

GOLDEN SHORE PROJECT

DEVELOPMENT AGREEMENT

33972

BY AND AMONG

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

(“CITY”)

AND

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

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

AND

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

(“DEVELOPER”)

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EXHIBITS

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

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

THIS DEVELOPMENT AGREEMENT, dated as of August 27, 2015, by and among the CITY OF LONG BEACH, a charter city and municipal corporation of the State of California, on the one hand, and 400 OCEANGATE, LTD., a California limited partnership, ELEVEN GOLDEN SHORE, L.P., a California limited partnership, and ONE GOLDEN SHORE, L.P., a California limited partnership, on the other hand, pursuant to the authority set forth in the Development Agreement Act, the City's inherent power as a charter city, and the Enabling Ordinance.

RECITALS

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

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

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

WHEREAS, in order to provide certainty and render the Project development more feasible in light of the capital investment necessary to implement the Project and the extended planning horizon necessary to coordinate a project of such scope and complexity, and in order to realize the benefits contemplated to result from the development of the Project, the City is willing to agree with the Developer that, with respect to the Property, certain existing governmental entitlements

shall, to the extent specified herein, not be changed or supplemented with inconsistent burdens and exactions during the Term of this Agreement; and

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

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

AGREEMENT

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

1. DEFINITIONS

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

1.1 “*Agreement*” means Development Agreement.

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

1.3 “*California Building Standards Codes*” means those building, electrical, mechanical, fire and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

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

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

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

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

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

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

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

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

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

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

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

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

1.16 “*Development*,” whether or not capitalized, means the improvement of the Property for the purposes of completing the structures, improvements, and facilities comprising the Project including, but not limited to: grading; the construction of buildings and structures; and the installation of landscaping.

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

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

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

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

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

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

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

1.24 “*Environmental Impact Report*” means Volume I Draft Environmental Impact Report, Golden Shore Master Plan, October, 2009; Volume II Draft Environmental Impact Report, Golden Shore Master Plan, October, 2009; and Volume III Final Environmental Impact Report, Golden Shore Master Plan, January, 2010 prepared pursuant to California Public Resources Code section 21000 *et seq.* covering the Project and assigned State Clearinghouse Number 2008111094.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.43 “*Subsequent Discretionary Project Approvals*” means all Discretionary Actions or Discretionary Approvals applicable to the Project or the Property that are required to implement the Project in accordance with this Agreement and that are approved by the City after the Effective Date.

1.44 “*Subsequent Land Use Regulations*” means any change in or addition to the Land Use Regulations adopted and effective after the Effective Date, including, without limitation, any

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

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

2. RECITALS OF PREMISES, PURPOSES AND INTENT

2.1 State Enabling Statute.

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

“The Legislature finds and declares that:

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

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

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development

agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties as further set forth herein.

2.2 City Procedures and Actions.

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

In accordance with Chapter 21.29 of the Code, City has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the General Plan, and has adopted Ordinance No. ORD-15-0018 approving the application for this Agreement, directing the City Attorney to prepare this Agreement and authorizing the execution of this Agreement by the City Manager on behalf of the City.

2.3 The Property.

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

2.4 The Project.

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

2.5 Public Objectives.

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

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

2.5.1 Comprehensive Planning Objectives.

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

- (a) Expanding and attracting new business to the City;
- (b) Locating new multi-family housing in proximity to growing employment centers to decrease travel time, reduce traffic congestion, lessen energy consumption, and improve air quality;
- (c) Assisting in improving the quality and availability of neighborhood housing and in building a strong network of healthy neighborhoods;
- (d) Redirecting growth to major employment/activity centers, such as the Project area; and
- (e) Improving the urban environment in order to make Long Beach a more pleasant place to live, work, play, and raise a family.

2.5.2 City Development Objectives.

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

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

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

2.6 Developer Objectives.

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

revenue associated with these development risks and uncertainties would, in the absence of this Agreement, deter and discourage Developer from making a long-term commitment to the implementation of the Project. Accordingly, Developer cannot prudently continue the development of the Project without reasonable assurance that, subject to the terms of this Agreement and the Reserved Powers, it will be able to complete the Project in accordance with the Project Approvals and the Land Use Regulations.

2.7 Applicability of the Agreement.

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

3. AGREEMENT AND ASSURANCES

3.1 Agreement and Assurances on the Part of Developer.

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

3.1.1 Project Development.

Developer agrees that it will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing its business decisions concerning timing of the commencement or continuation of development, to develop the Project in accordance with the terms and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations, including: as more fully described in PD-6 Sub Area 1, an integrated mixed use

development comprised of housing and commercial uses. Developer agrees to work with the City to incorporate a local hire component in its construction contracts.

3.1.2 Timing of Development.

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

3.2 Agreement and Assurances on the Part of City.

In order to effectuate the premises, purposes and intent set forth in Section 2 above, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, including the preceding Section 3.1 of this Agreement, City hereby agrees that Developer shall have a vested right to carry out and complete the entire Project, as specifically described and set forth in this Agreement, subject to the terms and conditions of this Agreement, including, without limitation, the Project Approvals and the Land Use Regulations. In furtherance of such agreement and assurance, and pursuant to the authority and provisions set forth in the Development Agreement Act and Chapter 21.29 of the Code, City, in entering into this Agreement, hereby agrees and acknowledges that:

3.2.1 Entitlement to Develop.

3.2.1.1 Project Entitlement.

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

3.2.1.2 Nonapplication of Subsequent Land Use Regulations.

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

3.2.1.3 Changes In California Building Standards Codes.

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

3.2.1.4 Changes Mandated by Federal or State Law.

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

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

3.2.1.5 Health and Safety Emergencies.

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

3.2.1.6 Agreed Changes and Other Reserved Powers.

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

3.2.2 Subsequent Discretionary Project Approvals; Consistent Subsequent Requirements.

In accordance with California Government Code section 65865.2, City hereby agrees that it will not withhold or condition any Subsequent Discretionary Project Approval in a manner which would prevent Development of the Property for the uses and to the density or

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

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

3.2.3 Consistency with Land Use Regulations.

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

3.2.4 Moratoria.

In the event an ordinance, resolution, or other measure is hereafter enacted, whether by action of City, by initiative, or otherwise, which affects the rate, timing, or sequencing of the Development of all or any part of the Project, or implementation or construction of any Condition of Approval ("*Moratorium*"), City agrees that the changes imposed by such Moratorium shall not apply to the Project or this Agreement, unless such changes are applied pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement, and, if applicable to the Project, shall toll the Term for the period of time that such Moratorium actually

delays the rate or timing or affects the sequencing of the Development of all or any part of the Project. Developer shall not request or, unless requested or permitted to do so by the City, support adoption of any such Moratorium during the Term.

3.2.5 Standard City Services.

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

3.2.6 No Limitation on Fees.

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

4. TERM

4.1 Basic Term.

The Project is a multi-phased Development which will occur over many years, the exact number of which will be determined ultimately by market conditions and other business factors. It is the intent of the Parties to establish as the Term of this Agreement more than sufficient time to complete the Project, so that if current expectations prove to be unrealistic, Developer will have additional time in which to complete the Project in an economically sound manner. Therefore, this Agreement shall commence upon the Effective Date and shall remain in effect until completion of the development of the Property as contemplated by Section 2.4 of this Agreement or for a term of twenty (20) years after the Effective Date, whichever is earlier, unless said Term is terminated, modified, or extended pursuant to the express provisions set forth in this Agreement or by mutual written consent of the Parties hereto. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect any right or duty arising from City entitlements or approvals, including the Project Approvals, approved prior to, concurrently with or subsequent to the Effective Date or any right or duty of Developer which has accrued as of the date of such termination or which, by its terms, expressly survives such termination. As provided in Section 3.2.4 of this Agreement, the Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any Moratorium.

4.2 Early Full Termination of Agreement.

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

5. ANNUAL REVIEW.

5.1 Annual Review Procedure.

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

5.2 Termination or Modification of Agreement.

In the event the City Council determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms of this Agreement, the City may modify or terminate this Agreement in accordance with the Development Agreement Act and Chapter 21.29.070 of the Code. Notwithstanding any provision to the contrary in any City procedures, there shall be no modification of this Agreement unless the City Council acts pursuant to sections 65867 and 65868 of the Development Agreement Act.

5.3 Certificate of Agreement Compliance.

If, at the conclusion of an annual review, Developer is found to be in good faith compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of

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

5.4 Failure of Annual Review.

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

5.5 Annual Review Fee.

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

6. VESTED RIGHTS TO DEVELOP

Subject to the terms of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Project Approvals and the Land Use Regulations. City and Developer hereby acknowledge and agree that all of the Development allowed under the Project Approvals is vested specifically with Developer, and may not be utilized by any other subsequent owner or lessee of a parcel or parcels of the Property except with the express written assignment by Developer pursuant to Section 8.15, and then only to the extent of such assignment; provided, however, that nothing herein shall be deemed to preclude a subsequent owner or lessee of a parcel or parcels of the Property from seeking additional entitlements to Development to the extent that such entitlements are additive to, and not a reduction of, the Development rights hereby vested with Developer, but any such additional entitlements shall be

subject to the full discretion of the City without limitation or qualification by this Agreement or any provision thereof.

7. DEFAULT, REMEDIES AND DISPUTE RESOLUTION

7.1 Intent.

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

7.2 City's Remedies.

7.2.1 Default by Developer.

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

7.2.2 Notice of Default.

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

that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

7.2.3 Failure to Cure Default Procedure.

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

7.2.4 Termination or Modification of Agreement.

If it is determined pursuant to the above-described procedures that the Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement as provided in Chapter 21.29.070C of the Code; provided, however, that with respect to a material breach of a Severable Obligation, as defined in Section 8.15.2, any such termination (as opposed to a modification) of this Agreement may only affect the portion of the Property affected by such breach; and further provided that with respect to a modification (as opposed to termination) of this Agreement, any modification that would materially increase the Developer's obligations under this Agreement may not be made unilaterally by City and shall require the consent of Developer.

7.2.5 Specific Performance.

Except as provided in this Section, the City shall have no right to seek a remedy of specific performance with respect to the Development of the Project. The City's right to seek specific performance in connection with the Development of the Project shall be specifically limited to compelling Developer to (a) complete or demolish any uncompleted improvements initiated in connection with the Project which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of

such improvements to be selected by the City in its sole discretion, (b) compelling Developer to dedicate and properly complete any public improvements which are required by the Project Approvals or the Land Use Regulations to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement, and (c) compelling the Developer to complete, demolish, or make safe and secure any uncompleted private improvements located on the Property with the choice of whether to demolish, complete, or secure such private improvements and the method of such demolition, completion, and securing of such private improvements to be selected by Developer in its sole discretion. Notwithstanding anything in Section 7.2 to the contrary and notwithstanding any termination of this Agreement, the City shall have the right to enforce all applicable provisions of the Land Use Regulations and the Project Approvals for any portion of the Project actually constructed and to collect all payments and reimbursements due to City under the express terms of this Agreement. Nothing in this Section 7.2.5 or the limitations on the City's rights of specific performance set forth herein shall be construed to prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, Project design, and heights set forth in the Project Approvals incorporated herein.

7.3 Developer's Remedies.

7.3.1 Default and Notice of Default.

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

7.3.2 Specific Performance; Waiver of Damage Remedies.

Both Parties agree and recognize that, due to the size, scope, and nature of the Project, including the design and placement of various discrete uses and structures, and the functional and economic interrelationships of the various components of the Project, as a practical matter it will not be possible physically, financially, and as a matter of land use planning, to restore

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

7.4 Rights and Duties Following Termination.

Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to (a) any obligations to have been performed or which have accrued prior to said termination, (b) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (c) any obligations arising under a provision of this Agreement which expressly provides that it survives the termination of this Agreement.

7.5 Developer's Right To Terminate Upon Specified Events.

Notwithstanding any other provisions of this Agreement to the contrary, Developer retains the right to terminate this Agreement upon thirty (30) days' written notice to City in the event that Developer reasonably determines that continued Development of the Project has become economically infeasible due to (i) changed market conditions, (ii) increased Development costs, (iii) burdens imposed, consistent with this Agreement, by the City as conditions to Subsequent

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

7.6 Legal Actions.

Subject to the limitations on remedies imposed by this Agreement, either Party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, enforce by specific performance the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations, or interpretations of this Agreement. The limitation of remedies set forth herein shall not limit any provisional remedies, including, without limitation, injunctive or similar relief, from any court of competent jurisdiction as may be necessary to protect the benefit to a Party of its rights and permitted remedies hereunder.

8. GENERAL PROVISIONS

8.1 Effective Date.

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

8.2 Appeals to City Council.

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

8.3 Cooperation and Implementation

8.3.1 Processing.

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

8.3.2 Other Governmental Permits.

Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City, at no out-of-pocket cost or expense to the City, shall reasonably cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Developer, consider, in good faith and in the City's sole discretion, agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and do not result in any additional cost or expense or other adverse impact to City. Such entities may include, but are not limited to, utility districts or providers, and the California Coastal Commission. Developer shall reimburse City for all costs and expenses incurred in connection with reviewing, negotiating or entering into any such agreement provided that Developer has requested the City to do so. Developer shall indemnify, defend (with counsel

selected by the indemnified Party), and hold harmless City, all City Agencies, and each City Representative from and against any and all claims, causes of action and Liabilities incurred by the indemnified Party arising from or related to any challenge by any person or entity to any such agreement, and shall reimburse City for any costs and expenses incurred by City in defending such claims or any other claims arising from the implementation of such agreement. Any fees, assessments, or other amounts payable by City under any such agreement shall be borne by Developer.

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

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

8.3.3.1 Developer and City Legal Counsel.

In the event any Litigation (including any cross-action) is filed against the City and/or Developer, the Party receiving service of such action shall notify the other in writing of such Litigation promptly after service upon it and shall transmit to the other any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, it in connection with such Litigation. Within ten (10) days after delivery of such notice, Developer shall retain and appoint legal counsel selected by City and reasonably acceptable to Developer (“*Counsel*” for purposes of this Section 8.3.3) with respect to the Litigation to jointly represent both Developer and City. The Parties acknowledge that Counsel will appear and represent both Developer and City in connection with such Litigation and such Counsel shall, at the request of the City Attorney, cooperate with the City Attorney, shall prepare drafts, for review by the City Attorney, of all pleadings, motions, and other Litigation-related documents, and shall coordinate legal strategy and otherwise cooperate with City in connection with the Litigation, all at Developer’s cost and expense. Developer shall also pay all filing fees, court costs, and similar out-of-pocket expenses required for the City to defend the Litigation. The City Attorney or his designee shall appear on behalf of the City in any such Litigation and shall at all times retain final authority and control over all documents to be filed on the City’s behalf and all actions to be taken by the City with respect to Litigation. The Developer shall not be responsible for reimbursing the City for fees or costs of any attorneys hired by the City in connection with such Litigation so long as Developer timely provides and funds the defense of such Litigation by Counsel pursuant to its obligations above; provided that, if Developer fails to provide the defense by Counsel as provided

above, then City may retain its own outside counsel and, in that event, Developer shall be responsible for paying all fees, costs, Attorneys' Fees, or other expenses resulting from actions taken by the City in connection with the defense of such Litigation. The City shall cooperate with Counsel's defense of the Litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to Counsel as may be reasonably requested by Counsel in connection with the Litigation.

8.3.3.2 Reimbursement of Attorneys' Fees.

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

8.3.3.3 Indemnification.

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

shall waive or limit any obligations of the Developer or rights and protections of the City set forth in any Project Approvals.

8.3.3.4 Joint Defense.

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

8.3.3.5 Continuing Obligations.

This Section 8.3.3 shall survive termination of this Agreement.

8.4 Relationship of Parties.

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

8.5 Notices.

Any notice or communication required under this Agreement between the City or Developer shall be in writing and shall be effective when delivered by registered or certified mail, postage prepaid, return receipt requested; when delivered personally; or when delivered by courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States

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

8.7 Insurance.

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

8.8 Severability and Termination.

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

8.9 Time is of Essence.

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

8.10 Modification or Amendment.

Subject to meeting the notice and hearing requirements of section 65867 of the Development Agreement Act, this Agreement may be modified or amended from time to time by

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

8.11 Waiver.

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

8.12 Equitable Servitudes and Covenants Running with the Land.

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

8.13 Governing State Law; Compliance with Applicable Law.

This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions. Developer agrees that all public work (as defined in California

Labor Code section 1720) performed pursuant to this Agreement (the “Public Work”), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* City and the City Representatives make no representation or statement that the Project, or any portion thereof, is or is not a “public work” as defined in California Labor Code section 1720.

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

Each portion of the Project shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, in such form as may be required of the Developer and all entities engaged in work on the Property by applicable law. Except with respect to the portion of the indemnity set forth above in this Section 8.13 applicable to compliance of the Project with all prevailing wage requirements, Developer shall be relieved from any further liability under this Section with respect to any portion of the Property transferred to another party where such transferee assumes Developer’s rights and obligations under this Agreement pursuant to Section 8.16 with respect to such portion of the Property transferred; provided that upon such transfer, the covenants and indemnity set forth herein shall automatically apply to such transferee, with all references herein to “Developer” deemed references to such transferee, and further provided that such transferee assumes the obligations under this Section 8.13 in writing and reaffirms its indemnity of the City, the City Agencies and the City Representatives pursuant to this Section. With respect to the portion of the above indemnity concerning compliance with all prevailing wage requirements, each transferee of Developer shall assume in writing and expressly reaffirm that assignee’s indemnity of the City, the City Agencies and the City Representatives with respect to compliance with such prevailing

wage requirements to the extent applicable to the portion of the Property acquired by said transferee, but such assumption shall not release or relieve Developer from its liability under such portion of that indemnity and Developer shall remain jointly and severally liable with such transferee for said indemnity; provided, that, at the time of such transfer by Developer, it may request that City agree to release Developer from such continuing liability under its indemnity based upon the financial capacity of the Developer's proposed transferee, but any such release shall be at the City's sole discretion and election and, to be effective, shall be in writing.

8.14 Constructive Notice and Acceptance.

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

8.15 Assignment.

8.15.1 Right to Assign.

Developer shall have the right to sell, encumber, convey, assign or otherwise transfer, in whole or in part, directly or indirectly, its rights, interests and obligations under this Agreement, to any person or entity at any time during the Term of this Agreement, provided that Developer first obtains the written consent of the City. Such consent may not be unreasonably withheld or conditioned upon demonstration by Developer to the reasonable satisfaction of the City Manager that the assignee (or any guarantor of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the portion of the Project affected by such assignment and that the proposed assignee has adequate experience with developments of comparable scope and complexity and has successfully completed such developments. Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided, that, any such request for additional information by the City shall be made, if at all, within ten (10) business days after City's receipt of the request for approval of the proposed assignment. If City wishes to disapprove any proposed assignment, City shall set

forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) days after receipt of written request for such approval delivered in the manner set forth in Section 8.5 and delivery of the required and requested additional information, if any, described above, such proposed assignment shall be deemed to be approved. Any attempted transfer in violation of this provision shall be void *ab initio*, and shall constitute a breach of this Agreement. All successors and assigns of Developer that wish to assign any rights under this Agreement shall also be bound by the terms of this Section 8.15 and each successive assignment of the rights hereunder shall also be subject to the requirements of this Agreement. Any assignment shall be documented by and shall require a written Assignment and Assumption Agreement in the form attached hereto as Exhibit "C" or another form acceptable to City. Any approval required of the City under this Section 8.15 may be provided by the City Manager and the City Manager is hereby delegated the authority to provide such approval; provided that nothing herein shall require the City Manager to act prior to submission of such matter to the City Council if the City Manager considers that review necessary or helpful in the City Manager's sole discretion. Any such submission of the City Manager to the City Council shall not extend the forty-five (45) day period to disapprove the assignment set forth in this Section.

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

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

Upon the conveyance of a portion of the Property and the assignment and assumption of the rights and obligations under the Agreement with respect thereto, the failure to perform the following obligations under this Agreement (herein referred to as a "**Severable**

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

- (a) Failure to pay Impact Fees pursuant to Section 3.2.6;
- (b) Violation of the Project Approvals or the Land Use Regulations pursuant to Section 3.1.1;
- (c) Failure to indemnify the City as required by Section 8.6; and
- (d) Failure to name the City as an additional insured pursuant to Section 8.7.

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

8.16 Tentative Subdivision Maps.

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

8.17 Water Availability.

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

8.18 Regulation by Other Public Agencies.

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

8.19 Vesting Tentative Maps.

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

8.20 Binding Effect of Agreement.

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

8.21 Statute of Limitation and Laches.

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

8.22 Entire Agreement.

This Agreement and the Project Approvals referenced herein set forth and contain the entire understanding and agreement of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings, or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations,

understandings, covenants, undertakings, or agreements shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

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

Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation thereof. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

8.24 Singular and Plural.

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

8.25 No Third Party Beneficiaries.

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

8.26 Eminent Domain.

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

8.27 Authority to Execute.

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

8.28 Force Majeure.

Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control; provided, that, the foregoing shall not apply to, and a Party's performance shall not be excused for, lack of financing or availability of financial resources

to a Party. If any such events shall occur, the Term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the Term of this Agreement shall not, under any circumstances, be cumulatively extended under this Section for more than a total of five (5) years and, in no event, may the Term of this Agreement, as so extended, exceed twenty-five (25) years from the Effective Date of this Agreement.

8.29 Estoppel Certificate.

Within thirty (30) business days following a written request by either of the Parties, the other Party to this Agreement shall execute and deliver to the requesting Party a statement certifying (a) that this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (b) that there are no known current uncured defaults under this Agreement or specifying the dates and nature of any such known default; and (c) as to any other reasonable information requested.

8.30 Mortgagee Protection.

The Parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification; provided, that City shall have no obligation to agree to any interpretation or modification that would adversely affect its rights or increase its obligations under this Agreement or if such interpretation or modification is inconsistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from

City of any default by Developer in the performance of Developer's obligations under this Agreement.


(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed Developer under this Agreement, except that as to a default requiring title or possession of the Property or any portion thereof to effectuate a cure, if the Mortgagee timely cures all defaults which do not require possession to effectuate a cure and commences foreclosure proceedings to acquire title to the Property or applicable portion thereof within ninety (90) days after receipt from City of the written notice of default and thereafter diligently and continuously prosecutes such foreclosure to completion, the Mortgagee shall be entitled to cure such default after obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession. Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, or assert any rights of Developer hereunder, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and shall be subject thereto and bound thereby and shall comply with the terms, conditions and requirements of the Project Approvals applicable to the Property or such part thereof so acquired by the Mortgagee.

[signatures on following page]

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

“CITY”


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

By: 
Name: Patrick H. West
Title: City Manager

ATTEST:


By: _____
City Clerk

APPROVED AS TO FORM:
CHARLES PARKIN, City Attorney

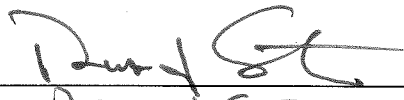
By:  8/12/2015
MICHAEL J. MAIS
Assistant City Attorney

"DEVELOPER"

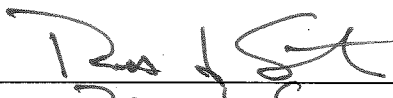
400 OCEANGATE, LTD,
a California limited partnership

By: 
Name: ROBERT J. STEMLER
Title: Vice President of 115 Ocean Partners

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

By: 
Name: ROBERT J. STEMLER
Title: Vice President of the Ocean Partners member

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

By: 
Name: ROBERT J. STEMLER
Title: Vice President of the Ocean Partners Member

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

STATE OF CALIFORNIA)
COUNTY OF Los Angeles)

On August 27, 2015, before me, Beverly Gail Nieves, a Notary Public, personally appeared Patrick H. West, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Beverly Gail Nieves



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

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On September 8, 2015, before me, Kefflyn T. Mathews, a Notary Public, personally appeared Robert J. Stemler, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Kefflyn T. Mathews



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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT A

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

Assessor's Parcel Numbers: 7278-002-009, 7278-002-010, 7278-003-034, & 7278-003-037

ONE GOLDEN SHORE

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

PARCEL 1:

PARCEL 1, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 7217 FILED IN BOOK 73 PAGES 95 AND 96 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM THAT PORTION OF PARCEL 1 OF SAID PARCEL MAP NO. 7217 WITHIN THE LINES OF LOTS 24 TO 38, INCLUSIVE OF BLOCK 1 OCEAN PARK ADDITION AS PER MAP RECORDED IN BOOK 34 PAGE 11 OF MISCELLANEOUS RECORDS, ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED LYING BELOW A PLANE 200 FEET BELOW THE SURFACE OF SAID LANDS, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL, AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO THE FIRST PARTY, ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING ANY PORTION OF THE LANDS HEREBY CONVEYED ABOVE A PLANE 200 FEET BELOW THE SURFACE OF SAID LAND, AS RESERVED IN DEED FROM LAS VEGAS LAND AND WATER COMPANY RECORDED MARCH 26, 1958 AS INSTRUMENT NO. 968, IN BOOK 41311 PAGE 351, RECORDED JULY 19, 1965 IN BOOK D2981 PAGE 153, AND RECORDED DECEMBER 31, 1963 IN BOOK D2305 PAGE 488, ALL OF OFFICIAL RECORDS.

PARCEL 2:

EASEMENTS FOR SEWER LINES AND INCIDENTAL PURPOSES OVER A STRIP OF LAND 10 FEET IN WIDTH OVER PARCEL 2 OF SAID PARCEL MAP WHICH IS ALSO DELINEATED ON SAID MAP.

APN: 7278-002-009.

END OF LEGAL DESCRIPTION

EXHIBIT A TO
AGREEMENT OF PURCHASE AND SALE
AND ESCROW INSTRUCTIONS

KYL_LB1826436

ELEVEN GOLDEN SHORE

Property Description

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

FEE

Parcel 1:

Parcel 2, in the City of Long Beach, County of Los Angeles, State of California, as shown on Parcel Map No. 7217, filed in Book 73 Pages 95 and 96 of Parcel Maps, in the Office of the County Recorder of said County.

Except all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of said land together with the right to drill into, through and use and occupy all parts of said land lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said land or other lands, but without, however any right to use either the surface of said land or any portion of said land within 500 feet of the surface for any purpose or purposes whatsoever as reserved by various deeds of record, among them being the Deed recorded July 19, 1965 as Instrument No. 885, in Book D2981 Page 153, Official Records.

Also except from that portion of Parcel 2 of said Parcel Map No. 7217 within Lot 8 Block 2 of Seaside Park Plat No. 3, as per Map recorded in Book 10 Page 27 of Maps, all oil, gas, hydrocarbons and minerals, of every kind and character more than 200 feet below the surface of said land, together with the right to drill through and occupy all parts of said land lying more than 200 feet below the surface thereof for any purposes incidental to the exploration for and production of oil, gas, hydrocarbon or minerals from said or other lands; but with no right to use the surface of said or any portion of said land within 200 feet of the surface for any purpose or purposes whatsoever, (all rights in and to the surface of said land and in and to those portions of said land below the surface, down to and including 200 feet below the surface), having been granted and transferred to the City of Long Beach, a Municipal Corporation, as reserved by Francis D. Reider, by Deed recorded December 31, 1963 as Instrument No. 1149 in Book D2305 Page 488, Official Records.

Excepting therefrom all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of said property, together with the right to drill into, through, and to use and occupy all parts of said property lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances, or minerals from said property or other lands, but without, however any right to use either the surface of said property or any portion of said property within 500 feet of the surface for any purpose whatsoever recorded January 22, 1981 as Instrument No. 81-74724, Official Records.

Parcel 2:

An easement for only the purpose of permitting the construction of an Office Tower with unprotected window openings at a distance of no less than fifteen (15) feet from the boundary of said land described as follows:

A strip of land 5 feet wide lying within Parcel 1 of Parcel Map 7217, as per Map filed in Book 73 Page 95 of Parcel Maps, Records of Los Angeles County described as follows:

Beginning at the Northwestern terminus of that certain non-tangent curve in the Southerly boundary of said Parcel 1 concave Northeasterly and having a radius of 446.00 feet, (a radial line to said point bears South 61°02'44" West); thence Southeasterly along said curve an arc length of 153.30 feet, (a radial line to said point bears South 41°21'06" West); thence continuing along the Southerly boundary of Parcel 1 North 89°55'49" East 7.61 feet to the beginning of a non-tangent curve concentric to the above-mentioned curve and having a radius of 441.00 feet, (a radial line to said point bears South 40°36'36" West); thence Northwesterly along said curve an arc length of 160.24 feet (a radial line to said point bears South 61°25'42" West); thence South 89°55'49" West 17.96 feet; thence South 0°04'11" East 5.00 feet to the Northerly line of Parcel 2 having a bearing and distance of North 89°55'49" East 151.22 feet; thence along said Southerly line North 89°55'49" East 15.00 feet to the point of beginning.

Parcel 3:

An easement for only the purpose of permitting the construction of a Two (2) story parking structure with unprotected openings facing on Parcel 2, said easement is described as:

A strip of land 20.00 feet wide lying within Parcel 1 of Parcel Map 7217 as per Map filed in Book 73, Page 95 of Parcel Maps, Records of Los Angeles County, described as follows:

Beginning at the Northwestern terminus of that certain non-tangent curve in the Southerly boundary of said Parcel 1 concave Northeasterly and having a radius of 446.00 feet, (a radial line to said point bears South 61°02'44" West); thence Southeasterly along said curve an arc length of 153.30 feet, (a radial line to said point bears South 41°21'06" West); thence continuing along the Southerly boundary of Parcel 1 North 89°55'49" Seconds East 31.20 feet to the beginning of a non-tangent curve concentric to the above-mentioned curve and having a radius of 426.00 feet, (a radial line to said point bears South 38°12'12" West); thence Northwesterly along said curve an arc length of 169.83 feet to the intersection with a radial line from said point of beginning that bears North 61°02'44" East; thence along said radial line South 61°02'44" West 20.00 feet to the point of beginning.

LEASEHOLD

A leasehold as created by that certain lease dated October 25, 1979, BY AND BETWEEN City of Long Beach, a municipal corporation, as Lessor, and Golden Shore Professional Building, a General Partnership, as Lessee, as disclosed by Memorandum of Lease, recorded December 15, 1987, as Instrument No. 87-1983907, Official Records, upon and subject to all the provisions therein contained, as Lessee's interest in said Lease was assigned by an assignment recorded December 15,

1987, as Instrument No. 87-1983909, by an assignment recorded December 30, 1999, as Instrument No. 99-2395855, by an assignment recorded October 23, 2003, as Instrument No. 03-3169286, and by an assignment recorded July 23, 2013, as Instrument No. 2013-1078114. Said Ground Lease, Memorandum and assignments, as they may be amended, supplemented or otherwise modified from time to time, shall collectively be referred to herein as the "Ground Lease".

The Ground Lease pertains to that certain real property described as follows:

Parcel 4:

Beginning at the Southeast corner of Parcel 1 of Tract No. 27757 as per Map recorded in Book 820, Pages 93 and 94 of Maps, in the Office of the County Recorder of said County, said corner being the intersection of the Westerly line of Golden Shore (formerly Golden Avenue) and the Northerly line of Seaside Way (formerly Seaside Boulevard), said point also being an angle point in the compromise tideland boundary as described in Section 7, Chapter 138, Page 20, Statutes of 1964, first extraordinary session, of said State; thence South 00°00'35" East 54.48 feet along the Southerly prolongation of the Westerly line of Golden Shore and said compromise tideland boundary to a point on a non-tangent curve concave Northerly, having a radius of 593.50 feet to which a radial bears South 06°00'33" West, said curve being 2.00 feet Northerly and concentric with the Northerly line of shoreline drive as shown on said Tract No. 27757; thence Westerly along said curve 176.30 feet through a central angle of 17°01'11" to a point on the Southerly line of said Parcel 1, Tract No. 27757, said point being 8.83 feet Easterly from the Southwest corner of said Parcel 1, (also being the Southerly line of Parcel 2 of Parcel Map 7217 as per Map recorded in Book 73, Page 96 of Maps, in the Office of the County Recorder of said County and said compromise tideland boundary), to which a radial bears South 23°01'44" West; thence North 86°29'09" East 167.34 feet along said Southerly line of Parcel 1 to the Southeast corner of Parcel 2 of said Parcel Map 7217; thence North 86°29'09" East 3.01 feet to the point of beginning.

Excepting an easement blanket in nature over that said portion, for access to, maintenance and repair of utilities.

END OF LEGAL DESCRIPTION

EXHIBIT A TO
AGREEMENT OF PURCHASE AND SALE
AND ESCROW INSTRUCTIONS

400 OCEANGATE

Property Description

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Parcel A:

That portion of Lot 2, Tract No. 27757, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 820, Page(s) 91 through 94 inclusive of Maps, in the Office of the County Recorder of said County, described as follows:

Beginning at a point in the Southerly line of said Lot 2, distant along said line North 89° 55' 49" East 229.31 feet from the most Southerly, Southwest corner of said Lot 2; thence North 0° 04' 11" West 161.00 feet; thence South 89° 55' 49" West 109.46 feet; thence North 0° 04' 11" West 176.05 feet to a point in the Northerly line of said Lot 2, distant along said Northerly line North 89° 55' 49" East 134.50 feet from the Northwest corner of said Lot 2; thence along the Northerly, Westerly, Southwesterly and Southerly lines of said Lot 2, as follows:

South 89° 55' 49" West 134.50 feet; South 0° 00' 35" East 322.05 feet; South 45° 02' 18" East 21.20 feet; and North 89° 55' 49" East 229.31 feet to the point of beginning.

Except all oil, gas, hydrocarbon substances and minerals of every kind and character, lying more than 500 feet below the surface of said land, together with the right to drill into, through and to use and occupy all parts of said land, lying more than 500 feet below the surface thereof, for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said or other lands, but without, however, any right to use either the surface of said land or any portion of said land within 500 feet of the surface for any purpose or purposes whatsoever, as contained in the deed recorded July 19, 1965, as Instrument No. 885, in Book D-2981, Page 153, Official Records, said land is now known as Parcel 1 of Parcel Map No. 5196, recorded in Book 71, Page 14, of Parcel Maps.

Parcel B:

Portion of Lot 4, Tract No. 27757, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 820, Page(s) 91 through 94 inclusive of Maps, in the Office of the County Recorder of said County, described as follows:

Beginning at a point in the Southerly line of said Lot 4, distant along said Southerly line North 88° 26' 36" East 244.48 feet from the Southwest corner of said Lot; thence along the Southerly, Westerly and Northerly boundary lines of said Lot 4, as follows:

South 88° 26' 36" West 244.48 feet; North 0° 00' 35" West 97.37 feet; South 45° 02' 18" East 21.20 feet; and North 89° 55' 49" East 229.31 feet; thence leaving said Northerly line, South 00° 04' 11" East 76.03 feet to the point of beginning.

Except all oil, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of said land, together with the right to drill into, through and to use and occupy all parts of said land lying more than 500 feet below the surface thereof, for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said or other lands, but without, however, any right to use either the surface of said land or any portion of said land within 500 feet of the surface for any purpose or purposes whatsoever, as contained in the deed recorded July 19, 1965, as Instrument No. 885, in Book D-2981, Page 153, Official Records.

The above described land is a portion of Parcel 1 as shown on map filed in Book 86, Page 32, of Record of Surveys, in said office of the County Recorder.

A portion of said land is now known as Parcel 4 of Parcel Map No. 5196, recorded in Book 71, Page 14 of Parcel Maps.

Parcel C:

An appurtenant easement to construct, maintain and operate, sidewalks for public use, ventilating shaft area ways, foundations, grade beams and pilings, area lighting, landscaping, together with water lines and irrigating systems, all as shown on Drawing No. 8-2639, entitled "Union Bank Phase 1" on filed in the office of the City Engineer of the City of Long Beach, in, over, along, upon and across that certain real property, in the City of Long Beach, designated as that portion of Lot 5, Tract No. 27757, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 820, Page(s) 91 through 94 inclusive of Maps, in the Office of the County Recorder of said County, lying Westerly of the following described line:

Beginning at a point in the South line of said Lot 5, distant thereon South 89° 55' 49" East 134.50 feet from the Southwest corner of said Lot; thence North 0° 04' 11" West 40.01 feet to the North line of said Lot.

Created by that certain Deed executed by the City of Long Beach, a Municipal Corporation, recorded October 31, 1974, as Instrument No. 562, and by that certain Deed executed by the Redevelopment Agency of the City of Long Beach, California, a public body, corporate and politic, recorded October 31, 1974, as Instrument No. 563, both of Official Records.

Assessor's Parcel Number: 7278-003-034 and 7278-003-037

END OF LEGAL DESCRIPTION

EXHIBIT "B"

PROJECT VICINITY MAP

GOLDEN SHORE DEVELOPMENT AREA

FIGURE 1

VICINITY MAP

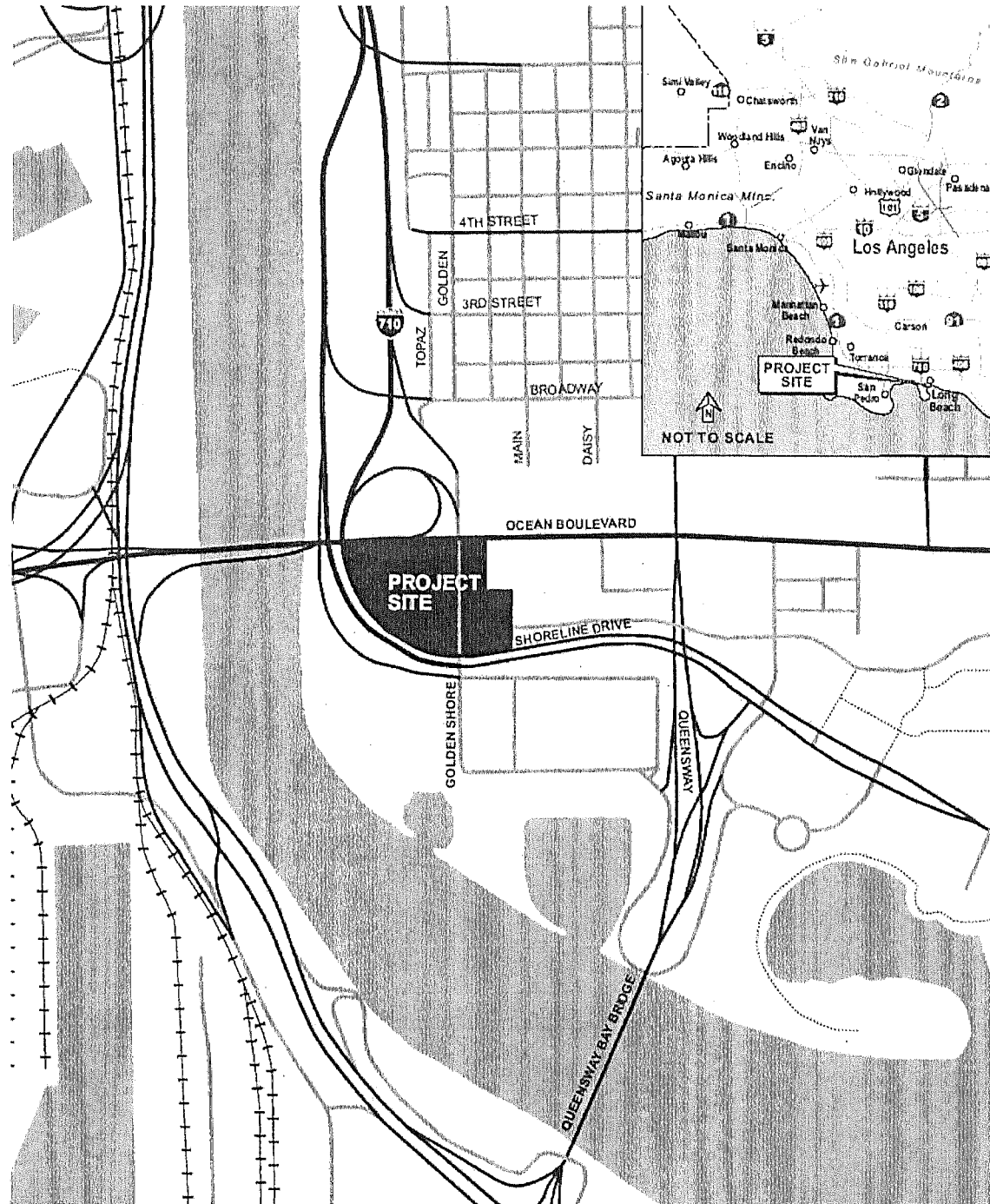


EXHIBIT "C"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

Attn: _____

(Space above for Recorder's Use)

ASSIGNMENT AND ASSUMPTION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ASSIGNOR:

a _____

By: _____

Its: _____

ASSIGNEE:

a _____

By: _____
Its: _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____