ATTACHMENT 1

Recording Requested by And
When Recorded Return to:

City of Hesperia
9700 Seventh Avenue
Hesperia, CA 92345

Attn: City Clerk

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code § 6103)

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into this _____ day of _____, 2017, (hereinafter the "Effective Date") by and between the CITY OF HESPERIA, a municipal corporation (hereinafter "City"), and HESPERIA VENTURE I LLC, a California limited partnership "Developer").

RECITALS

A. California Government Code Section 65864 *et seq*. ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. Developer is the owner of legal and/or equitable interests in certain real property legally described in Exhibit "A" attached hereto (the "Property"), and thus qualifies to enter into this Agreement in accordance with Development Agreement Law.

C. Developer and City agree that a development agreement should be approved and adopted for this Property in order to memorialize the property expectations of City and Developer as more particularly described herein.

D. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan and the Tapestry Specific Plan. This Agreement and the proposed "Project" (as hereinafter defined) will achieve a number of City objectives, including the orderly development of the Property; the providing of public benefits to the City and its residents through public improvements, including public parks, improvements to the Property, and street improvements in and around the Property.

E. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 2017-21 of the City Council have been duly and regularly taken.

F. As part of the process of approving this Agreement and granting the Development Approvals, the City Council has required the preparation of an Environmental Impact Report and Addendum and has otherwise carried out all requirements of the California Environmental Quality Act ("CEQA") of 1970, as amended.

G. On November 27, 2017, following a duly noticed and conducted public hearing, the City Planning Commission recommended that the City Council approve this Agreement.

H. On December 19, 2017, following a duly noticed and conducted public hearing, the City Council determined that the provisions of this Agreement are consistent with the General Plan of City, and introduced Ordinance No. 2017-21 approving and authorizing the execution of this Agreement.

I. On January 16, 2018, the City Council adopted Ordinance No. 2017-21 approving and authorizing the execution of this Agreement. A copy of the ordinance is on file at the office of the City Clerk, with adopted findings and conditions pertaining thereto, including those relating to the environmental documentation for the Project. This Agreement, in its entirety, has been incorporated by reference into Ordinance No. 2017-21 as if set forth in full.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in this Agreement. The defined terms include the following:

1.1.1 **"Agreement"** means this Development Agreement and all attachments and exhibits hereto.

1.1.2 **"City"** means the City of Hesperia, a municipal corporation.

1.1.3 **"City Council"** means the City Council of the City.

1.1.4 **"Developer"** means Hesperia Venture I LLC and its successors and assigns to all or any part of the Property.

1.1.5 **"Development"** means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, and, subject to the provisions of Section 3.17.2 below, the maintenance, repair, or reconstruction of any building,

structure, improvement, landscaping or facility after the construction and completion thereof on the Property.

1.1.6 **"Development Approvals"** means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals include, but are not limited to, general plan amendments, specific plans, site plans, tentative and final subdivision and parcel maps, design guidelines, variances, zoning designations, conditional use permits, grading, building, and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports and negative declarations, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals includes the Tapestry Specific Plan approved by Ordinance No. 2015-10 on January 26, 2016 (the "Specific Plan"), incorporated herein by reference as Exhibit "B," and Tentative Tract Maps 18985, 18989, and 18955, approved by Resolution Nos. 2015-44, 48, and 49 respectively, on January 26, 2016 ("Tentative Maps"). The term Development Approvals shall also include any "Subsequent Development Approval" (as hereinafter defined). Subject to the provisions of Section 3.2 below, the term Development Approvals does not include (i) rules, regulations, policies, and other enactments of general application within the City, or (ii) any matter where City has reserved authority under Section 3.8 below.

1.1.7 **"Development Plan"** means the proposed plan for Development of the Property pursuant to the Development Approvals. The Development Plan for the Property is reflected in the Specific Plan and contemplates the development of approximately 9,365 acres into a master planned community that will include 16,196 residential dwelling units. Other land uses contemplated for the Development Plan include: approximately 3,533 acres reserved as regional detention/open space; a wastewater treatment facility; 262 acres reserved for school sites including eight elementary schools, two middle schools, and two high schools; 387 acres of park land, including community and neighborhood parks; an extensive trail system; 94 acres for two mixed-use town centers; and public facilities and infrastructure.

1.1.8 **"Effective Date"** means the date inserted into the preamble of this Agreement after this Agreement has been approved by ordinance of the City Council and signed by Developer and City.

1.1.9 **"Existing Land Use Regulations"** means the Land Use Regulations which have been adopted and are effective on or before the Effective Date of this Agreement.

1.1.10 **"Land Use Regulations"** means all ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan, the Specific Plan, and Municipal Code and Zoning Code and including all development impact fees (except as otherwise provided in Section 3.6), which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the Property, subject to the terms of this Agreement. Except as otherwise set forth in this Agreement, the term Land Use Regulations does not include, however: regulations

relating to the conduct of business, professions, and occupancies generally; taxes and assessments; regulations for the control and abatement of nuisances; uniform codes; utility easements; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; health and safety regulations; environmental regulations; or similar matters or any other matter reserved to the City pursuant to Section 3.8 below.

1.1.11 **"Mortgagee"** means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender or each of their respective successors and assigns.

1.1.12 **"Phase"** means a phase of the Project as described in the Specific Plan.

1.1.13 **"Production Residential Units"** means the residential units constructed on the Property, but excluding model homes until such time when a model home receives a certificate of occupancy, is the subject of a recorded final map and the Developer has made the model home available for sale to the public, at which time each such model home shall be deemed a Production Residential Unit.

1.1.14 **"Project"** means the Development of the Property consistent with the Development Plan, the Specific Plan and this Agreement.

1.1.15 **"Property"** means the real property described in and shown in Exhibit "A."

1.1.16 **"Public Improvements"** means the improvements to be constructed on and adjacent to the Property, as further described in the Development Plan and the Specific Plan, and in any Planning and Engineering Conditions of Approval that are approved concurrently with the Project or that are approved in connection with any Subsequent Development Approval or Traffic Impact Analysis.

1.1.17 **"Reservation of Authority"** means the rights and authority accepted from the assurances and rights provided to Developer under this Agreement and reserved to City under Section 3.8 of this Agreement.

1.1.18 **"Settlement Agreement"** means that certain Settlement and General Release Agreement dated on or about May 1, 2017, between Developer and Terra Verde Group, LLC on one hand and the Center for Biological Diversity, the San Bernardino Valley Audubon Society, and the Sierra Club on the other hand ("Petitioners"), resolving the legal action filed in *Center for Biological Diversity, et al. v. City of Hesperia, et al.*, San Bernardino County Superior Court Case No. CIVDS1602824. The Settlement Agreement is further described in Section 3.21 below, and a copy is available through the City Clerk's Office.

1.1.19 **"Subsequent Development Approvals"** means all Development Approvals issued subsequent to the Effective Date in connection with Development of the Property.

1.1.20 **"Subsequent Land Use Regulations"** means any Land Use Regulations effective after the Effective Date of this Agreement, which govern development and use of the Property.

1.1.21 **"Term"** shall mean the period of time from the Effective Date until the termination of this Agreement as provided in Section 2.5, unless earlier terminated as provided in this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit "A" (Legal Descriptions); Exhibit "B" (Tapestry Specific Plan – by reference thereto), Exhibit "C" (Assignment and Assumption Agreement), Exhibit "D" (Phase 1 Concurrency Plan), Exhibit "E" (Planning and Engineering Conditions of Approval), Exhibit "F" (Local Goals And Policies For Community Facilities District Financing), and Exhibit "G" (General Staffing Needs for Public Safety Services).

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. From and following the Effective Date, actions by the City and Developer with respect to the Development of the Property, including actions by the City on applications for Subsequent Development Approvals affecting the Property, shall be subject to the terms and provisions of this Agreement.

2.2 Ownership of Property. City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Property and thus Developer is qualified to enter into and be a party to this Agreement under the Development Agreement Law.

2.3 Transfer Restrictions. Prior to the expiration of this Agreement, Developer shall not transfer this Agreement or any of Developer's rights or obligations hereunder, or any interest in the Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, which approval shall be made on a timely basis and shall not be unreasonably conditioned or withheld, and if so purported to be transferred without such approval, the same shall be null and void. In considering whether it will grant approval to any transfer by Developer of any interest in the Property, City shall consider factors including the following ("Transfer Factors"): (i) whether the completion or implementation of the Project is or may be jeopardized; (ii) the financial strength and capability of the proposed transferee to perform Developer's obligations hereunder; and/or (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written approval by City, the approval of which shall not be unreasonably withheld, delayed or conditioned by City, no transfer by Developer of all or any portion of Developer's interest in the Property or this Agreement (including without limitation an assignment or transfer not requiring City's approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Property which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assignment and assumption agreement in the form attached hereto as Exhibit "C." Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, the City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by

such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee, and any amendment to this Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee.

The foregoing prohibition shall not apply to any of the following:

(a) Any mortgage, deed of trust, or other form of conveyance for financing, but Developer shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Property.

(b) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above.

(c) The granting of easements to any appropriate public agency or utility or permits to facilitate the development of the Property.

(d) A sale or transfer in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(e) A sale or transfer of 49% or more of ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or transfers to a corporation, partnership or limited liability company or partnership in which the immediate family members or shareholders of the transferor have a controlling majority interest of 51% or more.

(f) A sale of a Production Residential Unit to an individual purchaser.

(g) A sale or transfer to a wholly new entity that will manage the implementation of the Project, provided that Developer is the managing member of that new entity.

2.4 Transfer to Public Entity. Transfer of any portion of the Property to a public entity, including but not limited to a school district, whether such transfer is voluntary or involuntary, shall not relieve Developer of its obligation to construct the Public Improvements required by this Agreement. Subject to the provisions of Section 2.3 above, Developer specifically acknowledges and agrees to construct the Public Improvements irrespective of such a transfer.

2.5 Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the date that is twenty-five (25) years from and after the Effective Date (the "Initial Term"). Provided that Developer completes the infrastructure for any six (6) Phases of the Project prior to the expiration of the Initial Term and any tolling periods approved by City, this Agreement shall automatically be extended for an additional ten (10) years ("Extended Term"). During the Initial Term or the Extended Term, Developer shall

have the right to apply for one (1) year tolling periods during significant market disruptions within the high desert and City markets for commercial and/or residential development. Upon demonstration by Developer to the City Council that market conditions within the high desert and City warrant a tolling of this Agreement, the City may grant a one (1) year tolling of the Agreement. Over the life of the Agreement, the Developer can request up to eight (8) tolling periods for a total of eight (8) years.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to and during the Term of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan, the Development Approvals, the Existing Land Use Regulations, applicable Subsequent Development Approvals, applicable Subsequent Land Use Regulations, and this Agreement.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the Effective Date of this Agreement. Pursuant to Government Code Section 66452.6 and 65863.9, the term of any tentative subdivision map for the Property or any portion thereof and the term of each of the Development Approvals shall automatically be extended for the term of this Agreement. Any tentative subdivision map prepared for the Project shall comply with the provisions of California Government Code Section 66473.7.

3.3 Timing of Development; Scope of Development. The Parties acknowledge that Developer cannot at this time predict when or the precise rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Because the California Supreme Court held in *Pardee Construction v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-enacted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property (but not the obligation to develop the Property) in such order and at such rate and at such time as Developer deems appropriate within the exercise of its sole and absolute subjective business judgment.

3.4 Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section

shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

3.5 Development Plan; Subsequent Development Approvals. The Development Plan for the Project will require the processing of Subsequent Development Approvals. Subject to the provisions of Section 3.19 below, the City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The Parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition, except that the Subsequent Development Approvals shall be generally consistent with the Development Plan. However, unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Development Approval, including any Subsequent Development Approval, respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in or amendments to the Development Approvals or Development Plan made pursuant to Developer's application shall not require an amendment to this Agreement; however, upon approval of the City, such Subsequent Development Approval, changes in the Development Approvals or Development Plan, shall be subject to and covered by this Agreement.

3.6 Development Impact Fees. It is not the intent of the Parties to "freeze" the amount of any existing development impact fee or to preclude the City from adopting any new development impact fee in the future for development within the City. Therefore, notwithstanding anything to the contrary in this Agreement, all requisite development impact fees shall be those existing on the date fees are due and payable for a particular Development Approval or Subsequent Development Approval. Except as expressly provided in this Agreement, Development impact fees shall be paid at such time and in such amount as payment for such fees is due and payable in accordance with the Land Use Regulations in effect at that time, for the portion of the Property to which such fees apply; that provided (i) any such development impact fees or increases shall be imposed on a City-wide, regional or sub-regional basis and not solely on the Project, and (ii) Developer reserves the right to protest any such development impact fees or increases through the method authorized by law. Developer acknowledges that City collects fees imposed by the Hesperia Unified School District and the Hesperia Recreation and Park District, but City has no authority over the amounts of such fees or determination of any fee credits, which are under the jurisdiction of the respective District. Developer shall inform City of any such fees or credits, and of any changes thereto.

3.7 Future Voter Actions Not Applicable to the Project. Notwithstanding any other provision of this Agreement to the contrary, any general plan amendment, specific plan amendment, zoning ordinance or regulation, or any other law, policy, or procedure adopted by the voters of the City after the Effective Date of this Agreement ("Voter Measures"), shall not apply in whole or in part to the Property, the Development, the Development Approvals, and/or the Development Plan. Any and all Voter Measures shall not impede the vested right Developer has to develop the Project pursuant to the terms of this Agreement.

3.8 Reservation of Authority.

3.8.1 **Limitations, Reservations and Exceptions.** Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development of the Property:

(a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, or other codes that may be applicable to the Project, and also adopted by City as Subsequent Land Use Regulations, if applicable City-wide.

(d) Regulations that may be in conflict with the Development Plan, any Development Approval, or this Agreement, if City determines that the failure of the City to enforce any such regulation would place the residents of the Project or the residents of the City, or both, in a condition dangerous to their health or safety, or both.

(e) Regulations that are not in conflict with the Development Plan or this Agreement.

(f) Regulations that are in conflict with the Development Plan or this Agreement, provided Developer has given written consent to the application of such regulations to Development of the Property.

(g) Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the Property or the Development of the Property.

(h) Subsequent Land Use Regulations applicable to local or regional development impact fees.

3.8.2 **Future Discretion of City.** This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.

3.8.3 **Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Laws.** In the event that Federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the

extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies. Developer may be required to enter into agreements with other public agencies regarding aspects of the Development of the Property, but such agreements shall not supersede or modify anything in this Agreement. Such other public agencies include, without limitation, the Hesperia Unified School District and the Hesperia Recreation and Park District. Developer shall provide to City copies of such agreements and any amendments thereto.

3.10 Public Improvements. If Developer proceeds with the Project at its sole and absolute discretion, Developer shall construct the Public Improvements, unless otherwise expressly provided in this Agreement. The timing of the construction of the Public Improvements shall be in substantial conformance with the timetable set forth in the Concurrency Plan submitted for each Phase and the Planning and Engineering Conditions of Approval that are approved concurrently with the Project, attached hereto as Exhibit "E," or that are approved in connection with a Subsequent Development Approval. The Concurrency Plan for Phase I is attached hereto as Exhibit "D." In addition, and notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to dedicate necessary land and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions:

3.10.1 The dedication or construction must be to alleviate an impact caused by the Project or be of benefit to the Project;

3.10.2 The timing of the Exaction should be reasonably related to the phasing of the development of the Project and the Public Improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public.

3.10.3 When Developer is required by this Agreement and/or the Development Plan to construct any public works facilities which will be dedicated to the City or any other public agency upon completion, Developer shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work.

3.11 Fees, Taxes and Assessments. During the term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Plan. This Development Agreement shall not prohibit the application of fees, taxes or assessments as follows:

3.11.1 Developer shall be obligated to pay those fees, taxes or City assessments which exist as the Effective Date or are included in the Development Plan and any increases in same;

3.11.2 Developer shall be obligated to pay any taxes, and increases thereof, imposed on a City-wide basis such as business license taxes, sales or use taxes, utility taxes, and public safety taxes;

3.11.3 Developer shall be obligated to pay any future assessments imposed on an area-wide basis (including without limitation landscape and lighting assessments, community services assessments, and road and bridge benefit districts), provided that Developer reserves its right to protest the establishment or amount of any such assessments through the method prescribed by law;

3.11.4 Developer shall be obligated to pay any fees imposed pursuant to any assessment district established within the Project otherwise proposed or consented to by Developer;

3.11.5 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code.

3.12 Infrastructure Phasing Flexibility. Notwithstanding the provisions of any phasing requirements in the Development Approvals, Developer and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure is constructed. Therefore, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Development Approvals, Developer and City shall collaborate and City may, in its sole discretion, permit any modification requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed.

3.13 Development Agreement/Development Approvals. In the event of any inconsistency between any Existing Land Use Regulation and a Development Approval, the provisions of the Development Approval shall control. In the event of any inconsistency between any Existing Land Use Regulation, Development Approval and this Agreement, the provisions of this Agreement shall control.

3.14 Reserved for Numbering Purposes.

3.15 Financing of Public Safety Services and Improvements. Developer acknowledges that City will not receive sufficient property tax revenue to fund the public safety services necessary to serve the residents of the Project, including law enforcement, animal control, and code enforcement services, as well as administrative, vehicle, and equipment costs associated with such services (collectively, "Public Safety Services"). In order to provide sufficient revenue for the City to provide such Public Safety Services to the residents of the Project, Developer and City have agreed to establish a community facilities district ("CFD") that will levy a special tax on the Property, or portions thereof. The amount of the special tax levied by the CFD for Public Safety Services shall be in an amount necessary to make the Project "revenue neutral" to the City, i.e., sufficient to cover the gap between the cost of the Public Safety Services for the Project and the amount of ordinary property tax received by the City and appropriated for such services. The amount of the special tax shall be increased each year based on the percentage change in the Consumer Price Index with a maximum annual increase of five percent (5%) and a minimum annual increase of two percent (2%) per Fiscal Year. The Consumer Price Index shall be the index

published by the U.S. Bureau of Labor Statistics for "All Urban Consumers" in the Los Angeles – Anaheim – Riverside Area, as measured in the month of December in the calendar year which ends in the previous Fiscal Year. The general staffing levels for the Public Safety Services are listed in Exhibit "G" as an initial reference point, but may be adjusted from time to time by City in its sole discretion without requiring an amendment to this Agreement, provided that law enforcement officer staffing levels shall not exceed 0.8 per 1,000 residents of the Project until such time as higher staffing levels are provided to the residents of the City outside the Project.

The Parties acknowledge that over time there may be changes in the economy, housing market, design preferences and other factors that could lead to changes in housing sizing and pricing. The Parties agree that the CFD will be adjusted from time to time by mutual agreement of the parties, generally upon each new Phase, to ensure the amount of the special tax levied by the CFD meets the requirements of this Section. The mechanism for implementing future adjustments will be determined by the Parties, but generally shall mean the creation of an initial improvement area for the first Phase (or portion thereof), designating the remainder of the Project as a future annexation area, and annexing future Phases (or portions thereof) into new improvement areas.

The CFD shall be formed in accordance with the City's Goals and Policies for Community Facilities District Financing, attached hereto as Exhibit "F" ("CFD Policies"), as modified or expanded by this Agreement. The CFD Policies may be amended from time to time by mutual agreement of the parties without requiring an amendment to this Agreement, and any such amendments shall be incorporated herein by reference. City may amend the CFD policies that apply to property outside the Project at City's sole discretion. The CFD shall be formed prior to occupancy of the first Production Residential Unit, and the levy for the Public Safety Services shall commence upon the issuance of the certificate of occupancy for each Production Residential Unit. If the Production Residential Unit is occupied, the owner shall be responsible for payment of the special tax. If the Production Residential Unit is not occupied, Developer shall be responsible for payment of the special tax.

The Public Safety Services portion of the CFD shall always take precedence over other items to be funded by the CFD. To the extent that special taxes from the CFD exceed the amount necessary to fund the Public Safety Services described above, and provided that the CFD meets the CFD Policies, Developer and City agree to establish a separate CFD that may fund fees and exactions and/or the Public Improvements. Developer agrees that no amount of special taxes shall be used to fund any fees imposed by public agencies other than City, including school fees and park fees.

To ensure that City residents outside the Project are not subsidizing the Public Safety Services provided to the Project and Project residents, Developer shall include in all homeowners' association documents provisions requiring that if Project residents vote to eliminate the Public Safety Services CFD, the full cost of providing such Public Safety Services shall be borne by the homeowners' association. The foregoing provisions in the homeowners' association documents shall be subject to City's approval and shall be a recorded restriction on each Production Residential Unit.

The Public Safety Services CFD shall not include a special tax levy for the undeveloped portions of the Property. In lieu of the CFD special tax levy, commencing on the issuance of the first

grading permit for the Project, Developer shall annually pay to City a Public Services Fee of ten dollars ($10.00) per developable acre of the Property that has not been annexed into the Public Safety Services CFD.

3.16 Design/Development Standards. Notwithstanding the provisions of the Existing Land Use Regulations, the following design/development standards shall apply to the Project:

3.16.1 **Easements.** Easements dedicated for pedestrian use shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities so long as they do not unreasonably interfere with pedestrian use and are approved by the City Engineer.

3.16.2 **Maintenance Obligations.** City shall require Developer to maintain parks, parkways, entry monuments, medians, detention basins, street lights and similar types of improvements for a period of up to one year or until annexed into an appropriate maintenance district, whichever is later. Developer's maintenance period shall commence when the improvements have passed inspection by the appropriate City department and shall terminate on the earlier to annexation into an appropriate maintenance district.

3.16.4 **Acceptance of Completed Infrastructure Improvements.** Upon written notice by Developer that specific infrastructure improvements have been completed, the City shall inspect such improvements within thirty (30) days and shall advise Developer of any deficiencies in such improvements, based on previously approved improvement plans. Such process shall continue until any deficiencies noted by City have been corrected whereupon, to the extent required by the Existing Land Use Regulations, such improvements shall be accepted by the City at the next reasonable regularly scheduled meeting of the City Council (subject to notice and agenda requirements) and any and all improvement bonds (except for maintenance bonds) relating to such improvements shall, in an expeditious manner, thereafter be released**.**

3.17 Model Homes. Prior to recordation of any final map, City agrees to issue building permits and occupancy certificates for the construction of model homes (and related model home complex structures) that will be used by Developer and/or merchant builders for the purpose of promoting sales of residential units within the Project; provided, however, in no event shall City be required to issue more than one (1) building permit for the construction of each different model home within a Phase (with no duplication for identical models with a Phase), and in no event shall Developer be permitted to sell or transfer any model home until a final map has been recorded on that portion of the Project where the model home is located.

3.18 Processing. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall, subject to all legal requirements, promptly initiate, diligently process, complete at the earliest possible time all required steps and expeditiously grant any approvals and permits necessary for the development by Developer of the Property in accordance with this Agreement, including, but not limited to, the following:

(a) the processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Development Approvals;

(b) the holding of any required public hearings;

(c) the processing of applications for and issuing of all approvals requiring the determination of conformance with the Existing Land Use Regulations, including, without limitation, site plans, development plans, land use plans, grading plans, improvement plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, demolition permits, grading permits, improvement permits, wall permits, building permits, lot line adjustments, encroachment permits, conditional and temporary use permits, sign permits, certificates of use and occupancy and approvals and entitlements and related matters as may be necessary for the completion of the development of the Property. Notwithstanding the foregoing, nothing herein guarantees that a particular approval will be granted, or granted with or without any particular condition, except as provided in this Agreement. In addition, City shall cooperate with Developer in Developer's endeavors to obtain (i) any other permits and approvals that may be required from other governmental or quasi-governmental agencies having jurisdiction over any aspect of the Project and (ii) any grants for which Developer may make application.

To further the implementation of this Section regarding expeditious processing, City agrees to retain an outside contractor or firm who will be dedicated to processing approvals for the Project, including plan check services. The contractor will be selected by City in accordance with City's procedures for engaging professional services, except that City agrees that Developer shall have an opportunity to provide input on the proposed contractor and the right to approve the proposed contractor, which approval shall not be unreasonably withheld. All costs shall be borne by Developer. City and Developer shall enter into a separate deposit agreement to provide for the payment of City's costs and the process and timeline for reviewing applications.

3.19 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals, any Subsequent Development Approvals or to other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Development Approval, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

3.20 Parcel Map. If requested by Developer, City hereby agrees to process a Parcel Map that will permit the conveyance of large parcels of the Property for financing purposes and/or for sale to merchant builders.

3.21 Settlement Agreement. Pursuant to the Settlement Agreement, Developer has agreed with the Petitioners to certain modifications to later Phases of the Project. Developer acknowledges that such modifications may require an amendment to the Specific Plan prior to the processing of any Development Approval affected by the Settlement Agreement. City agrees to process any necessary amendment to the Specific Plan, provided that City cannot and does not commit to approval of any amendment with or without any particular conditions. Notwithstanding the foregoing, the Settlement Agreement does not change the Project described above in this Agreement and previously approved by City. Any proposed amendments or modifications will be subject to CEQA review at the time any relevant Subsequent Development Approvals are sought.

3.22 Street DIF Payments. Payment of Street DIF shall be made by Developer to City as follows:

For Phase 1 of the Project, Developer shall pay to City the sum of Twelve Million Dollars ($12,000,000) upon recordation of the first final tract map for Phase 1. Developer shall pay to City the balance of the then-existing Street DIF for all Production Residential Units in Phase 1 prior to issuance of the building permit for the first Production Residential Unit in Phase 1, subject to the adjustments below.

For all other Phases of the Project, Developer shall pay to City fifty percent (50%) of the total Street DIF due for all Production Residential Units in that particular Phase upon recordation of the first final tract map for that Phase ("first payment"). Developer shall pay to City the balance of the then-existing Street DIF for all Production Residential Units in that Phase prior to issuance of the building permit for the first Production Residential Unit in that Phase ("second payment"), subject to the adjustments below.

Upon the second payment by Developer for a particular Phase and the issuance of the building permit for the first Production Residential Unit for that particular Phase, then Developer shall not be subject to any "new" Street DIF for the Production Residential Units in that particular Phase.

Adjustments of Street DIF:

(i) If City adjusts the Street DIF after Developer makes the first payment for a particular Phase, but before the second payment, then the adjusted "new" Street DIF will apply to all Production Residential Units in that Phase. In that event, the second payment for that particular Phase shall include the remaining fifty percent (50%) of the "old" Street DIF, plus the difference between the "old" and "new" Street DIF for all Production Residential Units in that Phase.

(ii) If the Developer pays the entire then-existing Street DIF for a particular Phase (first payment and second payment) but the building permit for the first Production Residential Unit for that particular Phase is not issued within five (5) years after the recordation of the first final tract map, Developer shall pay the "new" Street DIF for all Production Residential Units in that Phase if the City has adjusted the Street DIF during that five (5) year period.

As described in and required by the Development Approvals, the Traffic Impact Analysis ("TIA") shall be reviewed and validated periodically and adjusted as necessary during construction of the Project. If as a result of this validation process City determines that the City-wide Street DIF is inadequate to fund any new or accelerated off-site improvements required by the TIA or a Subsequent Development Approval, then City may adopt a Project-specific or regional impact fee to fund those improvements. Payment of the Project-specific or regional impact fee shall be made in the manner described in this Section. A Project-specific or regional impact fee could include the creation of a Road and Bridge Benefit District pursuant to California Government Code Section 66484.

3.23 Street Development Impact Fee Credit. City and Developer agree that Developer's payment of Street DIF fees pursuant to Section 3.22 shall satisfy Developer's obligation to construct the off-site traffic improvements required by the Development Approvals and included in the Street DIF nexus study. Such off-site traffic improvements will instead be constructed by City. City shall have sole discretion to determine what improvements will be built and the priority for construction of these improvements. City's failure to construct any traffic improvements required for a particular Phase for which the Street DIF has been fully paid shall not restrict issuance of building permits or certificates of occupancy for that Phase.

Developer's payment of the Street DIF shall not relieve Developer of any requirements to (i) construct all required on-site improvements; (ii) construct all off-site improvements required by the Development Approvals but not included in the Street DIF nexus study, including any new improvements required by the TIA validation process; (iii) pay a Project-specific or regional impact fee if adopted; or (iv) pay Developer's share of costs for improvements Developer itself is not required to construct, including but not limited to costs for improvements to State Highway 138.

With respect to item (ii) above, if the eligible cost of construction exceeds Developer's share of costs for such off-site improvements, then Developer may be entitled to reimbursement from other developers who are obligated to construct such improvements. If such fees are collected by City, then Developer shall be reimbursed within 30 days of when City receives such fees.

With respect to item (iii) above, Developer shall be entitled to a credit against a Project-specific or regional fee if Developer constructs the improvements to be funded by such fees. Developer shall be entitled to a reimbursement from regional fees paid by other developers if Developer constructs the improvements to be funded by such fees and the eligible cost of construction exceeds the amount of the regional fees paid by Developer. Developer shall be reimbursed within 30 days of when City receives such fees.

With respect to item (iv) above, if Developer pays more than Developer's share of costs for off-site improvements Developer itself is not required to construct, then Developer may be entitled to reimbursement from fees paid by other developers for such improvements. If such fees are collected by City, then Developer shall be reimbursed within 30 days of when City receives such fees.

3.24 Wastewater Treatment Facilities. In accordance with the Specific Plan, Developer will construct a wastewater treatment facility in Phase 1 of the Project, which may be expanded or modified during development of the Project. Developer acknowledges that any wastewater treatment facilities constructed as part of the Project shall be transferred to City or City's designee. Therefore, all wastewater treatment facilities serving the Project shall be constructed to the standards established by the Victor Valley Wastewater Reclamation Authority ("VVWRA") or its successor.

The wastewater treatment facility shall be completed prior to the issuance of the certificate of occupancy for the first Production Residential Unit in Phase 1 unless City and Developer agree to an an alternative method for treating wastewater from Phase 1. Developer shall pay for all costs associated with connecting Units in Phase 1 to the City's sewer system if that alternative method is selected. Whenever the first phase of the wastewater facility is constructed it shall be transferred to City or its designee, which will oversee future expansion of the facility at Developer's cost, provided

that the expansion shall be designed to meet the needs of the Project. If the design of the facility feasibly permits the expansion to be completed in discrete phases, then Developer will construct the later phases when necessary, and upon completion transfer such later phases to City or its designee.

In addition to the wastewater treatment facility to be constructed by Developer for the Project, Developer shall provide land adjacent to the facility for future City needs, such as a public works yard or other facility, provided that City shall bear the costs of and construct the additional facility.

The implementation of this Section 3.24 shall be described in an Operating Memorandum pursuant to Section 9.19 below, and shall not require an amendment to this Agreement.

3.25 Acquisition of Water Rights. Developer shall indemnify City and/or the Hesperia Water District ("District") for any costs incurred by City or the District to furnish water to the Project. To that end, but without limitation, Developer shall be responsible for acquiring water rights in the Mojave Basin necessary to serve the Project. Such water rights may be acquired by Developer or City, at Developer's cost. Water rights acquired by Developer for the Project shall be conveyed to City as required during development of the Project. All acquistion of water rights is subject to approval by the Mojave Water Agency.

3.25.1 With respect to water rights acquired by Developer: Developer may retain such rights and lease the rights to other parties until required for the Project, provided that (i) City shall have the first right of refusal to lease such rights for use outside the Project, and (ii) such rights shall be permanently transferred to City when required for the Project. For water rights within the Alto Subarea of the Mojave Basin, Developer shall consult with City prior to purchase, and City shall have the first right of refusal to acquire such rights from the seller and retain them subject to Section 3.25.2.

3.25.2 With respect to water rights acquired by City: City shall use its sole and absolute discretion for City's acquisition of water rights, including but not limited to timing, amount, source, and purchase price, provided that if such rights are being acquired expressly for the Project, Developer shall have the first right of refusal to acquire such rights from the seller and retain them subject to Section 3.25.1. If Developer does not exercise its right of refusal, City may acquire such rights and use them outside the Project until such rights are required for the Project. Developer shall not be required to purchase or pay for such rights until they are required for the Project.

3.25.3 Further details regarding acquisition of water shall be described in an Operating Memorandum pursuant to Section 9.19 below, and shall not require an amendment to this Agreement.

3.26 Water Connection Fee Payments. Payment of water connection fees shall be made by Developer to City as follows:

For each Phase of the Project, Developer shall pay to City fifty percent (50%) of the total water connection fees due for all Production Residential Units in that particular Phase upon recordation of the first final tract map for that Phase ("first payment"). Developer shall pay to City the balance of the then-existing water connection fees for all Production Residential Units in that

Phase prior to issuance of the building permit for the first Production Residential Unit in that Phase ("second payment"), subject to adjustments below.

Upon the second payment by Developer for a particular Phase and the issuance of the building permit for the first Production Residential Unit for that particular Phase, then Developer shall not be subject to any "new" water connection fee for the Production Residential Units in that particular Phase.

Adjustments of water connection fees:

(i) If City adjusts the water connection fee after Developer makes the first payment for a particular Phase, but before the second payment, then the adjusted "new" water connection fee will apply to all Production Residential Units in that Phase. In that event, the second payment for that particular Phase shall include the remaining fifty percent (50%) of the "old" water connection fee, plus the difference between the "old" and "new" water connection fee for all Production Residential Units in that Phase.

(ii) If the Developer pays the entire then-existing water connection fee for a particular Phase (first payment and second payment) but the building permit for the first Production Residential Unit for that particular Phase is not issued within five (5) years after the recordation of the first final tract map, Developer shall pay the "new" water connection fee for all Production Residential Units in that Phase if the City has adjusted the water connection fee during that five (5) year period.

3.27 Water Connection Fee Credit. The water connection fee has two components, one for capital facilities and one for water supply. Developer's payment of the water connection fee shall not relieve Developer of any requirements to (i) construct all on-site and off-site water facilities required for the Project, or (ii) acquire water rights for the Project.

With respect to item (i) above, Developer shall be entitled to a credit against the capital facilities component for eligible costs of off-site water facilities constructed by Developer. Developer may be entitled to a reimbursement from the capital facilities component paid by other developers if the eligible cost of construction exceeds the amount of the capital facilities component paid by Developer. Developer shall be reimbursed within 30 days of when City receives such fees.

With respect to item (ii) above, Developer shall be entitled to a credit against the water supply component for water rights acquired by Developer and conveyed to City for the Project pursuant to Section 3.25. As an example, if Developer acquires water rights sufficient to provide water for a particular Phase, then Developer's conveyance of such rights to City for that Phase shall satisfy Developer's obligation to pay the water supply component of the water connection fee for that Phase pursuant to Section 3.26. If Developer acquires water rights sufficient to provide water for only a portion of a particular Phase, then Developer's conveyance of such rights to City shall partially satisfy Developer's obligation for that Phase in an amount to be determined by the Parties.

3.28 Additional Water Supplies and Credits. Developer has the right to seek additional sources of water outside the Mojave Basin. If Developer is able to provide additional permanent water rights to City that can economically meet the needs of the Project at the point of delivery, then

Developer shall be entitled to a credit against the City's water supply component of the connection fee in an amount to be determined by the Parties.

City shall work with Developer to establish a City water storage account with the Mojave Basin Area Watermaster for the benefit of the Project. If Developer meets the terms established for the water storage account with the Mojave Basin Area Watermaster, then Developer shall be allowed to store any imported water in the Mojave Basin to the benefit of this storage account, including but not limited to seasonal excess recycled water from its wastewater treatment facility. Water credited to the storage account for the Project will be used to satisfy some of the water demands and/or water connection fees of the Project in an amount to be determined by the Parties.

All acquisition, credits, and storage activities under this section shall require approval by all agencies having jurisdiction over such matters.

The details regarding acquisition of water outside the Mojave Basin, water storage, and water credits shall be described in an Operating Memorandum pursuant to Section 9.19 below, and shall not require an amendment to this Agreement.

3.29 Development Agreement Fee. In consideration for the benefits received by Developer under the terms of this Agreement, and to pay for City's costs of administering this Agreement, Developer shall pay to City Fifty Thousand Dollars ($50,000) per year as a development agreement fee for the life of the Agreement. The first installment of this fee shall be paid to City upon execution of this Agreement.

4. REVIEW FOR COMPLIANCE

4.1 Annual Review. The City Council shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review"). No failure on part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement.

4.2 Special Review. The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such Special Reviews.

4.3 Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied in good faith with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefor and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such thirty (30) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to said Notice

within thirty (30) days after receipt of the Notice. If the response to the Notice of Non-Compliance has not been received in the offices of the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice. In the event that a cure or remedy is not timely effected or, if the Notice is contested and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 5. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "*force majeure*" as defined in, and subject to the provisions of, Section 9.10. City's failure to perform an Annual Review shall not constitute or be asserted as a default by Developer.

4.4 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("Certificate") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager, Planning Commission, and City Council that (1) this Agreement remains in effect and (2) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer may record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.

5. DEFAULT AND REMEDIES.

5.1 Specific Performance Available. The parties acknowledge and agree that other than the termination of this Agreement pursuant to Section 5.2, specific performance is the only remedy available for the enforcement of this Agreement and knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, Developer shall not be entitled to any money damages from City by reason of any default under this Agreement. Further, Developer shall not bring an action against City nor obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which the Developer knew of or should have known of prior to the time of entering this Agreement, Developer's sole remedies being as specifically provided above. Developer acknowledges that such remedies are adequate to protect Developer's interest hereunder and the wavier made herein is made in consideration of the obligations assumed by the City hereunder. The Developer's waiver of the right to recover monetary damages shall not apply to any damages or injuries to a third party caused by the City's negligence.

5.2 Termination of Agreement.

5.2.1 **Termination of Agreement for Material Default of Developer.** City in its discretion may terminate this Agreement for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 4.3. Any material default by Developer of any of the conditions of approval of any of the Development Approvals that is not timely cured by Developer shall be deemed a material default by Developer of this Agreement.

5.2.2 **Termination of Agreement for Material Default of City.** Developer in its discretion may terminate this Agreement for any material default by City; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 4.3.

5.2.3 **Rights and Duties Following Termination.** Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, or (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination. Termination of this Agreement shall not affect either party's rights or obligations with respect to any Development Approval granted prior to such termination.

5.2.4 **Termination of Agreement With Respect to Sales of Individual Production Residential Units.** Notwithstanding any other provision of this Agreement, this Agreement shall terminate with respect to each individual Production Residential Unit upon the issuance by City of a Certificate of Occupancy for that Production Residential Unit, without the execution or recordation of any further document.

6. THIRD PARTY LITIGATION.

City shall promptly notify Developer of any claim, action or proceeding filed and served against City to challenge, set aside, void, annul, limit or restrict the approval and continued implementation and enforcement of this Agreement, including but not limited to challenges of the environmental review of the Project and this Agreement conducted pursuant to the California Environmental Quality Act. Developer and City agree to confer and cooperate with respect to such third party litigation. Developer shall defend, indemnify and hold harmless City, its agents, officers and employees from any such claim, action or proceeding, and shall indemnify City for all costs of defense and/or judgment obtained in any such action or proceeding; provided, however, if Developer elects, in its sole discretion, not to defend the action (preferring to either allow judgment to be entered or to enter into a settlement with plaintiff(s) which declares this Agreement to be void, annulled, or which limits or restricts this Agreement), Developer shall so notify City in writing and City shall then have the option, in its sole discretion, of defending the action at City's cost. In the event this Agreement, as a result of a third party challenge, is voided or annulled, or is limited or restricted in such a manner that the intent and purposes of this Agreement cannot be implemented as mutually desired by the parties hereto, this Agreement shall terminate and be of no further force or effect as of the date such judgment or settlement so voids, annuls, limits, or restricts the intent and purpose of this Agreement.

7. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City's City Manager determines such interpretation or modification is consistent with the intent and purposes of this Agreement. City's City Manager shall be authorized to approve and to execute any documents reasonably necessary to carry out such interpretations or modifications without a formal amendment to this Agreement unless the City Manager and/or City Attorney determine that such interpretations or modifications are substantial enough that an amendment to this Agreement is required. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan applicable to the Property or such part thereof so acquired by the Mortgagee.

8. INSURANCE; INDEMNIFICATION.

8.1 Insurance.

8.1.1 **Types of Insurance. [SUBJECT TO REVIEW BY CITY'S RISK MANAGER]**

(a) **Commercial General Liability Insurance.** Prior to commencement and until completion of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force commercial general liability ("CGL") insurance against liability for bodily injury or death and for property damage (all as defined by the policy or policies) arising from the use, occupancy, disuse or condition of the Property, providing limits of at least Five Million Dollars ($5,000,000) bodily injury and property damage per occurrence limit, Five Million Dollars ($5,000,000) general aggregate limit, and Five Million Dollars ($5,000,000) products-completed operations aggregate limit.

(b) **Builder's Risk Insurance.** Prior to commencement and until completion of construction by Developer on the Property, Developer shall procure and shall maintain in force, or caused to be maintained in force, builder's risk insurance written on a "special causes of loss" form, on a replacement cost basis, including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees.

(c) **Workers' Compensation.** Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

(d) **Other Insurance.** Developer may procure and maintain any insurance not required by this Agreement.

(e) **Insurance Policy Form, Sufficiency, Content and Insurer.** All insurance required by express provisions hereof shall be carried only by insurance companies licensed and admitted to do business in California, rated "A" or better in the most recent edition of Best Rating Guide or in The Key Rating Guide and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent commercially reasonably obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice (ten (10) days in the event of cancellation for non-payment of premium) by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on the commercial general liability insurance and on the builder's risk insurance (as its interest may appear) policies required to

be procured by the terms of this Agreement. In the event the City's Risk Manager determines reasonably that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates a materially increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the CGL and builder's risk insurance policies required by this Section 8.1.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that such increased limits are available at commercially reasonable premiums. Developer shall have the right to appeal such determination of increased limits to the City Council within thirty (30) days of receipt of notice from the City's Risk Manager.

8.1.2 **Failure to Maintain Insurance and Proof of Compliance.** Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(a) For insurance required above, within thirty (30 days) after the Effective Date.

(b) For any renewal or replacement of a policy already in existence, at least ten (10) days before the expiration or termination of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

8.2 Indemnification.

8.2.1 **General.** Developer shall indemnify the City, its officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Property, whether or not there is current passive or active negligence on the part of the City, its officers, agents, or employees and in connection therewith.

(a) Developer will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Developer will promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of the Developer hereunder, and Developer agrees to save and hold the City, its officers, agents, and employees harmless therefrom.

(c) In the event the City, its officers, agents, or employees is made a party to the action or proceeding filed or prosecuted against for such damages or other claims arising out of or in connection with operation or activities of Developer hereunder, Developer agrees to pay the City, its

officers, agents, or employees any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including by not limited to legal costs and attorneys' fees.

8.2.2 **Exceptions.** The foregoing indemnity shall not include claims or liabilities arising from the negligence or willful misconduct of the City, its officers, agents, or employees.

8.2.3 **Loss and Damage.** City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature.

8.2.4 **Period of Indemnification.** The obligations for indemnity under this Section 8.2 shall begin upon the Effective Date and shall terminate upon termination of Development Agreement, provided that indemnification shall apply to all claims or liabilities arising during that period even if asserted at any time thereafter.

8.3 Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any loss or damage to Developer or to any person or property except as specifically provided hereunder, and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and shall obtain from such carrier a waiver of right of recovery against City, its agents and employees.

9. MISCELLANEOUS PROVISIONS.

9.1 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be

employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

9.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

9.6 Singular and Plural. As used herein, the singular of any word includes the plural.

9.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8 Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than one (1) year.

9.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.12 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

9.13 Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California.

In the event of any action between City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party entitled under this Agreement, its reasonable litigation

costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

9.14 Covenant not to Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of 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. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property and as future holder of fee title to such property, on the other hand. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the Public Improvements set forth herein.

9.16 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

9.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

9.18 Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of all parties specifically approving the amendment and in accordance with the

Government Code provisions for the amendment of Development Agreements. Notwithstanding the foregoing, implementation of the Project may require minor modifications of the details of the Development Plan and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, modifications of the Development Plan or Development Approvals, which are found by the City Attorney to be non-substantive and procedural shall not require an amendment to this Agreement. A modification will be deemed non-substantive and/or procedural if it does not result in material change in fees, cost, density, intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and construction standards and specifications for the Project.

9.19 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 9.18 above. The City Manager may execute any operating memoranda hereunder without City Council or Planning Commission action.

9.20 Amendments to Development Approvals. It is contemplated by City and Developer that Developer may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by City and Developer as being within the scope of this Agreement as long as they are consistent with the Existing Land Use Regulations and/or this Agreement and shall, upon approval by City, continue to constitute the Development Approvals as referenced herein. The parties agree that any such amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

9.21 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.22 Notices. All notices under this Agreement shall be effective when delivered by (i) personal delivery, or (ii) reputable same-day or overnight courier or messenger service, (iii) overnight United States Postal Service Express Mail, postage prepaid, or (iv) by United States Postal Service mail, registered or certified, postage prepaid; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City:	City of Hesperia 9700 Seventh Avenue Hesperia, CA 92345 Attn: City Manager
With copy to:	Aleshire & Wynder, LLP 3880 Lemon Street, Suite 520 Riverside, CA 92501 Attn: Eric L. Dunn, Esq.
To Developer:	Hesperia Venture I LLC 10410 Roberts Road Calimesa, CA 92320 Attn: John Ohanian
With copy to:	Terra Verde Group 2242 Good Hope Road Prosper, TX 75078 Attn: Craig Martin

9.23 Non-liability of City Officials. No officer, official, member, employee, agent, or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

9.24 Limitation of Liability. City hereby acknowledges and agrees that Developer's obligations under this Agreement are solely those of Hesperia Venture I LLC and in no event shall any present, past or future officer, director, shareholder, employee, partner, affiliate, manager, member, representative or agent of Hesperia Venture I LLC ("Related Parties") have any personal liability, directly or indirectly, under this Agreement and recourse shall not be available against any Related Party in connection with this Agreement or any other document or instrument heretofore or hereafter executed in connection with this Agreement. The limitations of liability provided in this Section are in addition to, and not in limitation of, any limitation on liability applicable to Hesperia Venture I LLC or any Related Party provided by law or in any other contract, agreement or instrument.

9.25 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement arising out of agreements by the indemnifying party to pay any commission or finder's fee.

9.26 Business Days. In this Agreement, the term "business days" means days other than Saturdays, Sundays, and federal and state legal holidays, and "days" means calendar days. If the

time for performance of an obligation under this Agreement falls on other than a business day, the time for performance shall be extended to the next business day.

9.27 Facsimile Signatures. Signatures delivered by facsimile shall be as binding as originals upon the Parties so signing and delivering.

[signatures on next page]

ATTACHMENT 1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Dated:_____ City: CITY OF HESPERIA, a municipal corporation

By: _____
_____
Mayor, City of Hesperia

ATTEST:

By: _____
Melinda Sayre, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, City Attorney

Developer: Hesperia Venture I LLC, a California limited liability company

By:_____
Its: _____

By:_____
Its: _____

[End of Signatures]

ATTACHMENT 1

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

On _____ before me, _____, 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.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

On _____ before me, _____, 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.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

ATTACHMENT 1

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Hesperia, County of San Bernardino, State of California, described as follows:

[TO BE INSERTED]

ATTACHMENT 1

EXHIBIT "B"

TAPESTRY SPECIFIC PLAN

The Tapestry Specific Plan was approved by Ordinance No 2015-10, adopted on January 26, 2016. Due to page length, the Tapestry Specific Plan is incorporated herein by reference as if set forth in full. The Tapestry Specific Plan is available in the City Clerk's office and on the City's website.

ATTACHMENT 1

EXHIBIT "C"

ASSIGNMENT AND ASSUMPTION AGREEMENT

Recording Requested By and
When Recorded Mail To:
City of Hesperia
9700 Seventh Street
Hesperia, CA 92345
Attn: City Clerk

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into by and between HESPERIA VENTURE I LLC, a California limited liability corporation ("Assignor"), and _____, a _____ ("Assignee").

R E C I T A L S

A. The City of Hesperia ("City") and Assignor entered into that certain Development Agreement dated _____, 2017 (the "Development Agreement"), with respect to the real property located in the City of Hesperia, State of California more particularly described in Exhibit "A" attached hereto (the "Project Site"), and

B. Assignor has obtained from the City certain development approvals and permits with respect to the development of the Project Site, including without limitation, approval of the Tapestry Specific Plan and this Agreement for the Project Site (collectively, the "Project Approvals").

C. Assignor intends to sell, and Assignee intends to purchase that portion of the Project Site more particularly described in Exhibit "B" attached hereto (the "Transferred Property").

D. In connection with such purchase and sale, Assignor desires to transfer all of the Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Transferred Property. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Development Agreement and the Project Approvals with respect to the Transferred Property.

THEREFORE, the parties agree as follows:

1. Assignment. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Transferred Property. Assignee hereby accepts such assignment from Assignor.

2. Assumption. Assignee expressly assumes and agrees to keep, perform, and fulfill all the terms, conditions, covenants, and obligations required to be kept, performed, and fulfilled by Assignor under the Development Agreement and the Project Approvals with respect to the

Transferred Property, including but not limited to those obligations specifically allocated to the Transferred Parcel as set forth on Attachment 1 attached hereto.

3. Effective Date. This Agreement shall be effective upon its recordation in the Official Records of San Bernardino County, California, provided that Assignee has closed the purchase and sale transaction and acquired legal title to the Transferred Property.

4. Remainder of Project. Any and all rights or obligations pertaining to such portion of the Project Site other than the Transferred Property are expressly excluded from the assignment and assumption provided in Sections 1 and 2 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

"ASSIGNOR"

HESPERIA VENTURE I, LLC, a California limited liability corporation

Date: _____, ____

By: _____
Its: _____

By: _____
Its: _____

"ASSIGNEE"

_____,
a _____

Date: _____, ____

By: _____
Its: _____

ATTACHMENT 1

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

On _____, 201_ before me, _____, 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.

Witness my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

On _____, 201_ before me, _____, 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.

Witness my hand and official seal.

Signature _____

(Seal)

ATTACHMENT 1

EXHIBIT "D

PHASE 1 CONCURRENCY PLAN
[TO BE INSERTED]

ATTACHMENT 1

EXHIBIT "E"

PLANNING AND ENGINEERING CONDITIONS OF APPROVAL
[TO BE INSERTED]

EXHIBIT "F"

LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICT FINANCING

CITY OF HESPERIA
AMENDED AND RESTATED LOCAL GOALS AND POLICIES
FOR
COMMUNITY FACILITIES DISTRICT FINANCING

1. **Introduction.** The following goals and policies are established pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 et *seq.)* (the "Act") respecting the establishment of new community facilities districts ("CFDs") and, if applicable, the authorization, issuance, and sale of special tax bonds by the City of Hesperia (the "City") on behalf of such CFDs as set forth in the Act. These goals and policies are intended to satisfy the minimum requirements of the Act, and may be amended or supplemented by resolution of the City at any time.

2. **General Policy.** The City may utilize the Act for (1) the acquisition, construction, and/or financing of all or a portion of the cost and expense of any and all public capital improvements authorized under the Act ("Facilities"); and (2) the financing of all or a portion of services authorized under the Act ("Services"). Such Facilities and/or Services must serve a public purpose for the City and its inhabitants.

3. **Eligible Public Facilities and Services.** Facilities proposed to be financed through a CFD must be owned, operated, or maintained by the City or other public agency or public utility approved by the City. The funding of Facilities to be owned, operated, or maintained by public agencies or public utilities other than the City shall be considered and approved on a case-by-case basis. Any such funding of Facilities to be owned, operated, or maintained by public agencies or public utilities other than the City shall be pursuant to a joint community facilities agreement or joint exercise of powers agreement if required by the Act.

   It is acknowledged that the Act permits the financing of fee obligations imposed by governmental agencies the proceeds of which fees are to be used to fund public capital improvements of the nature listed above. A CFD may also be formed for the purpose of refinancing any fixed special assessment or other governmental lien on property, to the extent permitted under the Act.

   To the extent required by the Act, the CFD may only finance Services authorized pursuant to a landowner vote to the extent they are in addition to those provided in the territory of the CFD before the CFD was created, and the additional Services may not supplant services already available within the territory of the CFD when the CFD was created.

4. **Priorities for CFD Financing.** Priorities for funding of Facilities from the proceeds of bonds issued by or on behalf of the CFD shall be given to the following:

   1. Large-scale projects with Facilities that constitute regional infrastructure required to serve the proposed development (i.e. "backbone" infrastructure).
   2. Projects responsible for constructing major unfunded public infrastructure like bridges, sewer treatment plants or other master planned facilities deemed necessary by the City.

3. Projects which contribute Facilities which assist with affordable housing goals.
4. Projects which fund Facilities which would provide regional, national and international recognition to the City of Hesperia.
5. Facilities for which there is a clearly demonstrated public benefit.
6. Other Facilities permitted by the Act.
7. CFD financing of fee obligations is not a high priority for the City. In the event the City is asked to consider CFD financing of fee obligations, it will prioritize fees for large-scale projects that will be used to fund acquisition or construction of Facilities that constitute regional infrastructure. The City will prioritize financing fees to be paid to the City because of the administrative burden associated with financing fees payable to other local agencies.

The City reserves the right to make exceptions to the priorities stated in this Section when circumstances warrant.

A CFD may finance any Services permitted by the Act to be performed by the City or any other public agency. Subject to the conditions set forth in the Act, priority for Services to be financed shall be given to Services which (1) are necessary for the public health, safety and welfare (including, but not limited to, public safety services); and (2) would otherwise be paid from the City's general fund, the general fund of a component entity of the City (for example, the Hesperia Fire Protection District). The City may finance services to be provided by another local agency if it determines the public convenience and necessity require it to do so.

5. Credit Quality Requirements for CFD Bond Issues.

5.1 Requirements CFD bond issues shall have at least a three to one (3:1) value-to- lien ratio after including the value of the installation of the Facilities to be financed. The value of the property to be assessed shall be based upon either (1) the full cash value as shown on the ad valorem assessment roll; or (2) an appraisal of the property by a certified MAI appraiser selected by the City, conducted in accordance with the standards promulgated by the State of California and otherwise determined applicable by the City.

5.2 Reserve Fund. The City may establish a reserve fund in order to increase the credit quality of any CFD bond issue. The City, after consultation with Developer, shall determine the amount of such reserve fund with the advice of a financial advisor or the underwriter, as deemed appropriate by the City. In no event may the reserve fund exceed the lesser of (1) maximum annual debt service on the bonds issued; (2) one hundred twenty-five percent (125%) of average annual debt service on the bonds issued; or (3) ten percent (10%) of the original proceeds on the bonds issued. The City will consider, (but is not required to allow), the posting of a letter of credit or other surety in lieu of such a reserve fund. In addition, the City will consider funding all or a portion of the reserve fund from excess special tax funds.

5.3 Credit Enhancement. The City may, after consultation with Developer, require additional credit enhancement to increase the credit quality of any CFD bond issue. Such credit enhancements may be required in situations where there is an insufficient value-to-lien ratio, where a substantial amount of the property within a CFD is undeveloped, where tax delinquencies are present in parcels within the CFD, where Developer is responsible for more than twenty percent (20%) of the special taxes, and in any other situation as required by the City. The form of any credit enhancement is subject to the approval by the City, and the City

shall impose specific requirements with respect to such credit enhancement on a case-by-case basis.

5.4 Escrow. As an alternative to providing other security, the applicant may request that a portion of the bond proceeds be placed in escrow with a trustee or fiscal agent in an amount sufficient to assure a value-to-lien ratio of at least three-to-one on the outstanding proceeds. The escrowed proceeds shall be released at such times and in such amounts as may be necessary to assure a value-to-lien ratio of at least three-to-one on the aggregate outstanding bond proceeds and other indebtedness secured by real property liens as required. The City may, in its sole discretion, permit escrowed proceeds if it determines that the proposed bonds do not present any unusual credit risk or as otherwise permitted by the Act.

5.5 Entitlement Status. The City will require that all major land use approvals and governmental permits necessary for development of land in the CFD be substantially in place before bonds may be issued.

5.6 Identity of Bond Purchasers and Authorized Denominations. The City will require that bond financings be structured so that bonds are purchased and owned by suitable investors. For example, the City may require placement of bonds with a limited number of sophisticated investors, large bond denominations and/or transfer restrictions in situations where there is an insufficient value-to-lien ratio, where a substantial amount of the property within a CFD is undeveloped, where tax delinquencies are present in parcels within the CFD, and in any other situation as required by the City.

5.7 Capitalized Interest. The City will consider capitalizing interest on bonds on a case-by-case basis, subject to limitations set forth in the Act.

5.8 Exceptions. The City may waive any and all requirements provided in this Section, subject to the provisions of the Act, if the City determines that the proposed bonds do not present any unusual credit risk, or that the proposed bond issue should proceed for specified public policy reasons. A determination by the City pursuant to this subsection 5.8 shall be conclusive upon all persons in the absence of actual fraud, and neither the City nor the CFD shall have any liability of any kind whatsoever out of, or in connection with, any such determination.

6. Disclosures.

6.1 Disclosure to Property Purchasers. The City shall require compliance with the disclosure provisions of the Act, including but not limited to Sections 53328.3, 53328,5, 53340.2, 53343.1, and 53341.5 of the Act, in order to ensure that prospective property purchasers are fully informed about their taxpaying obligations under the Act. The City reserves the right to require additional disclosure procedures in any particular case.

6.2 Continuing Bond Disclosure. Landowners in a CFD that are responsible for ten percent (10%) or more of the annual special taxes must agree to provide: (1) initial disclosure at the time of issuance of any bonds; and (2) annual disclosure as required under Rule 15c2-12 of the Securities Exchange Commission until the special tax obligation of the property owned by such owner drops below 10%. The City Council may change such disclosure threshold to 20% on a case-by-case basis upon a determination that such threshold is reasonable under the circumstances.

7. Special Tax Formulas and Maximum Special Taxes

7.1 Special Tax Formula. Special taxes shall be allocated and apportioned on a reasonable basis to all categories and classes of property within the CFD. Special tax formulas for CFDs shall be structured so as to produce special tax revenues sufficient to pay for, or to provide funds for, the following, as applicable to a particular case:

1. One hundred and ten percent (110%) of projected annual debt service on all CFD bonds issues.
2. Reasonable and necessary annual administrative expenses of the City related to the CFD.
3. Amounts required to establish or replenish any reserve fund established for a CFD bond issue.
4. Amounts to pay directly the costs of Facilities authorized to be financed by a CFD.
5. Amounts to provide Services.
6. Accumulation of funds reasonably required for future debt service on CFD bonds.
7. Amounts equal to projected delinquencies in special tax payments.
8. Costs of remarketing, credit enhancement, or liquidity fees.
9. Any other costs or payments permitted by the Act.

7.2 Maximum Special Taxes. The total tax burden on residential owner-occupied parcels ("Residential Parcels"), including projected ad valorem property taxes, special taxes, special assessments, and other special taxes for any overlapping CFD, together with the proposed maximum annual special tax, shall not exceed two percent (2%) of the estimated base sales price of such Residential Parcels upon estimated completion of the public and private improvements relating thereto. In the case of any special tax to pay for Facilities and to be levied against any Residential Parcel, when the City determines it to be in the best interest of the City, the City may provide for annual special tax increases, provided that such increases shall not exceed two percent (2%) per annum. The City may provide for a special tax increase in excess of two percent (2%) per annum for (i) non-Residential Parcels and (ii) Residential Parcels in connection with the financing of Services. Any and all special taxes are subject to the provisions of the Act.

7.3 Special Tax Consultant. The City may retain a special tax consultant to prepare a report which (1) recommends a special tax for the proposed CFD; and (2) evaluates the proposed special tax to determine its ability to adequately fund identified Facilities, City and CFD administrative costs, services, and other related expenditures, including maintenance and operations, if applicable. The analysis of such report shall also address the resulting aggregate tax burden of all proposed special taxes, existing special taxes, ad valorem taxes, and assessments on the properties within the CFD.

8. Appraisals. The definitions, standards and assumptions to be used for appraisals shall be determined by City staff on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California (including but not limited to the "Appraisal Standards for Land-Secured Financings" of the California Debt and Investment Advisory Commission dated July 2004, as such standards may be amended from time to time). The appraiser shall be selected by or otherwise acceptable to the City, and the appraisal shall be coordinated by and under the direction of, or otherwise as acceptable to, the City.

The appraisal must be dated within three months of the date the bonds on which the bonds are priced, unless the City Council determines a longer time is appropriate.

All costs associated with the preparation of the appraisal report shall be paid by the entity requesting the establishment of the CFD, if applicable, through the advance deposit mechanism described below.

9. Market Absorption Study. The City may, at its discretion, engage a consultant to provide a market absorption study and/or pricing study.

10. Terms and Conditions of Bonds. All terms and conditions of any CFD bond shall be established by the City Council, acting as the legislative body of the CFD. The City shall control, manage, and invest all CFD bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or credit rating of the City through the special taxes, credit enhancements, foreclosure covenant, and reserve funds. The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, disclosure counsel, financial advisors, appraiser, market absorption/pricing consultant and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

11. City Proceedings.

11.1 Petition. For new development projects, a petition meeting the requirements of the applicable authorizing law will be required. The applicant is urged to obtain unanimous waivers of the election waiting period. The applicant must specify in the application any reasonably expected impediments to obtaining petitions, including from co-owners and/or lenders of record (where required). Waiver of the petition shall be made only upon showing of extraordinary hardship. For existing development, petitions are preferred, but may be waived, depending on the nature of the project and degree of public importance.

11.2 Deposits and Reimbursements. All City staff and consultant costs incurred in the evaluation of CFD applications and the establishment of a CFD will be paid by the entity, if any, requesting the establishment of the CFD by advance deposit increments. The City shall not incur any expenses for processing and administering a CFD that are not paid by the applicant or from CFD bond proceeds. In general, expenses not chargeable to the CFD shall be directly borne by the proponents of the CFD.

Any petition for formation of a CFD shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with CFD review and implementation. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The City shall not accrue or pay any interest on any portion of the deposit refunded to any applicant or the costs and expenses reimbursed to an applicant. Neither the City nor the CFD shall be required to reimburse any applicant or property owner from any funds other than the proceeds of bonds issued by the CFD or special taxes levied in the CFD.

11.3 Representatives. The City and the applicant shall each designate a representative for each financing district proceeding. The representatives shall be responsible for coordinating the activities of their respective interests and shall be the spokespersons for each such interest. The purpose of this requirement is to avoid duplication of effort and misunderstandings from failure to communicate effectively. In the case of the City, it allows the City's consultants to report to a single official who will, in turn, communicate with other staff members.

11.4 Time Schedule. The final schedule of events for any proceeding shall be determined by the City, in consultation with its financing team and the applicant. Any changes will require approval by the appropriate City official. Time schedules will (unless specific exceptions are allowed) observe established Council meeting schedules and agenda deadlines. To the extent possible, financings will be scheduled to allow debt service to be placed on the tax rolls with a minimum of capitalized interest.

EXHIBIT "G"

GENERAL STAFFING NEEDS FOR PUBLIC SAFETY SERVICES

Animal Control	
Animal Control Officer	1 at completion of Phase 1 then 1 per 20,000 Residents
Code Enforcement	
Code Enforcement Officer	1 at completion of Phase 1 then 1 per 10,000 Residents
Sr. Code Enforcement Officer	1 per 45,000 Residents
Law Enforcement	0.8 per 1,000 Residents at the then-current Sheriff's Department contract rate, to include all associated costs