

MEMORANDUM OF AGREEMENT
(The Creek at Dominguez Hills Project)

This **MEMORANDUM OF AGREEMENT** (“Agreement”) is made and entered into as of _____, 2020, between the City of Carson, a California charter city (“City”), and Plenitude Holdings, LLC, a Wyoming limited liability company (“Plenitude” or the “Developer”) regarding the design, construction and operation of The Creek at Dominguez Hills Project. The Developer and the City shall also sometimes be referred to herein as the “Parties”. The County of Los Angeles (“County”) hereby acknowledges and approves this Agreement as a third party beneficiary of the terms and conditions herein.

RECITALS

WHEREAS, the County is the owner of the property located at 340 East Martin Luther King Jr. Street, City of Carson known as the Victoria Golf Course, consisting of approximately one hundred sixty seven (167) acres (the “Site”); and

WHEREAS, the Site is located within the City of Carson, and the City is committed to providing its residents with recreational opportunities and services; and

WHEREAS, the Site has been proposed for a comprehensive redevelopment, whereby the Carol Kimmelman Athletic and Academic Campus, Inc., a non-profit entity, (the “Foundation”) proposes to develop approximately eighty (80) acres of the Site, which will include a tennis center, sports fields, and a youth-focused learning center. Separately, on the other half of the Site, encompassing approximately ninety-four (94) acres (“Project Site”), Developer is proposing to construct a major new commercial development consisting of half a million square feet on the Project Site, including a multi-use indoor sports complex, a marketplace, clubhouse, indoor sky-diving facility, enhanced driving range, youth learning center, and various restaurants and auxiliary retail uses as detailed in the DEIR (defined below) (the “Development” or “Project”); and

WHEREAS, the City supports the Development in concept but has concerns regarding the lack of certain critical analysis and environmental imposed that will be imposed on the City in connection with the Draft Environmental Impact Report dated May 2019 (State Clearinghouse No. 2018081078) (“DEIR”), as enumerated in detail in its comment letters to the Initial Study and DEIR for the Development, dated September 27, 2018 and June 26, 2019; and

WHEREAS, the City has further continually asserted its right to be the proper permitting and approval authority over the Development (including as a lead agency under CEQA and as the entitlement issuing body), given the fact that the Project Site is located in the City and the City asserts that the Development will have direct impacts on the City’s public infrastructure, public services, and residents, and further the City asserts that it is in the best position to understand the full scope and scale of the environmental impacts posed by the Development; and

WHEREAS, the Parties have reached agreement on the terms and conditions contained within this Agreement to address the City’s concerns; and

WHEREAS, accordingly, subject to the terms and conditions of this Agreement, the City agrees not to challenge the Development and the Final Environmental Impact Report (“FEIR”); and

WHEREAS, the City reserves the right to enforce violations of the Agreement as well as all other violations of applicable law and/or City’s code provisions and regulations except as expressly set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived therefrom, the Parties hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to set out the terms and conditions under which the City and Developer agree to cooperatively work together to address the potential impacts of the Project. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that Plenitude shall be fully responsible and liable to the City for performance of all of the Developer’s obligations under this Agreement and the monetary obligations enumerated in this Agreement.

II. DEVELOPMENT

The Development will include and provide for the following:

A. City & Resident Access to Project Development Facilities

1. The City, and its constituent entities, shall have exclusive access to the following facilities for a combined cumulative total of 10 non-peak days per year, upon 60 days prior written notice to Developer from City (designating the specific facility requested by the City and the timeframe for such use). City shall be responsible for the costs associated with such usage or event hosted within the facilities (including damage to facilities (normal wear and tear expected)) but shall not be charged any fee for use of the facilities (including parking fees).

(a) The multi-use indoor sports complex and adjacent outdoor sports field;
and

(b) The clubhouse.

2. City residents who are seniors or students shall be entitled to a 20% discount on all usage fees or charges imposed on or by the Development’s various facilities and operators such as zipline adventure course, Skydiving, and enhanced driving range/putting green, except for food, beverage, and merchandise and parking costs.

B. Branding and Wayfinding Programs

1. The Developer will collaboratively with the City to develop and implement

a branding program along Avalon Boulevard (“Avalon Blvd”), focused on exemplary athletes, which shall highlight the City as a “partner” for the Development. The Developer shall contribute \$100,000 to the City by the Payment Date (defined below) to fund the finalized improvements and programs, which may include street banners, utility wraps, and civic art. The focus of the program will be around the perimeter of the Site on Avalon Blvd, extending north towards the Dignity Health Sports Park, however, within reason, it may include off-site wayfinding approaches.

2. The City will also be acknowledged on all construction signage for the Project.

C. Infrastructure Investments/Improvements

In addition to the improvements to traffic circulation requirements set forth under the DEIR, the Developer shall complete or cause to be completed the following road improvements at the sole cost and expense of the Developer:

1. The City shall have the right to review, require changes to, and reasonably approve, all improvement plans for such areas prior to commencement. City shall have inspection rights over all improvements to ensure conformance with the City’s generally applicable street plans/standards. Improvements shall include:

(a) Install traffic signals, pedestrian improvements, and other improvements as required by the DEIR Mitigation Measures MM-TRAF 1 through 18, based on the actual / ultimate costs for same; all of which must be installed / completed by the earlier of December 31, 2022 or the date the Temporary Certificate of Occupancy is issued (the “Completion Date”).

(b) Pay for traffic signals and pedestrian improvements at Avalon and Del Amo Blvd., fair share for signals and pedestrian improvements at Avalon at 192nd / MLK Blvd, Avalon/189th/University, Avalon and Elsmere, and Avalon and Turmont (for an estimated total of \$1,017,000). Developer must deposit such amount with the City by June 30, 2021 (the “Payment Date”).

(c) Developer shall be entitled to a DIF credit in the actual amount of the costs for installing / providing for the following improvements (and only the following improvements):

- Main and I-405
- Avalon and Del Amo
- Figueroa and Del Amo

2. Developer shall provide funding for and/or construct gutter and sidewalk repairs along Avalon Blvd. in the amount of \$96,000 as determined by the City and subject to approval of the City’s public works department. The City shall have the right to review, require changes to, and reasonably approve, all improvement plans for such improvements prior to commencement. The City shall have inspection rights over all improvements to ensure

conformance with the City's generally applicable street plans/standards. If Developer elects to install such improvements itself, it must complete them by the Completion Date, but if Developer elects to pay the City to install such improvements, such payment must be made by Developer to the City by the Payment Date (for City to have adequate time to complete bidding and construction by the Completion Date).

3. Developer shall provide funding for and/or upgrade 8 light poles along the west side of Avalon Blvd. adjacent to the Project Site in an amount up to \$80,000, which upgrades as determined by the City and subject to approval of the City's public works department. The City shall have the right to review, require changes to, and reasonably approve, all improvement plans for such improvements prior to commencement. The City shall have inspection rights over all improvements to ensure conformance with the City's generally applicable street plans/standards. If Developer elects to install such improvements itself, it must complete them by the Completion Date, but if Developer elects to pay the City to install such improvements, such payment must be made by Developer to the City by the Payment Date (for City to have adequate time to complete bidding and construction by the Completion Date).

4. Improvements to Avalon Blvd adjacent to the Project Site shall include:

(a) Bike lane improvements consistent with the City's Master Plan of Bikeways ("Bike Plan"), including a buffer between the bike lane and roadway, provided that they are limited to painting and do not require road construction/reconstruction. In addition, the Developer shall work with appropriate entities including the County of Los Angeles and the Los Angeles County Flood Control District, using reasonable efforts and after conducting appropriate due diligence, in order for the City to secure an easement or use agreement (which all reasonable efforts will be taken to execute by January 31, 2021) along the southern/western edge of the Property and along Del Amo, as set forth in Exhibit A, attached hereto, to allow for a bike path through the Property. The Developer shall additionally provide a by-pass bike lane within the Project in lieu of building a bridge along the Dominguez Channel.

(b) The Developer will install landscaping on the west side of Avalon Blvd along the entirety of the Project Site within private property and the public right of way. The Developer will meet and consult with the City regarding the proposed landscaping plan prior to installation. Landscaping plans on the west side of Avalon Blvd. which are in the City's right of way are subject to approval by the City prior to implementation.

(c) The Developer understands that the City is studying landscaping and beautification options along the east side of Avalon Blvd. The Developer will meet with the City prior to the commencement of construction of the Development and will work in good faith with the City to collaborate on opportunities and to possibly contribute towards reasonable plans on beautification of the exterior fencing on the east side of Avalon Blvd. which could possibly then be implemented during construction of the Development.

5. The Developer shall prepare improvement plans for all work to be performed in the Avalon Blvd. public right of way consistent with the City's generally applicable street standards and all applicable State and Federal requirements for such improvements. The plans shall be submitted to the City, reviewed, and approved by the City consistent with its general

street improvement standards prior to start of construction of improvements in the public right of way. City shall inspect all improvements within the Avalon Blvd. right of way to ensure they are built per the City's general street plans and standards prior to accepting the improvements. The City will commit to review and process all permits in a timely fashion. The City also understands and commits to in good faith and in reasonable time frames to review and approve matters on which the City has the right to prioritize under this Agreement.

D. Municipal Services

1. Fire Services: The Fire Department has worked with the City to propose a \$0.87 cent per square foot "mitigation fee" per square foot of new building area that would apply to construction of new building structures throughout the service area (including the Site). Based on the current proposal's square-footage, the total fee is \$443,265 (based on 509,500 sq. ft.). Thus, the Developer shall contribute the commensurate amount of funding to the City based upon the actual gross square footage of the building structures/areas constructed within the Development. The funds will be used towards construction of a fire station in City of Carson. If the City of Carson does not receive proof of full funding for the construction of the Carson Fire Station by July 1, 2021, the funds will be transferred to the City of Carson, provided that the City shall only use such funds for the construction of the Carson Fire Station, or alternatively the funds shall be transferred to a Consolidated Fire Protection District to be held for the construction of the Carson Fire Station.

2. Sheriff/Public Safety: The Sheriff/Public Safety plan shall be as follows:

a. During construction, the Developer shall institute commercially reasonable security measures to provide for the safety and security of the Development and the surrounding area. Following the opening of the Development for public patronage, the Developer shall provide (either directly or through contracting with a reputable third-party security company) commercially reasonable security for the Development in a manner comparable to such security services as are provided for comparable facilities in Los Angeles County. The Developer shall prepare and present to the County a security operation plan and an evacuation plan for the Development, which shall take into consideration any potential "spill over impacts from the Development" into the City ("Security Plan"). The Developer shall meet with the Los Angeles County Sheriff's Department, including the Captain for the City ("LASD"), the Los Angeles County Fire Department ("Fire Department"), and City representatives to obtain input on the draft Security Plan. Ninety (90) days prior to the opening of the Development for public patronage, the Developer shall submit the Security Plan to the County (with a copy provided to the City), which shall be subject to review and reasonable approval by the LASD (including input from the Sheriff's Captain for the City), and the Fire Department, respectively.

b. All reasonable changes, amendments or recommendations to the Security Plan that are requested or required by LASD (including the Captain for the City) and the Fire Department shall be implemented by the Developer prior to the opening of the Development for public patronage. The Developer shall, in good faith also consider any recommendations by the City to the Security Plan. The final Security Plan shall address any potential "spill-over impacts from the Development" into the City.

c. For Special Events (as defined in the Ground Lease) requiring additional coverage from LASD for security, traffic control, or additional coverage from the Fire Department for emergency response as set forth in the Security Plan, the Developer shall notify the LASD (including the Captain for the City) and the Fire Department thirty (30) days prior to the commencement of each Special Event. If additional law enforcement officers or Fire Department personnel are required by LASD or the Fire Department pursuant to the Security Plan, the Developer shall reimburse the LASD and the Fire Department within thirty (30) days following receipt of request for payment for such services. The Developer shall pay the cost for extraordinary services incurred due to any major disorders requiring support from LASD and the Fire Department.

d. The County, the Developer, the LASD (including the Captain for the City), the Fire Department and City representatives shall meet annually to discuss the Security Plan. Based on these meetings, if there is a necessity to revise the Security Plan, the Developer shall prepare a revised Security Plan, which shall be subject to reasonable approval by the LASD, including the Captain for the City, and the Fire Department. Further, if the Developer or the County propose any material changes to the Security Plan after its adoption, the LASD, including the Captain for the City, the Fire Department, and City representatives shall be immediately notified by the Developer. The Developer shall discuss in good faith with the City representatives any new terms to the Security Plan and consider the City's comments. Any proposed amendments after adoption of the Security Plan shall continue addressing any potential "spill-over impacts from the Development" into the City, which shall be subject to review and reasonable approval of LASD (including the Captain for the City) and the Fire Department.

3. Maintenance. All maintenance for the Development and Project Site (including all roads, sidewalks, lights, landscaping, facilities, utilities and infrastructure) will be the Developer's responsibility, including, without limitation, and subsidence issues caused by the underlying soil conditions of the Site.

E. City DIF and CFD Payments

1. DIF. Developer shall be required to pay the City's Development Impact Fees ("DIF") as set forth in Ordinance No. 19-1931 equal to a minimum of \$2,338,605; provided, however, the City recognizes and acknowledges the infrastructure improvements required under the FEIR by Developer for the Project, which Developer is entitled to a credit for (based on the actual costs of such infrastructure). Therefore, subject to the construction or in lieu payment of construction cost of such infrastructure improvements and Developer's compliance with the mitigation measures and requirements under the FEIR, Developer shall be entitled to a credit to the DIF payments in the maximum amount of \$1,451,527. Therefore, the total amount of DIF due prior to issuance of building permits is \$887,078.

2. CFD. Developer shall be required to pay an annual fee contribution in the amount of \$160,000 per year to the City as a partial payment of the otherwise required City-Wide Community Facilities District (CFD No. 2018-01) (the "CFD"); provided, however, in the event Developer does not ultimately construct the infrastructure improvements required under the FEIR (including the mitigation measures specified therein), Developer shall be required to pay the full annual payments of \$300,000 required under the CFD. The first such payment shall be made on

or before the Completion Date, and thereafter, in annual installments on the anniversary of such date. Any failure of payment by Developer, shall bear interest at a rate of ten percent (10%) per annum commencing on the date of such payment failure until fully paid.

F. Development Permitting

1. In consideration of the agreements, terms and conditions herein, the City agrees that the Development may be permitted directly by the County (except with respect to improvements within the City's public right-of-way, which shall be subject to the City's municipal code requirements). Subject to the terms and conditions of this Agreement, City waives any rights the City may have, if any, to act as the permitting or lead agency for the Development.

2. The City shall be entitled to advertise the Development as part of the City's economic development growth.

3. This Agreement does not alter any obligations the County may have under the California Environmental Quality Act ("CEQA") or challenges that may be asserted against the FEIR, or any liability resulting from future changes in use of the Site beyond the Development approved under the FEIR that may require future discretionary actions and additional environmental review pursuant to CEQA.

III. CITY APPROVAL

In consideration for the Developer's commitments, covenants and obligations set forth in this Agreement, the City hereby agrees to: (i) support the Development in all respects; (ii) withdraw in writing its prior comments and questions on the environmental review and approvals for the Development, including those certain letters dated September 27, 2018 and June 26, 2019, respectively, submitted by the City to the County with respect to certain objections to the Development; and (iii) not oppose or challenge in any way the FEIR, or the County's approval of the Development; (iv) not oppose or challenge in any way any other agencies' approvals needed for the implementation of the development of the Development.

IV. CONFORMANCE WITH THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE DEVELOPMENT

The Developer will fully implement, comply with, and enforce all of the mitigation measures set forth in the FEIR for the Development. The requirements of this Agreement should be considered additive to and not in place of such mitigation measures. In the event of a conflict in the requirements of the two documents, the more stringent requirement will apply.

V. QUARTERLY COMMUNITY MEETINGS

The Developer shall meet quarterly with City representatives to insure ongoing compliance with the terms set forth in this Agreement, and the City may request the County participate as needed. These meetings shall continue until they are jointly determined to no longer be necessary by the County, City, and the Developer.

As the implementation of the Development occurs, if the Developer or City finds that the terms of this Agreement need any adjustment or revision, the Developer commits to meet and confer in good faith with the City on any proposed changes.

VI. AMENDMENTS

This Agreement may only be amended by mutual consent of the City and Developer. Neither verbal agreements nor conversation by any officers, employees and/or representatives of either Party shall affect or modify any of the terms and conditions of the Agreement.

VII. GENERAL PROVISIONS

A. Applicable Law

The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation arises with respect to this Agreement, the venue shall be in the Superior Court of Los Angeles County. The Parties hereto shall be bound by all federal, state and local laws, ordinances, regulations, and directives pertaining to the services to be performed hereunder.

B. Notices

Any notices, requests, demands, documents approvals or disapprovals given or sent under this Agreement from one party to another (each a “Notice”, and collectively, the “Notices”) shall be given to the party entitled thereto at its address set forth below or at such other address as such party may provide to the other Parties in writing. Any such Notice may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; or (ii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the Notice is directed as set forth below:

To City:	City of Carson 701 East Carson St. Carson, CA 90745 Attention: City Manager
With a Copy to:	Aleshire & Wynder, LLP 18881 Von Karman Ave., Suite 1700 Irvine, CA 92612 Attention: Sunny Soltani
To Developer:	Plenitude Holdings <hr/> <hr/> Attention: Randy Blanchard
With Copies to:	County of Los Angeles 500 W Temple Street Room 723 Los Angeles, California 90012 Attention: David Howard

Shopoff Realty Investments, LP
2 Park Plaza, Suite 700
Irvine, CA 92614
Attention: Brian Rupp and William Shopoff

Gromet & Associates
114 Pacifica, Suite 250
Irvine, CA 92618
Attention: Stevan Gromet

C. Rights and Remedies Are Cumulative

Except as otherwise expressly stated herein, the rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party. Except as otherwise expressly stated herein, neither party is waiving any rights or remedies it may have under applicable law, and no such waiver will be implied or inferred in the absences of express language of any such waiver.

D. Attorneys' Fees

Each party shall bear its own attorneys' fees and other costs in any legal action or other proceeding or an action for declaratory relief brought between the Parties to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement.

E. Further Acts

Each party hereto shall execute such further documents and do such further acts as may be reasonably required to effectuate the Parties' intent and carry out the terms of this Agreement.

R. Severability

If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions.

G. Counterparts

This Agreement may be signed in one or more counterparts, each of which shall constitute an original and which collectively shall constitute one instrument. The signature of any party to this Agreement transmitted to any other party by facsimile or e-mail shall be deemed an original signature of the transmitting party.

H. Authority; Binding Effect; Transfers; Successors & Assigns

The persons executing this Agreement on behalf of a party hereby represents and warrants that (i) the signatory hereto has authority to sign on behalf of the stated party, (ii) such authority has been duly and validly conferred by that party's governing body (or the organizational documents binding on such party), and (iii) said party has full authority to enter into this Agreement, and (iv) by so executing this Agreement said party is formally bound to the provisions of this Agreement. Each and all of the covenants, terms and conditions hereunder shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns, including without limitation, any future owner or operator of the Project. The foregoing sentence shall not be construed as an authorization for any party to assign any right or obligation hereunder. Developer shall not assign or transfer its rights or obligations under this Agreement without the prior written consent of the City granted in its sole discretion. This Agreement shall be binding upon and shall inure to the benefit of Developer and the City and their respective heirs, personal representatives, successors and assigns.

I. Indemnity

To the full extent permitted by law, Developer agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the performance of, or failure to perform, the obligations under this Agreement (including its maintenance obligations) by Developer, its officers, employees, agents, subcontractors, or any individual or entity for which Developer is legally liable ("indemnitors"), and in connection therewith: (i) Developer will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith; (ii) Developer will promptly pay any judgment rendered against the Indemnified Parties for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform the obligations of Developer hereunder (including its maintenance obligations), and Developer agrees to save and hold the City, its officers, agents, and employees harmless therefrom; and (iii) in the event any Indemnified Parties are made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the performance of or failure to perform the obligations of Developer hereunder, Developer agrees to pay to the Indemnified Parties, any and all costs and expenses incurred by the Indemnified Parties in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

J. Third Party Beneficiaries

The County, as the owner of the Site, is hereby made an express third party beneficiary of this Agreement and may enforce any violations of this Agreement by Developer independent of any actions taken by City. Other than the County, there are no third party beneficiaries under this Agreement.

K. Term

This Agreement shall be effective upon execution by both Parties. It shall remain in full force and effect for the term of Developer's ground lease with the County for the Project Site (including any successor or assign to Developer's interest thereunder), unless terminated sooner by: (i) the mutual written agreement by the Parties, or (ii) the decision by the Developer not to proceed with the Development, or (iii) the County disapproving the Development.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and Plenitude have each executed this Agreement effective as of the date first written above, and the County has acknowledged the terms of this Agreement by its signature below.

CITY OF CARSON, a California charter city

By: _____
Name:
Title:

ATTEST:

By: _____
Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:

By: _____
Sunny K. Soltani, City Attorney

PLENITUDE HOLDINGS, LLC,
a Wyoming limited liability company

By: _____
Name/Title:

ACKNOWLEDGMENT AND APPROVAL
BY THE COUNTY WITH RESPECT TO
THE SPECIFIC TERMS APPLICABLE
TO THE COUNTY:

COUNTY OF LOS ANGELES

By: _____
Name/Title:

APPROVED AS TO FORM:

Rodrigo A. Castro-Silva
Acting County Counsel

By: _____
Deputy

EXHIBIT A

EASEMENT DEPICTION FOR BIKE PATH

