

August 10, 2022
Planning Commission

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Menifee
29844 Haun Road
Menifee, CA 92586
~~Attn: City Clerk~~

(Space Above Line For Recorder's Use Only)
(Exempt from Recording Fees Per Gov't Code 27383)

SECOND AMENDMENT TO CITY OF MENIFEE DEVELOPMENT AGREEMENT 2012-116:

ORIGINALLY: "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"

BY AND BETWEEN
THE CITY OF MENIFEE
AND
SCOTT ROAD PARTNERS LLC
REGARDING
SCOTT ROAD COMMERCE CENTER I AND SCOTT ROAD COMMERCE CENTER II
(formerly known as "Commerce Pointe")

Original Effective Date: December 20, 2013
Second Amendment Effective Date: November 4, 2022

SECOND AMENDMENT TO CITY OF MENIFEE DEVELOPMENT AGREEMENT 2012-116

Scott Road Commerce Center I and Scott Road Commerce Center II

(formerly known as "Commerce Pointe")

This Second Amendment to City of Menifee Development Agreement 2012-116 ("**Second Amendment**") is entered into between the City of Menifee, a municipal corporation ("**City**"), and Scott Road Partners LLC ("**Landowner**"). City and Landowner shall be referred to collectively within this Second Amendment as the "**Parties**."

RECITALS

- A. The Property.** Landowner owns fee title to the real property described on Exhibit "A" and shown on Exhibit "B" attached to this Second Amendment.
- B. The Original Development Agreement Approval.** On November 20, 2013, the City Council of the City ("**City Council**") adopted Ordinance No. 2013-133 approving Development Agreement No. 2012-116 ("**DA**") for the Property, which was then known as Commerce Pointe I and Commerce Pointe II. The original parties to the DA were (i) the City and (ii) Zeiders Road Business Park, Inc., a California corporation, and Commerce Pointe II Menifee, Inc., a California corporation. Landowner is the successor under the DA to those original parties.
- C. The Original Term.** The original effective date of the DA was December 20, 2013. December 19, 2023, is the final day of the original ten-year term of the DA ("**Original Term**").
- D. First Amendment.** Concurrently with the negotiation and approval of this Second Amendment pursuant to Ordinance No. [REDACTED], the Parties negotiated and the City Council approved a separate amendment to the DA ("**First Amendment**") pursuant to Ordinance No. [REDACTED]. A copy of the First Amendment is attached as Exhibit "C". It is the intent of the Parties that the First Amendment and Second Amendment shall be deemed to have been entered into and operate concurrently to the extent provided in each of those amendments. Ordinance No. [REDACTED] and Ordinance No. [REDACTED] shall be jointly referred to as the "**Adopting Ordinances**" and the date on which they become effective under California law shall be referred to as the "**Amendment Effective Date**."
- E. Relationship to DA and First Amendment.**
- *The DA.* This Second Amendment amends, but does not replace, the DA. Except as provided in the First and Second Amendments, the original provisions of the DA shall remain in full force and effect. The original effective date of the DA remains December 20, 2013, irrespective of the Amendment Effective Date. References to the "Agreement" in the DA shall be deemed to refer to the DA as modified by the First and Second Amendments, unless to do so would conflict with the express intent of either the First or Second Amendment.

If a provision of this Second Amendment is inconsistent with, conflicts with, or impedes the full implementation of a provision of the DA that has not been expressly deleted or modified by either this First Amendment or the Second Amendment, the Second

Amendment provision shall prevail over the original language in the DA, but only to the extent needed to fully implement the Second Amendment provision and the stated intent of this Second Amendment.

- *The First Amendment.* This Second Amendment supplements, but neither amends nor replaces, the First Amendment. Recitals A through G, I, and J of the First Amendment are incorporated into this Second Amendment for background purposes. The bolded defined terms in the First Amendment shall have the same meaning within this Second Amendment. When considered in conjunction with the First Amendment, this Second Amendment shall be interpreted and applied in a manner consistent with the First Amendment's provisions, but only to the extent needed to fully implement the Second Amendment provision and the stated intent of this Second Amendment.

When both the First and the Second Amendments are in effect and operative at the same time, the First Amendment controls development and use of the Property.

- H. Public Hearings.** On August 10, 2022, at a properly-noticed public hearing, the City's Planning Commission reviewed and recommended that the City Council approve this Second Amendment.
- I. City Council Action.** On September 21, 2022, the City Council conducted a properly-noticed public hearing in accordance with Chapter 9.45 of Article 2 of Title 9 of the Menifee Municipal Code ("**Development Agreement Ordinance**"). Following the public hearing, the City Council introduced and conducted a first reading of the Adopting Ordinance for the Second Amendment. At a properly-noticed public meeting on October 5, 2022, the City Council conducted a second reading of and adopted the Adopting Ordinance for the Second Amendment, making the Amendment Effective Date November 4, 2022.
- J. Findings.** In approving the Adopting Ordinance for the Second Amendment, the City Council found that this Second Amendment (i) is consistent with the City's General Plan and the presently applicable zoning for the Property¹, (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 the City's police power, and (iv) is entered into pursuant to Government Code Section 65868 and the Development Agreement Ordinance, which authorize the City to enter into modifications, including extensions of time, to a previously approved and effective Development Agreement.
- K. Purpose of Second Amendment.** It is the intent of the Parties that this Second Amendment will provide to both the City and Landowner limited assurances pertaining to the development and use of the Project Buildings for the Remaining Vested Uses if, for any reason, the benefits to the Parties under the First Amendment have not been realized as of December 19, 2023, the final day of the Original Term.

¹ Because the DA remains in effect at the time of this First Amendment, the Zone Change is not currently applicable to the Property.

AGREEMENT

For the consideration set forth below, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals above are intended to serve as a substantive part of this Second Amendment.
2. **New Public Benefit.** As consideration for entering into this Second Amendment, Landowner will make a single lump sum payment to the City of \$250,000 (the “**Second Amendment Payment**”) within three business days after receiving written notice from the City that each of the following has occurred:
 - a. The First and Second Amendments have been signed by the City (the Parties understand and agree that this Second Amendment shall be properly executed by Landowner and delivered to the City prior to City Council approval of the Adopting Ordinances, but that Landowner’s signing the Second Amendment shall not be binding, and this Second Amendment shall have no legal effect on any Party whatsoever if, after the delivery of the signed Second Amendment to the City by Landowner, the City Council (i) changes a single word in the Second Amendment, other than the addition of dates, signatures, ordinance numbers, project status updates in Recital D, typographical corrections, and similar technical matters and matters of form in the Second Amendment and the Exhibits, or (ii) adds any condition whatsoever to the approval of the Second Amendment without the prior written consent of Landowner);
 - b. The City has timely filed and the County has posted a single Notice of Determination for both the First and Second Amendments and the Adopting Ordinances (“**NOD**”). The NOD shall be filed by the City no more than five (5) days following the approval of the Adopting Ordinances; and
 - c. The Adopting Ordinances have become effective without a referendum applicable to either the First or Second Amendment having been timely submitted (*i.e.*, presented to the City Clerk with a legally sufficient number of signatures within 30 days following the approval of the Adopting Ordinances), both the First and Second Amendments have been recorded with the Riverside County Recorder, and a copy of both the First and Second Amendments showing the official Recorder’s stamp have been provided to Landowner.Such funds shall be used by the City in its sole discretion. Once delivered by Landowner to City, the Second Amendment Payment shall not be refundable.
3. **Extension of DA.** Provided that on December 19, 2023, Landowner is not in breach of the DA as amended by the First and Second Amendments, the Original Term automatically shall be extended through December 19, 2026, without further action by either of the Parties unless as of December 19, 2023, either:
 - Landowner has received certificates of occupancy for each of the Project Buildings; or
 - There is no litigation pending which challenges the validity of the First Amendment on any basis and the First Amendment remains valid.

If the DA is not extended because one of these conditions exists, City shall nonetheless retain the entirety of the Second Amendment Payment.

4. **“Effective” and “Operative” Dates.** This Second Amendment shall be effective as of the November 4, 2022, the Amendment Effective Date. It shall not become “operative” (meaning that the Parties will receive their respective benefits from the Second Amendment) unless and until the Second Amendment Payment is timely delivered to the City by Landowner.
5. **Addresses for Notices.** Addresses for notices related to this Second Amendment shall be the same as for the DA and the First Amendment, which are:

City:	City of Menifee Attn: City Clerk 29844 Haun Road Menifee, CA 92586
With a copy to:	Jeffrey Melching Rutan & Tucker, LLP 18575 Jamboree Rd, 9 th Floor Irvine, CA 92612 jmelching@rutan.com
Landowner:	Edmond F. St. Geme Scott Road Partners LLC c/o Jupiter Holdings LLC 24 Corporate Plaza, Suite 100 Newport Beach, CA 92660 ed@jupiterholdings.com
With a copy to:	Tim Paone Cox, Castle & Nicholson LLP 3121 Michelson Drive, Suite 200 Irvine, CA 92612 tpaone@coxcastle.com

6. **Sections 25 and 30.** In implementing this Second Amendment, the Parties shall comply with Sections 25 and 30 of the DA as amended by the First Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City and Landowner have executed this Second Amendment to City of Menifee Development Agreement 2012-116, with an Second Amendment Effective Date of November 4, 2022.

“City”

CITY OF MENIFEE, a California city

By: _____
Armando G. Villa, City Manager

ATTEST:

Stephanie Roseen, Interim City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Jeffrey T. Melching, City Attorney

“Landowner”

Scott Road Partners LLC,
a Delaware limited liability company

By: Jupiter B-III LLC,
a Delaware limited liability company,
Its: Member

By: Jupiter Advisors LLC, a California limited
liability company,
Its Manager

By: _____
Name: Edmond F. St. Geme
Its: Manager

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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 _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
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 _____ (Seal)

EXHIBIT A
(Legal Description of Property)

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

PARCEL 1, AS SHOWN ON PARCEL MAP NO. 36597 RECORDED NOVEMBER 15, 2018, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, IN BOOK 246, PAGES 6 THROUGH 8 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 384-180-051

PARCEL 2, AS SHOWN ON PARCEL MAP NO. 36597 RECORDED NOVEMBER 15, 2018, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, IN BOOK 246, PAGES 6 THROUGH 8 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 384-180-052

PARCEL A:

BEING A PORTION OF PARCEL 2 OF PARCEL MAP 8158, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 31, PAGE 50 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A PORTION OF PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 05016, RECORDED JUNE 23, 2006, AS DOCUMENT NO. 2006-0452652, OFFICIAL RECORDS OF SAID COUNTY, LYING WITHIN SECTION 22, TOWNSHIP 6 SOUTH, RANGE 3 WEST, S.B.M., SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL "A", SAID CORNER BEING A POINT ON THE CENTERLINE OF ZEIDERS ROAD (30 FEET IN HALF WIDTH), AS SAID ROAD IS SHOWN ON SAID NOTICE OF LOT LINE ADJUSTMENT NO. 05016 AND SAID PARCEL MAP;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL "A" AND SAID CENTERLINE OF ZEIDERS ROAD, NORTH 00°22'06" EAST, A DISTANCE OF 660.06 FEET;

THENCE SOUTH 89°37'54" EAST, A DISTANCE OF 853.00 FEET;

THENCE SOUTH 00°22'06" WEST, A DISTANCE OF 662.47 FEET TO THE SOUTHERLY LINE OF SAID PARCEL "A":

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", NORTH 89°28'13" WEST, A DISTANCE OF 853.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 12.95 ACRES MORE OR LESS.

RESERVING A RECIPROCAL EASEMENT FOR THE BENEFIT OF PARCEL "B" AND PARCEL "C" AS SHOWN HEREON.

PARCEL B:

BEING A PORTION OF PARCEL 1 AND PARCEL 2 OF PARCEL MAP 8158, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 31, PAGE 50 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A PORTION OF PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 05016, RECORDED JUNE 23, 2006, AS DOCUMENT NO. 2006-0452652, OFFICIAL RECORDS OF SAID COUNTY, LYING WITHIN SECTION 22, TOWNSHIP 6 SOUTH, RANGE 3 WEST, S.B.M., SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL "A", SAID CORNER BEING A POINT ON THE CENTERLINE OF ZEIDERS ROAD (30 FEET IN HALF WIDTH), AS SAID ROAD IS SHOWN ON SAID NOTICE OF LOT LINE ADJUSTMENT NO. 05016 AND SAID PARCEL MAP;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL "A" AND SAID CENTERLINE OF ZEIDERS ROAD, NORTH 00°22'06" EAST, A DISTANCE OF 660.06 FEET TO THE **POINT OF BEGINNING**.

THENCE SOUTH 89°37'54" EAST, A DISTANCE OF 853.00 FEET;

THENCE SOUTH 89°37'54" EAST, A DISTANCE OF 49.51 FEET;

THENCE NORTH 74°41'01" EAST, A DISTANCE OF 67.00 FEET;

THENCE SOUTH 89°37'54" EAST, A DISTANCE OF 284.25 FEET TO THE EASTERLY LINE OF SAID PARCEL "A";

THENCE ALONG SAID EASTERLY LINE THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 00°24'17" EAST, A DISTANCE OF 281.53 FEET;
- 2) NORTH 12°43'45" WEST, A DISTANCE OF 154.03 FEET;
- 3) NORTH 09°59'30" EAST, A DISTANCE OF 210.15 FEET TO THE NORTHERLY LINE OF SAID PARCEL 1;

THENCE ALONG SAID NORTHERLY LINE, NORTH 89°26'00" WEST, A DISTANCE OF 1251.68 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 1, SAID CORNER BEING A POINT ON THE CENTERLINE OF ZEIDERS ROAD (30 FEET IN HALF WIDTH);

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 1 AND SAID CENTERLINE, SOUTH 00°22'06" WEST, A DISTANCE OF 661.19 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 18.66 ACRES MORE OR LESS.

RESERVING A RECIPROCAL EASEMENT FOR THE BENEFIT OF PARCEL "A" AND PARCEL "C" AS SHOWN HEREON.

PARCEL C:

BEING A PORTION OF PARCEL 2 OF PARCEL MAP 8158, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 31, PAGE 50 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND A PORTION OF PARCEL "A" OF NOTICE OF LOT LINE ADJUSTMENT NO. 05016, RECORDED JUNE 23, 2006, AS DOCUMENT NO. 2006-0452652, OFFICIAL RECORDS OF SAID COUNTY, LYING WITHIN SECTION 22, TOWNSHIP 6 SOUTH, RANGE 3 WEST, S.B.M., SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL "A", SAID CORNER BEING A POINT ON THE CENTERLINE OF ZEIDERS ROAD (30 FEET IN HALF WIDTH), AS SAID ROAD IS SHOWN ON SAID NOTICE OF LOT LINE ADJUSTMENT NO. 05016 AND SAID PARCEL MAP;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL "A" AND SAID CENTERLINE OF ZEIDERS ROAD, NORTH 00°22'06" EAST, A DISTANCE OF 660.06 FEET;

THENCE SOUTH 89°37'54" EAST, A DISTANCE OF 853.00 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 89°37'54" EAST, A DISTANCE OF 49.51 FEET;

THENCE NORTH 74°41'01" EAST, A DISTANCE OF 67.00 FEET;

THENCE SOUTH 89°37'54" EAST, A DISTANCE OF 284.25 FEET TO THE EASTERLY LINE OF SAID PARCEL "A";

THENCE ALONG SAID EASTERLY LINE OF THE FOLLOWING TWO (2) COURSES:

- 1) SOUTH 00°24'17" WEST, A DISTANCE OF 668.47 FEET;
- 2) SOUTH 05°18'20" EAST, A DISTANCE OF 13.29 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL "A":

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", NORTH 89°28'13" WEST, A DISTANCE OF 399.15 FEET;

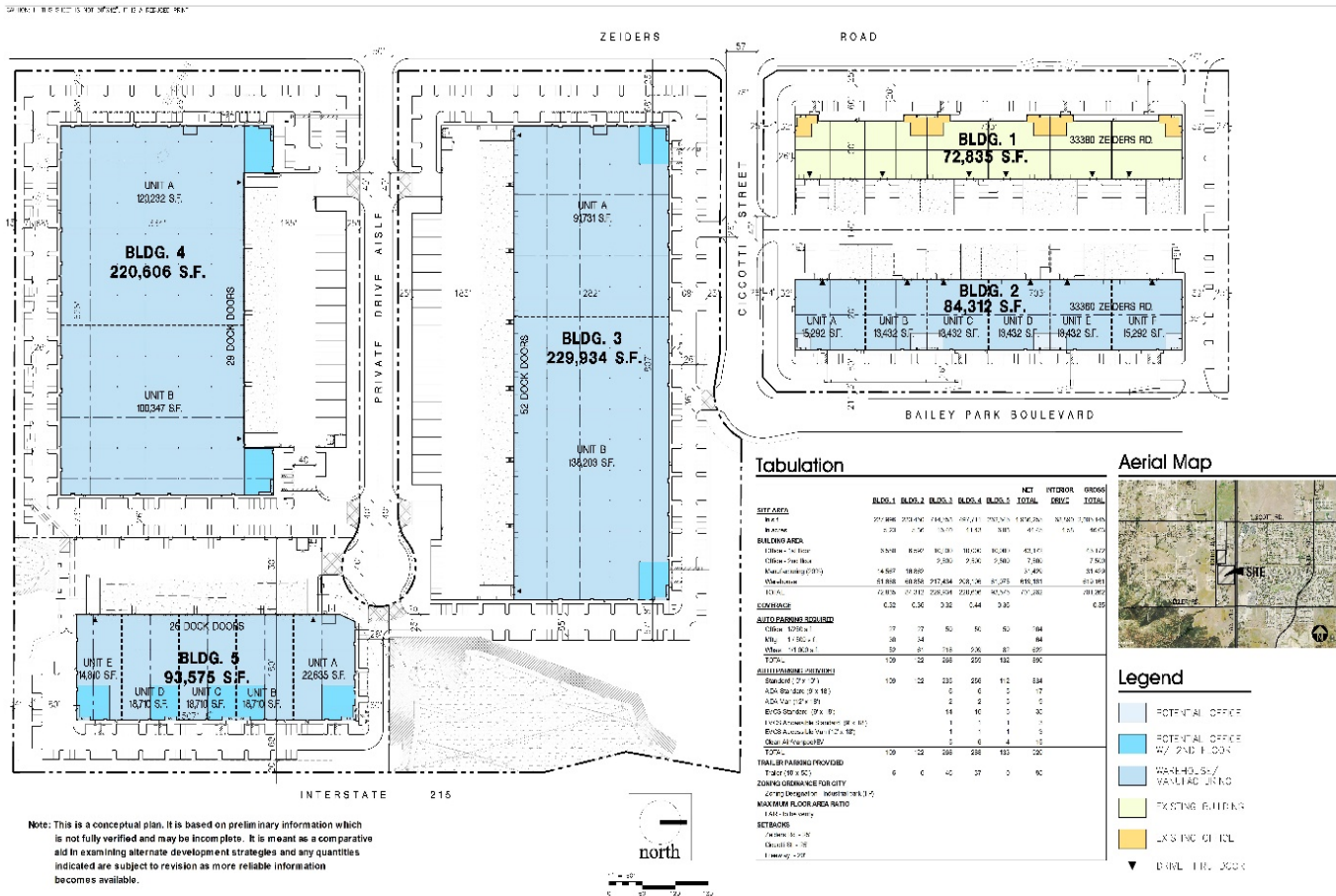
THENCE NORTH 00'22'06" EAST, A DISTANCE OF 662.47 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 6.19 ACRES MORE OR LESS.

RESERVING A RECIPROCAL EASEMENT FOR THE BENEFIT OF PARCEL "A" AND PARCEL "B" AS SHOWN HEREON.

APN(s): 384-150-009, 384-150-010, 384-150-011

EXHIBIT B (Depiction of Property)



16831 Barcen Ave. - Ste. #100
Irvine, CA 92612
(949) 853-1773
www.hpa-arch.com

Conceptual Site Plan Scott Road Commerce Center

Menifee, County of Riverside, CA



August 17, 2021 / Job # 19618
Scheme 12

EXHIBIT C
(First Amendment)