



**STAFF REPORT
City of Indio
Planning Commission Meeting of
November 9, 2016**

APPLICATION: **Virada Specific Plan and Project Master Plan**
Environmental Assessment (EA 16-4-528)
Specific Plan (SP 16-1-32)
Project Master Plan (PMP 16-1-57)
Large Lot Tentative Tract Map 37224 (TTM 16-4-171)
Development Agreement (DA 16-07-36)

**APPLICANT/
DEVELOPER:** Presidio Mana Indio, LLC
C/O Family Development
73081 Fred Waring Drive
Palm Desert, CA 92260

REPRESENTATIVE: The Altum Group
73-710 Fred Waring Drive, Suite 219
Palm Desert, CA 92260

**ASSESSOR'S
PARCEL NO.:** 750-210-003 through 011, and 752-030-020 through 023

**PROJECT
LOCATION:** The Virada Specific Plan and Project Master Plan ("Project")
is located at the northern terminus of Adams Street, north of
Avenue 38 and east of the Sun City Palm Desert community,
in the City of Indio.

**GENERAL PLAN
DESIGNATION:** Specific Plan (SP)

ZONING: Specific Plan (SP)

RECOMMENDATION: Staff recommends that the Planning Commission take the
following action:

1. Adopt Resolution No. 1778, recommending City Council approval of the Mitigated Negative Declaration and

Mitigation Monitoring and Reporting Program for the Virada Specific Plan and Project Master Plan (EA 16-4-528);

2. Adopt Resolution No. 1779, recommending City Council approval of the Virada Specific Plan (SP 16-4-32) and Project Master Plan (PMP 16-1-57);
3. Adopt Resolution No. 1780, recommending City Council approval of large-lot Tentative Tract Map No. 37224 (TM 16-4-171) to subdivide 656.34 acres into 38 lots within the Virada Specific Plan, subject to conditions of approval included therein; and,
4. Adopt Resolution No. 1783, recommending City Council approval of the Virada Development Agreement (DA 16-07-36).

PROJECT DESCRIPTION:

The applicant, Presidio Mana Indio, LLC is proposing Specific Plan and Project Master Plan (SP/PMP) named Virada, a 656.34-acre mixed use master planned community located at the base of the Indio Hills in northwestern Indio. Although the project is technically an amendment to a prior SP/PMP covering the same property, known as the Fiesta de Vida SP/PMP, the Virada SP/PMP will effectively replace Fiesta de Vida if approved. The project also includes Tentative Tract Map No. 37224, a large lot map that will subdivide the property into 38 lots. The SP/PMP proposes 1,287 single and multi-family residential units within planning areas/neighborhoods designed to provide a variety of residential options to future residents. Additional improvements include a 106.85-acre community park, a 6.55-acre community shared solar array, a new 1.92-acre fire station, and community open space and recreation in the form of parks, paseos, a 3.10-acre community center with a clubhouse and fitness center with a demonstration garden (xeriscape plants) at the entrance to the community. Over time, a portion of the community center/clubhouse may include development of up to 2.13-acre (3,000 square feet) of neighborhood commercial uses. The project also includes open space associated with a utility corridor (81.11 acres) and the Indio Hills (166.91 acres). The applicant is proposing the project be developed in three-phases over a 15-year period.

The following represents a brief summary of the requested entitlement applications for the project:

- **Initial Study and Mitigated Negative Declaration (EA 16-4-528):** A Mitigated Negative Declaration for all entitlements, prepared pursuant to the California Environmental Quality Act.
- **Virada Specific Plan (Virada–SP 16-4-32):** The Virada Specific Plan is for a phased development of 656.34 acres of vacant property into 637 single family

residential lots, and 650 multi-family dwelling units (1,287 total units) with a 106.85-acre community park with associated amenities, a fire station, potentially 3,000 sq. ft. of commercial space, community garden and related street system and open space, located at the northern terminus of Adams Street, north of Avenue 38 and east of the Sun City Palm Desert community. The Specific Plan also outlines development plans and standards including: 1) a Land Use master Plan; 2) an Open Space/Recreation Plan; 3) a Circulation Plan; 4) a Grading and Drainage Plan; 5) a Water and Sewer Plan; 6) a Fire/Emergency Management Plan; and 7) a Utilities System Plan.

- **Virada Project Master Plan (PMP 16-1-57):** The Project Master Plan is associated with the Specific Plan which outlines planning area standards for the nine planning areas, establishing development regulations (e.g. setbacks, height limits, permitted uses, etc.), basic criteria for future design guidelines for site planning, landscaping and architecture, and providing administration and implementation procedures.
- **Large-lot Tentative Tract Map No. 37224 (TM 16-4-171):** to subdivide the 656.34 acres in Virada into 38 lots generally corresponding to the Planning Areas contained in the Specific Plan and Project Master Plan.
- **Virada Development Agreement (DA 16-7-36):** A development agreement to establish certain terms and conditions specific to the development of the proposed Virada project as represented in the Specific Plan/Project Master Plan, including the requirement to complete certain improvements, maintenance obligations, and timing to complete development.

BACKGROUND:

Previously, in 1992, the County of Riverside adopted Specific Plan 231 for the subject site, which was known at the time as the Adams 34 Ranch Specific Plan (SP 231). The entitlement included 939 dwelling units (469 single-family and 470 multi-family), 7-acres of commercial uses, an 18-hole golf course, 8-acres of community parks, 2.3-acres of neighborhood parks, equestrian/hiking trails and approximately 173.1-acres of natural open space within its boundaries.

Subsequently, on July 15, 2005, after the project site was annexed into the City of Indio, the City Council adopted the current Fiesta de Vida Specific Plan as Amendment No.1 to Specific Plan 231 for a phased development of 656.3 acres of vacant property including a 25 large-lot subdivision to facilitate the development of approximately 1,200 dwelling units including 545 non-age restricted units and 656 age-restricted units; an additional 258 room lodge for assisted living, independent living and memory care; a 27-hole public golf course; a community park; maintenance facilities; easements; and open space. However, the developer never proceeded with development of the project and development pursuant to the Fiesta de Vida Specific Plan has been effectively abandoned.

The subject property was sold in 2014 to the current owner and project applicant, Presidio Mana Indio, LLC. The project applicant is now requesting approval of the Virada Specific Plan and Project Master Plan, which would replace the Fiesta de Vida project with development that has been represented as being representative of today's market condition.

ENVIRONMENTAL REVIEW:

The project proposes to amend previous entitlements (Fiesta de Vida Specific Plan) that were subject to a Mitigated Negative Declaration (MND) and associated Mitigation Monitoring and Reporting Program (MMRP). Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Initial Study (EA 16-4-528) was prepared for this project. The Initial Study determined that although the uses of the proposed project could result in significant environmental impacts, all impacts could be mitigated to a less than significant level. Therefore, adoption of a MND with accompanying MMRP is proposed.

Public Review of the Draft Initial Study and Notice of Intent to Adopt a Mitigated Negative Declaration was circulated to nineteen (19) agencies and other parties, including the Home Owners Association of Sun City Palm Desert, Coachella Valley Water District, Desert Sands Unified School District, Desert Recreation District, US Fish & Wildlife Service and the California Department of Fish and Game. The comment period concluded on July 5, 2016. Comments were received from eleven (11) agencies and interested parties. All comments received were reviewed and responses were prepared and disseminated on October 31, 2016, as part of the Final Initial Study/Mitigated Negative Declaration. (See Chapter F-2 - Comments and Responses, Virada Specific Plan and Project Master Plan Final Initial Study/Mitigated Negative Declaration)

In compliance with California Government Code Sections 65352.3, the City of Indio circulated the MND and accompanying MMRP to initiate the SB18 and AB52 consultation process with the following Tribal Governments for comments:

- Morongo Band of Mission Indians
- Agua Caliente Band of Cahuilla Indians THPO
- Cabazon Band of Mission Indians
- Augustine Band of Cahuilla Mission Indians
- Cahuilla Band of Indians
- Los Coyotes Band of Mission Indians
- Ramona Band of Cahuilla Mission Indians
- Santa Rosa Band of Mission Indians
- Santa Rosa Band of Mission Indians
- Saboba Band of Mission Indians
- Torres-Martinez Desert Cahuilla Indians

PUBLIC NOTICE:

A notice of intent to adopt the mitigated negative declaration and to hold the public

hearing was published in the Desert Sun newspaper on October 21, 2016. In addition; the public hearing notice was mailed to all surrounding property owners within 300 feet and 1,000 feet (Sun City Palm Desert) of the subject property on October 21, 2016. The applicant submitted a certified list of property owners within 300 feet and 1,000 feet (Sun City Palm Desert community) of the subject property. As of November 4, 2016 one letter was received from a neighboring property owner, which is attached. Any additional correspondence received will be distributed at the Planning Commission meeting.

SURROUNDING LAND USES:

The following are the current zoning, General Plan Land Use designation and existing uses of properties adjacent to the project site:

	GENERAL PLAN	ZONING	EXISTING LAND USE
North:	City Boundary	City Boundary/SP	Open Space/City Boundary
South:	Open Space (OP)/ Resource Recovery (RR)	Open Space (OP)/ Resource Recovery (RR)	Open Space/Vacant Land
East:	City Boundary	City Boundary	Open Space/Vacant Land
West:	City Boundary and SP	City Boundary/SP	Sun City Palm Desert Community

ANALYSIS:

The City’s General Plan land use designation for the project property is Specific Plan. As such, the Plan requires that development be subject in accordance with the applicable specific plan and further refined by the preparation of a Project Master Plan. The Virada SP/PMP addresses development-related topics in the form of proposed physical improvements, guidelines for future development, technical data, and implementation of procedures and regulations. The proposed project is intended to facilitate development of the site and implement the City of Indio General Plan. The size, location, and configuration of individual planning areas was determined on the basis of a variety of design considerations including topography, drainage, circulation, relationship with surrounding land uses, and other physical features. The location and designation of development allowed within the different planning areas is intended to create a design concept which will provide a unique identity and prominence for the site. The Virada Specific Plan and Project Master Plan is comprised of nine (9) planning areas with the residential areas including both single-family and multiple-family residential in order to account for variation in product type and lot sizes.

Virada Land Use Summary Table (below) summarizes the various planning areas, acreage for each planning area, the number and type of residential units (where applicable), commercial and community use, fire station, open space, circulation, flood control, etc.

**Table III-1
 Virada Land Use Summary Table**

Planning Area	Land Use/Product Type/ Lot Size	Acres	Dwelling Units	Square Feet
1	Community Park	106.85	N/A	N/A
2	Single-Family Residential Neighborhoods			N/A
2-1	SFR – 5,200 sq. ft. (65'X80')	15.62	62	N/A
2-2	SFR – 4,250 sq. ft. (50'X85')	14.55	82	N/A
2-3	SFR – 9,900 sq. ft. (90'X110')	20.91	50	N/A
2-4	SFR – 6,750 sq. ft. (75'X90')	27.66	83	N/A
2-5	SFR – 6,400 sq. ft. (80'X80')	20.67	77	N/A
2-6	SFR – 4,250 sq. ft. (50'X85')	18.27	94	N/A
2-7	SFR – 6,000 sq. ft. (60'X100')	12.39	53	N/A
2-8	SFR – 6,400 sq. ft. (80'X80')	13.07	48	N/A
2-9	SFR – (Clusters) (Min. 3,600' Lots)	15.21	88	N/A
	Subtotal (SFR)	158.35	637	N/A
3	Multi-Family Residential Neighborhoods			N/A
3-1	MFR – Attached Flats 1	13.81	130	N/A
3-2	MFR – Attached Condominiums	18.09	160	N/A
3-3	MFR - Apartments	16.38	170	N/A
3-4	MFR – Attached Flats 2	13.51	112	N/A
3-5	MFR - Duplexes/Triplexes	12.03	78	N/A
	Subtotal (MFR)	73.82	650	N/A
	Total (Planning Areas 2 & 3)	232.17	1,287	N/A
4	Commercial/Community Demonstration Garden	2.13	N/A	≤3,000
5	Community Center/Clubhouse	3.10	N/A	≤4,000
6	Community Shared Solar Array	6.55	N/A	N/A
7	Easement Area	81.11	N/A	N/A
8	Open Space Area	166.91	N/A	N/A
9	Fire Station	1.92	N/A	N/A
	Circulation	29.48	N/A	N/A
	Area-wide Drainage and Flood Control	26.12	N/A	N/A
	TOTAL PROJECT	656.34	1,287	≤7,000

Notes: SFR = Single-Family Detached; MFR = Multi-Family Residential

Source: Tentative Tract Map No. 37224 (Large Lot Tentative Tract Map dated 30, September 2016)

Each of the Planning Areas are listed and summarized below:

Planning Area 1 -Virada Community Park:

The proposed 106.85-acre Community Park will be developed along a southeast to northwest diagonal at the base of the Indio Hills. The site plan proposes both passive and active recreational amenities intended to meet the needs of all age groups. Amenities include two (2) baseball fields, one (1) soccer field and one (1) flex activity field; numerous hiking and biking trails; several interpretive lookouts; two (2) basketball, two (2) tennis and two (2) pickle-ball courts; a play area with integrated splash pad and shade structure; an amphitheater; a promenade; one (1) dog park; a meditation/aroma garden; desert garden areas; one (1) group picnic area and truck event area; one (1) group picnic area with shade structure; passive open space areas, one (1) archery range, two (2) restroom buildings (one with concessions); one (1) storage building, and attendant parking facilities.

The Community Park will be a public park and available for use by Virada residents or their guests as well as the general public. Primary vehicular access to the Community Park will be via either Coyote Song Way from the west or Adams Street from the south.

Planning Area 2 - Single-Family Residential Neighborhoods:

Planning Area No. 2 of the Virada planned community is comprised of nine separate single-family residential neighborhoods. Each of these neighborhoods may be gated. These neighborhoods (Planning Areas 2-1 thru 2-9) account for approximately 68 percent of the residential development area within Virada and range in size from approximately 12.39-acres to 27.66-acres. Overall, the single-family residential neighborhoods of Virada will have a mix of both one and two-story dwellings including a variety of plan types within each neighborhood, ranging in size from approximately 1,500 square feet to 4,000 square feet; on lot sizes ranging from 3,600 square feet to nearly 10,000 square feet. Overall, 637 detached single-family residences are planned to be constructed as part of Planning Area 2.

Planning Area 3- Multi-Family Residential Neighborhoods:

The Virada planned community includes five separate multi-family residential neighborhoods. These neighborhoods (Planning Areas 3-1 thru 3-5) comprise approximately 32 percent of the overall residential development area and range in size from approximately 12.03-acres to 18.09-acres. The types of multi-family residences propose for the community include Attached Flats, Attached Condominiums, Apartments and Duplexes/Triplexes. All multi-family residences within Virada will be two-story structures with exception of the Attached Duplexes/Triplexes which will be one-story structures. Overall, 650 multi-family residential units are proposed.

Planning Area 4 - Commercial/Community Demonstration Garden:

The Virada planned community provides for a centrally located development node containing a community demonstration garden and opportunity for the development of up to 3,000 square feet of community-oriented commercial uses. The intent of this planning area is to provide live examples of ground covers, shrubs and trees considered

suitable constituents of xeriscape landscaping. A botanical garden like setting is envisioned with individual plants and plant groupings astride meandering walkways with each species or groups of plant species identified by placards. It is anticipated that the development of commercial uses in this Planning Area will occur in response to market conditions. This predominantly passive informational recreational/open space and commercial component of the planned community will be located on approximately 2.13-acres at the northeast corner of the Adams Street/Eastbound Parkway intersection. Over time, a portion of the community demonstration garden may be developed with up to 3,000 square feet of neighborhood commercial uses.

Planning Area 5 - Community Center/Clubhouse:

Planning Area 5 is located immediately north of the Adams Street and Coyote Song Way intersection and has been designated for the Virada Community Clubhouse on an approximately 3.10-acre site. The Clubhouse, estimated to comprise up to 4,000 square feet for the purpose of social gatherings, and will include a pool and recreational amenities for Virada residents.

Planning Area 6 - Community Shared Solar Array

As part of Virada's sustainable community design emphasis, the project also includes a Community Shared Solar Array. This approximately 6.55-acre area is located along the southern boundary of the Easement Area west of Adams Street and Planning Area 2-4. Although the precise configuration of the solar array planned for this area has yet to be determined, it is the intent of the Community Shared Solar Array to provide energy for the common areas of the Virada community. The site design is intended ensure that the facility will not visible from residential areas to the south.

Planning Area 7 - Easement Area (Utility Corridor):

The 530 foot wide easement area traverses diagonally across the entire Virada project site in a northwest-southeast alignment. This is a utility easement area for high power transmission lines and a buried natural gas line. The easement will include a multi-purpose trail and will essentially remain non-landscaped with the exception of desert landscaping along roadways connecting the residential areas.

Planning Area 8 - Open Space Area:

This planning area comprises of approximately 167 acres (approximately 25.4% of the project site) and extends from along the northern boundary of the Virada Community Park north to the northern project site boundary. Planning Area 8 consists mostly of mountainous desert terrain exhibiting an abundance of steep slopes and incised drainages. As such, Planning Area 8 has as its primary objective – remaining undisturbed and being preserved in perpetuity as natural open space with land uses limited to recreational trails, utilities and drainage infrastructure.

Planning Area 9 - Fire Station:

Planning Area 9 is located immediately east of the Community Shared Solar Array along the western frontage of Adams Street and will serve as a location for a new Fire

Station. Planning Area 9 consists of approximately 1.92 acres with a developable area of approximately 1.23 acres.

Overall, the proposed planning areas of the SP/PMP would keep with the City's Circulation Element of the General Plan by improving the regional circulation patterns and constructing internal circulation (including primary and secondary accesses). The SP/PMP would allow master planned residential communities of all age and group by providing with a combination of 1,287 low, medium and high density residential housing product types. It is staff's opinion that the character of the planning areas will encourage a transition from urban and suburban uses to open space that provide for a variety of residential and recreational activities.

In addition the project proposes a 106.85-acre community park, which would benefit not only Virada residents but also to the local residents and general public. The Project reduces the residential development intensity below what was originally envisioned for in the Fiesta de Vida project. Virada proposes approximately 172 fewer units than Fiesta de Vida and a substantial increase in the amount of open space and parks. Thus, staff believes the proposed density increase is insignificant and properly addressed in the mitigated negative declaration and initial study. The proposed project is consistent with the General Plan.

Large Lot Tentative Tract Map 37224:

Tentative Large Lot Tentative Tract Map 37224 proposes to subdivide the 656.34 acres into 38 large lots generally corresponding to the Planning Areas contained in the Specific Plan and Project Master Plan. The Map subdivides the site into large parcels as follows- Lots "A" and "B" for public Street, Lots "C" thru "G" for private street, Lots "H" thru "P" for single family residential development, Lots "Q", "R", "S" and "U" for condominium development, Lot "T" for multi-family development, Lot, "V" Commercial/community demonstration garden, Lots "W" and "X" for recreational park/PUE, Lot "Y" for clubhouse/PUE, Lot "Z" for solar array, Lots "AA" thru "DD" for easement, Lots "EE" thru "FF" for open space, Lots "GG" thru "II" for drainage easement, Lots "JJ" thru "KK" for landscape/PUE and Lot "LL" for the fire station. Residential large lots are intended to be further subdivided for individual lots for the construction of residential homes. This will be done at a later time.

Virada Development Agreement:

The applicant is proposing a Development Agreement (DA) for the Virada Specific Plan and Project Master Plan. The DA provides language clarifying development interest, as well as certain responsibilities of the developer or city. For example, the DA specifies the obligation and requirement for securing land and constructing a new fire station. In addition, the DA also addressed the need to establish a future lighting and landscaping district for the maintenance of the parkways and medians associated with the two public streets and the private streets open for public access. The DA also grants additional time period to the entitlement permits granted for the Virada project. The Development Agreement Statute provides that the legislative body of a city may enter into a development agreement for the development of real property in order to vest certain

rights in the developer and to meet certain public purposes of the local government. Government Code §65865 authorized the DA Resolution, which established City's procedures and requirements related to development agreements.

The Developer intends and proposes to effect a comprehensive replan and redesign of the Project Site to conform to market demand and to develop and facilitate the future development of the Project Site as a model for healthy, active, sustainable living in the Virada community.

Respectfully Submitted,



Mamun Faruque
Senior Planner

Approved by:



Les Johnson
Development Services Director

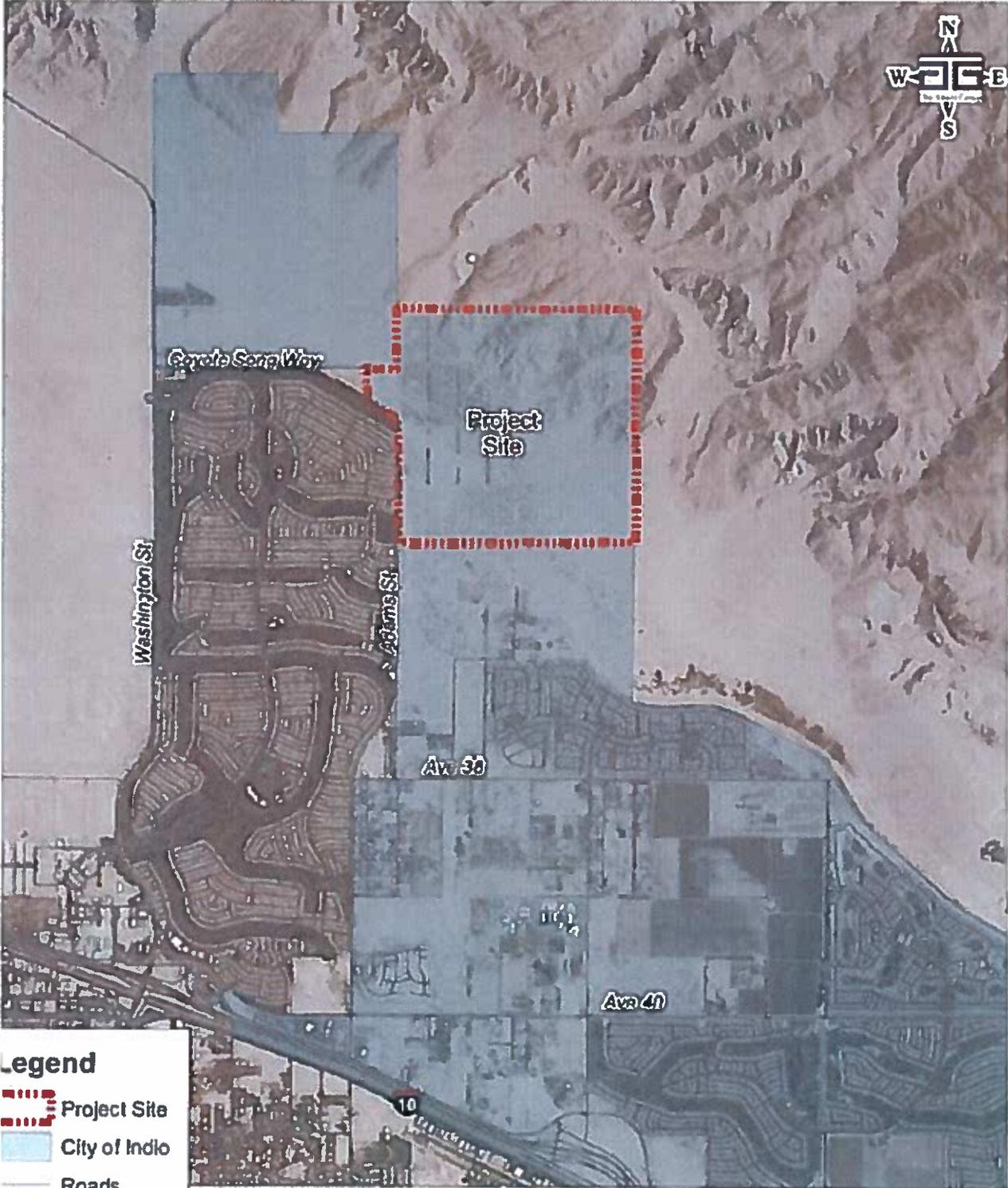
LIST OF ATTACHMENTS

- A. Vicinity Map
- B. Resolution 1778 - Initial Study/Mitigated Negative Declaration (EA 16-4-528)
- C. Resolution 1779 -Virada Specific Plan/Project Master Plan (SP 16-1-32//PMP 16-1-57)
- D. Resolution 1780 - Tentative Large Lot Tract Map 37224
- E. Tentative Large Lot Tract Map 37224
- F. Resolution 1783 – Development Agreement
- G. Development Agreement (Virada SP/PMP)
- H. Exhibit 1- Virada Specific Plan/Project Master Plan (Separate Document)
- I. Exhibit 2- Initial Study/Negative Declaration with Mitigation Monitoring and Reporting Program {EA 16-4-528 (Separate Document)}
- J. Written Correspondence from Rod and Michele Murphy

Attachment A

Vicinity Map

Vicinity Map



1 inch = 3,000 feet

Attachment B
Resolution 1778

Virada Environmental Assessment 16-4-528

RESOLUTION NO. 1778

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR THE VIRADA SPECIFIC PLAN AND PROJECT MASTER PLAN, A MASTER PLANNED COMMUNITY OF 1,287 SINGLE AND MULTI-FAMILY RESIDENTIAL UNITS, A COMMUNITY PARK, A COMMUNITY SHARED SOLAR ARRAY FACILITY, COMMUNITY OPEN SPACE AND RECREATION IN THE FORM OF PARKS AND PASEOS, A COMMUNITY CENTER, A NEW FIRE STATION, AND A COMMERCIAL AREA ON 656 ACRES OF LAND GENERALLY LOCATED NORTH OF AVENUE 38 AND EAST OF SUN CITY PALM DESERT. (ASSESSOR'S PARCEL NUMBERS: 750-210-003, 750-210-004, 750-210-005, 750-210-006, 750-210-007, 750-210-008, 750-210-009, 750-210-010, 750-210-011, 752-030-020, 752-030-021, 752-030-022, 752-030-023)

WHEREAS, Presidio Mana Indio, LLC ("Applicant") initiated applications with the City of Indio (the "City") for a Specific Plan (Case No. 16-1-32), Project Master Plan (Case No. 16-1-57) to ultimately develop approximately 656 acres into 1,287 single and multi-family residential units, a 106-acre community park, a 6.56-acre community shared solar array facility, community open space and recreation in the form of parks and paseos, a 3.07-acre community center, a new fire station, and a 2.09-acre commercial area, generally located north of Avenue 38 and east of Sun City Palm Desert (the "Virada project"). (Assessor's Parcel Nos. 750-210-003, 750-210-004, 750-210-005, 750-210-006, 750-210-007, 750-210-008, 750-210-009, 750-210-010, 750-210-011, 752-030-020, 752-030-021, 752-030-022, 752-030-023); and

WHEREAS, along with the aforementioned applications were requests for Large Lot Tentative Tract Map No. 37224 (Case No. 16-4-171), Tentative Tract Map 37225 (Case No. 16-4-169) and a Development Agreement (DA 16-7-36); and

WHEREAS, the City, in its capacity as the Lead Agency for the Project, has caused the preparation of an Initial Study (EA No. 16-4-528) pursuant to the provisions contained in the California Environmental Quality Act (CEQA), the Guidelines for Implementation of CEQA (State CEQA Guidelines) and the City of Indio CEQA Implementation Requirements, all as amended; and

WHEREAS, the Initial Study concluded that although the Virada project could have a significant effect on the environment, the potentially significant effects are avoided because revisions in the project were made or agreed to by the Applicant; therefore, a mitigated negative declaration and mitigation monitoring and reporting program were prepared for the Virada project.

WHEREAS, on November 9, 2016 the Planning Commission of the City of Indio conducted a duly advertised public hearing to consider the Virada project, including the mitigated negative declaration and mitigation monitoring and reporting program; and

WHEREAS, the Planning Commission has reviewed the findings made in this Resolution and finds that they are based upon substantial evidence presented to the Planning Commission in the record of the proceedings. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based are on file and available for public examination during normal business hours in the Development Services Department, who serves as the custodian of these records.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Planning Commission hereby specifically finds that all of the facts set forth in the recitals of this Resolution are true and correct, are incorporated into this Resolution by this reference and constitute a material part of this Resolution.

SECTION 2. Pursuant to the State CEQA Guidelines and the City of Indio CEQA Implementation Requirements, the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program is consistent with the California Government Code, the Indio Code of Ordinances, compatible with the present and future logical growth of the area, and generally protects and promotes the public health, safety and welfare.

SECTION 3. The Planning Commission of the City of Indio hereby recommends that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (EA No. 16-4-528) for the Virada project.

PASSED, APPROVED, and ADOPTED this 9th day of November, 2016, by the following vote, to with:

AYES:
NOES:
ABSTAIN:
ABSENT:

GLORIA FRANZ
Planning Commission Chair

ATTEST:

EVELYN BELTRAN
Planning Commission Secretary

Attachment C

Resolution 1779

Virada Specific Plan16-1-32 and Project Master Plan16-1-57

RESOLUTION NO. 1779

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE VIRADA SPECIFIC PLAN AND PROJECT MASTER PLAN FOR THE DEVELOPMENT OF 1287 RESIDENTIAL UNITS, COMMUNITY PARK, COMMERCIAL AND OTHER ASSOCIATED DEVELOPMENTS, GENERALLY LOCATED AT THE NORTHERN TERMINUS OF ADAMS STREET, NORTH OF AVENUE 38 AND EAST OF THE SUN CITY PALM DESERT COMMUNITY

WHEREAS, on January 8, 2016, Presidio Mana Indio, LLC ("Applicant") filed an application for the Virada Specific Plan (SP 16-1-32) and Project Master Plan (PMP 16-1-57) (the "Project"), generally located at the northern terminus of Adams Street, north of Avenue 38 and east of the Sun City Palm Desert community, in the City of Indio, Assessor's Parcel Numbers: 750-210-003 through 011, and 752-030-020 through 023; and,

WHEREAS, in September, 1992 the County of Riverside Board of Supervisors approved a project known as the Adams 34 Ranch Specific Plan (SP 231) that covered the subject property. The entitlement included 1,200 single family homes, a 258 unit assisted living, independent living and memory care lodge, and 27 holes of public golf course on a 656.3-acres site; and,

WHEREAS, on July 15, 2005, the Indio City Council approved the Fiesta de Vida Specific Plan for a phased development of the subject 656.3 acres, including a 25 large-lot subdivision to facilitate the development of approximately 1,200 dwelling units including 545 non-age restricted units and 656 age-restricted units; an additional 258 room lodge for assisted living, independent living and memory care; a 27-hole public golf course; a community park; maintenance facilities; easements; and open space. However, no developments pursuant to SP No. 231 and Fiesta De Vida have occurred to date; and,

WHEREAS, The Project proposes to change the name of the PMP and Specific Plan from "Fiesta de Vida" to "Virada", as well as amending land use regulations, development standards and design guidelines in order to develop 1287 single and multi-family residential units, community park, commercial and other associates developments. The Applicant is also proposing two new tentative tract maps to accommodate 1,287 new residential units on 656.34 acres; and,

WHEREAS, Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Initial Study/Mitigated Negative Declaration ("MND") (EA 16-4-528) has been prepared for the Project. The MND determined that although the uses of the proposed project could result in significant environmental impacts, all impacts could be mitigated to a less than significant level. The Public Review of the Draft Initial Study and Notice of Intent to Adopt a MND was completed on July 5, 2016. All comments

received were reviewed and responses were prepared and disseminated on October 31, 2016, as part of the Final MND. By Resolution No. 1778, the Planning Commission has recommended that the City Council approve the MND and accompanying mitigation monitoring and reporting program; and,

WHEREAS, on November 9, 2016, the Planning Commission held a duly noticed public hearing to consider the application for the Virada SP/PMP. Evidence both written and oral, including the staff report and supporting documents, was presented at the said hearing. At the conclusion of the hearing, the Planning Commission adopted this resolution to recommend that the City Council approve the Virada SP/PMP.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, HEREBY RESOLVES, FINDS AND DETERMINES AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in the recitals of this Resolution are true and correct.

Section 2. Based upon the evidence presented at the hearing, including the staff report, the Planning Commission hereby finds:

- 1) The SP/PMP is consistent with the Indio General Plan 2020 (“General Plan”). Residential Planned Development designations allow master planned residential communities with a combination of lot sizes, including low and medium and high density product types. The character of the Planning Area of the project encourages a transition from urban and suburban uses to open space to be accomplished by specific planning tools that provide for a variety of residential and recreational activities. The Project includes a PMP and Specific Plan with an intention of creating market driven housing products by modifying land use regulations, development standards and design guidelines. The project also proposes Tentative Tract Map No. 37224 (large lot) for the project. The project is comprised of 1,287 single and multi-family residential units within various planning areas that are designed to provide a variety of residential options to future residents. In addition to the residential neighborhoods, the project includes a 106.85-acre community park, a 6.55-acre community shared solar array, community open space and recreation in the form of parks, paseos, a 3.10-acre community center with a clubhouse, fitness center; a 1.92-acre new fire station, and a 2.13-acre commercial use area (3,000 square feet) with a demonstration garden (xeriscape plants) at the entrance to the community. The Project does not materially change the development intensity that was originally envisioned for the Project.
- 2) Table II-1 of the Virada Specific Plan, incorporated into this Resolution as if set forth in full, provides a comprehensive analysis of the General Plan policies and goals that the Project is consistent with. The Planning Commission concurs in the conclusions of the Virada Specific Plan’s General Plan consistency analysis and concludes that the Project is consistent with the General Plan.

- 3) The Indio Code of Ordinances seeks to have consistency between zoning classifications and the corresponding General Plan land use designations. The Project will not significantly change the approved land uses and the development regulations in keeping with the originally approved Fiesta de Vida planned community. The Project is subject to ordinance approval by the City Council and would create the proper zoning designations and regulations for each planning areas within the planned community. Therefore, the Project is consistent with the Indio Code of Ordinances, in that the proposed development standards meet the requirements for residential, public and commercial developments in the zone.

Section 3. Based on the foregoing findings, the Planning Commission hereby recommends that the City Council adopt an ordinance approving Specific Plan 16-1-32 and Project Master Plan 16-1-57, known as the Virada SP/PMP.

Section 4. The Planning Commission Secretary shall certify to the passage, approval, and adoption of this Resolution.

PASSED, APPROVED, and ADOPTED this 9th day of November, 2016 by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

GLORIA R. FRANZ
PLANNING COMMISSION CHAIR

ATTEST:

EVELYN BELTRAN
PLANNING COMMISSION SECRETARY

Attachment D

Resolution 1780

Tentative Large Lot Tract Map 37224 (TM 16-4-171)

RESOLUTION NO. 1780

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE LARGE-LOT TENTATIVE TRACT MAP 37224 (TTM 16-4-171) TO SUBDIVIDE APPROXIMATELY 656.34 ACRES INTO 38 LOTS WITHIN THE VIRADA SPECIFIC PLAN, GENERALLY LOCATED AT THE NORTHERN TERMINUS OF ADAMS STREET, NORTH OF AVENUE 38 AND EAST OF THE SUN CITY PALM DESERT COMMUNITY, ASSESSOR'S PARCEL NUMBERS: 750-210-003 THROUGH 011, AND 752-030-020 THROUGH 023

WHEREAS, on January 8, 2016, Presidio Mana Indio, LLC ("Applicant") filed an application for a Large-Lot Tentative Tract Map (TTM 37224) in conjunction with an amendment to the Fiesta De Vida Specific Plan (SP 05-02-14) and Project Master Plan (PMP No. 05-02-40), which rename these plans as the Virada Specific Plan (SP 16-1-32) and Project Master Plan (PMP 16-1-57), respectively (collectively, the "Project"); and

WHEREAS, the property is approximately 656.34 acres and is located at the northern terminus of Adams Street, north of Avenue 38 and east of the Sun City Palm Desert community, in the City of Indio, Assessor's Parcel Numbers: 750-210-003 through 011, and 752-030-020 through 023 ("Project Site"); and,

WHEREAS, on July 15, 2005, the current Fiesta de Vida Specific Plan was approved by Amendment No. 1 of Specific Plan 231 as a phased development of 656.3 acres and included Large-lot Tract Map No. 33276 (TM 05-02-424) to subdivide the in the Project Site into 25 lots for the Fiesta de Vida project. Tentative Tract Map 33276 expired in September 2016; and,

WHEREAS, the proposed Large-Lot Tentative Tract Map (TTM 37224) would replace the expired Large-lot Tract Map No. 33276. TTM 37224 would subdivide the 656.34-acre Project Site into 38 lots, with approval of the Planning Commission and City Council, the Tentative Tract Map will be further subdivided for separate project developments of each Planning Area within the Virada Specific Plan.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA), an Initial Study/Mitigated Negative Declaration ("MND") (EA 16-4-528) has been prepared for the Project. The MND determined that although the uses of the proposed project could result in significant environmental impacts, all impacts could be mitigated to a less than significant level. The Public Review of the Draft Initial Study and Notice of Intent to Adopt a MND was completed on July 5, 2016. All comments received were reviewed and responses were prepared and disseminated on October 31, 2016, as part of the Final MND. By Resolution No. 1778, the Planning Commission

has recommended that the City Council approve the MND and accompanying mitigation monitoring and reporting program.

WHEREAS, the City processed the Tentative Tract Map pursuant to the State Subdivision Map Act and the Subdivision Ordinance of the City of Indio; and,

WHEREAS, on November 9, 2016, the Planning Commission held a duly noticed public hearing meeting to consider the application for the tentative tract map. Evidence both written and oral, including the staff report and supporting documents, was presented at the said hearing. At the conclusion of the hearing, the Planning Commission adopted this resolution to recommend that the City Council approve Tentative Tract Map 37224.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, HEREBY RESOLVES, FINDS AND DETERMINES AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in the recitals of this Resolution are true and correct.

Section 2. Based upon the evidence presented at the hearing, including the staff report, the Planning Commission hereby finds:

1. The proposed Tentative Tract Map 37224, is consistent with the goals and objectives of the Indio General Plan 2020 ("General Plan") for the reasons specified in Chapter II, Table II-1 of the Virada Specific Plan, incorporated herein by reference as if set forth in full. The City's General Plan land use designation of "Specific Plan" allows a variety of residential communities with associated Parks and commercial (mixed-use) developments. Further, as conditioned, the proposed subdivision will meet the minimum lot width and area requirements of the residential development standards set forth in the Virada SP and PMP Zoning District as well as the density ranges set forth in the General Plan. Thus, the Planning Commission finds that Tentative Tract Map 37224, including as its proposed design and improvements, is consistent with the goals and objectives of the General Plan and the Virada Specific Plan.
2. The design and improvements of the proposed subdivision would be consistent with the General Plan and Virada Specific Plan. As conditioned, the proposed subdivision will meet the minimum lot width and area requirements of the residential development standards set forth in the Virada SP and PMP Zoning District as well as the density ranges set forth in the General Plan. Thus, the Planning Commission finds that the design and improvements of the proposed subdivision would be consistent with the Zoning Ordinance, the General Plan, and the Virada Specific Plan.

3. The Project Site is physically suitable for the type of development proposed. The Tentative Tract Map will be developed similar to the Fiesta de Vida residential neighborhoods that were previously approved for the Project Site. Currently, the parcel is vacant and will be graded according to the approved grading plans to accommodate the proposed development. Thus, the Planning Commission finds that the site is physically suitable for this type of proposed development.
4. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and unavoidably injure fish, wildlife, or their habitats. The Mitigated Negative Declaration with Mitigation Monitoring Program prepared for the Project determined that although the proposed Project could have an impact on the environment, these impacts will be reduced to less than significant with the proposed mitigation measures. Based on all relevant evidence in the record, including the Final MND, the Planning Commission finds that the proposed subdivision and improvements are not likely to cause substantial environmental damage or substantially and unavoidably injure fish, wildlife, or their habitats.
5. The design of the subdivision and the proposed improvements are not likely to cause serious public health problems. The project will provide for adequate drainage and flood control systems as part of the Virada Specific Plan and Project Master Plan. The design of the subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. The proposed map is also conditioned to require a Water Quality Management Plan for City approval prior to issuance of grading permit. The Applicant must also provide on-site water retention basins designed to the satisfaction of the Public Works Director/City Engineer. Thus, the Planning Commission finds that the design of the subdivision is not likely to cause serious public health problems.
6. The design of the subdivision and the type of improvements would not conflict with easements acquired by the public at large for access through the property as the site has been approved by the City for residential development. There are no known public easements traversing the subject site that would be adversely affected by the subdivision. Thus, the Planning Commission finds that the design and the type of improvements will not conflict with easements acquired by the public at large for access through or use of property in the site that has been approved by the City for residential development.

Section 3. Based on the foregoing findings, the Planning Commission hereby recommends approval of the Tentative Tract Map 37224, subject to the following conditions:

CONDITIONS OF APPROVAL

PLANNING DIVISION:

1. Approval of the final map shall be based on the approved Large-Lot Tentative Tract Map 37224, which is attached hereto as Exhibit "F" and incorporated herein by this reference, and as conditioned herein. Where the term "Applicant" is used in any condition of approval, this term shall apply also to the Property owner, any developer, or any successor in interest of the Applicant.
2. Tentative Tract Map 37224 covers property subject to a development agreement and shall be extended for the period of time provided for in the development agreement, in accordance with the City of Indio Subdivision Ordinance and the State of California Subdivision Map Act
3. The Applicant shall comply with all mitigation measures identified in the Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program, as stipulated in Environmental Assessment (EA 16-4-528) prepared for the Virada project.
4. The Applicant shall annex the subdivision into the existing Community Facilities District 2004-1 for public facilities and/or public services. The Applicant shall cause a covenant to be recorded on all residential lots within Tentative Tract Map 37224 advising of the owner's obligation to participate in the Community Facilities District for said public facilities and/or public services.
5. The Applicant shall submit CC&R's in a form acceptable to the City Attorney for the proposed subdivision. The CC&R's shall include provisions for the creation of a master homeowner's association and for adequate maintenance of all the common area improvements on the site, including all roadways, perimeter fencing, lighting, landscaping and irrigation. The Applicant may fulfill this condition by incorporating the lots created by this subdivision into the master homeowner's association for the Virada SP and PMP. The CC&R's shall be submitted for review by the Development Services Department Director prior to the recordation of the Tentative Tract Map. The Applicant shall submit a deposit of \$700 to cover legal costs incurred by the City in its review of CC&Rs and related documents prior to their recordation.
6. The Applicant shall, within 30 days after approval of this Resolution, submit to the Development Services Director its written consent to all of the conditions of approval contained in this Resolution without amendment. This approval shall be void and of no force or effect unless such written consent is submitted to the City within the 30 day period.

7. The Applicant shall cause to be recorded against the subject property these and all related conditions of approval with the Riverside County Recorder.
8. The CC&R's shall be recorded prior to the recordation of the Final Tract Map.
9. The Applicant shall construct perimeter walls, fences and landscaping as delineated in the SP/PMP and approved plans, prior to the recordation of the Tentative Tract Map areas (if applicable). A wall and fence plan shall be submitted to the Development Services Department as a part of the final landscaping plan.
10. The Applicant shall satisfy Planning Division, Building and Safety Division, Public Works Department, Fire Department and Coachella Valley Water District requirements. It is the responsibility of the Applicant to review this project with the noted departments and agencies.
11. Tentative Tract Map 37224 (TTM 16-4-171) is approved for financing, leasing and selling purposes only. The approval is contingent upon approval of the Virada Specific Plan (SP 16-1-32), Project Master Plan (PMP16-1-57) and Development Agreement (16-07-36).
12. The property owner or successor in interest shall participate in any future City-initiated LLD or similar District. The subdivider shall cause a covenant to be recorded on all lots within Tentative Tract Map 37224 advising of the owner's obligation to participate in any future LLD and similar district for such public facilities or public services.
13. The Applicant shall pay all applicable Quimby and Development Impact Fees pursuant to City Ordinance and as required at the time payment is due.
14. In the event of any court action or proceeding challenging the approval of this resolution or otherwise challenging the Project, or the environmental review conducted in conjunction with this Project, the Applicant shall defend, at its own expense, the action or proceeding. In addition, the Applicant shall reimburse the City for the City's cost of defending any such court action or proceeding. The Applicant shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. The Applicant shall cooperate with the City in any such defense as the City may reasonably request and may not resolve such challenge without the agreement of the City. In the event the Applicant fails or refuses to reimburse the City for its cost to defend any challenge to the approval of the Project, or the environmental review conducted in conjunction with this Project, the City shall have the right, among other remedies, to revoke this tentative tract map. In order to ensure compliance with this condition, within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside,

void or annul the approval of this tentative tract map or the Project, the Applicant shall deposit with the City cash or other security in the amount of ten thousand dollars (\$10,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this condition. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, the Applicant shall restore the deposit to its original amount within thirty (30) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit is necessary to secure the obligations of this section, the Applicant shall provide such additional security within thirty (30) days of notice from the City Attorney. The City shall promptly notify the Applicant of any claim, action or proceeding within the scope of this condition.

PUBLIC WORKS CONDITIONS:

Environmental Engineering

15. The Applicant shall comply with National Pollution Discharge Elimination System (NPDES) requirements per State regulations.
16. Applicant shall submit PM10 implementation plans for City approval. The Applicant shall also submit to the South Coast Air Quality Management District (SCAQMD) all grading plans for land greater than 10 acres in size.
17. Applicant shall submit a Water Quality Management Plan for City approval prior to issuance of grading permit.

Mapping Requirements

18. Applicant shall submit a copy of the Final Map to Coachella Valley Water District (CVWD) for its review and shall obtain a clearance letter from CVWD prior to recordation of Final Map.
19. Tentative tract map shall be submitted to the City along with the following items:
 - a. Soils report
 - b. Title Report
 - c. Preliminary grading plan (Topo/contour on map)
 - d. Hydrology report
 - e. Preliminary traffic impact report
 - f. Utility master plan
20. Applicant shall submit for City approval the following items:
 - a. Final tract map
 - b. Title report (updated within at least 60 days)

- c. Final map closure calculations
 - d. AutoCAD and GIS Shape File for Tract Map
 - e. All back-up information for map references (easement documents, maps, etc.)
21. Final tract map shall include:
- a. Street names
 - b. Subdivision Improvement Agreements
 - c. Improvement bonds
22. Applicant shall provide a 10-foot public utility easement along both sides of the interior streets in addition to an easement over the entire street width.

Grading Requirements

23. Applicant shall submit for City approval the following items:
- a. Precise grading plans – shall include the street address for each lot and building foot prints
 - b. Rough grading plans
 - c. Soils report
24. Retaining walls shall be required at elevational differences greater than 12 inches between lots throughout the project and in relation to adjacent boundary properties, unless otherwise approved by the City Engineer.

Curb/Guttering and Demolition Requirements

25. Applicant shall:
- a. Dispose of all concrete and asphalt removals within the site to an approved recyclable site.
 - b. Provide City of Indio Public Works Department with a copy of receipt showing tonnage for the disposal of recyclable concrete and asphalt.
 - c. Dispose of all material removals within the site to an approved disposal site.

Landscaping and Irrigation Requirements

26. Applicant shall submit landscape and irrigation plans for City approval.
27. The Applicant shall form a property owners association for the maintenance of:
- a. All interior and exterior common areas including landscaping.
 - b. Graffiti abatement for the interior and exterior or the preceding areas.
 - c. Maintenance of all frontage street median landscaping on Lots "C", "D", "E", and "F" as shown on Tentative Tract Map No. 37224 .

- d. Maintenance of all frontage landscaping.
- 28. A copy of the Covenant, Conditions, and Restrictions (CC&Rs) shall be submitted to the Public Works Engineering Division and Planning Department for review and approval with maintenance provisions flagged.
- 29. The CC&Rs shall be recorded prior to recordation of final tract map.
- 30. Applicant shall form a Landscaping, Lighting, and Maintenance District prior to the recordation of the Final Map for the maintenance of the park, shown as Lot "X" and trails shown as Lots "EE" and "FF" on Tentative Tract Map No. 37224; and all frontage street parkways; and medians landscaping and lighting on Coyote Song Way and Adams Street.

Street Requirements

- 31. Applicant shall submit for City approval the following items:
 - a. Street improvement plans
 - b. Streetlight plans
 - c. Composite utility plans
- 32. Applicant shall construct full off-site street improvements on the following public streets:
 - a. Adams Street, full street improvements (both sides) along the project frontage
 - b. Adams Street, east half street improvements from the fully improved section on the south, approximately 3,600 feet, to the project southerly limits, applicant shall be also be responsible for obtaining the required right-of-way for the improvements.
 - c. Coyote Song Way, full street improvements (both sides)
- 33. Applicant shall submit an updated traffic study to reflect recommended traffic mitigations for review and approval by City of Indio Traffic Engineer. Applicant must comply with the recommended traffic mitigations.
- 34. Applicant shall be responsible for installing traffic signals at proposed entrances, if required by the traffic study as part of the traffic mitigations.
- 35. The minimum street width for proposed private streets shall be 41 feet.
- 36. All improvements shall comply with City standards, requirements and policies. Applicant is required to construct all transition and missing links between existing and proposed improvements.

37. Applicant shall construct full off-site street improvements on both sides of private streets shown as Lots "C", "D", "E", and "F" on Tentative Tract Map No. 37224.
38. The improvements shall include construction of asphalt concrete pavement, curb/gutter, sidewalk, streetlights, storm drain system (catch basins, storm drain pipe, etc.), and fully landscaped and irrigated parkways and raised curb medians along the property frontage.
39. Adams Street and Coyote Song Way shall be constructed as an 88 feet wide street with 60 feet from curb to curb as shown on Tentative Tract Map No. 37224.
40. Lots "C" and "E" shall be constructed as a 74 feet wide "collector street" as shown on Tentative Tract Map No. 37224.
41. Majority of Lot "D", shall be constructed as an 82 feet wide "collector street" and a portion of Lot "D" as a 74 feet wide "collector street" as shown on Tentative Tract Map No. 37224.
42. Lot "F" shall be constructed as an 88 feet wide street as shown on Tentative Tract Map No. 37224.
43. All off-site street improvements including energizing of street lights and installation of irrigation and landscaping along:
 - a. Adams Street and Coyote Way shall be constructed and accepted by the City prior to issuance of any temporary or permanent certificate of occupancy.
 - b. Lots "C", "D", "E", and "F" as shown on Tentative Tract Map No. 37224 shall be constructed and accepted by the City prior to issuance of any temporary or permanent certificate of occupancy.
44. Adams Street and Coyote Way shall be constructed and accepted by the City prior to issuance of any temporary or permanent certificate of occupancy.
45. Lots "C", "D", "E", and "F" as shown on Tentative Tract Map No. 37224 shall be constructed and accepted by the City prior to issuance of any temporary or permanent certificate of occupancy.
46. Dedicate the required right-of-way along:
 - a. Adams Street and Coyote Way to City of Indio, per general plan for an 88 feet wide street with 60 feet from curb to curb as shown on Tentative Tract Map No. 37224.
47. Applicant shall obtain an encroachment permit prior to starting any street improvements within the public right-of-way.

48. All street knuckles shall be per City of Indio Standard Plan No. 142 and street cul-de-sacs shall be per City of Indio Standard Plan No. 140.
49. The minimum grade on all proposed streets shall be 0.50%.
50. The corner cutback at intersections shall comply per City standards and to the satisfaction of the City's Traffic Engineer.
51. The minimum curb return radius for public streets shall be:
 - a. R=35 feet and for
 - b. Private streets R=20 feet
52. The minimum street width for proposed private street shall be 41 feet.
53. Applicant shall remove existing temporary cul-de-sac at the east end of Coyote Song Way and repave and construct curb and gutter on both sides.
54. Provide sight distance at all street intersections acceptable to the City's Traffic Engineer.
55. Applicant shall incorporate traffic calming measures throughout the project acceptable to the City's Traffic Engineer.
56. The proposed project shall comply with American with Disabilities Act (ADA) requirements.
57. Street addresses shall be shown on Precise Grading Plans.
58. All improvements shall comply with City standards, requirements and policies. Applicant is required to construct all transition and missing links between existing and proposed improvements.

Drainage Requirements

59. Applicant shall use Riverside County Flood Control District standards and submit local on-site and regional hydrology, hydraulic storm calculations for City review and approval.
60. Applicant shall provide:
 - a. On-site storm water retention basin(s) or system(s) designed to the satisfaction of the City Engineer. Each retention basin shall include a sufficient number of underground vertical drywells designed to eliminate standing water in the basin. The retention basin shall be sized to retain all post-development storm water runoff within the limits of the project based

on a 100-year storm event of 24-hour duration and shall completely drain/percolate any storm event within 72 hours. All upstream runoff from adjacent properties that has historically been directed onto the proposed project may be considered to pass through the project with the exception of historical retention that occurred on-site. The retention basin shall be designed with a maximum depth of 5 feet and maximum side slopes of 3:1 and shall not be used for purposes other than for the collection of storm water, nuisance water and well blow-off water.

- b. A final hydrology study shall be provided which includes, in tabular form, the final retention provided for each tract versus the required retention from the preliminary hydrology study. The overall retention for the site must meet the project retention requirements from the preliminary hydrology study.
 - c. Applicant shall provide Reciprocal Drainage Easements for cross-lot drainage.
- 61. The design of the project lot pads, street improvements and the storm drainage improvements shall be design coordinated with all adjacent projects or properties to the satisfaction of the City Engineer.
 - 62. Applicant shall submit and get approved by FEMA a Conditional Letter of Map Revision (CLOMR) prior to the issuance of a grading permit.
 - 63. Applicant shall submit and get approved by FEMA a Letter of Map Revision (LMOR) removing the project site from a Special Flood Hazard Area (Flood Zone 'A' and 'AO') prior to the issuance of a building permit.
 - 64. Applicant shall obtain a approval letter from Coachella Valley Water District (CVWD) for all Regional Flood Control Design and Improvements.

Traffic Requirements

- 65. Applicant shall submit a traffic study for review and it shall be approved by the City's Traffic Engineer prior to the recordation of Final Map and Applicant shall comply with all required mitigations.
- 66. Applicant shall be responsible for installing any and all traffic signals, if required by the traffic study, as part of the traffic mitigations.

Specialty Requirements

- 67. All grading and pad elevations will be subject to approval of the Director of Development Services and the City Engineer based on grading plans and additional information to be submitted during plan check. Pad elevations shown

on the Tentative Tract Map No. 37224 are for reference only and may be required to be changed.

68. All overhead utilities less than 92kv, located within the project boundaries, bordering the project and/or fronting the project shall be undergrounded.
69. Applicant shall comply with the Aquist-Priolo Earthquake Fault Zoning Act prior to the recordation of Final Map.

FIRE DEPARTMENT CONDITIONS:

Single Family Residential Units:

70. Provide or show there exists a water system capable of delivering a fire flow in any case no less than 1500 gallons per minute for a two hours duration at 20 psi residual operating pressure, which must be available before any combustible material is placed on the construction site.
71. Approved accessible fire hydrants, shall be located at each street intersection, cul-de-sac, and spaced not more than 500 feet apart in any direction, with no portion of any lot frontage more than 250 feet from a fire hydrant.
72. Prior to building plan approval and construction, the Applicant shall furnish one copy of the water system fire hydrant plans to Indio Fire Services for review and approval. Plans shall be signed by a registered civil engineer, and shall conform to hydrant type, location, spacing, and minimum fire flow. Once plans are signed and approved by the local water authority, the originals shall be presented to the Fire Department for review and approval.
73. Prior to issuance of building permits, the water system for fire protection must be provided as approved by Indio Fire Services and the local water authority. A fire flow verification test shall be obtained from the local water purveyor and submitted to the Indio Fire Prevention Bureau for approval prior to any combustible material placed on the property/lot.
74. The required water system, including fire hydrants, shall be installed and accepted by the appropriate water agency prior to any combustible building material placed on the property/lot.
75. The Applicant shall mount blue retro reflective pavement markers on private streets, public streets and driveways to indicate location of fire hydrants. Prior to installation, the Indio Fire Services must approve placement of markers.

76. The installation of the on-site water system shall comply with all requirements of NFPA 24 and the California Fire Code 2013 edition and City of Indio Water Standard and drawings.
77. Super fire hydrant required (6" X 4" X 2 ½" X 2 ½ "). The valve stem of the 4" discharge shall be a minimum 18" above final grade, which means hydrant screw plate shall be above final grade.
78. All Streets shall be a minimum 40 feet wide for parking on both sides. The Applicant may construct 37 foot wide streets with parking only on one side of the street, provided that the narrower street conforms to all applicable City standards, which would be require of wider streets.
79. All proposed traffic calming elements for this development shall be submitted to the Fire Department for review and approval.
80. Gate entrances shall be a minimum 16 feet wide and at least 2 feet wider than the traffic lanes serving that gate. Any gate providing access from a road to a driveway shall be located at least 35 feet setback from the roadway and shall open to allow vehicle to stop without obstructing traffic on the road. When a one-way road with a single traffic lane provides access to a gate entrance, a 40' turning radius shall be used.
81. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provision for the turnaround capabilities of fire apparatus.
82. There shall be provided a second Fire Department and public access/egress for each gated and or non-gated community development.
83. Driveway loops, fire apparatus access lanes and entrance curb radius should be designed to adequately allow access of emergency fire vehicles. The Applicant or developer shall prepare and submit to the Fire Department for approval; a site plan designating required fire lanes with appropriate lane printing and/or signs. Required identification standard/guidelines handout shall be obtained from the Indio Fire Prevention Bureau.
84. Flag lots are shall be prohibited due to complications with accessibilities.
85. All addressing shall conform to City of Indio Municipal Code Sections 151.135 through 151.138 (Official Numbering System).
86. During the construction of this project, the site address shall be clearly posted at the job site entrance. This will enable incoming emergency equipment and the inspectors to locate the job site from the assigned street location. Numbers shall

be a minimum of 24 inches in height. Fire safety during construction shall be in accordance with California Fire Code Chapter 33.

87. Install a complete automatic fire sprinkler system for one and two family dwellings per NFPA 13D & California Residential Code.
88. Final conditions will be addressed when complete buildings plans are reviewed.
89. Additional requirements may be required based on future plan submittals.
90. Conditions subject to change with adoption of new codes, ordinances, or when buildings permits are not obtained within twelve (12) months.

Multi-Family Dwellings Units and Commercial Development:

91. Provide or show there exists a water system capable of delivering a fire flow of 4,000 gallons per minute for four hour duration at 20-psi residual operating pressure, which must be available before any combustible material is placed on the construction site. The above fire flow gpm is based on type V-B construction and includes a 50% reduction/credit, provided a fire sprinkler system is installed. Due to construction type and sprinkler credits, additional and/or less fire flow capabilities may be changed, but this will be determined and based on future building plans.
92. Approved accessible on site fire hydrants shall be located not to exceed 400 feet apart in any direction as measured by an approved route around the complex, exterior of the facility or building and Appendix C. Fire hydrants shall provide the required fire flow.
93. Prior to building plan approval and construction, the Applicant shall furnish one copy of the water system fire hydrant plans to Indio Fire Services for review and approval. Plans shall be signed by a registered civil engineer, and shall conform to hydrant type, location, spacing, and minimum fire flow. Once plans are signed and approved by the local water authority, the originals shall be presented to the Fire Department for review and approval.
94. Prior to issuance of building permits, the water system for fire protection must be provided as approved by Indio Fire Services and the local water authority. A fire flow verification test shall be obtained from the local water purveyor and submitted to the Indio Fire Prevention Bureau for approval prior to any combustible material placed on the property/lot.
95. The Applicant shall mount blue retro reflective pavement markers on private streets, public streets and driveways to indicate location of fire hydrants. Prior to installation, the Indio Fire Services must approve placement of markers.

96. The required water system, including fire hydrants, shall be installed and accepted by the appropriate water agency prior to any combustible building material placed on the property/lot.
97. For the purpose of final acceptance, an additional fire flow test of the on-site hydrants shall be conducted by the builder/developer and witnessed by the fire department personnel after construction and prior to occupancy.
98. The installation of the on-site water system shall comply with all requirements of NFPA 24 and the California Fire Code 2013 edition and City of Indio Water Standard and drawings.
99. No combustibles shall be brought on site prior to the on-site water system being installed and approved by the Indio Fire Services
100. Super fire hydrant required (6" X 4" X 2 ½" X 2 ½ "). The valve stem of the 4" discharge shall be a minimum 18" above final grade, which means hydrant screw plate shall be above final grade.
101. Access lanes will not have an up, or downgrade of more than 12%. (access will not be less than 24' in width.) and will have an unobstructed vertical clearance not less than 13'6". Access lanes will be designed to withstand the weight of eighty thousand (80,000) pounds over 2 axles. Access will have a turning radius capable of accommodating fire apparatus. Access lane shall be constructed with a surface so as to provide all weather driving capabilities. Streets shall be constructed in accordance with Indio City Street Standards.
102. Gate(s) shall be at a minimum 20 feet wide and power controlled or manual and gate access shall be equipped with a rapid entry system approved by the Fire Department. Plans shall be submitted to the Fire Department for review/approval prior to installation. Power controlled gates shall be equipped with emergency backup power and designed to be easily opened in the event of a power failure. Non-powered type gates shall have a means of emergency access approved by the Fire Department. Gates activated by the rapid entry system shall remain open until closed by the rapid entry system. Required order forms shall be obtained from Fire Department.
103. If no gates are to be installed on project site, the following statement shall be on plans, "NO GATES WILL BE INSTALLED TO RESTRICT THE FLOW OF TRAFFIC".
104. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provision for the turnaround capabilities of fire apparatus.

105. Driveway loops, fire apparatus access lanes and entrance curb radius should be designed to adequately allow access of emergency fire vehicles. The Applicant shall prepare and submit to the Fire Department for approval; a site plan designating required fire lanes with appropriate lane printing and/or signs. Required identification standard/guidelines handout shall be obtained from the Indio Fire Prevention Bureau.
106. Fire apparatus access shall be provided when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet from fire apparatus access as measured by an approved route around the exterior of the building or facility.
107. An approved Fire Department access key lock box (Minimum Knox Box 3200 series model) shall be installed next to the approved Fire Department access door to the building. If the buildings are protected with an alarm system, the lock box shall be required to have tampered monitoring. Required order forms and installation standards may be obtain at the Fire Department.
108. Display street numbers in a prominent location on the address side of building(s) and/or rear access if applicable. Numbers and letters shall be a minimum of 12" in height for building(s) up to 25' in height. Numbers and letters shall be a minimum of 24" in height for building(s) over 25' in height. In complexes with alpha designations, letter size must match numbers. All addressing must be legible, of a contrasting color, and adequately illuminated to be visible from street at all hours.
109. Approved addressing shall be provided for all new and existing buildings in such a position to be plainly visible and legible from the street or road fronting the property.
110. During the construction of this project, the site address shall be clearly posted at the job site entrance. This will enable incoming emergency equipment and the inspectors to locate the job site from the assigned street location. Numbers shall be a minimum of 24 inches in height. Fire safety during construction shall be in accordance with California Fire Code Chapter 33.
111. Install a complete commercial fire sprinkler system (per NFPA 13). Fire sprinkler system(s) with pipe sizes in excess of 4" in diameter will require the Project Structural Engineer to certify (wet signature) the stability of the building system for seismic and gravity loads to support the sprinkler system. All fire sprinkler risers shall be protected from any physical damage. The post indicator valve and Fire Department connection shall be located to the front, within 50 feet of hydrant, and a minimum of 25 feet from the building(s). Sprinkler riser room must have indicating exterior and/or interior door signs. Plans must be submitted with

current fee to the Fire Department for review and approval prior to installation. Contact Fire Department for guideline handout.

112. The Applicant shall be responsible to install a U. L. Central Station Monitored Fire Alarm System, per NFPA 72. Monitoring system shall monitor the fire sprinkler system(s) water flow, P. I. V. 's and all control valves. Plans must be submitted with current permit fee to the Fire Department for review and approval prior to installation.
113. Conditions subject to change with adoption of new codes, ordinances, or when buildings permits are not obtained within twelve (12) months.
114. Final conditions will be addressed when complete buildings plans are reviewed.
115. Additional requirements maybe required based on future plan submittals.

COACHELLA VALLEY WATER DISTRICT (CVWD) CONDITIONS:

116. The developer shall comply with CVWD Ordinance 1234.1, Riverside County Ordinance 458 and California Drainage Law in the preparation of regional and on-site flood protection facilities for this project. Flood protection measures shall include detailed hydrologic and hydraulic analysis of off-site flows and plans for flood protection. Flood protection measures may include design and construction of flood conveyance facilities.
117. The project area is shown to be subject to shallow flooding and is designated Zone A and Zone AO with depths 2 feet on Federal Flood Insurance rate maps, which are in effect at this time. Prior to issuance of grading permits, submit construction plans for the proposed flood control facilities and a detailed hydrological and hydraulic design report for review and approval.
118. Obtain a Conditional Letter of Map Revision (CLOMR) through the Federal Emergency Management Agency.
119. Execute an agreement with CVWD, which shall include provisions outlined in CVWD Ordinance No. 1234.1.
120. Submit to CVWD a Flood Control Facility Operations and Maintenance Manual for review and approval.
121. Grant flooding easements over the flood control facilities in a form and content reasonably acceptable to CVWD.

122. Prior to occupancy, the Developer shall Submit "as-built" topography, construction drawings and engineering analysis for CVWD review to verify that the design capacity is adequate following the completion of the construction of the flood control facilities.
123. Obtain a Letter of Map Revision (LOMR) through the Federal Emergency Management Agency, which removes the development from the special flood hazard area.
124. Flood protection measures for local drainage and regional flood shall comply with California Drainage Law and provide that stormwater flows are received onto and discharged from this property in a manner that is reasonably compatible with predevelopment conditions.

Section 4. The Planning Commission Secretary shall certify to the passage, approval, and adoption of this Resolution.

PASSED, APPROVED, and ADOPTED this 9th day of November, 2016 by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

GLORIA R. FRANZ
PLANNING COMMISSION CHAIR

ATTEST:

EVELYN BELTRAN
PLANNING COMMISSION SECRETARY

Attachment E

Tentative Large Lot Tract Map 37224

Attachment F

Resolution 1783

Development Agreement (DA 16-07-36)

RESOLUTION NO. 1783

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF INDIO, AND PRESIDIO MANA INDIO, LLC FOR THE PROPOSED VIRADA DEVELOPMENT.

WHEREAS, Presidio Mana Indio ("Developer"), a California Municipal Corporation, desires to enter into a development agreement (herein referred to as the "Development Agreement") with the City of Indio ("City"), a draft version of which is attached to this Resolution as Exhibit A, in connection with a development project entitled "Virada", which includes a new Project Master Plan and Specific Plan representing land use regulations, development standards and design guidelines for the future development of 1,287 residential units, community park, commercial and other associates developments on 656.34 acres.

WHEREAS, Developer seeks to execute the Development agreement in order to create beneficial development in the City that might otherwise not occur and which will conform to and complement the City's goals and provide for the development of approximately 656 acres of land located in the Shadow Hills area in the northwest portion of the City.

WHEREAS, the Planning Commission has reviewed the potential impacts and the various potential benefits and obligations to the City of the proposed Development Agreement and has concluded that the development proposed by Developer is in the City's best interests and constitutes sufficient consideration to support the development and vested rights authorized and provided for in the Development Agreement.

WHEREAS, On November 9, 2016, the Planning Commission held a duly noticed public hearing to consider the proposed Development Agreement. Evidence both written and oral, including the staff report and supporting documents, was presented at the said hearing. At the conclusion of the hearing, the Planning Commission adopted this Resolution 1783 recommending City Council approval of the Development Agreement.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF INDIO, CALIFORNIA, HEREBY RESOLVES, FINDS AND DETERMINES AS FOLLOWS:

Section 1. That the above recitals and findings are true and correct, are incorporated herein by this reference inclusive of all definitions, and constitute the findings of the Planning Commission in this case.

Section 2. Findings:

1. The above recitals are true and correct and are hereby incorporated by

reference, inclusive of all definitions and exhibits referenced.

2. The Planning Commission finds that the provisions of the Development Agreement are consistent with the City of Indio General Plan 2020 (“General Plan”) and comply with its objectives and policies including the objective of providing a diversity of residential opportunities and lifestyles, such as master-planned communities, that fit the current and future needs of Indio. The Development Agreement is consistent with the densities and uses for the Site specified in the General Plan and proposed Virada Specific Plan. The Development Agreement therefore implements the terms of the General Plan, the proposed Virada Specific Plan, and City ordinances, and does not allow development except in conformance with the General Plan.
3. The Development Agreement is consistent with the Zoning Ordinance of the City of Indio, compatible with the present and future logical growth of the Site (as envisioned in the Indio General Plan 2020), and designed to protect and promote the public health, safety and welfare.
4. Pursuant to Section 65867.5 of the Development Agreement Act, the Planning Commission has found and determined that: (i) this Development Agreement implements the goals and policies of City’s General Plan, provides balanced and diversified land uses, and imposes appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within City; (ii) this Development Agreement is in the best interests of and not detrimental to the public health, safety and general welfare of the City and its residents; (iii) adopting this Development Agreement is consistent with City’s General Plan, and each element thereof, and constitutes a present exercise of City’s police power; and (iv) this Development Agreement is being entered into pursuant to and in compliance with the requirements of Government Code Sections 65867 and 65867.5 of the Development Agreement Act.
5. Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Initial Study/Mitigated Negative Declaration (“MND”) (EA 16-4-528) has been prepared for the Project. The MND determined that although the uses of the proposed project could result in significant environmental impacts, all impacts could be mitigated to a less than significant level. The Public Review of the Draft Initial Study and Notice of Intent to Adopt a MND was completed on July 5, 2016. All comments received were reviewed and responses were prepared and disseminated on October 31, 2016, as part of the Final MND. By Resolution No. [XXXX], the Planning Commission has recommended that the City Council approve the MND and accompanying mitigation monitoring and reporting program

Section 3. The Planning Commission recommends that the City Council approve the Development Agreement. Approval of the Virada Development Agreement

will cancel the Fiesta de Vida Development Agreement.

Section 3. The Planning Commission Secretary shall certify to the passage, approval, and adoption of this Resolution.

PASSED, APPROVED, and ADOPTED this 9th day of November, 2016 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

GLORIA R. FRANZ
PLANNING COMMISSION CHAIR

ATTEST:

EVELYN BELTRAN
PLANNING COMMISSION SECRETARY

Attachment G

Development Agreement

Virada Specific Plan and Project Master Plan

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Indio
100 Civic Center Mall
P.O. Box Drawer 1788
Indio, CA 92202
Attention: City Clerk

Fee Exempt - Gov't Code §6103
(Space above for Recorder's Use)

DEVELOPMENT AGREEMENT

(VIRADA)

between

THE CITY OF INDIO,
a California Municipal Corporation

and

PRESIDIO MANA INDIO, LLC,
a Delaware Limited Liability Company

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 2016, by and among the City of Indio, a California municipal corporation (the “**City**”) and Presidio Mana Indio, LLC, a Delaware limited liability company (“**Developer**”). The City and the Developer are individually referred to herein as a “**Party**” and collectively referred to as the “**Parties**.”

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

A. The Developer is the fee owner of certain real property comprising approximately six hundred and fifty-six (656) acres located in the Shadow Hills area in the northwest portion of the City of Indio, California (the “**Project Site**” or “**Property**”), which Project Site is more particularly described on **Exhibit A** attached hereto and incorporated herein. The Project Site was previously annexed into the City, and is approximately 1 mile north of Avenue 38 and 1.1 miles east of Washington Street.

B. Developer desires to develop the Project (as hereafter defined).

C. Developer has applied to the City for approval of this mutually binding Agreement, pursuant to the provisions of the Development Agreement Act (as hereafter defined) and Resolution 5294 adopted by the City Council of the City of Indio (the “**City Council**”) on May 17, 1989 (the “**Development Agreement Resolution**”) and other applicable laws.

D. The Property was previously the subject of the Fiesta de Vida Development Agreement dated September 21, 2005 and recorded in the Riverside County Records Office as Document No. 2005-0861871(Fiesta de Vida Development Agreement). Although the Fiesta de Vida Development Agreement has expired, Developer (as successor in interest thereto) desires that said development agreement be affirmatively cancelled by the Parties. Accordingly, the City and Developer intend to cancel the Fiesta de Vida Development Agreement as part of Developer’s application for this new Agreement.

D. In anticipation of the development of the Project, Developer has made or will make application to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation, (1) a specific plan/project master plan, (2) a large lot tentative tract map, and (3) an application for a development agreement for the Project under the Development Agreement Act.

E. The Developer has, as of the Effective Date, submitted and received approval of the Project Approvals (as hereinafter defined) allowing the implementation of the Project.

F. The City Council has specifically considered and approved the impact and benefits of this Project upon the welfare of the City, including its compliance with the requirements of the CEQA (as hereafter defined).

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

H. To provide such certainty, the City desires, by this Agreement, to provide the Developer with assurance that the Developer can proceed with the Project with the uses, density and other land use characteristics specified in the Project Approvals. The Developer would not enter into this Agreement, or agree to provide the public benefits and improvements described therein, without the City's agreement that the Project can be implemented, during the term of this Agreement, with the uses and other land use characteristics specified in the Project Approvals.

I. The City has determined that, as a result of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public, including without limitation, a master-planned residential community that will serve as a model for healthy, active, sustainable living in the City of Indio. As a master-planned residential community with 1,287 market-rate dwelling units in nine single-family and five multi-residential neighborhoods, the Project will provide a diverse community specifically designed to promote active living, environmental sensitivity and a commitment to a sustainable lifestyle. The Project will offer housing opportunities to a wide spectrum of buyers, including renters, first-time home buyers, young families and mature adults. Nearly 400 acres of the Project will be dedicated to open space and passive or active recreation. The Project amenities will include 166 acres of open space in the Indio Hills, a 107-acre community park with a wide variety of active recreation facilities, 3 neighborhood parks, drought-tolerant desert landscaping, a clubhouse and community center, and a community demonstration garden.

J. On November __, 2016, pursuant to the requirements of the Development Agreement Act and the Development Agreement Resolution ____, the Planning Commission of the City of Indio conducted a duly noticed public hearing on the Developer's application for this Agreement.

K. On _____, 2016, pursuant to the requirements of the Development Agreement Act and Development Agreement Resolution ____, the City Council conducted a duly noticed public hearing on the Developer's application for this Agreement.

L. The City Council has found and determined that this Agreement is consistent with the City's General Plan, the City's Zoning Code and all other plans, policies, rules and regulations applicable to the Project.

M. On _____, 2016, the City Council adopted Ordinance No. ____ approving this Agreement and such ordinance became effective on _____, 2016. (the "Authorizing Resolution").

N. An environmental review has been conducted and completed with regard to the Project and a Mitigated Negative Declaration has been prepared, circulated and adopted by City Council Resolution No. _____, in accordance with CEQA and State and local guidelines.

NOW THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Definitions.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following words and phrases shall be defined as set forth below:

1.1

“**Agreement**” means this Development Agreement, including all exhibits attached hereto and all amendments and modifications hereto.

1.2

“**Applicable Rules**” means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City’s Zoning Regulations, building regulations, and Project Approvals adopted as of the Effective Date. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

1.3

“**Authorizing Ordinance**” means Ordinance No. ____ approving this Agreement.

1.4

“**CEQA**” means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq), and, as applicable, Title 14 of the California Code of Regulations, Chapter 3, §15000, as they now exist or ay hereafter be amended.

1.5

“**Conditions of Approval**” shall mean those conditions of approval imposed by the City upon the Project Approvals.

1.6

“**Development Agreement Act**” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Section 65864 through 65869.5) of the

California Government Code (as the same may be amended and/or recodified from time to time).

- 1.7 **“Development Impact Fees”** means all fees, exactions and impositions established by City and/or the Indio Water Authority pursuant to Section 66000 et. seq. of the Government Code of the State of California or the California Subdivision Map Act to offset the impact of development on the City’s capital facilities, including impact fees, linkage fees, exactions, assessments or fair charges or other similar impact fees imposed by the City and/or Indio Water Authority on or in connection with new development. Developer Fees does not mean or include Processing Fees, taxes or special assessments and sewer and water connection fees. The Development Impact Fees applicable to the Project are set forth in **Exhibit B**.
- 1.8 **“Director”** means the City’s Development Services Director.
- 1.9 **“Discretionary Action(s)”** or **“Discretionary Approval(s)”** means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Permit or Ministerial Approval.
- 1.10 **“Dwelling Unit”** means each and any residential unit (including apartments, condominiums, townhomes and single family residences) contemplated by the Project Approvals and included as part of the Project.
- 1.11 **“Effective Date”** means the date the Authorizing Ordinance becomes effective.
- 1.12 **“Fire Station Parcel”** means Planning Area 9.
- 1.13 **“First Certificate of Occupancy”** shall mean the first certificate of occupancy (including a temporary or conditional certificate of occupancy) issued by City for any Dwelling Unit within the Project.
- 1.14 **“LLMD”** means a Landscaping and Lighting Maintenance District as defined in California Street and Highways Code Section 22500 et. seq.
- 1.15 **“Ministerial Permit(s)”**, or **“Ministerial Approval(s)”** means a permit or approval, including, but not limited to, building permits, grading permits, and certificates of occupancy, which require the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance

with applicable rules, statutes, ordinances, conditions of approval, and regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

- 1.16 “**Mortgage**” means any mortgage, deed of trust, encumbrance, sale leaseback or other security interest encumbering all or any portion of the Property given by Developer for the purpose of securing funds to be used for financing the acquisition of the Property or any portion thereof, the construction of improvements thereon and/or any other expenditures reasonably necessary and appropriate to develop and construct the Project.
- 1.17 “**Mortgagee**” means the holder of the beneficial interest under any Mortgage.
- 1.18 “**Planning Area**” means each of the Planning Areas described in this Agreement and the Project Approvals.
- 1.19 “**Preliminary Land Development Improvements**” means, with respect to a subject area, rough grading of the subject area to a sheet graded pad, storm drains stubbed to the perimeter of the subject area, and sewer, water and dry utilities installed in that portion of the Arterial Streets (as hereafter defined) located in the subject area and stubbed to the perimeter of the subject area.
- 1.20 “**Processing Fees**” means all processing fees and charges required by the City that are applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, hauling permits, encroachment permits, demolition permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check. Processing Fees shall not mean or include Developer Impact Fees.
- 1.21 “**Project**” means the Project as defined in the Mitigated Negative Declaration.
- 1.22 “**Project Approvals**” means collectively, Virada Specific Plan and Project Master Plan No. XXX, Resolution XXX Adopting the Mitigation Monitoring Report and Resolutions_____, Tentative Tract Map No. 37224 (the “**Large Lot TTM**”), this Development Agreement and Ordinance No. _____, inclusive, all as approved by the City Council with respect to the Project and shall include any Subsequent Project approvals, amendments or modifications.
- 1.23 “**Reserved Powers**” means the power and authority of the City to enact regulations and/or take Discretionary Action if the same is

expressly found by the City to be necessary to protect residents of the City, those employed in the City, or visitors to the City, from a condition that is dangerous to public health or safety or if the same is required to comply with California or federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement).

- 1.24 **“Specific Plan” and “Project Master Plan”** collectively means the the October 2016 Virada Specific Plan and Project Master Plan included as part of the Project Approvals and individually Specific Plan means the Specific Plan Text and Project Master Plan means the Project Master Plan Text as described in such document.
- 1.25 **“Subdivision Improvement Agreement”** means one or more Subdivision Improvement Agreements between the City and the Developer arising from or in connection with any tentative map or final map related to the Project.
- 1.26 **“Subsequent Land Use Regulations”** means any amendment to, change in or addition to the Applicable Rules (or any of them) adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or by the electorate, as the case may be, which would, but for this Agreement, be applicable to the Project.
- 1.27 **“Subsequent Project Approvals”** shall mean all further Discretionary Actions or Discretionary Approvals requested with respect to the Project. Following adoption, any Subsequent Project Approvals shall become Project Approvals.

2. Recitals of Premises, Purpose and Intent.

2.1 State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

“(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would

make maximum efficient utilization of resources at the least economic cost to the public.”

“(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the parties thereto as set forth in such development agreements.

2.2. The Project. The Developer intends to develop the Property as described in the Project Approvals and the final plans submitted to the City, subject to the Applicable Rules, the Project Approvals and the Conditions of Approval. The Parties hereby acknowledge and agree that, for the term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction and other guidelines, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals, the Applicable Rules and this Agreement, including the Conditions of Approval, and that, subject to the City’s proper exercise of its Reserved Powers, Subsequent Land Use Regulations shall not apply to the Project during the Term (as hereafter defined) of this Agreement.

3. Property Subject to Agreement. This Agreement shall apply to all of the Property.

4. Application of Agreement. This Agreement shall apply to the development and use of the Property. Such development shall be in accordance with the Project Approvals and this Agreement.

5. Term of Agreement and Related Considerations.

5.1 Term. The term of this Agreement shall commence upon the Effective Date and shall continue for ten (10) years thereafter, unless extended or earlier terminated as provided herein (“**Term**”). In the event of any litigation or referendum initiated by third parties to attack, set aside, modify, void or annul this Agreement, any of the Project Approvals, or the MND (a “**Challenge**”), the term of this Agreement shall be tolled for the period during which such Challenge is proceeding until fully and finally resolved.

5.2 Extension of Term. This Agreement may be extended for one (1) additional five (5) year period following the expiration of the initial Term upon the occurrence of all of the following:

(a) Notice. Developer shall give written notice to City of its election to extend the Term for an additional five (5) year period no later than ninety (90) days before the expiration of the Term;

(b) Operating Memorandum. The Parties agree that they will negotiate, execute and enter into an Operating Memorandum memorializing Developer's Extension prior to the expiration of the initial Term;

(c) Project Commencement. Developer shall have previously obtained the _____; and

(d) No Material Default. Developer shall not then be in material default with respect to any provision of this Agreement, any of the Project Approvals, or any subsequent agreement or understanding between the Parties relating to the Project.

5.3 Term of Map(s). Pursuant to California Government Code Section 66452.6(a), the term of any tentative subdivision or parcel map that has been or in the future may be processed for all or any portion of the Property shall be deemed extended without further required action for a period of time through the expiration of the Term of this Agreement, including any extensions thereof, if the map would otherwise have expired thereto.

5.4 Cancellation and Termination of Agreement. This Agreement may be cancelled, in whole or in part, by mutual consent of the Parties or their successors in interest in accordance with Government Code Section 65867. Unless terminated earlier, pursuant to (a) the terms of this Agreement, (b) a successful challenge to the Authorizing Ordinance by referendum, or (c) entry of a final judgment or court order (after appeal periods have run with no appeal pending) setting aside, voiding or annulling the Authorizing Ordinance, this Agreement shall automatically terminate and be of no further effect upon the expiration of the Term, including any extensions thereof. Termination of this Agreement, for any reason, shall not, by itself, affect any right or duty arising from entitlements or approvals set forth under the Project.

6. Amendment of Development Agreement.

6.1 Amendment. This Agreement may be amended from time to time in accordance with the Development Agreement Act and the Development Agreement Resolution. Any amendment to this Agreement shall require both Parties' written consent and no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by each Parties' duly authorized representatives. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

6.2 Operating Memorandum. The provisions of this Agreement require a close degree of cooperation between City and Developer. The anticipated refinements to the Project may demonstrate that clarifications to and interpretations of this Agreement and the Project Approvals are appropriate with respect to the implementation and application of this Agreement and the Project Approvals. Subject to the terms of this Section 6.2, any such clarifications and interpretations may be effectuated by the Parties through an operating memorandum

(“**Operating Memorandum**”) approved by the Parties in writing which references to this Section 6.2. An Operating Memorandum will not be utilized if the terms of this Agreement require an amendment hereto or to the underlying Project Approval or otherwise preclude the utilization of an Operating Memorandum, or if the City Manager reasonably determines in accordance herewith that an amendment is required by the terms of the Development Agreement Act and/or the Development Agreement Resolution. Unless otherwise required by law or by this Agreement, no changes, adjustments, clarification or interpretations set forth in an Operating Memorandum shall require prior notice or hearing, public or otherwise. The City Manager shall be authorized to determine whether a requested clarification or interpretation (i) may be effectuated pursuant to an Operating Memorandum and this Section 6.2 and is consistent with the intent and purpose of this Agreement and the Project Approvals, or (ii) is of the type that would constitute an amendment to this Agreement and thus would require compliance with the provisions of Section 6.1 above. The authority to enter into such Operating Memorandum is hereby delegated to the City Manager and the City Manager is hereby authorized to execute any Operating Memorandum hereunder without further City Council action and to any corporate officer of other person designated for the purpose in a writing signed by a corporate officer on behalf of Developer. After execution of an Operating Memorandum, it shall be attached to and incorporated into this Agreement as an addendum hereto. Notwithstanding the foregoing, and subject to the use of an Operating Memorandum to implement a “minor amendment” as defined in the Specific Plan/Project Master Plan, an Operating Memorandum may not be used by the Developer or City as a means to: (i) avoid an amendment to the Specific Plan; (ii) to increase the total number of housing units specified in the Specific Plan or this Agreement, unless otherwise permitted herein or therein; (iii) alter the permitted uses of the Property set forth in the Specific Plan; (iv) increase the density or intensity of use of the Property as a whole; (v) delete or amend a Condition of Approval; or (vi) delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole in a manner that will result in significant public health and safety impacts.

6.3 Hearing Rights Protected. Notwithstanding Section 6.2, the City will process any change to this Agreement or the Project Approvals consistent with state law and will hold public hearings thereon if so required by state law. The Parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

7. Development of the Project Site.

7.1 Timing of Development. 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 Developer shall have the right to develop the Property consistent with the Project Approvals and the Conditions of Approval 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/or 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 which would otherwise restrict the Developer's time to complete the Project.

7.2 Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes, if any, required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended from time to time. Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Project Approvals, as they may be lawfully amended from time to time.

7.3 Gated Communities/Age Restrictions. Developer shall have the discretionary right, but not the obligation, to create "gated communities" and/or "age restricted communities" out of all or a portion of any of the Planning Areas that will include Dwelling Units.

7.4 Phasing - Improvements and Facilities. The phased development of the Project shall be consistent with the Project phasing set forth in the Project Master Plan (the "**Land Development Phasing Plan**"). In connection therewith, Developer may move forward with commencement of vertical construction at the Project if and when Developer deems it appropriate in its sole discretion; provided, however, that City shall not be obligated to grant or issue any certificates of occupancy for any Dwelling Unit within a Land Development Phase unless and until all Preliminary Land Development Improvements within such Land Development Phase and any prior Land Development Phases have been deemed completed by the City.

7.5 Initial Project Facilities and Improvements. Developer shall install, improve, construct and complete the following prior to the City's issuance of the First Certificate of Occupancy: (a) the Preliminary Land Development Improvements and recreational and other amenities within the Community Park to the extent they are included as part of Phase 1 of the Land Development Phasing Plan, and (b) all infrastructure, facilities and improvements arising from or related to those certain streets or portions thereof depicted on **Exhibit D** attached hereto (the "**Arterial Streets**"), including but not limited to full width streets, curbs, sidewalks, traffic signage and controls and parkway/median landscaping and any other improvement as directed by the City Engineer (together with the Arterial Streets, the "**Arterial Street Improvements**"). Collectively, these improvements (both (a) and (b)) shall be referred to as the "**Initial Project Facilities and Improvements.**" Developer shall complete construction and installation of the Initial Project Facilities and Improvements prior to City's issuance of the First Certificate of Occupancy.

7.6 Initial Planning Area Facilities and Improvements. Developer shall, prior to vertical construction within a Planning Area install, construct and complete for such Planning

Area then being built out (the “**Subject Area**”): (a) all water facilities necessary to adequately serve the Subject Area, in conformance with the Project Master Plan, the water and sewer plan, and as required by the Coachella Valley Water District (the “**Water Facilities**”), (b) all sewer facilities necessary to adequately serve the Subject Area, in conformance with the Project Master Plan, the water and sewer plan, and as required by the Coachella Valley Water District (the “**Sewer Facilities**”). (c) implementation of the grading and drainage plan in conformance with Project Master Plan grading and drainage development standards (the “**Drainage Improvements**”) throughout the Subject Area. (d) all electrical, telephone, natural gas, cable television (or equivalent) and irrigation improvements necessary to serve the Subject Area, in conformance with the Project Master Plan utility development standards (the “**Utility Improvements**”) and (e) construction and installation of all infrastructure, facilities and improvements arising from or related to the interior streets of the Subject Area, which interior street shall be private streets (as applicable, the “**Interior Streets**” or the “**Interior Street Improvements**”).

7.7 Dedication of Community Park Land, Streets and Fire Station. The Community Park, the Arterial Streets and, unless Developer elects to pay the Fire Station In-Lieu Fee in accordance with the terms of Section 9.13, the Fire Station Parcel, will be dedicated in fee to City, and the use and access of the Interior Streets will be dedicated to the City and the public pursuant to easements set forth on the subdivision maps for the Project. Developer acknowledges and agrees that other government entities may request certain dedications be made for the implementation of the Project (i.e. Coachella Valley Water District). The Community Park will be improved and dedicated to City incrementally, following improvement and in a manner that is consistent with the Land Development Phasing Plan and any Conditions of Approval.

7.8 Development Impact Fees. Developer shall pay the Development Impact Fees at the rates in effect when the fees become due. Unless otherwise specified herein, Development Impact Fees, shall be paid when required by the City’s Municipal Code or other applicable resolution. During the Term, Developer shall be entitled to the benefit of any temporary reductions in such City Development Impact Fees. Developer shall not be subjected to any fees, exactions or impositions related to the Development of the Project except as set forth on **Exhibit B**.

7.9 Quimby and Park Fees. The Parties acknowledge and agree that Developer may seek a credit against the park dedication requirement (i.e. Quimbu fees set forth in Section 156.130 et. seq. of the Indio Municipal Code) pursuant to Indio Municipal Code Section 156-136. Subject to any maintenance period set forth in the Subdivision Improvement Agreement, maintenance of the Community Park shall be as set forth in any future LLD for such purposes.

7.10 Street and Bridge Improvements/Maintenance. If, as and when required hereunder, Developer shall construct and install (a) the Arterial Street Improvements as major arterials, and (b) the crossing over the Regional Drainage Channel (as set forth on the Land Development Phasing Plan, the “**Drainage Crossing**”) in conformance with requirements of the General Plan and the Project Approvals. The Arterial Street Improvements shall be maintained by the Master HOA and the Interior Street Improvements shall be maintained by one or more

Sub HOAs. Notwithstanding the foregoing, and subject to the requirements of applicable law, Developer may include maintenance and repair obligations related to the Arterial Street Improvements and the Interior Street Improvements in any future LLD.

7.11 Alquist Priolo – Disclosure and Construction Limits. City requires and Developer agrees to make full disclosure to every purchaser of a Dwelling Unit anywhere in the Project, regarding the location and extent of the Alquist Priolo Earthquake Zone as represented in **Exhibit C** attached hereto and incorporated by reference herein), as same may be amended or supplemented by the City Engineer in a reasonable manner during the Term (as same may be extended in accordance with the terms hereof). Any such amendment or supplement of **Exhibit C** shall be reflected in an Operating Memorandum. Developer agrees that this disclosure to purchasers of Dwelling Units within the Project shall be made in a form and manner reasonably acceptable to the Director and as required by any State or Federal government entity. The Parties understand and agree that there shall be no construction of any structure in the Project within fifty (50) feet of any active fault line identified within the Alquist Priolo Earthquake Zone or as otherwise dictated by applicable State or Federal law or State or Federal government entity.

7.12 Fire Station. Developer shall be obligated to construct upon the Fire Station Parcel a fully improved fire station, excluding furnishings, fixtures and equipment, with adequate size and capacity to house one fire engine, one ambulance and the required number of fire fighters, paramedics and staff, which fire station shall be constructed pursuant to plans and specifications acceptable to City and the City Fire Chief or his or her designee (the “**Fire Station**”). Notwithstanding the foregoing, Developer shall have the right, exercisable at any time prior to the issuance of the 300th building permit to elect in its sole and exclusive discretion to pay a one-time, lump-sum fee of \$3,000,000.00 to the City in lieu of providing, and eliminating the obligation to provide, the Fire Station (the “**Fire Station In-Lieu Fee**”). If such Fire Station In Lieu Fee is paid, Developer is relieved of any further obligations regarding the Fire Station Parcel. If Developer proceeds with the construction of the Fire Station, construction shall commence when the 300th building permit is issued and shall be completed prior to the 500th certificate of occupancy. If the Fire Station is not completed by such time, the City shall have the right, but not the obligation, to withhold the issuance of any subsequent building permits (beginning with the 501st building permit).

7.13 Design Review Approval. Nothing set forth herein shall impair or interfere with City's right to conduct design review proceedings in accordance with the Project Approvals.

7.14 Covenants, Conditions and Restrictions. The Project will be governed by a Master Declaration of Covenants, Conditions and Restrictions (the “**Master Declaration**”) relating to the development, use and operation of the Project. The Master Declaration shall be prepared by Developer and shall establish a homeowners’ association to oversee the Project and common areas pursuant to the terms thereof (the “**Master HOA**”). The Master Declaration shall be recorded against Planning Area 2 and Planning Area 3, and additional Planning Areas as appropriate, following review and approval by the City and recordation of the final map from the Large Lot TTM. City’s review and approval of the Master Declaration shall be as set forth in the Project Approvals. Developer shall also have the discretionary right to record sub-Declarations

against all or a portion of Planning Area 2 and/or Planning Area 3, which shall be subject to the Master Declaration and which shall govern one or more distinct residential neighborhoods (each a “**Sub-Declaration**”). Any Sub-Declaration shall be prepared by Developer and shall establish a homeowners’ association to oversee the underlying portion of the Project and associated common areas pursuant to the terms thereof (each a “**Sub HOA**”). Any Sub-Declaration shall be subject to review and approval of the City prior to recordation to confirm compliance with the terms of this Agreement and the Project Approvals. The Master Declaration and any Sub-Declarations shall be subordinate to the terms of this Agreement and shall be consistent with the Project Approvals and the Applicable Rules. The Master Declaration and any Sub-Declarations shall address assessments and lien rights, among other things, and shall run with the land, and, in accordance with their terms, bind Developer’s successors, assigns and transferees of all or any portion of the underlying property. Notwithstanding the foregoing, but subject to the requirements of the California Bureau of Real Estate, Developer shall have the sole right to determine commencement of assessments under the Master Declaration or any Sub-Declaration. Any dispute between the Parties regarding the City’s approval or rejection of the Master Declaration shall be subject to immediate and binding arbitration pursuant to the rules of the American Arbitration Association upon request of either Party; provided, however, that the Parties shall, upon request of the other Party, meet and confer in good faith to resolve any issues or conflicts that may arise with respect to the Master Declaration and any Sub-Declarations.

(a) Pursuant to the Master Declaration, the Master HOA shall be responsible for the upkeep and management of the Community Demonstration Garden and the Community Center/Clubhouse. The land underlying the Community Demonstration Garden and the Community Center/Clubhouse shall be transferred to the Master HOA.

(b) Pursuant to the Master Declaration, the Arterial Street Improvements shall be maintained by the Master HOA.

(c) Pursuant to the Master Declaration and/or one or more Sub-Declarations, as reasonably determined by Developer, the Interior Streets shall be maintained by the Master HOA or one or more Sub HOAs. The land underlying the Interior Streets shall be transferred to the Master HOA or one or more Sub HOAs as reasonably determined by Developer.

7.15 Processing of Permits. City staff shall work cooperatively with Developer in the issuance of permits on an expedited basis and at the earliest feasible date, provided that Developer’s applications for such permits comply with all Applicable Rules applying to the subject matter of the permit and with the Project Approvals and Conditions of Approval. To the extent the City is unable to process and consider permits and approvals in a timeframe acceptable to the Developer, Developer may request the use of private contract planners, plan checkers and/or inspectors to assist the City (“**Private Contractors**”). Subject to Developer approving the applicable fee and cost schedule, such Private Contractors shall be at the sole selection of the City and shall be paid for at the sole cost and expense of Developer. Developer shall reimburse City, on a deposit-based cost recovery system, for all costs and expenses of any such Private Contractors plus any administrative cost to City of integrating services by Private Contractors into the Project’s development processing. Such deposit shall be replenished as necessary from time to time to assure that the City shall not bear any of the cost of the Private Contractors. If the

deposit is not replenished, City shall suspend the work of the Private Contractors until a deposit is provided by Developer.

8. Developer's Vested Rights. Developer shall have and is hereby vested with the rights to develop the Project as set forth in the Project Approvals, as they may be lawfully amended from time to time, all of which are hereby incorporated in this Agreement by reference. Upon any termination or the expiration of this Agreement, Developer shall retain the right to continue with the development and construction of the Project pursuant to the Project Approvals.

9. Changes in Applicable Rules.

9.1 Non-Application of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Processing Fees as provided in this Agreement), including, without limitation, any changes in the General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with or be more restrictive than the Applicable Rules or Developer's entitlements under the Project Approvals, shall not be applied to the Project during the term of this Agreement unless such changes represent an exercise of the City's Reserved Powers or the application of which has been consented to in writing by Developer.

9.2 Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the City's building, mechanical, plumbing and electrical regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the California Building Code, and other similar or related uniform codes.

9.3 Changes Regarding Public Health and Safety. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to future land use regulations primarily respecting public health and safety, which are applicable throughout the City, including to the Property, and which directly result from findings by the City that failure to adopt such future regulations would result in an imminent significant and unanticipated condition injurious or detrimental to the public health and safety and that the application of such future land use regulations to the Property are the only reasonable means to correct or avoid such condition.

9.4 Changes Mandated by Federal or California Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date shall apply to the Project, if and to the limited extent such changes or additions are specifically mandated to be applied to developments such as the Project, irrespective of vested rights, by

applicable California or federal laws or regulations. Where the City or Developer believes that such a change or addition exists that Party shall provide the other Party hereto with a copy of such California or federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement. The City's determination as to the applicability of the change or addition to California or federal laws to the Project shall be final and conclusive. However, nothing in this Agreement shall deprive Developer of the rights possessed by any other property owner, absent vested rights, to challenge the appropriateness of the application to the Project of the change or addition.

9.5 Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a Citywide basis.

10. Developer's Obligations.

10.1 Reimbursement of Project Approval Costs. No later than the Effective Date, Developer shall reimburse the City for all of its costs to process the Project Approvals, including legal and environmental processing costs related to the Project Approvals and preparation of this Agreement, if any.

10.2 Processing Fees. Developer agrees to pay all Processing Fees, including City plan check fees, building inspection fees, and permit fees, at the rate and amount in effect at the time the fee is required to be paid.

11. Transfer or Assignment.

11.1 Developer has the right to sell, transfer or assign its interest in the Propoerty in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et. seq) without the consent of City. However, Developer may not sell, assign, or otherwise transfer its rights and obligations under this Agreement as the same may relate to the portion of the Propoerty being transferred, to any person, partnership, joint venture, firm or corporation at any time during the Term of this Agreement until such time as the public improvements required by the Project Approvals and this Agreement have been accepted by the City unless the City has approved the transfer prior to its completion and with prior written consent of the City Council. City shall not unreasonably withhold or unreasonably delay consent to the transfer provided that: (1) the Developer is not in material default of this Agreement or the Project Approvals; (2) the transferee has specifically assumed in writing the obligations, or a portion of the obligations of the Developer, to design, construct, install and finally complete the public improvements required by the Development Approvals and this Agreement; (3) the transferee has the experience and financial capacity to complete the public and private improvements required by the Development Approvals and this Agreement; and (4) the transferee has obtained replacement bonds, accepted by the City for the public and private improvements required by the Development Approvals and this Agreement (in which event, the City shall release the Developer's corresponding Public Improvement bonds). In the event of any sale, assignment, or other transfer of the rights and obligations of this Agreement as the same may relate to the portion of the Agreement being transferreand pursuant to this Section, (i)

Developer shall notify the City within twenty (20) days prior to the transfer of the name of the transferee, together with the corresponding entitlements being transferred to such Transferee.

12. Periodic Reviews.

12.1 Annual Compliance Review. the City shall conduct annual reviews to determine whether Developer is acting in good faith compliance with the terms of this Agreement and Government Code Section 65865.1. The reasonable cost of each annual review conducted during the Term of this Agreement shall be reimbursed to the City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably insured in such annual review.

12.2 Special Reviews. In addition, the City Council of the City may order a special periodic review of Developer's compliance with this Agreement at any time. The cost of any such special reviews shall be borne by the City, unless such a special review demonstrates that Developer is not acting in good faith compliance with the provisions of this Agreement. In such cases, Developer shall reimburse the City for all costs, direct and indirect, reasonably incurred by City in conjunction with such a special review.

12.3 Procedure for Review. The Director shall conduct the reviews contemplated by this Section 13 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Director shall give Developer written notice that any such review has been commenced, and shall give Developer at least thirty (30) days after Developer's receipt of such notice to provide to the Director such information as Developer deems relevant to such review. In addition, upon the written request of the Director, Developer shall furnish such documents or other information as reasonably requested by the Director.

12.4 Result of Review. If, following such a review, the Director finds good faith compliance by Developer with the terms and conditions of this Agreement, the Director shall issue to Developer an executed certificate of compliance, certifying Developer's good faith compliance with the terms and conditions of this Agreement through the period of such review. Such certificate shall be in recordable form, and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record such certificate of compliance in the Official Records of the County of Riverside. If, following such a review, the Director finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the procedures set forth in the Development Agreement Resolution shall apply.:

12.5 Effect on Default. Nothing in this Section 13 shall be interpreted to prevent the City from providing Developer with a notice of default hereunder at any time, including any time other than during a periodic review under this Section 13, or from terminating this Agreement pursuant to the express provisions hereof following any event of default by Developer.

13. Indemnification and Third Party Litigation.

13.1 Developer agrees to and shall indemnify, hold harmless, and defend, City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project, during construction of the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 14, regardless of whether or not City prepared, supplied, or approved plans or specifications, or both; provided, however, that Developer's foregoing indemnity, defense and hold harmless obligation shall not apply to or any acts of willful misconduct on the part of the City and its respective officers, officials, members, agents, employees, and representatives. In the event of litigation, City agrees, at no cost to City, to cooperate with Developer. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and City in any such action.

13.2 In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals, the Subsequent Project Approvals or the CEQA determination prepared and adopted for the Project, Developer shall defend, at its own expense, the action or proceeding. In addition, Developer shall reimburse City for its actual costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals, the Subsequent Project Approvals or the CEQA determination and the Developer shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. Developer shall cooperate with City in any such defense as City may reasonably request and Developer may not resolve such challenge without the agreement of City. In the event Developer fails or refuses to reimburse City for its cost to defend any challenge to this Agreement, the Project Approvals, the Subsequent Project Approvals or the CEQA determination, City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 16. In all events, City shall have the right to resolve any challenge in any manner, in its sole discretion.

13.3 In order to ensure compliance with this section, within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this Agreement, any of the Project Approvals, the Subsequent Project Approvals or the CEQA determination prepared and adopted for the Project, the Developer shall deposit with the City cash or other security in the amount of \$250,000 satisfactory in form to the City Attorney, guaranteeing indemnification and/or reimbursement to the City of all costs related to any action triggering the obligations of this section. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, the applicant shall restore the deposit to its original amount within fifteen (15) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security is necessary to secure the obligations of this section, the Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify the Developer of any claim, action or proceeding within the scope of this Section and the Developer shall cooperate fully in the defense of any such claim or action.

13.4 The provisions of this Section 14, shall survive the termination, cancellation or expiration of this Agreement.

14. Notices. All notices, demands or other communications required or permitted by this Agreement shall be in writing and shall be either personally delivered (which shall include delivery by means of a professional overnight courier service which confirms receipt in writing such as Federal Express or UPS, sent by telecopier or facsimile machine capable of confirming transmission and receipt, or sent via U.S. Mail, by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to City: City of Indio
100 Civic Center Mall
Indio, California 92201
Attention: City Manager
Telephone: (760) 342-6580
Fax: (760) 342-6556

With copy to: Roxanne Diaz, City Attorney
Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, California 90071
Telephone: (213) 626-8484
Fax: (213) 626-0078

If to Developer: Presidio Mana Indio, LLC

Attention: _____
Telephone: () _____
Fax: () _____

With copy to:

Attention: _____
Telephone: () _____
Fax: () _____

Notices sent in accordance with this Section 18 shall be deemed delivered upon the: (a) the date of delivery as indicated on the written confirmation of deliver (if sent by overnight courier services); (b) the date of actual receipt (if personally delivered); (c) the date of delivery as indicated on the return receipt if sent by certified or registered mail, return receipt requested; (d) date of confirmation of transmission (if sent by telecopier or facsimile machine). Notice of change of address shall be given by written notice in the manner detailed in this Section 15. Notice may be delivered by a Party's counsel.

15. Defaults and Remedies.

15.1 Notice of Default. In the event of failure by a Party to substantially perform any material term or provision of this Agreement, the non-defaulting Party shall have those rights and remedies provided in this Agreement, provided that the non-defaulting Party has first provided to the defaulting Party a written notice of default in the manner required by this Section 16 identifying with specificity the nature of the alleged default and the manner in which the default may satisfactorily be cured.

15.2 Cure of Default. Upon the receipt of the notice of default, the alleged defaulting Party shall promptly commence to cure, correct or remedy the identified default at the earliest reasonable time after receipt of the notice of default and shall complete the cure, correction or remedy of the default not later than ten (10) calendar days after receipt of notice thereof if the breach of this Agreement involves the payment of money, or not later than thirty (30) calendar days after receipt of notice thereof if the breach of this Agreement does not involve the payment of money; provided, however, that if the breach may not reasonably be cured within the thirty (30) calendar day period, then a default shall exist only if the cure of the breach is not commenced within the thirty (30) calendar day period or thereafter is not diligently prosecuted to completion.

15.3 Developer's Remedies. Due to the size, nature and scope of the Property and its development, it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. Accordingly, City and Developer agree that damages will be an inadequate and inappropriate remedy. Therefore, to the extent permitted by law, if City fails to carry out its obligations under this Agreement, Developer shall have the right to seek and obtain specific performance as a remedy for any breach of this Agreement. Moreover, City would not have consented to this Agreement if it were to be subject to damages for breach of this Agreement. Therefore, Developer specifically agrees that it has no authority under this Agreement or otherwise to seek monetary damages against City for any breach of this Agreement by City, and agrees not to seek monetary damages against City for breach of this Agreement except to recover (i) any sums City owes to Developer pursuant to the express terms of this Agreement, subject to any conditions applicable to any such obligation and (ii) any attorneys' fees and costs recoverable pursuant to the terms of this Agreement, if and to the extent awarded by a court of competent jurisdiction.

15.4 City Remedies. In the event of an uncured default by Developer of the terms of this Agreement, City, at its option, may institute legal action in law or in equity to cure, correct or remedy the default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement by specific performance as its sole and exclusive remedy. Furthermore, City, in addition to or as an alternative to exercising the remedies set forth in this Section 16.4, in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement pursuant to this Agreement and/or the Development Agreement Act, in which event the matter shall be scheduled for consideration and review by the City Council in the manner set forth in the Development Agreement Act.

15.5 Judicial Review. Based on the foregoing, in the event Developer judicially (including by way of a reference proceeding) challenges the application of a Subsequent Land Use Regulation as being in violation of this Agreement and as not being a land use regulation adopted pursuant to the Reserved Powers, Developer shall bear the burden of proof in establishing that the rule, regulation or policy is inconsistent with the Applicable Rules and/or the Project Approvals, or both, and City shall thereafter bear the burden of proof in establishing that the rule, regulation or policy was adopted pursuant to and in accordance with the Reserved Powers and was not applied by City in violation of this Agreement.

15.6 Waiver. All waivers of performance must be in a writing signed by the Party granting the waiver. There are no implied waivers hereunder. Failure by City or Developer to insist upon the strict performance of any provision of this Agreement, or to pursue a remedy upon the material default of the other Party, irrespective of the length of time for which such failure or default continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future, or a waiver of the right to pursue any remedy permitted hereunder on account of such material default. A written waiver affects only the specific matter waived and defines the performance waived and the duration of the waiver. The waiver by any Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement

16. Local, State and Federal Laws. Developer and its contractors shall carry out the design and construction of all improvements on the Property in conformity with all applicable laws, including, without limitation, all applicable federal, state and local occupation, prevailing wage, employment, safety and health laws, rules, regulations and standards. Developer agrees to indemnify, defend and hold the City and its respective officers, officials, members, agents, employees, and representatives, harmless from and against any cost, expense, claim, charge or liability relating to or arising directly or indirectly from any breach by or failure of Developer or its contractor(s) or agents to comply with the laws, rules, regulations or standards. Developer's indemnity obligations set forth in this Section 17 shall survive the termination or expiration of this Agreement.

17. Dispute Resolution.

17.1 Dispute Resolution Proceedings. Any dispute or disagreement between the Parties may, upon the mutual agreement of the Parties, be submitted to mediation, binding arbitration, or any other mutually agreeable form of alternative dispute resolution that is to be conducted by an arbitrator who must be a former judge of the Riverside County Superior Court or Appellate Justice of the Fourth District Court of Appeals or a Justice of the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties.

17.2 Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in Code of Civil Procedure Section 638, et seq., or under such other

procedures as are agreeable to both parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

18. Mortgagee Protection.

18.1 Discretion to Encumber. The provisions of this Agreement shall not prevent or limit Developer's right to encumber the Property or any portion thereof or any improvements thereon with any Mortgage

18.2 Mortgagee Protection. City acknowledges that Mortgagees may require certain interpretations and modifications of this Agreement and City agrees, upon request, from time to time, to meet with Developer and/or representatives of such Mortgagees to negotiate in good faith any such request for interpretation or modification. City further agrees that it will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement and does not, in the City's sole determination, diminish the City's benefits from this Agreement. Any Mortgagee shall be entitled to the rights and privileges set forth in this Section.

18.3 Mortgage Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee.

18.4 Written Notice of Default. If a Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, the City shall exercise its best efforts to provide to such Mortgagee written notification from the City of any failure or default by Developer in the performance of Developer's obligations under this Agreement, which notification shall be provided to such Mortgagee at such time as such notification is delivered to Developer.

18.5 Right of Mortgagee to Cure. Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by Developer during the cure period allowed Developer under this Agreement, plus an additional sixty (60) days if, in order to cure such failure or default, it is necessary for the Mortgagee to obtain possession of the property such as by seeking the appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure or attempt to cure any such failure or default shall provide written notice to the City that it is undertaking efforts of such a nature; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

18.6 Mortgagee in Possession. Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any part thereof pursuant to foreclosure, eviction or otherwise, shall take such Property or part thereof subject to the terms of this Agreement. Nothing in this Section shall prevent the City from exercising any remedy it may have for default under this Agreement; provided, however,

that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee except that Mortgagee may not pursue any activities related to development of the Project pursuant to this Agreement until all delinquent and current fees and other monetary obligations due under this Agreement for the portions of the Property acquired by the Mortgagee have been paid to City.

19. Entire Agreement. This Agreement constitutes the entire understanding and agreement of City and Developer with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Developer respecting the subject matter of this Agreement.

20. Severability. If any section, subsection, term, provision, covenant or condition of this Agreement, or the application thereof to any Party or circumstance, shall, to any extent, be held invalid, void or unenforceable, the remainder of the section, subsection, term, provision, covenant or condition of this Agreement, or the application of such section, subsection, term, provision, covenant or condition to persons or circumstances other than those as to whom or which it is held invalid, void or unenforceable, shall not be affected thereby and each remaining section, subsection, term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Sections 7 and 10 are held invalid, void or unenforceable, this entire Agreement shall be void and unenforceable and of no further force and effect.

21. Attorneys' Fees. In the event any Party hereto brings an action or proceeding for a declaration of the rights of the Parties, for injunctive relief, for an alleged material default hereunder, or any other action arising out of this Agreement, or the transactions contemplated hereby or institutes a reference or arbitration proceeding as may expressly be permitted by the terms of this Agreement, the prevailing Party in any such action shall be entitled to its costs and expenses, including reasonable attorney fees.

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

23. Estoppel Certificates. City shall, at any time and from time to time, within thirty (30) days after receipt of written notice from Developer requesting same, execute, acknowledge and deliver to Developer a signed statement ("Estoppel Certificate") in writing: (a) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and (b) acknowledging that there are no uncured defaults on the part of Developer hereunder or specifying such defaults if any are claimed. Any such statement shall also provide any other reasonable information requested by Developer. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by Developer and that there are no uncured defaults on the part of Developer hereunder, except as may be represented by the requesting Party. Any such statement or conclusive presumption may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Project Site. Upon Developer's written request, City

shall promptly issue a certificate of performance evidencing completion of any of Developer's obligation(s) under this Agreement. The City Manager or any person designated by the City Manager may sign the Estoppel Certificates on behalf of the City. Any officer of Developer may sign on behalf of Developer. In the event that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto.

24. Enforcement Costs. Except as otherwise set forth herein, Developer shall reimburse City for any direct costs or expenses that City reasonably incurs, including City staff time and attorney's fees and costs, in taking actions that Developer requests City to take in writing pursuant to this Agreement.

25. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions shall be in Riverside County, California.

26. Interpretation. 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 shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

27. Recorded Statement Upon Termination. Upon the completion of performance of this Agreement or its cancellation or termination, a statement evidencing completion, cancellation, or termination signed by the appropriate agents of City, shall be recorded by City in the Official Records.

28. Captions. The captions and headings of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

29. Covenant of Cooperation. City and Developer shall cooperate and deal with each other in good faith, and, at no cost, expense or liability to such Party, assist the other Party in the performance of the provisions of this Agreement.

30. Further Actions and Instruments. Upon the request of any 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. The provisions of this section shall not require the taking of any actions which are prohibited by law or, except as expressly set forth in this Agreement, impair the lawful discretion of City as to those matters to which the law otherwise imparts discretion to City.

31. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and Permitted Assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

32. Time of Essence. Time is of the essence of this Agreement and every term or performance hereunder.

33. Recordation of Agreement. This Agreement and any amendment or cancellation hereof shall be recorded with the County Recorder by the City Clerk within the period required by Government Code Section 65868.5.

34. Jointly Drafted. The Parties acknowledge and agree that this Agreement was jointly negotiated and jointly drafted by the Parties and their respective counsel, and that it shall not be interpreted or construed in favor of or against any party solely on the ground that it drafted the Agreement.

35. Independent Legal Counsel. Each party acknowledges and agrees that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

36. Relationship of the Parties. It is hereby acknowledged and agreed by the Parties that the Project is a private development project, that neither Party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Developer, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Although the parties believe that there is no public assistance being provided from City to Developer, Owner shall be solely responsible for the payment of prevailing wage if required by applicable law including, without limitation, the provisions of the California Labor Code and will fully indemnify City in the event any governmental entity determines that such wages should have been paid and provide payment bonds as required by the Labor Code. The only relationship between the City and the Developer is that of a government entity regulating the development of private property and the owner of such private property.

37. Binding Effect of Agreement. All of the terms, provisions, agreements, rights, powers, standards, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City and Developer, and their respective, successors (by merger, reorganization, consolidation or otherwise), assignees, successors, Mortgagees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or interest therein, whether by operation of law or in any manner whatsoever. Whenever the term "Developer" is used herein, such term shall include any other lawfully approved successor in interest of Developer, with respect to all or any portion of the Property.

38. Compliance with Law. Notwithstanding any provisions of this Agreement, the Parties agree to comply with all federal, state and local laws and to act in good faith in carrying out the terms of this Agreement.

39. Authorization. Each person executing this Agreement represents and warrants that he or she is authorized and has the legal capacity to execute and deliver this Agreement on behalf of the Party for which execution has been made.

40. Alterations. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the Parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act.

41. Development Agreement/Project Approvals. In the event of any inconsistency between any Applicable Rule, Project Approvals or Subsequent Project Approvals and this Agreement, the provisions of this Agreement shall control.

42. No Monetary Damages Remedy Against City. The parties acknowledge that the City would not have entered into this Development Agreement had it been exposed to monetary damage claims from Developer for any breach, termination or default hereunder. As such, the parties specifically agree that in no event shall Developer be entitled to seek or otherwise recover money damages of any amount against City for City's breach, termination or default under this Agreement.

43. Cancellation of Fiesta de Vida Development Agreement. Pursuant to the terms of the Fiesta de Vida Development Agreement and the provisions of Government Code Section 65868, the City and Developer hereby mutually agree to cancel the terminate and/or cancel the Fiesta de Vida Development Agreement. Accordingly, neither the City nor the Developer shall have or be subject to any obligations whatsoever arising from or under the Fiesta de Vida Development Agreement.

SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Execution Date.

CITY

City of Indio,
a California Municipal Corporation

By: _____

Mayor

Date: _____

ATTEST:

By _____

Date _____

APPROVED AS TO FORM:

By: _____

Date: _____

DEVELOPER

Presidio Mana Indio, LLC,
a Delaware limited liability company

By: _____

Its: _____

Date: _____

And

By: _____

Its: _____

Date: _____

EXHIBIT "A"
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF INDIO, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: (APNS: 750-210-003 to 011, inclusive)

SECTION 29, TOWNSHIP 4 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 2: (APNS: 752-030-020, 021 & 022)

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT AN UNDIVIDED 1/16TH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND, AS RESERVED TO THE STATE OF CALIFORNIA, IN PATENT RECORDED SEPTEMBER 26, 1923 IN BOOK 8, PAGE 376 OF PATENTS AND AS PROVIDED BY AN ACT OF THE LEGISLATURE APPROVED MAY 25, 1921, (CHAPTER 303, STATUTES OF CALIFORNIA 1921).

PARCEL 3: (APN: 752-030-023)

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COACHELLA VALLEY WATER DISTRICT BY DEED RECORDED APRIL 21, 2000 AS INSTRUMENT NO. 2000-149372, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 30; THENCE SOUTH 89° 44' 28" WEST ALONG THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 663.94 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, THENCE NORTH 00° 44' 04" WEST ALONG THE WESTERLY LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, A DISTANCE OF 562.81 FEET TO THE NORTHEASTERLY LINE OF AN EASEMENT DESCRIBED IN THE RIGHT OF WAY OF SOUTHERN CALIFORNIA GAS COMPANY, RECORDED FEBRUARY 8, 1947 IN BOOK 822, PAGE 42, OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 59° 48' 10" EAST ALONG THE NORTHEASTERLY LINE, A DISTANCE OF 774.25 FEET TO THE EASTERLY LINE OF SAID SECTION 30; THENCE SOUTH 00° 39' 29" EAST ALONG THE EASTERLY LINE OF SAID SECTION 30, A DISTANCE OF 170.34 FEET TO THE POINT OF BEGINNING.

PARCEL 4:

AN EASEMENT FOR ROAD PURPOSES OVER THE NORTHERLY 30 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, EXCEPT THEREFROM THAT PORTION INCLUDED WITHIN PARCELS 2 AND 3.

PARCEL 5:

AN EASEMENT FOR ROAD PURPOSES OVER THAT PORTION OF LOT 1 OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

EXHIBIT "A"
Continued

BEGINNING AT THE NORTHWESTERLY CORNER OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 30, SAID CORNER BEING AT A POINT IN THE EASTERLY LINE OF SAID LOT 1; THENCE WESTERLY ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 30, TO ITS INTERSECTION WITH THE WESTERLY LINE OF SAID LOT 1; THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID LOT 1 TO THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF THE NORTHERLY 30 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 30; THENCE EASTERLY ALONG SAID LAST MENTIONED PROLONGATION TO THE EASTERLY LINE OF SAID LOT 1; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT 1 TO SAID POINT OF BEGINNING.

PARCEL 6:

AN EASEMENT FOR ROAD PURPOSES OVER THAT PORTION OF LOT 1 OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH, RANGE 7 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF SAID LOT 1, WITH THE NORTHERLY LINE OF THE SOUTHERLY 30 FEET OF THE NORTH HALF OF LOT 2 OF THE NORTHWEST QUARTER OF SAID SECTION 30; THENCE EASTERLY ALONG THE EASTERLY PROLONGATION OF SAID NORTHERLY LINE 30 FEET; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH SAID WESTERLY LINE TO THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 30; THENCE WESTERLY ALONG SAID LAST MENTIONED PROLONGATION TO THE WESTERLY LINE OF SAID LOT 1; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO SAID POINT OF BEGINNING.

PARCEL 7:

AN EASEMENT FOR ROAD PURPOSES OVER THE SOUTHERLY 30 FEET OF THE NORTH HALF OF LOT 2 OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXHIBIT "B"
Schedule of Applicable Development Impact Fees



EXHIBIT “C”

Location and Extent of the Alquist Priolo Earthquake Zone

[see following pages]



Attachment H

Exhibit 1

Virada Specific Plan and Project Master Plan
(As a Separate Document)

Attachment I

Exhibit 2

Virada Initial Study/Negative Declaration with Mitigation
Monitoring and Reporting Program
(As a Separate Document)

Attachment J

Comment Letter from Rod and Michele Murphy

RECEIVED

Oct. 26, 2016

City of Indio Planning Commission
PO Drawer 1788
Indio, CA 92202

OCT 31 2016

DEVELOPMENT
SERVICES

Re: Virada Specific Plan and Project Master Plan

This letter will serve as our opposition to the Virada Specific Plan and Master Project.

1. The proposed characteristics of this development, specific to its high density, multi-story, multi-family and commercial nature are not compatible with its existing neighbor, the Sun City Palm Desert senior community ("Sun City"). Sun City single-family residences will directly border the multi-story, multi-family and commercial portion of this proposed project. The resulting negative impact on the mountain views and rural nature of the area as well as the decline in property values is obvious and will be substantial to residents of a senior living community.
2. The developer of this proposed project should be required to produce a new Environment Impact Report specific to the new and different characteristics of this project. The reliance on an existing EIR, produced for an entirely different development is totally unacceptable. The nature of this proposal has several major differences from the development for which the existing EIR was produced; specifically, the new EIR should address the impact on water usage regarding new drought data and new features, such as the multi-story/multi-family units, the amphitheater, extensive green belts/parks, the solar array and the commercial use.
3. We also question the proposed use of a solar array field adjacent to Sun City Palm Desert. New theories debate the environmental "friendliness" of these array fields and show the use of rooftop solar arrays are far more environmentally friendly by preserving open space for natural habitat and reducing visual blight. Rooftop solar also has the benefit of reducing massive in-place conversion infrastructure as the solar panels are placed close to the existing electrical grid infrastructure.
4. In the midst of an historic drought and limited water resources in a desert environment, what is the justification for further diminishing the depleted aquifer by proposing a high-density residential project?

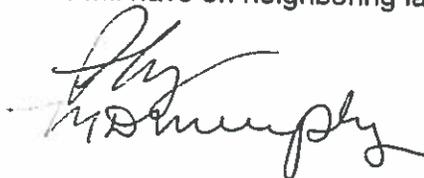
As an attendee at the recent developer's presentation to the Sun City Palm Desert community, I have the distinct impression that this is a hastily conceived project which is trying to minimize development costs at the expense of the environment and neighboring communities.

The long term consequences to the environment and the impact to the retired seniors living next to a high density, multi-story, multi-family residential and commercial area are unacceptable.

The developer's decision regarding the placement of this high density, multi-story, multi-family residential and commercial use must be questioned in detail.

Also, the use of a solar array field must be completely analyzed for its functionality and the visual and environmental impact it will have on neighboring land uses and the natural habitat.

Rod and Michele Murphy
78780 Stansbury Ct
Palm Desert, CA 92211
rjmdmurphy@gmail.com



cc. Steve Campbell General Manager SCPD