

SETTLEMENT AGREEMENT

This settlement agreement (this “Agreement”) is made at Moreno Valley, California, as of October 11, 2016, between THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (the “District”), on the one hand, and the CITY OF MORENO VALLEY (the “City”), HF PROPERTIES, SUNNYMEAD PROPERTIES, THEODORE PROPERTIES PARTNERS, 13451 THEODORE, LLC, and HL PROPERTY PARTNERS (collectively “Highland Fairview”), on the other hand, with respect to the following facts:

- A. Highland Fairview was the applicant for, and is now the developer of, the World Logistics Center located in Moreno Valley.
- B. In August, 2015, the City certified an environmental impact report (the “EIR”) and immediately thereafter granted a number of land use approvals for the World Logistics Center..
- C. In September, 2015, the District filed a lawsuit in the Riverside Superior Court, Case No. RIC 1511213, related to the EIR’s compliance with the California Environmental Quality Act (the “CEQA Lawsuit”).
- D. The CEQA Lawsuit is in addition to eight other lawsuits questioning the validity of the approvals granted by the City (the “other CEQA Lawsuits”).
- E. In November, 2015, the City adopted three resident-sponsored initiatives which vacated a majority of the approvals for the World Logistics Center approved in August, 2015, and then adopted them pursuant to the citizens’ initiative power, as set forth in Election Code §§ 9214 and 9215, as an adoption in the first instance.
- F. In February, 2016, the District filed a lawsuit in the Riverside Superior Court, Case No. RIC 16019880, questioning the validity of the initiatives adopted by the City in November, 2015 (the “Initiative Lawsuit”).
- G. The Initiative Lawsuit is in addition to three other lawsuits questioning the validity of the resident-sponsored initiatives adopted by the City (the “other Initiative Lawsuits”).
- H. After the Initiative Lawsuit and the other Initiative Lawsuits were filed, the trial court stayed the CEQA Lawsuit and the other CEQA Lawsuits until after a judgment had been entered in the Initiative Lawsuit and the other Initiative Lawsuits.
- I. A judgment in favor of the City and Highland Fairview was entered in the Initiative Lawsuit and the other Initiative Lawsuits in September, 2016.

- J. The District has claimed that the air quality mitigation measures set forth in the EIR were inadequate. The City and Highland Fairview have claimed that they were adequate.
- K. The parties agree that the amount of the Air Quality Improvement Fee, defined in paragraph 1 below, is in addition to the air quality improvement features already part of the World Logistics Center including the commitment to all 2010 clean diesel trucks, all Tier 4 construction equipment and a CNG/LNG fueling facility

IN LIGHT OF THE FOREGOING FACTS, IT IS MUTUALLY AGREED THAT:

1. Highland Fairview shall pay the District \$.64 per sq.ft at the time of issuance of a certificate of occupancy for each building constructed in the World Logistics Center (the "Air Quality Improvement Fee"). The District may use the Air Quality Improvement Fee for any purpose that will improve the air quality in the South Coast Air Basin.

2. For purposes of this Agreement, without either side admitting to the validity of the other side's claims, all parties agree that the payment of the Air Quality Improvement Fee will adequately mitigate heavy-duty truck related air quality impacts that may result from the construction and operation of the World Logistics Center as described in the EIR and that no additional charges will be imposed on the World Logistics Center to mitigate emissions, including NOx, described in the EIR from heavy-duty trucks.

3. If the California Air Resources Board ("Board") adopts a fee to fund projects that either directly or indirectly offset NOx emissions described in the EIR from heavy-duty trucks and which includes heavy-duty trucks transporting goods to or from the World Logistics Center, the amount of the fee paid to the Board will be credited against the Air Quality Improvements Fee.

4. The District shall not file any lawsuits challenging any approvals granted in the future for the World Logistics Center if the amounts of the resulting emissions do not exceed the amounts set forth in the EIR except that the District shall have the right to sue to enforce any air quality related condition, including mitigation measures, imposed on the construction or operation of the World Logistics Center by the City.

5. The District shall be free to make its concerns known during the process leading to any further approval for the development, construction or operation of the World Logistics Center.

6. Each party shall bear its own costs, including, but not limited to, attorneys' fees and costs incurred in, or related to, the CEQA Lawsuit, the Initiative Lawsuit and the negotiations leading up to, and the preparation of, this Agreement. This provision does not affect the defense and indemnity obligations between Highland Fairview and the City.

7. The terms of this Agreement shall be embodied in a stipulated judgment in the CEQA Lawsuit in the form of Exhibit A.

8. The District shall not appeal the judgment in the Initiative Lawsuit.

9. The parties shall express their positive support of the terms of this Agreement.

10. This Agreement is entered into solely for the benefit of the parties hereto and their successors (including by law, contract or title), transferees and assigns. Other than the parties hereto, their successors, transferees and assigns, no third party shall be entitled, directly or indirectly, to base any claim, or to have any right arising from, or related to, this Agreement.

11. The parties shall execute all further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement. The parties shall act in good faith and shall take all further actions reasonably necessary to effectuate the letter and the spirit of this Agreement.

12. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal context and relationship solely within the State. The language of this Agreement and all other documents referred to herein shall be construed as a whole according to their fair meaning. Venue and jurisdiction with respect to any action arising under or in relation to this Agreement shall be exclusively within the Riverside County Superior Court. To the extent permitted by law, this agreement is intended as a valid settlement agreement pursuant to Evidence Code § 1123 and shall be admissible and enforceable pursuant to Code of Civil Procedure § 664.6.

13. The prevailing party in any litigation brought to enforce or interpret this Agreement shall be entitled to recover its attorneys' fees and all costs of litigation including, but not limited to, expert witness fees, in addition to any other relief to which it may be entitled. Fees and costs not included within those allowed by Code of Civil Procedure § 1033.5 shall be set forth in the parties' pleadings and shall be proved to the trial judge, the right to trial by jury being hereby waived for all purposes. All of the other terms of this Agreement shall remain in effect if the jury waiver set forth in this paragraph 14 is held to be unenforceable.

14. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally, by reliable overnight courier or by electronic transmission for receipt during the receiving parties' normal business hours to the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed as follows:

The District: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765
Attn: Kurt R. Wiese, Esq., General Counsel
Telephone: (909) 396-3460
E-mail: kwiese@aqmd.gov

The City: City of Moreno Valley
14177 Frederick Street
Moreno Valley, California 92552
Attn: Michelle Dawson, City Manager
Telephone: (951) 413-3000
E-mail: michelled@moval.org

Copy to: Martin D. Koczanowicz, Esq., City Attorney
14177 Frederick Street
Moreno Valley, California 92553
Telephone: (760) 883-1848
E-mail: martink@moval.org

Highland Fairview: Iddo Benzeevi
President and Chief Executive Officer
Highland Fairview Operating Co.
14225 Corporate Way
Moreno Valley, California 92553
Telephone: (951) 867-5327
E-mail: ibenzeevi@highlandfairview.com

Copy to: Kenneth B. Bley, Esq.
Cox Castle & Nicholson LLP
2029 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 284-2231
E-mail: kbley@coxcastle.com

15. This Agreement contains the entire agreement and understanding concerning the CEQA Lawsuit and the Initiative Lawsuit and supersedes and replaces all prior negotiations or proposed agreements, written or oral. Each of the parties hereto acknowledges that no other party, nor the agents nor the attorneys for any party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement and acknowledges that this Agreement has not been executed in reliance upon any promise, representation or warranty not contained herein. Each party has participated, cooperated or contributed to the drafting and preparation of this Agreement. This Agreement shall not be construed for or against any Party but shall be construed fairly according to its plain meaning, and shall be unconditionally supported by all Parties, in all forums.

16. This Agreement may not be amended except in a writing signed by all the parties hereto.

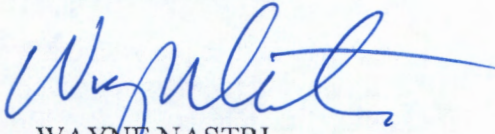
17. The parties to this Agreement hereby acknowledge that they have undertaken an independent investigation of the facts concerning the approvals of the World Logistics Center and the CEQA Lawsuit and the Initiative Lawsuit and that they have been advised by their own attorneys. The parties expressly assume the risk that the true facts concerning the foregoing may differ from those currently understood by them.

18. Each individual signing this Agreement warrants and represents that he or she has been duly authorized to do so by the party he or she represents.

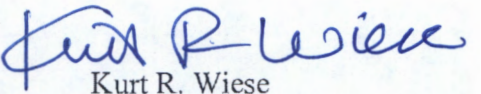
19. This Agreement may be signed in one or more counterparts and, when all parties have signed the original or a counterpart, such counterparts, whether originals, facsimiles or e-mail attachments, together shall constitute one original document.

Dated: October 20, 2016

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT

By: 
WAYNE NASTRI
ACTING EXECUTIVE OFFICER

Approved as to form

By: 
Kurt R. Wiese
GENERAL COUNSEL FOR THE SOUTH
COAST AIR QUALITY MANAGEMENT
DISTRICT

Dated: October __, 2016

CITY OF MORENO VALLEY AND ITS
CITY COUNCIL

By:
DR. YXSTIAN A. GUTIERREZ
MAYOR

(Signatures continued on the next page.)

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Dated: October __, 2016

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT

By:
WAYNE NASTRI
ACTING EXECUTIVE OFFICER

Approved as to form

By:
Kurt R. Wiese
GENERAL COUNSEL FOR THE SOUTH
COAST AIR QUALITY MANAGEMENT
DISTRICT

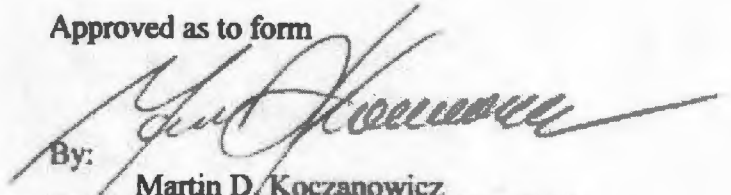
Dated: October __, 2016

CITY OF MORENO VALLEY AND ITS
CITY COUNCIL

By: 
DR. YXSTIAN A. GUTIERREZ
MAYOR

(Signatures continued on the next page.)

Approved as to form



By: **Martin D. Koczanowicz**
**CITY ATTORNEY FOR THE CITY OF
MORENO VALLEY AND ITS CITY
COUNCIL**

Dated: October __, 2016

**HF PROPERTIES, SUNNYMEAD
PROPERTIES, THEODORE PROPERTIES
PARTNERS, 13451 THEODORE, LLC, AND
HL PROPERTY PARTNERS**

By: **IDDO BENZEEVI**

Approved as to form

COX, CASTLE & NICHOLSON LLP

By: **Kenneth B. Bley**
**COUNSEL FOR HF PROPERTIES,
SUNNYMEAD PROPERTIES, THEODORE
PROPERTIES PARTNERS, 13451
THEODORE, LLC, AND HL PROPERTY
PARTNERS**

Approved as to form

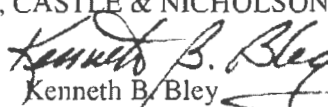
By: Martin D. Koczanowicz
CITY ATTORNEY FOR THE CITY OF
MORENO VALLEY AND ITS CITY
COUNCIL

Dated: October 17, 2016

HF PROPERTIES, SUNNYMEAD
PROPERTIES, THEODORE PROPERTIES
PARTNERS, 13451 THEODORE, LLC, AND
HL PROPERTY PARTNERS

By: 
IDDO BENZEEVI

Approved as to form

COX, CASTLE & NICHOLSON LLP
By: 
Kenneth B. Bley
COUNSEL FOR HF PROPERTIES,
SUNNYMEAD PROPERTIES, THEODORE
PROPERTIES PARTNERS, 13451
THEODORE, LLC, AND HL PROPERTY
PARTNERS