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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MENIFEE

AND

ZEIDERS ROAD BUSINESS PARK, INC.

AND

COMMERCE POINTE II MENIFEE INC.

REGARDING THE

COMMERCE POINTE PROJECT

Effective Date.

December 20, 2013

**DEVELOPMENT  
AGREEMENT**

**COMMERCE POINTE PROJECT**

**This Development Agreement** ("Agreement") is entered into as of this 20<sup>th</sup> day of November 2013, by and between the CITY OF MENIFEE, a municipal corporation (the "City") and Zeiders Road Business Park, Inc., a California corporation, and Commerce Pointe II Menifee, Inc., a California corporation (individually a "Landowner" and collectively "Landowners"). The City and Landowners are sometimes hereinafter collectively referred to as the "Parties" and singularly as "Party."

**RECITALS**

**A. Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864, et seq. (the "Development Agreement Statute"), which authorizes the City and any person having a legal or equitable interest in real property to enter into a development agreement and, among other things, establish certain development rights in the property which is the subject of the development project application. On July 7, 2009, the City Council adopted Ordinance No. 2009-49 which sets forth the procedures, requirements and authorization to approve development agreements (the "Development Agreement Ordinance").

**B. Property.** Zeiders Road Business Park, Inc. holds a legal interest in certain real property comprised of Assessor Parcel #s 384-150-008, -009, and -010 (commonly known as "Commerce Pointe I"), and Commerce Pointe II Menifee, Inc. holds a legal interest in Assessor Parcel # 384-180-043 (commonly known as "Commerce Pointe II"). Commerce Pointe I and Commerce Pointe II are located in the City of Menifee, County of Riverside, State of California, as more particularly described in Exhibit "A" attached hereto (the "Property").

**C. Project.** Landowners have been authorized to develop on the Property two light industrial parks consisting of (i) approximately 209,858 square feet of floor area within 18 buildings, plus 327 parking spaces on Commerce Pointe II; and (ii) approximately 617,919 square feet of floor area within 33 buildings, plus 1,035 parking spaces on Commerce Pointe I.

**D. Project Approvals.** The land use approvals for the Project obtained prior to the Approval Date of this Agreement (collectively, the "Project Approvals") include but are not limited to the following:

- (a) Environmental Impact Report (State Clearinghouse # 2006121062), with Mitigation Measures, certified by the City Council of the City of Menifee on April 7, 2009.

- (b) Resolution No. 09-06 certifying the environmental impact report (State Clearinghouse #2006121062) and adopting a statement of overriding considerations of environmental impact for the Commerce Pointe I and II Project, approved and adopted by the City Council of the City of Menifee on April 7, 2009.
- (c) Change of Zone #7476, which changed the zoning of parcels within Commerce Pointe I from Light Agriculture to Light Industrial and from Light Agriculture and Manufacturing-Service Commercial to Light Industrial, approved and adopted by the City Council of the City of Menifee on April 7, 2009.
- (d) Plot Plan #21452 and Plot Plan #22280 for the siting and design of Commerce Pointe I and Commerce Pointe II with a maximum building height of 36 feet, approved and adopted by the City Council of the City of Menifee on April 7, 2009.
- (e) Tentative Parcel Map No. 2013-118 (PM36596) subdividing the Property into eighteen (18) lots on Commerce Pointe I and Tentative Parcel Map No. 2013-119 (PM36597) subdividing the Property into six (6) lots on Commerce Pointe II, approved by the City Planning Commission on October 8, 2013.
- (f) Administrative approvals in conjunction with the above mentioned Project Approvals, including but not limited to grading plans, landscape plans, and other detailed design and specification plans for Commerce Pointe I and Commerce Pointe II.

**E. Purpose of Development Agreement.** The City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning process and secure orderly development of the Project, assure progressive installation of necessary improvements and mitigation appropriate to each stage of development of the Project, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The Project will provide important employment opportunities and is highly capital intensive, especially in its initial phases, which, in order to make the Project economically and fiscally feasible, requires major commitment to and investment in public facilities and on-site and off-site improvements prior to the construction and sale or leasing of the light industrial units. Landowners desire certainty with respect to certain entitlements before expending the necessary sums to prepare the plans, implement mitigation, dedicate property and construct the public facilities referred to in this Agreement and to pursue other various pre-development work associated with the development of the Project. The City desires to provide certainty through this Agreement with respect to infrastructure and specific development criteria to be applicable to the Property in order to provide for appropriate utilization of the Property and general circulation in accordance with sound planning principles.

**F. Public Benefits Provided Pursuant to the Development Agreement.** The City Council determined that the development of the Project will afford the City, its citizens and the surrounding region with the following primary benefits:

- (a) Contributing to an increased quality of life for local residents by providing jobs in close proximity to the home, improving the jobs-to-housing balance for citywide planning, and reducing commuter traffic to San Diego, Orange and Los Angeles Counties.
- (b) Providing fiscal benefits to the City's general fund in terms of increased property tax revenues.
- (c) Creating substantial employment opportunities including both short-term construction employment and long-term permanent employment within the city.
- (d) Providing funding for transportation improvements at the following intersections to help alleviate existing failing levels of service:
  - (1) Scott & Murrieta Road;
  - (2) Zeiders Road/Haun Road & Scott Road;
  - (3) I-215 southbound ramps & Scott Road;
  - (4) I-215 northbound ramps & Scott Road;
  - (5) Zeiders Road & Keller Road;
  - (6) Antelope Road & Scott Road; and,
  - (7) Haun Road & Holland Road.
- (e) Constructing timely and needed backbone infrastructure to the surrounding area, including the following public improvements:
  - (1) Zeiders Road between Scott Road and Keller Road;
  - (2) Ciccotti Street between Zeiders Road and Bailey Park Boulevard;
  - (3) Bailey Park Boulevard near Ciccotti Street;
  - (4) Undergrounding of utilities along Zeiders Road from the south Commerce Pointe property line to the Scott Road intersection; and,
  - (5) Expanded storm drain and sewer facilities to meet projected regional needs.
- (f) Delivering a high quality industrial development that will enhance the surrounding community and provide opportunities to meet the demands of local and regional area businesses.
- (g) Conserving and enhancing valuable biologically sensitive areas and open space.

**G. Public Hearings.** On October 8, 2013, pursuant to the requirements of the Development Agreement Ordinance, the City's Planning Commission conducted a public

hearing on Landowners' application for this Development Agreement. On November 6, 2013, pursuant to the requirements of the Development Agreement Ordinance, the City Council conducted a public hearing on Landowners' application for this Development Agreement.

**H. Findings.** The City Council has found and determined that this Development Agreement: (i) is consistent with the City's General Plan and the zoning for the Property; (ii) is in the best interests of health, safety and general welfare of the City, its residents and the public; (iii) is entered into pursuant to and constitutes a present exercise of police power by the City; and, (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute.

**I. City Council Action.** In accordance with the Development Agreement Ordinance, the City Council held a duly noticed public hearing on this Agreement and, after independent review and consideration, adopted Ordinance No. 2013-133 finding this Agreement consistent with the General Plan and authorizing the execution of this Agreement, and such ordinance shall become effective on December 20, 2013.

**J. Material Terms.** Notwithstanding the fact that the provisions of this Agreement are derived from and include the policy determinations of the parties as outlined in Exhibit "B" entitled "Commerce Pointe Project – Material Terms for Pending Development Agreement and Associated Tract Map," in the event that there is any conflict between the Agreement and Exhibit "B", the provisions of the Agreement shall control.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

## **AGREEMENT**

1. **Incorporation of Recitals.** The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Agreement.
2. **Definitions.** Each reference in this Agreement to any of the following commonly used terms shall have the meaning set forth below for each such term.
  - 2.1 **Adoption Date.** November 20, 2013, the date the City Council adopted the Enacting Ordinance.
  - 2.2 **CEQA.** The California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*) and the Guidelines there under (Title 14, Cal. Code Regs. § 15000, *et seq.*).
  - 2.3 **Default.** Defined in Section 15.

**2.4 Effective Date.** The later of: (i) the date the Ordinance approving this Agreement takes effect pursuant to Government Code §36937; or (ii) if the Ordinance approving this Agreement or any other contemporaneous Project Approval is subject to a valid referendum proceeding pursuant to Elections Code §3500, *et seq.*, the date the Ordinance approving this Agreement or other Project Approval(s) is (or are) upheld pursuant to such referendum proceeding.

**2.5 EIR.** The Environmental Impact Report defined in Recital D above.

**2.6 Exactions.** All exactions, costs, fees, in-lieu fees or payments, charges, assessments, dedications or other monetary or non-monetary requirement charged or imposed by the City, or by the City through an assessment district (or similar entity), in connection with the development of, construction on, or use of real property, including but not limited to transportation improvement fees, park fees, art fees, affordable housing fees, infrastructure fees, dedication or reservation requirements, facility fees, sewer fees, water connection fees, building permit fees, obligations for on- or off-site improvements or construction requirements for Public Improvements, or other conditions for approval called for in connection with the development of or construction of the Project, whether such exactions constitute Public Improvements, Mitigation Measures in connection with environmental review of the Project Approvals or Subsequent Approvals, or impositions made under applicable City laws and regulations or in order to make an approval consistent with applicable City laws and regulations. Exactions shall not include Processing Fees as defined in Section 7.2 below.

**2.7 Existing Land Use Regulations.** Collectively, the Existing Land Use Regulations shall mean: (i) the City of Menifee General Plan; (ii) Planning and Zoning Codes of the City's Municipal Code; and, (iii) all other ordinances, resolutions, regulations, and official policies governing land use development and building construction in effect in the City as of the Adoption Date of this Agreement, including but not limited to the Project Approvals.

**2.8 Minor Modification.** As defined in Section 8.5.1

**2.9 Mitigation Measures.** The mitigation measures applicable to the Project developed as part of the EIR process and required to be implemented by Landowners, and adopted as part of the Project Approvals.

**2.10 Mortgage.** A mortgage or deed of trust, or other transaction, in which the Property, or a portion thereof or an interest therein, or any improvements thereon, is conveyed or pledged as security, contracted in good faith and for fair value, or a sale and leaseback arrangement in which the Property, or a portion thereof or an interest therein, or improvements thereon, is sold and leased back concurrently therewith in good faith and for fair value.

**2.11 Mortgagee.** The holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

2.12 **Project.** As defined in Recital C.

2.13 **Project Approvals.** As defined in Recital D.

2.14 **Property.** As defined in Recital B.

2.15 **Public Improvements.** The lands and facilities, both on- and off-site, to be improved and constructed by Landowners, and publicly dedicated or made available for public use, as provided by the Project Approvals and this Agreement. Public Improvements consist of all right-of-way improvements, streets and roads within the Property; all utilities (such as gas, electricity, cable television, water, sewer and storm drainage); pedestrian and bicycle paths and trails; parks and open space; the off-site public improvements; and all other improvements and facilities required or called for by the Mitigation Measures, conditions of the Project Approvals, and this Agreement to be implemented by Landowners.

2.16 **Subsequent Approvals.** Approvals and actions of any kind or character issued by the City following the Adoption Date of this Agreement that implement or change the Project Approvals, including, but not limited to, the Project Approvals, subdivision maps, plot plans, minor administrative permits, sign permits, lot mergers, building permits, use permits, variances, demolition permits, site clearance, grading plans and permits, substantial conformance determinations, certificates of occupancy, municipal financing, abandonment of streets or rights-of-way, and right-of-way transfers.

2.17 **Termination.** The expiration of the Term of this Agreement without extension, whether by the passage of time or by any earlier occurrence pursuant to any provision, including an uncured Default, of this Agreement. For purposes hereof, "Termination" includes any grammatical variant thereof, including "Terminate," "Terminated," and "Terminating."

2.18 **Vested Rights.** As defined in Section 7.

3. **Provisions Required by Statute.** California Government Code §§65865.1 and 65865.2 provide, among other things, that a development agreement shall specify the following:

- (a) Duration of the agreement. See Section 6.2 of this Agreement
- (b) Permitted Uses of the Property. See Section 7.1 of this Agreement.
- (c) Density or intensity of such use. See Project Approvals.
- (d) Maximum height and size of proposed buildings. See Project Approvals.
- (e) Reservation or dedication of land for public purposes. See Project

Approvals.

- (f) Periodic Review at least annually to demonstrate good faith compliance with the Development Agreement. See Section 12 of this Agreement.

4. **Landowner Representations and Warranties.**

The Landowners represent and warrant to the City, as follows:

- (a) Organization. Each Landowner is a corporation duly organized, validly existing and in good standing under the laws of the State of California, with full right, power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.
- (b) Authorization. Each Landowner has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of the Agreement. Upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Landowner, enforceable against it in accordance with its terms.
- (c) No Conflict. The execution, delivery and performance of this Agreement by each Landowner does not and will not materially conflict with, or constitute a material violation or material breach of, or constitute a default under (i) the charter or incorporation documents of the Landowner, (ii) any applicable law, rule or regulation binding upon or applicable to the Landowner, or (iii) any material agreements to which the Landowner is a party.
- (d) No Litigation. Unless otherwise disclosed in writing to the City prior to the date of this Agreement, there is no existing or, to the Landowner's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Landowner or, to the best knowledge of the Landowner, the Property that would, if adversely determined, materially and adversely affect the Landowner or the Property or the Landowner's ability to perform its obligations under this Agreement or to develop and operate the Project.
- (e) Licenses, Permits, Consents and Approvals. Landowners and/or any person or entity owning or operating the Property have duly obtained and maintained, or will duly obtain and maintain, and will continue to obtain and maintain, all licenses, permits, consents and approvals required by all applicable governmental authorities to develop, sell, lease, own and operate the Project on the Property.

- (f) Payment of Taxes. Landowners shall pay when due any and all real estate taxes and assessments (including any possessory interest tax) assessed and levied on the Property or any portion thereof.

5. **Relationship of City and Landowners.** The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Landowners, the affairs of the City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. The City and Landowners hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Landowners joint venturers or partners.

6. **Effective Date and Term.**

6.1 **Effective Date.** The effective date of this Agreement is December 20, 2013, which is the effective date of City Ordinance No. 2013-133 adopting this Agreement, unless said Ordinance or any other contemporaneous Project Approval is subject to a valid referendum. Not later than ten (10) days after the Adoption Date, the City and Landowners shall execute and acknowledge this Agreement. Not later than forty (40) days after the Adoption Date, the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of Riverside, State of California, provided that a referendum applicable to the Development Agreement has not been timely submitted to the City.

6.2 **Term.** The term of this Agreement shall commence on the Effective Date and continue thereafter for ten (10) years unless said Initial Term is terminated, modified or extended by the terms of this Agreement.

6.3 **Extension of Term Due to Litigation.** In the event that litigation is filed by a third party which seeks to invalidate this Agreement or any of the Project Approvals, the term of this Agreement shall be extended for a period equal to the length of time from the time a summons and complaint and/or petition are served on the defendant(s)/respondent(s) until the resolution of the matter is final and not subject to appeal; provided, however, that the total amount of time for which the term shall be extended as a result of any and all litigation shall not exceed two (2) years.

6.4 **Term of Project Approvals.** The term of any and all Project Approvals, including but not limited to those Project Approvals already granted as Existing Land Use Regulations as well as Subsequent Approvals, if any, for the Project, shall be extended automatically through the term of this Agreement,

notwithstanding any other City law.

**6.5 Automatic Termination Upon Completion and Sale of Units.**

- (a) This Agreement shall automatically be terminated, without any further action by either party or need to record any additional document, with respect to any single industrial building or industrial condominium comprising a portion of the Property, upon completion of construction and issuance by the City of a final certificate of occupancy permit for the industrial unit, and conveyance of such industrial unit to a bona-fide good-faith purchaser (e.g., individual building owner or end-user). In connection with its issuance of a final inspection for such industrial unit, the City shall confirm that all improvements, which are required to serve the unit, as determined by the City, have been accepted by the City.
- (b) Upon the conveyance of any lot, parcel, or other property to a property owners' association, or public or quasi-public entity, that lot and its owner shall have no further obligations under and shall be released from this Agreement.

**6.6 Rights and Obligations Upon Expiration or Termination.** Following Termination of this Agreement all of the rights, duties and obligations of the Parties hereunder shall terminate and be of no further force and effect. Upon Termination of this Agreement, Landowners shall thereafter comply with the provisions of all City laws and regulations then in effect or subsequently adopted with respect to the Property and/or the Project, except that any Termination shall not affect any right vested (absent this Agreement), or other rights arising from approvals granted by the City for development of all or any portion of the Project.

**7. Vested Rights.**

**7.1. Development Rights.** Except as set forth in Sections 7.2, 7.3, 7.4 and 8.5 below, during the term of this Agreement the Landowners are provided and assured the right to develop and use the Property in accordance with this Agreement, the Project Approvals, and the Existing Land Use Regulations in force and effect on the Adoption Date of this Agreement to the maximum extent allowed under this Agreement (the "Vested Rights"). The permitted uses of the Property, the density and intensity of use, the rate, timing and sequencing of development, the maximum height and design and size of proposed buildings, the parking standards, and provisions for reservation and dedication of land, shall be those set forth in the Vested Rights.

**7.2 Fees, Taxes and Exactions.** The Landowners shall pay when due all Exactions duly imposed by the City on the Project and/or the Property as part of the Project Approvals and Existing Land Use Regulations. Notwithstanding the

foregoing, the Development Impact Fees applicable to the Project, as set forth in the attached Exhibit "C", shall be subject to moratorium during the Term of this Agreement. The Development Impact Fees shall not be modified or renegotiated by the City during the moratorium in connection with granting of any modification or amendment of the Project Approvals, or the granting of any approval which does not materially alter the maximum density or intensity of the Project. Landowners shall pay those citywide application, processing, inspection, permit and plan check fees and charges (the "Processing Fees") required by the City and in effect at the time of the application for that permit or approval. Landowners agree that Landowners shall pay the City the full costs of a contract planner or contract building plan check person if such services are determined to be necessary by the City Manager; provided, however, that the Processing Fees paid by Landowner to the City shall apply as a credit against costs of contract planner or contract building plan check person. This Agreement shall not limit the City's right and power to impose taxes on the Property or Project provided that any taxes imposed are adopted pursuant to all applicable laws and that said tax is a general tax that applies throughout the boundaries of the City.

**7.3 Rules Regarding Design, Engineering and Construction for Public Improvements.** Except as provided in Section 8.3 and 8.4 below, all ordinances, resolutions, rules, regulations and official policies governing engineering and construction standards and specifications applicable to the Public Improvements shall be those in force and effect at the time the tentative subdivision map for the property that includes the specific improvement is approved.

**7.4 Uniform Codes Applicable.** The Project shall be constructed in accordance with the provisions of the International Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project.

**7.5 Subsequent Rules.** Except as set forth in Sections 7.2, 7.3, 7.4 and 7.6, during the Term of this Agreement, the City shall not apply any City ordinances, resolutions, rules, regulations, official policies, or Exactions enacted after the Adoption Date ("Subsequent Rule") that would conflict with or impede the Vested Rights of Landowners set forth in Section 7.1 above or otherwise conflict with this Agreement or the Existing Land Use Regulations, without Landowners' written consent.

**7.6 Changes in State or Federal Law.** This Agreement shall not preclude the application to development of the Property of Subsequent Rules mandated and required by preemptive changes in State or federal laws or regulations.

**8. Development of the Project and Public Improvements.**

**8.1 Construction and Operation of the Project.** Landowners shall have the right to construct and operate the Project in accordance with the Vested Rights described in Section 7 above.

**8.2. Phasing.** The Parties acknowledge that presently Landowners cannot predict the exact timing or sequence of the phasing of the Project. Landowners therefore shall have the right to develop the Project in phases in such order and at such times, if at all, as Landowners deem appropriate within the exercise of their sole subjective business judgment and the provisions of this Agreement. Moreover, subject to the conditions of the Project Approvals, Landowners may determine in their sole discretion which part of the Project to develop first and thereafter, and Landowners may determine in their sole discretion when to record the first final map for any portion of the Property. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties to provide for the timing of development of the Project in this Agreement. To do so, the Parties acknowledge and provide that Landowners shall have the right, but not the obligation, to complete the Project or any portion thereof in such order, at such rate, at such times, and in as many development phases and sub-phases as the Landowners deem appropriate in their sole subjective business judgment, provided such completed portion conforms to applicable Existing Land Use Regulations.

**8.3 Design and Construction of Zeiders Road.**

**8.3.1** Prior to issuance of the first occupancy permit for the Project, Landowners shall complete construction of Zeiders Road in accordance with the street improvement plans approved on April 26, 2011, sewer plans approved on November 9, 2010, and water plans submitted February 2011.

**8.3.2** Landowners agree to construct Phase 1 of the Zeiders Road improvements to commence upon the earlier of (i) 180 days after the first permit is issued for mass grading of the Project, or (ii) July 1, 2015. Phase 1 of Zeiders Road will include minimum standards for a 2-lane paved roadway from approximately 200 feet south of Ciccotti Street northward to the improved section south of Scott Road, with one level of asphalt paving and curb and gutter on the east side of Zeiders Road, but no sidewalks or landscaping incorporated in Phase 1. The Phase 1 Zeiders Road improvement plans are attached hereto as Exhibit "D".

**8.4 Design and Construction of Ciccotti Street.**

**8.4.1** Prior to issuance of the first occupancy permit for the Project, Landowners shall complete construction of Ciccotti Street from Zeiders Road to Bailey Park Boulevard.

**8.4.2** Landowners agree to construct Phase 1 of the Ciccotti Street improvements from Zeiders Road to Bailey Park Boulevard to minimum all-weather standards for a 2-lane road (without curb, gutter, sidewalk or landscaping) to commence upon the earlier of: (i) 180 days after the first permit is issued for mass grading of the Project; or (ii) July 1, 2015. The Phase 1 Ciccotti Street improvement plans are attached hereto as Exhibit "E".

**8.5** **Subsequent Project Approvals.** The development of the Project is subject to future approvals and actions by the City that have not been reviewed or approved by the City prior to the Adoption Date of this Agreement (i.e., Subsequent Approvals). Subsequent Approvals may include discretionary and ministerial actions by the City including, but are not limited to, review and approval of site plans, landscape and irrigation plans, architectural plans, tentative and/or final parcel and subdivision maps, additional tentative subdivision maps, condominium plans, special permits, variances, demolition permits, plan review, design review, grading permits and building permits. In reviewing and acting on applications for Subsequent Approvals, the City shall cooperate with Landowners to expedite review and final action on such requests. Once approved by the City, any Subsequent Approval shall become part of the Project Approvals and Vested Rights.

**8.5.1** **Minor Modifications.** The Parties acknowledge that refinements or modifications of the Project may be required during the Term. The Parties agree that the following refinements and modifications to the Project or Project Approvals constitute Minor Modifications: (i) changes in landscaping; (ii) variations in the location or size of structures that do not increase the maximum aggregate floor area of the Project, including but not limited to the consolidation or aggregation of building footprints as long as no single building exceeds 250,000 square feet; (iii) variations in the location of utilities or other infrastructure connections or facilities not materially affecting design concepts; (iv) variations in the open space or conservation area configurations that do not reduce the aggregate size of open space or conservation area; (v) minor adjustments to the tentative or final map or to the legal descriptions to accommodate approved modifications to other Project Approvals; (vi) map phasing and condominium plans; and (vii) similar modifications or other changes that are ministerial in nature and are not subject to further review under CEQA. Notwithstanding any other provision of the Existing Land Use Regulations, a request for a Minor Modification shall be approved administratively unless appealed to the Planning Commission in accordance with Section 2.20.150 of the Menifee Municipal Code in existence as of the Adoption Date of this Agreement. Minor Modifications shall be deemed to be ministerial in nature and shall not require an amendment to this Agreement or public hearing. The City shall not unreasonably withhold or delay the approval of a requested Minor Modification nor shall the City impose as a

condition to approval any Exaction except as authorized in this Agreement.

**8.5.2 Subdivision of Property - Future Tentative Maps.** In accordance with the provisions of this Section, Landowners shall have the right, from time to time or at any time, to apply for one or more parcel or tract maps or condominium plans, subdividing the Property into smaller developable parcels, as may be necessary in order to develop, lease, finance or sell any portion of the Property in connection with development of the Project as provided in this Agreement and consistent with the density and intensity set forth in the Existing Land Use Regulations. Final maps may be approved on a phased basis.

**8.5.3 Other Subsequent Project Approvals.** Any change in the Project which is not a Minor Modification as defined herein shall require a subsequent discretionary action by the City as required by Existing Land Use Regulations, which shall be applicable to such project changes. A subsequent discretionary action shall not prevent development of the land for the uses and to the maximum density or intensity of development established in the Project Approvals for the Term of this Agreement pursuant to Government Code Section 65865.2.

**8.5.4 Subsequent Environmental Review.** The Parties acknowledge that the EIR for the Project contains a thorough analysis of the Project and Project alternatives and specifies the feasible Mitigation Measures necessary to eliminate or reduce to an acceptable level adverse environmental impacts of the Project, and acknowledge that the City Council issued a statement of overriding considerations in connection with the Project Approvals, pursuant to 14 California Code of Regulations (CEQA Guidelines) Section 15093 for those significant impacts which could not be mitigated. For these reasons, no further review or mitigation under CEQA shall be required by the City for any Subsequent Approvals unless the criteria for further environmental review under CEQA are met as specified in California Public Resources Code Section 21166.

**8.6 Other Governmental Permits.** Landowners shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall reasonably cooperate with Landowners in their endeavors to obtain such permits and approvals and, from time to time at the request of Landowners, shall attempt with reasonable efforts and in good faith to enter into binding agreements with any such entity in order to assure the availability of such permits and approvals or services.

**8.7 Easements; Improvements; Abandonments.** The City shall reasonably cooperate with Landowners in connection with any arrangements for abandoning

existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project; and if any such easement is owned by the City or an agency of the City, the City or such agency shall, at the request of Landowners, take such action and execute such documents as may be reasonably necessary to abandon existing easements and relocate them, as necessary or appropriate in connection with the approved development of the Project.

**8.8 Conservation Easement.** The City agrees to accept the dedication of a conservation easement in accordance with California Civil Code Section 815-816 for the portion of the Property identified on Exhibit "F" to protect and maintain habitat mitigation areas in perpetuity (the "Conservation Easement"), provided that Landowners have established a secured method for funding the anticipated long-term maintenance costs of the easement area, including but not limited to the posting of a bond, endowment, or certificate of deposit, or by including the maintenance costs of the Conservation Easement in an appropriate financing district. The Conservation Easement shall be conveyed substantially in the form attached as Exhibit "G".

**8.9 TUMF Credits for Phase 1 Improvements.** The City will use its best efforts to obtain approval to permit the use of Western Riverside Council of Governments ("WRCOG") Transportation Uniform Mitigation Fees ("TUMF") for the improvements to Zeiders Road and Ciccotti Street, such that the Landowners' costs for delivery of the improvements is credited against the Landowners' obligation to pay the applicable TUMF for the Project. If the cost of the improvements to Zeiders Road and Ciccotti Street exceeds the Landowners' TUMF obligation, the Landowners may request, to WRCOG, a reimbursement for such costs through the TUMF program. To the extent permissible, the City will provide construction in lieu Road & Bridge Benefit District ("RBBD") fee credits for these improvements. In no case shall duplicate fee credits be issued for the same costs related to eligible improvements.

9. **Transfers and Assignments.** Subject to the terms of this Section 9, any Landowner shall have the right to assign or transfer (collectively "Transfer") all or any portion of its interest, rights or obligations under this Agreement to third parties or entities (the "Transferee") acquiring an interest or estate in all or a portion of the Property (the "Transferred Property"), including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, industrial condominiums or of any of the buildings located upon the Property. Landowner shall remain jointly liable for all obligations and requirements under this Agreement after the effective date of the Transfer unless Landowner satisfies the following conditions: (i) Transferee executes and delivers to the City an Assignment and Assumption Agreement in the form set forth in Exhibit "H" to this Agreement specifying the obligations and requirements to be assumed by the Transferee; and (ii) Landowner has not received a notice of a Default under this Agreement that remains uncured as of the effective date of the Transfer. If

conditions (i) and (ii) are satisfied, Landowner shall be released from any further liability or obligation under this Agreement related to the Transferred Property as specified in the Assignment and Assumption Agreement, and the Transferee shall become the "Landowner" under this Agreement with all rights and obligations related thereto, with respect to such Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such Default shall not constitute a Default by Landowner with respect to any other portion of the Property hereunder and shall not entitle the City to Terminate or modify this Agreement with respect to such other portion of the Property.

**10. Lender Obligations and Protections.**

**10.1 Encumbrances on the Property.** The Parties hereto agree that this Agreement shall not prevent or limit Landowners, in any manner, from encumbering the Property or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Property.

**10.2 Mortgagee Obligations.** A Mortgagee not in legal possession of the Property or any portion thereof shall not be subject to the obligations or liabilities of the Landowners under this Agreement, including the obligation to construct or complete construction of improvements or pay fees. A Mortgagee in legal possession shall not have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition. A Mortgagee in legal possession of the Property or portion thereof shall only be entitled to use of Property or to construct any improvements on the Property in accordance with the Project Approvals and this Agreement if Mortgagee fully complies with the terms of this Agreement.

**10.3 Mortgagee Protection.** 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 for any deed of trust or Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or Mortgagee that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise, and any such Mortgagee or successor to a Lender that takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

**10.4 Notice of Default to Mortgagee; Right of Lender to Cure.** If the City receives notice from a Mortgagee requesting a copy of any notice of Default given Landowners under this Agreement and specifying the address for service thereof,

then the City shall deliver to such Mortgagee, concurrently with service thereon to Landowners, any notice given to Landowners with respect to any claim by the City that Landowner(s) is/are in Default and/or Certificate of Non-Compliance. Each Mortgagee shall have the right during the same period available to Landowners to cure or remedy, or to commence to cure or remedy, the Default or non-compliance as provided in this Agreement; provided, however, that if the Default, noncompliance or Certificate of Non-Compliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Default, noncompliance or Certificate of Non-Compliance within ninety (90) days after obtaining possession. If any such Default, noncompliance or Certificate of Non-Compliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default, noncompliance or Certificate of Non-Compliance (including but not limited to proceeding to gain possession of the Property) if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible.

11. **Estoppel Certificate.** Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and, (iv) such other information as may reasonably be requested. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The City Manager shall have the right to execute any certificate requested by Landowners hereunder. The City acknowledges that a certificate hereunder may be relied upon by Transferees, Lenders and Mortgagees.

12. **Annual Review.**

12.1 **Review Date.** The annual review date for this Agreement shall occur each year on the anniversary date of the Effective Date of this Agreement ("Annual Review Date").

12.2 **Required Information from Landowners.** Not more than sixty (60) days and not less than forty-five (45) days prior to the Annual Review Date, the Landowners shall provide a letter to the City Manager or his/her designee containing evidence to show compliance with this Agreement. The burden of proof, by substantial evidence, of compliance is upon the Landowners.

12.3 **City Report.** Within forty (40) days after Landowners submit their

letter(s), the City Manager or his/her designee shall review the information submitted by Landowner(s) and all other available evidence on Landowners' compliance with this Agreement. All such available evidence including public comments and final staff reports shall, upon receipt of the City, be made available as soon as possible to Landowners. The City Manager or his/her designee shall notify the Landowners in writing whether the Landowners have complied with the terms of this Agreement. If the City Manager or his/her designee finds one or more of the Landowners in compliance, the City Manager or his/her designee shall issue a Certificate of Compliance with respect to those Properties in compliance. If the City Manager or his/her designee finds one or more of the Landowners not in compliance, the City Manager or his/her designee shall issue a Certificate of Non-Compliance with respect to those properties not in compliance after following the procedures set forth in Section 12.4.

**12.4 Non-compliance with Agreement; Hearing.** Prior to issuing a Certificate of Non-Compliance, if the City Manager or his/her designee, on the basis of substantial evidence, finds that a Landowner has not complied with the terms of this Agreement, he/she shall specify in writing to Landowner, with reasonable specificity, the respects in which Landowner has failed to comply. The City Manager or his/her designee shall also specify a reasonable time for Landowner to meet the terms of compliance, which time shall be not less than thirty (30) days, and shall be reasonably related to the time necessary for Landowner to adequately bring its performance into compliance with the terms of this Agreement, subject to any permitted delay. If after the reasonable time for Landowner to meet the terms of compliance has passed and the City Manager or his/her designee, on the basis of substantial evidence, continues to find that the Landowner has not complied, then the City Manager or his/her designee shall issue a Certificate of Non-Compliance. Any Certificate of Non-Compliance shall be made in writing with reasonable specificity as to the reasons for the determination, and a copy shall be provided to Landowner. If the City Manager or his/her designee issues a Certificate of Non-Compliance, then the Landowner that is not in compliance shall be entitled to appeal such determination to the City Council with an opportunity to present evidence at a hearing. If the non-compliance involves a material obligation of this Agreement, the City may proceed with the procedure regarding Default in Section 15 below.

**12.5 Costs.** Costs reasonably incurred by the City in connection with the annual review and related hearings shall be paid by Landowners in accordance with the City's schedule of fees and billing rates for staff time in effect at the time of review.

**12.6 Effect on Transferees.** If a Landowner has effected a transfer so that its interest in the Property has been divided between Transferees, then the annual review hereunder shall be conducted separately with respect to each Party.

13. **Indemnification.** Landowners agree to indemnify, defend and hold harmless the City, any City agencies and their respective elected and appointed councils, boards,

commissions, officers, agents, employees, volunteers and representatives from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses) by any third-party or entity, directly or indirectly arising or alleged to have arisen out of or in any way related to: (i) the approval of this Agreement or the Project Approvals; (ii) any development or use of the Property under this Agreement or the Project Approvals; and (iii) any actions or inactions by the Landowners or their contractors, subcontractors, agents, or employees in connection with the construction or improvement of the Property and the Project; provided, however, that once the City accepts the Public Improvements, Landowners' indemnification obligation with respect to such improvements shall cease. Notwithstanding the foregoing, Landowners shall have no indemnification obligation with respect to the following: (i) the gross negligence or willful misconduct of the City, its contractors, subcontractors, agents or employees; (ii) the maintenance, use or condition of any improvement or portion of the Property after the time it has been dedicated to and accepted by the City or another public entity, or taken over by a property owner's association; and, (iii) the public use easements after the time the public use easements have been accepted by the City.

**14. Amendment, Cancellation or Suspension.**

**14.1 Modification Because of Conflict with State or Federal Laws.** In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require substantial and material changes in Project Approvals, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or State law or regulation. Any such amendment of the Agreement shall be approved by the City Council in accordance with State law, the City Municipal Code, and this Agreement.

**14.2 Amendment by Mutual Consent.** This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law, the City Municipal Code and this Agreement.

**14.3 Substantive Amendments.** Any substantive modification to this Agreement shall require approval of an amendment to this Agreement in accordance with State law and the City Municipal Code. No Amendment to this Agreement shall be required due to a change to the Project or the Project Approvals as permitted or authorized by this Agreement.

**14.4 Cancellation by Mutual Consent.** This Agreement may be Terminated in whole or in part by the mutual consent of the parties or their successors in interest, in accordance with the provisions of the State law and the City Municipal Code.

15. **Default.** Subject to Section 19, a Party's violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement required to be performed by such Party shall constitute a default ("Default").

**15.1 Procedure Regarding Defaults.** For purposes of this Agreement, a Party claiming another Party is in Default shall be referred to as the "Complaining Party," and the Party alleged to be in Default shall be referred to as the "Party in Default." A Complaining Party shall not exercise any of its remedies as the result of Default unless such Complaining Party first gives notice to the Party in Default as provided in this Section, and the Party in Default fails to cure such Default within the applicable cure period.

**15.2 Notice.** The Complaining Party shall give written notice of Default to the Party in Default, specifying the Default alleged by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default.

**15.3 Cure.** Subject to Section 19, the Party in Default shall have thirty (30) days from receipt of the notice of Default to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged Default is such that it cannot practicably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if: (a) the cure shall be commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing Party's receipt of the notice), the curing Party provides written notice to the other Party that the cure cannot practicably be completed within such thirty (30) day period; and (d) the cure is completed at the earliest practicable date. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be agreed to by the Complaining Party to be reasonably necessary to correct the matter).

**15.4 Procedure for Terminating Agreement upon Default.** If the City desires to Terminate this Agreement in the event of a Default, the matter shall be set for a public hearing before the City Council. The burden of proof of whether a Party is in Default shall be on the Complaining Party. If the City Council determines that a Landowner is in Default and has not cured to the City's reasonable satisfaction, or that the Default presents a serious risk to public health, safety or welfare, the City Council may Terminate this Agreement.

**15.5 No Cross Default.** Notwithstanding anything to the contrary in this Agreement, if a Landowner has effected a Transfer so that its interest in the Property has been divided between Transferees, then any determination that a Party

is in Default shall be effective only as to the Party to whom the determination is made and the portions of the Property in which such Party has an interest.

16. **Legal Actions by Parties to the Agreement.** If either Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against the other Party by reason of a Default, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees (including, without limitation, costs and expenses), which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.
17. **Third Party Court Action.** If any court action or proceeding is brought by any third party to challenge any Project Approval or this Agreement, Landowners shall have the right to Terminate this Agreement upon thirty (30) days' notice in writing to the City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination. Any such action or proceeding shall constitute an excuse for nonperformance pursuant to Section 19.
18. **Agreement Runs with the Land.** Except as otherwise provided for in this Agreement, all of the provisions, agreements, rights, terms, powers, standards, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons or entities acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California, and the burdens and benefits shall be binding upon and inure to the benefit of each of the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, and lessees.
19. **Excuse for Nonperformance.** Notwithstanding anything to the contrary in this Agreement, Landowners and the City shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, strikes, lockouts, condemnation, litigation challenging this development agreement or project, court order or any other reason not caused by and not within the control of the Party claiming the extension of time to perform. The Party claiming such extension shall

send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

20. **Severability.** Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to Terminate this entire Agreement from and after such determination.
21. **Waiver; Remedies Cumulative.** Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. All of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.
22. **Applicable Law and Venue.** This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California. The parties agree that any lawsuit or legal proceeding arising hereunder shall be heard in the Superior Court of California located in Riverside, California.
23. **Notices.** Any notice to either Party required by this Agreement shall be in writing and given by delivering the same to such Party in person or by sending the same by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Menifee  
ATTN: City Clerk  
29714 Haun Road  
Menifee, CA 92586

With a copy to:

Landowner                      Peter G. Aylward  
   Strategic Property Advisers, Inc.  
   3250 Vista Diego Road  
   Jamul, CA 91935-2014

With a copy to:                Dennis Fitzpatrick  
   PacTen Partners  
   1689 Comstock Avenue  
   Los Angeles, CA 90024

Any Party may change its mailing address at any time by giving written notice of such change to the other Party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

24. **Recordation.** The City shall cause this Agreement, any amendment hereto and any Termination of any parts or provisions hereof, to be recorded, at Landowners' expense, with the County Recorder within forty (40) days of the Adoption Date thereof. The failure of the City to record this Agreement or its Termination or amendment shall not affect the validity of and binding obligations set forth in said document.
25. **Further Assurances.** Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.
26. **Entire Agreement.** This written Agreement and the Exhibits contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.
27. **Construction of Agreement.** The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the

Parties. The captions preceding the text of each Article, Section, subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. Exhibits to this Agreement shall be incorporated into this Agreement as if stated fully herein. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. This Agreement has been reviewed and revised by legal counsel for both landowner and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

28. **Signature Pages.** For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages in counterparts which, when attached to this Agreement, shall constitute this as one complete Agreement.
29. **Time.** Time is of the essence of this Agreement and of each and every term and condition hereof.
30. **Prevailing Wages.** Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. Landowners are responsible for determining whether the Prevailing Wage laws apply to the transportation improvement projects set forth in Recital F. If Landowners determine that the transportation improvements set forth in Recital F are being constructed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Landowners agree to fully comply with such Prevailing Wage Laws. Landowners shall determine the applicable prevailing rates and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the necessary work available to interested parties upon request, and shall post copies at the Landowner's principal place of business and at the project site. Landowner shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

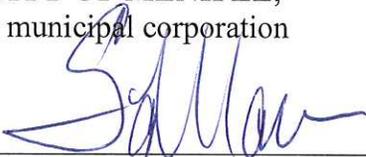
[END OF TEXT; SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the City of Menifee, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attested to by its City Clerk under the authority of Ordinance No. 2013-133, adopted by the City Council of the City of Menifee on the 20th day of November, 2013, and landowner has caused this Agreement to be executed.

“CITY”

“LANDOWNER”

**CITY OF MENIFEE,**  
a municipal corporation

  
\_\_\_\_\_  
Scott A. Mann, Mayor

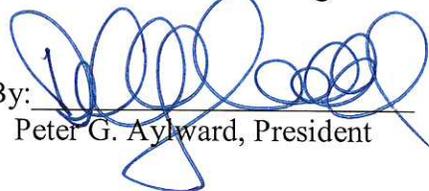
**Zeiders Road Business Park, Inc.,**  
a California corporation

By: \_\_\_\_\_  
Ronald A. Schoen  
Chief Financial Officer and Secretary

ATTEST:

  
\_\_\_\_\_  
Kathy Bennett, City Clerk

By: Strategic Property Advisers, Inc.,  
a California corporation  
Its Authorized Adviser and Agent

By:   
\_\_\_\_\_  
Peter G. Aylward, President

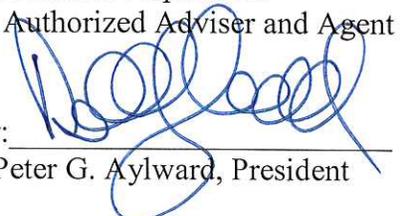
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Julie H. Biggs, City Attorney

**Commerce Pointe II Menifee, Inc.,**  
a California corporation

By: \_\_\_\_\_  
Ronald A. Schoen  
Chief Financial Officer and Secretary

By: Strategic Property Advisers, Inc.,  
a California corporation  
Its Authorized Adviser and Agent

By:   
\_\_\_\_\_  
Peter G. Aylward, President

**ACKNOWLEDGMENT**

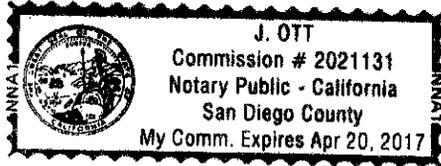
State of California  
County of San Diego

On November 27, 2013 before me, J. Ott, Notary Public  
(insert name and title of the officer)

personally appeared Peter G. Aylward  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature J. Ott (Seal)

# ACKNOWLEDGMENT

State of California  
County of San Diego

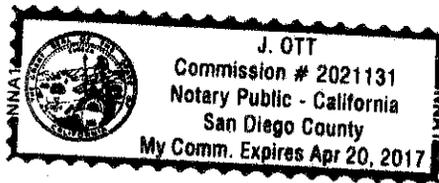
On November 27, 2013 before me, J. Ott, Notary Public  
(insert name and title of the officer)

personally appeared Peter G. Aylward  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~  
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in  
~~his/hers/their~~ authorized capacity(ies), and that by ~~his/hers/their~~ signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature J. Ott (Seal)



IN WITNESS WHEREOF, the City of Menifee, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attested to by its City Clerk under the authority of Ordinance No. 2013-133, adopted by the City Council of the City of Menifee on the 20th day of November, 2013, and landowner has caused this Agreement to be executed.

“CITY”

“LANDOWNER”

**CITY OF MENIFEE,**  
a municipal corporation

**Zeiders Road Business Park, Inc.,**  
a California corporation

\_\_\_\_\_  
Scott A. Mann, Mayor

By:   
\_\_\_\_\_  
Ronald A. Schoen  
Chief Financial Officer and Secretary

ATTEST:

By: Strategic Property Advisers, Inc.,  
a California corporation  
Its Authorized Adviser and Agent

\_\_\_\_\_  
Kathy Bennett, City Clerk

By: \_\_\_\_\_  
Peter G. Aylward, President

APPROVED AS TO FORM:

**Commerce Pointe II Menifee, Inc.,**  
a California corporation

\_\_\_\_\_  
Julie H. Biggs, City Attorney

By:   
\_\_\_\_\_  
Ronald A. Schoen  
Chief Financial Officer and Secretary

By: Strategic Property Advisers, Inc.,  
a California corporation  
Its Authorized Adviser and Agent

By: \_\_\_\_\_  
Peter G. Aylward, President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of Los Angeles }

On 12-05-2013 before me, NELLY CAYWOOD, NOTARY PUBLIC,  
Date Here Insert Name and Title of the Officer

personally appeared RONALD A. SCHOEN  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Nelly Caywood  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> Corporate Officer — Title(s): _____<br><input type="checkbox"/> Individual<br><input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General<br><input type="checkbox"/> Attorney in Fact<br><input type="checkbox"/> Trustee<br><input type="checkbox"/> Guardian or Conservator<br><input type="checkbox"/> Other: _____ | <p style="text-align: center; font-weight: bold; font-size: small;">RIGHT THUMBPRINT OF SIGNER</p> <p style="text-align: center; font-size: x-small;">Top of thumb here</p> | <input type="checkbox"/> Corporate Officer — Title(s): _____<br><input type="checkbox"/> Individual<br><input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General<br><input type="checkbox"/> Attorney in Fact<br><input type="checkbox"/> Trustee<br><input type="checkbox"/> Guardian or Conservator<br><input type="checkbox"/> Other: _____ | <p style="text-align: center; font-weight: bold; font-size: small;">RIGHT THUMBPRINT OF SIGNER</p> <p style="text-align: center; font-size: x-small;">Top of thumb here</p> |
|---|---|---|---|

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

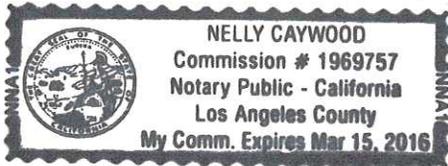
State of California

County of Los Angeles }

On 12-05-2013 before me, NELLY CAYWOOD, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared RONALD A. SCHOEN  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: Nelly Caywood  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Partner —  Limited  General  Individual  Partner —  Limited  General

Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Exhibit A  
Property Description

LEGAL DESCRIPTION  
CP 1

Real property in the City of Menifee, County of Riverside, State of California, described as follows:

DIVISION 1:

PARCELS 1 AND 2 AND LOTS B, C AND D OF PARCEL MAP 8158, AS PER MAP RECORDED IN BOOK 31, PAGE 50 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

DIVISION 2:

PARCEL A OF LOT LINE ADJUSTMENT NO. 05016 RECORDED ON JUNE 23, 2006 AS INSTRUMENT NO. 2006-0452652 OF RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 3 OF PARCEL MAP 8158, AS SHOWN IN BOOK 31 PAGE 50, INCLUSIVE OF MAPS AND A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 6 SOUTH, RANGE 3 WEST, S.B.B.M., AS DESCRIBED IN DEED RECORDED SEPTEMBER 30, 2005 AS INSTRUMENT NUMBER 2005-0813258, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 3, SAID POINT ALSO BEING A POINT ON THE CENTERLINE OF ZEIDERS ROAD, AS SHOWN ON SAID PARCEL MAP 8158;

THENCE NORTH ALONG THE WESTERLY LINE OF SAID PARCEL 3 AND THE CENTERLINE OF SAID ZEIDERS ROAD NORTH  $00^{\circ}22'06''$  EAST A DISTANCE OF 440.41 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 3;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 3, SOUTH  $89^{\circ}26'00''$  EAST, A DISTANCE OF 1181.13 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 3;

THENCE NORTH ALONG THE EASTERLY LINE OF PARCEL 2 OF SAID PARCEL MAP 8158, NORTH  $02^{\circ}03'20''$  EAST, A DISTANCE OF 311.14 FEET;

THENCE CONTINUING NORTH ALONG THE EASTERLY LINE OF SAID PARCEL 2 NORTH  $13^{\circ}25'35''$  WEST, A DISTANCE OF 133.33 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 2, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF PARCEL 1 AS SHOWN ON SAID PARCEL MAP 8158;

THENCE NORTH ALONG THE EASTERLY LINE OF SAID PARCEL 1 NORTH  $13^{\circ}25'35''$  WEST, A DISTANCE OF 253.52 FEET;

THENCE CONTINUING NORTH ALONG THE EASTERLY LINE OF SAID PARCEL 1 NORTH  $31^{\circ}20'06''$  EAST, A DISTANCE OF 226.27 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 1;

THENCE SOUTH  $89^{\circ}26'00''$  EAST, A DISTANCE OF 37.20 FEET;

THENCE SOUTH  $09^{\circ}59'30''$  WEST, A DISTANCE OF 210.15 FEET;

THENCE SOUTH  $12^{\circ}43'45''$  EAST, A DISTANCE OF 154.03 FEET;

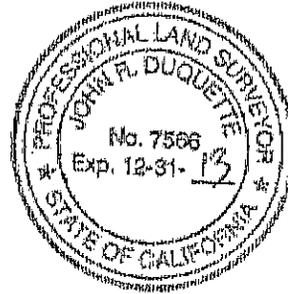
THENCE SOUTH  $00^{\circ}24'17''$  WEST, A DISTANCE OF 950.00 FEET;

THENCE SOUTH 05°18'20" EAST, A DISTANCE OF 13.29 FEET;

THENCE NORTH 89°28'13" WEST, A DISTANCE OF 1252.15 FEET TO THE POINT OF BEGINNING.

APN: 384-150-003-2 (old) 384-150-009-8 (new) and 384-150-010-8 (new) and 384-150-002-1 (old) 384-150-005-7 (new)

  
\_\_\_\_\_  
John R. Duquette, PLS 7566



LEGAL DESCRIPTION  
CP 2

Real property in the City of Menifee, County of Riverside, State of California, described as follows:

TENTATIVE PARCEL MAP NO. 35835, BEING A DIVISION OF THE FOLLOWING:

THE WEST 12 OF THE FOLLOWING DESCRIBED PARCEL OF LAND;

THAT PORTION OF THE EAST 12 OF THE NORTHEAST  $\frac{1}{4}$  OF THE SECTION 22, TOWNSHIP 6 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 22; THENCE NORTH  $89^{\circ} 58' 00''$  WEST, ALONG THE SOUTH LINE OF SAID NORTHEAST  $\frac{1}{4}$ , A DISTANCE OF 30.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH  $89^{\circ} 58' 00''$  WEST, ALONG SAID SOUTH LINE A DISTANCE OF 1,287.68 FEET TO THE SOUTHWEST CORNER OF SAID EAST  $\frac{1}{2}$  OF SAID NORTHEAST  $\frac{1}{4}$ ; THENCE NORTH  $00^{\circ} 10' 15''$  WEST, ALONG THE WEST LINE OF SAID EAST  $\frac{1}{2}$ , 883.19 FEET TO THE POINT OF INTERSECTION OF THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF PARCEL 6 AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 21, PAGE 33 RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS; THENCE NORTH  $89^{\circ} 52' 00''$  EAST, ALONG THE WESTERLY PROLONGATION OF SAID SOUTHERLY LINE AND SAID SOUTHERLY LINE 1,288.25 FEET TO A POINT THAT IS 30.00 FEET WEST OF THE EAST LINE OF SAID NORTHEAST  $\frac{1}{4}$ ; THENCE SOUTH  $00^{\circ} 08' 00''$  EAST, 887.02 FEET TO THE TRUE POINT OF BEGINNING.

APN: 384-180-026-6

  
\_\_\_\_\_  
John R. Duquette, PLS 7566



Exhibit B  
Development Agreement Material Terms

**COMMERCE POINTE PROJECT**

**Material Terms for Pending Development Agreement  
and Associated Tract Map**

**A. Introduction**

The Menifee City Council unanimously approved the Commerce Pointe Project on Zeiders Road in 2009. Separately, Caltrans, the County of Riverside and the Cities of Menifee and Murrieta have been working closely to implement improvements to the existing I-215/Scott Road interchange in an effort to improve regional circulation and meet future traffic needs. The Commerce Pointe Project is required to make major improvements to Zeiders Road and Ciccotti Street (between Zeiders Road and Bailey Park Boulevard) that will be important to the regional traffic circulation during and after the construction of the I-215/Scott Road improvements. However, the economic recession has delayed the Commerce Pointe Project and, consequently, the required transportation improvements. Therefore, City staff and the Commerce Pointe Project owners have been discussing the terms of a possible development agreement that would allow for the completion of the Commerce Pointe Project over time as the market returns, but guarantee the early delivery of the critical regional transportation improvements. Other public benefits provided by the Commerce Pointe Project through the proposed development agreement are outlined on the attached Exhibit A.

**B. Development Agreement ("Agreement")**

**I. Project Approvals and Modifications.** In 2009, the City approved plot plans for Commerce Pointe I and II on adjacent parcels for a total of 827,777 square feet (the "Project"). The Agreement provides that the Project may be completed over time in accordance with all the Project Approvals and other laws and regulations in place as of the date of the Agreement. The Agreement also establishes a process for the City to administratively approve minor modifications to the Project (such as adjusting the building footprints) to accommodate changing market conditions and engineering requirements as the Project progresses. The following refinements and modifications to the Project are considered to be minor modifications that shall be approved administratively unless appealed to the Planning Commission in accordance with Section 2.20.150 of the Menifee City Code: (i) changes in landscaping; (ii) variations in the location or size of structures that do not increase the maximum aggregate floor area of the Project, including consolidation or aggregation of building footprints as long as no single building exceeds 250,000 square feet; (iii) variations in the location of utilities or other infrastructure connections or facilities not materially affecting design concepts; (iv) variations in the open space or conservation area configurations that do not reduce the aggregate size of open space or conservation area; (v)

minor adjustments to the tentative map, final map or the legal descriptions to accommodate approved modifications to other Project Approvals; (vi) map phasing and condominium plans; and (vii) similar modifications or other minor changes that are ministerial in nature and are not subject to further review under the California Environmental Quality Act.

2. **Conservation Easement.** The City would agree to accept the dedication of a 1.97-acre portion of the property that is required by state and federal resource agencies to be protected by a conservation easement for habitat mitigation, provided that the property owners have established a secured method for funding the long-term maintenance costs of the easement area. The City and the Project owners intend to annex the property into a landscape and lighting maintenance district so that future tax assessments on Commerce Pointe would provide funding for the City's expenditures related to maintenance and reporting obligations for the conservation area. The City and the Project owners have executed a Letter of Understanding for the appropriate resource agencies confirming the intention to implement the Conservation Easement in accordance with this paragraph.

3. **Term.** The Development Agreement would be effective for ten years. The term of all Project Approvals will be extended automatically through the term of the Development Agreement.

4. **Zeiders Road.** The Project owners will construct Phase 1 of the Zeiders Road improvements to commence upon the earlier of (i) 180 days after the permit is issued for mass grading of the Project, or (ii) July 1, 2015. Phase 1 of Zeiders Road will include minimum standards for a 2-lane paved roadway from approximately 200 feet south of Ciccotti Street northward to the improved section south of Scott Road, with one level of asphalt paving and curb and gutter on the east side of Zeiders Road, but no sidewalks or landscaping incorporated in Phase 1. The owners agree to fully complete Zeiders Road in accordance with approved street, sewer, water and landscape plans prior to issuance of the first occupancy permit for the Project. The Phase 1 Zeiders Road improvement plans shall be attached to the final executed Agreement as Exhibits \_\_\_ and \_\_\_.

5. **Ciccotti Street.** The Project owners will also construct Phase 1 of the Ciccotti Street improvements from Zeiders Road to Bailey Park Boulevard to minimum all-weather standards for a 2-lane road (without curb, gutter, sidewalk or landscaping) to commence upon the earlier of (i) 180 days after the permit is issued for mass grading of the Project, or (ii) July 1, 2015. The owners agree to complete full construction of Ciccotti Street prior to issuance of the first occupancy permit for the Project. The Phase 1 Ciccotti Street improvement plans shall be attached to the final executed Agreement as Exhibits \_\_\_ and \_\_\_.

6. **TUMF Credits for Phase 1 Improvements.** The timely construction of improvements to Zeiders Road and Ciccotti Street, by the Project owners, as well as the required closure of Bailey Park Drive, is critical to the Scott Road Interchange project and the regional transportation system. The Scott Road/I-215 interchange is included in the Western Riverside Council of Governments ("WRCOG") Transportation Uniform Mitigation Fee ("TUMF") program and the County of Riverside Scott Road Road & Bridge Benefitt District

("RBBB") program. The City of Menifee administers collection of fees and approval of fee credits/reimbursement for development projects within city boundaries subject to administrative guidelines for each respective program. Under the Development Agreement, the City will use its best efforts to obtain approval to permit the use of TUMF for the proposed improvements to Zeiders Road and Ciccotti Street, such that the Project owners' costs for delivery of the improvements is credited against the Project owners' obligation to pay the applicable TUMF for the Project. If the cost of the improvements to Zeiders Road and Ciccotti Street exceeds the Project owners' TUMF obligation, the Project owners may request, to WRCOG, a reimbursement for such costs through the TUMF program. To the extent permissible, the City will provide construction in lieu RBBB fee credits for these improvements. In no case shall duplicate fee credits be issued for the same costs related to eligible improvements.

7. **Timing for Approvals and Construction.** Attached as Exhibit B is a proposed schedule showing the timing of the Agreement, parcel map and conservation easement approvals that would allow construction of the transportation improvements to begin by September 2013.

8. **Other Usual and Customary Terms.** The Agreement will include other usual and customary provisions, including a description of the public benefits from the Project (see attached Exhibit A) and other standard terms addressing transfers and assignments, lender obligations and protections, annual review of the development agreement, indemnification, default and enforcements, and other normal miscellaneous provisions.

### **C. Tentative Maps**

The property owners' have applied for two tentative maps for the Project, which are consistent with the existing approved plot plans and substantially similar to the vesting tentative tract map that was previously filed for the Project. The tentative maps will be processed concurrently with the proposed Agreement and intended for consideration by the City Planning Commission prior to the City Council's consideration of the Agreement. If approved, the tentative maps will become part of the Project Approvals subject to the Agreement.

## Exhibit A

### Public Benefits of the Project.

- A. Contributing to an increased quality of life for local residents by providing jobs in close proximity to the home, improving the jobs-to-housing balance for Citywide planning, and reducing commuter traffic to San Diego, Orange and Los Angeles Counties;
- B. Providing fiscal benefits to the City's general fund in terms of increased property tax revenues;
- C. Creating substantial employment opportunities including both short-term construction employment and long-term permanent employment within City;
- D. Providing funding for transportation improvements at the following intersections to help alleviate existing failing levels of service:
  - (1) Scott & Murrieta Road;
  - (2) Zeiders Road/Haun Road & Scott Road;
  - (3) I-215 southbound ramps & Scott Road;
  - (4) I-215 northbound ramps & Scott Road;
  - (5) Zeiders Road & Keller Road;
  - (6) Antelope Road & Scott Road; and,
  - (7) Haun Road & Holland Road.
- E. Constructing timely and needed backbone infrastructure to the surrounding area, including the following public improvements:
  - (1) Zeiders Road between Scott Road and Keller Road;
  - (2) Ciccotti Street between Zeiders Road and Bailey Park Boulevard;
  - (3) Bailey Park Boulevard near Ciccotti Street;
  - (4) Undergrounding of utilities along Zeiders Road from the south Commerce Pointe property line to the Scott Road intersection; and,
  - (5) Expanded storm drain and sewer facilities to meet projected regional needs.
- F. Delivering a high quality industrial development that will enhance the surrounding community and provide opportunities to meet the demands of local and regional area businesses;
- G. Providing recreational amenities for the employees and the community at large; and,
- H. Conserving and enhancing valuable biologically sensitive areas and open space.

Exhibit C

Development Impact Fees

Development Impact Fees for Area 17

Development Impact Fees	Single Family Residential/Unit	Multi-Family Residential/Unit	Commercial/Acre	Industrial/Acre	Surface Mining/Acre
Public Facilities	\$1,207	\$1,011	\$5,163	\$2,112	\$211
Fire Facilities	\$765	\$550	\$4,879	\$2,085	\$209
Transportation-Roads, Bridges, Major Improvements	\$1,564	\$1,236	\$5,823	\$3,042	\$2,677
Transportation signals	\$420	\$378	\$6,974	\$4,878	\$4,293
Conservation and Land Bank	\$0	\$0	\$0	\$0	\$0
Regional Parks	\$563	\$472	\$2,259	\$942	\$94
Community Centers/Parks	\$0	\$0	\$0	\$0	\$0
Regional Multipurpose Trails	\$316	\$264	\$1,266	\$528	\$53
Flood Control	\$0	\$0	\$0	\$0	\$0
Library Books	\$341	\$286	\$0	\$0	\$0
Fee Program Administration	\$69	\$56	\$248	\$127	\$47
<b>Total</b>	<b>\$5,185.00</b>	<b>\$4,253.00</b>	<b>\$26,609</b>	<b>\$13,664</b>	<b>\$7,378</b>

Exhibit D

Phase 1 Zeiders Road Improvement Plans

Exhibit F

Property Depiction of Conservation Easement Area



Exhibit G

Form of Conservation Easement

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Zeiders Road Business Park, Inc.  
c/o Peter G. Aylward  
Strategic Property Advisers, Inc.  
3250 Vista Diego Road  
Jamul, CA 91935-2014

CONSERVATION EASEMENT DEED

This CONSERVATION EASEMENT DEED ("**Conservation Easement**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by Zeiders Road Business Park, Inc., a California corporation ("**Grantor**"), in favor of the City of Menifee ("**Grantee**").

RECITALS

A. Grantor is the sole owner in fee simple of real property containing 36.07 acres, located in the City of Menifee, County of Riverside, State of California, designated Assessor's Parcel Numbers 384-150-008, 384-150-009 and 384-150-010 (the "**Property**"). The Property is legally described on **Exhibit "A"** attached hereto and incorporated by this reference. Grantor intends to grant a conservation easement over a 1.97-acre portion of the Property (the "**Easement Area**"). The Easement Area is legally described on **Exhibit "B"** and depicted on **Exhibit "C"** attached hereto and incorporated by this reference.

B. The Easement Area provides, among other things, compensatory mitigation for unavoidable impacts associated with the Commerce Pointe Industrial Park Project by Grantor pursuant to requirements of the following state and Federal approvals (collectively, "**Agency Approvals**"): (1) United States Army Corps of Engineers' ("**ACOE**") Section 404 Permit No. SPL-2012-00052-JPL and any amendments thereto (the "**Section 404 Permit**").

C. This Conservation Easement is designed to satisfy and is granted in satisfaction of the Agency Approval.

D. Consistent with the terms and conditions of this Conservation Easement, the Easement Area is and will remain in a Natural Condition as defined herein and is intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values (collectively, "**Conservation Values**"). The Conservation Values are of importance to the people of the County of Riverside and the people of the State of California and United States.

E. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is *a governmental entity identified in Civil Code Section 815.3(b) and otherwise authorized to acquire and hold title to real property.*

F. The ACOE is the Federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to Section 404 of the Clean Water Act, and is a third party beneficiary of this Conservation Easement.

### **COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and State of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee and its successors or assigns, as appropriate, a Conservation Easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth. This Conservation Easement shall run with the land and be binding on Grantor's heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. Purpose.

(a) The purpose of this Conservation Easement is to ensure the Easement Area will be managed and preserved in a Natural Condition, as defined herein, in perpetuity and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area (the "**Purpose**"). Grantor intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with this Purpose, including without limitation, those involving the preservation, restoration, and enhancement of native species and their habitats.

(b) The term "**Natural Condition**," as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:

(1) Compensatory mitigation measures, including implementation, maintenance, and monitoring activities (collectively, "**Compensatory Mitigation**") required by the Agency Approval and as described in the Final Habitat Mitigation and Monitoring Plan dated 22 October 2013 ("**Mitigation Plan**"), a copy of which is attached as **Exhibit "D**;"

(2) In-perpetuity maintenance ("**Long-Term Maintenance**") as described in Section 16 herein; or

(3) Activities described in Sections 4-6 herein.

(c) To the best of the Grantor's knowledge, Grantor represents and warrants that there are no structures or improvements existing on the Easement Area at the time this grant is executed. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purpose of this Conservation Easement as evidenced by the Title Report attached at **Exhibit "E**." The present Natural Condition is evidenced in part by the depiction of the Easement Area attached on **Exhibit "F**," showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and ACOE consisting of (1) a color aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.

(d) If a controversy arises with respect to the present Natural Condition of the Easement Area, Grantor, Grantee, or ACOE or any designees or agents of Grantor, Grantee, and ACOE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

(e) The term "**Biological Monitor**" shall mean an independent third-party consultant with knowledge of aquatic resources in the Riverside County area and expertise in the field of biology or related field.

2. Grantee's Rights. To accomplish the Purpose of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee. These rights, without obligation, are also granted to ACOE or their designees as third party beneficiaries of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Easement Area; and

(b) To enter upon the Easement Area and Property at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement; and

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Conservation Easement; and

(d) All mineral, air, and water rights necessary to protect and to sustain the biological resources of the Easement Area, provided that any exercise of such rights by Grantee shall not result in conflict with such Conservation Values; and

(e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area are hereby terminated and extinguished and such present and future development rights may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise; and

(f) The right to enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

3. Prohibited Uses. Any activity on or use of the Easement Area inconsistent with the Purpose of this Conservation Easement and not reserved as a right of Grantor is prohibited. Without limiting the generality of the foregoing, the following uses by Grantor, Grantee, and their respective guests, agents, assigns, employees, representatives, successors, and third parties are expressly prohibited on

the Easement Area except as otherwise provided herein or unless specifically provided for in the Agency Approval, the Mitigation Plan, and any easements and reservations of rights recorded in the chain of title to the Easement Area at the time of this conveyance (as set forth on Exhibits E and F hereto):

(a) Unseasonable or supplemental watering except for habitat enhancement activities described in Section 6(b) or the Mitigation Plan;

(b) Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species as allowed in Section 6(c);

(c) Incompatible fire protection activities except fire prevention activities set forth in Section 6;

(d) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;

(e) Grazing or other agricultural activity of any kind;

(f) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing;

(g) Residential, commercial, retail, institutional, or industrial uses;

(h) Any legal or de facto division, subdivision or partitioning of the Easement Area;

(i) Construction, reconstruction or placement of any building, road, wireless communication cell towers, or any other structure or improvement, except as provided for in Section 6, or any billboard or sign except those signs specifically allowed under Section 5(c);

(j) Dumping soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;

(k) Planting, gardening, or introduction or dispersal of non-native plant or animal species;

(l) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area;

(m) Altering the general topography of the Easement Area or the design hydrology for the mitigation channel in the Easement Area, including but not limited to building of roads, trails, and flood control work; except as permitted by the

Agency Approval, or as necessary to implement the Mitigation Plan, or any right reserved in Section 6, or Section 16;

(n) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials as set forth in Section 6(e), (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) completing the Mitigation Plan, or (5) activities described in Section 4, Section 6, or Section 16;

(o) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;

(p) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;

(q) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral rights or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area; and

(r) Creation of any encumbrance superior to this Conservation Easement, other than those encumbrances set forth in **Exhibit "E"** hereto, or the recording of any involuntary lien (which is not released within thirty calendar days), or the granting of any lease, license or similar possessory interest in the Easement Area which will affect the Conservation Values of the Easement Area.

4. Grantor's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantor shall undertake the following construction, maintenance and monitoring of mitigated areas pursuant to the Mitigation Plan until issuance of final approval per the Agency Approval confirming that Grantor has successfully completed construction, maintenance and monitoring of mitigated areas pursuant to the Mitigation Plan ("**Final Approval**"). This duty is non-transferable. Grantor, its successors and assigns shall:

(a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement;

(b) Cooperate with Grantee, its successors or assigns in the protection of the Conservation Values;

(c) Pursuant to Section 16(d), below, repair and restore damage to the Easement Area directly or indirectly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control; provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work in the Easement Area without first consulting with the Grantee or its successor or assigns and ACOE; and

(d) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

5. Grantee's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantee shall:

(a) Perform at least quarterly compliance inspections of the Easement Area, prepare an annual inspection report that documents the quarterly inspection results, and shall make reports available to ACOE upon request;

(b) Upon receipt of Final Approval, perform the Long-Term Maintenance of the Easement Area as described in Section 16;

(c) Within 90 days of recordation of this Conservation Easement, erect signs and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions. Prior to erection of such signage, Grantee shall submit detailed plans showing the location and language of such signs to ACOE for review and approval. The erection and maintenance of informative signage shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements;

(d) Pursuant to the requirements of Section 16(e), below, repair and restore damage to the Easement Area directly or indirectly caused by Grantee, Grantee's guests, representatives, employees or agents, and third parties within Grantee's control provided, however, Grantee, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with Grantor and ACOE; and

(e) Set aside, hold, invest and disburse adequate Special Assessment District funds (described in Section 17) solely for the purposes of preserving the Conservation Values of the Easement Area under this Conservation Easement in perpetuity.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in or to permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited or limited by, and are consistent with, the Purpose of this Conservation Easement, including the following uses:

(a) Access. Reasonable access through the Easement Area and Property to adjacent land over existing roads, or to perform obligations or other activities permitted by this Conservation Easement.

(b) Habitat Enhancement Activities. Creation and enhancement of native plant communities, including the right to plant trees and shrubs of the same type as currently existing on the Easement Area, so long as such activities do not harm the habitat types identified in the Agency Approval or Mitigation Plan. For purposes of preventing erosion and reestablishing native vegetation, the Grantor shall have the right to revegetate areas that may be damaged by the permitted activities under this Section 6, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Easement Area. Prior to any habitat enhancement activities, Grantor shall have a Biological Monitor submit detailed plans to ACOE for review and approval. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements.

(c) Vegetation, Debris, and Exotic Species Removal. Removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant) and removal of non-native or exotic plant or animal species. Vegetation, debris, and exotic plant species removal shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(d) No Interference with Development of Adjoining Property. Notwithstanding anything set forth herein to the contrary, nothing in this Conservation Easement is intended nor shall be applied to in any way limit Grantor or any of Grantor's successors and assigns from (1) constructing, placing, installing, and/or erecting any improvements upon the portions of the Property not constituting the Easement Area and/or (2) developing adjoining property for any purposes, except as limited by any local, state or federal permit requirements for such development and provided that for all of the above clauses (1) and (2) neither such activity nor any effect resulting from such activity amounts to a use of the Easement Area, or has an impact upon the Easement Area, that is prohibited by Section 3 above.

(e) Fire Protection. The right, in an emergency situation only, to

maintain firebreaks (defined as a strip of plowed or cleared land made to check the spread of a fire), trim or remove brush, otherwise perform preventative measures required by the fire department to protect structures and other improvements from encroaching fire. All other brush management activities shall be limited to areas outside the Easement Area.

7. Enforcement.

(a) Right to Enforce. Grantor, its successors and assigns, grant to ACOE, the U.S. Department of Justice, and the State of California a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. The ACOE, U.S. Department of Justice, and the State of California shall have the same rights, remedies and limitations as Grantee under this Section 7. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above, the rights of enforcement against Grantor, Grantee and their successors or assigns under the Agency Approval, or any rights of the various documents created thereunder or referred to therein. The term "**Party**" means Grantor or Grantee, as the case may be. Grantor, Grantee, and any third party beneficiaries, when implementing any remedies under this easement, shall provide timely written notice to each other of any actions taken under this section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Notice of Violation. In the event that a Party or its employees, agents, contractors or invitees is in violation of the terms of this Conservation Easement or that a violation is threatened, the non-violating Party and/or third party beneficiaries may demand the cure of such violation. In such a case, the non-violating Party and/or third party beneficiaries shall issue a written notice to the violating Party (hereinafter "**Notice of Violation**") informing the violating Party of the actual or threatened violations and demanding cure of such violations. The Notice of Violation shall be sent to the other Party and third party beneficiaries listed under Section 14 of this Conservation Easement.

(c) Time to Cure. The violating Party shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the violating Party shall, within the thirty (30) day period, submit to the non-violating Party and/or third party beneficiaries, as the case may be, for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. If the violating Party disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter "**Notice of Dispute**") to the appropriate Party and/or third party beneficiary within thirty (30) days of receipt of written Notice of Violation.

(d) Failure to Cure. If the violating Party fails to cure the violation within the time period(s) described in Section 7(c), above, or Section 7(e)(2), below, the non-violating Party and/or third party beneficiaries may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating Party with the terms of this Conservation Easement. In such action, the non-violating Party and/or third party beneficiaries may:

(1) Recover any damages to which they may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, ACOE shall be consulted.

(2) Enjoin the violation by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(3) Obtain other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury. This remedy is expressly available notwithstanding the ability to claim damages as provided for in subdivision (1).

(e) Notice of Dispute.

(1) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third party beneficiaries shall consider all relevant information concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.

(2) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party and/or third party beneficiaries determine that a violation has occurred, the non-violating Party and/or third party beneficiaries shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating Party shall, within the fifteen (15) day period, submit to the non-violating Party and/or third party beneficiaries for review and approval a plan and time schedule to diligently complete a

cure. The violating Party shall complete such cure in accordance with the approved plan.

(f) Conflicting Notices of Violation.

(1) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter "**Active Notice(s) of Violation**") such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter "**Notice of Conflict**") to the non-violating Party and/or third party beneficiaries issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries within fifteen (15) days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.

(2) Upon issuing a valid Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party responsible for said conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Section 7(c) above. Notwithstanding Section 7(g), failure to cure within said time period(s) shall entitle the non-violating Party to the remedies described in Section 7(d) and Section 7(h).

(3) The failure of the violating Party to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Easement Area, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least twenty four (24) hours' written notice before pursuing such remedies. So long as such twenty-four (24) hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and/or third party beneficiaries listed in Section 14 of this Conservation Easement. The rights of the non-violating Party and/or third party beneficiaries under this paragraph

apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive.

(h) Costs of Enforcement. Any costs incurred by a Party in enforcing the terms of this Conservation Easement against another Party, including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by a Party's violation or negligence under the terms of this Conservation Easement shall be borne by the violating Party.

(i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party and/or third party beneficiary shall be at the discretion of the Party and/or third party beneficiary, and any forbearance by such Party and/or third party beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-violating Party and third party beneficiary of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the rights of the non-violating Party and third party beneficiary under this Conservation Easement. No delay or omission by the non-violating Party and/or third party beneficiaries in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party and/or third party beneficiaries to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions give rise to a private right of action against the non-violating Party and/or third party beneficiaries by any third parties.

(j) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee, its successors or assigns to bring any action against Grantor, its successors or assigns for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;

(2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area

resulting from such causes; provided that once the emergency has abated, Grantor, its successors or assigns promptly take all reasonable and necessary actions required to restore the Easement Area to the condition it was in immediately prior to the emergency;

(3) Acts by Grantee, ACOE, or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

Notwithstanding the foregoing, Grantor must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

(k) Acts Beyond Grantee's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor, its successors or assigns to bring any action against Grantee, its successors or assigns for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, and earth movement;

(2) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes, provided that once the emergency has abated, Grantee, its successors or assigns promptly take all reasonable and necessary actions required to restore the Easement Area to the condition it was in immediately prior to the emergency;

(3) Acts by Grantor, ACOE or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantee's control.

Notwithstanding the foregoing, Grantee must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

8. Access. This Conservation Easement does not convey a general right of access to the public or a general right of access to the Easement Area.

9. Costs and Liabilities.

(a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance (except Long-Term Maintenance pursuant to Section 16) of the Property. Grantor agrees Grantee and ACOE shall not have any duty or responsibility for the operation, upkeep, or maintenance (except Long-Term Maintenance pursuant to Section 16) of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

(1) Grantor, its successors and assigns shall hold harmless, protect, defend and indemnify ACOE and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them ("**ACOE Indemnified Party**" and collectively, "**ACOE Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with: injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause unless caused by the negligence or willful misconduct of any of the ACOE Indemnified Parties.

(2) Grantor, and its successors and assigns shall hold harmless, protect, defend and indemnify Grantee and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them ("**Grantee Indemnified Party**" and collectively "**Grantee Indemnified Parties**") from and against any and all Claims which are in contravention of this Conservation Easement, arising from or in any way connected with: injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area regardless of cause unless caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties.

10. Taxes, No Liens. Grantor and its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes

imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and ACOE with satisfactory evidence of payment, if assessed, upon request. Grantor, Grantee, and their successors and assigns shall keep the Easement Area free from any liens. Should either Grantor's work or Grantee's work in or upon the Easement Area result in a lien on the Easement Area Grantor or Grantee, as the case may be, shall take all steps required to have said lien removed from the Easement Area.

11. Condemnation. If the Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

12. Subsequent Transfers.

(a) By Grantee.

(1) This Conservation Easement is transferable by Grantee, but Grantee may assign its rights and delegate obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 and Government Code Section 65966 (or any successor provision(s) then applicable) and only with the prior written approval of Grantor and ACOE; and

(2) Grantee shall record the assignment in the County of Riverside; and

(3) Unless otherwise agreed by Grantor, Grantee and ACOE, along with such transfer of this Conservation Easement, Grantee shall transfer any special assessment district funds collected for the management, maintenance and monitoring of this Conservation Easement, after deducting reasonable costs of transfer and the cost of satisfying all outstanding contracts and obligations.

(b) By Grantor.

(1) The covenants, conditions, and restrictions contained in this Conservation Easement are intended to and shall run with the land and bind all future owners of any interest in the Easement Area. Grantor, its successor or assign agrees to (i) incorporate by reference to the title of and the recording information for this Conservation Easement in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Easement Area, including, without limitation, a leasehold interest and (ii) give actual notice to any such transferee or lessee of the existence of this Conservation Easement. Grantor, its successor and assign agrees to give written notice to Grantee and ACOE of the intent to transfer any

interest at least sixty (60) days prior to the date of such transfer. The failure of Grantor, its successor or assign to perform any act provided in this Section 12 shall not impair the validity of this Conservation Easement or limit its enforceability in any way, and Grantor, its successors or assigns assume any liability relating to transfer(s) or assignment(s) to bona fide purchasers without notice of the existence or terms of this Conservation Easement.

(2) From and after the date of any transfer of all or any portion of the Easement Area by Grantor and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Grantor as to the portion transferred, as set forth in this Conservation Easement, (ii) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (iii) the transferor, as applicable, shall have no further obligations hereunder except for any obligations pursuant to Section 20(g), and (iv) all references to Grantor in this Conservation Easement shall thereafter be deemed to refer to such transferee.

13. Additional Interests. Grantor, its successors and assigns shall not grant additional easements or other interests in the surface or subsurface of the Easement Area (other than a security interest that is subordinate to this Conservation Easement) without the prior written authorization of Grantee and ACOE. It shall be reasonable for Grantee and ACOE to withhold consent for the grant of additional easements or other interest in the Easement Area that are in direct or potential conflict with the Agency Approval and the preservation of the Purpose and the Natural Condition of the Easement Area as defined in Section 1 of this Conservation Easement or will impair or otherwise interfere with the Conservation Values of the Easement Area. Grantor or its successors and assigns shall record any additional easements or other interests in the Easement Area approved by Grantee and ACOE, in the official records of Riverside County, California and shall provide a copy of the recorded document to Grantee and ACOE.

14. Notices. All notices, demands, requests, consents, approvals, or communications from one party to another shall be personally delivered or sent by facsimile to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any Party may from time to time specify to the other parties in writing:

To Grantor: Zeiders Road Business Park, Inc.  
c/o Peter G. Aylward  
Strategic Property Advisers, Inc.  
3250 Vista Diego Road  
Jamul, CA 91935-2014

To Grantee: City of Menifee  
29714 Haun Road  
Menifee, CA 92586

FAX: 951-679-3843

*With a copy to:* District Counsel  
U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Boulevard, Room 1535  
Los Angeles, CA 90017-3401  
FAX: 213-452-4217

15. Amendment. Grantor and Grantee may amend this Conservation Easement only by mutual written agreement and with the written consent of ACOE. Any such amendment shall be consistent with the Purpose of this Conservation Easement and shall not affect its perpetual duration. Grantor shall record any amendments to this Conservation Easement approved by the Grantee and ACOE in the official records of Riverside County, California and shall provide a copy of the recorded document to the Grantee and ACOE.

16. Long-Term Maintenance.

(a) Grantee's Responsibilities for Maintenance and Management. Grantee, its successors and assigns shall be responsible for in-perpetuity, ongoing, long-term maintenance and management of the Easement Area. Such long-term maintenance and management shall consist of the following activities: (1) annual removal of trash or man-made debris and (2) annual maintenance of signage and other notification features installed pursuant to Section 5(c).

(b) Restoration Responsibilities. Grantor, Grantee, their successors and assigns shall each individually be obligated to repair, remediate, or restore the Easement Area damaged by any activities prohibited by Section 3 herein for which it is responsible.

(c) Annual Reporting. Grantee, its successors and assigns shall prepare an annual monitoring and maintenance report documenting activities performed under Section 16(a) above, and shall make such report available to the Grantor and ACOE upon request.

(d) Grantor Restoration. When activities are performed pursuant to Section 16(b) for which Grantor is responsible, Grantee, its successors and assigns, shall retain, at Grantor's expense, a qualified Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities. Grantee shall have its Biological Monitor submit a draft Restoration Plan to Grantor and ACOE for review and for the ACOE written approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantee shall have a Biological Monitor prepare a detailed monitoring report, and Grantee shall make the report available to Grantor and ACOE within thirty (30) days of completion of restoration

activities. Grantee, its successors or assigns and Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Grantee, its successors or assigns, or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented. Grantor shall be responsible for compensating and/or reimbursing Biological Monitor and Grantee for all reasonable and ordinary expenses incurred by them in discharging their respective responsibilities under this subsection within thirty (30) days of invoice.

(e) Grantee Restoration. When activities are performed pursuant to Section 16(b) for which Grantee is responsible, Grantee shall retain, at Grantee's expense, a qualified Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities. Grantee shall have a Biological Monitor submit a draft Restoration Plan to ACOE for review and written approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantee shall have a Biological Monitor prepare a detailed monitoring report, and Grantee shall make the report available to ACOE within thirty (30) days of completion of restoration activities. Grantee, its successors or assigns and Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Grantee, its successors or assigns, or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented.

17. Annexation into Special Assessment District. Grantor shall petition to have the Easement Area included as a new zone to be annexed into Landscape and Lighting Maintenance District ("L&LMD") No. 89-1-Consolidated in the County of Riverside, California, and shall approve the levy of assessments thereunder such that upon Final Approval, funds from the collection of assessments on the Property are available for the perpetual management, maintenance, and monitoring of the Easement Area as required under this Conservation Easement.

18. Recordation. Grantee shall promptly record this instrument in the official records of Riverside County, California and immediately notify the Grantor and ACOE through the mailing of a conformed copy of the recorded easement.

19. Estoppel Certificate. Upon request, Grantee shall within fifteen (15) days execute and deliver to Grantor, its successors and assigns any document, including an estoppel certificate, which certifies compliance with any obligation of Grantor, its successors and assigns contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor, its successors and assigns.

20. General Provisions.

(a) Controlling Law. The laws of the United States and the State of California, disregarding the conflicts of law principles of such state, shall govern the interpretation and performance of this Conservation Easement.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the Purpose of this Conservation Easement and the policy and purpose set forth in California Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) Entire Agreement. This instrument together with the attached exhibits and any documents referred to herein sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 15.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area. The covenants hereunder benefiting Grantee shall also benefit ACOE as a third party beneficiary.

(g) Termination of Rights and Obligations. Provided the transfer was consistent with the terms of this Conservation Easement, a party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Easement Area (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted

solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(j) Exhibits. All Exhibits referred to in this Conservation Easement are attached and incorporated herein by reference.

(k) No Hazardous Materials Liability.

(1) Grantor represents it is unaware of any release or threatened release of Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of Grantor herein, Grantor hereby releases and agrees to indemnify, protect, defend and hold harmless the Grantee Indemnified Parties and the ACOE Indemnified Parties (defined in Section 9(c)(1) and 9(c)(2)) against any and all Claims (defined in Section 9(c)(1)) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to Grantee Indemnified Parties and to ACOE Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by Grantee Indemnified Parties or ACOE Indemnified Parties. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the Grantor's violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

(3) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives Grantee and ACOE any of the following:

(i) The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "CERCLA"); or

(ii) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(iii) The obligations of a responsible person under any

applicable Environmental Laws; or

(iv) The right to investigate and remediate any Hazardous Materials associated with the Property unless said investigation or remediation is related to the investigation or remediation of the Easement Area; or

(v) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property unless said investigation or remediation by Grantor is related to the Easement Area.

The term "**Hazardous Materials**" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA; Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement.

The term "**Environmental Laws**" includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor and Grantee represents, warrants and covenants to each other and to ACOE that Grantor and Grantee's activities upon and use of the Easement Area will comply with all Environmental Laws.

(l) Extinguishment. If circumstances arise in the future that render the Purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(m) Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, deeds of trust, encumbrances or other interests in the Easement Area (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement, and that the Easement Area is not subject to any other conservation easement.

(n) No Merger. Grantor and Grantee agree that should Grantee, or any successor in interest to Grantee, come to own all or a portion of the fee interest subject to this Conservation Easement, there shall be no express or implied merger by operation of law or otherwise. If any party should claim such a merger, the parties agree that any and all terms and conditions of this Conservation Easement shall be deemed covenants and restrictions upon the Easement Area, which, shall run with the

land according to California and/or other applicable law and otherwise exist in perpetuity.

[REMAINDER LEFT INTENTIONALLY BLANK]

*IN WITNESS WHEREOF* Grantor and Grantee have executed this Conservation Easement the day and year first above written and have agreed to be bound by the terms and provisions hereof.

GRANTOR:  
Zeiders Road Business Park, Inc.

By: \_\_\_\_\_  
Ronald A. Schoen  
Chief Financial Officer and Secretary

By: Strategic Property Advisers, Inc.,  
a California corporation  
Its Authorized Adviser and Agent

By: \_\_\_\_\_  
Peter G. Aylward, President

CERTIFICATE OF ACCEPTANCE

This is to certify that the Conservation Easement by Zeiders Road Business Park, Inc., a California corporation, dated \_\_\_\_\_, 2013, to the City of Menifee, is accepted by the undersigned officers on behalf of Grantee.

GRANTEE:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

State of California }  
County of Riverside}

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public

State of California }  
County of Riverside}

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public

State of California }  
County of Riverside}

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature \_\_\_\_\_  
Signature of Notary Public

**Exhibit A**

Legal Description of Property

[See Attached]

**Exhibit B**

Legal Description of Easement Area

[See Attached]

**Exhibit C**

Depiction of Easement Area

[See Attached]

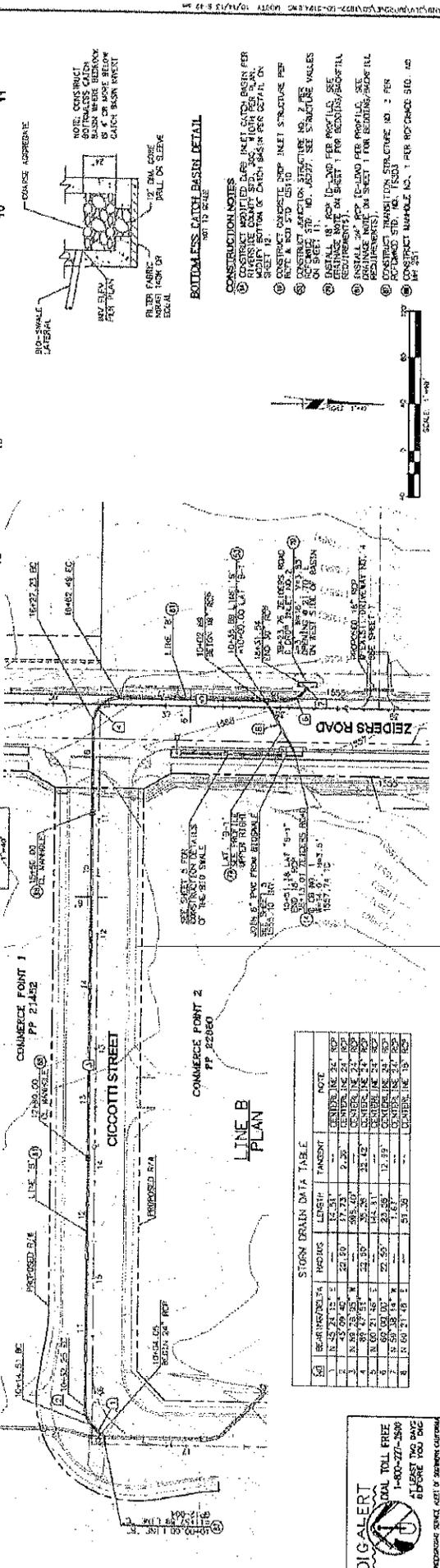
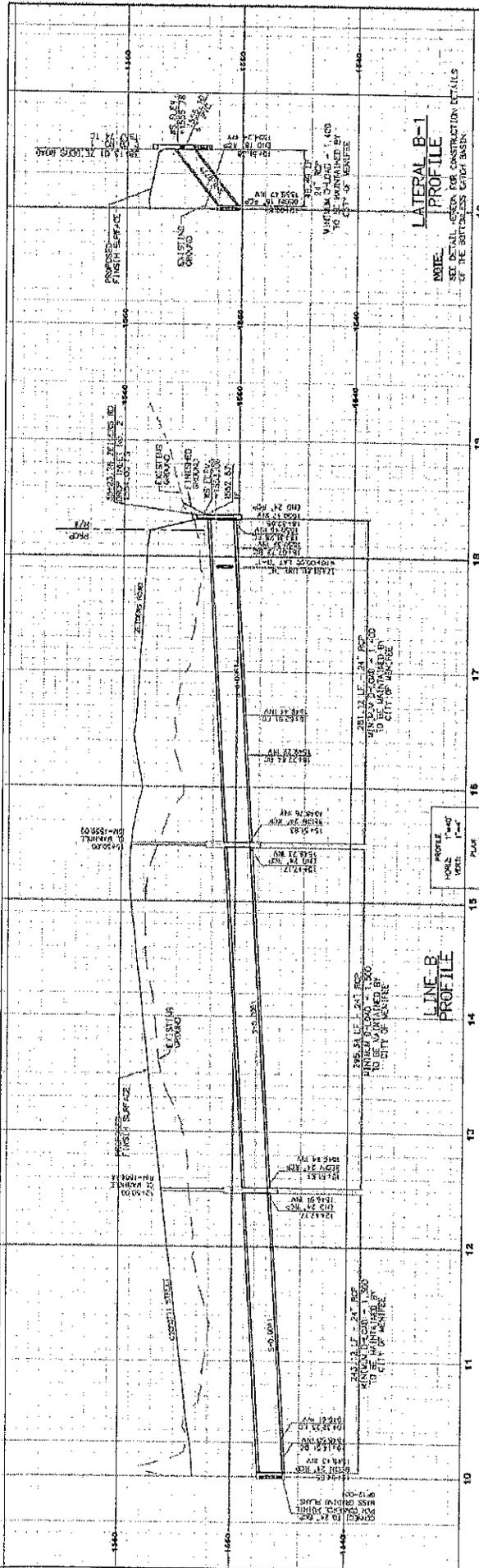
**Exhibit D**

Mitigation Plan

[See Attached]







STORM DRAIN DATA TABLE

NO.	BEARINGS/DELTA	LENGTH	DIAMETER	NOTE
1	N 45° 31' 12" E	12.51'	18" Ø	CONCRETE PIPE
2	S 45° 09' 45" W	20.10'	18" Ø	CONCRETE PIPE
3	S 45° 09' 45" W	20.10'	18" Ø	CONCRETE PIPE
4	N 45° 31' 12" E	12.51'	18" Ø	CONCRETE PIPE
5	N 45° 31' 12" E	12.51'	18" Ø	CONCRETE PIPE
6	S 45° 09' 45" W	20.10'	18" Ø	CONCRETE PIPE
7	S 45° 09' 45" W	20.10'	18" Ø	CONCRETE PIPE
8	N 45° 31' 12" E	12.51'	18" Ø	CONCRETE PIPE
9	N 45° 31' 12" E	12.51'	18" Ø	CONCRETE PIPE

**DIGALERT**  
 LOCAL TOLL FREE 1-800-277-5886  
 AT LEAST TWO DAYS BEFORE YOU DIG

**NOTE:**  
 THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AGENCIES.

**REVISIONS**

NO.	DATE	DESCRIPTION
1		

**CITY OF MENEFEE**  
 ENGINEERING DEPARTMENT

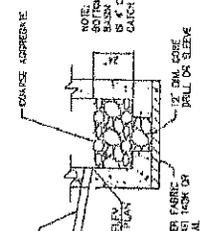
**RBF CONSULTING**  
 REGISTERED PROFESSIONAL ENGINEER  
 NO. 4000  
 UTAH STATE BOARD OF PROFESSIONAL ENGINEERS

**BENCHMARK**  
 (SEE SHEET 1)

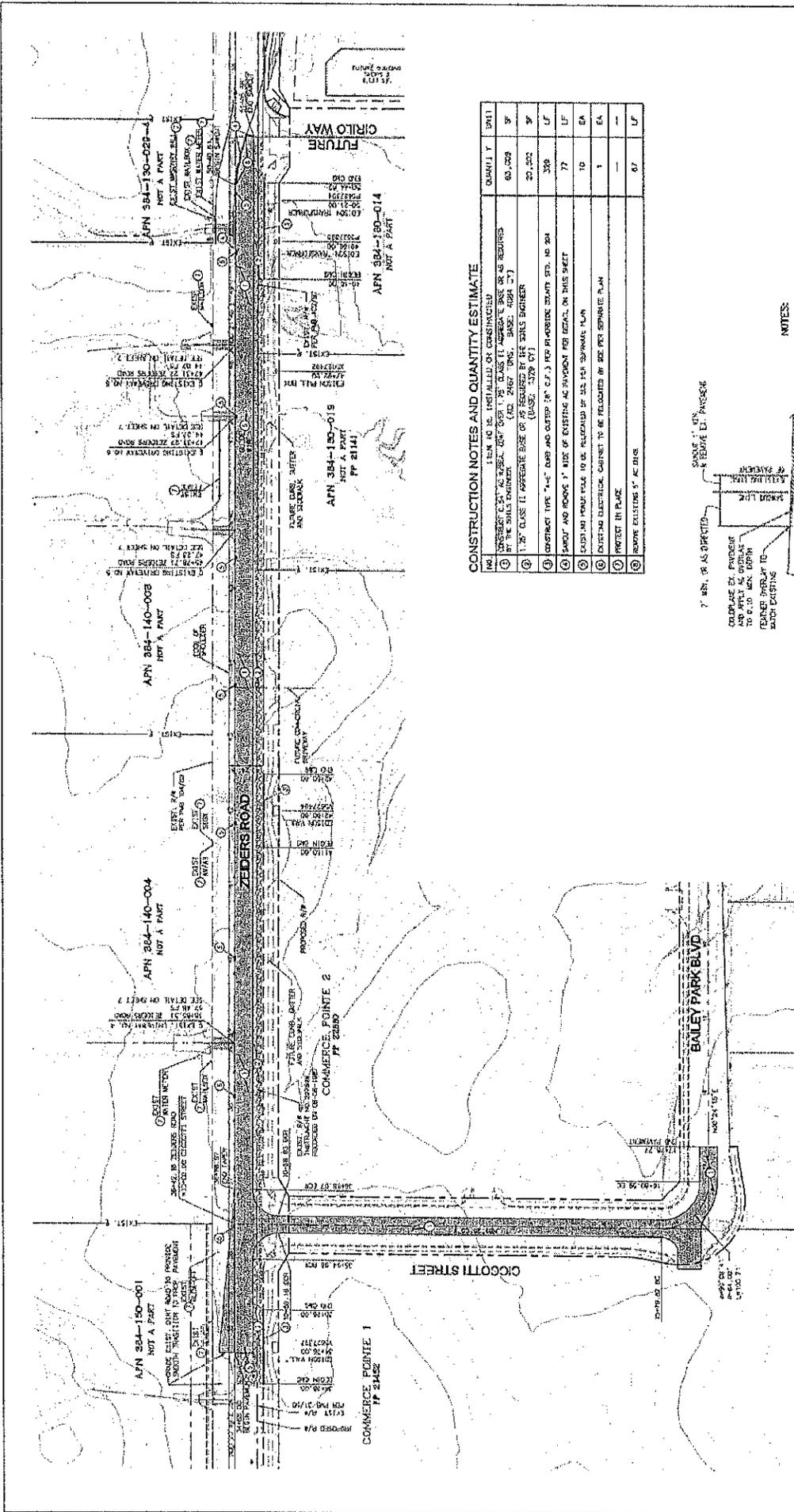
**CITY OF MENEFEE**  
 STORM DRAIN IMPROVEMENT PLAN  
 ZEIDERS ROAD  
 LINE B AND LATERAL B-1

**SHEET NO. 12A**  
 OF 18 SHEETS

SCALE: H. 1" = 40'  
 V. 1" = 4'

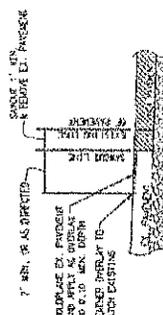


- CONSTRUCTION NOTES**
- CONSTRUCT MANHOLE AND INLET STRUCTURE PER STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, SECTION 201.01, WITH THE FOLLOWING MODIFICATIONS: SEE DETAIL FOR MANHOLE AND INLET STRUCTURE PER STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, SECTION 201.01.
  - CONSTRUCT MANHOLE AND INLET STRUCTURE PER STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, SECTION 201.01, WITH THE FOLLOWING MODIFICATIONS: SEE DETAIL FOR MANHOLE AND INLET STRUCTURE PER STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, SECTION 201.01.
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**CONSTRUCTION NOTES AND QUANTITY ESTIMATE**

NO.	DESCRIPTION	QUANTITY	UNIT
1	1.00" DIA. 10' LONG UNGRADED CONCRETE CURB	60.000	LF
2	1.00" DIA. 10' LONG 1.5" CLASS II ASPHALT BASE OR AS REQUIRED BY THE CIVIL ENGINEER (A.C. 2467 TMS. BASE: AUSA 27)	20.000	LF
3	1.00" DIA. 10' LONG 1.5" CLASS II ASPHALT SURFACE (AUSA 27)	20.000	LF
4	CONCRETE TYPE "A" CURB AND GUTTER 18" C.P.J. FOR PARALLEL DRIVE STD. 10' DIA	77	LF
5	PAVING AND ROADS 1" BULK OF EXISTING AC PAVEMENT FOR DETAIL ON THIS SHEET	10	EA
6	EXISTING 4" DIA. 10' LONG TO BE RELOCATED BY THE SURVEYOR'S PLAN	1	EA
7	PROTECT IN PLACE	-	LF
8	REMOVE EXISTING 3" AC BASE	67	LF



- NOTES:**
- FOR ZEDERS ROAD STREET PLAN & PROFILE, SEE SHEETS 2 & 6
  - FOR CICCOTTI STREET PLAN & PROFILE, SEE 7 OF CICCOTTI STREET PLAN & PROFILE
  - FOR ZEDERS ROAD STREET PLAN, SEE 7-12-19
  - FOR ZEDERS ROAD STORM DRAIN PLAN, SEE SHEET 12A

**OVERLAY/JOIN DETAIL**



**DIGALERT**  
 800-451-4343  
 1-800-221-2882  
 AT LEAST TWO DAYS BEFORE YOU DIG

**NOTE:**  
 UNDESIGNED DRIVE ALERT IS SUPERSEDED BY THE DRIVE ALERT PLAN. THE DRIVE ALERT PLAN IS THE AUTHORITY FOR THE DRIVE ALERT PLAN. THE DRIVE ALERT PLAN IS THE AUTHORITY FOR THE DRIVE ALERT PLAN. THE DRIVE ALERT PLAN IS THE AUTHORITY FOR THE DRIVE ALERT PLAN.

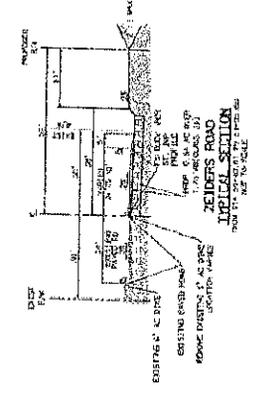
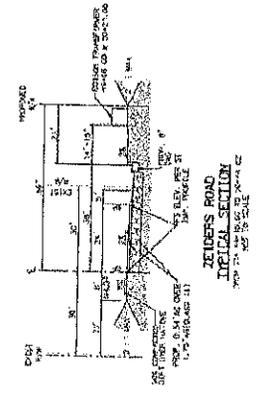
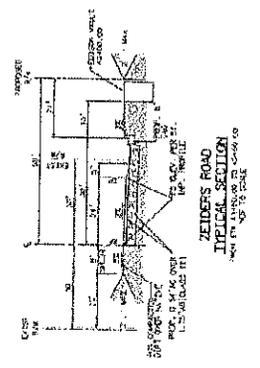
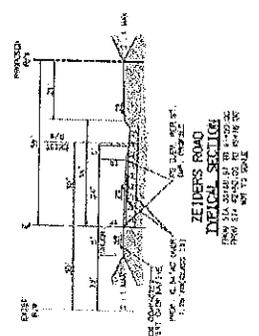
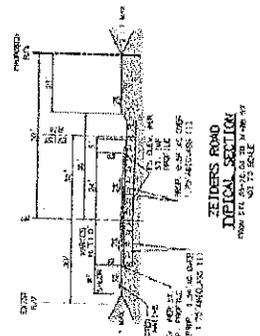
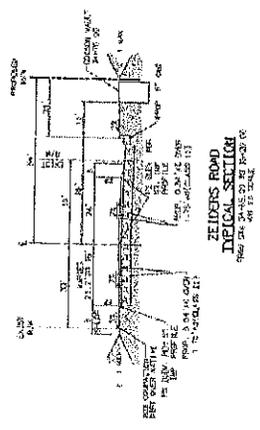
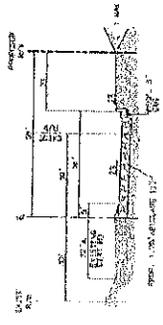
**REVISIONS**

NO.	DATE	DESCRIPTION

**RBF CONSULTING**  
 1000 W. 10TH AVENUE, SUITE 100  
 DENVER, CO 80202  
 (303) 733-1111  
 www.rbfconsulting.com

**CITY OF MENEFEE**  
 ENGINEERING DEPARTMENT  
 APPROVED BY: [Signature]  
 DATE: [Date]

**SHEET NO. 19A**  
 OF 19 SHEETS  
 PHASE 1, ZEDERS ROAD  
 PLAN VIEW  
 CITY OF MENEFEE



**DIG ALERT**

CALL 800-4-A-DIG (4364) FOR FREE  
1-800-277-2862  
AT LEAST 14 DAYS BEFORE YOU DIG

PROVIDING SERVICE AHEAD OF SCHEDULED CONSTRUCTION

NOTE:  
DO NOT CONSIDER UTILITIES THESE PLANS  
UNLESS SHOWN OTHERWISE. THE CITY OF  
MENIFEE IS NOT RESPONSIBLE FOR ANY  
DAMAGE TO UTILITIES OR PERSONS OR  
PROPERTY CAUSED BY ANYONE WHO  
DIGS WITHOUT KNOWING THE LOCATION  
AND DEPTH OF UTILITIES. THE CITY OF  
MENIFEE IS NOT RESPONSIBLE FOR ANY  
DAMAGE TO UTILITIES OR PERSONS OR  
PROPERTY CAUSED BY ANYONE WHO  
DIGS WITHOUT KNOWING THE LOCATION  
AND DEPTH OF UTILITIES.

		<b>CITY OF MENIFEE</b> PHASE 1, ZEIDERS ROAD SECTIONS	SHEET NO. <b>19B</b> OF 19 SHEETS
RBF CONSULTING 1000 N. TRAVIS STREET SUITE 100 MENIFEE, CA 92559		(SEE SHEET 11)	DATE: _____
ENGINEERING DEPARTMENT CITY OF MENIFEE 1000 N. TRAVIS STREET MENIFEE, CA 92559		PROJECT NO. _____	DRAWING NO. _____
REVISIONS		CONTRACT PARTNERS I	

# CITY OF MENIFEE COMMERCE POINTE - APN 384-150-002 OFFSITE SEWER IMPROVEMENT PLANS ZEIDERS ROAD

**EMWD SEWER NOTE**

1. ALL SEWER CONSTRUCTION AND WORKING SHALL BE IN ACCORDANCE WITH THE CITY OF MENIFEE STANDARD SPECIFICATIONS FOR SEWER CONSTRUCTION.
2. GRAVITY ELEVATIONS FOR ALL ELEVATIONS ARE TO LOW LINE.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MENIFEE STANDARD SPECIFICATIONS FOR SEWER CONSTRUCTION.
4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MENIFEE STANDARD SPECIFICATIONS FOR SEWER CONSTRUCTION.
5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MENIFEE STANDARD SPECIFICATIONS FOR SEWER CONSTRUCTION.
6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MENIFEE STANDARD SPECIFICATIONS FOR SEWER CONSTRUCTION.
7. THE CONTRACTOR IS ADVISED THAT THE CITY OF MENIFEE WILL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE MAINLINE TO THE PROPERTY LINE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.

**NOTE**

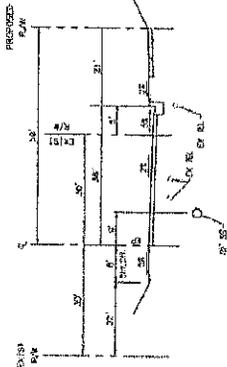
FOR "STANDARD" STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, THE CONTRACTOR SHALL REFER TO THE CITY OF MENIFEE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.

**NOTIFICATIONS**

1. AT LEAST 48 HOURS PRIOR TO COMMENCING CONSTRUCTION, CONTRACTOR SHALL NOTIFY:
  - a. CITY OF MENIFEE, WATER DISTRICT, FIELD ENGINEERING DEPARTMENT, (951) 938-3777, EXT 4030
  - b. CITY OF MENIFEE, (951) 977-4777
  - c. WATERBODIES SERVICE CENTER (WASC), 911

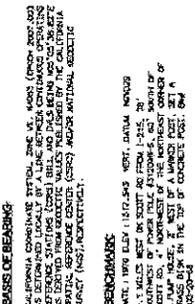
**STATIONING OF SEWER SYSTEMS**

CONSTRUCTION STATIONING OF SEWER SYSTEMS IS REFERENCED TO STREET CENTERLINE STATIONING.



TYPICAL UNITS LOCATION SECTION  
NOT TO SCALE

**PROPOSED PLAN**



**PRIVATE ENGINEER'S NOTICE TO CONTRACTOR**

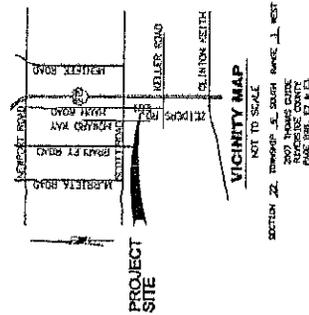
1. CONTRACTOR AGREES THAT HE SHALL ASSUME FULL AND COMPLETE RESPONSIBILITY FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.
2. ALL EXISTING UTILITIES OF STRUCTURES, EXCEPT FOR PUBLIC UTILITIES, SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY ALL DIMENSIONS AND CONDITIONS OF SUCH UTILITIES PRIOR TO ANY CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.
4. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY ALL DIMENSIONS AND CONDITIONS OF SUCH UTILITIES PRIOR TO ANY CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.

**REMARKS**

DATE: 11/09/2013 11:07:33 AM. DATE: 11/09/2013 11:07:33 AM.

**CITY OF MENIFEE**

WORK CONTAINED WITHIN THESE PLANS SHALL NOT CONSTITUTE A GUARANTEE OF ANY KIND. THE CITY OF MENIFEE SHALL NOT BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.



PROJECT SITE

**TIME LIMITATION**

IF THE LIMIT OF DRAWING APPROVAL SHALL BE THE (3) MONTHS FROM THE DATE OF THE CITY OF MENIFEE APPROVAL. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SEWER SYSTEM FROM THE PROPERTY LINE TO THE PROPERTY LINE.

**DEVELOPER**

PROJECT PARTNER  
1000 N. MAIN ST. SUITE 100  
MENIFEE, CA 92554  
PHONE: (951) 977-4777

**INVOICE DRAWINGS**

- SHEET 1 - TITLE SHEET
- SHEET 2 - INDEX MAP AND QUANTITIES
- SHEET 3 - STA 44+36.14 TO STA 47+00.00
- SHEET 4 - STA 47+00.00 TO STA 50+40.04



Know what's below.  
Call before you dig.

CITY OF MENIFEE  
ENGINEERING DEPARTMENT  
1000 N. MAIN ST. SUITE 100  
MENIFEE, CA 92554  
PHONE: (951) 977-4777

Prepared under the supervision of:  
*Michael Beck*  
MICHAEL BECK  
REGISTERED PROFESSIONAL ENGINEER  
NO. 40371  
DATE: 11/09/2013



**RBF CONSULTING**  
1000 N. MAIN ST. SUITE 100  
MENIFEE, CA 92554  
PHONE: (951) 977-4777

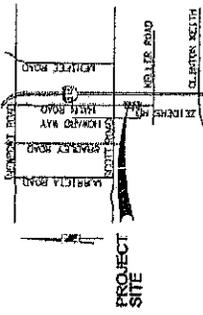
NO.	DATE	DESCRIPTION	BY	CHKD.

NO.	DATE	DESCRIPTION	BY	CHKD.

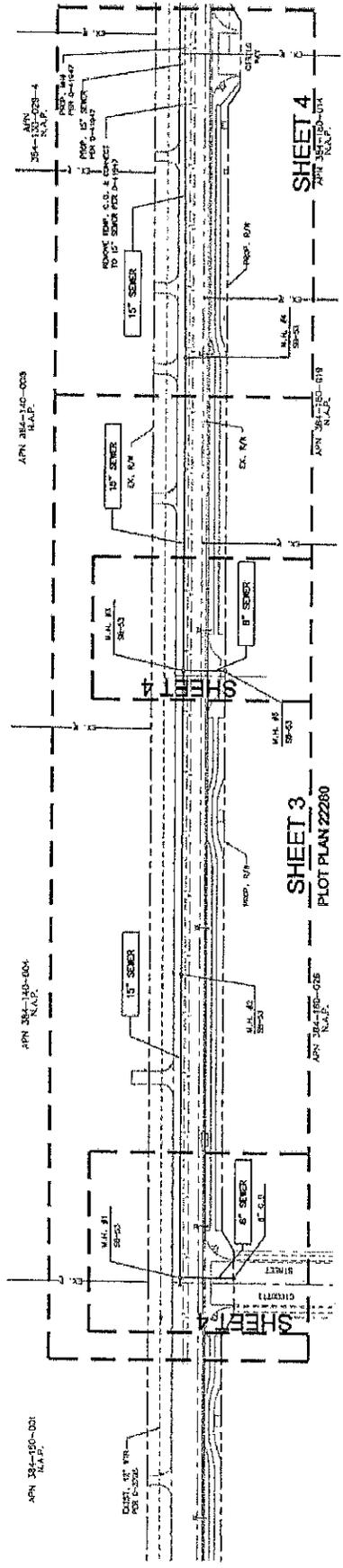
NO.	DATE	DESCRIPTION	BY	CHKD.

NO.	DATE	DESCRIPTION	BY	CHKD.

CITY OF MENIFEE  
COMMERCE POINTE APN 384-150-002  
OFFSITE SEWER IMPROVEMENT PLANS  
ZEIDERS ROAD  
TITLE SHEET  
SHEET 1 OF 4  
11/09/2013



**ZEIDERS ROAD**



**INDEX MAP**



**SEWER LEGEND:**  
 EXISTING SEWER LINE  
 PROPOSED SEWER LINE  
 EXISTING MANHOLE  
 PROPOSED MANHOLE  
 EXISTING/PROPOSED BY OTHER CLEARANCE

**ABBREVIATIONS**  
 C.S.P. CONCRETE POINT  
 C.P. CONCRETE POINT  
 T.S.P. TYPICAL SEWER PROFILE  
 V.C.P. VERTICALLY CURVED PIPE  
 R.C.P. REINFORCED CONCRETE PIPE  
 D.C. DOMESTIC WATER  
 S.S. STORM SEWER

**QUANTITY ESTIMATES:**  
 15" SEWER MAIN PIPE 200' PER 20-15  
 8" SEWER MAIN PIPE 100' PER 20-15  
 15" SEWER MAIN PIPE 100' PER 20-15  
 15" TEMPORARY END CAP

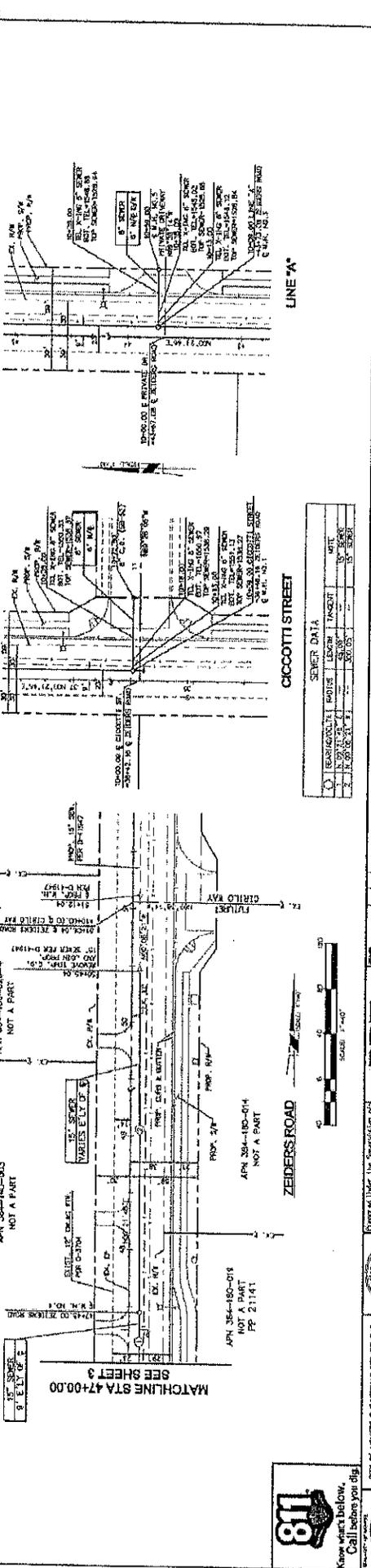
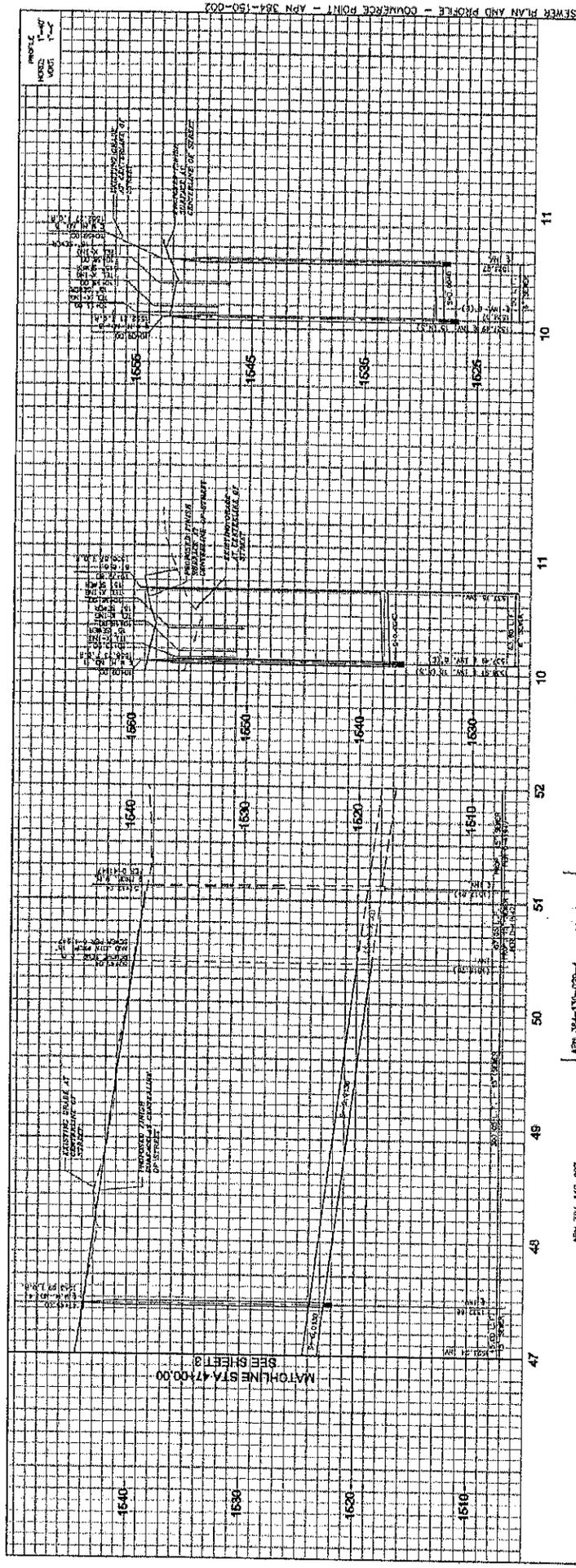
**NOTE:**  
 QUANTITIES ARE FOR DESIGN AND INCLUDE PROVISIONS FOR 10% AND 20% FOR CONTINGENCY PURPOSES. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR VERIFYING ALL QUANTITIES FOR CONSTRUCTION.



**IMPLEMENTING FACILITIES (SEWER):**  
 ZEIDERS ROAD SEWER LINE 15-15-15-15

CITY OF MENEFEE ENGINEER MICHAEL J. BUCK DATE: 6/20/13 PROJECT: 22260		CITY OF MENEFEE ENGINEER MICHAEL J. BUCK DATE: 6/20/13 PROJECT: 22260	
EASTERN SOUTHERN WATER DISTRICT PROJECT: 22260 DATE: 6/20/13		CITY OF MENEFEE ENGINEER MICHAEL J. BUCK DATE: 6/20/13 PROJECT: 22260	
APPROVALS [Signatures]		APPROVALS [Signatures]	
INDEX MAP AND QUANTITIES		INDEX MAP AND QUANTITIES	





<b>811</b> Know what's below. Call before you dig.		CITY OF MONTE ENGINEERING DEPARTMENT PROJECT NO. 15-00000000 DATE: 06/20/12	PROJECT NO. 15-00000000 DATE: 06/20/12	PROJECT NO. 15-00000000 DATE: 06/20/12	PROJECT NO. 15-00000000 DATE: 06/20/12
PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12	
PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12	
PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12	
PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12		PROJECT NO. 15-00000000 DATE: 06/20/12	

MATCHLINE STA 47+00.00  
 SEE SHEET 3  
 MATCHLINE STA 52+00.00  
 SEE SHEET 4  
 MATCHLINE STA 10+00.00  
 SEE SHEET 10  
 MATCHLINE STA 11+00.00  
 SEE SHEET 11

CITY OF MONTE ENGINEERING DEPARTMENT  
 PROJECT NO. 15-00000000  
 DATE: 06/20/12  
 PROJECT NO. 15-00000000  
 DATE: 06/20/12  
 PROJECT NO. 15-00000000  
 DATE: 06/20/12  
 PROJECT NO. 15-00000000  
 DATE: 06/20/12

Exhibit E

Phase 1 Ciccotti Road Improvement Plans









**Exhibit E**

Title Report

[See Attached]

**Exhibits F-1 and F-2**

Current Natural Condition of the Easement Area

[See Attached]

Exhibit H  
Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

---

**ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT**

This Assignment and Assumption of Development Agreement (this "Assignment") is executed by \_\_\_\_\_, a \_\_\_\_\_ ("Owner"), in favor of \_\_\_\_\_, a \_\_\_\_\_ ("Assignee") as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, with reference to the following facts:

A. Owner and the City of Menifee, California, a municipal corporation organized and existing under the laws of the State of California, have entered into that certain Development Agreement Regarding the Commerce Pointe Project, dated as of \_\_\_\_\_, 2013, recorded \_\_\_\_\_ as Document No. \_\_\_\_\_ in Official Records, County of Riverside, California the "Development Agreement;" and

B. Owner now desires to assign and transfer to Assignee, and Assignee desires to accept from Owner all of Owner's rights and obligations in, under and to the Development Agreement with respect to (but only with respect to) the real property described on **Exhibit A** attached hereto (the Transferred Property").

THEREFORE, Owner and Assignee agree as follows:

1. **Assignment.** Owner hereby assigns and transfers to Assignee all of Owner's rights in, under and to the Development Agreement and all of Owner's obligations arising under the Development Agreement with respect to (but only with respect to) the Transferred Property from and after the date hereof.
2. **Acceptance and Assumption.** Assignee hereby accepts from Owner all of Owner's rights in, under and to the Development Agreement and agrees to assume all of Owner's obligations arising under the Development Agreement with respect to (but only with respect to) the Transferred Property from and after the date hereof.
3. **Further Assurances.** Each party hereto hereby agrees to execute any additional documents, and take any further actions necessary to effect or evidence the assignment and assumption set forth in Sections 1 and 2 above.

4. **Notices:** For purposes of the Development Agreement, any notice to Assignee shall be given to the following mailing address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

6. **Miscellaneous.** This Assignment shall be binding on and inure to the benefit of the parties and their respective successors and assigns. The paragraph headings of this Assignment are for convenient reference only and shall not be used in interpreting this Assignment.

7. **California Law.** This Assignment shall be governed by and interpreted in accordance with the laws of the State of California.

8. **Costs of Dispute Resolution.** In the event of any action or proceeding brought by any party against any other parties under this Agreement, the prevailing parties shall be entitled to recover from the non-prevailing parties all costs and expenses, including attorneys' and experts' fees and expenses, in such action and proceeding in such amount as the court may adjudge reasonable. The prevailing parties shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other parties' major arguments or positions on major disputed issues.

IN WITNESS WHEREOF, Owner and Assignee have executed this Assignment as of the date and year first above written.

**OWNER:**

**ASSIGNEE:**

[SIGNATURES TO BE NOTARIZED]