appropriate within the exercise of its subjective business judgment in its sole and absolute discretion. In addition, to the extent Owner or its assignee decide to proceed with a phase of the development of the Subject Property, City shall cooperate with Owner or its assignee with respect to the phasing of the development of the Subject Property. If Owner or its assignee determine, in its sole and absolute discretion, to develop portions or phases of the Subject Property, City shall allow the phasing of Offsite Improvements (not including Oregon Park, the construction of which shall not be phased) such that the Offsite Improvements required would only be those commensurate to that needed to serve the phase being constructed, or as described in a more comprehensive manner by the Planning Division Conditions of Approval.

4.5 Terms of Maps and Other Project Approvals. Pursuant to California Government Code Sections 66452.6(1) and 65863.9, the term of any subdivision or parcel map may be processed on all or any portion of the Subject Property and the term of each of the development approvals, including the Tentative Map and any future approvals, shall be extended for a period of time through the scheduled termination date of this Agreement, as set forth above.

4.6 Changes and Amendments. The Parties acknowledge that although Development of the Project may require Subsequent Development Approvals, such Development shall be in compliance with the Development Plan. The above notwithstanding, Owner may determine that changes are appropriate and desirable in the existing Development Approvals or Development Plan. In the event Owner finds that such a change is appropriate or desirable, Owner may apply in writing for an amendment to prior Development Approvals or the Development Plan to effectuate such change. The Parties acknowledge that City shall be permitted to use its sole and absolute discretion in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing, City shall not apply a standard to Owner that is less favorable or different than applied by City to any other residential property developments. In addition, the Parties acknowledge and agree any modification to the Development that does not meet the thresholds set forth in 14 Cal. Code of Regs. Section 15162 shall be deemed to be a minor modification and shall not require any subsequent environmental review. Any change in the Development Approvals or Development Plan made pursuant to Owner's application and deemed

a material change by City, shall require an amendment to this Agreement. Any such amendment shall be solely for the purpose of acknowledging the change to the Development Approvals or Development Plan, as the case may be.

4.7 **Reservation of Authority.**

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

(a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

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

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by City as Subsequent Land Use Regulations.

(d) Regulations that are not in conflict with the Development Plan and this Agreement and do not impede the Development, or add to the cost of the Development of the Project.

(e) Regulations that are in conflict with the Development Plan provided Owner has given written consent to the application of such regulations to Development of the Subject Property at Owner's sole and absolute discretion.

(f) Federal, state, county, and multi-jurisdictional laws and regulations which City is required to enforce against the Subject Property or the Development of the Subject Property.

(g) Payment of development impact fees in effect at the time that certificates of occupancy are issued for the development or any portion thereof, except all of City's impact fees related to transportation, sewer, police, fire and public safety will be calculated based on the impact fees in effect as of the Effective Date, as more particularly described in Exhibit "F".

4.7.2 **Future Discretion of City.** This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

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

4.8 Future Voter Actions. It is the intent of the Parties that future voter actions adopting Subsequent Land Use Regulations shall not apply to the Project unless such voter actions promote, advance, or otherwise further the intent and expeditious development of the Project pursuant to and consistent with the terms and conditions of this Agreement.

4.9 Development Shall Not Be Delayed Due to Any City Acquisition Activities; Interim Facilities. If Owner proceeds with the Project, Owner may be required, subject to the terms of this Agreement, to construct the Offsite Improvements set forth in Exhibit "C". To the extent City does not already own the property upon which the Offsite Improvements will be constructed ("Offsite Property"), City and Owner will use their reasonable best efforts to cooperate in acquiring the necessary legal interest in the Offsite Property. This Section 4.9 is not intended by the Parties to impose upon Owner an enforceable duty to acquire land or construct any Offsite Improvements on land not owned by Owner, except to the extent that Owner elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by City upon the development of the Project under the Subdivision Map Act or other legal authority.

If City is unable to acquire property necessary to enable Owner to construct the Offsite Improvements, or otherwise necessary to comply with any conditions of approval or this Agreement, then the Parties agree that Owner shall no longer be required prior to receiving any permits required for the Project, including final building inspections, to complete the Offsite Improvements or the portion of the Offsite Improvements that cannot occur due to the inability to obtain required right of way. In these latter circumstances, in lieu of constructing the Offsite Improvements, Owner shall only be required to pay its pro rata fair share for the cost of the Offsite Improvements.

4.10 Financing District Formation. City and Owner agree to cooperate in the formation of a financing district in order to finance, at Owner's sole election, some or all of certain Offsite Improvements and other improvements and obligations required of Owner pursuant to the Existing Development Approvals and this Agreement.

4.11 Conditions of Approval. Owner shall comply with the Project conditions of approval.

4.12. Traffic Improvements. The traffic signal at Del Amo Boulevard and related traffic improvements, which constitute Offsite Improvements, shall be started, at the discretion of the City Traffic Engineer, prior to the issuance of a grading permit for the Project.

4.13 Covenants, Conditions and Restrictions. Owner agrees to declare Covenants, Conditions and Restrictions (“CC&Rs”) applicable to the entire Project, which will be administered by a Homeowners Association (“HOA”) to be established by Owner. City desires, and Owner agrees, to include in the CC&Rs provisions that (i) reserve certain areas of street parking exclusively for guest parking; (ii) prohibit “mother-in-law” units (to the extent it is legally permissible to do so); (iii) prohibit parking in the driveways of the residential units; and (iv) require trash receptacles to be stored in garages or backyards except on days which trash is regularly collected.

4.14 Oregon Park. Upon issuance of the first building permit by City in connection with the Project, Owner agrees, at its sole expense, to construct that certain Offsite Improvement known as Oregon Park, as more specifically described in Exhibits “D” and “E”, in substantial conformance with the conceptual design and specific requirements provided by City and the Construction Drawings attached as to this Agreement as Exhibits “D” & “E”, respectively. The Construction and Delivery of Oregon Park will satisfy all of Owner’s obligations under the Quimby Act and the City’s local implementation ordinance. Owner shall be entitled to a credit which reduces (or possibly eliminates) monetary park fees due to the City in accordance with the Long Beach Municipal Code. City and Owner shall execute a Right of Entry Permit substantially in the form attached hereto as Exhibit “J” granting, among other things, Owner the right to enter upon City property in order to construct Oregon Park. After completion of Oregon Park and expiration of the maintenance period described in the conditions of approval of the Site Plan, City shall be responsible for the maintenance and operation of Oregon Park; provided, however, that Owner’s warranty obligations shall remain in full force and effect after City begins maintenance and operation of Oregon Park.

4.14.1 Timing. Owner agrees to commence grading for Oregon Park simultaneously with the start of grading for the Project, and shall complete grading for Oregon Park within ninety (90) days after commencement thereof. Owner’s grading plans and improvements plans for the Project that are submitted to City shall include grading plans and improvement plans for the Park. The Oregon park infrastructure improvements shall be completed upon or before the completion of the Project’s infrastructure improvements. Owner shall complete construction of Oregon Park prior to the issuance of the 33rd certificate of occupancy for the Project. Oregon Park must be accepted for maintenance by City prior to the issuance of the 67th certificate of occupancy for the Project.

4.14.2 Assurances. Owner agrees to provide a performance bond in an amount equal to 115% of the total costs of the Offsite Improvements and the onsite infrastructure improvements and otherwise in a form reasonably acceptable to City and sufficient to ensure construction of Oregon Park and construction of the Project’s onsite infrastructure improvements and the remainder of the Offsite Improvements. Such bond shall be delivered to City prior to the issuance of any permits in connection with the Project, and shall be released upon completion of the Oregon Park maintenance period described in the conditions of approval of the Site Plan.

4.15 Payment of Impact Fees. Los Angeles County and School Developer Fees and the Long Beach Water Department’s Sewer Capacity Fee are due and payable prior to the issuance of a building permit in connection with the Project. The City’s applicable developer impact fees are due and payable prior to final building inspection or issuance of a certificate of occupancy,

whichever comes first. In connection with its construction of certain Offsite Improvements located on public streets, Owner shall be entitled to a credit which reduces (or possibly eliminates) monetary traffic impact fees due to the City in accordance with the Long Beach Municipal Code.

4.16 **Affordable Housing.** Notwithstanding any other section of this Agreement, the Project is not subject to any affordable housing requirements, including but not limited to any on site or in lieu requirements.

4.17 **Prevailing Wages.** All construction work performed in connection with the Offsite Improvements, or any other public improvements, including Oregon Park and the offsite roadway improvements described herein, shall be subject to prevailing wage requirements.

4.18 **Traffic Mitigation Fund.** Prior to the issuance of the 33rd certificate of occupancy for the Project, Owner shall establish with the City a “neighborhood traffic mitigation fund” in the amount of \$100,000, the proceeds of which shall be used by City, in its sole discretion, to mitigate traffic issues which may result from the Project. Any such funds which are unused five years after the issuance of the final certificate of occupancy for the Project shall be promptly returned to Owner.

ARTICLE 5. REVIEW FOR COMPLIANCE

5.1 **Periodic Review.** The Long Beach Planning Commission shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Owner with the terms of this Agreement. As part of that review, Owner shall submit an annual monitoring review statement describing its actions in compliance with this Agreement, in a form acceptable to the Development Director or his/her authorized designee, at least thirty (30) days prior to each anniversary of the Effective Date. The statement shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of this Agreement during the succeeding year. The amount of the annual review and administration fee shall be set by resolution of the City Council. No failure on part of City to conduct or complete the review as provided herein shall have any impact on the validity of this Agreement.

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

5.3 **Procedure.** Each Party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other Party a justification of its position on such matters.

5.3.1 If on the basis of the Parties’ review of any terms of this Agreement, either Party concludes that the other Party has not complied in good faith with the terms of this Agreement, then such Party may issue a written “Notice of Non-Compliance” specifying the grounds therefor and all facts demonstrating such non-compliance.

5.3.2 The Party receiving a Notice of Non-Compliance shall have thirty (30) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure

or remedy is not reasonably capable of being completed within such thirty (30) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion.

5.3.3 If the Party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to said Notice of Non-Compliance within thirty (30) days after receipt of the Notice.

5.3.4 If the response to the Notice of Non-Compliance has not been received in the offices of the Party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be presumed to be valid unless good cause exists for not responding within the time period.

5.3.5 If a Notice of Non-Compliance is contested, the Parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice of Non-Compliance. In the event that a cure or remedy is not timely effected or, if the Notice of Non-Compliance is contested and the Parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Article 6 of this Agreement.

5.3.6 Neither Party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 12.9.

5.4 **Certificate of Agreement Compliance.** If, at the conclusion of a periodic or special review, Owner is found to be in compliance with this Agreement, City shall, upon request by Owner, issue a Certificate of Compliance with Development Agreement in the form attached hereto as Exhibit "I" ("Certificate") to Owner stating that after the most recent periodic or special review and based upon the information known or made known to the Long Beach Planning Commission that (1) this Agreement remains in effect and that (2) Owner is in compliance. The Certificate, whether issued after a Periodic or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state that the Certificate expires upon the earlier of (i) one (1) year from the date thereof, or (ii) the date of recordation of a notice of termination of development agreement. Owner may record the Certificate with the County Recorder. Additionally, Owner may at any time request from City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Subject Property, or any lot or parcel within the Subject Property.

ARTICLE 6. DEFAULT AND REMEDIES

6.1 **Specific Performance Available.** The Parties acknowledge and agree that specific performance is the preferred remedy available for the enforcement of this Agreement. However, nothing in the foregoing shall be construed to constitute a waiver of the right to obtain monetary damages from the other Party by reason of default of this Agreement. Subject to the cure rights set forth in Section 5.3, any material default by Owner or City of this Agreement or any of the

conditions of approval of any of the Development Approvals that is not timely cured by Owner or City shall be deemed a material default by Owner or City of this Agreement.

6.2 Termination of this Agreement.

6.2.1 Termination of Agreement for Default of Owner. City may terminate this Agreement for any failure of Owner to perform any duty or obligation of Owner hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as “default” or “breach”); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3.

6.2.2 Termination of Agreement for Default of City. Owner may terminate this Agreement for any default by City; provided, however, Owner may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.3 and thereafter providing written notice by Owner to City of the default setting forth the nature of the default and the actions, if any, required by City to cure such default and, where the default can be cured, the failure of City to cure such default within thirty (30) days after the effective date of such notice or, in the event that such default cannot be cured within such thirty (30) day period, the failure of City to commence to cure such default within such thirty (30) day period and to diligently proceed to complete such actions and to cure such default.

6.2.3 Rights and Duties Following Termination. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (iii) restoration of that portion of the Subject Property owned by City to its general condition prior to the Effective Date.

6.3 **Institution of Legal Action.** Subject to notice of default and opportunity to cure under Section 5.3, in addition to any other rights or remedies, any Party to this Agreement may institute legal action to cure, correct, or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement. If a legal action or proceeding is brought by any Party to this Agreement because of default, or to enforce a provision hereof, the prevailing Party shall be entitled to reimbursement of all costs and expenses, including attorneys’ fees, incurred in prosecuting such legal action or proceeding. This provision is separate and severable, and shall survive the merger of this Agreement into any judgment on this Agreement.

ARTICLE 7. THIRD PARTY LITIGATION

The City shall promptly notify Owner of any claim, action, or proceeding filed and served against the City to challenge, set aside, void, annul, limit or restrict the approval and continued implementation and enforcement of this Agreement. Owner agrees to fully defend and indemnify the City for all costs of defense and/or judgment obtained in any such action or proceeding. This indemnification clause shall only apply if Owner approves of the selection of defense counsel for the City, which approval shall not unreasonably be withheld. The City and Owner agree to cooperate in the defense of such action(s).

ARTICLE 8. MORTGAGEE PROTECTION

8.1 The Parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Subject 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 Subject 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 Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement.

8.2 Any Mortgagee of the Subject 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 Subject 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 Subject Property, or any part thereof, which Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner'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 Owner under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such Party under this Agreement, or (ii) thirty (30) days.

(d) Any Mortgagee who comes into possession of the Subject 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 Subject 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 Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Owner 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 Subject Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan applicable to the Subject Property or such part thereof so acquired by the Mortgagee.

ARTICLE 9. INSURANCE

9.1 **Requirements.** Owner, before commencement of work on Oregon Park, shall submit to City duplicate originals of policies and endorsements, or appropriate certificates of insurance, of public liability insurance and broad form property damage insurance policies in the amount of not less than Two Million Dollars (\$2,000,000), combined single limits, for death and injury to any person and property damage, naming City and its officers, officials, employees, agents, and representatives as additional insureds, and in addition all such insurance:

(a) shall be primary insurance and not contributory with any other insurance City or its officers, officials, employees, agents, and representatives may have;

(b) shall contain no special limitations on the scope of protection affordable to City and its officers, officials, employees, agents, and representatives;

(c) shall be "date of occurrence" and not "claims-made" insurance;

(d) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(e) shall provide that the policy shall not be canceled by the insurer or Owner unless there is a minimum of thirty (30) days prior written notice to City;

(f) shall be endorsed to include a waiver of subrogation rights against City or its officers, officials, employees, agents, and representatives; and

(g) shall not require Owner to meet a deductible of more than One Hundred Thousand Dollars (\$100,000) unless approved in writing by the Development Director in his/her sole and absolute discretion.

9.2 **Workers Compensation Insurance.** Owner shall also furnish or cause to be furnished to City evidence reasonably satisfactory to Owner that any consultant or contractor with whom Owner has contracted for the performance of any work on or about or with respect to the Subject Property carries worker's compensation insurance as required by the State of California.

ARTICLE 10. INDEMNITY

Owner agrees to and shall indemnify, defend, and hold harmless City and City's officers, officials, members, employees, agents, and representatives (collectively, "Indemnified Parties"), from and against any and all claims, liabilities, damages, and losses, including without limitation reasonable attorneys' fees and litigation expenses, including court costs and expert witness fees (collectively, "Claims"), due to the death or personal injury of any person, or physical damage to any person's real or personal property, caused by the construction of improvements by, or construction-related activities of, Owner or Owner's employees, agents, representatives, servants, invitees, consultants, contractors, or subcontractors (collectively, "Owner's Representatives") on the Subject Property, or for any construction defects in any improvements constructed by Owner or Owner's Representatives on the Subject Property or for any other work related to this Agreement; provided, however, that the foregoing indemnification shall not apply to the extent

such Claims are proximately caused by the negligence or willful misconduct of City, or City's officers, officials, members, employees, agents, or representatives, subject to any immunities which may apply to City with respect to such Claims. The foregoing indemnification provision shall survive the termination of this Agreement.

ARTICLE 11. COMPLIANCE WITH APPLICABLE LAW

11.1 Compliance with Laws. Owner shall cause all work performed in connection with construction of the Project to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of Section 1770 et seq. of the California Labor Code), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Owner shall indemnify, defend and hold the Indemnified Parties harmless from any and all Claims based upon or arising from the failure of any work related to the Project to comply with all such applicable legal requirements, including, without limitation, any such Claims that may be asserted against or incurred by any of the Indemnified Parties with respect to or in any way arising from the Project's compliance with or failure to comply with applicable laws, including all federal and state labor requirements including, without limitation, the requirements of California Labor code Section 1770 et seq.

11.2 Public Works. Owner agrees that all public work (as defined in California Labor Code Section 1720) performed pursuant to this Agreement (the "Public Work") shall comply with the requirements of California Labor Code Section 1770 et seq. City makes 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.

11.3 Public Work Contracts. In all bid specifications, contracts and subcontracts for any Public Work, Owner (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."

This Article 11 shall survive the termination of this Agreement.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5. Any amendments to this Agreement approved by the Parties, and any cancellation hereof, shall be similarly recorded.

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

12.3 **Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the invalid provision shall be deemed to be severable from the remaining provisions contained within this Agreement. The Parties hereby state and acknowledge they would have adopted each provision contained within this Agreement notwithstanding the presence of an invalid provision.

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

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

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

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

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

12.9 **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, the acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the Party's employment force), court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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

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

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

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

12.14 **Project as a Private Undertaking.** It is specifically understood and agreed by and between the Parties that the Development of the Subject Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property and as future holder of fee title to such property, on the other hand.

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

12.16 **Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both Parties specifically approving the amendment and in accordance with the Government Code Section 65868. The Parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall

treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager in consultation with the City Attorney.

12.17 **[Intentionally Omitted].**

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

12.19 **Notices.** All notices under this Agreement shall be effective upon personal delivery, via facsimile so long as the sender receives confirmation of successful transmission from the sending machine, or three (3) business days after deposit in the United States mail, registered, certified, postage fully prepaid and addressed to the respective Parties as set forth below or as to such other address as the Parties may from time to time designate in writing:

To City: City of Long Beach
 333 W Ocean Blvd., 3rd Floor
 Long Beach, CA 90802
 Attn: Development Services Director
 Facsimile No.: _____

 City of Long Beach
 333 W Ocean Blvd., 11th Floor
 Long Beach, CA 90802
 Attn: City Attorney
 Facsimile No.: _____

To Owner: The Long Beach Project Owner, LLC and DEM Investment
 Company, LLC
 888 San Clemente, Suite 100
 Newport Beach, CA 92660
 Attn: Evan Knapp and Caren Read

Copy to: John A. Ramirez
 Rutan & Tucker, LLP
 611 Anton Blvd. Suite 1400
 Costa Mesa, CA 92626
 Phone: 714-662-4610
 Fax: 714-546-9035

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

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

[end – signature page follows]

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

City:

CITY OF LONG BEACH

By

Patrick H. West
City Manager, City of Long Beach

Owner:

THE LONG BEACH PROJECT OWNER, LLC, a
Delaware limited liability company

By:

C. Evan Knapp, Authorized Representative

DEM INVESTMENT COMPANY, LLC, a
Delaware limited liability company

By:

C. Evan Knapp, Authorized Representative

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)
) ss
COUNTY OF LOS ANGELES)

On _____, 20___, before me, _____,
Notary Public, personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he/she executed the same in his/her authorized capacity, and that by
his/her signature on the instrument the person or the entity upon behalf of which the person acted,
executed the instrument.

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.

Notary Public

[SEAL]

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)
) ss
 COUNTY OF LOS ANGELES)

On _____, 20__ , before me, _____,
 Notary Public, personally appeared _____, who proved to me on the basis of
 satisfactory evidence to be the person whose name is subscribed to the within instrument and
 acknowledged to me that he/she executed the same in his/her authorized capacity, and that by
 his/her signature on the instrument the person or the entity upon behalf of which the person acted,
 executed the instrument.

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.

Notary Public

[SEAL]

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)
) ss
COUNTY OF LOS ANGELES)

On _____, 20___, before me, _____,
Notary Public, personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he/she executed the same in his/her authorized capacity, and that by
his/her signature on the instrument the person or the entity upon behalf of which the person acted,
executed the instrument.

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.

Notary Public

[SEAL]

EXHIBIT "A-1"

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

That certain real property located in the City of Long Beach, County of Los Angeles, State of California more particularly described as

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

PARCEL 1:

THAT PORTION OF LOT 6 IN BLOCK "D" OF DOMINGUEZ COLONY, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN CASE NO. 3284, SUPERIOR COURT OF SAID COUNTY, LYING EASTERLY OF THE EASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, RECORDED IN BOOK 12763, PAGE 215, OF OFFICIAL RECORDS OF SAID COUNTY, AND LYING NORTHERLY OF THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE DEED TO LOS ANGELES AND SALT LAKE RAILROAD COMPANY, RECORDED IN BOOK 1163, PAGE 48, OF OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 15 OF TRACT NO. 10396, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 154, PAGES 31 THROUGH 33, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF A LINE EXTENDING WESTERLY FROM A POINT IN THE EASTERLY LINE OF SAID LOT DISTANT NORTHERLY THEREON 16.50 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT, TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT DISTANT NORTHWESTERLY THEREON 58.50 FEET FROM SAID MOST SOUTHERLY CORNER.

PARCEL 3:

LETTERED LOT A OF TRACT NO. 10396, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 154, PAGES 31 THROUGH 33, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

TOGETHER WITH THAT PORTION OF LOT 48TH STREET AS VACATED IN A DOCUMENT RECORDED IN JUNE 27, 1958 AS INSTRUMENT NO. 1539 OF OFFICIAL RECORDS



EXHIBIT "A-2"

DEPICTION OF THE SUBJECT PROPERTY

[SEE FOLLOWING PAGE]



Imagery provided by Google and its licensors © 2014.

-  Project Boundary
-  Future Oregon Park Site

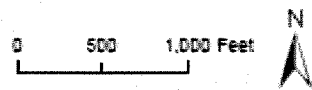


EXHIBIT "B"

APPROVED SITE PLAN AND ELEVATIONS

[SEE FOLLOWING PAGES]

REPLACE THIS PAGE WITH SITE PLAN AND ELEVATIONS

EXHIBIT "C"

OFFSITE IMPROVEMENTS

OFF TRACT ITEMS

DAISY AVE (From 48th St to the Property)

| | | |
|--|----|------|
| Mill and Overlay | SF | 1375 |
| Curb and Gutter | LF | 500 |
| 4' P.C.C. Sidewalk | SF | 250 |
| Landscaping | SF | 1250 |
| ADA ramps at intersection | | |
| 2 cross gutters at intersection of 48th St | | |

OREGON AVE (From 48th St to the Property)

| | | |
|---------------------------------|----|------|
| Mill and Overlay | SF | 2975 |
| Curb and Gutter | LF | 300 |
| 4' P.C.C. Sidewalk | SF | 170 |
| Landscaping | SF | 850 |
| Traffic Signal @ Del Amo | EA | 1 |
| ADA ramps at intersection | | |

48TH ST.

| | | |
|--|----|--------|
| Slurry from Long Beach Blvd to Pacific | SF | 150000 |
| Mill and Overlay | | |
| Curb and Gutter | LF | 450 |
| ADA ramps at intersection | | |

OREGON PARK

SITE IMPROVEMENTS

| | | |
|---|----|-------|
| EARTHWORK (IMPORT) | CY | 11650 |
| EROSION CONTROL | LS | 1 |
| CLEAR AND GRUB EXISTING SITE | LS | 1 |
| 4" CONCRETE PAVEMENT (OPTIMUS MICRO SAND (05) FINISH) | SF | 3780 |
| 8" CONCRETE PAVEMENT | SF | 380 |
| 4" CONCRETE PAVEMENT (OPTIMUS SANDBLAST MEDIUM (25) FINISH) | SF | 6700 |
| CONSTRUCT AGGREGATE BASE | CY | 100 |
| CONCRETE MOWCURB | LF | 1930 |
| DECOMPOSED GRANITE PAVING | CY | 120 |
| 6' TALL TABULAR STEEL FENCING/GATE | LF | 590 |
| SALVAGED STEEL FENCING | LF | 685 |
| 8' TALL MASONRY WALL | LF | 390 |
| LODGEPOLE FENCING | LF | 160 |
| DRIVE APRON | SF | 390 |

| | | |
|--------------------------------------|----|------|
| ASPHALTIC CONCRETE PARKING LOT (3") | SY | 2182 |
| CONCRETE BOLLARD | EA | 3 |
| VEGETATED SWALE | SF | 3410 |
| 6' TALL MASONRY PILASTER | EA | 2 |
| 8' TALL MASONRY PILASTER | EA | 1 |
| PARKING LOT POLES AND FIXTURES | EA | 7 |
| MOUNTABLE 6" CURB AND GUTTER | LF | 11 |
| TUBULAR STEEL GATE (PEDESTRIAN GATE) | EA | 1 |
| CONSTRUCT 6" CURB | LF | 830 |
| CONSTRUCT 6" CURB AND GUTTER | LF | 220 |
| MOUNTABLE 6" CURB | LF | 11 |
| CONSTRUCT ADA RAMP | EA | 1 |
| INSTALL WHEEL STOP | EA | 3 |
| SIGNAGE AND STRIPING | LS | 1 |

STORM IMPROVEMENTS

| | | |
|--|---------|-----|
| CONSTRUCT CATCH BASIN AND GRATE (12"-36") | 11650 | 13 |
| CONSTRUCT 6" ATRIUM DRAIN | 1 | 7 |
| CONSTRUCT 4" PVC (SD PIPE) | 1 | 670 |
| CONSTRUCT 6" PVC (SD PIPE) | 3780 | 320 |
| CONSTRUCT 8" PVC (SD PIPE) | 380 | 80 |
| CONSTRUCT 12" PVC (SD PIPE) | 6700 | 150 |
| CONSTRUCT 18" RCP (SD PIPE) | #VALUE! | 180 |
| CONSTRUCT SUBDRAIN (4" PVC PERFORATED PIPE WITH 12"X18" GRAVEL WRAP) | 1930 | 380 |
| CONSTRUCT CURB INLET CATCH BASIN | 120 | 1 |
| CONSTRUCT LOCAL DEPRESSION AT CURB INLET | 590 | 1 |
| INSTALL STORMCEPTOR MODEL NO STC 2400 | 685 | 1 |
| CONSTRUCT HANCOR STORMWATER RETENTION SYSTEM | 390 | 1 |
| CONSTRUCT DECK DRAIN | 160 | 5 |
| CONSTRUCT 12"X12" CATCH BASIN | 390 | 7 |
| CONSTRUCT STORM DRAIN CLEANOUT | 2182 | 1 |
| CONSTRUCT JUNCTION STRUCTURE | 3 | 2 |
| CONSTRUCT MANHOLE | 3410 | 1 |

WET UTILITIES

| | | |
|--|----|-----|
| CONSTRUCT 2" SERVICE W/ 1 1/2" METER | LS | 1 |
| INSTALL 1 1/2" RPPD | EA | 1 |
| CONSTRUCT 1-1/2" PVC (WATER) | LF | 200 |
| CONSTRUCT ASPHALT PAVEMENT REPLACEMENT | SF | 120 |
| CONSTRUCT 4" PVC (SEWER) | LF | 120 |
| CONNECT TO EXISTING SEWER | EA | 1 |
| CONSTRUCT SEWER CLEANOUT | EA | 2 |

ELECTRICAL

| | | |
|-------------------------------------|----|---|
| ELECTRICAL LINES, CONNECTIONS ETC. | LS | 1 |
| PEDESTRIAN LIGHT POLES AND FIXTURES | EA | 7 |
| SPORTSFIELD LIGHTING | EA | 4 |

PLANTING/LANDSCAPE/IRRIGATION

| | | |
|--|----|-------|
| 24" BOX TRESS WITH STAKING | LS | 112 |
| 5 GALLON SHRUB/PLANT | EA | 1342 |
| 1 GALLON SHRUB/PLANT | EA | 1188 |
| VEGETATED SWALE PLANTING (1 GALLON PLANS 24" OC) | EA | 722 |
| NON SPORTS FIELD BERMUDA | SF | 23356 |
| ROOT BARRIER (WITH 5' OF HARDSCAPE) | LF | 1440 |
| MULCH | SF | 45643 |
| IRRIGATION CONTOLLERS | EA | 5 |
| IRRIGATION AREA | SF | 74800 |

SITE FURNISHINGS

| | | |
|-------------------------------------|----|-------|
| BIKE RACKS | EA | 4 |
| PICNIC TABLES | EA | 3 |
| TREE GRATES | EA | 2 |
| TRASH RECEPTACLES | EA | 9 |
| BENCHES | EA | 8 |
| CONCRETE BOLLARDS | EA | 3 |
| PLAY AREA EQUIPMENT | LS | 1 |
| EXERCISE AREA EQUIPMENT | LS | 1 |
| PREFABRICATED RESTROOM | EA | 1 |
| PREFABRICATED PICNIC AREA STRUCTURE | EA | 1 |
| ARTIFICIAL TURF FIELD INSTALLATION | SF | 54000 |

Descriptions and quantities per RJM and MCE plans dated 7/3/14.

Quantities do not include offsite street improvements. Assumes existing improvements to remain in place.

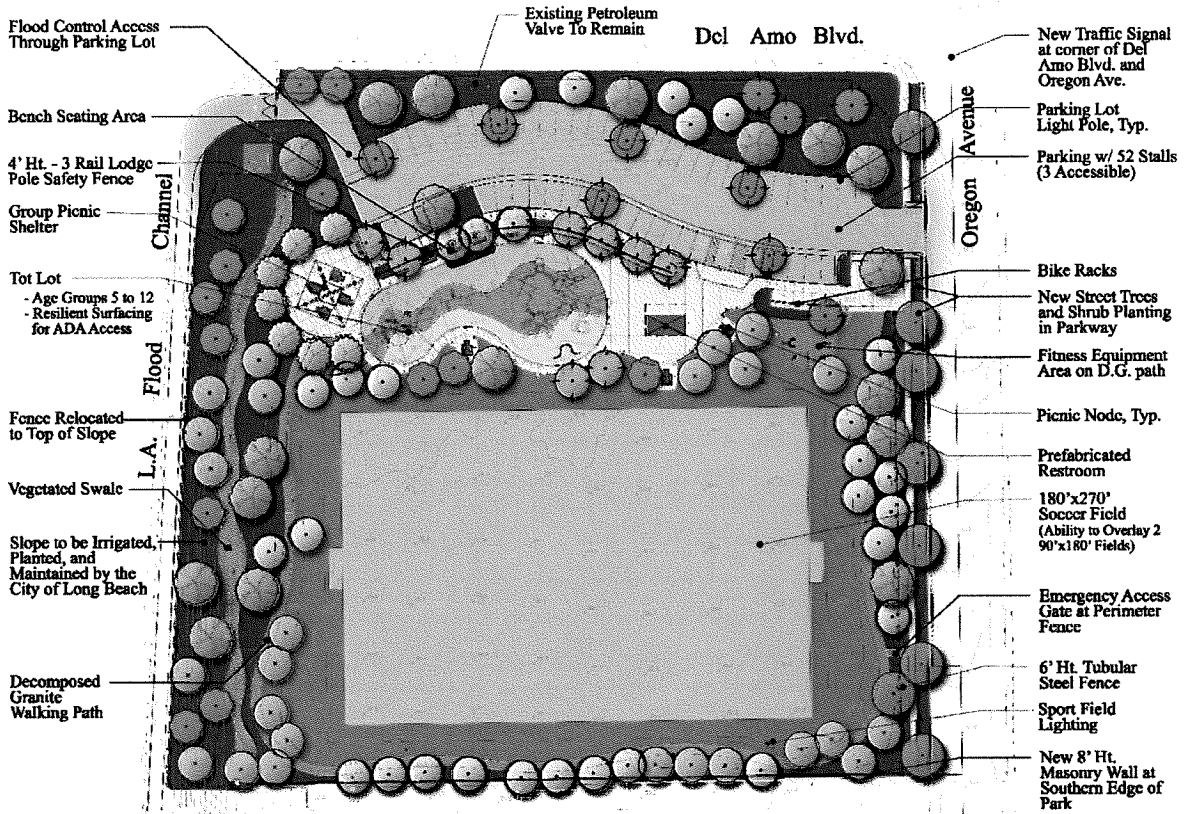
Processing Fees, Utility Connection Fees, Frontage Utility Fees are Excluded from this estimate.

The parties acknowledge and agree that the list of improvements contained in this Exhibit may not be exhaustive, and that additional improvements which were mistakenly omitted from this Exhibit or otherwise become reasonably necessary to complete the Project shall constitute "Offsite Improvements".

EXHIBIT "D"

CONCEPTUAL PARK DESIGN

[SEE FOLLOWING PAGE]



UPDATED 07/24/14

LANDSCAPE CONCEPT PLAN

OREGON PARK IMPROVEMENTS
CITY OF LONG BEACH, CALIFORNIA

THIS DOCUMENT IS THE PROPERTY OF RJM DESIGN GROUP, INC. AND NO PART THEREOF SHALL BE REPRODUCED OR USED TO REPRODUCE THE CONTENTS OF THIS DOCUMENT WITHOUT THE WRITTEN CONSENT OF RJM DESIGN GROUP, INC. 8330 S. RAY BLVD., SUITE 100, LONG BEACH, CA 90803

EXHIBIT "E"

OREGON PARK IMPROVEMENTS, 4951 OREGON AVENUE, LONG BEACH, CA

- K-rated bollards separating the parking lot
- Drought-tolerant plants in all landscaped areas
- Irrigation with CalSense Automatic Controllers, and a handheld CalSense modem programmed to talk to the irrigation controller onsite
- Trees
- Benches with dividers for seating throughout the park
- Waste and Recycling Receptacles throughout the park
- Bike Racks with capacity for up to 15 bikes
- Six-foot tubular steel perimeter fencing, and a lockable gate with automated locks, shall be provided at the entrance to the LA Flood Channel
- Six-foot, tubular steel fence, with gates, around the synthetic turf soccer field
- Synthetic Turf Soccer Field with organic infill, 180' x 270' with ability to overlay two 90' x 180' fields
- Musco LED field lighting with ControlLink
- Reduce turf around the synthetic turf field by expanding the width of the decomposed granite walking loop to accommodate multiple walkers
- Appropriately transition from synthetic turf to the decomposed granite walking loop, in a fashion that does not void the synthetic turf warranty
- Include at least six fitness stations, with distance markers at each station
- Benched seating around the walking loop
- Restroom with six stalls, including 2 ADA accessible stalls, and 4 unisex stalls, with a central plumbing chase, and an additional area for equipment storage
- Hydration station/drinking fountain, sink and waste and recycling receptacle on exterior of the restroom
- Underground all utilities on and leading to the public park site

Age-Separated Play Equipment for ages 2-5 and ages 5-12 with shade structures and/or trees

31591 Camino Capistrano
San Juan Capistrano, CA 92675
www.RJMdesigngroup.com
[949] 493-2690 *fax*
[949] 493-2600 *phone*



OREGON PARK DESIGNED AMENITIES - City of Long Beach, California
July 3, 2014

Project Size: 4 Acres (Does not include adjacent parkway improvements on Oregon Ave.)

A.C. Parking Lot - 48 Standard Stalls
3 Accessible Stalls
Total 51 Parking Stalls

Play Area with 2 large play structures, swings, shade toppers and some universal play elements

30' Square group picnic Polygon structure

Pre-fabricated Restroom Bldg.

Picnic Table Pads

Fitness/Exercise Equipment Area

Bike Racks

Bench Seating Areas

Enriched Concrete Paving

Decomposed Granite Trail

Vegetated Swale

180'x270' Soccer Field

Sports Field Lighting

Pedestrian Lighting

Tubular Steel Perimeter Fencing w/ Gated Entrances

Below Grade Stormwater Collection System

EXHIBIT "F"

CITY OF LONG BEACH IMPACT FEE SCHEDULE

EXHIBIT "G"

ASSIGNMENT AND ASSUMPTION AGREEMENT

[SEE FOLLOWING PAGES]

Recording Requested by And
When Recorded Return to:

City of Long Beach
333 W Ocean Blvd.
Long Beach, CA 90802
Attn: City Clerk
APNs: _____

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Agreement”) is made and entered into as of _____, 20__ by and among _____ (“Assignor”), and _____ (“Assignee”).

RECITALS:

A. Assignor entered into that certain Development Agreement No. _____ executed by City of Long Beach (“City”) and the Assignor on _____ and recorded on _____ (the “Development Agreement”) in the Official Records of Los Angeles, California as Document No. _____.

B. The Development Agreement vested Assignor’s rights to develop 131 residential units, a park and a community center (the “Project”) on real property in north-central Long Beach just north of the Virginia Country Club between Long Beach Blvd. and Interstate 710, as more specifically described in Exhibit “A-1” to the Development Agreement, and as illustrated in the depiction set forth in Exhibit “A-2” to the Development Agreement (the “Subject Property”).

C. Section 3.3 of the Development Agreement allows Assignor to sell, transfer, or assign the Subject Property in whole or in part to any person, partnership, joint venture, firm or corporation at any time during the term of that Development Agreement, provided that any such sale, transfer or assignment includes an assignment and assumption of the rights, duties and obligations arising under or from the Development Agreement. This Agreement is intended to serve as the instrument that effects that assignment and assumption of the rights, duties and obligations arising under or from the Development Agreement, in order to comply with Section 3.3 of the Development Agreement.

D. The Assignor and Assignee have entered into a purchase and sale agreement (“Purchase Agreement”) whereby Assignor is selling all of its interest in the Subject Property to the Assignee, which is scheduled to close on _____ (the “Effective Date”).

E. As part of its sale of the Subject Property, Assignor desires to assign, and Assignee desires to be assigned, all of Assignor's interest in the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Assignment of Development Agreement.

(a) As of the Effective Date (as defined below), Assignor hereby transfers and assign to Assignee, all right, title and interest under the Development Agreement ("Assignment"). The "Effective Date" shall be a date on which the Assignee acquires the Subject Property.

(b) Assignor represents and warrants that it has complied in all material respects with its obligations under the Development Agreement arising prior to the Effective Date.

(c) Notwithstanding section 3.3.1 of the Development Agreement, Assignor shall remain liable to City for the full and proper performance of all the obligations under the Development Agreement only for the period prior to the Effective Date of this Agreement.

(d) Assignor has not received notice of any default under the Development Agreement from the City and, to Assignor's knowledge, neither Assignor nor the City is in default in any material respect thereunder. Assignor represents and warrants that it has not assigned any interest in the Development Agreement and that it will defend its interest under the Development Agreement. Except as stated above, and except for such representations and warranties as may expressly survive the execution of this Agreement pursuant to the terms of the Purchase Agreement, Assignor's right, title and interest in, to and under the Development Agreement and the Subject Property covered thereby are assigned hereunder without representation or warranty of any kind or nature whatsoever, whether statutory, express or implied.

2. Assumption of Development Agreement.

(a) The undersigned Assignee (i) hereby accepts said Assignment as of the Effective Date; (ii) hereby assumes all of Assignor's burdens and obligations under the Development Agreement from and after the Effective Date; (iii) hereby agrees to and for the benefit of City to keep, perform, and be bound by all of the terms, covenants and conditions contained in said Development Agreement on the part of the Owner therein to be kept and performed from and after the Effective Date, to all intents and purposes as though the undersigned Assignee was the original Owner thereunder; and (iv) hereby agrees to be subject to all of the terms and conditions of the Development Agreement applicable to the Subject Property, in each case to the extent that such burdens, obligations or duties arise from and after the Effective Date.

(b) Pursuant to Section 3.3.1(c) of the Development Agreement, the Assignee shall provide the City with security equivalent to any security previously provided by the Assignor to secure performance of Assignee's obligations as the Owner under the Development Agreement.

(c) As between the Assignee and the Assignor, the delivery of this Agreement shall not affect, enlarge, diminish or otherwise impair any of the terms or provisions of the Purchase Agreement or the rights or obligations of the parties thereunder. In the event of a conflict

between the terms and provisions of this Agreement and the terms and provisions of the Purchase Agreement, the terms and provisions of this Agreement shall govern and control. In the event of a conflict between (i) the Development Agreement and this Agreement, and/or (ii) the Development Agreement and the Purchase Agreement, the terms and provisions of the Development Agreement shall, as between the City, on the one hand, and the Assignor and Assignee, on the other hand, govern and control.

(d) The undersigned Assignee further covenants and agrees that it has examined the Subject Property and that no representation or warranties have been made by Assignor, the City or by any person or agent acting for the Assignor or the City in connection with the Subject Property. Assignee accepts the Subject Property "AS IS".

(e) On or before the Effective Date, Assignee further agrees to provide City evidence of insurance in the manner required by Article 9 of the Development Agreement.

(f) Any default under this Agreement by Assignee shall be a concurrent default under the Development Agreement.

3. Development Agreement. Assignee has reviewed all of the provisions of the Development Agreement, has sought legal counsel where necessary, and fully understands all of the terms and conditions of the Development Agreement that are allocated to the Subject Property and assumed by Assignee by this Agreement.

4. No Amendment to Development Agreement. Assignor and Assignee acknowledge and agree that the Development Agreement shall continue to be in full force and effect notwithstanding the Assignment thereof with respect to the Subject Property, and shall continue to govern the rights and obligations of Assignee as the assignee of the "Owner" of the Subject Property, as provided by this Agreement and the Development Agreement.

5. Recording. This Agreement may be recorded.

6. Counterparts. This Agreement may be executed in counterparts, each of which when taken together shall constitute the one original.

[The remainder of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed as of the date first above written.

ASSIGNOR:

_____,
a _____

By: _____
Name: _____
Its: _____

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Its: _____

EXHIBIT "H"

RELEASE

[SEE FOLLOWING PAGES]

Recording Requested by And
When Recorded Return to:

City of Long Beach
333 W Ocean Blvd.
Long Beach, CA 90802
Attn: City Clerk
APN: _____

RELEASE OF DEVELOPMENT AGREEMENT

THIS RELEASE OF DEVELOPMENT AGREEMENT ("Release") is dated as of _____, 20____, and is made by the City of Long Beach, a California municipal corporation ("City"), with respect to that certain Development Agreement No. _____, executed by City and _____, a _____ ("Owner") on _____, which was recorded in the Official Records of Los Angeles County, California, on _____, as Document No. _____ (the "Development Agreement").

Initially capitalized words or terms used but not defined in this Release shall have the meanings assigned to such words or terms in the Development Agreement.

Pursuant to Section 3.3.3 of the Development Agreement, the City finds and declares that the parcel more specifically described in Exhibit "A" hereto ("Parcel") has been finally subdivided and a site plan for development of the Parcel has been finally approved, as those terms are used in Section 3.3.3 of the Development Agreement. The City hereby finds and declares that the conditions in Section 3.3.1 of the Development Agreement have been satisfied, and the Parcel has been transferred to _____ ("Purchaser") in compliance with the terms of that Development Agreement.

Accordingly, the City hereby fully and completely releases the Purchaser from all of the Owners' obligations under the Development Agreement with respect to the Parcel. This Release specifically enures to the benefit of the Purchaser's successors and assigns.

IN WITNESS WHEREOF, City has caused this Partial Release of Development Agreement to be executed as of the day and year first above written.

CITY:

CITY OF LONG BEACH, a California municipal corporation

By: _____
_____, City Manager

ATTEST:

Stephanie A. Mendenhall, City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "I"

CERTIFICATE OF COMPLIANCE WITH DEVELOPMENT AGREEMENT

[SEE FOLLOWING PAGES]

DRAFT

Recording Requested by And
When Recorded Return to:

City of Long Beach
333 W Ocean Blvd.
Long Beach, CA 90802
Attn: City Clerk

CERTIFICATE OF COMPLIANCE WITH DEVELOPMENT AGREEMENT

This Certificate of Compliance with Development Agreement (“Certificate”) is delivered with reference to that certain Development Agreement No. _____, executed by and between _____, a _____ (“Owner”) and the City of Long Beach, a California municipal corporation (“City”) on _____, and recorded with the County of Los Angeles on _____, as Document No. _____. Section references in this Certificate relate to the Development Agreement unless stated otherwise.

This Certificate is delivered in accordance with Section 5.4 of the Development Agreement, and has been executed by an authorized officer of the City. This Certificate is delivered with respect to the time period from _____ to _____ (“Review Period”), and the date on which this certificate was executed by the City shall be referred to as the Compliance Date.

In accordance with Section 5.4 of the Development Agreement, as of the Compliance Date, after the City’s most recent [Periodic or Special] Review, which occurred during the Review Period, based upon the information known or made known to the City Council, the Development Agreement remains in effect, and the Owner is in full compliance with the development agreement.

To the best knowledge of the undersigned and the City Council, no event or circumstance has occurred that constitutes a material adverse change since the date the most recent Certificate was executed and delivered.

This Certificate shall expire the earlier of (i) one (1) year after the Compliance Date, or (ii) the date of recordation of a Notice of Termination of Development Agreement, as that term is defined in the Development Agreement.

The undersigned and the City Council affirm that the obligations under the Development Agreement have been fully satisfied by the Owner as of the Compliance Date:

Dated: _____, 20__.

City of Long Beach

By:

DRAFT

EXHIBIT "J"

RIGHT OF ENTRY PERMIT

RIGHT OF ENTRY PERMIT AGREEMENT

The City of Long Beach ("City") hereby grants permission to _____ ("Permittee") to use and occupy approximately _____ (_____) gross acres of real property located at _____ ("permit areas") shown Exhibit "A", attached hereto and by this reference made a part hereof.

The permit areas shall be used and occupied by Permittee subject to the following terms, conditions, and limitations:

1. The permit areas and the improvements thereon shall be used for construction of a park in accordance with that certain Development Agreement between City and Permittee dated as of _____, 2015, as the same may be thereafter amended, and for no other purpose without the prior written consent of the City Manager of the City ("City Manager"). Notwithstanding the foregoing, the parties acknowledge that Permittee's construction of a City-approved park may require the demolition of existing improvements in, on or under the permit areas.

2. Permittee shall not be charged any rent or other fees or costs (other than standard processing fees) in consideration of its activity, or the rights granted under this Permit.

3. The term of this Right-of-Entry Permit Agreement ("Permit") Permit shall commence on _____, and shall end at midnight on _____.

4. City shall have no duty to make any improvement or repair to the permit areas; provided, however, nothing herein shall relieve City of any liability or remediation obligation with respect to any environmental condition in, on or about the permit areas which has not been caused by Permittee. Any and all uses of the permit areas by Permittee, its agents, contractors, and their employees shall be at their sole risk, cost, and expense. Permittee, at its cost, in connection with the permitted activities, shall keep and maintain the permit areas during its use and occupancy thereof, in good order, condition, and repair, free and clear of all rubbish, debris and litter.

5. During its use and occupancy of the permit areas, Permittee shall at all times comply with all laws, ordinances, rules, and regulations of and obtain applicable permits from all federal, state, and local governmental authorities having jurisdiction over the permit areas with respect to Permittee's activities thereon. Notwithstanding the foregoing, Permittee shall have no obligation to remediate any environmental condition, except to the extent caused solely by Permittee.

6. Permittee shall not assign this Permit or any interest herein nor allow the transfer thereof (whether by operation of law or otherwise), without the prior written consent of City, which shall not be unreasonably withheld, conditioned or delayed; provided, however, Permittee may

assign its right, title and interest in and to this Permit to any such party taking an assignment of the Development Agreement as permitted therein. Any attempted transfer or assignment without such consent shall be void and confer no rights whatsoever upon a transferee or assignee.

7. City's authorized representatives shall have access to and across the permit areas during business hours and, in the event of an emergency, at any other time for inspection, repair of publicly-owned utilities and structures, and for fire and police purposes. City, at its cost, in connection with such activities, shall keep and maintain the permit areas during its use and occupancy thereof, in good order, condition, and repair, free and clear of all rubbish, debris and litter. With respect to such access and activities, City shall indemnify, hold harmless and defend Permittee to the same extent as Permittee is obligated to indemnify, hold harmless and defend City pursuant to Section 10 hereafter.

8. The permit areas are subject to all rights of way and entry thereon for the installation, relocation, removal, operation, and maintenance of sewers, pipelines, conduits, and telephone, telegraph, light, heat, and power lines (whether underground or overhead) as may from time to time be determined by City.

9. Prior to commencing any work under this Permit, Permittee or its contractors and agents shall procure and maintain the following insurance at Permittee's or its contractors' and agents' sole expense for the duration of this Permit from insurance companies that are admitted to write insurance in the State of California or from non-admitted insurers that are on California's List of Eligible Surplus Lines Insurers and that have ratings of or equivalent to an A:VIII by A.M. Best Company:

- (a) Commercial general liability insurance (equivalent in coverage scope to Insurance Services Office, Inc. (ISO) form CG 00 01 11 85 or 11 88) in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate. This coverage shall include broad form contractual liability, cross liability protection, independent contractors liability, explosion, collapse and underground hazards (XCU), and sudden and accidental pollution liability. The City, its officials, employees, and agents shall be named as additional insureds, to the extent of the indemnity provided under Section 10, by endorsement (equivalent in coverage scope to ISO form CG 20 12 11 85 or CG 20 26 11 85). Permittee's liability policy is a manuscript form based on the ISO forms with additions and enhancements to meet Permittee's specific needs. The commercial general liability policy meets or exceeds ISO standards in all relevant respects.
- (b) Commercial automobile liability insurance (equivalent in coverage scope to Insurance Services Office, Inc. (ISO) form CA 00 01 06 92) in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit covering symbol 1, "Any Auto".
- (c) Permittee hereby releases the City from, and waives, its entire claim of recovery for loss of or damage to property arising out of or incident to fire,

any other perils normally included in an "all risk" Builder's Risk insurance policy when such property is in, on or about the permit areas, whether or not such loss or damage is due to the negligence of the Permittee, their contractors and/subcontractors.

Any self-insurance program, self-insured retention or deductible must be approved separately in writing by City's Risk Manager or designee and shall protect the City, its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained such self-insurance or deductible provisions. City hereby approves Permittee's self-insurance program.

All insurance required hereunder shall provide at least thirty (30) days' prior written notice of cancellation to the City (except that ten (10) days prior written notice of cancellation for nonpayment of premium is acceptable). Such insurance shall provide that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by the City, its officials, employees, or agents.

Permittee shall require any subcontractor that Permittee may use in the performance of this Permit to maintain insurance in compliance with the provisions of these terms and conditions.

Such insurance as required herein shall not be deemed to limit Permittee's liability relating to performance under this Permit. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Permit. City makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Permittee's liability and obligations under this Permit.

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the City's Risk Manager or designee.

10. Permittee shall indemnify and hold City harmless from and against any and all claims or liability for bodily injury to or death of any person or loss of or damage to any property arising out of the activities of Permittee, its agents, employees, contractors or invitees in, on or about the permit areas except claims and liabilities to the extent caused by any negligence on the part of City, its agents, employees, contractors or invitees. In the absence of any negligence on the part of the City, its agents, employees, contractors or invitees, such indemnity shall include all reasonable costs, attorneys' fees and expenses incurred in the defense of any such claim or any action or proceeding brought thereon.

In the event any action or proceeding is brought against City by reason of any claim falling within the scope of the foregoing indemnity, and in the absence of any negligence on the part of City, Permittee upon written notice from City to Permittee within 20 days after City receives notice of the claim shall defend same at Permittee's expense by counsel reasonably satisfactory to City.

The foregoing indemnity is conditioned upon City providing notice to Permittee within 20 days after City receives notice of any claim or occurrence that is likely to give rise to a

claim that will fall within the scope of the foregoing indemnity and cooperating fully with Permittee in any defense or settlement of the claim.

11. Except as otherwise expressly provided in this Permit, in the event Permittee shall fail or refuse to perform any term, covenant or condition on its part to be performed, within ten (10) days after receipt of written notice from City, or such longer period as may be reasonably necessary under the circumstances, City may terminate this Permit. Permittee shall promptly vacate and surrender the Permit upon the expiration of the ten (10) day notice period unless Permittee shall have cured the default within the ten (10) day notice period or such longer period as may be reasonably necessary under the circumstances.

12. Any notice, demand, request, consent, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either be served personally, by facsimile transmission or sent by prepaid, first-class mail, addressed as follows:

TO CITY: City Manager
 City of Long Beach
 333 West Ocean Boulevard
 Long Beach, California 90802
 FAX No. (562) 570-6583

TO PERMITTEE: _____

Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated upon delivery if personally served or given by facsimile transmission and within forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

ACCEPTED this _____ day of _____, 20__.

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

"PERMITTEE"

CITY OF LONG BEACH,
a municipal corporation

DATED: _____

By: _____
City Manager

"CITY"

Approved as to form this _____ day of _____, 20__.

CHARLES PARKIN, City Attorney

By: _____
Deputy City Attorney