

DEVELOPMENT AGREEMENT

“MODELO”

CITY OF COMMERCE

AND

COMSTOCK GAGE LLC

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DEVELOPMENT AGREEMENT

(Comstock Gage, LLC -- Modelo Project)

This Development Agreement (“**Agreement**”) is dated for identification purposes as of _____, 2021 with an Effective Date as defined herein by and between the CITY OF COMMERCE (the “**City**”) and COMSTOCK GAGE LLC, a Delaware limited liability company, (the “**Developer**” or “**Comstock**”) (collectively with the City, the “**Parties**” and individually, the “**Party**”) and is made for the purpose of governing the development of the Project to be styled “**Modelo**”. Each capitalized term used in this Agreement shall have the definition ascribed to it in Section 2.

RECITALS

A. WHEREAS, Government Code Sections 65864 through 65869.5 (the “**California Vesting Statutes**”) authorize the City to enter into binding agreements with persons having a legal or equitable interest in real property in the City for the development of such property, for the purpose of strengthening the public planning process, encouraging private participation in comprehensive planning, limiting the economic costs of such development and reducing the economic risk of such development on both the Developer and the City.

B. WHEREAS, the California Vesting Statutes provide for orderly development in conformity with the objectives of the City’s General Plan and will eliminate uncertainty in planning for and reduce the economic risk of developing publicly beneficial projects, insure attainment of the maximum efficient utilization of resources and otherwise achieve the goals and purposes for which the California Vesting Statutes were enacted.

C. WHEREAS, in 2013, the Developer acquired that certain undeveloped real property located at 7316 East Gage Avenue in the City of Commerce, identified as APN 6357-018-005 (the “**Original Comstock Property**”).

D. WHEREAS, the City owns certain real property adjacent to the Original Comstock Property commonly known as Veterans Memorial Park, consisting of three legal parcels identified as APN 6357-019-904, APN 6357-019-905 and APN 6357-018-900 (the “**Original City Property**”).

E. WHEREAS, the Original Comstock Property and the Original City Property (collectively, the “**Project Site**”) include closed landfills that were operated by predecessors of Comstock and the City, respectively, between 1948 and 1954, one of which landfill is registered with state and local agencies. The Project Site is currently underutilized and possesses significant development constraints given the existence of the inactive former landfills and the substantial cost required to excavate and remove landfill materials.

F. WHEREAS, Comstock has obtained approval from the Los Angeles Regional Water Quality Control Board (“**LARWQCB**”) of a Remedial Action Plan dated August 2016 to excavate and remove buried waste from the portion of the former landfill located within the

Original Comstock Property. Comstock, at its expense, desires to expand the scope of the Remedial Action Plan to encompass the proposed remediation of the remaining portion of the landfill within the City Original Property. Comstock has submitted to LARWQCB for review and approval a new Remedial Action Plan to address both the Comstock Original Property and the City Original Property. The new Remedial Action Plan, when approved by LARWQCB, is referred to herein as the “**RAP**”.

G. WHEREAS, prior to developing the Project Site as contemplated in this Agreement, the Developer, at its cost, intends to undertake the work described in the RAP Work Plan for the Remediation of the Project Site.

H. WHEREAS, the Parties, pursuant to the California Vesting Statutes and consistent with their purposes, desire and hereby agree by this Agreement and the Exhibits attached to this Agreement to vest the right in the Developer to develop, operate and use the Project Site as a class-A mixed-used residential/commercial development consisting of up to 850 residential units (740 for rent, 110 for sale) and up to 165,000 square feet of commercial, entertainment and public space. Key commercial uses may include, but not be limited to, the following: grocery store, pharmacy, multi-screen movie-theatre or entertainment space, arcade/bowling/family venue, fitness and wellness gym, various restaurants, a sports-bar, a breakfast-venue, a Latino arts or Los Angeleno-regional museum and public gallery space. Key design components of the Project may include the following: (i) an architecturally striking, significant, sustainable and usable Community Center, (ii) a two-level subterranean parking structure placing all parking (except for temporary loading and a limited number of accessible spaces) below ground, which will result in a pedestrian-friendly, walkable, open and inviting ground-level for the Project and (iii) an architectural tower or towers serving as the Project’s visual icon and physical gateway.

I. WHEREAS, the Developer, on behalf of the City, shall assist the City in designing and constructing the Community Element by acting as the project manager in the design and construction of the Community Center. The Project Site shall appear as a unified development with seamless transitions between the public and private spaces. The Community Element may include the following (the “**City Community Amenities**”): a multi-disciplinary sports complex, including youth baseball, youth and adult soccer, futsal, basketball, indoor volleyball and open green space as well as walking and bike paths, open parkland, all-inclusive playground and splashpad, picnic and barbecue area.

J. WHEREAS, the Developer shall also construct and upgrade Off-Site Improvements, Traffic Improvements and infrastructure serving the Project Site and surrounding area, including those specified in the Project Approvals and those envisioned by the Developer which may include a welcoming path consisting of an improved sidewalk, street lamps and planters from the intersection of Gage Avenue and Slauson Avenue into the Project.

K. WHEREAS, the development of the Project Site constitutes the “**Project**”. The Project will be styled and named by Comstock as the Modelo Project or simply “**Modelo**” which harkens the City’s motto, “The Model City”. The Developer may use the name and title Modelo and Modelo Project and variants thereof for its commercial marketing and licensing purposes.

L. WHEREAS, the following entitlements and agreements are being considered for approval by the City concurrently with this Agreement to implement the Project: the Site Plan; Modelo Specific Plan (No. ___); General Plan Amendment No. __ (text and map); Zoning Code Amendment No. __, including conforming amendments to the Zoning Map; the Vesting Tentative Tract Map (No. ___) (the “**Vesting Tentative Map**”); Master Sign Plan; and Environmental Impact Report ENV-20__ - __-EIR, State Clearinghouse No. 201908312 (the “**EIR**”), (collectively with this Agreement, the “**Project Approvals**”). Copies of the Project Approvals are available at the City’s Department of Economic Development and Planning.

M. WHEREAS, upon recordation of the Final Map, the Final Map shall subdivide the Project Site into three parcels (each a “**Parcel**”), to wit: the “**Development Parcel**”, the “**Parking Parcel**” and the “**City Parcel**”. The Development Parcel, the Parking Parcel, and the City Parcel are shown on the “**Site Plan**” attached hereto as **Exhibit “A”**. Upon the recordation of the Final Map in the Official Records of Los Angeles County and upon closing of the land exchange (the “**Land Exchange**”) by Comstock and the City of portions of the Original Comstock Property and Original City Property to the Project Site pursuant to the Real Property Exchange Agreement being executed concurrently with this Agreement by the City and the Developer substantially in the form attached hereto as **Exhibit “B**”, fee title to the City Parcel will be vested in the City and fee title to the Development Parcel and the Parking Parcel will be vested in the Developer. It is intended that the City Parcel will be developed with the Community Center and Community Amenities for public use; the Development Parcel will be developed with the Project’s residential, retail, entertainment and commercial uses; and the Parking Parcel will be developed with the Parking Structure for use by the Development Parcel and the City Parcel.

N. WHEREAS, after conducting a duly noticed public hearing, the Planning Commission considered the Project, the Project Approvals and the related approvals and actions requested by the Developer, took testimony, recommended that the City Council consider this Agreement, and found that this Agreement: (i) is consistent with the objectives, policies, general land uses, intensity of uses and programs of the City, the City General Plan, the Project Approvals and all Applicable Laws, (ii) is compatible with the uses authorized in, and the regulations prescribed for the area in which the Project Site is located, (iii) is in conformity with and will promote public convenience, general welfare and good land use practice, (iv) will promote public health, safety and general welfare and (v) will not adversely affect the orderly development of property or the preservation of property values in the immediate neighborhood and general surrounding area.

O. WHEREAS, on _____, 2021 at a duly noticed public hearing held pursuant to Government Code Section 65867, the City Council adopted Ordinance No. _____ approving this Agreement, approving the Project Approvals, adopting the recommendations of the Planning Commission, and authorizing the execution of this Agreement. The City Council has conducted all necessary proceedings in accordance with the City’s rules and regulations for the approval of this Agreement.

P. WHEREAS, the City Council finds the terms and conditions of this Agreement to be: (i) fair, just and reasonable, (ii) in the best interests of its residents and their public health,

safety and welfare and (iii) in conformance with the ordinances, policies and procedures of the City.

Q. WHEREAS, prior to approving this Agreement, the City Council certified the EIR for the Project.

R. WHEREAS, in exchange for the Public Benefits to the City that will result from the development of the Project, the Developer will receive by this Agreement assurance that it may proceed with the vested right to develop, operate and use the Project and the Project Site in accordance with the Project Approvals and Applicable Laws and therefore desires to enter into this Agreement.

S. WHEREAS, by electing to enter into this Agreement, the City shall bind itself, its future City Councils and all of its departments, commissions, committees, divisions, other City agencies, elected and appointed officials and employees to the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers of the City Council. The Parties acknowledge that this Agreement is a binding agreement authorized by and subject to the California Vesting Statutes and other Applicable Law.

AGREEMENT

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

1. DEFINITIONS

- 1.1 Agreement: This Development Agreement.
- 1.2 Allocable Share: The Allocable Share described in Section 11.5.4.
- 1.3 Allowable Fees: The fees described as Allowable Fees in Section 4.9.
- 1.4 Amphitheater: The Amphitheater described in Section 7.4.2.
- 1.5 APN: Assessor Parcel Number.
- 1.6 Applicable Laws: The rules, regulations, official policies, standards and specifications applicable to the Project that are set forth in the Project Approvals and this Agreement, and, with respect to matters not addressed by the Project Approvals, those rules, regulations, official policies, standards and specifications (including City ordinances, resolutions and codes) in force and effect on the Effective Date governing development, including without limitation, permitted uses, building locations, timing of construction, densities, design, and heights. The Applicable Laws shall include affordable housing, attainable housing, inclusionary housing, and other similar programs or requirements not already required by the Applicable Laws or set forth in this Agreement. Notwithstanding the foregoing, the Developer, in its sole

discretion, may elect in writing to proceed pursuant to those rules, regulations, official policies, standards and specifications (including City ordinances, resolutions and codes) in effect at the time of application for a Subsequent Approval.

1.7 California Vesting Statutes: California Government Code Sections 65864 through 65869.5.

1.8 Caltrans: The California Department of Transportation.

1.9 CEQA: California Environmental Quality Act, Public Resources Code Sections 21000, *et seq.* and the Guidelines set forth in the California Code of Regulations, Title 14, Sections 15000, *et seq.*

1.10 CERCLA: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*

1.11 City: The City of Commerce.

1.12 City Community Amenities: The City Community Amenities described in Recital I.

1.13 City Council: The City Council of the City of Commerce.

1.14 City Housing Program: The City Housing Program described in Section 10.4.1.

1.15 City Indemnified Parties: The City Indemnified Parties described in Section 12.2.

1.16 City Parcel: The City Parcel described in Recital M.

1.17 City Parking: The City Parking described in Section 11.3.

1.18 Claims: The Claims described in Section 12.1.

1.19 Commercial Element: The Commercial Element described in Section 7.2.2.

1.20 Common Expenses: The Common Expenses described in Section 11.5.4.

1.21 Common Infrastructure: Infrastructure located on the Project Site that is used by and required for the development and functioning of all the Project Parcels. More specifically, Common Infrastructure is any shared road or sidewalk, and the lighting thereof, providing access between the City Parcel on the one hand and the Development and Parking Parcels on the other hand, any utility pull sections, conduit, piping or substations serving both the City Parcel on the one hand and the Development

and Parking Parcels on the other hand, and any other infrastructure resource used by both City and Developer.

1.22 Community Center: The Community Center described in Section 3.1.2.

1.23 Community Element: The Community Element described in Section 7.1.1.

1.24 Completion Report: The Completion Report certifying that the Remediation has been completed in accordance with the RAP Work Plan as required by the RAP.

1.25 Comstock: Comstock Gage LLC, a California limited liability company.

1.26 Comstock Community Amenities: The Comstock Community Amenities described in Section 7.4.2.

1.27 Declaration: The Declaration of Maintenance Covenants and Grant of Easements described in Section 11.2.

1.28 Deemed Compliance: The Deemed Compliance described in Section 17.5.3.

1.29 Default Notice: The Default Notice described in Section 17.1.

1.30 Developer: Comstock Gage LLC, a Delaware limited liability company.

1.31 Development Costs: All costs incurred to entitle, design, develop and/or construct the Project including both “hard” and “soft” construction costs actually incurred in the design, permitting and construction including, without limitation, the costs of: the construction contract as modified by any change order, purchase orders, labor, equipment, materials and supplies, sales tax, architectural (e.g., site, electrical, landscaping, lighting, etc.) and engineering (e.g., civil, geotechnical, structural, traffic, environmental, utility and similar items) design, construction administration fees and related reimbursable expenses, miscellaneous site-related consultant and legal fees and costs, printing and distribution of construction documents, contracts with utility servers and utility connection fees (e.g., gas, electric, telephone), Processing Fees, financing fees, third-party soils, materials and deputy inspection fees, soils and materials laboratory testing and related report and certificates, temporary construction signage and traffic control, temporary construction utilities and usage, temporary construction fencing, temporary construction office and furnishings, site security and monitoring, site survey, and the payment, performance, and maintenance of payment and performance bonds, labor and materials bonds, and warranty bonds required by applicable governing authorities. With respect to the entire Community Element and the portions of the Project for which the City is providing reimbursements as set forth in Section 10.2.7,

Development Costs shall also include a development fee, the amount of which shall be negotiated between the Developer and the City Manager, and/or his or her designee, but will not exceed three percent (3%) of the Development Costs for those improvements.

1.32 Developer Indemnified Parties: The Developer Indemnified Parties described in Section 12.1.

1.33 Development Parcel: The Development Parcel described in Recital M.

1.34 Director: City Director of Economic Development and Planning.

1.35 Effective Date: The last date of execution of this Agreement set forth in the signature lines at the end of this Agreement pursuant to Government Code 65866(a).

1.36 EIR: Environmental Impact Report ENV-20__ - __-EIR, State Clearinghouse No. 2019080312.

1.37 Environmental Laws: Any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials, including without limitation, CERCLA, RCRA, the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*), the Safe Drinking Water Act (14 U.S.C. §§ 1401, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, *et seq.*), the Toxic Substance Control Act (15 U.S.C. §§ 2601, *et seq.*), the California Hazardous Waste Control Law (California Health and Safety Code §§ 25100, *et seq.*), California Hazardous Substance Account Act (California Health & Safety Code §§ 25300 to 25395.15), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000, *et seq.*), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code §§ 25249.5, *et seq.*), and any other federal, state or local law, and their respective regulations.

1.38 Hazardous Material(s): Any hazardous, toxic or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include, but not be limited to, the terms “Hazardous Substance” and “Hazardous Waste” as defined in CERCLA and RCRA.

1.39 Impact Fees: Any monetary fee or exaction other than a tax or special assessment that would be charged by a local government agency pursuant to Government Code Section 66000, *et seq.*, to a project applicant in connection with new development for the purpose of defraying all or a portion of the cost of public facilities related to the new development, including without limitation, fees for utility construction, use, linkage or connection fees; public transit; traffic improvement and operations and any other traffic-related fees; affordable housing; sustainability or green initiatives; capital facilities; police and fire; parks; libraries; and other exactions,

assessments, fair share charges or other similar impact fees or charges imposed on and in connection with new development. Impact Fees do not include Processing Fees.

1.40 Indemnified Parties: The Indemnified Parties described in Section 10.4.5.

1.41 Infrastructure: Utilities and right of ways necessary to operate and use the Project Parcels. Infrastructure includes, without limitation, roadways, sidewalks, walkways, bike paths, driveways, intake and exhaust systems, storm and sanitary sewer systems, drainage systems (including storm water pollution protection devices), ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, fire protection, water, sprinkler and alarm systems, telephone systems, cable television systems, telecommunications and satellite systems, water systems, sump pumps, central utility services, and all other utility systems and facilities reasonably necessary to service any improvement situated in, on, over and under the Project and all ducts, shafts, risers, chases and conduits enclosing such utility systems and facilities.

1.42 Initial Project Construction: The Initial Project Construction described in Sections 4.9 and 15.2.1.

1.43 Land Exchange: The Land Exchange described in Recital M.

1.44 LARWQCB: The Los Angeles Regional Water Quality Control Board.

1.45 Letter of Credit: The Letter of Credit described in Section 7.14.

1.46 Maintenance Area: The Maintenance Area described in Section 11.1.

1.47 Minor Changes: Changes that do not do any of the following:

1.47.1 Alter the permitted uses of the Project Site as a whole; or

1.47.2 Increase the density or intensity of use of the Project Site as a whole by more than ten (10) percent; or

1.47.3 Increase the maximum height and size of permitted buildings by more than ten (10) percent; or

1.47.4 Delete a requirement for the reservation or dedication of land for public purposes within the Project Site as a whole; or

1.47.5 Constitute a new project as defined by, and requiring a subsequent or additional environmental impact report pursuant to Section 21166 of the Public Resources Code.

1.48 Notice of Compliance: The Notice of Compliance described in Sections 17.5.4 and 19.5.

1.49 Off-Site Improvements: The Off-Site Improvements required to be developed by the terms of the Project Approvals. The Off-Site Improvements do not include the Traffic Improvements.

1.50 Original Comstock Property: The Original Comstock Property described in Recital C.

1.51 Original City Property: The Original City Property described in Recital D.

1.52 Original City Property Contamination: As of the Effective Date, the presence of Hazardous Materials on, under or emanating from the Original City Property, if any, or City's non-compliance with any Environmental Laws or arising from the presence of Hazardous Materials or other substances or conditions on, under, or emanating from the Original City Property which were brought onto the Original City Property or created by City or any agent of City at any time.

1.53 Original Comstock Property Contamination: As of the Effective Date, the presence of Hazardous Materials on, under or emanating from the Original Comstock Property, if any, or Comstock's non-compliance with any Environmental Laws or arising from the presence of Hazardous Materials or other substances or conditions on, under, or emanating from the Original Comstock Property which were brought onto the Original Comstock Property or created by Comstock or any agent of Comstock at any time.

1.54 Other Approvals: The Other Approvals described in Section 15.3.

1.55 Parcel: The Parcels described in Recital M.

1.56 Parcel-Specific Infrastructure: Infrastructure that benefits and is required for only an individual Project Parcel and not the Project Site as a whole.

1.57 Parking Lease: The Parking Lease described in Section 11.3.

1.58 Parking Parcel: The Parking Parcel described in Recital M.

1.59 Parking Structure: The Parking Structure in Section 7.5.

1.60 Party or Parties: The Party or Parties described in the introduction of this Agreement.

1.61 Permitted Uses: The Permitted Uses described in Section 9.1.

1.62 Periodic Review: The Periodic Review described in Section 17.5.

1.63 Planning Commission: The Planning Commission of the City of Commerce.

1.64 Processing Fees: Customary and routine administrative fees and charges imposed by a governmental agency for processing all new development applications, including, without limitation, land use applications, administrative review, building, grading, plumbing, mechanical, and electrical permits, encroachment permits, tract or parcel maps, lot line adjustments, street vacations, certificates of occupancy and other similar permits and are described on **Exhibit “C”**. Processing Fees shall not include Impact Fees.

1.65 Program Contribution: The Program Contribution described in Section 10.4.1.

1.66 Project: The Project described in Recital K.

1.67 Project Approvals: The Project Approvals described in Recital L. All Project Approvals shall be submitted to and considered by the City prior to or at the same time as consideration of this Development Agreement.

1.68 Project Parcel and Project Parcels: The Project Parcel and the Project Parcels described in Section 5.1.

1.69 Project Site: The Project Site described in Recital E.

1.70 Project Submittals: The Project Submittals described in Section 15.1.

1.71 Public Benefits: The Public Benefits described in Section 3.1.

1.72 RAP: The RAP described in Recital F.

1.73 RAP Work Plan: The RAP Work Plan is the work plan set forth in the RAP describing the work needed to be undertaken to accomplish the Remediation.

1.74 RCRA: Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*

1.75 Real Property Exchange Agreement: The Real Property Exchange Agreement described in Recital M.

1.76 Remediation: The Remediation described in Section 6.1.

1.77 Reservations of Authority: The Reservations of Authority in Section 4.6.

1.78 Residential Element: The Residential Element described in Section 7.4.1.

1.79 Set-Aside: The Set-Aside described in Section 10.4.2(b).

1.80 sf: Square feet, square foot, or square footage.

1.81 Site Plan: The Site Plan described in Recital M.

1.82

1.83 Subsequent Approvals: Those certain other land use approvals, entitlements, and permits other than the Project Approvals which are necessary or desirable for implementation of the Project. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, design review approvals, improvement agreements, use permits, grading permits, excavation permits, plan checks, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, planned development (PD), concept plans, PD project plans, rezonings, development agreements, permits, re-subdivisions, and any amendments to, or repealing of, any of the foregoing.

1.84 Subsequent Laws: Those rules, regulations, official policies, standards and specifications (including City ordinances, resolutions and codes) governing permitted uses, building locations, timing of construction, densities, design, and heights that become effective after the Effective Date and that are not set forth in this Agreement, the Applicable Laws, or the Project Approvals.

1.85 Term: The Term of this Agreement as set forth in Section 2.2.

1.86 Traffic Improvements: The improvements outlined in the EIR and conditions that may be imposed as part of the Project and necessary to mitigate environmental impacts and alleviate traffic congestion resulting from the Project.

1.87 Vesting Tentative Map: The Vesting Tentative Map described in Recital L.

2. GENERAL PROVISIONS

2.1 Recitals. All of the foregoing Recitals are deemed to be true and are incorporated herein as a part of this Agreement.

2.2 Term. The Term of this Agreement shall commence upon the Effective Date and shall continue for thirty (30) years after the recordation of the Final Map in the Official Records of Los Angeles County.

2.3 Term of Project Approvals and Subsequent Approvals. The term of any subdivision map, including a vesting tentative tract map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the longer of the Term (including any extensions) or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The Term and the term of any

subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project, or any period of time during which a lawsuit involving any such development approvals or permits is pending.

3. PUBLIC BENEFITS

3.1 The Project is expected to realize significant regional and community public benefits (the “**Public Benefits**”), including, without limitation:

3.1.1 Remediation pursuant to the RAP to remove waste and contaminated soil, estimated to be 477,000 cubic yards in volume, within the subterranean waste cell of the former landfills within the bounds of the Project Site, including the removal of waste and contaminated soil underneath and adjacent to Veterans Memorial Park thereby overcoming the significant development constraints resulting from the former landfills.

3.1.2 Replace at a new location within the project site the Veteran’s Park Community Center with a contemporary, progressive, “model”, Class A, LEED certified Community Center (the “**Community Center**”) that will be a source of enjoyment and civic pride for the City’s residents. The re-imagined Community Center will provide a diverse programming space for the City’s Department of Parks & Recreation and may include community event spaces, a daycare, a performance space for youth and adult programs, teen, young children, and senior programming areas, and a contemporary library/technology space for students and citizens.

3.1.3 Develop publicly accessible amenities, including open parkland, walking and bicycle paths on the Project Site, tying the Project Site into the Los Angeles River and the Rio Hondo River tributary, development of the amphitheater, (the “**Amphitheater**”) and inclusion of publicly displayed statues, sculpture, mural and painting art pieces by Latino Los Angeleno and Californian artists.

3.1.4 Strengthen the City’s economic base with an estimated addition of more than 850 residences and attracting approximately 1,700 residents who will pay market-rate rents and values for housing.

3.1.5 Create 4,701 direct construction related jobs during the 48-month construction period of the Project plus 434 permanent jobs at the operating businesses at the Project after completion of its construction. Employment job fairs will be held for City residents allowing them to be the first to apply for available jobs.

3.1.6 Attract new and additional retailers who provide neighborhood serving uses and amenities that are conveniently located for the residents of the City or nearby cities.

3.1.7 Enhance Veterans Memorial Park with a multi-purpose sports field that can host baseball, soccer and many other youth sports. Other public park amenities will include walking paths along and throughout the park, splash pads, picnic and bar-b-que within the park area, etc.

3.1.8 Provide outdoor day-care supervised splash pad and inclusive playground for children of all abilities as part of the Community Element.

3.1.9 Provide an outdoor lawn separate from the sports field for City-hosted events and movie-viewing evenings.

3.1.10 Provide lush, native-plant-landscaped open spaces throughout the Project Site for the benefit and recreation of the City's visitors and residents.

3.1.11 By placing 90 percent of parking subterranean, the Project Site will accommodate walking paths and trails, open bench seating, and bountiful flowering and fragrant landscape throughout.

3.1.12 Provide a safe, walkable, local and regional commercial retail space to service the City's residents and attract visitors from across Southern California. The Project shall include a variety of retail establishments from local and slow-serve retail, service retail such as salons and pack-and-ship stores, as well as fitness, cineplex, and other entertainment uses, all of which are anchored by a regional grocery store, pharmacy, and restaurants.

3.1.13 Expand the City's supply of high-quality housing with approximately 110 newly constructed for sale and approximately 740 newly constructed for rent residential units to offset the severe housing shortage in the City, Southeast Los Angeles and the State of California, with a range of price-points and amenities at levels currently in the City, as well as at levels matching new developments in the region and a limited number of units at aspirational rates reflecting distinct finishes and features, all of which will result in retaining existing City residents by providing them new, better product while attracting new residents who may have never otherwise considered living in the City.

3.1.14 Facilitate the City's provision of affordable housing by contributing \$5,000,000 towards the City's rental subsidy and first time homebuyers' program.

3.1.15 Substantially increase direct revenues for the City in the form of sales taxes, real property taxes and fees and exactions that the City may lawfully impose as well as create an opportunity for indirect revenue to the City by bringing more residents to live, spend and do business in the City.

3.1.16 Strengthen and enhance the cultural fabric of the City by providing performing arts space, museum space and substantial public art throughout the Project.

3.1.17 Create new and improve existing public Infrastructure due to the on-site improvements, the Off-Site Improvements and Traffic Improvements that the Developer shall construct as part of the Project, which will alleviate congestion and mitigate traffic impacts at the Project and may include, without limitation street beautification measures to enhance the aesthetics and pedestrian experience leading to the Project Site on Slauson Avenue, East Gage Avenue, Zindell Avenue, and Gage Avenue South, and which will include improvements, upgrading traffic intersections and the establishment and/or implementation of bus stops through additional shading, seating, signage and traffic improvement measures in the Project's vicinity.

3.1.18 Build a LEED- and wellness-certified Project to meet the City's motto as a "Model City" and to promote health and well-being while preserving finite environmental resources.

4. VESTED RIGHTS

4.1 Vested Right to Develop. Subject to the Reservations of Authority, the Developer shall have a vested right to develop the Project and Project Site in accordance with the terms and conditions of this Agreement, the Project Approvals, the Applicable Laws, and, as and when they are issued (but not in limitation of the right to develop as set forth in the Project Approvals), the Subsequent Approvals. The Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, redevelop, rebuild or replace the Project or any portion thereof throughout the Term for any reason, including, without limitation, in the event of damage, destruction or obsolescence of the Project or any portion thereof, in accordance with the terms and conditions of this Agreement, the Project Approvals, the Applicable Laws, and, as and when they are issued (but not in limitation of the right to develop as set forth in the Project Approvals), the Subsequent Approvals. Nothing in this Section shall be deemed to eliminate or diminish the requirement, or the right, of the Developer to obtain any Subsequent Approvals required or permitted by law. The Developer's vested rights provided by this Agreement shall apply upon submission of an application by, or on behalf of, the Developer within the Term for the purpose of undertaking any development, construction, operation or use in connection with the Project. In the event of any conflict between the Applicable Laws on the one hand, and this Agreement, the Project Approvals or, as and when they are issued, the Subsequent Approvals, on the other hand, this Agreement, the Project Approvals and the Subsequent Approvals shall control.

4.2 Subsequent Approvals. By approving the Project and this Agreement, the City has found and made a final policy decision that the Project is in the best interests of the public health, safety and general welfare of the City. Accordingly, the City shall not use its discretionary authority in considering any application for a Subsequent Approval that involves or requires the exercise of discretion to change the policy decisions reflected by the Project Approvals or this Agreement, or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement or further those final policy decisions. In the event the Developer finds that Subsequent Approvals

are necessary or appropriate for the development of the Project, the Developer shall apply for such Subsequent Approvals and the City shall process and consider such applications in accordance with the Project Approvals, this Agreement and Applicable Laws. If the Project Approvals, this Agreement and the Applicable Laws do not clearly establish the needed development criteria for consideration of an application for a Subsequent Approval, the application shall be processed in accordance with Subsequent Laws which do not conflict with the Applicable Laws and so long as application of Subsequent Laws do not prevent development and use of the Project Site consistent with the Project Approvals and this Agreement. In connection with Subsequent Approvals, the City shall not impose any fee, exaction, condition or restriction that is more restrictive or onerous than the Applicable Laws.

The EIR is intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with CEQA's policies and requirements, the City agrees to use the EIR in connection with the processing of any Subsequent Approval for the Project to the maximum extent allowed by applicable law and not to impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals or the EIR, or as specifically required by CEQA and other applicable laws. In the event that additional environmental review is required by CEQA for any Subsequent Approval, the City agrees to utilize tiered environmental documents to the fullest extent permitted by applicable law and as provided in California Public Resources Code Sections 21093 and 21094.

4.3 Vesting of Subsequent Approvals. Upon the City's granting of Subsequent Approvals, the Developer shall have a "vested right," as that term is defined under California law, in and to such Subsequent Approvals by virtue of this Agreement for the Term or as otherwise provided by law after the expiration of the Term.

4.4 Non-Application of City Changes to the Applicable Laws. Subject to the Reservations of Authority and to the extent permitted by applicable law, any change in the Applicable Laws, including, without limitation, any change in any applicable general plan, community plan, master plan, area or specific plan, zoning, subdivision rule or regulation, adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council of the City, the Planning Commission, or any other board, agency, commission or department of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project Site and which would conflict in any way with the Applicable Laws, the Project Approvals or this Agreement, shall not be applied by the City to the Project Site in connection with the development of the Project without the Developer's express written consent, which consent the Developer may withhold in the Developer's sole discretion. Without limiting the generality of the foregoing, any City law or other action shall be deemed to conflict with the Applicable Laws, the Project Approvals or this Agreement if it would accomplish any of the following results in the absence of the Developer's vested rights as set forth in this Agreement, either by

specific reference to the Project or as part of a general enactment which applies to or affects the Project:

4.4.1 Change any land use designation or permitted use of the Project or the Project Site.

4.4.2 Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (such as water rights, water connections or sewage capacity rights, or sewer connections) for the Project, other than those actions by the City's utilities that are applied on a uniform and non-discriminatory basis to other utility customers, and further that nothing in this Agreement guarantees that City utilities will be available at all times and in the capacities that may be needed or requested by the Developer.

4.4.3 Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued).

4.4.4 Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner except as otherwise expressly provided in this Agreement.

4.4.5 Apply to the Project affordable housing, attainable housing, inclusionary housing, or other similar programs and requirements not already required by the Applicable Laws or set forth in this Agreement.

4.4.6 Apply to the Project any City law otherwise allowed by this Agreement that is not uniformly applied to all substantially similar types of development projects and project sites.

4.4.7 Materially delay or materially increase the cost to develop or construct the Project because of the need for additional permits, entitlements, or approvals from the City other than those required by the Applicable Laws.

4.4.8 Establish, enact, increase, or impose against the Project or the Project Site any fees or other non-tax obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities.

4.4.9 Impose against the Project any condition, dedication or other exaction not specifically authorized by the Applicable Laws, Subsequent Approvals, or this Agreement.

4.4.10 Limit the processing or procuring of applications and approvals of Subsequent Approvals.

4.5 Referenda and Initiative. This Agreement is a legally binding contract which shall, to the extent permitted by law, prevail over the provisions of any subsequently enacted voter initiative or referendum, and whether or not such initiative or referendum relates, in whole or in part, to the rate, timing, sequencing or phasing of the Project or affects the Project Approvals or Subsequent Approvals. No such measure approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project to the extent permitted by applicable law. Should any initiative or referendum be enacted which would preclude or make infeasible construction of all or any part of the Project, and should such enactment be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Agreement, the Developer shall have no recourse against the City for any damage the Developer might sustain as a result thereof. However, the City agrees, to the extent allowable by applicable law, to not participate in nor support any such initiative or referendum.

4.6 Reservations of Authority. Notwithstanding any other provision of this Agreement, changes and updates to the following shall apply to the Project and Project Site (the “**Reservations of Authority**”):

4.6.1 Processing Fees, except as otherwise provided by the terms and conditions of this Agreement.

4.6.2 General procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, unless such new regulations substantially and materially adversely affect the ability of the Developer to proceed with the Project, unless required by state or federal law.

4.6.3 Regulations governing construction standards and specifications implementing periodic updates to the California Code of Regulations Title 24 - California Building Standards Code as adopted and amended by the City; other uniform construction codes; and the City’s then current design and construction standards for road and storm drain facilities, provided any such uniform code or standard has been adopted and uniformly applied by the City on a citywide basis and provided that no such code or standard is adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

4.6.4 Regulations which may be in conflict with Applicable Laws but which are reasonably necessary to prevent a serious threat to public health, safety or welfare. To the extent possible, any such regulations shall be applied and construed so as to provide the Developer with the rights and assurances provided under this Agreement.

4.6.5 Regulations which are not in conflict with the Applicable Laws and which are not more restrictive or onerous than the Applicable Laws. Any regulation, whether adopted by initiative or otherwise, imposing a development moratorium or limiting the rate or timing of the Project shall be deemed to conflict with the Applicable Laws and shall therefore not be applicable to the Project.

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

4.8 Special Taxes and Assessments. The Developer shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees that the City may impose with respect to any assessment districts, Mello-Roos Community Facilities Districts, maintenance districts or other similar districts.

4.9 Impact Fees. The City hereby warrants and represents that no Impact Fees are required pursuant to any of the rules, regulations, ordinances and policies of the City in effect as of the Effective Date, except for the existing school district fees and Art in Public Places fee pursuant to Division 23 of the City's Municipal Code. At the time the Developer applies for plan check, it may submit designs and an application to the City regarding art to be installed at the Project Site and request a determination by the City Council that such art satisfies the Art in Public Places requirement pursuant to Division 23 off the City's Municipal Code. The City covenants that no other Impact Fees shall be imposed on the Project or the Project Approvals until after completion of the Initial Project Construction, as defined in this paragraph. The "**Initial Project Construction**" shall be considered completed for any portion of a Parcel developed pursuant to this Agreement and the Project Approvals upon issuance of the first certificate of occupancy or equivalent for that portion of the Parcel. Once the first certificate of occupancy or equivalent for a portion of a Parcel is issued, any changes to or redevelopment thereafter for that portion of a Parcel shall be subject to Impact Fees, if any, in effect at the time application is made to the City for said changes or redevelopment.

4.10 Exempting Fees Imposed by Outside Agencies. The City agrees to work in good faith to assist Developer to have the Developer and the Project excluded from any and all fees, collection agreements regarding fees, including, but not limited to, Impact Fees, Processing Fees, and assessment districts, which other public agencies such as the County or school district request the City to impose on the Project or the Project Site. This Section shall not prohibit the City from imposing on the Developer any fee or obligation that is imposed by a regional agency in accordance with state or federal obligations and implemented by the City in cooperation with such regional agency.

4.11 Copies of Applicable Laws. Within thirty (30) days after the Effective Date, the City will compile, at the Developer's cost, two (2) sets of the Applicable Laws, one set to be maintained by the City and one set to be delivered to the Developer, so that if it becomes necessary in the future to refer to any Applicable Laws in order to resolve disputes between the Parties or for any other purpose there will be a common set available for such purposes. In the event that the City does not include any

Applicable Laws in the foregoing sets, the Applicable Laws shall nonetheless be applicable and binding on the Parties, provided that it shall be up to the City to demonstrate that any Applicable Laws left out of these sets should have been included and apply hereto.

5. SUBDIVISION AND LAND EXCHANGE

5.1 Subdivision. The Developer has filed an application for a Vesting Tentative Map to subdivide the Project Site into three legal parcels, to wit: the Development Parcel, the Parking Parcel, and the City Parcel, each a “**Project Parcel**” and collectively, the “**Project Parcels**” in compliance with the California Subdivision Map Act, California Government Code §§ 66410, *et seq.*, and Title 18 of the City’s Municipal Code (Plats and Subdivisions). Tentative Maps shall comply with the provisions of Government Code Section 66473.7 to the extent applicable.

5.2 Final Map. Following approval of the Vesting Tentative Map and after Developer satisfies or secures the conditions of approval associated with the Vesting Tentative Map, the Developer shall prepare and submit a Final Map to the City Engineer for consideration of final approval. The City shall provide all reasonable assistance and cooperation to the Developer to expeditiously prepare the submittal package for the Final Map as it relates to the Original City Property and the City Parcel, including without limitation, furnishing, as may be needed, evidence of title, complete copies of all documents and information referenced on the Final Map, and signatures, affidavits, and acknowledgments, except that the City shall have no obligation to incur any costs (other than ordinary costs to process the Final Map), without reimbursement.

5.2.1 Changes to Final Map. Because of the need for substantial excavation to perform the Remediation and construct the Parking Structure and because the City Parcel and the Development Parcel are located in part above that work, and the final depths and elevations cannot be known until that time, there may, following the Remediation and construction of the Parking Structure, be variations between the Project Parcel dimensions depicted on the Final Map and the actual dimensions of the Project Parcels. Accordingly, if needed to accommodate corrections in grading, excavation depth, and building footprint caused by the above described circumstances, the Developer shall revise the dimensions of the Project Parcels on the Final Map accordingly and submit to the City Engineer a revised Final Map and the City Engineer shall approve the revised Final Map and such revisions shall not be subject to discretionary review by the City.

5.3 Land Exchange. Concurrently with the recordation of the Final Map in the Official Records of the County of Los Angeles, the City and Comstock shall complete the Land Exchange in accordance with the Real Property Exchange Agreement. Upon completion of the Land Exchange, the City shall own the City Parcel and the Developer shall own the Development Parcel and the Parking Parcel, substantially as shown on the Vesting Tentative Tract Map. Comstock’s obligations under this Agreement pertaining to the Remediation and development of the Project are contingent upon the recordation of the Final Map and completion of the Land Exchange.

5.4 No Limitation on Additional Subdivisions. This Agreement shall not be construed in any way to limit the Developer's right to seek approval at any time, in its sole and absolute discretion, to further subdivide the Development Parcel, including for the purposes of creating condominium lots.

6. REMEDIATION

6.1 Remediation; Satisfaction. The Developer, at its cost, shall excavate and undertake the removal of buried landfill waste and impacted soils as described in the RAP Work Plan (the "**Remediation**"). Once the Developer commences the Remediation, it shall thereafter process the Remediation continuously and with due diligence until submittal to LARWQCB of the Completion Report. Notwithstanding that the Developer shall have obligations under this Agreement to perform the Remediation, the LARWQCB shall have sole jurisdiction over the right to approve the completion of the work authorized by the RAP Work Plan and the approval by LARWQCB of the Completion Report shall be deemed to satisfy the Developer's Remediation obligation under this Agreement.

6.2 Insurance. The Developer may arrange for and obtain, as a Development Cost or as a Common Expense, customary insurance coverage for liability against damage arising from the Remediation and cause the Parcel owners to be named as additional insureds on any such policy(ies).

6.3 Condition Precedent. The Developer's obligations under this Agreement are contingent upon LARWQCB approving the RAP.

7. PROJECT DEVELOPMENT.

Subject to the terms of this Agreement, the Developer shall be responsible for the design and construction of the Project in accordance with the Project Approvals as a class-A, community-oriented, walkable, environmentally-sustainable, mixed-use park, residential, retail and entertainment development.

7.1 Confirmation of Developer Financing. Prior to the City issuing a building permit for any portion of the Project, Developer shall provide to the City a letter of confirmation of financing for construction of said portion, for which the City Manager or its designee will have 14 days to provide reasonable approval. If, after 14 days, no approval or disapproval is provided, the Project financing shall be deemed approved, and the City may no longer delay issuing a building permit on the basis of noncompliance with this Section 7.1.

7.2 Development Schedule

7.2.1 Remediation Commencement. The Developer shall commence the Remediation at a date no later than twenty-four (24) months following Developer's receipt of the Project Approvals and grading permit. If Developer does not commence the Remediation within the timeframe provided herein this Section 7.2.1, then the ownership of the Parcels shall be reconfigured as needed so that ownership is the same

as existed prior to the City's final action on and recordation of the Final Map, assuming such events have occurred, with ownership of the Original City Property vested in the City and ownership of the Original Comstock Property vested in the Developer.

7.2.2 Remediation Assurances. Developer shall provide or cause to be provided to the benefit of the City and to Comstock, a completion bond for the scope of remediation work set forth in the RAP Work Plan. The bond shall be in a form reasonably satisfactory to the City Attorney, and it shall be provided by a surety in good standing and licensed to perform surety business in the State of California. In the event Developer does not commence construction of the Parking Structure within twelve (12) months (plus automatic extensions, if any, pursuant to Section 19.3 Enforced Delay) of Developer's receipt of the grading, shoring, and/or building permit required for such commencement, City may require that the area excavated pursuant to the RAP Work Plan be backfilled and returned to a rough grade condition. Developer shall provide or cause to be provided to the benefit of the City and to Comstock a completion or other appropriate bond, for the scope of work necessary to backfill and return the site to a rough grade condition. The bond shall be in a form reasonably satisfactory to the City Attorney, and it shall be provided by a surety in good standing and licensed to perform surety business in the State of California.

7.2.3 Community Center Completion. Developer shall, within twenty-four (24) months of the City's issuance of a building permit for the Community Center, obtain or cause to be obtained a certificate of occupancy for the Community Center and complete the other Community Element improvements located on the City Parcel.

7.2.4 Construction Schedule. Developer presently intends as of the Effective Date to develop the Project consistent with the schedule set forth in Exhibit G. Notwithstanding that, the Parties agree that Developer shall be able to, except as proscribed by Sections 7.2.1, 7.2.2, and 7.2.3 above, develop the Project in accordance with Developer's own time schedule as such schedule may exist or be modified from time to time, and Developer shall determine in its sole discretion which part of the Project to develop first, and at Developer's chosen schedule. Without limiting the foregoing, the Parties intend with this Section 7.2.4 to avoid the results of, or results similar to those at issue in, *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 (holding that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement).

Notwithstanding and without limiting the foregoing, following completion of the Remediation and Developer's receipt of the grading, shoring, and/or building permit(s) required to commence construction of the Parking Structure, Developer shall commence such construction and proceed diligently with commercially reasonable efforts to complete vertical construction of the Residential Element and Commercial Element within five years of such commencement (plus automatic extensions, if any, pursuant to Section 19.3 Enforced Delay) ("**Completion Deadline**"). The Parties acknowledge that the development density and intensity of the Project described in this Agreement are maximum allowances and that there is no minimum build requirement for the Residential Element and Commercial Element for purposes of the vertical construction

that Developer will complete by the Completion Deadline. If vertical construction of the Residential Element and Commercial Element are not completed by the Completion Deadline, Developer shall meet with the City Manager and Director of Economic Planning and Development, or their designees, to evaluate the status of construction. The City Manager or Director of Economic Planning and Development may approve (which approval shall not be unreasonably withheld or delayed) up to two, 2.5-year extensions of the Completion Deadline.

Throughout vertical construction of the Project, for any undeveloped space on the Property that is not actively under construction for more than 90 days, Developer shall ensure that such areas, until construction begins within those areas, are landscaped and maintained attractively so that they appear as a continuous extension of the landscaping for the completed portions of the Project.

7.3 City Parcel.

7.3.1 Development. As a condition of approval for approving this Agreement, Comstock or its affiliate shall act as the project manager and oversee the design, cost budgeting and day-to-day construction management of the Community Center and the City Community Amenities on the City Parcel. The City shall finance the Development Costs (other than the \$12,000,000 contribution to be made by Comstock as provided in Section 10.2.6 below) for the construction and development of the Community Center and City Community Amenities. The Community Center and the City Community Amenities are collectively referred to as the “**Community Element**”.

7.3.2 Uses and Design. The specific uses and spaces provided in the Community Element are those specified in the Project Approvals and shall include the Community Center and the City Community Amenities.

7.3.3 Community Element Design. The design of the Community Element shall be value engineered and finalized during the design development process occurring during the first nine (9) months after commencement of the Remediation by the Developer. The Developer shall present and the City shall approve the design and budget for the Community Element not later than sixty (60) days after submittal by Developer. The City Staff and the Developer shall hold weekly design development meetings to discuss and coordinate the design of the Community Element. The City shall have the right to approve, within sixty (60) days of receipt from the Developer, final design development drawings of the Community Element, which approval shall not be unreasonably withheld or delayed.

7.3.4 Prior to commencement of work on the Community Element, Developer shall provide or cause to be provided to City a labor and materials bond in the amount of one-hundred percent (100%) the estimated cost of work for the Community Element, a performance bond in the amount of one-hundred percent (100%) of the estimated cost of work for the Community Element, and a warranty bond in the amount of fifty percent (50%) of the estimated cost of work for the Community Element in a form approved by City. The bonds shall be in favor of the City, in a form reasonably satisfactory to the City Attorney, and they shall be provided by a surety in good standing and licensed to perform

surety business in the State of California. The bonds shall be in an amount sufficient to include subterranean parking for the Community Element and access between the City Parcel and Gage Avenue and other access required by the Fire Department and City's Building and Safety Division.

7.4 Development Parcel. Except as otherwise provided in this Agreement, the Developer, at its own cost, shall finance, design, oversee and complete the development and construction of the following:

7.4.1 Residential Element. Up to 850 residential units, with a minimum of 12.9% of the units built to be offered for sale ("**Residential Element**"), and half of that 12.9% shall be townhomes. This means that, if all 850 units are constructed, then 110 units are to be offered for sale, 55 of which shall be townhomes; if 700 units are constructed, 90 units shall be for sale, 45 of which shall be townhomes; etc. However, in no case shall Developer offer less than 55 of the total units for sale.

7.4.2 Commercial Element. New commercial space consisting of a mix of retail, entertainment and other commercial uses that may include, but not be limited to, grocery, pharmacy, multi-screen theatre, arcade/bowling/family venue, gym, restaurants, and a landmark architectural element serving as a gateway to the Project ("**Commercial Element**"). The Commercial Element also includes the opportunity for the following (the "**Comstock Community Amenities**"): a museum and art space to be constructed which may feature Latino and Los Angeleno art, cultural and education, an outdoor community venue and gathering space, an arts museum, a public pedestrian avenue, an amphitheater (the "**Amphitheater**") with grass seating and deck area and fountain. The Comstock Community Amenities may be enjoyed by the public.

7.5 Parking Parcel. Except as otherwise provided in this Agreement, the Developer shall, at its own cost, finance, design, oversee and complete the development and the construction of a two level subterranean parking structure containing the maximum number of 2,223 parking spaces allowed by the EIR, located in part underneath the Development Parcel and in part underneath the City Parcel (the "**Parking Structure**"). The Parking Structure shall include separate access controlled areas for the users of the Community Element, Residential Element and Commercial Element. The City shall have exclusive parking rights to certain parking spaces in the Parking Structure, either pursuant to the Parking Lease described in Section 11.3 or pursuant to a parking easement granted by Developer to City, as will be determined by the City Manager.

7.6 As a condition of approval for approving this Agreement, Developer shall also perform the following work:

7.6.1 Common Infrastructure. Except as otherwise provided in this Agreement, the Developer shall, at its cost, design, oversee and complete the development and construction of the Common Infrastructure throughout the Project, underneath the roads, within the walls and ceilings of the Parking Structure and at ground level pads as

required by fire and utility providers, or in other locations as determined during the design development process and mandated by utility providers.

7.6.2 Parcel-Specific Infrastructure. Except as otherwise provided in this Agreement, the City and the Developer shall, at each's cost, design and complete the development and construction of Parcel-Specific Infrastructure on the City Parcel and the Development Parcel, respectively, as part of their respective development obligations under this Agreement.

7.6.3 Off-Site Improvements. Except as otherwise provided in this Agreement, the Developer shall, at its cost, design, oversee and complete the development and construction of the Off-Site Improvements in accordance with the Project Approvals.

7.6.4 Traffic Improvements. Except as otherwise provided in this Agreement, the Developer shall, at its cost, design, oversee and complete the development and construction of the Traffic Improvements in accordance with the Project Approvals.

7.7 Reimbursement of Traffic and Off-Site Improvements. To the extent i) Developer's costs for the Traffic and Off-Site Improvements, and dedications, if any, for the Project exceed Developer's fair share obligation for such improvements and dedications as contemplated by California Government Code Section 66000 *et. seq.* and other applicable law, ii) such improvements and dedications benefit properties other than the Project Parcels, and iii) Developer agrees to pay such excess costs, the City shall enter into a reimbursement agreement with Developer under Government Code Sections 66485-66489 and Los Angeles County Municipal Code Section 21.32.030(B) to reimburse Developer for that portion of the costs incurred by Developer for such improvements and dedications that exceeds Developer's fair share obligation. The Parties agree that the sole source of any reimbursement amount shall in accordance with Government Code Section 66487.

7.8 Temporary Easement Agreement. The City shall grant to the Developer a temporary easement to allow the Developer, including its consultants, agents, and contractors, to enter and do any and all work needed upon, under, over, and across the City Parcel in order to perform the Remediation and construct the Project. In this regard, the City and the Developer shall execute the Temporary Easement Agreement attached as **Exhibit D** prior to commencement of the Remediation by the Developer. The temporary easement shall terminate upon the later of (a) the Developer's completion of the Remediation, (b) the completion of the construction of the Community Center and the Community Amenities on the City Parcel and (c) the completion of the construction of the Parking Structure.

7.9 Environmentally-Sustainable and Wellness-Oriented Building Design. The Developer shall achieve Leadership in Energy and Environmental Design (LEED) certification into all components of the Project providing a model for sustainable building standards, green initiatives and renewable energy resources to optimize building performance, reduce nonrenewable energy consumption and to enhance interior environments to promote health and well-being.

7.10 Utilities. The Developer shall make arrangements necessary to secure the availability of utilities required to construct and operate the Project. The City shall assist the Developer in coordinating with other applicable agencies to, acquire, accommodate, and reserve capacity for sewer, water and other utility services as may be necessary to serve the Project.

7.11 Guarantee of Safe Condition. Prior to the City issuing a building permit for the Parking Structure, Developer shall deliver to the City a standby letter of credit in the sum of five million dollars (\$5,000,000), issued by a commercial lending institution and in a form acceptable to the City, which designates the City as beneficiary (“**Letter of Credit**”). The term of the Letter of Credit shall be the commencement of the Parking Structure through Comstock’s completion of the Project’s “vertical improvements” (the Parking Structure, and the buildings which comprise the Residential Element and Commercial Element). The Letter of Credit shall provide that the City may draw on the Letter of Credit, in whole or part, during its term in the event both of the following occur: (1) Developer ceases construction on a vertical improvement for more than twelve (12) months (plus automatic extensions, if any, pursuant to Section 19.3 Enforced Delay), and (2) the Letter of Credit is drawn upon for the purpose of returning that unfinished vertical improvement to a safe condition, including by securing the unfinished improvement or demolishing it and returning it to rough grade.

8. LABOR.

8.1 Prevailing Wage. Prevailing wage requirements shall apply to all work on the Community Element and on any County, State or Federally grant funded construction on the Project.

8.2 Other Labor Agreements. As it pertains to work not within the Community Element, the Developer shall have the right, in its sole discretion, to negotiate such labor agreements with contractors as it deems reasonably necessary.

8.3 Prevailing Wage Indemnity. Developer understands and acknowledges that Developer may be required by California Labor Code Sections 1720 and 1770 or other federal, state or local laws, to comply with the prevailing wage requirements of California Labor Code Sections 1720-1861 or other federal, state or local laws. Failure to comply with these provisions may result in substantial penalties. Developer agrees to indemnify, hold harmless and defend the City, its officers, employees, contractors and agents against any claim, action, proceeding, liability, damages, expenses, attorney fees, expert fees or other costs arising out of Developer's obligations under this Section 8.3.

8.4 Local Hire Goal.

8.4.1 Construction Local Hire Goal. For the construction of the Parking Structure, the Commercial Element and the Residential Element, the Developer shall incorporate a “Local Hire Goal” of skilled and available laborers from the City and the

surrounding five (5) mile radius. The Remediation will require specialized labor and equipment but will be subject to the Local Hire Goal.

8.4.2 Tenant Local Hire Goal. Upon completion of construction of the Commercial Element, the Developer shall create a Local Hire Goal for tenants of the Commercial Element to employ residents of the City and the surrounding five (5) mile radius who possess the necessary skills and availability. In addition, the Developer shall cause to be advertised and conducted a one-day job fair on the Commercial Parcel 30 days prior to the anticipated initial occupancy of any retail or commercial spaces thereon and every six months thereafter until 85 percent of the retail and commercial spaces developed on the Commercial Parcels have been leased.

9. PERMITTED USES.

9.1 Development Parcel. The Developer may construct upon and use the Development Parcel for a range of potential uses and configurations instead of, or in addition to, the specific uses and configurations identified elsewhere in this Agreement, including those uses for the Project Site identified in the Project Approvals (collectively, the “**Permitted Uses**”). The Permitted Uses vested by this Agreement shall include the uses for the Project Site, the density and intensity of use of the Project Site, the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, all as set forth in this Agreement, the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals. For purposes of analysis of the Project and Subsequent Approvals under CEQA, the EIR considered impacts based on all such uses and the maximum analyzed square footages, heights, densities, and intensities described in this Agreement.

9.2 City Parcel. To achieve the goal to create a class-A integrated commercial, residential and community development, the City Parcel shall be developed and maintained with the Community Center and City Community Amenities. The portions of the City Parcel developed with the City Community Amenities shall not be used for any purpose other than open recreation space for public access, use and enjoyment. The City shall not allow the City Parcel to be used for any of the following uses: homeless shelters, prisons, addiction or drug clinics, subsidized or social housing or similar uses.

10. DEVELOPMENT COSTS.

10.1 General. Subject to the reimbursement obligations set forth in this Section 10, the Development Costs to construct the Project shall be allocated as set forth in this Section 10. The Developer shall provide the City with a pro forma budget showing the estimated cost to construct each of the Project elements described in this Section with respect to which the City is required to pay or reimburse Development Costs and the amounts or formulas underlying the cost allocations.

10.2 Cost Allocations.

10.2.1 Development Parcel. The Developer shall pay all Development Costs related to the Commercial Element and Residential Element (including Parcel-Specific Infrastructure costs related thereto).

10.2.2 Parking Parcel. The Developer shall pay all Development Costs related to the Parking Parcel, including those related to the construction of the Parking Structure.

10.2.3 City Parcel. The City shall pay all Development Costs related to the Community Element, including those related to the (a) Community Center, (b) the City Community Amenities and (c) the Parcel-Specific Infrastructure related to the Community Center and the City Community Amenities.

10.2.4 Remediation. The Developer shall pay all Development Costs to complete the work described in the RAP Work Plan for the Project Site and to obtain the Completion Certificate.

10.2.5 Common Infrastructure, Off-Site Improvements, Traffic Improvements. The Developer shall pay all Development costs related to the Common Infrastructure, Off-Site Improvements, and Traffic Improvements.

10.2.6 Reimbursement by the Developer. The Developer shall contribute Twelve Million Dollars (\$12,000,000) of the Development Costs of the Community Element.

10.2.7 Reimbursement by the City. The City shall reimburse the Developer the percentage of the Development Costs for the categories of work listed below based on the formulas listed below:

<u>Development Cost Category</u>	<u>City Percentage</u>	<u>Developer Percentage</u>
Parking Structure (including Parcel Specific Infrastructure), provided City obtains parking rights through an easement and not the Parking Lease	The percentage equal to the ratio of the gross floor area of the parking stalls, drive aisles, and infrastructure of the Parking Structure that contains the dedicated City parking stalls over the total gross floor area of the Parking Structure	Remainder
Common Infrastructure	The percentage equal to the ratio of the gross building area of the Community Center over the combined total gross building area of all buildings	Remainder

	on the Development Parcel and City Parcel.	
Off-Site Improvements	The percentage equal to the ratio of the gross building area of the Community Center over the combined total gross building area of all buildings on the Development Parcel and City Parcel.	Remainder
Traffic Improvements	20.1%	Remainder

10.2.8 Contributions/Reimbursements Generally. All contributions and reimbursements shall be made monthly based upon Development Costs actually incurred during the prior month. Reimbursement shall be made within 30 days after receipt of invoices and/or other evidence of payment thereof submitted by the Developer to the City or by the City to the Developer, as the case may be. Reimbursement shall be made on a percentage of completion basis.

10.3 Public Facilities Funding Mechanisms. The Developer may identify that a Community Facilities District, Enhanced Infrastructure Financing District or similar assessment district or available grants may be a beneficial mechanism to fund in whole or in part the Common Infrastructure, Off-Site Improvements, and Traffic Improvements. The Developer may, in its discretion and at its own cost, research such financing sources, have proposals prepared, and present them to the City. The City agrees to diligently and in good faith consider such proposals.

10.4 Developer Contribution Towards City Housing Program.

10.4.1 Developer shall contribute \$5,000,000 (five million dollars) (“**Program Contribution**”) towards the City’s rental subsidy and/or first time homebuyers’ program. The Program Contribution shall be paid in installments on the schedule set forth below. The City may use the Program Contribution for the City’s rental subsidy and/or first time homebuyers’ program, or for any successor or related program (collectively “**City Housing Program**”).

(a) Installment Payment Schedule for Program Contribution

(i) First Installment: Prior to issuance of the first building permit for vertical construction of residential buildings, Developer shall pay \$1,500,000

(ii) Second Installment: Within one (1) year of the first installment payment, Developer shall pay \$1,500,000

(iii) Third Installment: Within one (1) year of the second installment payment, Developer shall pay \$1,000,000

(iv) Fourth Installment: Within one (1) year of the third installment payment, Developer shall pay \$500,000

(v) Fifth Installment: Within one (1) year of the fourth installment payment, Developer shall pay \$500,000

10.4.2 For-Rent Units. Developer, or the owner or operator of the for-rent units at the time of rental, make available, during Years 1 through 10 following issuance of the first certificate of occupancy for rental units at the Project, a certain percentage of the Project's for-rent units ("**Set-Aside**") for the City's placement of tenants pursuant to the City Housing Program.

(a) The Set-Aside requirement shall be seven percent (7%) of the Project's for rent units certified and occupiable. For instance, should 150 rental units be certified and occupiable during Years 1 through 3 following issuance of the first certificate of occupancy for rental units at the Project, then the Set-Aside during that time shall be eleven (11) rental units. If 300 units are then certified and occupiable during Years 4 and 5, then the Set-Aside during that time shall be twenty-one (21) rental units.

(b) After the 120th month following the issuance of the Project's first certificate of occupancy for rental units, there shall no longer be a Set-Aside requirement. Tenants in place at that time may remain until said tenant vacates the unit or assigns the lease.

(c) If a tenant is placed in one of the Project's for-rent units through the City Housing Program as outlined above, said Developer, or the owner or operator, may require said tenant to enter into the standard lease required for other tenants at the Project in similar units. The Developer, owner or operator, of the for-rent unit shall also have all rights, remedies, and obligations with respect to said tenant as the owner or operator would for any other tenant at the Project not placed through the City Housing Program. Such rights, remedies, and obligations include any available under state and federal law, including, without limitation, eviction laws, unlawful detainer, notice requirements, breach of contract, and specific performance.

(d) Prior to the issuance of the first building permit for vertical construction of residential buildings, the Developer and City shall enter into an agreement establishing the procedures for placing tenants in the Set-Aside units pursuant to the City Housing Program.

10.4.3 For-Sale Units. For for-sale units at the Project, Developer will provide a 15-day preview to City residents within the City Housing Program in advance of showing for-sale units to any other potential buyer. Offers and bidding on the for-sale units shall be at Developer's discretion without any preference for City residents or participants in the City Housing Program.

10.4.4 If and when the City establishes a review board to the satisfaction of the City to administer the City Housing Program, Developer or Developer's successor shall be offered a seat on said commission. The creation of a review board is not

a condition to Developer's obligation to contribute \$5,000,000 (five million dollars) towards the City's rental and/or first time homebuyers' program. If a City Housing Program is not in place at the time that any of the installment payments of the Program Contribution are due as outlined above in Section 10.4.1(a), Developer shall be relieved of making further installment payments towards the Program Contribution..

10.4.5 City Indemnity. The City shall hold harmless, defend and indemnify the Developer and any owner or operator of the for-rent units, and their respective officers, members, agents, employees, and representatives (collectively, for purposes of this subparagraph, the "**Indemnified Parties**"), from claims, costs, and liabilities for any personal injury, death, property or other damage arising out of any court action, administrative proceeding, or other process challenging the validity or other feature of the City Housing Program or the City's implementation of or compliance with the City Housing Program. The City's obligations in this subparagraph shall apply whether the alleged wrongdoing was performed by the City or any of the City's contractors, subcontractors, agents or employees. The Indemnified Parties shall have the right to choose the defense counsel to represent them subject to the reasonable approval of the City, which approval shall not be unreasonably withheld or delayed.

11. OPERATION AND MAINTENANCE OF THE PROJECT

11.1 Maintenance Area. Because the Project is intended to be developed as a unified space with seamless transitions between public and private spaces, certain portions of the Project Site will be designated as the "**Maintenance Area**". The Maintenance Area shall consist of the Common Infrastructure and the Parking Structure, unless otherwise provided in this Agreement.

11.2 Declaration of Maintenance Covenants and Grant of Easements. Prior to issuance of the first certificate of occupancy for any portion of the Project, the Developer and the City shall execute and record in the Official Records of Los Angeles County a Declaration of Maintenance Covenants and Grant of Easement (the "**Declaration**") governing the operation and maintenance of the Maintenance Area. The Declaration shall be substantially in the form of **Exhibit E** attached hereto and shall contain all of the terms and conditions set forth in this Section 11.2, as well as any other terms and conditions deemed reasonably necessary by the Developer to establish a secure, equitable and efficient coordination between the Project Parcels. Under the Declaration, the City shall have the right to exclude the City Parking (as defined in Section 11.4.4) from the Maintenance Area and to operate and maintain the City Parking independently of the balance of the parking in the Parking Structure. In such event, the City shall not be required to pay an Allocable Share (as defined in Section 11.5.4) related to the Parking Structure under the Declaration but the City shall be responsible for paying directly all costs incurred by it to so maintain and/or operate the City Parking. If the City does not choose to exclude the City Parking from the Maintenance Area, then the City Parking shall be included therein and subject to an Allocable Share from the City.

11.2.1 Parking Lease. If the City chooses to enter into a Parking Lease rather than an easement for Parking, then within sixty (60) days after the Effective Date, Developer and City shall enter into a lease (“**Parking Lease**”) pursuant to which the Developer shall lease to the City and the City shall lease from the Developer 84 parking spaces (“**City Parking**”) within the Parking Structure. The Parking Lease shall be for a rent to be agreed upon and on a standard form, the terms of which shall be negotiated between Developer and the City prior to issuance of a certificate of occupancy for the Community Element.

11.3 Easements. The Declaration shall also create the following easements:

11.3.1 Access Drives. For the benefit of the City Parcel, permanent, non-exclusive easements for vehicular and pedestrian access, ingress and egress over all roadways and adjacent sidewalks and walkways located on the Development Parcel which provide vehicular and pedestrian access to the City Parcel.

11.3.2 Parcel-Specific Infrastructure. For the benefit of the Development Parcel and the City Parcel, reciprocal, permanent non-exclusive easements over the Project Parcels to the extent needed to use, install, maintain, repair, and replace any Parcel-Specific Infrastructure.

11.3.3 Common Infrastructure on City Parcel. For the benefit of the Development Parcel, a permanent, non-exclusive easement over the City Parcel to the extent needed to use, install, maintain, repair, and replace any Common Infrastructure that may be located on the City Parcel.

11.3.4 City Parking. If the City chooses to enter into an Easement for Parking for the benefit of the City instead of the Parking Lease, the Declaration shall dedicate to the City an exclusive right to park eighty-four (84) automobiles within an access controlled area within the Parking Structure (the “**City Parking**”). The City’s right shall include nonexclusive easements over the Development Parcel and Parking Parcel to the extent necessary for the City to access, operate, maintain and otherwise use the City Parking. At the time the Developer and the City execute and enter into the Declaration, the Developer shall identify and provide the City a depiction of the location of the City Parking and ancillary access areas described above.

11.4 Maintenance and Operation.

11.4.1 Maintenance of the City Parcel. Subject to the terms of the Declaration, the City shall, at its sole cost, operate, maintain, repair and replace all portions of the City Parcel and improvements thereon, as well as the City Parcel’s Parcel-Specific Infrastructure whether located on the City’s Parcel or on other Project Parcels.

11.4.2 Maintenance of the Development Parcel. Subject to the terms of the Declaration, the Developer shall, at its sole cost, operate, maintain, repair and replace all portions of the Development Parcel as well as the Development Parcel’s Parcel Specific Infrastructure whether located on the Development Parcel or on other Project Parcels.

11.4.3 Maintenance of the Parking Parcel. Subject to the terms of the Parking Lease and the Declaration (including the terms of Sections 11.2 and 11.3), the Developer shall, at its sole cost, operate, maintain, repair, and replace all portions of the Parking Parcel as well as the Parking Parcel's Parcel Specific Infrastructure whether located on the Parking Parcel or other Project Parcels.

11.4.4 Maintenance of the Maintenance Area. The Maintenance Area will be operated, maintained, repaired and replaced pursuant to the terms of the Declaration. The Declaration shall provide that the Project Parcel owners shall each pay their fair share ("**Allocable Share**") of all costs expended to pay customary expenses necessary to operate, maintain, repair and replace the Maintenance Area ("**Common Expenses**"), including but not limited to real estate taxes, security, maintenance and operations, improvements, insurance, and fees to third party operators. Allocable Share shall be determined based upon the ratio provided in Section 10.2.7.

11.4.5 Maintenance Standard. The Project Site shall be maintained as a class-A residential, commercial retail, park, and community center in compliance with the detailed maintenance standards set forth in the Declaration.

11.4.6 Developer's Self-Help Right. In the event the City does not operate, maintain, repair and replace any portion of the City Parcel and the improvements thereon (including the City Parcel's Parcel Specific Infrastructure) and the City Parking as required by this Agreement or the Declaration, the Developer shall have the right, upon prior notice to the City, to undertake such operation, maintenance, repair or replacement, at its cost, upon demand, the City shall reimburse the Developer with any costs so expended.

11.5 Parking Fees Share. In the event Developer in its sole discretion collects direct fees for parking in the Parking Structure from users of the Development Parcel (exclusive of any residential tenants and/or their invitees), the Developer shall, in exchange for the vested rights granted by the City to Developer in this Agreement, pay to the City an amount equal to ten percent (10%) of the fees so collected by Developer.

12. MUTUAL INDEMNITY

12.1 City Indemnity. The City shall indemnify, defend (by counsel acceptable to the Developer), protect, and hold harmless the Developer and its officers, directors, members, employees, agents, representatives, successors and assigns ("**Developer Indemnified Parties**"), from, of, for and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including reasonable attorneys', consultants', and expert fees), liens, fees, fines, suits, proceedings, actions and causes of action of any and every kind and nature (collectively, "**Claims**") against the Developer arising from, related to, or in connection with (a) the death of or injury to any person or damage to any property or other losses whatsoever and (b) governmental agency orders or demands for response costs or response actions, to the extent arising out of or related to the Original City Property Contamination. The indemnity obligations created hereunder shall not include Claims arising out of or in connection with the work undertaken by the Developer pursuant to the RAP Work Plan.

12.2 Developer Indemnity. The Developer shall indemnify, defend (by counsel acceptable to the City), protect, and hold harmless the City and its officers, directors, employees, agents, representatives, successors and assigns (“**City Indemnified Parties**”), from, of, for and against any and all Claims against the City arising from, related to, or in connection with (a) the death of or injury to any person or damage to any property or other losses whatsoever, and (b) governmental agency orders or demands for response costs or response actions, to the extent arising out of or related to the Original Comstock Property Contamination. The indemnity obligations created hereunder shall include Claims arising out of or connected with the work undertaken by the Developer pursuant to the RAP Work Plan.

13. ADDITIONAL CITY OBLIGATIONS.

In the absence of the Developer’s development of the Project, including the undertaking of the Remediation and the Developer’s agreement to advance certain Development Costs, the Project Site would remain a contaminated landfill occupied by a transient population and therefore would remain under-utilized and unsafe. To generate the economic opportunities and Public Benefits that the Project will provide, the City shall undertake reasonable efforts, to the extent allowed by applicable law, to provide the following, at the City’s cost, in addition to the City’s other obligations set forth in this Agreement:

13.1 Public Transit. Public bus transit to the Project Site with a bus stop at the Development Parcel and the City Parcel, as depicted on the Site Plan.

13.2 Street Names. Prior to completion of the Remediation, the City shall use reasonable efforts to cause the name of Zindell Avenue to be changed to Modelo Drive and shall cooperate with the Developer to request the County of Los Angeles to change the name of Gage Avenue South to Modelo Way.

13.3 City Coordination with State, County and Adjacent Cities. Without limiting the generality of the City’s obligation to assist in securing the Other Approvals, significant cooperation and assistance from the City is needed to construct the Traffic Improvements because several of the Traffic Improvements are located in whole or in part within the jurisdiction of other agencies. Because of the City’s long-standing relationship with these agencies, including coordinating past public improvement projects, the City’s existing relationships will greatly facilitate coordinating with these agencies to obtain the approvals necessary to construct the Traffic Improvements. The City, therefore, shall, to the greatest extent permitted by applicable law, cooperate with and assist the Developer in obtaining any and all approvals needed from applicable agencies with respect to approvals needed for construction of the Traffic Improvements, including, without limitation, supporting applications to the applicable agencies and/or joining in as applicant, negotiating with such agencies, and attending meetings with such agencies.

14. SIGNAGE

14.1 Master Sign Plan. A Master Sign Plan is included in the Project Approvals. The Master Sign Plan, as updated and revised from time to time, sets forth the initial Project identity, wayfinding, and onsite signage, as well as off-premises advertising, that the Developer will install for the Project. The Master Sign Plan also sets forth the design, the location and other guidelines and procedures under which signs may be revised and updated and future signs approved, including off-premises advertising and tenant signage. The Master Sign Plan will control, and supersede inconsistent City regulations, with respect to all signage related to the Project, the other Project Approvals and, if and when adopted, the Subsequent Approvals. The Master Plan is attached hereto as **Exhibit “F”**.

14.2 Signage Easements. Upon request of the Developer, the City shall grant easements over the Project Site to implement the Master Sign Program, including easements to provide access (including utilities), development, operation, maintenance, repair, restoration and use rights and including, for the monument Project, identity and tenant signs at the corner of East Gage Avenue and Gage Avenue South which will be the primary entrance to the Project. The locations for such easements will be consistent with the locations of the signs identified in the Master Sign Program.

14.3 Coordination with Caltrans. Without limiting the generality of the City’s obligations to facilitate obtaining Other Approvals, to the extent Caltrans may have jurisdiction over signage related to the Project given the Project’s proximity to the I-5 Freeway, the City shall, to the greatest extent permitted by applicable law, cooperate with and assist the Developer in obtaining any and all approvals needed from Caltrans with respect to such signage including, without limitation, supporting license or other applications to Caltrans, negotiating with Caltrans, and/or attending meetings with Caltrans with respect to the signage within Caltrans’ jurisdiction.

15. PROCESSING; COOPERATION; FEES

15.1 Timely Processing by the City. The Developer shall prepare and submit to the City in a timely manner applications and other information and materials necessary to develop the Project, including the Project Approvals, Subsequent Approvals and applications for excavation, demolition, and building permits and plan check (“**Project Submittals**”). Upon submission to the City of any complete Project Submittals, including the payment of any Processing Fees that may be applicable, the City shall promptly and diligently conduct all reviews, proceedings and hearings, and take all actions necessary in a timely manner. If the Developer elects, in its sole discretion, to request the City to incur overtime or additional consulting services to receive expedited processing by the City, the City shall agree to expedite processing, including, without limitation, by authorizing overtime payments to its employees and hiring contractors; provided, however, that the Developer shall pay all overtime costs and/or contract charges incurred by the City for such expedited processing. To assure that the Project Site is developed in a timely manner, the City shall review and provide comments to initial building plan check submittals within sixty (60) days after receipt, shall return and provide comments to plan check revision submittals within twenty-one

(21) days of receipt and shall review and act upon submittals for demolition and grading permits within twenty-one (21) days after receipt.

15.2 Processing Fees. Except as otherwise set forth in this Agreement, the Processing Fees shall be allocated to each Project element as applicable (e.g., Processing Fees related to the development of the Community Element shall be allocated to the City; Processing Fees related to the development of the Residential Element and Commercial Element shall be allocated to the Developer). The Processing Fees which should be allocated to more than one Project element because of shared uses of that element shall be allocated among the Project Parcel owners as reasonably determined by the Developer and City.

15.2.1 With respect to any Processing Fees allocated to the Residential Element or Commercial Element (i.e. the Development Parcel), the Developer shall pay, until the completion of the Initial Project Construction (as defined in this paragraph), the Processing Fees based on the rates in effect at the time the City takes final action on the Project Approvals. The "Initial Project Construction" shall be considered completed for any portion of a Parcel developed pursuant to the Project Approvals upon issuance a certificate of occupancy or equivalent for that portion of the Parcel. Once the first certificate of occupancy or equivalent for a portion of a Parcel is issued, any changes to or redevelopment thereafter shall be subject to the rates for Processing Fees in effect at the time application is made to the City for said changes or redevelopment of that portion of the Parcel. The Processing Fees related to the Community Center and the Community Amenities shall be waived.

15.2.2 Any Processing Fees or CEQA-related compliance as part of the Project shall be reduced by the amount of fees Comstock already paid for the same types of applications Comstock filed, if any, as part of its application for review of Plot Plan 989 (denied by the Planning Commission on August 22, 2018). The amount of the reduction of such fees shall not exceed \$180,000, subject to verification by the City Manager based on documentation provided by Developer.

15.3 RELEASE AND WAIVER Pertaining to Plot Plan 989. Assuming no default of this Agreement by the City, following the receipt of all of the Project Approvals and expiration of all statutes of limitations for actions related to challenging the Project, if no such challenges are made, the release and waiver in this Section 15.3 shall apply. Developer, on behalf of Developer and Developer's heirs, successors, transferees, assignees, principals, members and shareholders now and forever releases, discharges and waives any claim against (the "Release") the City of Commerce and its officers, employees, agents, successors, attorneys, insurers, brokers, principals, and whoever else may be liable ("Releasees"), from any and all claims, demands, losses, expenses, damages, liabilities, actions, and causes of action of any nature, that in any manner arise from or relate to denial of Developer's application for review of Plot Plan 989 (denied by the Planning Commission on August 22, 2018). This Release extends to and includes any and all claims, liabilities, injuries, damages, and causes of action that the parties do not presently anticipate, know, or suspect to exist, but that may develop, accrue, or be discovered in the future that may arise from or relate to

denial of Developer’s application for review of Plot Plan 989 (denied by the Planning Commission on August 22, 2018). Accordingly, DEVELOPER EXPRESSLY WAIVES ALL SUCH RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." Developer represents and warrants that Developer has considered the possibility that claims, liabilities, injuries, damages, and causes of action that Developer does not presently know or suspect to exist in Developer's favor may develop, accrue, or be discovered in the future, and that Developer voluntarily assumes that risk as part of the consideration received for this Release. Further, Developer covenants and agrees that Developer will not make, assert, or maintain any claim, demand, action, or cause of action that is discharged by this Release against the City of Commerce or any other Releasee. Developer agrees to indemnify, defend, and hold each Releasee named or described in this Release, and their successors in interest, harmless against any claim, demand, damage, liability, action, cause of action, cost, or expense, including attorney fees, resulting from a breach of the covenant contained in this paragraph.

I, the undersigned, have read this Release and understand all of its terms.
I execute it voluntarily and with full knowledge of its significance.

“DEVELOPER” or “COMSTOCK”

COMSTOCK GAGE LLC

By: _____

Print Name: Adrian D. Comstock

Title: Managing Member

Date: _____, 2021

15.4 Non-City Approvals. At the Developer’s sole discretion and in accordance with the Developer’s construction schedule, the Developer shall pursue and obtain from individuals, entities, or regulatory agencies other than the City, such as the LARWQCB, CalRecycle, Caltrans, and County of Los Angeles, permits, approvals, agreements, financing and/or other funding sources (including grants with state, local, and federal agencies, and nongovernmental organizations), and take other actions the Developer deems necessary to develop the Project (“**Other Approvals**”). The City shall render all reasonable assistance to the Developer in obtaining the Other Approvals, assisting the Developer to satisfy the conditions of such Other Approvals, attending with the Developer meetings with other individuals, entities, or regulatory agencies, such as the LARWQCB, Caltrans, and County of Los Angeles, in support of the Developer’s efforts to obtain Other Approvals, and using its best efforts to support binding agreements with other individuals, entities or agencies as may be necessary to ensure the timely availability of such Other Approvals; provided, that, nothing herein shall require

the City to expend any funds (other than staff work) in connection with such support and coordination. The Developer may at times identify grants and other such sources of funding potentially available to the City that can be applied towards the City's share of the Project's Development Costs. The Developer may, in its discretion and at its own cost, research such funding sources, have proposals prepared, and present them to the City. The City agrees to diligently and in good faith consider such proposals, including pursuing them as an applicant, and will inform Developer in writing within 30 days of receipt of any such proposal whether City intends to pursue such funding opportunities or assist Developer in the pursuit thereof. As of the Effective Date, the Parties are collaborating to apply for an Equitable Community Revitalization Grant, provided through the California Department of Toxic Substances Control ("**DTSC Grant**"), to defray costs of the Remediation. Should the DTSC Grant be awarded to the City, the DTSC Grant award shall be applied towards the costs of the Remediation, and Comstock shall in return contribute an additional amount towards the City's Development Costs for the Project in an amount equal to 10% of the amount awarded by the DTSC Grant or \$250,000, whichever is less.

16. ASSIGNMENT; TRANSFER; NOTICE

16.1 City's Intent. The Developer has demonstrated, and the City finds that the Developer possesses, the experience, reputation and financial resources to develop the Project in the manner contemplated by this Agreement. It is because of such qualifications, which assures the development of the Project to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of the Developer to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's General Plan and this Agreement.

16.2 City Consent Required. Except as provided in Section 16.3, the consent of the City Manager or its designee shall be required for Developer to transfer all or any of its rights or privileges, or delegate any of its obligations contained in this Agreement. The Developer shall provide with its request for consent reasonable information evidencing the financial wherewithal, development experience and reputation of the transferee. The City Manager or its designee shall within 30 days of request therefor either consent to or disapprove the proposed transfer. Failure of the City Manager or its designee to provide its consent or disapproval within the 30 day shall be deemed consent to the proposed transfer.

16.3 No City Consent Required. The consent of the City Manager or its designee shall not be required for the following assignments or transfers of all or a portion of the rights or privileges or the delegation of obligations of the Developer contained in this Agreement:

16.3.1 to an affiliate of the Developer or to a joint venture, partnership or limited liability company in which the Developer (directly or indirectly) has the right to make day-to-day management decisions and in which such the Developer, directly or indirectly, maintains an equity ownership interest,

16.3.2 to any ground lessee of a subdivided lot within the Project or to any tenant or subtenant to occupy space within the Project,

16.3.3 to a purchaser who purchases any portion of a Parcel after Initial Project Completion has occurred with respect to such portion of the Parcel,

16.3.4 pursuant to any mortgage, deed of trust, sale and leaseback or other form of conveyance required to implement any reasonable method of financing requiring a security arrangement with respect to the Project or any portion thereof,

16.3.5 from the mortgagee, beneficiary or other person providing the financing after exercising its foreclosure rights or accepting a deed in lieu of foreclosure or otherwise succeeding to title to the Project or a portion thereof (the words “mortgage” and “deed of trust” include all other appropriate modes of financing), or

16.3.6 to any transferee or assignee resulting from any proceeding in bankruptcy, receivership or order relating thereto.

16.4 Assignment and Assumption Agreement. Any assignment or transfer of the rights and privileges of the Developer or any portion thereof, whether or not the City’s consent has been required shall be evidenced by an Assignment and Assumption Agreement reasonably satisfactory to the Developer and the City Manager or its designee pursuant to which the transferee or assignee shall assume all of the duties and obligations of the Developer under this Agreement with respect to the portion of the Project assigned and/or transferred to such transferee which accrue from and after the date of such assignment and transfer.

16.5 Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation. The Developer agrees that the restriction in this Section 16 on its right to transfer any of its rights or privileges set forth in this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement.

16.6 City Council Approval. In the event the City Manager determines that the assignment or transfer should be acted upon by the City Council and the City Manager so notifies the Developer then the City Manager shall refer the matter to the City Council. When and if the matter is so referred, the City Council will render a decision thereon within 30 days of delivery of such request to the City Clerk for such City Council action. City failure to act within the above time limits shall be deemed approval of the request.

17. DEFAULTS; REMEDIES; TERMINATION

17.1 Defaults. Except as otherwise provided in this Agreement, any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for thirty (30) days (unless such period is extended by mutual written consent) following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence

(“**Default Notice**”) shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period (or a longer period as agreed between the Parties by mutual written consent), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure. If the default is cured as provided in this Section, then no default shall exist and the noticing Party shall have no right to take further action described in this Section.

17.2 Remedies in the Event of Default. In the event of a claim of default or any other dispute between the Parties arising from or in connection with this Agreement, either Party may institute the procedure described in this Section, which procedure shall be the exclusive means by which any such claim of default or other dispute shall be resolved before any Party may pursue administrative or judicial remedies to resolve said default or other dispute. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in the City’s regulations governing development agreements are available to the Parties to pursue in the event there is a default or other dispute.

17.3 Procedures Upon Default. It is the desire and intention of the Parties to agree upon a mechanism and procedure by which any breach or dispute arising out of this Agreement will be resolved in a prompt and expeditious manner. Accordingly, any default or dispute arising out of this Agreement or relating to the interpretation of any term or provision of this Agreement shall be determined pursuant to the provisions of California Code of Civil Procedure Sections 638-645.1, inclusive;

17.3.1 The Parties shall promptly and diligently cooperate and perform to obtain a prompt and expeditious resolution of disputes and defaults in accordance with this Agreement;

17.3.2 The Parties shall mutually agree upon a single decision maker or if they are unable to agree thereon within ten (10) days of a written request to do so by any Party, then any Party may thereafter seek to have a referee appointed pursuant to the Code of Civil Procedure Sections 638 and 640;

17.3.3 The Parties agree that the decision maker under California Code of Civil Procedure Sections 638-645.1 shall have the power to decide all issues in dispute between them; and

17.3.4 The costs of such a proceeding shall be borne equally by each Party to the dispute except as otherwise provided in this Agreement.

17.4 Limitation of Damages. The Parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that Developer’s damages for City’s breach of this Agreement shall be limited to a total sum of \$7.5 million. Such limit shall include damages of any and all types including, but not limited to, actual out-of-pocket expenses,

overhead, lost profits, court costs, attorney's fees, witness fees, expert witness fees, consultant's fees and any other loss suffered by Developer of any kind or nature. However, Developer may pursue other equitable remedies for declaratory relief, specific performance or injunctive relief which do not require the City to pay monetary damage to Developer. In no event shall any Party be entitled to recover for lost profits or lost economic opportunities, or incidental, special, punitive or consequential damages for the breach of this Agreement, it being agreed that all monetary remedies shall be limited to actual damages incurred by a Party.

17.5 Periodic Review. Throughout the Term, at least once every twelve (12) months following the Effective Date, the City shall review the extent of good-faith compliance by the Developer with the terms of this Agreement. This review (the "**Periodic Review**") shall be conducted by the Director or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1.

17.5.1 Notice. At least ten (10) days prior to the Periodic Review, the City shall deposit in the mail to the Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning the Developer's performance hereunder. The Developer shall be permitted an opportunity to respond to the City's evaluation of the Developer's performance, either orally at a public hearing or in a written statement, at the Developer's election. Such response shall be made to the Director.

17.5.2 Good Faith Compliance. During the Periodic Review, the Director shall review the Developer's good faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the Director shall make written findings and determinations, on the basis of substantial evidence, as to whether or not the Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the Director shall be appealable to the City Council. If the Director finds and determines that the Developer has not complied with such terms and conditions, the Director may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code Sections 65867 and 65868. The costs incurred by the City in connection with the Periodic Review process described herein shall be shared equally by the Developer and the City.

17.5.3 Failure to Conduct Periodic Review. If the City fails, during any calendar year, to either (a) conduct the Periodic Review or (b) notify the Developer in writing of the City's determination, pursuant to a Periodic Review, as to the Developer's compliance with the terms of this Agreement, then the Developer may provide written notice to the City within thirty (30) days after the applicable anniversary date of the Effective Date, requesting the City to undertake the Periodic Review. If the City fails to undertake and complete the Periodic Review within ninety (90) days of the request, such failure shall be conclusively deemed an approval by the City of the Developer's compliance with the terms of this Agreement ("**Deemed Compliance**") for that review period.

17.5.4 Written Notice of Compliance. With respect to any year for which the Developer has been determined to be in compliance or there is Deemed Compliance with this Agreement, the City shall, within thirty (30) days following request by the Developer, provide the Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by the City. The Developer shall have the right, in the Developer's sole discretion, to record such notice of compliance in the Official Records of Los Angeles County.

17.6 Amendment or Termination of Agreement. Except as otherwise provided in this Agreement, this Agreement may be amended or terminated in whole or in part only by written consent of both Parties in the manner provided for in the California Vesting Statutes, or upon the occurrence of any of the following events: (a) expiration of the Term or (b) completion of a referendum proceeding or entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement. To the extent permitted by applicable law, no amendment of this Agreement shall be required for any Minor Change. If a hearing is required by applicable law or deemed necessary by the City for a Minor Change, the hearing on and the City's consideration of the proposed Minor Change shall be limited to consideration of and action on the Minor Change and shall not extend to any consideration of or any action on this Agreement, the Project Approvals or other matters addressed by this Agreement.

17.7 Effect of Termination. Termination of this Agreement shall not constitute termination of any Project Approvals; provided, however, in the event of any such termination, the City may thereafter elect, in its sole discretion, to terminate the vested rights for the Project Approvals, Subsequent Approvals or any other land use entitlements approved for the Project and/or the City may, in its sole discretion, alter or modify any of such Project Approvals, Subsequent Approvals or any other land use entitlements approved for the Project. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination, any obligation that expressly survives the termination of this Agreement as provided in this Agreement, or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination.

18. INDEMNITY; THIRD PARTY LITIGATION

18.1 Hold Harmless. The Developer shall hold harmless, defend and indemnify the City and its elected and appointed officers, agents, employees, and representatives from claims, costs, and liabilities for any personal injury, death, or property damage which is a result of the construction of the Project, or of operations performed under this Agreement by the Developer or by the Developer's contractors, subcontractors, agents or employees, whether such operations were performed by the Developer or any of the Developer's contractors, subcontractors, agents or employees. Notwithstanding the foregoing sentence, the Developer shall not be obligated to hold harmless, defend and indemnify the City from any claims of personal injury, death or property damage arising from, or alleged to arise from, any act, or failure to act, on the

part of the City, its elected and appointed representatives, officers, agents, employees or representatives.

The City shall hold harmless, defend and indemnify the Developer and its officers, members, agents, employees, and representatives from claims, costs, and liabilities for any personal injury, death, or property damage which is a result of the construction of the Project, or of operations performed under this Agreement by the City or by the City's contractors, subcontractors, agents or employees, whether such operations were performed by the City or any of the City's contractors, subcontractors, agents or employees. Notwithstanding the foregoing sentence, the City shall not be obligated to hold harmless, defend and indemnify the Developer from any claims of personal injury, death or property damage arising from, or alleged to arise from, any act, or failure to act, on the part of the Developer, its officers, members, agents, employees or representatives.

18.2 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against the City or the Developer relating to this Agreement, the Project Approvals or to other development issues affecting the Project Site or the Project shall not be grounds for the City to delay or stop the development, processing or construction of the Project, or approval of the Subsequent Approvals, unless the third party obtains a court order preventing the activity. The City shall not stipulate to the issuance of any such order. Unless the third party obtains a court order preventing the development, processing or construction of the Project, the City shall process Developer's applications for development of the Project in the ordinary course and in accordance with this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, the Parties agree, subject to all legal requirements, to consider and approve modifications to this Agreement to render it valid and enforceable.

18.3 Legal Challenge to Project. In the event of any court action or proceeding challenging the validity of the Project or this Agreement, or any of the Project Approvals, the Developer shall defend, indemnify and hold harmless, at its own expense, the City and its officers, officials, members, agents, employees, consultants and representatives from and against the action or proceeding, except for those acts, errors, and/or omissions caused or alleged to be caused by the negligence or willful misconduct of the City (or its officers, officials, members, agents, employees, or representatives). In such instance, the City shall have the right to choose the defense counsel to represent the City subject to the reasonable approval of the Developer, which approval shall not be unreasonably withheld or delayed. In the event of such court action or proceeding described in this Section 18.3 and the Developer is not named as a party or real party in interest, the Developer may petition the court to intervene in the action as a named party in such court action or proceeding, in which case the Developer shall have the right to defend, at its own expense, itself and the challenged actions in accordance with this Section. To the extent a joint defense is not inconsistent with either Party's claims or defenses in any such court action or proceeding, the Developer and the City shall cooperate with each other in any such defense as either the Developer or the City may reasonably request. Neither Party may resolve such challenge without the written agreement of the other Party to the extent the Parties have agreed in writing to a joint

defense on an asserted claim or cause of action or to jointly bring a claim or cause of action. In the event the Developer fails or refuses to be a party in any challenge to the Project, this Agreement, the Development Approvals or the Environmental Assessment, the Developer shall continue to perform its obligations under this Section 18.3 to defend, indemnify, and hold harmless the City. If the cost of defending any challenge, claim, court action or proceeding against the City challenging the validity of the Project, this Agreement or any of the Project Approvals is covered by insurance payable to the City, including the City as a participant with the Joint Powers Insurance Authority, the costs of defense shall be borne by the City, but only to the extent of such insurance coverage.

18.4 Validity of Regulations. Developer agrees that the Applicable Laws, Project Approvals, and this Agreement are valid and enforceable. The City agrees that it will not apply or enforce the Applicable Laws, Project Approvals, and this Agreement in an unlawful manner.

19. MISCELLANEOUS

19.1 No Agency, Joint Venture, or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (a) the Project is a private development, (b) the City has no interest or responsibilities for, or duty to, third Parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals, (c) the Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of the Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (d) the City and the Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Developer.

19.2 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and the Developer. During the Term, clarifications to this Agreement and the Applicable Laws may be appropriate with respect to the details of performance of the City and the Developer. If and when, from time to time, during the Term of this Agreement, the City and the Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by the City and the Developer, which, after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by the City and the Developer. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement or allow a subsequent discretionary action to the Project but are mere ministerial clarifications. Therefore, public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with, and approval of, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires

compliance with the provisions of Section 17.6. The authority to enter into such operating memoranda is hereby delegated to the Director (or his or her designee) who is hereby authorized to execute any operating memoranda hereunder without further City action.

19.3 Enforced Delay. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which a Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; pandemics; states of emergency; stay-at-home orders; litigation and administrative proceedings, including administrative and judicial appeals, against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs [such as the Periodic Review]); any approval required by the City or other governmental entity with jurisdiction over the Project or any portion thereof (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the Reservations of Authority; or similar bases for excused performance which are not within the reasonable control of the Party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of the Developer or, if not dismissed within ninety (90) days, by any third parties against the Developer.

19.4 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded in the Official Records of Los Angeles County within the period required by Section 65868.5 of the California Government Code.

19.5 Notice of Compliance Requested by the Developer. Within thirty (30) days following any written request which the Developer or a Mortgagee may make in its discretion from time to time, the City shall execute and deliver to the Developer (or to any Party requested by the Developer) or a Mortgagee, whichever made such request, a written “**Notice of Compliance,**” in recordable form, duly executed and acknowledged by the City, that certifies:

19.5.1 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;

19.5.2 There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default;

19.5.3 Any other information reasonably requested by the Developer or a Mortgagee.

The City's failure to deliver such a statement within the time prescribed in this Section shall constitute a conclusive presumption against the City that this Agreement is in full force and effect without modification; provided, however, that no such presumption shall arise and the City shall have no obligation to provide a Notice of Compliance if the City finds that the Developer is in default under this Agreement after the Developer fails timely to cure any such default or timely to commence to cure and diligently proceeds to complete the cure within the time and in the manner prescribed by the Agreement.

19.6 Reservation. The Developer reserves the right to challenge in court, without first following any procedures to the contrary set forth in this Agreement, any measure, whether or not enacted by the City, or by voter initiative or referendum, that would conflict with any of the Applicable Laws, this Agreement, the Project Approvals, or the Subsequent Approvals or that would reduce the development rights provided by the Applicable Law, this Agreement, the Project Approvals or the Subsequent Approvals.

19.7 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

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

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

19.10 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.

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

19.12 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

19.13 Attorneys' Fees and Costs. Except as otherwise expressly provided in this Agreement, in any proceeding brought by either Party to enforce or interpret a provision of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

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

19.15 Enforceability. The City and the Developer agree that unless this Agreement is terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any Party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by the City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code Section 65866.

19.16 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either the City or the Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other Party.

19.17 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

19.18 Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

19.19 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

19.20 Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

19.21 Notices. Any notice or communication required hereunder between the City or the Developer must be in writing, and may be given either personally, by telefacsimile (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party’s facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

Notice to
the City:

Edgar Cisneros, City Manager
City of Commerce
2535 Commerce Way
Commerce, CA 90040
ecisneros@ci.commerce.ca.us

Jose Jimenez, Director of Economic Development &
Planning

City of Commerce
2535 Commerce Way
Commerce, CA 90040
jjimenez@ci.commerce.ca.us

Vilko Domic, Assistant City Manager
City of Commerce
2535 Commerce Way
Commerce, CA. 90040
vilkod@ci.commerce.ca.us

With a
copy to: Noel Tapia, Esq., City Attorney
Alvarez-Glasman & Colvin
13181 Crossroads Pkwy. North
Suite 400 - West Tower
City of Industry, CA 91746
ntapia@agclawfirm.com

Notice to
Developer: Adrian Comstock
Managing Member
Comstock Gage LLC
1801 Century Park East
Suite 1095
Los Angeles, CA 90067
acomstock@comstockrealtypartners.com

With a
copy to: Fernando Villa, Esq.
Allen Matkins Leck Gamble
Mallory & Natsis
865 S Figueroa Street
Suite 2800
Los Angeles, CA 90017

fvilla@allenmatkins.com

Michael L. Matkins, Esq.
Allen Matkins Leck Gamble
Mallory & Natsis
865 S Figueroa Street
Suite 2800
Los Angeles, CA 90017

mmatkins@allenmatkins.com

A Party may change the address by giving notice in writing to the other Party and thereafter notices shall be addressed and transmitted to the new address.

19.22 Entire Agreement, Counterparts And Exhibits. This Agreement constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the City and Comstock. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

EXHIBIT A – Site Plan

EXHIBIT B - Land Exchange Agreement

EXHIBIT C – Processing Fees

EXHIBIT D - Temporary Easement Agreement

EXHIBIT E – Declaration of Covenants, Conditions and Restrictions

EXHIBIT F – Master Sign Plan

EXHIBIT G – Proforma Project Schedule

19.23 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

19.24 Authority to Execute. The person(s) executing this Agreement on behalf of the Developer and the City warrants and represents that he, she or they has/have the authority to execute this Agreement on behalf of his, her or their corporation, partnership or business entity and warrants and represents that he, she or they has/have the authority to bind the Developer to the performance of its obligations hereunder.

“DEVELOPER” or “COMSTOCK”

COMSTOCK GAGE LLC

By: _____

Print Name: Adrian D. Comstock

Title: Managing Member

Date: _____, 2021

ATTEST:

By: _____

“CITY”

CITY OF COMMERCE

By: _____

Print Name: _____

Title: _____

Date: _____, 2021

APPROVED AS TO FORM:

By: _____

[Signatures and Acknowledgments on Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year first-above written.

**PARCEL A OWNER:
City of Commerce, California**

By:
Name: _____
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, _____, 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: (Seal)

[Signature and acknowledgments continue on next page]

Comstock Gage LLC, a Delaware limited liability company
By:
Name: Adrian Comstock
Its: Managing 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 _____

On _____ before me, _____, 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: (Seal)

Exhibit "G" Anticipated Construction Schedule (Draft)

