

**CONFIDENTIAL SEPARATION AGREEMENT AND RELEASE**

This Agreement is entered into on \_\_\_\_\_, 20\_\_\_\_, by and between (hereinafter "Employee") and \_\_\_\_\_(hereinafter "Employer"). Said parties shall be collectively referred to as the "Parties." Employee is currently employed as an \_\_\_\_\_for Employer. During the course of Employee's employment issues arose concerning Employee's availability for continued employment. The Parties mutually desire 'to settle all of their present and possible future differences, disputes, or claims relating to and arising out of the employment and, therefore, the Parties agree as follows:

1.       CONSIDERATION AND REVOCATION PERIODS. This Agreement was presented to Employee on \_\_\_\_\_Employee has [21 or 45] days to consider, at which time the offer of Agreement is no longer valid. Following execution by Employee, Employee may revoke acceptance of this Agreement, provided Employee does so in a writing which must be hand delivered to Employer's [President] within seven (7) days of the date Employee signs this Agreement.

2.       EFFECTIVE DATE OF AGREEMENT. The effective date of this Agreement ("Effective Date:) will be at 5:01 p.m. on the eighth (8th) day after the Employer receives Employee's signed Agreement, provided Employee has not previously revoked acceptance on or before that date.

3.       SEPARATION TERMS. Employee agrees not to contest his separation from employment as of \_\_\_\_\_, 20\_\_\_\_ ("Separation Date") and to release all claims set for herein. Employee agrees that, as of the Separation Date, he will have already returned any and all equipment or other property belonging to Employer. In return, Employer agrees to pay Employee severance pay in the total amount equal to [\_\_\_\_\_]. This amount is in addition to compensation provided as final wages owed. The severance pay will be paid on Employer's first regular payday following the Effective Date of this Agreement. The payment shall be subject to all lawful deductions and taxes applicable to Employee's wages, and further subject to the terms and conditions contained herein.

4.       GENERAL RELEASE. Employee voluntarily and irrevocably releases and discharges Employer and its shareholders, directors, officers, employees, fiduciaries, agents, successors, and assigns (collectively, "Released Parties") from and against any and all individual relief claims,

obligations, debts, demands, judgments, or causes of action of any kind whatsoever, known or unknown, actual or contingent, whether brought at law, in equity or otherwise, based on tort, contract, statute, or on any other basis, which Employee has or may have against any of them or liability they may have to Employee (collectively, "Claims"), which arise from or are related to employee's employment or relationship with the Employer or any other Released Party, Employee's separation from employment from any of them, or any other matter, cause or thing whatsoever which may have occurred involving Employee and any Released Party prior to the date of Employee's acceptance of this Agreement. This release also includes all Claims for equitable relief, actual, compensatory, consequential, punitive, special, multiple, or other damages, expenses (including without limitation attorneys' fees and court costs. This release includes, without limitation, any and all Claims Employee has or may have against the Employer or any other Released Party arising under any federal, state, local, or foreign statute, common or other law, including without limitation those relating to the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Civil Rights Acts of 1866, 1871, 1964 and 1991, the Equal Pay Act of 1963, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, the Fair Labor Standards Act of 1938, the Family and Medical Leave Act of 1993, the Labor Management Relations Act of 1947, the National Labor Relations Act, the Rehabilitation Act of 1973, the California Labor Code, the California Fair Employment and Housing Act.

5. CIVIL CODE SECTION 1542 WAIVER. Employee agrees that the Released Claims include not only claims presently known to Employee but also include all unknown or unanticipated claims. Employee understands that he may later discover facts different from what they now believe to be true, which if known, could have materially affected this Agreement, but he nevertheless waives any claims or rights based on different or additional facts. Employee knowingly and voluntarily waives any and all rights or benefits that he may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXISTS IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding the provisions of Section 1542, this Agreement is also intended to include all claims which Employee does not know or suspect to exist at the time this Agreement's execution.

6. NO ACTIONS. Employee affirms that he currently has no action, charge, or administrative claim pending before any court of law, governmental body, or administrative agency, either on the federal or state level. [IF EXISTING CLAIM, CONSIDER STATEMENT OBLIGATING EMPLOYEE TO REQUEST DISMISSAL OR ADVISE EEOC OF SETTLEMENT TO EE'S SATISFACTION]. Employee agrees he will not at any time in the future pursue any employment personnel appeal or internal grievance or file any claim for individual relief with any governmental agency or any court arising out of or in any way related to his employment. Employee affirms that he is unaware of any issue relating to Employer's non-compliance with regulatory obligations, [and Employee undertakes the duty to notify Employer, in writing if such non-compliance becomes known.]

7. RELEASE CARVE OUT. Notwithstanding the provisions of paragraphs 4-6, Employee's released claims shall not include any claims based on obligations created by or reaffirmed in this Agreement, nor shall Employee's released claims include claims which expressly cannot be waived according to California Labor Code Section 2804. Nor shall anything in this Agreement be construed to prohibit Employee from filing a charge with or participating in any investigation or proceeding conducted by the National Labor Relations Board (NLRB), U.S. Equal Employment Opportunity Commission (EEOC), California Department of Fair Employment and Housing (DFEH), or any other governmental agency. Notwithstanding the foregoing, Employee hereby agrees to, and does, waive his right to recover monetary damages in any charge or lawsuit filed by Employee or anyone else on his behalf.

**[CONSIDER: DTSA NOTIFICATION:** Notwithstanding my confidentiality obligations set forth in Section \_\_\_\_\_ of this Agreement, I understand that, pursuant to the Defend Trade Secrets Act of 2016, I will not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. I understand that in the event it is determined that disclosure of Company trade secrets was not done

in good faith pursuant to the above, I will be subject to substantial damages, including punitive damages and attorneys' fees.]

8. **NO RE-EMPLOYMENT.** As of the date of this Agreement, Employee has not applied for, sought, or accepted re-employment with Employer. Employee knowingly and voluntarily waives all rights he may have under federal or state law to reinstatement and acknowledges that Employer may, in its discretion, refuse to consider any application for re-employment.

9. **NO DEFAMATION.** The Employee may not disparage customers, suppliers, or vendors nor may Employee defame Employer, its management, its employees, agents, officers, shareholders, or affiliates. Employee agrees to refrain from making public statements regarding his subjective opinion regarding Employer. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 7.

10. **CONFIDENTIALITY.** The Parties acknowledge that they have not discussed or disclosed any of the terms of this Agreement to anyone, except for their attorneys or union representatives. Except as such disclosure may occur to Employee's attorneys or accountants or as otherwise may be required by law, or in response to any subpoena, Employee agrees the terms of this Agreement and all negotiations between the Parties shall be kept strictly confidential and neither the details of the negotiations, the terms of this Agreement, or Employee's subjective opinion relating to the negotiations, the Agreement, or his prior employment may be disclosed to anyone, including without limitation, any person, corporation, or other business entity for any purpose. Should any inquiry be made, the Employee may respond only by indicating that the separation was amicable. Should any inquiry be made about Employee by a prospective employer, Employer's human resources personnel may respond to such questions only by indicating dates of employment, his job title, and his salary at the time of his separation.

If Employee becomes legally compelled by deposition, subpoena, interrogatory, request for documents, or similar legal process, he shall immediately notify the Employer telephonically and confirmed in writing, so that the Employer will have the opportunity to intervene. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 7.

11. **NO ASSIGNMENT.** The Parties hereto each warrant that they have made no assignment and will make no assignment of any claim, right of action, or any right of any kind whatsoever

embodied in any of the Released Claims and that no other person or entity of any kind had or has any interest in the same.

12. **NO ADMISSION OF LIABILITY.** This Agreement is solely for the purpose of compromising on the issue of separation of employment. It does not constitute, nor shall it be construed, as an admission of the truth or validity of any claims asserted. All communications made in conjunction with this Agreement shall be governed and protected in accordance with the Federal Rule of Evidence 408 and California Evidence Code sections 1150, et seq.

13. **ENTIRE AGREEMENT.** This is the entire Agreement between the Parties pertaining to the separation of employment or any disputes or claims arising during the course of employment, and it supersedes all prior or contemporaneous agreements, negotiations, or discussions, whether oral or written, express or implied. No supplements, modifications, or waivers of this Agreement shall be binding unless executed by written amendment.

14. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, including those executed by facsimile, each of which shall be deemed an original but all of which taken together shall constitute one Agreement.

15. **ATTORNEYS' FEES.** In the event of legal proceedings to enforce the terms of this Agreement, necessary to declare rights hereunder, or as the result of the breach of this Agreement, the prevailing party in any such proceeding shall be entitled to recover from the losing party reasonable costs and attorneys' fees, including but not limited to the out-of-pocket expenses of attorneys and out-of-pocket expenses of experts.

16. **NEGOTIATED AGREEMENT.** Employee acknowledges and agrees that Employer has recommended use of independent counsel or labor representation, if relevant, throughout all negotiations that preceded the execution of this Agreement. Any choice to forgo such use is of the Employer's own will. This Agreement is the result of arms-length negotiations and expresses the complete, actual, and intended agreement of the Parties.

17. **WAIVER & SEVERABILITY.** Failure to insist on compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of the same. If any provision is held to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent

permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT AND ARE SIGNING VOLUNTARILY.

Date: \_\_\_\_\_, 2021

\_\_\_\_\_  
Gabriel Martin, EMPLOYEE

CITY OF COACHELLA

Date: \_\_\_\_\_, 2021

By: \_\_\_\_\_  
\_\_\_\_\_  
Mayor