

October 5, 2022
City Council

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)

FIRST 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

First Amendment Effective Date: November 4, 2022

FIRST 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 First Amendment to City of Menifee Development Agreement 2012-116 ("**First 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 First Amendment as the "**Parties**" and individually as a "**Party**."

RECITALS

A. The Development Agreement.

1. **The Original Approval.** On November 20, 2013, the City Council of the City of Menifee ("**City Council**") adopted Ordinance No. 2013-133 approving Development Agreement No. 2012-116 ("**DA**") for property which was then known as Commerce Pointe I and Commerce Pointe II and is described in the DA and Paragraph 2 of this First Amendment ("**Property**"). 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 (collectively "**Original Landowner**").
2. **The Original Term.** The effective date of the DA was December 20, 2013 ("**Original Effective Date**"). December 19, 2023, is the final day of the original ten-year term of the DA ("**Original Term**"). A copy of the DA is attached to this First Amendment as **Exhibit "A"**. The relationship between this First Amendment and the DA is set forth in Paragraph 3 below.
3. **The Property.** The Property is described on **Exhibit "B"** and shown on **Exhibit "C"** to this First Amendment.
4. **Second Amendment.** Concurrently with the negotiation and approval of this First Amendment pursuant to Ordinance No. [REDACTED], the Parties negotiated and the City Council approved a second and separate amendment to the DA ("**Second Amendment**") pursuant to Ordinance No. [REDACTED]. 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**."

- B. **Landowner's Acquisition.** In 2021, Landowner acquired the Property and the building that had been constructed at that time on the Property. Original Landowner's rights and obligations under the DA have been assigned or transferred to Landowner. Landowner is bound by the obligations under the DA and entitled to the rights granted under the DA.
- C. **Original Vested Rights.** Section 2.7 of the DA defines "Existing Land Use Regulations." In turn, the Existing Land Use Regulations specifically include Article X (I-P Zone – Industrial Park Regulations) of Riverside County Zoning Ordinance (Ord. 348), which was incorporated into the Menifee Municipal Code as of the Original Effective Date ("**I-P Regulations**"). A copy of the I-P Regulations is attached as **Exhibit "D"**.

Section 7.1 of the DA defined the scope of Landowner's vested rights that were granted by the DA for the term of the DA ("**Original Vested Rights**"). Among the Original Vested Rights are:

- The right to *develop* the Property in accordance with, among other things, the Existing Land Use Regulations.
- The right to *use* the Property ("**Original Vested Uses**") in accordance with, among other things, the Existing Land Use Regulations and, therefore, the I-P Regulations.

D. Project Status. The development of the Property was approved in 2013 for 51 buildings totaling 827,777 square feet of construction through the adoption of Resolutions 09-66 and 09-67. Subsequently, pursuant to Plot Plan No. 2016-126 and PLN 21-0216, the Property's entitlements were modified to allow a total of five buildings ("**Project Buildings**") and a total of 701,687 square feet ("**Project**"). As of the date of this First Amendment:

- One Project Building totaling 72,835 square feet is complete and occupied.
- A second Project Building totaling 84,312 square feet, is currently under construction.
- The final three Project Buildings ("Buildings 3, 4, and 5") totaling 544,540 square feet were in plan check as of July 26, 2022, and it is anticipated will have completed plan check and will be under construction by the Amendment Effective Date.

E. City's Zoning Amendment. On March 2, 2022, the City Council adopted certain Industrial Good Neighbor Policies to provide local government and developers with ways to address environmental and neighborhood compatibility issues associated with permitting warehouse, logistics, and distribution centers ("**Industrial Good Neighbor Policies**"). On March 16, 2022, the City Council adopted Change of Zone No. PLN21-0408, amending definitions and permitted uses in select Economic Development Corridor subareas, including the Southern Gateway subarea ("**Zone Change**"). The Project is located in the Southern Gateway subarea.

F. Original Public Benefits. As consideration for the City granting vested rights to the Original Landowner through the end of the Original Term, the Original Landowner provided to the City the public benefits set forth in Recital F of the DA ("**Original Public Benefits**").

G. Status of Original Public Benefits. Landowner and Original Landowner have satisfied their obligations to provide the Original Public Benefits to the City.

H. New Public Benefits. As consideration for entering into this First Amendment, Landowner will provide to the City the following "**New Public Benefits**":

1. **First Amendment Payment.** Landowner will make a single lump sum payment to the City of \$2,500,000 (the "**First Amendment Payment**") within three business days after receiving written notice from the City that each of the following events has occurred:
 - a. The First and Second Amendments have been signed by the City (the Parties understand and agree that this First 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 First Amendment shall not be binding, and this First Amendment shall have no legal effect on any Party whatsoever if, after the delivery of the signed First Amendment to the City by Landowner, the City Council (i) changes a single word in the First 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 First Amendment and the Exhibits, or (ii) adds any condition whatsoever to the approval of the First 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 toward the construction of an as-yet-undetermined public facility, to be identified by the City in its sole discretion.

2. Elimination of Certain Original Vested Uses. Beginning on the Amendment Effective Date, the following Original Vested Uses currently allowed under the I-P Regulations will not be permitted on the Property during the remainder of the term of the DA, as extended by this First Amendment (“**Eliminated Vested Uses**”):

- a. From within the range of “parcel delivery services” covered by Section 10.1(a)(1)(g)(9) of the I-P Regulations, those that meet each of these criteria: (i) consist of dedicated “last-mile” terminals of FedEx, UPS, Amazon, Walmart, DHL, or OnTrac and (ii) are primarily used to process and deliver e-commerce packages to their final destinations and (iii) conduct incoming and outgoing deliveries for more than 16 hours per day.
- b. Recycling Collection Facilities covered by Section 10.1(a)(1)(g)(10).
- c. Vehicle Storage and Impoundment covered by Section 10.1(a)(1)(e)(1).
- d. Recycling processing facilities covered by Section 10.1(b)(3).
- e. Sex-oriented businesses covered by Section 10.1(c).

The Original Vested Uses less the Eliminated Vested Uses are referred to within this First Amendment as the “**Remaining Vested Uses.**”

3. Waiver of Claims. Irrespective of whether the claims were asserted by Landowner or any other party, Landowner on behalf of itself and its agents, officers, and affiliates waives and releases, as of the Amendment Effective Date, all claims that it has or may have in any way arising from or relating to the adoption of (i) the Zone Change and (ii) the Industrial Good Neighbor Policies. Without limiting the generality of the foregoing, this waiver and release

includes, but is not limited to, all claims asserted in letters from Landowner's attorney to the City Council dated March 1, 2022, and March 2, 2022.

I. Landowner's Perspective. As the Original Term nears its end and Buildings 3, 4, and 5 are anticipated to soon be under construction, Landowner has the following concerns which motivate Landowner to enter into this First Amendment:

- Landowner and Original Landowner have invested and are continuing to invest considerable sums in both the acquisition of the Property and the entitlement and construction of the Project Buildings.
- When Landowner acquired the Property, it was Landowner's business expectation that the Project Buildings would be constructed and used for a reasonable period of time during and after the Original Term consistent with the Original Vested Rights.
- The Project Buildings have been designed and have been or are being constructed to accommodate specific Original Vested Uses which require buildings of a certain size, configuration, and location.
- Landowner understands that, without this First Amendment, uses in place within the Project Buildings when the Original Term ends on December 19, 2023, will be allowed to continue to operate, subject to the terms of the City's non-conforming use ordinance.
- Due to economic, market, and other conditions, including the historic pandemic beginning in 2020, construction of all of the Project Buildings will not be complete until, at best, the final year of the Original Term.
- Prior to the adoption of the Zone Change and the Industrial Good Neighbor Policies, Landowner communicated in writing its potential legal claims to the City pertaining to the implications of the Zone Change and the Industrial Good Neighbor Policies upon the Property and the DA.
- To achieve greater certainty with respect to the use of the Property in the future, Landowner has requested the City to extend the term of the DA to assure that (i) in the short-term, the construction of the Project Buildings will be completed while the DA is in effect and (ii) in the longer term, the Project Buildings can be used for the Remaining Vested Uses for which they were designed and constructed.
- In return for an extension of the term of the DA, Landowner is willing to provide the New Public Benefits to the City.

J. City's Perspective. City contends that Landowner's claims pertaining to the Zone Change and the Industrial Good Neighbor Policies are without merit, but is nevertheless motivated to consider this First Amendment for the following reasons:

- This First Amendment removes the Eliminated Vested Uses from the list of uses Landowner may pursue on the Property during the remainder of the Original Term, and following the expiration of the Original Term.
- Without this First Amendment, Landowner would retain the ability to conduct the Original Vested Uses through the end of the Original Term, and to thereafter perpetuate those established uses under City's nonconforming use ordinances.

- This First Amendment will provide substantial funding toward the construction of a public facility to be identified by the City in its sole discretion.
 - This First Amendment will avoid the cost and uncertainty of defending against a legal challenge to the Zone Change and/or Industrial Good Neighbor Policies brought by Landowner, its agents, officers, and affiliates.
- K. 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 First Amendment.
- L. 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 First 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 First Amendment, making the Amendment Effective Date November 4, 2022.
- M. Findings.** In approving the Adopting Ordinance for the First Amendment, the City Council found that this First 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.
- N. Purpose of First Amendment.** It is the intent of the Parties that this First Amendment will (i) provide to both the City and Landowner ongoing assurances and certainty with respect to the development and use of the Property, (ii) provide significant benefits, in the form of vested rights, to Landowner beyond those Landowner already has received as consideration for entering into the DA, (iii) provide significant New Public Benefits to the City beyond those the City already has received as consideration for entering into the DA, and (iv) resolve disagreements between the Parties with respect to the Zone Change and the Industrial Good Neighbor Policies as they relate to the development and use of 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 First Amendment. Without limiting and to clarify the foregoing:
 - a. Landowner shall deliver the “First Amendment Payment” described in Recital H1 at the time and in the manner specified in Recital H1. If Landowner fails to timely deliver the First Amendment Payment to City, City may, upon provision of written notice to Landowner, unilaterally terminate this First Amendment.

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

- b. Any alleged default with respect to the “Elimination of Certain Original Vested Uses” described in Recital H2 shall be addressed in the manner set forth in Section 15 of the DA.
 - c. The “Waiver of Claims” described in Recital H3 shall be deemed effective without any further action by Landowner upon delivery of the First Amendment Payment.
 - d. This First 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 First Amendment) unless and until the First Amendment Payment is timely delivered to the City by Landowner.
2. **Property.** As of the Amendment Effective Date, Landowner holds legal title to the Property. The Property is comprised of (i) Assessor Parcel Nos. 384-180-051 and 384-180-052 (now known as “**Scott Road Commerce Center I**”) and (ii) Assessor Parcels Nos. 384-150-009, -010, and -011 (now known as “**Scott Road Commerce Center II**”). For clarity, the property described on Exhibit “B” and shown on Exhibit “C” is the same as the property described on Exhibit A to the DA.
3. **Relationship to DA.** This First Amendment amends, but does not replace, the DA. 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. When considered in conjunction with the DA which it amends, however, this First Amendment shall be interpreted and applied to implement the intent of each of this First Amendment’s provisions, subject to the following:
- a. *Provisions Not Modified.* Except as provided in the First and Second Amendments, including Paragraph 4 below, the original provisions of the DA shall remain in full force and effect.
 - b. *Resolution of Inconsistencies.* If a provision of this First 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 First Amendment provision shall prevail over the original language in the DA, but only to the extent needed to fully implement the First Amendment provision and the stated intent of this First Amendment. When considered in conjunction with the Second Amendment, this First Amendment shall be interpreted and applied in a manner consistent with the Second Amendment’s provisions.
4. **Litigation Contingencies.**
- a. *Extension of Term of First Amendment.* If litigation is filed by a third party which seeks to invalidate either the First or the Second Amendment or either of the Adopting Ordinances (“**Adverse Litigation**”), then, upon the filing of that Adverse Litigation both the Extended Development Term and the Extended Use Term (as described in the modification to Section 6.2 set forth in Paragraph 5k below) shall automatically be further extended for a period equal to the length of time from the filing of the Adverse Litigation until the Adverse Litigation is “final.”² The maximum of each of these extensions, however, shall be three (3) years.

² All references within this First Amendment to litigation being “final” shall mean that the litigation has concluded, whether by judgment, dismissal, settlement, or otherwise, and all applicable appeal rights have been exhausted or expired.

b. *Return of First Amendment Payment.* If the First Amendment Payment has been made to City by Landowner and a court of law subsequently invalidates the First Amendment and all Adverse Litigation related to the First Amendment is final, then:

- Within forty five (45) days after Landowner's written request, the City shall return the First Amendment Payment with interest based upon the Local Agency Investment Funds (LAIF) from the date the First Amendment Payment was delivered to the City through the date the First Amendment Payment was returned to Landowner (the "Returned Funds").
- Upon receipt of the Returned Funds, Landowner shall provide an express disclaimer and waiver by Landowner of any rights under or relating to this First Amendment, effective upon delivery of the Returned Funds to Landowner by the City.

The provisions of this Paragraph 4 shall survive the termination of this First Amendment.

5. **Specific Modifications and Updates.** On the Amendment Effective Date, the Recitals and all other provisions of this First Amendment, along with the following updated information and changes to the DA, shall be deemed to modify the DA; provided, however that under Paragraph 1(d), such modifications shall not become operative unless and until the First Amendment Payment is timely delivered to the City by Landowner. Where terms defined in this First Amendment, but not used originally in the DA, are used in the provisions of the DA which are modified by this First Amendment, they shall have the defined meaning given to them by this First Amendment. (For purposes of this Paragraph 5, the "**Recitals**" identified in the headers to subparagraphs a-h refer to recitals of the DA. References to recitals in this First Amendment are stated as, for example, "Recital D of this First Amendment." "**Section**" references are to the DA as originally approved, while "**Paragraph**" references are to this First Amendment.) Pursuant to Section 9.45.130 of the Menifee Municipal Code, *if* Landowner has provided the First Amendment Payment and subject to the provisions of Paragraph 4 above, *then* the following specific modifications and updates to the DA are made by this First Amendment:

- a. **Recital B of the DA.** Recital B is supplemented by Paragraph 2 of this First Amendment.
- b. **Recital C of the DA.** Recital C is supplemented and updated by Recital D of this First Amendment.
- c. **Recital D of the DA.** Recital D is supplemented and updated by modifying the introductory statement and adding subparagraphs (g) and (h) as follows:

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

....

(g) Plot Plan No. 2016-126, approving a minor modification for Commerce Pointe II, reducing the number of buildings to two and the total square footage to 157,147 square feet. Approved on January 19, 2017.

(h) PLN 21-0216, approving a minor modification for Scott Road Commerce Center II (formerly Commerce Pointe I), reducing the number of buildings to three and the total square footage to 544,540 square feet. Approved on November 10, 2021."

- d. **Recital E of the DA.** Recital E is supplemented by Recital N of this First Amendment.
- e. **Recital F of the DA.** Recital F is supplemented by Recital H of this First Amendment.
- f. **Recital G of the DA.** Recital G is supplemented by the Recital K of this First Amendment.
- g. **Recital H of the DA.** Recital H is supplemented by Recital M of this First Amendment.
- h. **Recital I of the DA.** Recital I is supplemented by Recital K of this First Amendment and Recital L of this First Amendment.
- i. **Section 2.4.** Section 2.4 is modified to read in its entirety:

“Original Effective Date. December 20, 2013.”
- j. **Section 6.1.** Section 6.1 is modified to read in its entirety:

“Original Effective Date. The Original Effective Date is December 20, 2013. The DA was recorded on December 26, 2013, in the Official Records of the County of Riverside, State of California. The First Amendment is effective as of November 4, 2022. Not later than November 10, 2022, the City and Landowner shall execute and acknowledge the First Amendment. Not later than November 14, 2022, the City Clerk shall cause the First Amendment to be recorded in the Official Records of the County of Riverside, State of California, provided that a referendum applicable to the First Amendment has not been timely submitted to the City. The failure of the City to sign and/or record the First Amendment shall not affect the validity of the First Amendment.”
- k. **Section 6.2.** Section 6.2 is modified to read in its entirety:

“Term. The term of the DA commenced on the Original Effective Date and, absent amendment, the final day of the ten-year Original Term would have been December 19, 2023. The DA has been amended to extend the Original Term as follows:

 - (a) *Development.* With respect to the Development Rights described in Section 7.1.1 below, the Original Term is extended through December 19, 2028, unless otherwise terminated, modified, or extended by the terms of this Agreement (**‘Extended Development Term’**).
 - (b) *Use.* With respect to the Use Rights described in Section 7.1.2 below, the Original Term is extended through December 19, 2063, unless otherwise terminated, modified, or extended by the terms of this Agreement. (**‘Extended Use Term’**).”
- l. **Section 6.3.** Section 6.3 shall be superseded by the provisions of Paragraph 4 above.
- m. **Section 6.6.** The first sentence of Section 6.6 is modified to read:

“Except with respect to rights and obligations expressly stated to survive the Termination of this Agreement, following Termination of this Agreement all of the rights, duties and obligations of the Parties shall terminate and be of no further force and effect.”
- n. **Section 7.1.** Section 7.1 is modified to read, in its entirety:

“Development and Use Rights.

7.1.1. **Development Rights.** Separate from the use rights provided under Section 7.1.2, which expire as set forth in Section 6.2(b), during the Extended Development Term and except as set forth in Sections 7.2, 7.3, 7.4 and 8.5 below, with respect to 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 as set forth in this Agreement, the Existing Land Use Regulations in force and effect on the Adoption Date, and the Project Approvals.”

7.1.2. **Use Rights.** Separate from the development rights provided under Section 7.1.1, which expire as set forth in Section 6.2(a), during the Extended Use Term and except as set forth in Section 7.2, 7.3, 7.4, and 8.5 below, the Remaining Vested Uses may be conducted in those Project Buildings which have been constructed or for which building permits have been granted as of December 19, 2028. The provisions of Section 6.5 (“Automatic Termination”) shall not apply to Use Rights.

7.1.3. **Nonconforming Uses.** All uses of the Property, including the Original Vested Uses, which become nonconforming at any time shall be subject to the provisions of the Menifee Municipal Code, as it may be amended from time to time, pertaining to the continuation of nonconforming uses. For the remainder of the Original Term and during the Extended Use Term, a use shall not be considered nonconforming if it is permitted by this Agreement.”

- o. **Section 7.2.** Section 7.2 is modified to read, in its entirety:

“Fees, Taxes and Exactions. Except as provided in Sections 7.2(a) and 7.2(b) below, the Landowner 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. Landowner 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. Landowner agrees that Landowner 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 the costs of the contract planner or the 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.

(a) *Development Impact Fees for Buildings 3, 4, and 5.* As of May 26, 2022, development impact fees (“**DIF Fees**”) for Buildings 3, 4, and 5 were paid

in full by Landowner with respect to any and all building permits required for those buildings.

(b) *Future DIF Fees*. Notwithstanding the foregoing, the DIF Fees applicable to the Project, as set forth in the attached Exhibit "C", shall be subject to moratorium during the Original Term of this Agreement, i.e., through December 19, 2023 ("**DIF Freeze**"). Without prejudicing the right of either Party to contend that additional DIF Fees are or are not required for future development of the Property as a result, for example, of the expiration of a building permit:

- During the remainder of the Original Term (i.e., through December 19, 2023), the DIF Freeze shall remain in place.
- After the conclusion of the Original Term and through the conclusion of the Extended Development Term (i.e., from December 20, 2023, through December 19, 2028), the DIF Fees imposed upon the Project shall be those established pursuant to Council Resolution 21-1007. For avoidance of doubt, the fees applicable to "Industrial/Business Park" development on the Property under City Council Resolution No. 21-1007 are charged at a rate of \$5,372 per 1,000 square feet of construction.

p. **Section 19**. Section 19 is modified to read, in its entirety:

"Excuse for Nonperformance. Landowner and City shall be excused from performing any obligation or undertaking provided in this Agreement if 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, pandemic (provided, however, that the Parties acknowledge the COVID-19 pandemic is not currently and has not to date caused any excuse for nonperformance under this Agreement), war, invasion, insurrection, riot, mob violence, sabotage, strikes, lockouts, condemnation, Adverse Litigation, court order or any 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."

q. **Section 23**. Section 23 is modified to read in its entirety:

"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

- r. **Section 25.** Section 25 is modified to read in its entirety:

“Further Assurances and Cooperation. City and Landowner will cooperate in a “good faith and fair dealing” manner with respect to each of their respective obligations under this Agreement. This includes, but is not limited to, the timely delivery of the New Public Benefits by Landowner and the City’s timely review of all applications and issuance of all permits (building, occupancy, *etc.*) for each of the Project Buildings. Each Party further 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.”

- s. **Section 30.** Section 30(a) is added to the Agreement to read as follows:

“(a) This Section 30 shall apply additionally to the construction of the Project, with the clarification that, *as to the City*, this provision creates an indemnification obligation and not an obligation to pay prevailing wage. Landowner shall not be considered in default under this Section 30, except for a failure to meet that indemnification obligation.”

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City and Landowner have executed this First Amendment to City of Menifee Development Agreement 2012-116, with an 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
(Original Development Agreement)

EXHIBIT B

(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 C (Depiction of Property)

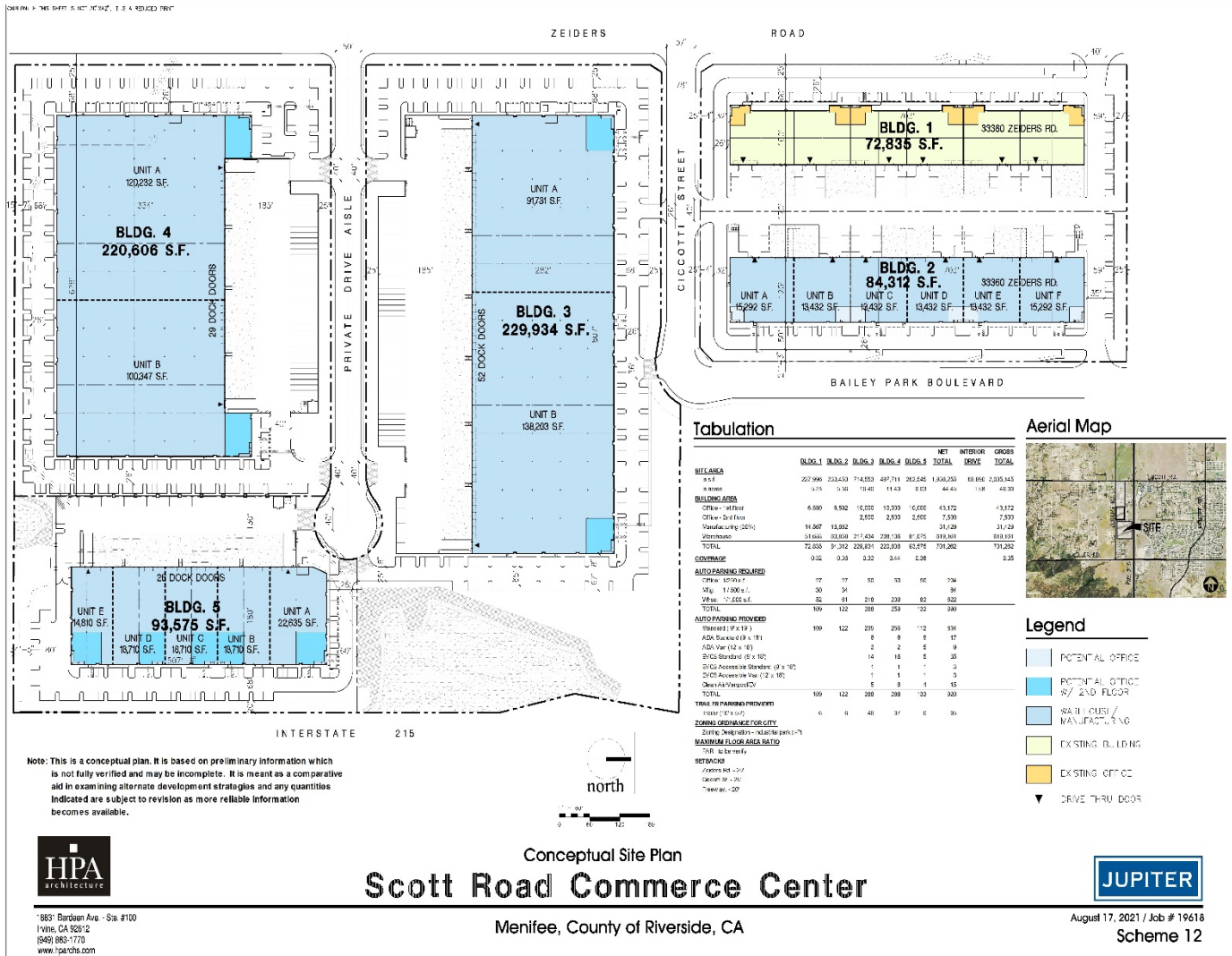


EXHIBIT D

(I-P Regulations)

Menifee, CA Code of Ordinances

ARTICLE X

I-P ZONE

(INDUSTRIAL PARK)

The following regulations shall apply to all I-P Zones:

SECTION 10.1. USES PERMITTED.

a. The following uses are permitted provided an Industrial Park Plot Plan has been approved pursuant to the provisions of Section 18.30 of this ordinance.

(1) The following industrial and manufacturing uses:

a) Food, Lumber, Wood, and Paper products:

1. Grain and bakery products.
2. Sugar and confectionary products.
3. Nonalcoholic beverages.
4. Ice.
5. Manufacture of furniture and fixtures including cabinets, partitions, and similar items.
6. Printing and publishing or newspapers, periodicals, books, forms, cards, and similar items.
7. Binding of books and other publications.

b) Textile and Leather Products:

1. Wearing apparel and accessory products.
2. Manufacture of handbags, luggage, footwear, and other personal leather goods.

c) Chemical and Glass Products:

1. Pharmaceutical research and manufacture.
2. Glassblowing, pressing, cutting, and other glassware products.

d) Metal, Machinery, and Electrical Products:

1. Jewelry manufacture and repair.
2. Manufacture, assembly, testing and repair of components, devices, equipment and systems of an electrical, electronic, or electro-mechanical nature, such as, but not limited to:
 - a. Television and radio equipment and systems.
 - b. Phonographs and audio units.
 - c. Metering instruments, equipment and systems.
 - d. Radar, infrared and ultraviolet equipment and systems.
 - e. Coils, tubes, semiconductors and similar components.
 - f. Scientific and mechanical instruments.
 - g. Data processing equipment and systems.
 - h. Communication, navigation control, transmission and reception equipment, control transmission and reception equipment,

control equipment and systems, guidance equipment and systems.

- i. Musical and recording equipment.
3. Office and computing machine manufacture, repair, and sales.
4. Control devices and gauges.
5. Equipment sales, rental and storage.
6. Appliance manufacture, and repair.
7. Manufacture of lighting fixtures, and supplies.
- e) Transportation and Related Industries:
 1. Vehicle storage and impoundment within an enclosed building.
 2. Trailer, recreational vehicle, and boat storage within an enclosed building.
- f) Engineering and Scientific Instruments:
 1. Manufacture and repair of engineering, scientific, and medical instrumentation including but not limited to:
 - a. Measuring devices, watches, clocks, and related items.
 - b. Optical goods.
 - c. Medical, and dental instruments.
 - d. Engineering, survey, and drafting instruments.
 - e. Photographic equipment.
- g) Industrial Uses:
 1. Public utility substations and storage buildings.
 2. Warehousing and distribution, including mini-warehouses.
 3. Communications and microwave installations.
 4. Cold storage facilities.
 5. Telephone exchanges and switching equipment.
 6. Post offices.
 7. Fire and police stations.
 8. Water and gas company service facilities.
 9. Parcel delivery services.
 10. Recycling collection facilities.
- (2) The following service and commercial uses:
 - a) Banks and financial institutions.
 - b) Blueprint and duplicating services.
 - c) Laboratories, film, medical, research, or testing centers.
 - d) Office equipment sales and service.
 - e) Offices, professional sales and service, including business, law, medical, dental, chiropractic, architectural and engineering.
 - f) Parking lots and parking structures.

- g) Restaurants and other eating establishments.
- h) Barber and beauty shops.
- i) Day care centers.
- j) Health and exercise centers.
- k) Mobilehomes, provided they are kept mobile and licensed pursuant to state law, when used for construction offices and caretaker's quarters on construction sites for the duration of a valid building permit.
- l) One-family dwellings on the same parcel as the industrial or commercial use provided such dwellings are occupied exclusively by the proprietor or caretaker of the use and their immediate families.
- m) Signs, on-site advertising.
- n) Automobile service stations, not including the concurrent sale of beer and wine for off-premises consumption.
- o) Motels.
- p) Churches, temples, or other structures used primarily for religious worship.

Amended Effective:

11-30-95 (Ord. 348.3753)

- b. The following uses are permitted provided a conditional use permit has been granted pursuant to Section 18.28 of this ordinance:
 - (1) Airports.
 - (2) Heliports.
 - (3) Recycling processing facilities.
- c. Sex-oriented businesses, subject to the provisions of County Ordinance No. 743. The uses listed in Subsections a. and b. do not include sex-oriented businesses.

Amended Effective:

03-01-94 (Ord. 348.3584)

- d. Any use that is not specifically listed in Subsections a. and b. may be considered a permitted or conditionally permitted use provided that the Planning Director finds that the proposed use is substantially the same in character and intensity as those listed in the designated subsections. Such a use is subject to the permit process which governs the category in which it falls.

Amended Effective:

06-06-89 (Ord. 348.3032)

08-10-89 (Ord. 348.3047)

10-05-89 (Ord. 348.3053)

03-01-94 (Ord. 348.3584)

11-30-95 (Ord. 348.3753)

SECTION 10.2. PLANNED INDUSTRIAL DEVELOPMENTS.

Planned industrial developments are permitted provided a land division has been approved pursuant to the provisions of Ordinance No. 460.

SECTION 10.3. INDUSTRIAL PARK PLOT PLAN.