

# **AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

## **PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

### **(IMPROVEMENT AREA: 6)**

WHEREAS the undersigned Subdivider/Developer (hereinafter "Subdivider"), has submitted its Final Map for the above-referenced project (hereinafter "Project") to San Bernardino County (hereinafter "County") for approval; and

WHEREAS Subdivider desires to complete the required improvements for the Final Map on a per area basis (hereinafter "Improvement Area"), covering seven (7) different Improvement Areas in the Project; and

WHEREAS Subdivider has not completed all of the work for Improvement Area 6 of the Project, or made all of the improvements required by Title 8 of the County Code or such other ordinances of County requiring construction of improvements in conjunction with land divisions, subdivisions, and the like for Improvement Area 6 of the Project, hereinafter collectively referred to as "said ordinance"; and

WHEREAS Subdivider desires to enter into this agreement (hereinafter "Agreement") to provide for the completion of the work and making of the improvements for Improvement Area 6 of the Project and to furnish security for the performance of this Agreement and to guarantee the work for a period of one year following the completion and final acceptance by the County in accordance with the provisions of said ordinance and County Code.

NOW THEREFORE, in consideration of the approval of said Final Map by County, and as a condition of such approval, Subdivider promises and agrees at Subdivider's own expense to do all of the work and make all of the improvements required by said ordinance for Improvement Area 6 of the Project as follows:

1. The list of work and improvements as shown on Page 4 hereof is only a general designation of the work and improvements for Improvement Area 6 of the Project and is not intended to limit the work required on the approval of amended plans and specifications referred to in Paragraph 2 below.

2. All of said work shall be done and improvements made and completed which are shown on and in strict compliance with the Street Improvement Plans for Parcel Map No. 20478, approved by the San Bernardino County Land Use Services Department on April 2, 2024, and any subsequent alterations thereto. Any subsequent alterations in said plans and specifications and the work to be performed may be accomplished without first giving prior notice thereof to Surety, unless the estimated cost of any changes or alterations in said work exceeds ten percent (10%) of the original estimated cost of the improvements, then the consent of the Surety shall be obtained. Absent such consent, the Surety's obligations shall not exceed the cost of improvements to be constructed under the originally approved plans prior to any alteration. In no event shall any alteration result in exonerating the Surety's obligations.

3. All work required in this Agreement shall be completed and improvements made within two (2) years from the date of this Agreement, unless such time is extended by County upon written application of Subdivider. Subdivider shall maintain the work performed and the improvements in accordance with this Agreement for one (1) year following the completion and final acceptance by the County of the work and improvements.

4. The making of an application for an extension of time by Subdivider shall, upon the granting of the application by County, constitute a waiver by Subdivider of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by County within a period of four (4) years immediately following the date to which the time of performance is extended.

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5. Subdivider further agrees that any and all grading done or to be done in conjunction with the development of said project shall conform to the requirements of San Bernardino County Code and any other applicable ordinances regulating excavations and fills (e.g., grading regulations) and shall be completed within the period of time described above and prior to the acceptance by or on behalf of the County of the work and improvements, in order that the improvements will not be endangered by improper drainage or other hazards.

6. From Subdivider's commencement of the work through the date that is one (1) year after the completion and final acceptance by the County of the work and improvements, Subdivider promises and agrees to maintain all of:

A. Road and Drainage: Repair of pavement, curbs, gutters, sidewalks, parkways, drainage facilities, and removal of debris from drainage facilities, sweeping, repairing and maintaining in good and safe condition all streets and street improvements.

B. Sewer System: Repair of sewer system, and removal of debris from sewer system; repairing and maintaining in good and safe condition all sewer system improvements.

C. Water System: Repair and/or removal of debris from the water system; repairing and maintaining in good and safe condition the water system improvements.

D. It shall be Subdivider's responsibility to initiate the work described in this Paragraph.

1. If Subdivider should fail to do so Subdivider shall promptly perform such maintenance when notified in writing to do so by the County Director of Public Works.

2. If Subdivider fails to properly perform the maintenance required hereunder, the County may exercise its self-help rights pursuant to and in accordance with Section 9.A below.

7. Subdivider agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever prior to final acceptance by the County of all the work and improvements constructed under this Agreement, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Subdivider's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

8. If Subdivider fails to install all or any part of the improvements required by this Agreement within the time set forth herein, or fails to comply with any other obligation contained herein, and such failure continues more than thirty (30) calendar days after the County provides Subdivider with written notice of the same, Subdivider shall be liable to the County for any administrative expenses and attorney's fees incurred in obtaining compliance with this Agreement and any such expenses and fees incurred in bringing any action for damages or for any other remedies permitted by law.

## **AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

### **PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

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9. Upon default of any obligation hereunder (beyond any applicable cure period), and at any time after any such default (beyond any applicable cure period), County may make written demand upon Subdivider to immediately remedy the default or complete the work.

A. If said remedial activities or completion of work are not commenced within thirty (30) calendar days after such demand is made and are not thereafter diligently prosecuted to completion and fully completed within ninety (90) calendar days after the making of such demand, County may, after providing Subdivider with an additional ten (10) calendar days' prior written notice, complete or arrange for completion of all remaining work or conduct such remedial activity as in the sole judgment of County may be required, all at the full expense and obligation of Subdivider.

B. In the event County elects to complete or arrange for completion of remaining work and improvements, the County may require all work by Subdivider to cease in order to permit adequate coordination by the County for completing any remaining work and improvements.

10. All work and improvements done pursuant to this Agreement shall conform to the standards applicable at the time the work is actually commenced.

11. Should Subdivider fail to commence or complete improvements required by this Agreement, then County may elect, as permitted by law, to revert subdivided property to acreage. In this event, the cost of the processing of the property back to acreage shall be paid directly by Subdivider and shall be secured by the securities required by this Agreement.

12. Subdivider shall provide security in amounts as shown on Page 4 hereof to:

A. Guarantee performance under this Agreement.

B. Guarantee payment to any contractors, subcontractors, and persons furnishing labor, materials and equipment to them for the performance of the work herein described.

C. Guarantee the work for a period of one year following completion and final acceptance thereof by County against any defective work or labor done, or defective materials furnished.

13. Subdivider acknowledges and agrees to County regulations governing signs and advertising structures.

A. Subdivider agrees and consents to removal by County of all signs erected, placed, or situated in violation of any County ordinance governing size, location, or required permits.

B. Removal shall be at the expense of the Subdivider and Subdivider shall indemnify, defend (with counsel reasonably approved by County) and hold harmless the County from any and all claim, action or demand arising out of or incurred as a result of such removal, consistent with the provisions set forth in Paragraph 7 above.

C. Subdivider agrees that said signs may be erected only pursuant to a permit issued by the County upon payment of necessary fees or deposits.

14. Except as provided below, Subdivider shall have the right to transfer its fee interest in parcels within Improvement Area 6 of the Project (or any portion thereof) and to assign this Agreement to said

## **AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

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transferee (in whole or in part) in conjunction with said transfer with the prior written consent of the County's Chief Executive Officer. Notwithstanding the foregoing, Subdivider agrees to promptly notify Surety and County of any such transfer of subject tract or of any interest therein whether voluntary or involuntary and agrees to condition any voluntary transfer of the tract upon (i) prior assumption of the obligations contained herein by the transferee in the form attached hereto as Exhibit "A" ("Assignment and Assumption Agreement") approved by the County's Chief Executive Officer; and (ii) prior assumption of the obligations contained in the approved securities, as required by Section 12. If the requested transfer requires a substitute security or additional security, said transfer shall require the approval of the County's Board of Supervisors. Failure to comply with the terms of this section shall give County the right, upon twenty (20) calendar days' prior written notice to Subdivider and Surety, to declare a default and thereafter pursue any action for damages or for any other remedies permitted by law. Notwithstanding the foregoing or anything to the contrary in this Agreement, Subdivider shall have the unrestricted right to transfer its fee interest in any or all of the legal parcels located within Improvement Area 6 of the Project to any entity(ies) that (directly or indirectly) control(s), is(are) controlled by, or is(are) under common control with Speedway SBC Development, LLC, a Delaware limited liability company (each a "Related Entity"), and, in such event: (a) this Agreement need not be assigned to the Related Entity(ies); (b) Speedway SBC Development, LLC shall remain fully responsible for the obligations of Subdivider hereunder; (c) the Securities posted by Speedway SBC Development, LLC shall remain in place (and need not be replaced by the Related Entity(ies)) as security for SBC Development, LLC's performance of this Agreement; and (d) said transfer(s) shall not require the County's prior written consent, but Subdivider shall promptly provide the County with written notice of the transfer to a Related Entity and Subdivider's election not to assign this Agreement in connection therewith.

**AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

**PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA: 6)**

(I) Work and improvements shall consist of:

Construction of Road & Drainage Improvements for Improvement Area 6 of the Project as shown on the Street Improvement Plans for **PARCEL MAP NO. 20478**, approved by **San Bernardino County Land Use Services Department** on April 2, 2024.

|                 |                           |                        |
|-----------------|---------------------------|------------------------|
| (II) (Security) | Performance               | <u>\$ 2,498,000.00</u> |
|                 | Labor and Material        | <u>\$ 1,249,000.00</u> |
|                 | Other: Guarantee/Warranty | <u>\$ 249,800.00</u>   |

Said securities shall be in the form \_\_\_\_\_ Bond  
(Cash, Bond, Instrument of Credit, etc.)

**SUBDIVIDER:**

SPEEDWAY SBC DEVELOPMENT, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Scott Morse  
Title: Executive Vice President  
Date: \_\_\_\_\_

ADDRESS: 901 Via Piemonte, Suite 175  
Ontario, CA 91764  
[scott.morse@hillwood.com](mailto:scott.morse@hillwood.com)

PHONE: (909) 382-0033

SAN BERNARDINO COUNTY

Date of Agreement \_\_\_\_\_

By: \_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

**ATTEST:**

Signed and Certified that a copy of this document has been delivered to the Chairman of the Board  
LYNNA MONELL  
Clerk of the Board of Supervisors  
of San Bernardino County

Approved as to legal form  
TOM BUNTON, County Counsel

\_\_\_\_\_  
Date \_\_\_\_\_

By: \_\_\_\_\_  
(Deputy)

**EXHIBIT "A"**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**ASSIGNMENT AND CONSENT TO ASSIGNMENT TO THE AGREEMENT FOR  
CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS  
PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

This ASSIGNMENT AND CONSENT TO ASSIGNMENT TO THE AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478 (IMPROVEMENT AREA 6) ("Assignment") is entered into as of \_\_\_\_\_, 20\_\_, by Speedway SBC Development, LLC, a Delaware limited liability company ("Assignor"), \_\_\_\_\_ ("Assignee"), and San Bernardino County, a California county ("Consentee" or "County"). Assignor, Assignee, and County are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS:**

**WHEREAS**, on \_\_\_\_\_, 20\_\_, Board Agenda Item No. \_\_\_\_, Assignor and County entered into that certain Agreement for Construction and Maintenance of Improvements Project: Road & Drainage Improvements – Parcel Map No. 20478 (Improvement Area 6) ("Agreement") as a condition precedent to County's acceptance of the final map for Parcel Map No. 20478; and

**WHEREAS**, as a condition to the Agreement, Assignor and \_\_\_\_\_ ("Surety") furnished the required faithful performance bond and labor and material bond ("Securities") to ensure the construction and warranty of required development infrastructure and to secure payment to the contractor, subcontractor, and persons furnishing labor, materials, or equipment for the improvements for Parcel Map No. 20478; and

**WHEREAS**, Section 14 of the Agreement requires Assignor to notify Surety and County of any transfer of Parcel Map No. 20478 and condition any transfer upon the (i) assumption of the obligations contained in the Agreement to the transferee in a form approved by the County; and (ii) the assumption of the obligations contained in the approved Securities; and

**WHEREAS**, Assignee desires to assume all of Assignor's obligations under the Agreement, including, but not limited to, the completion of the required work and improvements, maintenance of said work, defense and indemnification of any challenges to said Agreement, and to provide security in amounts required by the County ("Obligations"), provided that the County consents and agrees to the assignment, and to acquire all of Assignor's right, title and interest in and to the Agreement.

**NOW THEREFORE**, for good and valuable consideration, the Parties agree as follows:

**ASSIGNMENT**

1. Assignor and Assignee hereby agree that the Assignor shall assign all its right, title and interest, and delegate all its Obligations, responsibilities and duties in and to the Agreement, to Assignee as of the effective date of this Assignment.

2. Assignee hereby accepts the assignment of all of Assignor's Obligations, responsibilities and duties under the Agreement and all of Assignor's right, title and interest in the Agreement.

3. The County, pursuant to Section 14 of the Agreement, hereby consents to Assignor's assignment of the Agreement to Assignee. By so doing, Assignee promises and agrees at Assignee's own expense to do all of the work and make all of the improvements required by the Agreement.

4. The County, in executing its consent to the Assignment, does not release Assignor from any claims or remedies it may have against Assignor under the Agreement or Securities for obligations incurred prior to the effective date of this Assignment.

5. The Parties agree that the Assignment is contingent upon the assumption of the obligations contained in the approved securities, as required by Section 12 of the Agreement.

**IN WITNESS THEREOF**, the Parties hereto have executed this Assignment to the Agreement as of the last date listed below.

**ASSIGNOR:**

Speedway SBC Development, LLC

By: \_\_\_\_\_  
(Authorized notarized signature – sign in blue ink)

Name: \_\_\_\_\_  
(Print or type name of person signing)

Title: \_\_\_\_\_  
(Print or type)

Date: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Authorized notarized signature – sign in blue ink)

Name: \_\_\_\_\_  
(Print or type name of person signing)

Title: \_\_\_\_\_  
(Print or type)

Date: \_\_\_\_\_

**CONSENTEE:**

SAN BERNARDINO COUNTY

By: \_\_\_\_\_  
(Authorized notarized signature – sign in blue ink)

Name: Luther Snoke \_\_\_\_\_  
(Print or type name of person signing)

Title: Chief Executive Officer \_\_\_\_\_  
(Print or type)

Date:

**FAITHFUL PERFORMANCE BOND**

**PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

Bond Number: \_\_\_\_\_

WHEREAS, the Board of Supervisors of San Bernardino County, State of California, and Speedway SBC Development LLC, a Delaware Limited Liability Company (hereinafter referred to as "Principal") have entered into a subdivision agreement whereby Principal agrees to install and complete certain designated public improvements for improvement area: 6 of Parcel Map No. 20478, which said agreement, dated June 11, 2024, and identified as Agreement for Construction and Maintenance of Improvements, Project: Road & Drainage Improvements – Parcel Map No. 20478 (Improvement Area 6) (hereinafter referred to as "Agreement") is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said Agreement to furnish a bond for the faithful performance of said Agreement, and to guarantee the work for a period of one year.

NOW, THEREFORE, we, the Principal and \_\_\_\_\_  
\_\_\_\_\_, whose place of business is \_\_\_\_\_  
\_\_\_\_\_, a corporation organized and doing business under and by virtue of the laws of the State of \_\_\_\_\_, and duly licensed by the State of California for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as Surety, are held and firmly bound unto San Bernardino County, in the sum of **TWO MILLION FOUR HUNDRED NINETY EIGHT THOUSAND DOLLARS (\$2,498,000.00)**, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, their or its heirs, executors, administrators, successors, or assigns, shall in all things stand to or abide by, and well and truly keep and perform the covenants, conditions and provisions in the said Agreement and any alteration thereof made as therein provided, on their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless San Bernardino County, its officers, agents and employees as therein stipulated, then this obligation shall be come null and void; otherwise it shall be and remain in full force and effect.

The Surety and Principal further agree that in the event the work and improvements are not commenced or completed within the time allowed by the said Agreement or any extensions thereof as may be granted by San Bernardino County, they shall be jointly and severally liable to San Bernardino County for any and all costs incurred by San Bernardino County in completing the required improvements; including any administrative expenses and attorney's fees incurred in obtaining completion of the required improvements or any such fees and expenses incurred in bringing any action for damages or for any other remedies permitted by law.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including



**FAITHFUL PERFORMANCE BOND**

**PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

reasonable attorney's fees, incurred by San Bernardino County in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety and Principal further agree that **ten** percent of the face amount of this bond will remain in effect and continue after completion and acceptance of the work and improvements by San Bernardino County for one year from the date of acceptance to guarantee said improvements against any defective work or labor done, or defective materials furnished, in performance of the Agreement with San Bernardino County.

The Surety hereby stipulates and agrees that no change, extension of time, alternation or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alternation or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, said Principal and said Surety have caused this performance bond to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Speedway SBC Development, LLC  
Principal Name (PRINT/TYPE)

\_\_\_\_\_  
Surety Name (PRINT/TYPE)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Name of Person That Can Accept  
Service on Behalf of Surety (Print/Type)

\_\_\_\_\_  
Address Where Service Can Be Made

## LABOR AND MATERIAL BOND

**PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

Bond Number: \_\_\_\_\_

WHEREAS, the Board of Supervisors of San Bernardino County, State of California, and Speedway SBC Development LLC, a Delaware Limited Liability Company (hereinafter referred to as "Principal") have entered into a subdivision agreement whereby Principal agrees to install and complete certain designated public improvements for improvement area: 6 of Parcel Map No. 20478, which said agreement, dated June 11, 2024, and identified as Agreement for Construction and Maintenance of Improvements, Project: Road & Drainage Improvements – Parcel Map No. 20478 (Improvement Area 6) (hereinafter referred to as "Agreement") is hereby referred to and made a part hereof; and

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with San Bernardino County to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, the Principal and the undersigned as corporate surety, are held firmly bound unto San Bernardino County and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **ONE MILLION TWO HUNDRED FORTY NINE THOUSAND DOLLARS (\$1,249,000.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by San Bernardino County in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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**LABOR AND MATERIAL BOND**

**PROJECT: ROAD & DRAINAGE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Speedway SBC Development, LLC

Principal Name (PRINT/TYPE)

\_\_\_\_\_  
Surety Name (PRINT/TYPE)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Name of Person That Can Accept  
Service on Behalf of Surety (Print/Type)

\_\_\_\_\_  
Address Where Service Can Be Made

# AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

## PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478

### (IMPROVEMENT AREA: 6)

WHEREAS the undersigned Subdivider/Developer (hereinafter "Subdivider"), has submitted its Final Map for the above-referenced project (hereinafter "Project") to San Bernardino County (hereinafter "County") for approval; and

WHEREAS Subdivider desires to complete the required improvements for the Final Map on a per area basis (hereinafter "Improvement Area"), covering seven (7) different Improvement Areas in the Project; and

WHEREAS Subdivider has not completed all of the work for Improvement Area 6 of the Project, or made all of the improvements required by Title 8 of the County Code or such other ordinances of County requiring construction of improvements in conjunction with land divisions, subdivisions, and the like for Improvement Area 6 of the Project, hereinafter collectively referred to as "said ordinance"; and

WHEREAS Subdivider desires to enter into this agreement (hereinafter "Agreement") to provide for the completion of the work and making of the improvements for Improvement Area 6 of the Project and to furnish security for the performance of this Agreement and to guarantee the work for a period of one year following the completion and final acceptance by the County in accordance with the provisions of said ordinance and County Code.

NOW THEREFORE, in consideration of the approval of said Final Map by County, and as a condition of such approval, Subdivider promises and agrees at Subdivider's own expense to do all of the work and make all of the improvements required by said ordinance for Improvement Area 6 of the Project as follows:

1. The list of work and improvements as shown on Page 4 hereof is only a general designation of the work and improvements for Improvement Area 6 of the Project and is not intended to limit the work required on the approval of amended plans and specifications referred to in Paragraph 2 below.

2. All of said work shall be done and improvements made and completed which are shown on and in strict compliance with the Landscape Plans for Parcel Map No. 20478, approved by the San Bernardino County Land Use Services Department on May 2, 2024, and any subsequent alterations thereto. Any subsequent alterations in said plans and specifications and the work to be performed may be accomplished without first giving prior notice thereof to Surety, unless the estimated cost of any changes or alterations in said work exceeds ten percent (10%) of the original estimated cost of the improvements, then the consent of the Surety shall be obtained. Absent such consent, the Surety's obligations shall not exceed the cost of improvements to be constructed under the originally approved plans prior to any alteration. In no event shall any alteration result in exonerating the Surety's obligations.

3. All work required in this Agreement shall be completed and improvements made within two (2) years from the date of this Agreement, unless such time is extended by County upon written application of Subdivider. Subdivider shall maintain the work performed and the improvements in accordance with this Agreement for one (1) year following the completion and final acceptance by the County of the work and improvements.

4. The making of an application for an extension of time by Subdivider shall, upon the granting of the application by County, constitute a waiver by Subdivider of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by County within a period of four (4) years immediately following the date to which the time of performance is extended.

# **AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

## **PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

### **(IMPROVEMENT AREA: 6)**

5. Subdivider further agrees that any and all grading done or to be done in conjunction with the development of said project shall conform to the requirements of San Bernardino County Code and any other applicable ordinances regulating excavations and fills (e.g., grading regulations) and shall be completed within the period of time described above and prior to the acceptance by or on behalf of the County of the work and improvements, in order that the improvements will not be endangered by improper drainage or other hazards.

6. From Subdivider's commencement of the work through the date that is one (1) year after the completion and final acceptance by the County of the work and improvements, Subdivider promises and agrees to maintain all of:

A. Road and Drainage: Repair of pavement, curbs, gutters, sidewalks, parkways, drainage facilities, and removal of debris from drainage facilities, sweeping, repairing and maintaining in good and safe condition all streets and street improvements.

B. Sewer System: Repair of sewer system, and removal of debris from sewer system; repairing and maintaining in good and safe condition all sewer system improvements.

C. Landscape and Water System: Repair and maintain all landscape improvements; repair and/or removal of debris from the water system; repairing and maintaining in good and safe condition the water system improvements.

D. It shall be Subdivider's responsibility to initiate the work described in this Paragraph.

1. If Subdivider should fail to do so Subdivider shall promptly perform such maintenance when notified in writing to do so by the County Director of Public Works.

2. If Subdivider fails to properly perform the maintenance required hereunder, the County may exercise its self-help rights pursuant to and in accordance with Section 9.A below.

7. Subdivider agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever prior to final acceptance by the County of all the work and improvements constructed under this Agreement, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Subdivider's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

8. If Subdivider fails to install all or any part of the improvements required by this Agreement within the time set forth herein, or fails to comply with any other obligation contained herein, and such failure continues more than thirty (30) calendar days after the County provides Subdivider with written notice of the same, Subdivider shall be liable to the County for any administrative expenses and attorney's fees incurred in obtaining compliance with this Agreement and any such expenses and fees incurred in bringing any action for damages or for any other remedies permitted by law.

## **AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

### **PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

#### **(IMPROVEMENT AREA: 6)**

9. Upon default of any obligation hereunder (beyond any applicable cure period), and at any time after any such default (beyond any applicable cure period), County may make written demand upon Subdivider to immediately remedy the default or complete the work.

A. If said remedial activities or completion of work are not commenced within thirty (30) calendar days after such demand is made and are not thereafter diligently prosecuted to completion and fully completed within ninety (90) calendar days after the making of such demand, County may, after providing Subdivider with an additional ten (10) calendar days' prior written notice, complete or arrange for completion of all remaining work or conduct such remedial activity as in the sole judgment of County may be required, all at the full expense and obligation of Subdivider.

B. In the event County elects to complete or arrange for completion of remaining work and improvements, the County may require all work by Subdivider to cease in order to permit adequate coordination by the County for completing any remaining work and improvements.

10. All work and improvements done pursuant to this Agreement shall conform to the standards applicable at the time the work is actually commenced.

11. Should Subdivider fail to commence or complete improvements required by this Agreement, then County may elect, as permitted by law, to revert subdivided property to acreage. In this event, the cost of the processing of the property back to acreage shall be paid directly by Subdivider and shall be secured by the securities required by this Agreement.

12. Subdivider shall provide security in amounts as shown on Page 4 hereof to:

A. Guarantee performance under this Agreement.

B. Guarantee payment to any contractors, subcontractors, and persons furnishing labor, materials and equipment to them for the performance of the work herein described.

C. Guarantee the work for a period of one year following completion and final acceptance thereof by County against any defective work or labor done, or defective materials furnished.

13. Subdivider acknowledges and agrees to County regulations governing signs and advertising structures.

A. Subdivider agrees and consents to removal by County of all signs erected, placed, or situated in violation of any County ordinance governing size, location, or required permits.

B. Removal shall be at the expense of the Subdivider and Subdivider shall indemnify, defend (with counsel reasonably approved by County) and hold harmless the County from any and all claim, action or demand arising out of or incurred as a result of such removal, consistent with the provisions set forth in Paragraph 7 above.

C. Subdivider agrees that said signs may be erected only pursuant to a permit issued by the County upon payment of necessary fees or deposits.

14. Except as provided below, Subdivider shall have the right to transfer its fee interest in parcels within Improvement Area 6 of the Project (or any portion thereof) and to assign this Agreement to said

## **AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

### **PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

#### **(IMPROVEMENT AREA: 6)**

transferee (in whole or in part) in conjunction with said transfer with the prior written consent of the County's Chief Executive Officer. Notwithstanding the foregoing, Subdivider agrees to promptly notify Surety and County of any such transfer of subject tract or of any interest therein whether voluntary or involuntary and agrees to condition any voluntary transfer of the tract upon (i) prior assumption of the obligations contained herein by the transferee in the form attached hereto as Exhibit "A" ("Assignment and Assumption Agreement") approved by the County's Chief Executive Officer; and (ii) prior assumption of the obligations contained in the approved securities, as required by Section 12. If the requested transfer requires a substitute security or additional security, said transfer shall require the approval of the County's Board of Supervisors. Failure to comply with the terms of this section shall give County the right, upon twenty (20) calendar days' prior written notice to Subdivider and Surety, to declare a default and thereafter pursue any action for damages or for any other remedies permitted by law. Notwithstanding the foregoing or anything to the contrary in this Agreement, Subdivider shall have the unrestricted right to transfer its fee interest in any or all of the legal parcels located within Improvement Area 6 of the Project to any entity(ies) that (directly or indirectly) control(s), is(are) controlled by, or is(are) under common control with Speedway SBC Development, LLC, a Delaware limited liability company (each a "Related Entity"), and, in such event: (a) this Agreement need not be assigned to the Related Entity(ies); (b) Speedway SBC Development, LLC shall remain fully responsible for the obligations of Subdivider hereunder; (c) the Securities posted by Speedway SBC Development, LLC shall remain in place (and need not be replaced by the Related Entity(ies)) as security for SBC Development, LLC's performance of this Agreement; and (d) said transfer(s) shall not require the County's prior written consent, but Subdivider shall promptly provide the County with written notice of the transfer to a Related Entity and Subdivider's election not to assign this Agreement in connection therewith.

**AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**

**PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA: 6)**

(I) Work and improvements shall consist of:

Construction of Landscape Improvements for Improvement Area 6 of the Project as shown on the Landscape Plans for **PARCEL MAP NO. 20478**, approved by **San Bernardino County Land Use Services Department** on May 2, 2024.

|                 |                           |                      |
|-----------------|---------------------------|----------------------|
| (II) (Security) | Performance               | <u>\$ 165,000.00</u> |
|                 | Labor and Material        | <u>\$ 82,500.00</u>  |
|                 | Other: Guarantee/Warranty | <u>\$ 16,500.00</u>  |

Said securities shall be in the form \_\_\_\_\_ Bond  
(Cash, Bond, Instrument of Credit, etc.)

**SUBDIVIDER:**

SPEEDWAY SBC DEVELOPMENT, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Scott Morse  
Title: Executive Vice President  
Date: \_\_\_\_\_

ADDRESS: 901 Via Piemonte, Suite 175  
Ontario, CA 91764  
[scott.morse@hillwood.com](mailto:scott.morse@hillwood.com)

PHONE: (909) 382-0033

SAN BERNARDINO COUNTY

Date of Agreement \_\_\_\_\_

By: \_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

**ATTEST:**

Signed and Certified that a copy of this document has been delivered to the Chairman of the Board  
LYNNA MONELL  
Clerk of the Board of Supervisors  
of San Bernardino County

Approved as to legal form  
TOM BUNTON, County Counsel

\_\_\_\_\_  
Date \_\_\_\_\_

By: \_\_\_\_\_  
(Deputy)



**EXHIBIT "A"**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**ASSIGNMENT AND CONSENT TO ASSIGNMENT TO THE AGREEMENT FOR  
CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS  
PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

This ASSIGNMENT AND CONSENT TO ASSIGNMENT TO THE AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478 (IMPROVEMENT AREA 6) ("Assignment") is entered into as of \_\_\_\_\_, 20\_\_, by Speedway SBC Development, LLC, a Delaware limited liability company ("Assignor"), \_\_\_\_\_ ("Assignee"), and San Bernardino County, a California county ("Consentee" or "County"). Assignor, Assignee, and County are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS:**

**WHEREAS**, on \_\_\_\_\_, 20\_\_, Board Agenda Item No. \_\_\_\_, Assignor and County entered into that certain Agreement for Construction and Maintenance of Improvements Project: Landscape Improvements – Parcel Map No. 20478 (Improvement Area 6) ("Agreement") as a condition precedent to County's acceptance of the final map for Parcel Map No. 20478; and

**WHEREAS**, as a condition to the Agreement, Assignor and \_\_\_\_\_ ("Surety") furnished the required faithful performance bond and labor and material bond ("Securities") to ensure the construction and warranty of required development infrastructure and to secure payment to the contractor, subcontractor, and persons furnishing labor, materials, or equipment for the improvements for Parcel Map No. 20478; and

**WHEREAS**, Section 14 of the Agreement requires Assignor to notify Surety and County of any transfer of Parcel Map No. 20478 and condition any transfer upon the (i) assumption of the obligations contained in the Agreement to the transferee in a form approved by the County; and (ii) the assumption of the obligations contained in the approved Securities; and

**WHEREAS**, Assignee desires to assume all of Assignor's obligations under the Agreement, including, but not limited to, the completion of the required work and improvements, maintenance of said work, defense and indemnification of any challenges to said Agreement, and to provide security in amounts required by the County ("Obligations"), provided that the County consents and agrees to the assignment, and to acquire all of Assignor's right, title and interest in and to the Agreement.

**NOW THEREFORE**, for good and valuable consideration, the Parties agree as follows:

**ASSIGNMENT**

1. Assignor and Assignee hereby agree that the Assignor shall assign all its right, title and interest, and delegate all its Obligations, responsibilities and duties in and to the Agreement, to Assignee as of the effective date of this Assignment.

2. Assignee hereby accepts the assignment of all of Assignor's Obligations, responsibilities and duties under the Agreement and all of Assignor's right, title and interest in the Agreement.

3. The County, pursuant to Section 14 of the Agreement, hereby consents to Assignor's assignment of the Agreement to Assignee. By so doing, Assignee promises and agrees at Assignee's own expense to do all of the work and make all of the improvements required by the Agreement.

4. The County, in executing its consent to the Assignment, does not release Assignor from any claims or remedies it may have against Assignor under the Agreement or Securities for obligations incurred prior to the effective date of this Assignment.

5. The Parties agree that the Assignment is contingent upon the assumption of the obligations contained in the approved securities, as required by Section 12 of the Agreement.

**IN WITNESS THEREOF**, the Parties hereto have executed this Assignment to the Agreement as of the last date listed below.

**ASSIGNOR:**

Speedway SBC Development, LLC

By: \_\_\_\_\_  
(Authorized notarized signature – sign in blue ink)

Name: \_\_\_\_\_  
(Print or type name of person signing)

Title: \_\_\_\_\_  
(Print or type)

Date: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Authorized notarized signature – sign in blue ink)

Name: \_\_\_\_\_  
(Print or type name of person signing)

Title: \_\_\_\_\_  
(Print or type)

Date: \_\_\_\_\_

**CONSENTEE:**

SAN BERNARDINO COUNTY

By: \_\_\_\_\_  
(Authorized notarized signature – sign in blue ink)

Name: Luther Snoke \_\_\_\_\_  
(Print or type name of person signing)

Title: Chief Executive Officer \_\_\_\_\_  
(Print or type)

Date:

**FAITHFUL PERFORMANCE BOND**

**PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

Bond Number: \_\_\_\_\_

WHEREAS, the Board of Supervisors of San Bernardino County, State of California, and Speedway SBC Development LLC, a Delaware Limited Liability Company (hereinafter referred to as "Principal") have entered into a subdivision agreement whereby Principal agrees to install and complete certain designated public improvements for improvement area: 6 of Parcel Map No. 20478, which said agreement, dated June 11, 2024, and identified as Agreement for Construction and Maintenance of Improvements, Project: Landscape Improvements – Parcel Map No. 20478 (Improvement Area 6) (hereinafter referred to as "Agreement") is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said Agreement to furnish a bond for the faithful performance of said Agreement, and to guarantee the work for a period of one year.

NOW, THEREFORE, we, the Principal and \_\_\_\_\_  
\_\_\_\_\_, whose place of business is \_\_\_\_\_  
\_\_\_\_\_, a corporation organized and doing business under and by virtue of the laws of the State of \_\_\_\_\_, and duly licensed by the State of California for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as Surety, are held and firmly bound unto San Bernardino County, in the sum of **ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000.00)**, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, their or its heirs, executors, administrators, successors, or assigns, shall in all things stand to or abide by, and well and truly keep and perform the covenants, conditions and provisions in the said Agreement and any alteration thereof made as therein provided, on their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless San Bernardino County, its officers, agents and employees as therein stipulated, then this obligation shall be come null and void; otherwise it shall be and remain in full force and effect.

The Surety and Principal further agree that in the event the work and improvements are not commenced or completed within the time allowed by the said Agreement or any extensions thereof as may be granted by San Bernardino County, they shall be jointly and severally liable to San Bernardino County for any and all costs incurred by San Bernardino County in completing the required improvements; including any administrative expenses and attorney's fees incurred in obtaining completion of the required improvements or any such fees and expenses incurred in bringing any action for damages or for any other remedies permitted by law.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by San Bernardino County in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

**FAITHFUL PERFORMANCE BOND**

**PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

The Surety and Principal further agree that **ten** percent of the face amount of this bond will remain in effect and continue after completion and acceptance of the work and improvements by San Bernardino County for one year from the date of acceptance to guarantee said improvements against any defective work or labor done, or defective materials furnished, in performance of the Agreement with San Bernardino County.

The Surety hereby stipulates and agrees that no change, extension of time, alternation or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alternation or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, said Principal and said Surety have caused this performance bond to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Speedway SBC Development, LLC

Principal Name (PRINT/TYPE)

\_\_\_\_\_  
Surety Name (PRINT/TYPE)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Name of Person That Can Accept  
Service on Behalf of Surety (Print/Type)

\_\_\_\_\_  
Address Where Service Can Be Made

## LABOR AND MATERIAL BOND

PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478

(IMPROVEMENT AREA 6 )

Bond Number: \_\_\_\_\_

WHEREAS, the Board of Supervisors of San Bernardino County, State of California, and Speedway SBC Development LLC, a Delaware Limited Liability Company (hereinafter referred to as "Principal") have entered into a subdivision agreement whereby Principal agrees to install and complete certain designated public improvements for improvement area: 6 of Parcel Map No. 20478, which said agreement, dated June 11, 2024, and identified as Agreement for Construction and Maintenance of Improvements, Project: Landscape Improvements – Parcel Map No. 20478 (Improvement Area 6) (hereinafter referred to as "Agreement") is hereby referred to and made a part hereof; and

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with San Bernardino County to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, the Principal and the undersigned as corporate surety, are held firmly bound unto San Bernardino County and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **EIGHTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$82,500.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by San Bernardino County in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

**LABOR AND MATERIAL BOND**

**PROJECT: LANDSCAPE IMPROVEMENTS – PARCEL MAP NO. 20478**

**(IMPROVEMENT AREA 6 )**

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Speedway SBC Development, LLC

Principal Name (PRINT/TYPE)

\_\_\_\_\_  
Surety Name (PRINT/TYPE)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Signature (MUST BE NOTARIZED)

\_\_\_\_\_  
Name of Person That Can Accept  
Service on Behalf of Surety (Print/Type)

\_\_\_\_\_  
Address Where Service Can Be Made