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DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF COACHELLA

AND

EMPIRE AIRPORT, LLC

TABLE OF CONTENTS

Page

Page

Page

Exhibits

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF COACHELLA
AND
EMPIRE AIRPORT, LLC

THIS DEVELOPMENT AGREEMENT ("**Agreement**") dated for reference purposes only as of _____, 2026, and effective as of the Effective Date, is by and between the **City of Coachella**, a California municipal corporation ("**City**"), and **Empire Airport, LLC**, a California limited liability company ("**Developer**") pursuant to the authority of Sections 65864 *et seq.* of the California Government Code. City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**." An index of all capitalized defined terms is included at the end of this document.

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of City and Developer.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq*. of the Government Code (the "**Development Agreement Statute**"), which authorizes the City and a developer having a legal or equitable interest in real property to enter into a binding development agreement, establishing certain development rights in the property.

B. Developer is the owner of that certain real property located in the City of Coachella, County of Riverside, California and legally described on **Exhibit A** attached hereto and incorporated herein, (the "**Property**" or "**Project Site**"). The rights and obligations of Developer under this Agreement shall attach to all property currently owned by Developer, as described on Exhibit A, upon recordation of this Agreement. The Project Site is located at the northwest corner of the intersection of State Route 86 and Airport Boulevard in the City and is comprised of four parcels totaling approximately 47.96 acres in size. The Assessor's Parcel Numbers (APNs) for the Project Site are 763-330-013, 763-330-018, 763-330-029, and a portion of Cal Trans Deed DDB 25983-01-01.

C. The overall Project Site will include 42.36 acres of industrial uses with a 5.6-acre site for an Imperial Irrigation District ("**IID**") substation located at the northern end of the Project Site. Developer intends to develop the Property with a mixed-use business park, including warehouse space, small businesses, self-storage units and personal vehicle storage, a small retail and restaurant development, a billboard sign, a fuel station and convenience store, as well as associated landscaping, parking, and signage (the "**Project**") as depicted in **Exhibit B**. The Project is more fully described in, and subject to, (i) this Agreement, (ii) the Change of Zone No. 20-01from M-H (Heavy Industrial) to MS (Manufacturing Services) and C-G (General Commercial) approved by the City Council on _____ by Resolution No. _____, (iii) the Environmental Impact Report prepared for the Project, approved and certified by the City Council on _____ by City Council Resolution No. _____ (the "**Project EIR**"),

(iv) Conditional Use Permit Nos. 324, 325 and 326 approved by the City Council on _____ by City Council Resolution No. _____, (v) Architectural Review No. 20-04 approved by the City Council on _____ by City Council Resolution No. _____, (vi) any future discretionary or ministerial approvals and/or permits issued for the Project (collectively, the "**Project Site Development Permits**"), and (vii) the conditions of approval associated with each and all of the foregoing approvals (collectively, the "**Conditions of Approval**"). The documents, permits, approvals, and conditions described in the foregoing clauses (i) through (vii) are collectively referenced herein as the "**Project Approvals**" or "**Entitlements**."

D. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if the City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing, and proceeding with construction of the Project.

E. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate. This Development Agreement will eliminate or reduce uncertainty regarding Project Approvals, thereby encouraging planning for, investment in, and commitment to the use and development of the Property. Development of the Project will in turn provide substantial employment and property and sales tax benefits as well as other public benefits, thereby achieving the goals and purposes for which the Development Agreement Statute was enacted.

F. The City Council has determined that this Agreement is consistent with the City's General Plan, including the goals and objectives thereof.

G. All actions taken by the City in connection with approving this Agreement have been duly taken in accordance with all applicable legal requirements, including the California Environmental Quality Act (*Public Resources Code* Section 21000, et seq.) ("**CEQA**"), and all other requirements for notice, public hearings, findings, votes and procedural matters. In connection therewith, the City Council has found and determined that this Agreement is consistent with and part of the Project Approvals and that all potentially significant environmental effects of those Project Approvals, as well as feasible measures to mitigate those effects to the maximum extent feasible, have been analyzed, disclosed and mitigated as set forth in the Project EIR.

H. On _____, 2026, the City Council adopted its Ordinance No.___ approving this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals of fact and the mutual covenants and promises set forth herein, the City and Developer hereby agree as follows:

AGREEMENT

ARTICLE 1
GENERAL PROVISIONS

1.1 **Incorporation of Preamble, Recitals, and Exhibits**. The preamble paragraph, Recitals, Exhibits, and any Appendices, and all defined terms contained therein, are hereby incorporated into this Agreement by this reference as if set forth in full.

1.2 **Definitions**. The capitalized terms used in this Agreement shall have the meanings set forth in **Appendix I** attached hereto and otherwise as defined in the body of this Agreement.

1.3 **Term**.

1.3.1 **Effective Date**. This Agreement shall become effective upon the later of (i) the date of execution of this Agreement by both Parties, and (ii) the effective date of Ordinance No. _____ approving this Agreement (the "**Effective Date**"). Notwithstanding the foregoing or any provision of this Agreement to the contrary, if after all appeals or time to appeal have been exhausted, a court of competent jurisdiction enters a final judgment or issuance of a final order directed to the City to set aside, withdraw, or abrogate the approval of this Agreement, then this Agreement shall be deemed to have no force or effect upon either Party.

1.3.2 **Term of Agreement**. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect thereafter for a period of ten (10) years **(**the "**Initial Term**"**)** unless extended pursuant to the mutual agreement of the Parties or earlier terminated as provided elsewhere in this Agreement. The term of this Agreement shall be extended from the end of the Initial Term for an additional period of ten (10) years, so long as Developer has commenced minimum improvements, including but not limited to the receipt of permits and commencement of construction for site grading for Phase 1 infrastructure improvements ("**Minimum Improvements**") for the Project during the Initial Term **("Additional Term")**. The Initial Term and the Additional Term are collectively referred to as the "**Term**". The Term has been established by the Parties in order to provide ample time to develop the Project and obtain the community benefits of the Project.

ARTICLE 2
APPLICABLE LAW

2.1 **Applicable Rules**. Except as otherwise expressly provided in this Agreement, during the Term, the Project Approvals, including any future applications for discretionary or ministerial approvals and/or permits necessary or convenient for implementation of the Project (collectively, "**Subsequent Approvals")** shall be processed, considered, reviewed, and acted upon in accordance with the rules, regulations, ordinances, and officially adopted policies of the City in full force and effect as of the Effective Date of this Agreement (collectively, the "**Applicable Rules**").

2.2 **Future Changes to Applicable Rules**.

2.2.1 To the extent any changes in the Applicable Rules, or any provisions of future general plans, specific plans, zoning ordinances, or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means) of the City (collectively, "**Future Changes to the Applicable Rules**") are not in conflict with the Vested Elements (as defined in Section 3.2 below), such Future Changes to the Applicable Rules shall be applicable to the Project.

2.2.2 Future Changes to the Applicable Rules shall be deemed to be in "conflict" with the Vested Elements if any one of the following would occur:

2.2.2.1 Alter or change any land use, including permitted or conditional uses, of the Project Site from that permitted under this Agreement and the Applicable Rules.

2.2.2.2 Limit or reduce the height or bulk of the Project, or any portion thereof, or otherwise require any reduction in the height or bulk of individual proposed buildings or other improvements from that permitted under this Agreement and the Applicable Rules.

2.2.2.3 Limit or reduce the density or intensity of the Project, or any portion thereof, or otherwise require any reduction in the square footage or number of proposed buildings, parking or loading spaces, or other improvements from that permitted under this Agreement and the Applicable Rules.

2.2.2.4 Except as otherwise provided in this Agreement, in any manner unreasonably control, delay, or limit the rate, timing, phasing, or sequencing of the approval, development, or construction of all or part of the Project.

2.2.2.5 Increase any Development Fees, except as expressly permitted by this Agreement.

2.2.2.6 Except as otherwise provided in this Agreement, materially increase (by an amount greater than 15%) the cost of performance of, or preclude compliance with, any provision of the Project Approvals.

2.2.2.7 Conflict with or materially increase the obligations of Developer under this Agreement.

2.2.2.8 Adversely affect in any material respect the rights of Developer under this Agreement.

2.2.2.9 Except as otherwise provided in this Agreement, limit or restrict the availability of public utilities, services, infrastructure, or facilities (for example, without limitation, water rights, water connection or sewage capacity rights, sewer connections, etc.) to the Project.

2.2.2.10 Except as expressly provided herein, impose limits or controls in the rate, timing, phasing, or sequencing of development of the Project beyond those existing on the Effective Date.

2.2.2.11 Limit or control the location of buildings, structures, grading, or other improvements of the Project inconsistently with or more restrictively than limitations included in the Project Approvals.

2.2.2.12 Apply to the Project any Future Changes to the Applicable Rules otherwise allowed by this Agreement that are not uniformly applied to all substantially similar types of development projects and project sites under the City's jurisdiction.

2.2.2.13 Require the issuance of additional permits or approvals by the City other than those required by the Applicable Rules.

2.2.2.14 Establish, enact, increase, or impose against the Project or Property any fees, assessments, or other monetary obligations other than those specifically permitted by this Agreement; provided, however, that the foregoing shall not prevent or limit the imposition or collection of any generally applicable real or personal property taxes with respect to the Property or any generally applicable sales, use, excise taxes, or business license fees with respect to any commercial uses within the Project.

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

2.2.2.16 Subject to Section 2.7, limit the processing of applications and approvals of Subsequent Approvals, including without limitation Future Changes to the Applicable Rules that require additional processing of such applications and approvals of Subsequent Approvals.

2.2.3 To the extent that Future Changes to the Applicable Rules conflict with the Vested Elements, they shall not apply to the Project and the Vested Elements shall apply to the Project, except as provided in this Section 2.2.3 and in Sections 2.3 through 2.6, inclusive. A Future Change in the Applicable Rules that conflicts with the Vested Elements shall nonetheless apply to the Property and the Project if, and only if (i) consented to in writing by Developer in its sole and absolute discretion; (ii) it is determined by the City, and evidenced through express findings, that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety as set forth in Section 2.4 below; (iii) required by changes in State or Federal law as set forth in Section 2.5 below; (iv) it consists of changes in, or new fees permitted by, Section 4.2.3.2; (v) it consists of revisions to, or new Uniform Code Regulations to the extent permitted by Section 2.3 below; or (vi) it is otherwise expressly permitted by this Agreement. In the event of any of the foregoing, the applicable Future Change to the Applicable Rules shall be deemed to be a part of the Applicable Rules.

2.2.4 Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties as provided for under Section 8.1, or terminated pursuant to Section 8.2, either Party may enforce this Agreement notwithstanding any Future Changes to the Applicable Rules.

2.3 **Applicability of Uniform Code Regulations**. Notwithstanding any provision herein to the contrary, nothing in this Agreement shall preclude the City from applying to the Project any provisions, requirements, rules, or regulations applicable across the City's jurisdiction that are contained at any time during the Term in the California Building Standards Code, as amended by the City in accordance with the California Health and Safety Code, including requirements of the applicable Building Code, Administrative Code, Energy Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code, or other applicable construction codes (collectively, "**Uniform Code Regulations**").

2.4 **Public Health and Safety Exception**. The City shall exercise its discretion under this Agreement and the Applicable Rules in a manner which is consistent with the public health, safety, and welfare. Notwithstanding any provision in this Agreement to the contrary, and in addition to application to the Project of Uniform Code Regulations, City shall retain, at all times, its authority to take any legally valid action necessary to protect persons or property from dangerous or hazardous conditions which create a threat to the public health or safety, including, without limitation, authority to condition or deny a permit, approval, or agreement or other entitlement or to change or adopt any new regulations applicable to the Project so long as such condition or denial or new law (i) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, and (ii) is based on written findings by City and transmitted to Developer, specifically identifying, based on objective and quantifiable evidence in the official record, the precise nature and extent of the dangerous or hazardous conditions requiring such condition or denial or change in the Applicable Rules, why there are no reasonable alternatives to the imposition of such condition or denial or changes in the law, and how such condition or denial or new law would alleviate the dangerous or hazardous condition ("**Public Health and Safety Exception**"). Developer retains the right to dispute any City reliance on the Public Health and Safety Exception.

2.5 **Changes in State or Federal Laws**. In accordance with Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date ("**State or Federal Law**") prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to determine the feasibility of any modification or suspension of this Agreement that may be necessary to comply with such State or Federal Law, to determine the effect such modification or suspension would have on the purposes and intent of this Agreement and the Vested Elements, and to prepare such modification. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such

an event, this Development Agreement together with any required modifications shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate materially and irremediably (a) the Vested Elements, or (b) the City's right to receive the community benefits as set forth in this Agreement, Developer, in the event of item (a), or the City, in the event of item (b), may terminate this Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation), at its sole cost, the State or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise, except that if the Term of this Development Agreement would otherwise terminate during the period of any such challenge and Developer has not commenced with the development of the Project in accordance with this Development Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge. If Developer raises such a challenge, then City agrees, upon Developer's written request and at Developer's sole cost and expense, to cooperate with Developer concerning Developer's challenge, which cooperation shall be subject to the provisions of Section 6.2; provided, however, that City shall not have any obligation to commence, prosecute, or defend any litigation with respect to any such challenge.

2.6 **CEQA**. Nothing in this Agreement shall be deemed to limit the City's ability to comply or compel Developer compliance with CEQA, including any mitigation measures in the EIR ("**Mitigation Measures**").

2.7 **Subsequent Approvals**.

2.7.1 Processing of Subsequent Approvals. To develop the Project as contemplated in this Agreement, the Project will require land use approvals, entitlements, development permits, and use and/or construction approvals other than the Initial Approvals, which may include, without limitation: development plans, conditional and administrative use permits, plot plans, tentative and final subdivision maps, street abandonments, design plan approvals, certificates of compliance, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right of way permits, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, encroachment permits, and amendments thereto and to the Project Approvals (collectively, "**Subsequent Approvals**"). City, provided Developer submits all legally required material, reports, and requisite data in order to deem any subsequent approvals complete, will accept, make completeness determinations, and process, promptly and diligently to completion, all applications for Subsequent Approvals in accordance with Applicable Rules and the terms of this Agreement. At such time as any Subsequent Approval is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a "**Project Approval**" under this Development Agreement.

2.7.2 Scope of Review of Subsequent Approvals. By approving the Initial Approvals and this Agreement, City has made a final policy decision that the Project is in

the best interests of the public health, safety, and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Initial Approvals or otherwise to prevent or delay development of the Project as set forth in the Initial Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. The scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Vested Elements as set forth and subject to Section 3.2 (and except as otherwise provided by Sections 2.2 through 2.6, inclusive, and other Applicable Rules). Where such conformity/compliance exists, City shall not deny an application for a Subsequent Approval.

2.7.3 Conditions of Subsequent Approvals.

2.7.3.1 City shall have the right to impose reasonable conditions upon Subsequent Approvals including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules, nor inconsistent with the development of the Project as contemplated by this Agreement except to the extent required by the Applicable Rules. Developer may protest any conditions, dedications, or fees while continuing to develop the Property. In the event of a protest by Developer, the City retains the right to pause any Subsequent Approval processes until the protest is resolved, to ensure that the Project proceeds in a manner consistent with the City's interests and regulations, but the City shall not withhold or delay any permit or other approval for any aspect of the Project not directly subject to the Subsequent Approval that is the subject of the protest.

2.7.3.2 Conditions imposed on Subsequent Approvals may only require dedications or reservations for, or construction or funding of, Public Improvements beyond those already included or referenced in the Initial Approvals, the Mitigation Measures (except to the extent required by CEQA in connection with any Subsequent Approvals) or Section 3.8.1, in the event of a Public Health and Safety Exception, as defined in Section 2.4 of this Agreement. In addition, any and all conditions imposed on Subsequent Approvals for the Project must comply with Section 4.2 (Payment of Fees and Costs).

2.8 **Regulatory Agency Approvals**. The Parties acknowledge and agree that, in addition to the Initial Approvals and any Subsequent Approvals, the Project, including the provision of some of the community benefits, may require Developer to obtain approvals or clearances from various Regulatory Agencies, other third-party public agencies and utilities (collectively, the "**Third-Party Agency Approvals**"). Without limitation, the Third-Party Agency Approvals may include approvals or clearances from the Coachella Valley Water District ("**CVWD**"), IID, the U.S. Army Corps of Engineers, the California Department of Fish & Wildlife, and the Regional Water Quality Control Board. Developer agrees to use diligent and commercially reasonable efforts to procure the Third-Party Agency Approvals. If requested by Developer, the City shall cooperate with Developer, at Developer's sole cost, in Developer's efforts to obtain the Third-Party Agency Approvals. If after using all reasonable efforts, Developer is unable to obtain

any Third-Party Agency Approval needed in order for Developer to develop the Project or meet its obligations under this Agreement, including providing the public benefits described in this Agreement, such inability shall constitute a Permitted Delay subject to the provisions of Section 11.6.

2.9 **Changes to Development Agreement Statute**. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed at the Effective Date. No amendment or addition to those provisions, which would materially affect the interpretation or enforceability of this Agreement, shall be applicable to this Agreement unless such amendment or addition is specifically required by the California Legislature, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in the Development Agreement Statute, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Agreement that may be necessary to comply with such change in law and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such change in law. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected by the same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability.

ARTICLE 3
DEVELOPMENT OF THE PROJECT

3.1 **Development Rights**. Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements.

3.2 **Vested Elements**. The overall design, development, construction, and use of the Project and all improvements in connection therewith, including without limitation, permitted uses of the Property, the maximum density of development, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for and financing for Public Improvements, and the other terms and conditions of development applicable to the Property are as set forth in the Project Approvals, and are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the "**Vested Elements**"). The intent of this Section 3.2 is to cause all development rights which may be required to develop the Project in accordance with this Agreement and the Project Approvals to be deemed to be "vested rights" as that term is defined under California law applicable to the development of land or property and the right of a public agency to regulate or control such development of land or property. City hereby agrees to be bound with respect to the Vested Elements, subject to Developer's full and timely compliance with the terms and conditions of this Agreement, the Project Approvals, and all Applicable Rules. By stating that the terms and conditions of this Agreement and the

Project Approvals control the overall design, development and construction of the Project, this Agreement is consistent with the requirements of California Government Code Section 65865.2 (requiring a development agreement to state permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes). Notwithstanding the preceding provisions of this Section 3.2 or any other provision in this Agreement to the contrary, in the event of any conflict between the terms and conditions of any Project Approvals (including Developer's rights and obligations thereunder) other than this Agreement, including without limitation any Subsequent Approvals, and the terms and conditions of this Agreement (including Developer's rights and obligations hereunder), the terms and conditions of this Agreement shall control.

3.3 **Life of Subdivision Maps and Other Project Approvals**.

3.3.1 Life of Subdivision Maps. The terms (lifespan) of the TTM and any other Subdivision Maps approved by the City for the Project shall be automatically extended such that the TTM and all such other Subdivision Maps remain in effect for a period of time coterminous with the Term of this Agreement, or such longer period as may be permitted under state law.

3.3.2 Life of Other Project Approvals. The term of all other Project Approvals, including all implementing approvals, conditional use permits ("CUPs"), and architectural review approvals, shall be automatically extended such that the Project Approvals remain in effect for the same term as the Term of this Agreement, with the exception of construction permit approvals, which shall be valid for the period of time identified within the applicable California Building Standards Code.

3.3.3 Termination of Agreement. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement for any reason other than a Developer Event of Default, the term of any Subdivision Map approved by the City for the Project or any other Project Approval, as well as the vesting period for any vesting Subdivision Map approved as a Project Approval, shall be the term otherwise applicable to such approval in accordance with the California Subdivision Map Act, which term shall commence to run on the date that such termination of this Agreement takes effect. In the event of any termination of this Agreement for a Developer Event of Default, the provisions of Section 8.2.3 shall govern with respect to the term of the Project Approvals.

3.4 **Compliance with CEQA**. Developer acknowledges that the development of the Project and the Project Site is subject to compliance with CEQA, including but not limited to any applicable Mitigation Measures as may be amended from time to time. The EIR, which has been certified by the City as being in compliance with CEQA, addresses the potential environmental impacts of the Project as it is described in the Initial Approvals. To the extent that the Project will require the issuance of Subsequent Approvals that are discretionary in nature, such Subsequent Approval shall be subject to review by the City during public hearings to the extent required by CEQA or other Applicable Rules. The City will rely on the previously-certified EIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA, and City will not

require a new initial study, negative declaration, EIR addendum, or subsequent or supplemental EIR unless required by CEQA and will not impose on the Project any additional mitigation measures other than specifically required by CEQA. Nothing in this Agreement shall limit the ability of the City to impose conditions on any Subsequent Approvals resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate significant environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by a Subsequent Approval; provided, however, any such conditions must be in accordance with CEQA. As used herein, "**Material Changes**" means the circumstances described in subparts (a), (b), and (c) of Public Resources Code Section 21166.

3.5 **Compliance with Project Approvals**. In developing the Project, Developer shall at all times comply with the Project Approvals and Applicable Rules, and Developer further agrees that all improvements required to be constructed by Developer for the Project (including all onsite improvements and offsite improvements) shall be constructed in accordance with this Agreement, the Project Approvals, and Applicable Law.

3.6 **Development Timing**.

3.6.1 *Pardee* Finding. Development of the Project Site is permitted to occur in phases as described and contemplated in **Exhibit C** ("**Construction Phasing**"). The Parties wish to avoid the result of *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), where the failure of the parties there to expressly provide for the timing of development resulted in the court's determination that a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Accordingly, the Parties acknowledge and agree that Developer shall have the right, subject to the provisions of the Project Approvals and the requirements of Sections 4.1 and 4.2 of this Agreement, to develop the Project at such time and in such phases as Developer deems appropriate in the exercise of its subjective business judgment.

3.7 **Final Subdivision Maps**. Developer may from time to time file applications for Subsequent Approvals of final subdivision maps (including phased final subdivision maps) with respect to some or all of the Project Site in accordance with the provisions of the Subdivision Map Act.

3.8 **Provision and Financing of Public Improvements**.

3.8.1 Construction and Dedication. Subject to the other provisions of this Agreement, Developer shall be responsible for the design, engineering, and construction of all roads, parks, drainage, sewer, water, and utility improvements, and all other infrastructure and improvements for the Project, including any onsite improvements or offsite improvements, that may or are to be dedicated or otherwise made available for public use pursuant to this Agreement or the Project Approvals ("**Public Improvements**"). Except as set forth in this Section 3.8.1 or otherwise agreed to in writing by the City, in its reasonable discretion, all Public Improvements necessary to serve any particular phase of

the Project shall be completed prior to the City's issuance of the first Certificate of Occupancy for any development within that phase or any earlier date specified in the Project Approvals.

3.8.2 3.8.2 Airport Boulevard Improvements. Developer shall dedicate and improve the portion of the Project Site fronting Airport Boulevard east of the Whitewater Bridge and west of the State Route 86 interchange boundary, from the northerly edge of the County Bridge widening improvement project up to the northerly edge of the Right of Way abutting the Project Site, as determined by the demands outlined in the traffic study performed as part of the Project EIR, and shall design and install a new traffic signal at the Project's main entrance at Airport Boulevard. (collectively, the "**Airport Boulevard Improvements**"). Developer may be eligible to receive credit against Transportation Uniform Mitigation Fees, Street and Transportation Development Impact Fee, and Bridge and Grade Separation Fees for the cost of the Airport Boulevard Improvements and land dedication to the extent the Airport Boulevard Improvements are included in the public facilities identified to be funded with such fees under a City capital improvement program or nexus fee study, subject to reasonable confirmation by the City at the time the Airport Boulevard Improvements are constructed. Prior to commencement of the Airport Boulevard Improvements, the Parties shall meet in good faith to confirm the amount of fee credits applicable to the Airport Boulevard Improvements and to consider further City contributions to the cost of the Airport Boulevard Improvements, based upon the economically beneficial businesses and occupants in the Project that warrant such City contribution

3.8.3 Developer shall maintain and be liable for all Public Improvements until formally accepted by City, or when finally accepted by another authority if another authority has jurisdiction over the Public Improvements, and/or when finally accepted by a public utility if a public utility has jurisdiction over the Public Improvements. Upon completion of required Public Improvements hereunder in conformance with the approved plans, Developer shall offer for dedication to City, from time to time as such Public Improvements are completed, those Public Improvements for which the Project Approvals require such offer of dedication, and, City shall promptly accept from Developer such completed Public Improvements in accordance with Applicable Rules (the "**Dedicated Public Improvements**"). Developer may offer dedication of Dedicated Public Improvements in phases and City shall not refuse to accept such phased dedications or refuse phased releases of bonds or other security so long as all other conditions and requirements for acceptance have been satisfied by Developer, and subject to any such conditions to the Project Approvals pertaining to maintenance of the Public Improvements following acceptance. Upon Developer's request, and at Developer's sole cost, City shall reasonably cooperate with Developer (a) to locate any new easements required for the Project so as to minimize interference with development of the Project, and (b) in Developer's efforts to relocate or remove easements to facilitate development of the Project, provided that such cooperation does not entail any financial or legal liability for the City.

3.8.4 Financing. Except as otherwise expressly provided in this Agreement or negotiated with the City, Developer shall fund all Public Improvements for

the Project by means of its own funds and any other means of financing, subject to approval by the City, as generally described in this Section 3.8.4 (the "**Financing Plan**"). The City agrees to reasonably cooperate with Developer in the formation of a Mello-Roos Community Facilities District (**CFD**) or other assessment district or other financing mechanism, as deemed appropriate by City and Developer to help implement the Financing Plan, provided that such cooperation does not entail any financial or legal liability for the City., including but not limited to entering into Joint Community Facility Agreements with CVWD, IID, Coachella Valley Power Agency ("**CVPA**"), and/or other public agencies to fund public facilities, including capital facilities fees (each, a "**Financing Mechanism**") that Developer in its sole discretion may elect to initiate related to the Project as and when so requested by Developer, provided that such Financing Mechanisms shall be subject to the following:

3.8.4.1 Developer shall, without need for a written request from the City, advance amounts necessary to pay all actual costs and expenses of City to evaluate and structure any Financing Mechanism, to the end that City will not be obligated to pay any costs related to the formation or implementation of any Financing Mechanism.

3.8.4.2 Any Financing Mechanism will provide for the reimbursement to Developer of any advances by Developer described in Section 3.8.4.1, and any other costs incurred by Developer that are related to the Financing Mechanism, such as the costs of legal counsel, special tax consultants, engineers, etc. Developer agrees to promptly submit to City a detailed accounting of all such other costs incurred by Developer, along with supporting documentation, at such time as Developer makes application for reimbursement.

3.8.4.3 City shall, without limiting its discretion, consult with Developer prior to engaging any consultant (including bond counsel, underwriters, appraisers, market absorption analysts, financial advisors, special tax consultants, assessment engineers, and other consultants deemed necessary to accomplish any financing). However, City retains the sole right to make the final selection of any such consultants.

3.8.4.4 Developer shall submit to City Developer's phasing plan for any Public Improvements to be financed, including the priority and financing needs, as well as proposed improvement areas and/or tax zones. City shall act as the lead agency in forming the Financing Mechanism and will use available proceeds of any public financing in accordance with such priorities, and as otherwise provided in this Agreement.

3.8.4.5 City and Developer will determine, following consultation with any other participating public agencies, the means by which any Public Improvements may be acquired by City or other public agency, as applicable.

3.8.4.6 In addition, any financing may include amounts necessary to discharge any assessment, special tax, or other liens on the Property.

3.8.4.7 Any public financing shall be secured solely by assessments or special taxes levied within the respective district, proceeds of the bonds issued that are placed in a bond fund, reserve fund, or other such fund for the financing and investment earnings thereon.

3.8.4.8 The payment of actual initial and annual administrative costs of City to be incurred in connection with any Financing Mechanism shall be adequately assured, through the inclusion in any assessment or special tax methodology of appropriate provision for such costs as estimated by City, to the end that City shall not be called upon to provide for any initial or annual administrative costs related to any Financing Mechanism.

3.8.4.9 The bond term of any Financing Mechanism shall not exceed thirty-five (35) years, and bonds may be issued in one or more series; the maximum tax rate shall not exceed two percent (2.00%), and special taxes shall be authorized to escalate by two percent (2.00%) annually.

3.8.4.10 The status of Entitlement applications and fee deposits as of the Effective Date is summarized in **Exhibit D** (Summary of Entitlement Applications and Fee Deposits).

ARTICLE 4
OBLIGATIONS OF DEVELOPER

4.1 **IID Substation Obligations**.

4.1.1 Developer to Contribute Land for Substation. In consultation with IID and City, Developer has selected and acquired an approximately 5.6-acre parcel, all or a portion of which may be available for a potential new electrical substation, located at the northern end of the Project Site (the "**Substation Site**"). The Project EIR includes the proposed substation in the Project description and fully analyzes the potentially significant adverse environmental effects of constructing and operating the substation on the Substation Site, including feasibility measures to mitigate any such effects.

4.1.2 Cooperation in Facilitating Electrical Service. The Parties shall reasonably cooperate in good faith in facilitating electrical service to the Project, which may include construction of a new IID substation on the Project site. Developer shall pay its fair-share toward the cost of any new substation constructed on the Project site, and the parties shall reasonably cooperate in good faith in pursuing a cost-sharing and/or reimbursement agreement with IID or other third parties to provide for reimbursement to City or Developer from other benefitted parties who are served by the capacity of the new substation to the extent either agrees to advance or fund costs for a new substation in excess of that Party's fair-share of the total costs.

4.2 **Payment of Fees and Costs**.

4.2.1 General. All fees, exactions, dedications, reservations, or other impositions to which the Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as "Administrative Fees" or "Development Fees". Developer shall timely pay or perform, as applicable, all Administrative Fees and Development Fees applicable to the Project or the Project Site in accordance with the terms of this Agreement.

4.2.2 Administrative Fees. As used in this Agreement, "**Administrative Fees**" means fees charged by the City, on a City-wide basis in effect at the time to cover the costs of City's review of applications for any permit or other approval or review or inspection by City. Administrative Fees are not Development Fees. Applications for Subsequent Approvals shall be charged, and Developer shall timely pay to the City, Administrative Fees to allow City to recover its actual and reasonable costs of processing Subsequent Approvals. Administrative Fees shall be paid in accordance with the City's ordinances or requirements, as applicable, and the provisions of this Section. Without limiting the foregoing, Developer shall reimburse City or pay directly all reasonable and actual costs relating to the hiring of consultants and the performing of studies as may be necessary to review or process any applications for Project Approvals or perform any related environmental review and City shall provide Developer with detailed invoices relating thereto as part of any reimbursement request. Prior to engaging the services of any such consultant, or authorizing the expenditure of any funds for such consultant, the City shall consult with Developer in an effort to mutually agree to terms regarding (i) the scope of work to be performed, (ii) the projected costs associated with the work, and (iii) the particular consultant that would be engaged to perform the work.

4.2.3 Development Fees.

4.2.3.1 Definition. As used in this Agreement, "**Development Fees**" means all fees, contributions, exactions, dedications, reservations, or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation, and maintenance attributable to the burden created by the Project. Development Fees do not include: (a) any Administrative Fee; (b) any Mitigation Measure (unless the Mitigation Measure consists of payment of a Development Fee); (c) any community benefits to be provided by Developer hereunder; (d) taxes or special assessments; (e) any utility connection fees in effect from time to time generally applicable on a City-wide basis to similar land uses as the Project; or (f) any fees, taxes, assessments, or impositions imposed by other entities that the City collects on behalf of such other entities, all of which shall be due and payable by Developer as and when due in accordance with applicable law.

4.2.3.2 Applicability and Payment.

(a) Generally. No Development Fees shall be applicable to the Project except as provided in this Agreement. The Project shall be subject only to the Development Fees as set forth in **Exhibit E** ("**Existing Development Fees**"), except as otherwise expressly permitted by this Section 4.2.3.2. Developer shall pay all applicable Development Fees at the time that Developer applies for or obtains, as applicable, a building permit for the Project, according to the following limitations.

(b) Categories of Development Fees. During the Term no new categories of Development Fees (i.e., categories other than those set forth in the Existing Development Fees) shall apply to development of the Project.

(c) Amounts of Development Fees. There shall be no increase in the amounts of the Existing Development Fees for a period of five (5) years from the Effective Date of this Agreement. Upon commencement of construction of vertical construction in Phase 1 of the Project, the Existing Development Fees shall be frozen for an additional five (5) year period, commencing at the later of (i) expiration of the initial five (5) year period, or (ii) the date of commencement of vertical construction in Phase 1, at the fee schedule effective on that extension date.

4.2.3.3 Fee Credits. Developer shall receive the benefit of any credits against Development Fees ("**Fee Credits**") if and only to the extent any Fee Credits are specifically set forth in **Exhibit E**, or as may be subsequently agreed to in writing by the parties, including but not limited to the potential fee credits described in Section 3.8.2 of this Agreement.

4.3 **Hold Harmless and Indemnification of City**. To the fullest extent permitted by law, Developer shall defend with counsel of Developer's choosing, subject to approval by City, and hold harmless the City and its elected and other officials, officers, agents, and employees ("**Indemnified Parties**") from and against any third party Claims brought against the Indemnified Parties: (a) to attack, set aside, void, or annul this Agreement; or (b) resulting or arising from death or injury to any person or for any damage to or loss of property resulting directly or indirectly from Developer's performance of this Agreement, except to the extent such Claims for death, injury, damage, or loss are ultimately determined by a court to be the result of the gross negligence or willful misconduct of the City. In the event a third-party Claim is commenced against the City, City shall give prompt notice of same to Developer, which notice shall be a condition of Developer's obligations under this Section 4.3. If Developer is required to defend the City as set forth above, Developer shall be entitled to select legal counsel to defend the City, subject to the City's approval, at Developer's cost. In the event of a court order issued as a result of a successful legal challenge as described in item (a) above, the City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by,

the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

4.4 **Payment of Prevailing Wages.**

4.4.1 Developer acknowledges that the City has made no representation, express or implied, to Developer or any person associated with Developer regarding whether or not laborers employed relative to the construction and installation of improvements on the Property, if any, must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720, et seq. Developer agrees with the City that Developer shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction of capital improvements on the Property or for the Development must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720, et seq.

4.4.2 If Civil Code sections 9550 et seq. require contractors to procure a payment bond for the improvements on the Property, then the Developer shall ensure that its contractors deliver the required bond.

4.4.3 Developer, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to any of them pursuant to California Labor Code Sections 1726 and 1781. Developer acknowledges the protections of California Civil Code Section 1542 relative to the waiver and release contained in this Section 4.4, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
>
> BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 4.4:

_____
Developer's Initials

_____
Developer's Initials

4.4.4. Developer shall defend with counsel reasonably acceptable to the City, indemnify and hold harmless City and its elected officials, officers, employees, agents and contractors from any and all liability, costs, claims, damages, fines, penalties and expense, including costs of litigation and attorneys' fees, arising out of or in any way connected with Developer's construction of the facilities and improvements described in this Agreement and Developer shall indemnify, defend with counsel reasonably acceptable to the City and hold harmless the City against any claims pursuant to California Labor Code Section 1781 arising from this Agreement or the construction or installation of any improvements on the Property or for the Development, in accordance with the terms of Section 4.4 of this Agreement.

4.5 **Provision of Community Benefits**. Developer will provide the development of an underutilized site, creating new and diverse employment opportunities within the City as identified under the City's 2035 General Plan Update. The Project will contribute to an increase in the City's fiscal health through the development of mixed commercial uses, while ensuring that the scale of the development respects the surroundings and existing land use patterns. Additionally, the Project will include improvements to Airport Boulevard and provide a site for the construction of additional IID electrical facilities to improve the electric grid and enhance reliability to the City. In connection with the Project, Developer is providing the following benefits to the City and area residents (collectively, "**Community Benefits**"):

4.5.1 New Substation. Pursuant to Section 4.1 above, Developer is contributing a site for the potential construction of a new substation, which will provide additional system resiliency and reliability to existing City residents, as well as provide additional capacity to serve future development within the City. The Substation Site will be located at the northern end of the overall Project Site on a parcel that has been acquired from the California Department of Transportation (Caltrans).

4.5.2 Airport Boulevard Improvements and New Traffic Signal. As set forth in Section 3.8.1 above, Developer is installing a new traffic signal at the Project's main entrance, as well as dedicating and improving portions of Airport Boulevard between the Whitewater Bridge and the State Route 86 interchange boundary.

4.5.3 Fuel Station, Convenience Store, and Restaurant. Developer intends to install a fuel station and associated convenience store with parking located at the site's entrance along Airport Boulevard, as well as a retail and drive-through restaurant located to the northeast of the Project Site entrance, which will enhance the City's sales tax base and help fund the City's public safety services and other City services.

4.5.4 Additional Development. Developer intends to install a variety of additional buildings and structures totaling approximately 615,000 square feet, which may include a combination of large warehouse structures, small warehouse structures, small business buildings, structures for storing personal vehicles, self-storage buildings, and other permitted industrial and commercial buildings that will enhance the employment opportunities available in the City.

4.5.5 Electronic Signage. Developer intends to install an electronic freeway sign adjacent to the State Route 86S freeway that can be used to advertise City events and otherwise promote the City of Coachella. The City's name and logo will be included on the freeway sign at no cost to City.

4.6 **Developer Representations and Warranties**. Developer represents, warrants, and covenants to the City, as of the Effective Date and thereafter during the Term, as follows:

4.6.1 Authority. Developer is a California limited liability company duly organized and validly existing, and is authorized to own property and do business in the State of California. Developer has the capacity and full right, power, and lawful authority to own its property and perform the terms and covenants of this Agreement, and the execution, delivery, and performance of this Agreement by Developer has been fully authorized by all requisite action on the part of Developer. The person(s) executing this Agreement on behalf of Developer has all requisite power, right, and authority to do so and to bind Developer to this Agreement.

4.6.2 Valid Binding Agreement. This Agreement and all other documents and instruments which have been executed and delivered by or on behalf of Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute legal, valid, and binding obligations of Developer, enforceable against Developer in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, and other laws affecting creditors' rights, or by application of equitable principles. Developer has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement by Developer have been duly and validly authorized by all necessary action. No consent, authorization, or approval of, or other action by, and no notice to or filing with any governmental authority, regulatory body, or any other person is required for the execution, delivery, and performance by Developer of this Agreement or any of the terms and covenants herein or therein.

4.6.3 No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant, or other term hereof or thereof, will conflict with or result in a breach of or default under any agreement to which Developer is a party or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established in accordance with this Agreement.

4.6.4 Pending Proceedings. Developer has no knowledge of any default under any law or regulation or under any order of any court, arbitrator, board, commission or agency, and there are no known claims, actions, suits, or proceeding pending or, to the knowledge of Developer, threatened against or affecting developer, at law of in equity, before any court, arbitrator, board, commission, or agency which might, if determined

adversely to Developer, materially affect Developer's ability to perform its obligations under this Agreement.

4.6.5 Development Experience. Developer has significant expertise and a proven track record in the development of other projects similar in nature and scale to the Project, and possesses robust financial resources, skilled personnel, and all necessary resources, in order to successfully develop the Project and fulfill all of its obligations under this Agreement and the Project Approvals in a timely and efficient manner.

ARTICLE 5
OBLIGATIONS OF CITY

5.1 **IID Substation Cost-Sharing Reimbursement**. City shall reasonably cooperate in good faith and support Developer's efforts to enter into a cost-sharing and reimbursement agreement with IID to provide for reimbursement to Developer for a portion of the new substation costs from other benefitted properties within the City. If City adopts or collects a surcharge or other fee or financing mechanism to fund electrical infrastructure within the City, the substation costs incurred by Developer shall be given the highest priority (at least on par with any other electrical infrastructure) in receiving City funding contribution or reimbursement from the proceeds of such surcharge, fee, or other finding mechanism.

5.2 **Water and Sewer Service**. City shall cooperate and facilitate Developer receiving water service from the new CVWD waterline via the Whitewater River channel crossing and the Airport Boulevard activation project, pursuant to an existing agreement between City and CVWD, dated January 9, 2008. Further, City provided a letter dated July 15, 2025, authorizing CVWD to provide service only until such time as City is able to provide service. Developer and City shall reasonably cooperate to ensure that, prior to issuance of a first building permit for the Project, City and CVWD will enter into a new agreement to outline the means and methods of providing water and or sewer service to the Project and the transfer of service from CVWD back to the City at such future time as the City has the necessary facilities in place to provide such service.

5.3 **Processing During Third Party Litigation**. The filing of any third-party lawsuit(s) against the City or Developer relating to this Agreement, the Project Approvals, or other development issues affecting the Project or the Project Site, shall not delay or stop the development, processing, or construction of the Project or the issuance of Subsequent Approvals unless the third party obtains an injunction or other court order preventing the activity.

5.4 **Expedited Processing**. The parties agree that Developer must be able to proceed rapidly with the development of the Property and, accordingly, that expedited City review of Subsequent Approvals, including but not limited to improvement plans, final maps, modifications to Project Approvals, building permits and construction inspections, is essential to the successful completion of the Project. Accordingly, to the

extent that the applications and submittals are in conformity with the Project Approvals, Applicable Rules, and this Agreement, and adequate funding exists therefor, City agrees to provide adequate City resources to diligently accept, review, and take action on all subsequent applications and submittals made to City by Developer in furtherance of the Project. Similarly, to the extent that adequate funding exists therefor, City shall provide adequate City resources to promptly review and approve improvement plans, conduct construction inspections, and accept completed public facilities. Developer agrees to reimburse the City for all costs associated with providing expedited services, above and beyond those costs covered by the City's Processing Fees. In the event City does not have adequate resources, City shall authorize the use of "contract labor" for inspection and plan review purposes, which shall be reimbursed by Developer, pursuant to a mutually agreeable reimbursement agreement that also specifies any fee credit to Developer to avoid Developer paying more than once for the same plan check, inspection, or other City service. City shall consult with Developer concerning the selection of the most knowledgeable, efficient and available "contract labor" for purposes of providing inspection and plan review duties for the City and the Project; provided, however, that City shall retain the exclusive right to select any "contract labor" it deems suitable.

ARTICLE 6
MUTUAL OBLIGATIONS

6.1 **Notice of Completion or Revocation**. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Office of the Recorder of the County of Riverside, California.

6.2 **Estoppel**. Each Party hereto shall provide, upon the request of the other Party and within thirty (30) days of such request, a signed estoppel certificate in a reasonable form for the benefit of third parties.

6.3 **Good Faith and Fair Dealing**. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary and appropriate to implement the Project as contemplated by this Agreement.

6.4 **Other Necessary Acts**. Each Party shall execute, acknowledge, and deliver to the other all further instruments and documents and shall take such further actions as may be reasonably necessary to carry out this Agreement in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

6.5 **Compliance with Financing Plan**. Developer shall at all times comply with applicable provisions of the Financing Plan and Developer and City shall each at all times comply with their respective obligations under applicable provisions of the Financing Mechanism.

ARTICLE 7
ANNUAL REVIEW OF DEVELOPER'S COMPLIANCE

7.1 **Procedure**. The annual review required by Government Code Section 65865.1 shall be conducted for the purposes and in the manner stated in those laws as further provided herein ("**Annual Review**"). As part of each Annual Review, Developer must demonstrate good faith compliance with the provisions of the Development Agreement. Not more than sixty (60) days and not less than forty-five (45) days prior to the Annual Review Date, City shall provide Developer with written notice for Developer to provide a letter to the City containing substantial evidence to show compliance with this Agreement. Within sixty (60) days after Developer submits its letter, City shall review the information submitted by Developer and all other available evidence on Developer's compliance with this Agreement. All such other available evidence shall, upon receipt of by the City be made available as soon as possible to Developer. City shall notify Developer in writing whether Developer has complied with the terms of this Agreement. If the City finds that Developer has not complied with the provisions of the Development Agreement, City may issue a finding of noncompliance. City's finding of compliance or noncompliance may be appealed to the City Council within ten (10) days after the issuance of such finding, and upon the filing of such an appeal, the City shall schedule a City Council hearing in accordance with the City's Municipal Code. The issuance of a finding of compliance or finding of noncompliance by the City and the expiration of the appeal period without appeal, or the confirmation of the issuance of the finding on such appeal, will conclude the review for the applicable period and such determination will be final, subject only to judicial review. In the absence of the City notice required above, to commence the annual review process, Developer shall be deemed to be in good faith compliance with the provisions of this Development Agreement until such annual review is subsequently completed.

7.1.1 Annual Review Costs. In accordance with Government Code Section 65865.1, Developer shall reimburse City for the actual and reasonable costs incurred in conducting each Annual Review, provided that: (a) City shall provide Developer with a written invoice identifying the Annual Review costs incurred; (b) reimbursable costs shall be limited to those directly related to the Annual Review process; (c) the total cost for any single Annual Review shall not exceed $ 2,500.00, unless otherwise agreed to in writing by the Parties; and (d) Developer shall have the right to dispute any Annual Review costs it believes to be unreasonable, in which case the Parties shall meet and confer in accordance with Section 10.2 of this Agreement to resolve any such dispute. City shall make reasonable efforts to minimize Annual Review costs.

7.2 **Noncompliance and Cure**. If City finds that Developer is not in compliance, City must specify in writing to the Developer the respects in which the Developer has failed to comply, and must set forth terms of compliance and specify a reasonable time for the Developer to meet the terms of compliance. Unless alleged noncompliance is an immediate threat to public health and safety, City shall grant a cure period of at least sixty (60) days and shall extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed for Developer to prosecute such cure to completion. If Developer does not

comply with any terms of compliance within the prescribed time limits, this Agreement will be subject to termination or modification by the City as applicable. Developer shall have the right to appeal any determination of non-compliance, and upon any unsuccessful appeal to the City Council, to seek judicial review.

7.3 **Effect on Permitted Transferees**. If Developer has transferred a portion of the Project to a Permitted Transferee (other than a Developer Affiliate) pursuant to ARTICLE 9 of this Agreement, then the Annual Review shall be conducted separately with respect to each such Permitted Transferee. If such Annual Review results in a final determination that such Permitted Transferee has not complied with this Agreement, such determination and any resulting termination or modification of this Agreement by the City shall be effective only as to the Permitted Transferee to whom the determination is made and the portions of the Project Site in which such Permitted Transferee has an interest. Such Permitted Transferee shall have the right to appeal the City's determination of non-compliance, as described above. Such a termination or modification shall have no effect on Developer or any other Permitted Transferees which have an ownership interest in the Property, and which are in compliance with this Agreement.

ARTICLE 8
AMENDMENT; TERMINATION

8.1 **Amendment or Termination of Agreement**. This Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Statute. Review and approval of an amendment to this Agreement shall be strictly limited to consideration of only those provisions to be added or modified. All amendments to this Agreement shall automatically become part of the Project Approvals. Notwithstanding the foregoing, no Insubstantial Modification or Operating Memorandum approved pursuant to Section 8.3, or the approval of a Subsequent Approval pursuant to Section 2.7, shall require an amendment to this Agreement. Upon approval, any such amendment shall be deemed to be incorporated automatically into the Project and the Vested Elements under this Agreement (subject to any conditions set forth in the amendment or Subsequent Approval).

8.2 **Expiration; Termination**.

8.2.1 Expiration of Term. Except as otherwise expressly provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement as set forth in Section 1.3; provided however, that such expiration shall not affect any right, duty, or expiration date arising from the Project Approvals (other than this Agreement) and, provided further that such expiration shall not relieve or release Developer from any obligation or liability for any Developer Event of Default arising prior to such expiration. As to any specific lot containing a residential dwelling within the Project, this Agreement shall terminate as to such lot upon

the issuance by the City of a certificate of occupancy for the dwelling and the close of escrow of the initial sale of that dwelling.

8.2.2 Survival of Obligations. Upon the expiration or termination of this Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Agreement except with respect to any obligation that is specifically set forth as surviving the expiration or termination of this Agreement.

8.2.3 Termination by City. Notwithstanding any other provision of this Agreement, City shall not have the right to terminate this Agreement with respect to all or any portion of the Property before the expiration of the Term unless the City complies with all termination procedures set forth in the Development Agreement Statute and there is an alleged Developer Event of Default and such Developer Event of Default is not cured pursuant to ARTICLE 7 or ARTICLE 10 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council, and this Agreement is terminated only with respect to that portion of the Property to which the default applies. In the event of such termination by the City, the Project Approvals with respect to such portion of the Property shall automatically terminate and be of no further force or effect notwithstanding any provision to the contrary in the Project Approvals.

8.3 **Insubstantial Modifications and Operating Memoranda**. The Parties acknowledge that refinements and further development of the Project may demonstrate that minor changes are appropriate with respect to the details of the Project development and the performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project development and with respect to those items covered in general terms under this Agreement, and thus desire to provide a streamlined method of approving insubstantial modifications to, or clarifications of the Parties' responsibilities and obligations under this Agreement. Therefore, any minor modification or clarification to this Agreement which does not materially modify (i) the Term of this Agreement; (ii) permitted uses of the Project Site, (iii) maximum density or intensity of use within the Project, except as specifically allowed in the Project Approvals, (iv) provisions for the reservation or dedication of land, (v) conditions, terms, restrictions or requirements for subsequent discretionary actions, or (vi) monetary obligations of Developer (hereinafter an "**Insubstantial Modification**"), and that can be processed under CEQA as exempt from CEQA, or with the preparation of an Addendum to the EIR, shall not require a public hearing or City Council approval prior to the parties executing a modification to this Agreement. By way of example only, changes to mix of buildings and allowed uses within the conceptual site plan that do not exceed the total square footage allowed on the Project site and do not materially increase the trip generation or VMT caused by the Project are anticipated to constitute Insubstantial Modifications. Either Party may propose an Insubstantial Modification, consent to which shall not be unreasonably withheld, conditioned, or delayed by the other Party. Upon receiving a written request from the Developer for a modification to this Agreement, the City Manager or a designated representative will evaluate the request. The evaluation will consider: (1) whether the requested modification falls under the definition of an "Insubstantial Modification"; (2) whether the requested modification aligns with Applicable Rules (excluding that portion of this Agreement

sought to be modified); and (3) whether the requested modification aligns with the objectives of this Agreement. The City Manager will not unreasonably withhold a decision, but will also ensure the City's interests are adequately protected. If the City Manager or designee determines that the requested modification is an "Insubstantial Modification" that is consistent with Applicable Rules and tends to promote the goals of this Agreement, the proposed modification will be approved by the City as an Insubstantial Modification, and a written modification will be executed by the Parties and attached to this Agreement as an operating memorandum ("**Operating Memorandum**"). Neither an Operating Memorandum nor an Insubstantial Modification shall be deemed an "amendment" to this Agreement under Government Code Section 65858.

8.4 **Amendments to Project Approvals**. Notwithstanding any other provision of this Agreement, Developer may seek and City may review and grant amendments or modifications to the Project Approvals (including the Subsequent Approvals) subject to the following (except that the procedures for amendment of this Agreement are set forth in Section 8.1). Project Approvals (except for this Agreement) may be amended or modified from time to time, but only at the written request of Developer (at the City's discretion, subject to the terms of this Agreement) or with the written consent of Developer (at its sole discretion) and in accordance with Section 3.4 and relevant provisions of the City Municipal Code. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for Public Improvements and financing of Public Improvements, and the other terms and conditions of development as set forth in all such amendments shall automatically become Vested Elements pursuant to this Agreement (subject to any conditions set forth in the amendments) without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 3.4. City shall not request, process, or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent.

ARTICLE 9
TRANSFER AND ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE

9.1 **Right to Assign**. Provided that there does not then exist a Developer Event of Default, Developer shall have the right at any time during the Term, subject to the provisions of this Section 9.1, to sell, mortgage, hypothecate, assign, or transfer all or a portion of its rights, duties, and obligations arising under this Agreement (each, a "**Transfer**") to any person, partnership, joint venture, firm, or corporation (each, a "**Transferee**"). No Transfer shall be permitted unless made pursuant to a sale, assignment, or other transfer of all or a portion of Developer's interest in the Property. Notwithstanding any other provision of this Agreement to the contrary, each of the

following Transfers are permitted and shall not require City consent under this Section 9.1:

9.1.1 Any Transfer for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project;

9.1.2 An assignment of this Agreement to a parent or subsidiary of Developer or a company under common ownership with Developer ("**Developer Affiliate**"); provided such Developer Affiliate executes and delivers to the City a recordable Assignment and Assumption Agreement substantially in the form attached hereto as **Exhibit F** and otherwise reasonably acceptable to City ("**Assignment and Assumption Agreement**"); or

9.1.3 Dedications and grants of easements and rights of way required in accordance with the Project Approvals.

Any and all other Transfers hereunder, other than the sale or lease of a commercial lot to a business entity, shall require the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. City's withholding of consent shall be deemed reasonable if, in light of the proposed Transferee's experience, reputation and financial resources, such Transferee would not, in City's reasonable determination, be able to perform the obligations proposed to be assumed by such Transferee. Such determination shall be made by the City will be appealable to the City Council and subject to judicial review. If City consents to any such Transfer, the Transferee shall, in addition to any other conditions upon such consent, execute and deliver to City an Assignment and Assumption Agreement. Any Transfer consented to by City, or permitted without City's consent pursuant to this Section 9.1, is herein referred to as a "**Permitted Transfer**" and the Transferee of a Permitted Transfer is herein referred to as a "**Permitted Transferee**."

9.2 **Release upon Permitted Transfer**. Effective upon any Permitted Transfer pursuant to Section 9.1, except for a Permitted Transfer to a Developer Affiliate pursuant to Section 9.1.2, Developer shall be released from its obligations under Agreement with respect to the Property, or portion thereof so transferred, only after the City's written confirmation of successful transfer of obligations to the Transferee. Thereafter, a default under this Agreement by Developer shall not be considered or acted upon by City as a default by the Permitted Transferee and shall not affect the Permitted Transferee's rights or obligations hereunder. Likewise, a default by a Permitted Transferee shall not be considered or acted upon by the City as a default by Developer and shall not affect Developer's retained rights and obligations hereunder. The City is entitled to enforce each and every such obligation assumed by the Permitted Transferee directly against the Permitted Transferee as if the Permitted Transferee were an original signatory to this Agreement with respect to such obligation. A Permitted Transfer to a Developer Affiliate shall not relieve or release Developer from any of its obligations hereunder unless otherwise specifically agreed to in writing by the City in its sole discretion, which shall not be unreasonably withheld. Notwithstanding the foregoing provisions of this Section or any other provision of this Agreement to the contrary, a Permitted Transfer shall not relieve or release Developer from: (a) any indemnity

obligations of Developer hereunder arising or accruing from any events occurring prior to the Permitted Transfer; or (b) any liability of Developer for any Developer Event of Default occurring prior to the Permitted Transfer unless otherwise specifically agreed to in writing by City, in its sole discretion, which shall not be unreasonably withheld.

9.3 **Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default**.

9.3.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property ("**Mortgage**"). This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

9.3.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.3.1, no Mortgagee (including a Mortgagee who obtains title to Developer's interest in the Property or the Project or any portion thereof as a result of foreclosure proceedings or transfer in lieu of foreclosure) shall in any way be obligated by the provisions of this Agreement to construct or complete the Project, unless the Mortgagee expressly assumes such obligation by written notice to City or by written agreement with City. Nothing in this Agreement shall be deemed to construe, permit, or authorize any such Mortgagee to devote the Property or the Project or any portion thereof to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, or by the Project Approvals and Applicable Rules, and only to the extent Mortgagee complies with the terms of this Agreement and executes and delivers to the City, in a form and with terms reasonably acceptable to City, an assumption agreement of Developer's obligations hereunder.

9.3.3 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If City timely receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by the City that Developer has committed a default, and if the City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. If Developer does not cure or remedy the claimed default within the applicable cure period set forth in this Agreement, then City shall provide notice of such ("**Developer Non-Cure Notice**") to each Mortgagee who has previously made a written request to the City therefore. Each such Mortgagee shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy or commence to cure or

remedy any such default within (a) fifteen (15) days (with respect to monetary defaults only) after receipt of the Developer Non-Cure Notice, or (b) sixty (60) days (with respect to non-monetary defaults), after receipt of the Developer Non-Cure Notice unless a further extension of time to cure is granted in writing by City. In case of a default which is not susceptible of being cured by such Mortgagee (including a bankruptcy of Developer), such Event of Default does not have to be cured. If a Mortgagee is required to obtain possession of the Property (or a portion thereof) in order to cure or remedy any claimed Event of Default, the time to cure shall be tolled so long as the Mortgagee is attempting in good faith to obtain possession, including by appointment of a receiver or foreclosure, and the Mortgagee shall be deemed to have timely cured or remedied the claimed Event of Default, provided the Mortgagee commences the proceedings necessary to obtain possession within sixty (60) days after receipt of the Developer Non-Cure Notice, diligently pursues such proceedings to completion, and after obtaining possession diligently completes such cure or remedy.

9.4 **Constructive Notice**. Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project or the Project Site and undertakes any development activities at the Project Site is, and shall be, constructively deemed to have consented and agreed to, and is obligated by, all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.

ARTICLE 10
ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

10.1 **Events of Default**. Subject to any extensions of time by mutual consent of the Parties, in writing, and subject to the provisions of Section 11.6 regarding Permitted Delays and a Mortgagee's right to cure pursuant to Section 9.3, any failure by either Party (a "**Defaulting Party**") to perform any material term or provision of this Agreement shall constitute an event of default by the Defaulting Party ("**Event of Default**") (i) if such Defaulting Party does not cure such failure within sixty (60) days (such sixty (60) day period is not in addition to any sixty (60) day cure period under Section 7.2, if Section 7.2 is applicable) following written notice of default from the other Party ("**Notice of Default**"), where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the Defaulting Party does not within such sixty (60) day period commence efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion such cure. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Defaulting Party shall not be considered to be in default for purposes of (a) termination of this Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any Subsequent

Approval with respect to the Project. The waiver by either Party of any Event of Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

10.2 **Emergency Working Group Meeting**. Notwithstanding any other provision in this Agreement, neither Developer nor City shall commence any legal action, or willfully engage in any other act or omission inconsistent with the terms of this Agreement, including but not limited to withholding or delaying prompt issuance of any ministerial Subsequent Approvals by City, (collectively, a "**Self-Help Remedy**"), without first initiating, and participating in good faith in, an "**Emergency Working Group Meeting**" pursuant to the terms of this Section. Upon receipt of any Notice of Default, or upon the existence of any dispute or disagreement between the Parties arising out of or relating to this Agreement and/or the Project, any party may initiate an Emergency Working Group Meeting to address and seek to resolve the dispute or disagreement by giving written notice to the other Party setting forth the nature of the issue in dispute and the desire to hold an immediate Emergency Working Group Meeting. The Meeting shall be held within ten (10) business days of the written notice, unless extended by mutual written agreement of the Parties. The Emergency Working Group shall consist of the following members: (1) the City Manager; (2) the City Planning Director; (3) City Public Works Director; (4) City Building Official; (5) City Attorney; (6) Developer's President, Vice President or Managing Member; (7) Developer's project manager or other employee appointed by Developer; (8) Developer's legal counsel; and (9) at Developer's election, up to two other representatives of Developer, if Developer owns any interest in the Property at the time of the dispute. Nothing herein shall be construed to extend the time period for this Emergency Working Group Meeting obligation beyond the sixty (60) day cure period referred to in Section 10.1 (even if the sixty (60) day cure period itself is extended pursuant to Section 10.1(ii)) unless the Parties agree otherwise in writing.

10.3 **Remedies and Termination**. If, after notice, Emergency Working Group Meeting, and expiration of the cure periods and procedures set forth in Sections 10.1 and 10.2 (subject to the provisions of Section 10.2), the alleged Event of Default is not cured, the non-Defaulting Party, at its option, may institute legal proceedings pursuant to Section 10.4 and/or terminate this Agreement pursuant to Section 8.2.3 or Section 10.4.2 (as applicable). In the event that this Agreement is terminated pursuant to Section 8.2.3 or Section 10.4.2 and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

10.4 **Legal Action by Parties**.

10.4.1 Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any Event of Default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or obtain any remedies consistent with the purpose of this Development Agreement. Without limiting the foregoing, in the event of a Developer Event of Default (that is not timely cured

in accordance with Section 10.1), City may cease and terminate all processing of any applications for Subsequent Approvals to the extent otherwise permitted by Applicable Law. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

10.4.2 Limited Damages. Except as expressly set forth in this Section 10.4.2, neither Party shall be liable in damages for any default under this Agreement, it being expressly understood and agreed that, except as set forth below, the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party pursuant to any of the following: (a) to make any payment due under any indemnity in this Agreement; (b) to advance or reimburse monies required under this Agreement; or (c) to pay attorneys' fees and costs as set forth in Section 10.5 or when required by an arbitrator or a court with jurisdiction. In no event shall either Party be liable hereunder for any consequential, special, or punitive damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall: (i) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer be personally liable for any breach of this Agreement by Developer or for any amount which may become due to the City under the terms of this Agreement; or (b) any board, commission, department, member, commissioner, officer, agent, or employee of the City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

10.5 **Attorneys' Fees**. Should any legal action be brought by either Party against the other for default under this Agreement or to enforce or interpret any provision hereof, the Party prevailing in such action shall be entitled to recover against the non-prevailing Party its reasonable attorneys' fees and costs incurred in such action. The provisions of this Section 10.5 shall survive the expiration or termination of this Agreement.

10.6 **Nexus/Reasonable Relationship Challenges**. Developer consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions or requirements set forth in this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax. Developer reserves the right, however, to challenge in court any future fee, exaction, or other Applicable Rules that would, in Developer's opinion, conflict with Applicable Law (including this Agreement) or reduce the development rights provided by this Agreement..

10.7 **No Waiver**. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any

provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 **Entire Agreement**. This Agreement, including the preamble paragraph, Recitals, and Exhibits constitute the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement.

11.2 **Binding Covenants; Run With the Land**. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California.

11.3 **Applicable Law and Venue**. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California, without reference to any of its conflict of laws principles. All rights and obligations of the Parties under this Agreement are to be performed in the County of Riverside. The exclusive venue for any disputes or legal actions hereunder or arising out of or in connection with this Agreement shall be the Superior Court of California in and for the County of Riverside and all Parties waive their respective rights to change venue pursuant to Section 394 of the Code of Civil Procedure.

11.4 **Construction of Agreement**. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," "hereof," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms

"include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" (d) "shall" and "must" are mandatory and "may" is permissive; and (e) "or" is not necessarily exclusive. Each reference in this Agreement to this Agreement shall be deemed to refer to this Agreement as amended from time to time pursuant to the provisions of this Agreement, as applicable, whether or not the particular reference refers to such possible amendment.

11.5 **Project Is a Private Undertaking; No Joint Venture or Partnership**. The development proposed to be undertaken by Developer on the Project Site is a private development, except for that portion to be devoted to Public Improvements to be constructed by Developer. Developer is not a state or governmental actor with respect to any activity conducted by the Developer hereunder. City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Nothing in this Agreement, in any actions or negotiations leading to this Agreement, in any acts or omissions under this Agreement, or otherwise is intended to or does establish the City and Developer as partners, co-venturers, or principal and agent with one another.

11.6 **Force Majeure**. Subject to the limitations set forth below, performance by any Party of its obligations hereunder shall be excused and the required date for performance thereof shall be extended day for day during any period of "**Permitted Delay**" as hereinafter defined, subject, however, to the requirement that Developer must promptly communicate with the City concerning the delay and provide reasonable documentation of Developer's good faith efforts to diligently pursue performance as required under this Agreement. For purposes hereof, Permitted Delay shall mean delay beyond the reasonable control and without the fault of the Party claiming the delay (and despite the good faith efforts of such Party) first arising after the Effective Date (except for item (xii) below) including, but not limited to: (i) acts of God; (ii) civil commotion; (iii) riots; (iv) strikes, picketing, or other labor disputes; (v) shortages of materials or supplies; (vi) damage to work in progress by reason of fire, floods, earthquake, or other casualties; (vii) an Event of Default of the other Party; (viii) restrictions imposed or mandated by any regulatory authorities, utility providers, or other public agencies, or delays in obtaining any Third-Party Agency Approvals; (ix) enactment of conflicting state or federal laws or regulations, (x) judicial decisions or similar legal incapacity to perform, (xi) epidemics and pandemics, including COVID 19-induced restrictions on the ability of any Party to perform its obligations of this Agreement; (xii) litigation brought by a third party attacking the validity of this Agreement; and (xiii) delays caused by the City.

11.7 **Recordation**. Pursuant to Section 65868.5 of the Development Agreement Statute the City shall cause this Agreement to be recorded with the Riverside County Recorder within ten (10) days after execution of the Agreement or any amendment thereto, with costs to be borne by Developer.

11.8 **Signature in Counterparts**. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

11.9 **Computation of Time; Time of the Essence**. All references in this Agreement to "days" shall mean calendar days unless expressly referred to as "business days." The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a Saturday, Sunday, or holiday, and then that day is also excluded. If the day for performance of any obligation under this Agreement is a Saturday, Sunday, or holiday, then the time for performance of that obligation shall be extended to the first following day that is not a Saturday, Sunday, or holiday under the laws of California.

11.10 **Notices**. Any notice, demand, or other communication required to be given by Developer or City pursuant to this Agreement shall be in writing and shall be sufficiently given if (a) addressed as set forth below and (b) delivered in one of the following ways, and shall be deemed to have been delivered or received (i) three (3) days after the date when deposited in the United States registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), (ii) when personally delivered, (iii) when sent by electronic means, provided receipt was promptly confirmed in writing by another means of notice allowed in this Section 11.10 within one (1) business day, or (iv) one business day after the date deposited with a nationally recognized courier service (e.g., Federal Express) for next day delivery. The current principal office addresses and email addresses of the City and Developer are as follows:

To City:
City of Coachella
53990 Enterprise Way
Coachella, CA 92236
Attn: Kendra Reif
E-mail: kreif@coachella.org

With a copy to:
Best Best & Krieger
300 S Grand Avenue Fl 2
Los Angeles, CA 90071
Attn: Seth Merewitz
E-mail: seth.merewitz@bbklaw.com

To Developer: Empire Airport LLC c/o
Haagen Company, LLC
12302 Exposition Blvd
Los Angeles, CA 90064
Attention: Alexander Haagen III
Manager
E-mail:AH3@haagenco.com

With a copy to: Rob Scapa
Haagen Company, LLC
12302 Exposition Blvd
Los Angeles, CA 90064
E-mail:

And to: Procopio, Cory, Hargreaves & Savitch LLP
200 Spectrum Center Drive, Suite 1650
Irvine, CA 92618
Attn: James D. Vaughn, Esq.
Email: james.vaughn@procopio.com

Either Party to this Agreement may at any time, upon written notice delivered via certified mail or email to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given.

If failure to respond to a specified notice, request, demand, or other communication within a specified period would result in a deemed approval, a conclusive presumption, a prohibition against further action or protest, or other adverse result specifically provided under this Agreement, the notice, request, demand, or other communication shall state clearly and unambiguously on the first page, with reference to the applicable provisions of this Agreement, that failure to respond in a timely manner could have a specified adverse result.

11.11 **No Third Party Beneficiaries**. This Agreement and all provisions hereof is made and entered into for the sole protection and benefit of City, Developer, and their successors and assigns. No other person shall have right of action based upon any provision in this Agreement.

11.12 **Conflict of Interest**. No member, official, or employee of City shall make any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested.

11.13 **Severability**. If any term, provision, covenant, or condition of this Agreement or its application to any Party or circumstance is held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remaining provisions of this Agreement or the application of the term, provision, condition, or covenant to

persons or circumstances other than those as to whom or which it is invalid or unenforceable, shall not be affected and shall continue in full force and effect to the fullest extent permitted by law, unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

11.14 **Further City Actions**. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, waiver, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the Designee. The Designee is authorized to execute and deliver, on behalf of the City and to take any action necessary or desirable to effectuate the provisions and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

EMPIRE AIRPORT, LLC,
by Haagen Company LLC, its Manager
a California limited liability company,

By:_____
Alexander Haagen III, Its Manager

CITY:

CITY OF COACHELLA, a California
municipal corporation

By:_____
Name:
Title:

ATTEST:

_____
Name
City Clerk

APPROVED AS TO FORM
LAW FIRM

_____
Name
City Attorney

Exhibit A

Legal Description Of Property

Certain real property consisting of approximately 47.96 acres located in the City of Coachella, County of Riverside, California, legally described on Exhibit A attached to the Development Agreement and generally located at the northwest corner of the intersection of State Route 86 and Airport Boulevard.

Exhibit B

Project Description

The proposed Project would include the development of a currently vacant and undeveloped approximate 47.96 acres in the southeastern portion of the city of Coachella. The overall proposed Project site would be developed for approximately 42.36 acres of industrial uses while an Imperial Irrigation District (IID) substation would be located at the northern 5.6 acres of the overall Project site. As a new business park development within the City, the overall proposed Project site would be developed for industrial uses comprised of large and small warehouse, personal vehicle storage and self-storage units, small business use spaces, a small retail and restaurant development, a billboard sign, and a fuel station with a convenience store, as well as associated landscaping, parking, lighting, and signage. Below is a summary of the Project components:

• The approximate 4,000 square foot (sqft) fuel station with associated convenience store and parking would be located at the site's entrance along Airport Boulevard, with an approximate 4,650 sqft retail and drive-through restaurant located to the northeast of the site entrance.

• Eighteen (18) proposed small business buildings, approximately 4,500 sqft in size each and totaling about 81,000 sqft, would be located along the site's eastern frontage along SR 86 and to the north of the fuel station and convenience store site within the southern portion of the overall Project site.

• Four (4) structures for storing personal vehicles averaging 19,200 sqft (for an estimated total of 76,800 sqft) with an internal open space area would be located to the north of the small business buildings and to the west of the proposed small warehouse buildings on site.

• Seventeen (17) self-storage buildings totaling 128,600 sqft, ranging in size between 5,200 sqft and 10,400 sqft, would be located in the center portion of the site, west of the small warehouse buildings.

• Five (5) small warehouse structures, ranging in size from 9,600 sqft to 24,000 sqft (totaling approximately 96,000 sqft) would also be located along the site's eastern frontage along SR 86. Six (6) large warehouse structures ranging in size from 22.400 sqft to 48,800 sqft, totaling approximately 233,100 sqft of warehouse space would be located along the northern portion of the site, in close proximity to the proposed electric substation

• An IID substation facility is proposed to be located at the northern end of the overall Project site on a parcel that has been acquired from the California Department of Transportation (Caltrans). The Project Applicant now owns the substation parcel. The new 315-foot x 315-foot electrical substation will require at least one 1-25 mega volt ampere (MVA) 92/13.2 kilovolt (kV) transformer bank in order to provide adequate power for the proposed Project. The final components of the new substation will be determined in consultation with IID and may include additional facilities to improve electrical system resiliency and reliability to the surrounding community. There also would be 92 kV transmission line extensions and associated distribution

feeders/backbones and distribution line extensions installed on the substation portion of the overall Project site.

• Utility connections to Coachella Valley Water District (CVWD) waterlines and sewer lines are proposed as part of Project implementation.

Exhibit C

Construction Phasing

	Phase I -2027	Phase II-2030	Phase III-2035
Large Warehouse Area (sq ft)	110,990	48,800	73,400
Small Warehouse Area (sq ft)	24,000	52,800	19,200
Small Business Area (sq ft)	31,500	22,500	27,000
Self Storage Area (sq ft)	67,300	------	61,300
Vehicle Storage Area (sq ft)	19,200	19,200	------
Fuel Center, C-Store (sq ft)	4,000	------	------
Retail – Restaurants (2) Area (sq ft)	4,650	------	------
Total Area per Phase	261,550	143,300	180,900

Exhibit D

Summary of Entitlement Applications and Fee Deposits

A. Summary of Entitlement Applications

Application	Description	Date Submitted	City File #	Notes
Change of Zone No. 20-01	Change from M-H (Heavy Industrial) to MS (Manufacturing Services) and C-G (General Commercial)	07/13/2020	# CZ 20-01	
Conditional Use Permit 324	Cannabis-related land uses	07/13/2020	# CUP 324	
Conditional Use Permit 325	Proposed drive through	07/13/2020	# CUP 325	
Conditional Use Permit 326	Proposed service station	07/13/2020	# CUP 326	
Architectural Review No. 20-04		07/13/2020	# AR 20-04	
Tentative Parcel Map No. 37921		07/13/2020	# TPM No. 37921	
Development Agreement		07/14/2025	# DA 25-02	

Exhibit E

Existing Development Fees and Credits

Fire:	Industrial: $198.57 per 1,000 sq. ft.
	Commercial: $381.04 per 1,000 sq. ft.
	Ind. Warehouse: $99.28 per 1,000 sq. ft.
Police:	Industrial: $12.10 per 1,000 sq. ft.
	Commercial: $23.22 per 1,000 sq. ft.
	Ind. Warehouse: $6.05 per 1,000 sq. ft.
Govt. Facilities:	Industrial: $93.04 per 1,000 sq. ft.
	Commercial: $178.54 per 1,000 sq. ft.
	Ind. Warehouse: $46.52 per sq. ft.
Streets/Trans:	Industrial: $3,027.72 per 1,000 sq. ft.
	Commercial: $3,730.15 per 1,000 sq. ft.
	Ind. Warehouse: $1,513.86 per 1,000 sq. ft.

Notes: Project subject to TUMF and MSHCP Fees in effect at time of payment

Exhibit F

Form: Assignment And Assumption Agreement

REQUESTED BY
AND WHEN RECORDED MAIL TO:

Exempt From Recording Fee Pursuant to Government Code § 27383

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Assignment") is entered into this ____ day of ____ by and between Empire Airport, LLC, a California limited liability company ("Assignor") and _____, a _____ ("Assignee") with reference to the following:

RECITALS

A. Assignor is the owner in fee simple of certain real property located in the City of Coachella, California, and legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Property" or "Site").

B. On _____ the Assignor and the City of Coachella, a California municipal corporation and charter city ("City") entered into that certain Development Agreement, which was recorded against the [Site or Development Property] in the Official Records of the County of Riverside on _____, as Instrument No. _____ (the "Development Agreement").

C. Pursuant to the terms of the Development Agreement, the Site was to be used for a _____ (the "Project").

D. Assignor now desires to transfer the Site to Assignee, and concurrently therewith, to transfer to Assignee all of Assignor's rights and responsibilities under the Project Agreements [to the extent that such rights and responsibilities relate to the Site].

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignor hereby assigns to Assignee all of Assignor's rights and responsibilities under the terms of the Development Agreement, [but only to the extent that such rights and responsibilities arise from the ownership of the Project and/or Site] from and after the "Effective Date" (as that term is defined in Section 4 below) of this Assignment (collectively, the "Assigned Rights and Obligations").

2. Assignee hereby accepts the foregoing assignment of the Assigned Rights and Obligations, and agrees to be bound by the terms of the Development Agreement [to the extent that such terms affect or are affected by ownership of the Site].

3. The parties hereto acknowledge and agree that Assignee shall not be responsible for any of the obligations of the Development Agreement which arise from ownership of any portion of the Site and which arise prior to the Effective Date hereof. As such, a default by Assignor under the Development Agreement prior to the Effective Date hereof ("Assignor's Default") shall not be deemed a default by Assignee, and Assignor shall indemnify, defend and hold harmless Assignee from any and all losses, claims or liability, including without limitation reasonable attorneys' fees and costs, arising from an Assignor's Default. A default by Assignee under the Development Agreement with respect to the Site after the Effective Date hereof ("Assignee's Default") shall not be deemed a default by Assignor, and Assignee shall indemnify, defend and hold harmless Assignor from any and all losses, claims or liability, including without limitation reasonable attorneys' fees and costs, arising from an Assignee's Default.

4. This Assignment shall be deemed effective upon the last of the following events to occur: (a) conveyance of the Site to Assignee as evidenced by the recording of the grant deed therefor in the Official Records of the County of Riverside, California, and (b) the written consent to this Assignment by the City with respect to the Assigned Obligations arising under the Project Agreements (herein referred to as the "Effective Date").

5. Except as otherwise described in paragraph 4 above, the parties hereto each warrant and represent that they have taken all necessary corporate action to authorize the execution and performance of this Assignment and that the individuals executing this document on behalf of the parties are authorized to do so, and by doing so, create binding obligations as described herein of the party represented.

6. This Assignment shall be governed by the internal laws of the State of California, without regard to conflict of law principles.

7. This Assignment may be signed in counterparts which, when signed by both parties hereto, shall constitute a binding agreement.

WHEREFORE, the parties hereto have executed this Assignment on the date first written above.

"ASSIGNOR"

EMPIRE AIRPORT, LLC,
by Haagen Company LLC, its Manager,
a California limited liability company,

Date:_____, 2026

By:_____
Alexander Haagen III, Its Manager

"**ASSIGNEE**"

_____

Date:_____, 2026

By: _____
_____

CONSENT

By execution below, the City hereby consents to the foregoing assignment.

CITY OF COACHELLA, a California municipal corporation

By: _____
Its: City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:
BEST, BEST & KREIGER, LLP

_____
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

[attachment to Assignment and Assumption Agreement]

APPENDIX I

1. DEFINED TERMS.

1.1. Additional Term. An extension of the term of the Agreement from the end of the Initial Term for an additional period of ten (10) years, so long as Developer has commenced construction of some improvements for the Project during the Initial Term.

1.2. Administrative Fees. Fees charged by the City, on a City-wide basis in effect at the time of payment to cover the costs of City's review of applications for any permit or other approval or review or inspection by City.

1.3. Agreement. This Development Agreement between the City of Coachella and Empire Airport, LLC.

1.4. Airport Boulevard Improvements. The Project's improvements on the portion of the Project Site fronting Airport Boulevard east of the Whitewater Bridge and west of the State Route 86 interchange boundary, from the northerly edge of the County Bridge widening improvement project up to the northerly edge of the Right of Way abutting the Project Site, as determined by the demands outlined in the traffic study performed as part of the Project EIR, including the design and installation of a new traffic signal at the Project's main entrance at Airport Boulevard.

1.5. Annual Review. Annual review as required by Government Code Section 65865.1 and further described in Article 7 of this Agreement.

1.6. Applicable Rules. The rules, regulations, ordinances, and officially adopted policies of the City in full force and effect as of the Effective Date of this Agreement.

1.7. Assignment and Assumption Agreement. A duly executed agreement between Developer and a Permitted Transferee whereby the Developer assigns and the Permitted Transferee assumes all of Developer's rights and obligations under this Agreement as to that portion of the Project Site or Property transferred to that Permitted Transferee pursuant to the provisions of Article 9 of this Agreement.

1.8. CEQA. California Environmental Quality Act (*Public Resources Code Section 21000, et seq.*)

1.9. CFD. Mello-Roos Community Facilities District.

1.10. City. The City of Coachella.

1.11. Community Benefits. The extraordinary benefit provided by Developer to City and its residents, as more specifically described in Section 4.4 of this Agreement.

1.12. Conditions of Approval. The conditions of approval imposed by the City on the Project Site Development Permits, as identified in Recital C of the Agreement.

1.13. Construction Cost Index. The Construction Cost Index published monthly by the Engineering News-Record (ENR) to track changes in the cost of construction over time, to the extent incorporated into the City's Existing Development Fees.

1.14. Construction Phasing. Development of the Project Site is permitted to occur in phases as described and contemplated in Exhibit C.

1.15. CVPA. Coachella Valley Power Agency.

1.16. CVWD. Coachella Valley Water District.

1.17. Dedicated Public Improvements. Those Public Improvements constructed by or on behalf of Developer that have been accepted by City in accordance with the Applicable Rules.

1.18. Defaulting Party. Party who fails to perform any material term or provision of this Agreement as more fully described in Section 10.1 of the Agreement.

1.19. Developer. Empire Airport, LLC, a California limited liability company.

1.20. Developer Affiliate. A parent or subsidiary of Developer or a company under common ownership with Developer.

1.21. Developer Event of Default. Any failure by Developer to perform any material term or provision of this Agreement that is not cured within 60 days following written notice of default from City (or such further time as may be reasonably required to cure), as more fully described in Article 10 of this Agreement.

1.22. Development Agreement Statute. Sections 65864 et seq. of the Government Code.

1.23. Development Fees. All fees, contributions, exactions, dedications, reservations, or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation, and maintenance attributable to the burden created by the Project.

1.24. Effective Date. The later to occur of (i) the date of execution of the Development Agreement by both Parties, and (ii) the effective date of Ordinance No. ____ approving Agreement.

1.25. Event of Default. Any failure by either Party to perform any material term or provision of this Agreement that is not cured within 60 days following written notice of default

from the other Party (or such further time as may be reasonably required to cure), as more fully described in Article 10 of this Agreement.

1.26. Existing Development Fees. The Development Fees applicable to the Project as set forth on Exhibit E.

1.27. Fee Credits. The fee credits or other fee reductions applicable to the Project as set forth on Exhibit E.

1.28. Financing Mechanism. A Mello-Roos Community Facilities District or other financing district used to fund public facilities.

1.29. Future Changes to the Applicable Rules. Any changes in the Applicable Rules, or any provisions of future general plans, specific plans, zoning ordinances, or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means) occurring after the Effective Date.

1.30. IID. Imperial Irrigation District.

1.31. Indemnified Parties. The City and its elected and other officials, officers, agents, and employees.

1.32. Initial Term. The period commencing upon the Effective Date and continuing thereafter for a period of ten (10) years, unless extended pursuant to the mutual agreement of the Parties or earlier terminated as provided in the Agreement.

1.33. Insubstantial Modification. Any minor modification or clarification to this Agreement which does not materially modify (i) the Term of this Agreement; (ii) permitted uses of the Project Site, (iii) maximum density or intensity of use within the Project, except as specifically allowed in the Project Approvals, (iv) provisions for the reservation or dedication of land, (v) conditions, terms, restrictions or requirements for subsequent discretionary actions, or (vi) monetary obligations of Developer. By way of example only, changes to mix of buildings and allowed uses within the conceptual site plan that do not exceed the total square footage allowed on the Project site and do not materially increase the trip generation or VMT caused by the Project are anticipated to constitute Insubstantial Modifications.

1.34. Material Changes. The circumstances described in subparts (a), (b), and (c) of Public Resources Code Section 21166.

1.35. Mitigation Measures. Mitigation measures listed in the EIR.

1.36. Mortgage. Any mortgage, deed of trust, or other security device securing financing with respect to the Property

1.37. Mortgagee. Any deed of trust beneficiary, mortgagee or other secured party who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, or deed in lieu of foreclosure**.**

1.38. Notice of Default. Written notice to a Party asserting that Party's failure to perform a material term of the Agreement.

1.39. Operating Memorandum. Written modification executed by Parties approved by City Manager or designee as an Insubstantial Modification.

1.40. Party or **Parties.** City of Coachella and Empire Airport, LLC.

1.41. Permitted Delay. Delay beyond the reasonable control and without the fault of the Party claiming the delay (and despite the good faith efforts of such Party) first arising after the Effective Date (except for item (xii) below) including, but not limited to: (i) acts of God; (ii) civil commotion; (iii) riots; (iv) strikes, picketing, or other labor disputes; (v) shortages of materials or supplies; (vi) damage to work in progress by reason of fire, floods, earthquake, or other casualties; (vii) an Event of Default of the other Party; (viii) restrictions imposed or mandated by any regulatory authorities, utility providers, or other public agencies, or delays in obtaining any Third-Party Agency Approvals; (ix) enactment of conflicting state or federal laws or regulations, (x) judicial decisions or similar legal incapacity to perform, (xi) epidemics and pandemics, including COVID 19-induced restrictions on the ability of any Party to perform its obligations of this Agreement; (xii) litigation brought by a third party attacking the validity of this Agreement; and (xiii) delays caused by the City.

1.42. Permitted Transfer. Any Transfer consented to by City or permitted without City's consent under Section 9.1 of the Agreement.

1.43. Permitted Transferee. Transferee of a Permitted Transfer

1.44. Project. Development of the Property with a mixed-use business park, including warehouse space, small businesses, self-storage units and personal vehicle storage, a small retail and restaurant development, a billboard sign, a fuel station and convenience store, as well as associated landscaping, parking, and signage.

1.45. Project Approvals. (i) This Agreement, (ii) the Change of Zone No. 20-01from M-H (Heavy Industrial) to MS (Manufacturing Services) and C-G (General Commercial) approved by the City Council on _____ by Resolution No. _____, (iii) the Environmental Impact Report prepared for the Project, approved and certified by the City Council on _____ by City Council Resolution No. _____ (the "**Project EIR**"), (iv) Conditional Use Permit Nos. 324, 325 and 326 approved by the City Council on _____ by City Council Resolution No. _____, (v) Architectural Review No. 20-04 approved by the City Council on _____ by City Council Resolution No. _____, (vi) any future discretionary or ministerial approvals and/or permits issued for the Project (collectively, the "**Project Site Development Permits**"), and (vii) the conditions of approval associated with each and all of the foregoing approvals.

1.46. **Project EIR.** The Environmental Impact Report prepared for the Project, approved and certified by the City Council on _____ by City Council Resolution No. _____.

1.47. **Project Site Development Permits.** Any future discretionary or ministerial approvals and/or permits issued for the Project.

1.48. **Property** or **Project Site.** Certain real property consisting of approximately 47.96 acres located in the City of Coachella, County of Riverside, California, legally described on Exhibit A attached to the Development Agreement and generally located at the northwest corner of the intersection of State Route 86 and Airport Boulevard.

1.49. **Public Health and Safety Exception.** City's authority to take any legally valid action necessary to protect persons or property from dangerous or hazardous conditions which create a threat to the public health or safety, including, without limitation, authority to condition or deny a permit, approval, or agreement or other entitlement or to change or adopt any new regulations applicable to the Project so long as such condition or denial or new law (i) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, and (ii) is based on written findings by City and transmitted to Developer, specifically identifying, based on objective and quantifiable evidence in the official record, the precise nature and extent of the dangerous or hazardous conditions requiring such condition or denial or change in the Applicable Rules, why there are no reasonable alternatives to the imposition of such condition or denial or changes in the law, and how such condition or denial or new law would alleviate the dangerous or hazardous condition.

1.50. **Public Improvements.** All roads, parks, drainage, sewer, water, and utility improvements, and all other infrastructure and improvements for the Project, including any onsite improvements or offsite improvements, that may or are to be dedicated or otherwise made available for public use pursuant to this Agreement or the Project Approvals.

1.51. **State or Federal Law.** A state or federal law or regulation enacted after the Effective Date.

1.52. **Subsequent Approvals.** Any future applications for discretionary or ministerial approvals and/or permits necessary or convenient for implementation of the Project, which may include, without limitation: development plans, conditional and administrative use permits, plot plans, tentative and final subdivision maps, street abandonments, design plan approvals, certificates of compliance, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right of way permits, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, encroachment permits, and amendments thereto and to the Project Approvals.

1.53. **Substation Site.** An approximately 5.6 acre parcel to be available for a potential new electrical substation, located at the northern end of the Project site.

1.54. **Term.** The term of this Agreement, including the Initial Term and the Additional Term, as may be extended or terminated.

1.55. **Third-Party Agency Approvals.** Required approvals or clearances from various Regulatory Agencies, other third-party public agencies and utilities.

1.56. **Transfer.** Any sale, mortgage, hypothecation, assignment or transfer all or a portion of Developer's rights, duties, and obligations arising under this Agreement.

1.57. **Transferee.** Any person, partnership, joint venture, firm, or corporation who is receiving all or a portion of Developer's rights, duties, and obligations arising under this Agreement pursuant to a Transfer.

1.58. **Uniform Code Regulations.** California Building Standards Code, as amended by the City in accordance with the California Health and Safety Code, including requirements of the applicable Building Code, Administrative Code, Energy Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code, or other applicable construction codes

1.59. **Vested Elements.** The overall design, development, construction, and use of the Project and all improvements in connection therewith, including without limitation, permitted uses of the Property, the maximum density of development, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for and financing for public improvements, and the other terms and conditions of development applicable to the Property as set forth in the Project Approvals.