

ORDINANCE NO. 2024-[next in order]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, APPROVING THE DEVELOPMENT AGREEMENT PEN24-0080 BY AND BETWEEN TIMOTHY HOBBIN, WILLIAM WARREN PROPERTIES INC. AND THE CITY OF MORENO VALLEY

RECITALS

WHEREAS, the City of Moreno Valley is a general law city and a municipal corporation of the State of California; and

WHEREAS, the City of Moreno Valley (“City”) and Timothy Hobbin, William Warren Properties Inc. (“Applicant”) agreed to enter into a Development Agreement pursuant to Government Code §65864 et seq. of the Government Code (the “Development Agreement Legislation”); and

WHEREAS, Applicant is the owner of real property consisting of approximately 7.05 acres located at 28720 Spruce Avenue, west of Redlands Boulevard (Assessor’s Parcel Number 488-310-011) as more particularly described in the Legal Description, shown as an exhibit of the Development Agreement, attached here to as Exhibit A (“Project Site”); and

WHEREAS, Developer intends to develop a portion of the Project Site as a for Freeway Oriented Sign (“Proposed Project”); and

WHEREAS, the City is authorized to enter into development agreements with persons having legal or equitable interests in real property for the development of such property pursuant to California State general laws: Article 2.5 of Chapter 4 of Division I of Title 7 of the California Government Code commencing with section 65864 (the “Development Agreement Law”), and Article XI, Section 7, of the California Constitution, together with City ordinances; and

WHEREAS, Title 9, Section 9.02.110 (Development Agreements) of the Moreno Valley Municipal Code acknowledges that the Development Agreement Law permits local agencies and property owners to enter into development agreements as to matters such as the density, intensity, timing and conditions of development of real properties and that development agreements provide an enhanced degree of certainty in the development process for both the property owner/developer and the public agency; and

WHEREAS, the subject Development Agreement will eliminate uncertainty in planning for and secure orderly development of the Project Site, assure progressive installation of necessary improvements, and ensure attainment of the maximum effective utilization of resources within City at the least economic cost to its citizens; and

WHEREAS, the subject Development Agreement provides assurances that the Proposed Project can proceed without disruption caused by a change in City planning

and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Proposed Project; and

WHEREAS, the subject Development Agreement was voluntarily entered into in consideration of the benefits to and the rights created in favor of each of the parties thereto and in reliance upon the various representations and warranties contained therein; and

WHEREAS, City has determined that by entering into the subject Development Agreement: (1) City will ensure the productive use of Project Site and foster orderly growth and quality development in City; (2) development will proceed in accordance with the Proposed Project's entitlements; (3) City will receive substantially increased property tax and sales tax revenues; (4) City will benefit from the provision of workforce housing; (5) City will benefit from increased employment opportunities for residents of City created by the Proposed Project; and (6) City will receive the Public Community Benefits described in the subject Development Agreement; and

WHEREAS, based on the foregoing recitals, City has determined that the subject Development Agreement is appropriate under the Development Agreement Law and the City's "Development Agreement" provisions set forth in Title 9, Section 9.02.110 of the Municipal Code; and

WHEREAS, City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code §21000 et seq. ("CEQA")) and the CEQA Guidelines, the required analysis of the environmental effects that would be caused by the Proposed Project; and

WHEREAS, City has given the required notice of its intention to adopt the subject Development Agreement and has conducted public hearings thereon pursuant to Government Code § 65867; and

WHEREAS, on October 24, 2024, the City's Planning Commission ("Planning Commission"), at a duly noticed public hearing, voted 6-1 to recommend that the City Council approve the subject Development Agreement pursuant to Planning Commission Resolution No. 2024-34.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

That the above Recitals are true and correct and are incorporated as though fully set forth herein.

SECTION 2. CONSISTENCY FINDING

That the City Council finds that based on substantial evidence contained in the administrative record of the proceedings related to the Proposed Project's entitlements, including without limitation the subject Development Agreement, the terms, conditions and provisions of the subject Development Agreement are consistent with the applicable General Plan, as amended.

SECTION 3. APPROVAL OF DEVELOPMENT AGREEMENT

That the City Council hereby approves the attached Development Agreement PEN24-0080 by and between Timothy Hobbin, William Warren Properties Inc. and the City of Moreno Valley, attached hereto as Attachment A, and authorizes the Mayor to execute the Development Agreement on behalf of the City of Moreno Valley.

SECTION 4. REPEAL OF CONFLICTING PROVISIONS

That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Ordinance, are hereby repealed.

SECTION 5. SEVERABILITY

That the City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

SECTION 6. EFFECTIVE DATE OF ORDINANCE

That this Ordinance shall take effect thirty (30) days after its second reading and adoption by the City Council.

SECTION 7. RECORDATION

That the City Clerk shall, no later than 10 days after the Effective Date of this Ordinance, record a copy of the subject Development Agreement, which shall cause the burdens of the subject Development Agreement to be binding upon, and the benefits of the subject Development Agreement shall inure to, all successors in interest to the parties to the subject Development Agreement.

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SECTION 8. CERTIFICATION

That the City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published according to law.

INTRODUCED at a regular meeting of the City Council on December 17, 2024, and PASSED, APPROVED, and ADOPTED by the City Council on _____, _____, by the following vote:

CITY OF MORENO VALLEY
CITY COUNCIL

Ulises Cabrera,
Mayor of the City of Moreno Valley

ATTEST:

M. Patricia Rodriguez, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney

ORDINANCE JURAT

STATE OF CALIFORNIA)

COUNTY OF RIVERSIDE)

ss. CITY OF MORENO VALLEY)

I, M. Patricia Rodriguez, City Clerk of the City of Moreno Valley, California, do hereby certify that Ordinance No. ____ was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(Council Members, Mayor Pro Tem, and Mayor)

CITY CLERK _____

(SEAL)

Exhibit A

Development Agreement PEN24-0080

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Moreno Valley
c/o City Clerk
14177 Frederick Street,
Moreno Valley, CA 92552

(Space Above Line for Recorder's Use)

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF MORENO VALLEY
AND
[TO BE FORMED SPE]**

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF MORENO VALLEY
AND
[TO BE FORMED SPE]**

This Development Agreement (hereinafter “**Agreement**”) is entered into this [REDACTED] day of [REDACTED], 2024, by and between the City of Moreno Valley (hereinafter “**City**”), and [To be formed SPE] (hereinafter “**Developer**”).

RECITALS

This Development Agreement is predicated upon the following facts:

A. The Development Agreement Statute (Government Code section 65864 et seq.) 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 purposes of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. Developer has a leasehold interest in that certain portion of real property, located adjacent to and on the northerly side of Spruce Avenue, at 28720 Spruce Avenue, in the City of Moreno Valley (APN: 488-310-011), as more specifically described in Exhibit “A” attached hereto and incorporated herein (the “**Site**”).

C. Developer desires to install on the Site a new double-sided 14 x 48-foot digital display, and 6 x 15-foot static display oriented toward State Route 60, as more particularly described in the Scope of Development attached hereto as Exhibit “B” and depicted in the Site Plan attached hereto as Exhibit “C” which is incorporated herein by this reference (the “**New Freeway Oriented Sign**” or the “**Project**”).

D. Developer and City recognize that the Developer has a legal or equitable interest in the Site and is therefore qualified to enter into this Agreement in accordance with Development Agreement Act.

E. In anticipation of the implementation of the Project, Developer will submit applications to the City for certain approvals, entitlements, and permits, based on the requisite findings, including without limitation, the necessary permit(s) and an application for this Agreement, pursuant to the Development Agreement Statute, which the parties acknowledge and agree are required for the implementation of the Project.

F. To mitigate the impact of the Project and in consideration of the City’s agreement to enter into this Agreement with Developer, Developer has offered to: (1) pay a one-time contribution of \$500,000 to the Moreno Valley Community Foundation; (2) pay 20 percent of gross revenues generated by the Project over 30 years to the City; (3) allow the City to display certain public messages without charge; and (4) prohibit any messages or advertisements which relate or pertain to tobacco products, cannabis products, and sexual products, activities or services

regardless of whether such messages or advertisements are otherwise legal under any applicable law, court opinions, etc.

G. This Agreement eliminates uncertainty in planning and provides for the orderly implementation of the Project in a manner consistent with the City’s zoning regulations and the General Plan.

H. On [REDACTED], 2024, at a duly noticed public hearing, the Planning Commission adopted Resolution No. [REDACTED], recommending that the City Council approve this Agreement (Development Agreement No. [REDACTED]).

I. On [REDACTED], 2024, at a duly noticed public hearing, the City Council approved this Agreement, by introducing Ordinance No. _____, which the City Council subsequently adopted on _____, 2024, based in part on the finding that the Development Approvals and this Agreement will provide substantial public benefits which are in the best public interest of the City and its residents.

J. The City finds and determines that all actions required of the City precedent to approval of this Agreement by Ordinance No. [REDACTED] of the City Council have been duly and regularly taken.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and 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 are 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 the Agreement. In addition to the terms defined in the Recitals above, the defined terms include the following:

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

1.1.2 “**Anniversary Date**” is the annual reoccurrence of the Effective Date of this Agreement.

1.1.3 “**Cannabis Products**” means any products derived from, containing, or made from the cannabis plant (Cannabis sativa, Cannabis indica, or any hybrid thereof), intended for human use or consumption by any means.

1.1.4 “**City**” means the City of Moreno Valley, a California municipal corporation.

1.1.5 “**City Council**” means the City Council of the City.

1.1.6 “**Completion Requirements**” means (i) issuance of all Development Approvals, Final Permits and/or compliance with all requirements, including receipt of a Certificate of Occupancy, under applicable laws required to operate the New Freeway-Oriented Sign and the expiration of all applicable challenge periods related to the foregoing without the filing of any challenge or appeal (or if a challenge or appeal has been filed, such challenge or appeal has been resolved on terms reasonably satisfactory to Developer), as evidenced by written notice thereof from Developer to the City, and (ii) completion of construction of the New Freeway-Oriented Sign, such that Developer can immediately commence operation of the New Freeway-Oriented Sign (as determined by Developer in its reasonable discretion), as evidenced by written notice thereof from Developer to the City.

1.1.7 “**Developer**” means [To be formed SPE] and its successors and assigns.

1.1.8 “**Development**” means the installation of a New Freeway-Oriented Sign on the Site, as well as any other improvements to the Site for the purpose of completing the structures, improvements and facilities comprising the Project.

1.1.9 “**Development Agreement Statute**” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code, as the same may be amended or re-codified from time to time.

1.1.10 “**Development Approvals**” means any and all permits, licenses, consents, rights and privileges approved or issued by the City in connection with the Project on or before the Effective Date, including, without limitation, this Agreement pursuant to Resolution No. [REDACTED] approved by the Planning Commission on [REDACTED], 2024, and approval of the City Council by Ordinance No. [REDACTED] on [REDACTED], 2024, as further described at Section 4.3 herein.

1.1.11 “**Effective Date**” means the date that this Agreement takes effect pursuant to the Development Agreement Statute.

1.1.12 “**Final Permits**” shall mean all necessary/required permits and inspections by all governmental and utility agencies, including any permits and approvals required by the California Department of Transportation, to construct and operate the New Freeway-Oriented Sign and related improvements, which are signed and dated by the City, as applicable. Final Permits do not include the Development Approvals.

1.1.13 “**Land Use Regulations**” means all ordinances, resolutions, codes, rules, regulations and official policies of the City, including, but not limited to, the City’s General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of the New Freeway-Oriented Sign, and the design, improvement and construction standards and specifications applicable to the Development or the Site which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include the federal National Pollutant Discharge Elimination System (“NPDES”) regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.14 “**Lease**” means the lease or license agreement, as the case may be, for the Site between Owner, as landlord or licensor, and Developer, as tenant or licensee.

1.1.15 “**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.

1.1.16 “**Official Records**” means the official Records of Riverside County, California.

1.1.17 “**City Fees**” means all fees and charges required by City that are customarily and applied uniformly to all construction or development related activity including, but not limited to, development impact fees and fees for land use applications, building permit applications, building permits, grading permits, hauling permits, encroachment permits, demolition permits, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check.

1.1.18 “**Processing Fee**” is the fee which is in addition to the payment of City Fees or customary building plan check or building permit fees, and is intended to reimburse the City for fees and costs incurred in connections with City’s review, evaluation, and analysis pertaining to the New Freeway-Oriented Sign, including, but not limited to, legal and consultant fees and feasibility analysis incurred by the City in negotiation and preparation of this Agreement.

1.1.19 “**Project**” means the New Freeway-Oriented Sign as described in Exhibit “B” consistent with the Development Approvals and the Final Permits.

1.1.20 “**Public Benefit Contribution**” means the payment from Developer to City pursuant to Section 3.3 of this Agreement, which payment may be used by the City for various public projects and programs.

1.1.21 “**Sexual Content**” refers to any material or visual representation that explicitly or implicitly depicts or references sexual acts, sexualized body parts, nudity, or sexually suggestive behavior.

1.1.22 “**Site**” refers to the real property described in Recital B and more specifically described on Exhibit “A” attached hereto and incorporated herein.

1.1.23 “**Scope of Development**” means the Scope of Development attached hereto as Exhibit “B” and incorporated herein.

1.1.24 “**Subsequent Land Use Regulations**” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement which govern development and use of the Site and Project.

1.1.25 “**Subsequent Development Approvals**” means any Development Approvals issued subsequent to the Effective Date in connection with the Project.

1.1.26 “**Term**” shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.1.27 “**Tobacco Products**” means any products derived from, containing, or made from the tobacco plant (*Nicotiana tabacum* or any other species of *Nicotiana*), intended for human consumption by any means, including but not limited to smoking, chewing, inhaling, or otherwise ingesting.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit “A” (Legal Description of Site), Exhibit “B” (Scope of Development), and Exhibit “C” (Site Plan and Elevations).

2. **GENERAL PROVISIONS.**

2.1. **Application of Agreement.** This Agreement shall apply to the development and use of the Project carried out on the Site. The Project shall be developed and operated in accordance with the Development Approvals and this Agreement.

2.2. **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Development, including actions by the City on applications for Subsequent Development Approvals affecting the Site, shall be subject to the terms and provisions of this Agreement, provided, however, that nothing in this Agreement shall be deemed or construed: (i) to modify or amend the Lease, or any of Developer’s obligations thereunder, or to bind or restrict Owner with respect to its ownership or operation of the Site except as expressly set forth herein with respect to the Development, or (ii) to impose any obligation whatsoever on Owner with respect to the Development, except as expressly set forth in this Agreement.

2.3. **Interest in Site.** The City and Developer acknowledge and agree that Developer is the tenant of the Site and thus is qualified to enter into and be a party to this Agreement under the Development Agreement Statute. The City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under the Development Agreement Act. Additionally, prior to the execution of this Agreement, Developer has allowed the City to view a redacted copy of the Lease which demonstrates that Developer has a leasehold or license interest in the Site, which interest shall be maintained for the entire Term of this Agreement. If Developer’s leasehold interest is prematurely and legally terminated by Owner in conformance with the Lease, then Developer shall have no further obligations under Section 3(a) of the Scope of Development attached hereto as Exhibit “B”, relative to the maintenance of landscaping thereon that particular Site, except as provided under Section 6.1. Additionally, if Developer’s leasehold interest is prematurely terminated for any reason, then Developer shall have no further obligations under this Agreement for that particular Site, except as provided under Section 6.1.

2.4. **Term of Agreement.** Unless earlier terminated as provided in this Agreement, this Agreement shall commence on the Effective Date and continue in full force and effect until the date that is 30 years after the Effective Date. Prior to the expiration the Developer may give one hundred twenty (120) days’ notice to the City of its desire to extend this Agreement, and thereafter Developer and the City shall negotiate in good faith to reach a mutually agreeable arrangement for the extension of this Agreement; provided however that neither party shall be obligated to extend this Agreement in the event such good faith negotiations fail to result in a mutually agreeable

arrangement. The Term are collectively referred to herein as the “**Term**”. Notwithstanding any provision in this Agreement to the contrary, the Term of this Agreement shall automatically expire upon (i) the expiration or earlier termination of the Lease, or (ii) the permanent removal of the New Freeway-Oriented Sign constructed pursuant to the terms hereof, other than its removal for repair or replacement. Within thirty (30) days after the termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded in the Official Records pursuant to Section 9.1 below. If this Agreement is not extended or renewed as set forth herein, then either party may, at its option, elect for Developer to remove the New Freeway-Oriented Sign to its pre-Project condition, except the columns can be cut off one (1) foot below grade.

3. DEVELOPER OBLIGATIONS-PUBLIC BENEFIT.

3.1. **City Fees.** Developer shall pay all City Fees for the development of the Project at the rate and amount in effect at the time the fee is required to be paid.

3.2. **One-Time Public Benefit Contribution to Moreno Valley Community Foundation.** In consideration for the rights and benefits to developer under this Agreement, Developer shall pay to the Moreno Valley Community Foundation a one-time contribution of FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

3.3. **Recurring Public Benefit Contribution to City of Moreno Valley.** In consideration for the rights and benefits to Developer under this Agreement, Developer shall pay City an annual Public Benefit Contribution in the amount set forth in the table below. The Public Benefit Contribution shall be paid to the City on the first (1st) day of March of the following year as set forth in the table below.

<u>Year</u>	<u>Public Benefit Contribution</u>
1	20 Percent of Gross Revenue
2	20 Percent of Gross Revenue
3	20 Percent of Gross Revenue
4	20 Percent of Gross Revenue
5	20 Percent of Gross Revenue
6	20 Percent of Gross Revenue
7	20 Percent of Gross Revenue
8	20 Percent of Gross Revenue
9	20 Percent of Gross Revenue
10	20 Percent of Gross Revenue
11	20 Percent of Gross Revenue
12	20 Percent of Gross Revenue
13	20 Percent of Gross Revenue
14	20 Percent of Gross Revenue
15	20 Percent of Gross Revenue
16	20 Percent of Gross Revenue
17	20 Percent of Gross Revenue
18	20 Percent of Gross Revenue
19	20 Percent of Gross Revenue

20	20 Percent of Gross Revenue
21	20 Percent of Gross Revenue
22	20 Percent of Gross Revenue
23	20 Percent of Gross Revenue
24	20 Percent of Gross Revenue
25	20 Percent of Gross Revenue
26	20 Percent of Gross Revenue
27	20 Percent of Gross Revenue
28	20 Percent of Gross Revenue
29	20 Percent of Gross Revenue
30	20 Percent of Gross Revenue

3.4. **Community Benefits.** Developer shall also provide the following community benefits during the entire Term of this Agreement:

3.4.1. **City’s Use of the Freeway-Oriented Sign.** During the entire Term of this Agreement, Developer shall provide display time for the Project for public service announcements by the City on either side of the New Freeway-Oriented Sign, during certain periods of availability as determined in good faith by Developer. The City shall be responsible for providing Developer with approved advertising copy and shall also be responsible for any costs associated with providing Developer with artwork in acceptable format per Developer's specifications. City’s use is subject to the following conditions and parameters: (1) all copy must be submitted to Developer at least fifteen (15) days before the proposed display date and will be subject to Developer’s standard advertising copy rejection and removal policies, which allow Developer, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed; and (2) because City’s use is strictly subject to availability of space, Developer cannot guarantee that City will be permitted to use the Project for any minimum period of time or during any specific time of day.

3.5. **Restrictions on Use.** Developer shall not utilize any of the displays on the New Freeway-Oriented Sign to advertise or communicate tobacco products, cannabis products, or sexual content. Further, Developer shall not utilize any of the displays on the New Freeway-Oriented Sign to advertise or communicate any matter that may be prohibited by State or Federal law and any City ordinance existing as of the Effective Date of this Agreement, or as may be amended or implemented from time-to-time after the Effective Date and equally-applicable to all sign displays by any duly and valid City ordinance. The New Freeway-Oriented Sign shall at all times be constructed and operated in a manner consistent with the Outdoor Advertising Act of the State of California (Business & Professions Code sections 5200 et seq.) and other applicable State and Federal laws and regulations.

4. DEVELOPMENT AND IMPLEMENTATION OF THE DEVELOPMENT.

4.1. **Rights to Develop.** Subject to provisions of this Agreement, Developer shall have the right to develop the Site in accordance with, and to the extent of, the Development Approvals, the existing Land Use Regulations, this Agreement and in compliance with all laws, regulations, rules and requirements of all governmental authorities with jurisdiction over the Project. Sign Permit No. PSN24-0001 stands approved with the approval of this Agreement as described in the

Scope of Development attached hereto as Exhibit “B” and depicted in the Site Plan attached hereto as Exhibit “C”.

4.2. **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 Site, the density and intensity of use of the of the structures on the Site, the maximum height and size of proposed structures on the Site, and the design, improvement and construction standards and specifications applicable to the Site, shall be superseded by the terms of this Agreement.

4.3. **Development Approvals.** Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of improvement upon the Site, secure or cause to be secured the Development Approvals, and any and all permits and approvals which may be required by any other governmental agency or utility affected by such construction, development or work to be performed by Developer pursuant to the Scope of Development; provided, however, that the City acknowledges that the City’s Planning Commission and City Council have approved a Categorical Exemption for the Project, thus complying with, and satisfying the requirements of CEQA. Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all: (1) applicable NPDES requirements pertaining to the Project, and (2) applicable building codes that were in effect at the time the Agreement was approved by the City Council, except as may be permitted by any applicable laws. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by the City in connection with the Development which are standard and uniformly applied to similar projects in the City. Nothing contained in this Agreement shall be deemed to impose any obligation on Owner with respect to the Development Approvals or the Project.

4.4. **Timing of Development.**

4.4.1. The parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 (the “**Pardee Case**”) that the failure of the parties therein to provide for the timing of development resulted in a later adopted 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, except as otherwise provided in this Agreement, Developer shall have the right to develop the Project consistent with the Development Approvals in such order and at such rate and at such times as Developer deems appropriate within the exercise of its sole and subjective business judgment during the Term of this Agreement. This provision shall be broadly construed to provide Developer the greatest amount of time and flexibility (in light of the *Pardee Case* and any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the Project irrespective of later-adopted rules, regulations or initiatives that would otherwise restrict Developer’s time to complete the Project.

4.4.2. Developer shall commence construction of the New Freeway-Oriented Sign on the Site within three hundred sixty (360) calendar days following: (a) the issuance of all Development Approvals and Final Permits for construction of the New Freeway-Oriented Sign

and related improvements, and (b) the expiration of all applicable challenge periods related to the foregoing without the filing of any challenge or appeal (or if a challenge or appeal has been filed, such challenge or appeal has been resolved on terms reasonably satisfactory to Developer). In the event that Developer fails to meet the schedule for commencement of construction of the New Freeway-Oriented Sign set forth above, then after compliance with Section 5.3, either party hereto may terminate this Agreement by delivering written notice to the other party, and, in the event of such termination, neither party shall have any further obligation hereunder. However, if circumstances within the scope of Section 9.10 delay the commencement of construction or completion of construction of the New Freeway-Oriented Sign, then such delays shall not constitute grounds for any termination rights found within this Agreement and the timeline to commence or complete the relevant task shall be extended in the manner set forth in Section 9.10. Notwithstanding the above, Developer shall, at all times, comply with all other obligations set forth in this Agreement regarding the construction or improvement of the New Freeway-Oriented Sign. Developer shall also maintain the New Freeway-Oriented Sign at all times during the Term in accordance with the maintenance provisions set forth in Section 3 of the Scope of Development, attached as Exhibit "B" herein.

4.5. Changes and Amendments. Developer may determine that changes to the Development Approvals are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Development Approvals to effectuate such change(s). The parties acknowledge that the City shall be permitted to use its inherent land use authority in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing reasonable discretion, the City shall not apply a standard different than that used in evaluating requests of other developers. Accordingly, under no circumstance shall the City be obligated in any manner to approve any amendment to the Development Approvals. The City Manager shall be authorized to approve any non-substantive amendment to the Development Approvals without processing an amendment to this Agreement. All other amendments shall require the approval of the City Council. Nothing herein shall cause Developer to be in default if, during the Term of this Agreement, it makes non-substantive changes to the Project that are consistent with the Development Approvals or otherwise changes the digital displays or other technology installed pursuant to this Agreement to incorporate newer or more desirable technology without the City's consent; provided Developer shall secure all applicable ministerial permits to do so and such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement, Land Use Regulations and Subsequent Land Use Regulations.

4.6. Reservation of Authority.

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

(a) Processing fees and charges of every kind and nature imposed by the City to cover the estimated actual costs to the City of processing applications for Subsequent Development Approvals.

(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. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

(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, or National Electrical Code, as adopted by the City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the New Freeway-Oriented Sign. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement.

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

(f) Applicable federal, state, county and multi-jurisdictional laws and regulations which the City is required to enforce against the Site or the Development, and that do not have an exception for existing signs or legal nonconforming uses.

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

4.6.3. **Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.** In the event that applicable 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, and there is no exception for the legal nonconforming use under applicable federal, state, county or multi-jurisdictional laws or regulations, 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 provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

4.7. **Regulation by Other Public Agencies.** It is acknowledged by the parties that other public agencies not subject to control by the City may possess authority to regulate aspects of the Development as contemplated herein, and this Agreement does not limit the authority of such other

public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, state and local laws and regulations applicable to the Development and that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Development and do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 6.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

4.8. **Public Improvements.** Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals on the requirement that Developer pay subsequently required development fees, and/or construct certain subsequently required public infrastructure ("**Exactions**") at such time as the City shall determine, subject to the following conditions:

4.8.1. The payment or construction must be to alleviate an impact caused by the Development or be of benefit to the Development.

4.8.2. The timing of the Exaction should be reasonably related to the development of the Development and said public improvements shall be phased to be commensurate with the logical progression of the development of the Development, as well as the reasonable needs of the public.

4.8.3. It is understood, however, that if there is a material increase in cost to Developer, or such action by the City otherwise materially impacts Developer or its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

4.9. **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 Development, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Approvals. However, this Agreement shall not prohibit the application of fees, taxes or assessments upon the Site only and not on the New Freeway-Oriented Sign or Developer directly, except as follows:

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

4.9.2. Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes applicable to the Development;

4.9.3. Developer shall be obligated to pay all fees applicable to any permit applications as charged by the City at the time such application(s) are filed by Developer; and

4.9.4. Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the permit applications are filed by Developer or that exist when Developer applies for any Subsequent Development Approvals.

4.10. **Changes.** Notwithstanding anything to the contrary herein, if there is a change in such fees as compared to those fees in effect as of the Effective Date, or if any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

5. **REVIEW FOR COMPLIANCE.**

5.1. **Review.** In compliance with the Development Agreement Act, the City Council shall have the right to review at its sole cost and expense the Developer's good faith compliance with the terms of this Agreement at least every twelve (12) months during the Term ("**Review**") and City Council may, in its sole and absolute discretion and at its sole cost and expense, order a Review at any time. No failure on the part of the City to conduct or complete any Review as provided herein shall have any impact on the validity of this Agreement. Developer shall cooperate with the City in the conduct of such any Review.

5.2. **City Rights of Access.** Subject to the City's execution of a permit to enter the Site in a form reasonably acceptable to Owner, the City and its officers, employees, agents and contractors shall have the right, at their sole risk and expense, to enter the Site without interfering with any right-of-way, and at all reasonable times with as little interference as possible, for the purpose of conducting the Review under this Section 5 or inspection, construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the improvements constructed thereon (including, without limitation, the New Freeway-Oriented Sign) resulting from such entry shall be promptly repaired at the sole expense of the City. Notwithstanding the foregoing or any other provision in this Agreement (including without limitation Section 5.1 above) to the contrary, the City shall have no right whatsoever to enter the Site unless and until the City executes and delivers to Owner a permit to enter in a form reasonably acceptable to Owner (except that this provision is not intended to interfere with the City's police powers to address any nuisance, dangerous condition, or other condition pursuant to the City's ordinances). Notwithstanding anything to the contrary herein, in no event will the City's representatives ever climb up the pole of the New Freeway-Oriented Sign during any inspection.

5.3. **Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with this 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 this Agreement, either party concludes that the other party has not complied in good faith with the terms of this Agreement, then such party may issue a written "**Notice of Non-Compliance**" specifying the grounds therefore 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, but if such cure or remedy is not reasonably capable of being cured or remedied within such thirty (30) day period, then the party receiving a Notice of Non-Compliance shall commence to cure or

remedy the non-compliance within such thirty (30) day period and thereafter 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 of Non-Compliance, it shall do so by responding in writing to said Notice of Non-Compliance within thirty (30) days after receipt of the Notice of Non-Compliance. If the response to the Notice of Non-Compliance has not been received in the office 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 of Non-Compliance. In the event that a cure or remedy is not timely completed, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6; provided, however, that if the Notice of Non-Compliance 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, then either party shall have the right to seek a judicial determination of such contested matter. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to “force majeure” as defined in, and subject to the provisions of, Section 9.10.

5.4. **Certificate of Agreement Compliance.** If, at the conclusion of any Review, Developer is found to be in compliance with this Agreement, the City shall, upon request by Developer, issue within ten (10) days of receipt of the request, a written confirmation (“**Certificate**”) to Developer stating that, after the most recent Review, and based upon the information known or made known to the City Manager and the City Council, that (1) this Agreement remains in effect, and (2) Developer is in compliance. The Certificate shall be in recordable form if requested by Developer and 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 specific obligations under this Agreement have been fully satisfied with respect to the Site and City shall respond within ten (10) days of receipt of the request. If the City fails to respond to a Developer’s request pursuant to this Section 5.4, the Developer is presumed to be in compliance with this Agreement or any obligation that is the subject of the Developer’s request.

6. **DEFAULT AND REMEDIES.**

6.1. **Termination of Agreement.**

6.1.1. **Termination of Agreement for Material Default of Developer.** The City, in its discretion, may terminate this Agreement (a) if Developer fails to make the Public Benefit Contribution within thirty (30) days after the due date, or (b) 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, the City may terminate this Agreement pursuant to subsection (b) above only after following the procedures set forth in Section 5.3. In the event of a termination by the City under this Section 6.1.1, Developer acknowledges and agrees that the City may retain any portion of the Public Benefit Contribution paid up to the date of termination and Developer shall pay the prorated amount of the Public Benefit Contribution within sixty (60) days after the date of termination and

removal of the New Freeway-Oriented Sign that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.2. Termination of Agreement for Material Default of City. Developer, in its discretion, may terminate this Agreement for any material failure of the City to perform any material duty or obligation of the City hereunder or to comply in good faith with the terms of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedures set forth in Section 5.

6.1.3. Termination of Agreement Without Default. Developer may terminate this Agreement upon the occurrence of any of the following: (1) if, despite Developer's good faith efforts, Developer is unable to secure the necessary permits (including all Final Permits) and/or comply with requirements under applicable laws as necessary to effectuate the Development, or (2) any governmental agency has concluded a taking or regulatory taking of the Site and/or the Development, or (3) the Lease is terminated, or (4) Developer is unable to profitably operate the Development or (5) if the advertising value of the New Freeway-Oriented Sign is materially diminished for any reason, including, without limitation, a diversion or reduction of vehicular traffic or the view of the New Freeway-Oriented Sign becomes entirely or partially obstructed or impaired, or (6) any other circumstance or event pursuant to which termination is permitted by Developer under this Agreement. In the event of a termination by Developer under this Section 6.1.3, Developer acknowledges and agrees that the City may retain any portion of the Public Benefit Contribution paid up to the date of termination and Developer shall pay the prorated amount of the Public Benefit Contribution within sixty (60) days after the date of termination.

6.1.4. Rights and Duties Following Termination. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except (i) Developer's obligation to remove the terminated New Freeway-Oriented Sign pursuant to Section 2.4, and (ii) any continuing obligations to indemnify other parties.

7. INSURANCE, INDEMNIFICATION AND WAIVERS.

7.1. Insurance.

7.1.1. Types of Insurance.

(a) Liability Insurance. On or prior to the Effective Date and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for Developer general liability insurance against claims and liabilities for bodily injury, death or property arising out of or in connection with Developer's activities under this Agreement and for claims and liabilities covered by the indemnification provisions of Section 7.2. Such insurance shall have the following limits: (i) at least Two Million Dollars (\$2,000,000) for bodily injury or death to any one person, (ii) at least Four Million Dollars (\$4,000,000) for any one accident or occurrence, and (iii) at least One Million Dollars (\$1,000,000) for property damage. Within seven (7) days after written request from the City, Developer shall also furnish or cause to be furnished to the City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same coverage required of Developer.

(b) Worker's Compensation. Within seven (7) days after written request from the City, Developer shall also furnish or cause to be furnished to the City evidence that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law.

(c) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against the City and against the City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by the City, but only with respect to the liabilities assumed by Developer under this Agreement; and (iii) the policies cannot be canceled or materially changed except after written notice by the insurer to the City or the City's designated representative as expeditiously as the insurance company agrees to provide such notice. Developer shall furnish the City with certificates evidencing the insurance required to be procured by the terms of this Agreement on or prior to the Effective Date.

7.1.2. **Failure to Maintain Insurance.** If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish the City with required proof that the insurance has been procured and is in force and paid for, the City, after complying with the requirements of Section 5.3, may view such failure or refusal to be a default hereunder.

7.2. **Indemnification.**

7.2.1. **General.** To the extent of its liability coverage required under Section 7.1.1(a) above, Developer shall indemnify the City and 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 to the extent arising out of or in connection with the negligent work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Site or arising from this Agreement.

(a) Developer will defend any action or actions filed in connection with any such claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including reasonable legal costs and attorneys' fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company where insurance coverage applies, or by Developer.

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

7.2.2. **Exceptions.** The foregoing indemnity shall not include claims or liabilities arising from the negligence or willful misconduct of the City, or its officers, agents or employees who are directly responsible to the City.

7.2.3. **Additional Coverage.** Without limiting the generality of the foregoing, Developer's indemnity obligation shall include any liability arising by reason of:

(a) Any accident or other occurrence in or on the Site causing injury to any person or property whatsoever to the extent caused by Developer;

(b) Any failure of Developer to comply with performance of all of the provisions of this Agreement;

(c) Any harm, delays, injuries or other damages incurred by any party as a result of any subsurface conditions on the Site caused solely by Developer, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

7.2.4. **Loss and Damage.** Except as set forth below, the City shall not be liable for any damage to property of Developer, nor for the loss of or damage to any property of Developer by theft or otherwise. The foregoing sentence shall not apply (i) to the extent the City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Site, or (ii) under the circumstances set forth in Section 7.2.2 above.

7.2.5. **Period of Indemnification.** The obligations for indemnity under this Section 7.2 shall begin upon the Effective Date and shall survive termination of this Agreement for the period of two (2) years.

7.3. **Waiver of Subrogation.** Developer and the City mutually agree that neither shall make any claim against, nor seek to recover from the other or its agents, servants, or employees, for any loss or damage to Developer or the City or to any person or property relating to this Agreement, except as specifically provided hereunder, which include but is not limited to a claim or liability to the extent arising from the negligence or willful misconduct of the City or Developer, as the case may be, or their respective officers, agents, or employees who are directly responsible to the City and Developer, as the case may be.

8. **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 Site or any portion thereof or the Development or any improvement on the Site thereon by any mortgage, deed of trust or other security device securing financing with respect to the Site. The City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and the City agrees upon request, from time to time, to meet with Developer or Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, the City will not unreasonably withhold its consent to any such requested interpretation or modification, provided the City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Upon reasonable approval by the City Attorney, the City authorizes the City Manager to execute any Notices of Consent to Assignment on behalf of the City or similar

financial documentation. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

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

8.1.2. The Mortgagee of any mortgage or deed of trust encumbering the Development of the Site or any mortgage or deed of trust encumbering the Site, 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 the City of any default by Developer in the performance of Developer's obligations under this Agreement.

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

8.1.4. Any Mortgagee who comes into possession of the Development or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Development or the Site, 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 the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Development or the Site 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 Approvals applicable to the Development or the Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1. **Recordation of Agreement.** This Agreement shall be recorded in the Official Records of the Riverside County Assessor-County Clerk-Recorder within ten (10) days of execution, as required by Government Code Section 65868.5. 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 that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the Development to be permitted and operated and to provide the Public Benefit Contribution Fee to the City; otherwise, 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. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, 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 Owner and their respective successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10. **Force Majeure.** Notwithstanding any provision to the contrary herein, 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, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City and of the California Department of Transportation), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur during the term of this Agreement then 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 five (5) years beyond the date it would have otherwise expired, and further provided that if such delay is longer than six (6) months, Developer

may terminate this Agreement upon written notice to the City and the City shall return to Developer any portion of the Public Benefit Contribution fee paid for any period after the effective date of such termination.

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 Los Angeles, State of California, or such other appropriate court in said county. Service of process on the 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 the 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 is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation, its expert witness fees and reasonable attorneys' fees.

9.14. **Covenant Not to Sue.** The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are 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, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15. **Development as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the Development 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 the 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 private property on the other hand. The 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" development, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private development into a public work project, it being understood that this Agreement is entered into by the 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 the City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

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 the City of its power of eminent domain or Developer's right to seek and collect just compensation or any other remedy available to it.

9.18. **Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both parties specifically approving the amendment (which approval shall not be unreasonably withheld, conditioned or delayed) and in accordance with the Government Code provisions for the amendment of development agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved on behalf of the City by the City Manager upon reasonable approval by the City Attorney.

9.19. **Assignment.** Developer shall not transfer or assign its rights and obligations under this Agreement (collectively, an "Assignment") to any person or entity without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Developer may assign this Agreement without City's consent if such assignment is to an affiliate or an entity that is under common control with Developer or in connection with a merger, acquisition or sale of substantially all of Developer's assets, provided that such assignee provides written notice to the City of such assignment and assumes all of the rights and obligations of Developer hereunder.

9.20. **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.

9.21. **Notices.** All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested, and addressed to the respective parties as set forth below, or to such other address as either party may from time to time designate in writing by providing notice to the other party:

If to the City:	City of Moreno Valley 14177 Frederick Street Moreno Valley, CA 92553 Attn: City Manager
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If to Developer: [To be formed SPE]
100 Wilshire Boulevard, Suite 400
Santa Monica, CA 90401
Attn: Timothy Hobin

9.22. **Nonliability of City Officials.** No officer, official, member, employee, agent, or representatives of the 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.

9.23. **No Brokers.** The City and Developer each represent and warrant to the other that it has not 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 attorneys' 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 or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

9.24. **No Amendment of Lease.** Nothing contained in this Agreement shall be deemed to amend or modify any of the terms or provisions of the Lease. Nothing contained in this Agreement shall constitute or be deemed to constitute a limit on any of Developer's obligations under the Lease, or any of Owner's rights or remedies against Developer under the Lease.

[Signatures on the following page]

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

APPROVED:

CITY OF MORENO VALLEY:

By: _____
Ulises Cabrera, Mayor

ATTEST:

M. Patricia Rodriguez, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney

APPROVED:

[To be formed SPE]

By: _____

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

STATE OF CALIFORNIA

COUNTY OF _____

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

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature (Seal)

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

STATE OF CALIFORNIA

COUNTY OF _____

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

personally appeared _____

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

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

WITNESS my hand and official seal.

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

All that certain real property located in the City of Moreno Valley, County of Riverside, State of California more particularly described as follows:

THAT CERTAIN REAL PROPERTY DESCRIBED AS PARCEL A IN PARCEL MERGER NO. 370 / AND CERTIFICATE OF COMPLIANCE, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 19, 2007, AS INSTRUMENT NO. 2007-0755490 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 6 IN BLOCK 30 OF BEAR VALLEY AND ALESSANDRO DEVELOPMENT CO., IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 11 PAGE 10 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA;

EXCEPT THE WEST 3 ACRES OF LOT 6 MORE PARTICULARLY DESCRIBED AS THE WEST 261.32 FEET OF LOT 6;

ALSO EXCEPT THAT PORTION DEEDED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES.

TOGETHER WITH LOT 7 IN BLOCK 30 OF BEAR VALLEY AND ALESSANDRO DEVELOPMENT CO., AS SHOWN BY MAP ON FILE IN BOOK 11 PAGE 10 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA;

EXCEPT THEREFROM THE EASTERLY 443.57 FEET THEREOF;

ALSO EXCEPTING THAT PORTION DEEDED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES; THE EASTERLY DISTANCE OF 443.57 FEET BEING MEASURED ALONG THE NORTHERLY LINE.

EXHIBIT "B"

SCOPE OF DEVELOPMENT

Developer and the City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. The Development. Developer shall install the New Freeway-Oriented Sign on the Site in accordance with the terms of this Agreement. The New Freeway-Oriented Sign consists of (1) a double-sided 14 x 48-foot digital display, and (2) a double-sided 6 x 15-foot static display at 28720 Spruce Avenue, adjacent to State Route (SR) 60.

2. Building Fees. Developer shall pay all applicable City building fees at the time that the building permit is issued for the installation of the New Freeway-Oriented Sign.

3. Maintenance and Access. Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the New Freeway-Oriented Sign (where authorized pursuant to the Agreement, and including but not limited to, the displays installed thereon, and all related on-site improvements and, if applicable, easements and rights-of-way, at its sole cost and expense), including, without limitation, landscaping, poles, lighting, signs and walls (as they relate to the Development) to be kept in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site. Such maintenance and repair shall include, but not be limited to, the following: (i) the care and replacement of all shrubbery, plantings, and other landscaping or the painted backing in a healthy condition if damaged by the Development; and (ii) the repair, replacement and repainting of the New Freeway-Oriented Sign's structures and displays as necessary to maintain such sign in good condition and repair.

(b) Maintenance of the New Freeway-Oriented Sign in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Development such as to be detrimental to the public health, safety or general welfare, or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of the Site.

(c) If more than ten percent (10%) of the display is not operational, the entire display shall be turned off and remain black until the display is repaired.

4. Other Rights of the City. In the event of any violation or threatened violation of any of the provisions of this Exhibit "B", then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of the Agreement, the City shall have the right, after complying with Section 5.3 of the Agreement, to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Section 3 above (subject to the execution of a permit to enter in form reasonably acceptable to Owner) and charging Developer for any actual out-of-pocket maintenance costs incurred in performing same.

5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of the Agreement. The failure of the City to enforce the Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to Developer, its successors, transferees or assigns, for any default or breach by the City under the Agreement.

6. Conditions of Approval. The following additional conditions shall apply to the installation of the New Freeway-Oriented Sign and, where stated, landscaping adjacent to New Freeway-Oriented Sign, which sign and landscaping or painted backing adjacent to the sign, respectively, shall conform to all applicable provisions of the Development Approvals and the following conditions, in a manner subject to the approval of the Director of Planning or his or her designee:

(a) A building permit will be required, and structural calculations shall be prepared by a licensed civil engineer and approved by the City.

(b) The Sign shall be located in the portion of the Site shown on Exhibit "C" and shall be of the dimensions described in Section 1, above.

(f) Plans and specifications for the proposed installation of the New Freeway-Oriented Sign shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits.

(g) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(h) Developer shall maintain the New Freeway-Oriented Sign and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, county, state or federal agencies by any duly and valid City, county or state ordinance with jurisdiction over the facilities.

(i) Developer shall, at all times, comply with the terms of the approval for the New Freeway-Oriented Sign from the California Department of Transportation Outdoor Advertising Division, and shall maintain acceptable clearance between proposed sign and Southern California Edison distribution lines.

(j) Developer shall pay any and all applicable fees due to any public agency prior to the final issuance of the applicable building or electrical permits.

(k) The activities proposed in the Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(l) Developer shall ensure that all access to the New Freeway-Oriented Sign is kept restricted to the general public to the extent permitted under local laws and by the Development Approvals.

(1) If any portion of the landscaping or painted backing installed adjacent to the New Freeway-Oriented Sign is damaged by the Development or becomes damaged, unhealthy or otherwise in need of replacement, as determined by the City's Director of Planning or his or her designee, Developer shall ensure that the replacement is accomplished within fourteen (14) days of notification by the City, unless such time is extended by the City's Director of Planning or his or her designee if Developer shows unusual circumstances requiring more time to accomplish such replacement. Developer or Owner may trim such landscaping so as not to block the sign or with the reasonable consent of the Director of Planning, the Developer at the Developer's own cost, may remove and relocate any landscaping.

(m) Developer shall comply with all necessary federal National Pollutant Discharge Elimination System (NPDES) requirements pertaining to the proposed use, to the extent applicable.

(n) All graffiti shall be adequately and completely removed or painted over within seven (7) days of notice to Developer of such graffiti being affixed on the Development.

(p) Prior to final sign-off of the building permit for the New Freeway-Oriented Sign, the applicable landscaping or painted backing shall be installed at the Site.

(q) Developer shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels at a distance of 250 feet, and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment and the obligation to have automatic dimming capabilities. Upon any reasonable complaint by City Manager or designee, Developer shall perform a brightness measurement and display using OAAA standards and provide City with the results of same within five (5) days of City complaint.

EXHIBIT "C"

SITE PLAN AND ELEVATIONS