

**SUBDIVISION IMPROVEMENT AGREEMENT**  
**Parcel Map No. 37158**

This agreement is made and entered into as of \_\_\_\_\_ November \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation ("**CITY**") and Coachillin' Holdings, LLC ("**DEVELOPER**"), with respect to the following:

A. DEVELOPER shall construct the following public improvements ("work") for the above-referenced property: streets, curbs, gutters, storm drains, sewer, water, walls, landscaping and any improvements associated with this development, all as described on Schedule A hereto.

B. CITY-approved plans and specifications for the construction of the work, which are incorporated herein by reference.

C. The following are attached hereto and made a part hereof: **Schedule A, Schedule B, Schedule C.**

1. **IMPROVEMENTS:** For valuable consideration, DEVELOPER agrees to do, or cause to be done, at DEVELOPER'S expense and without any cost or liability to CITY, all of the work described herein by the date specified in Schedule A. DEVELOPER warrants that all of the materials supplied and work to be done will be of good quality and workmanship. Said work shall be in strict conformity with the plans and specifications of the work, the standard specifications and drawings for public improvements adopted by CITY and this agreement. DEVELOPER shall furnish all transportation, equipment, labor, services, permits, utilities and all other items necessary to complete the work. DEVELOPER shall pay and defend all claims, demands and liability arising out of, or resulting from or in connection with, the performance of the work as provided for in this agreement. DEVELOPER shall furnish accurate "as constructed" plans. In addition, DEVELOPER shall, within thirty (30) days of acceptance of the work, set all final monuments in place for acceptance. DEVELOPER'S obligations herein are not limited by any cost estimates nor will any estimate be a measure of damages.

CITY in its sole discretion and without liability to CITY, City Council members, CITY'S engineer and their consultants, and each of their officials, directors, officers, employees and agents, may require changes, alterations, or additions to the plans and specifications which do not exceed ten percent (10%) of the original CITY-approved cost estimate of the work for the reasons set forth herein. Changes, alterations or additions in addition to said ten percent (10%) limitation may be made to correct errors or omissions in the approved plans and specification and for unforeseen conditions such as but not limited to rock excavation, unstable soil conditions or high water tables requiring dewatering.

2. **INSURANCE:** DEVELOPER shall not commence or continue to perform any work unless DEVELOPER has in full force and effect all insurance required hereunder with companies satisfactory to CITY. To be acceptable, insurers must be authorized to do business, and have an agent for service of process, in California, and have an "A" policyholder's rating and a financial rating of at least Class V, in accordance with the current Best's Ratings. All insurance policies shall be maintained until the work is accepted by CITY and provide for coverage of all causes of

action or disputes arising out of acts in performance of the construction of the work herein, whether said causes or disputes are filed or brought to the attention of CITY before or after the termination of this contract.

Concurrent with execution of this agreement, DEVELOPER shall provide certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that DEVELOPER has and will maintain for the agreement period, full worker's compensation insurance coverage as required by State laws, for all persons who are or may be employed in carrying out the work. This provision shall not apply if DEVELOPER has no employees performing work under this Agreement. If DEVELOPER has no employees for the purposes of this Agreement, DEVELOPER shall sign the Certificate of Exemption from Worker's Compensation Insurance, attached hereto as Schedule "C."

Concurrent with execution of this agreement, DEVELOPER shall provide to CITY certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that DEVELOPER has liability insurance coverage naming CITY, City Council members, CITY'S engineer, and their consultants, officials, directors, officers, agents and employees, as additional insureds for both bodily injury and property damage in a single limit of not less than that specified in Schedule A for any one occurrence.

Liability insurance coverage shall include each of the following types of insurance as required by CITY to carry out this agreement:

A. General Liability

1. Comprehensive Form
2. Premises-Operations
3. Explosion and Collapse Hazard
4. Underground Hazard
5. Products/Operations Completed
6. Contractual Insurance
7. Broad Form Property Damage Including Completed Operations
8. Independent Contractors
9. Personal Injury

B. Automobile Liability

1. Comprehensive Form, Including Loading and Unloading
2. Owned
3. Hired

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Concurrent with execution of any agreements between DEVELOPER and any subcontractors retained by DEVELOPER to perform any work required of DEVELOPER hereunder, and in any event prior to DEVELOPER authorizing any subcontractors to perform any such work or to even conduct any preliminary activities at the location of where the work is to be completed in preparation for or in anticipation of such work, DEVELOPER shall collect certificates of insurance from all such subcontractors evidencing proof that all subcontractors have procured and will maintain all the insurance coverages required of DEVELOPER under this agreement.

In addition to naming the CITY, City Council members, CITY'S engineer, and their consultants, officials, directors, officers, agents and employees, as additional insureds, as set forth above, the certificates of insurance, including those provided by any subcontractor, provided either on forms required by the CITY or as otherwise approved by the City Attorney, shall bear the following endorsements: (1) each policy required herein must be endorsed to provide that the policy shall not be cancelled or non-renewed by or reduced in coverage or limits (except by paid claims) unless the insurer has provided the CITY with thirty (30) days prior written notice of cancellation; (2) the carriers of all required insurance policies must waive all rights of subrogation against the CITY and its officers, employees, servants, volunteers, agents and independent contractors; and (3) except for worker's compensation insurance, if any, all insurance policies required to be provided by DEVELOPER must be endorsed to provide that the policies shall apply on a primary and non-contributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the CITY, and its officers, employees, servants, volunteers, agents and independent contractors.

All insurance certificates executed in connection with this agreement, whether issued as DEVELOPER or any of DEVELOPER's subcontractors as the named insured, shall be signed under penalty of perjury under the laws of the State of California that all the information contained in the insurance certificates is true and correct, and such representation shall be made knowingly based on independent investigation and verification.

Nothing contained in these insurance requirements shall limit the liability of DEVELOPER or DEVELOPER'S sureties. Review and acceptance of insurance certificates shall not constitute any representation by CITY or its representatives that any required insurance has been issued.

**3. DEVELOPER'S LIABILITY:** DEVELOPER shall, at DEVELOPER'S sole cost and expense, be solely and completely responsible for all matters affecting the design, prosecution, progress and completion of the work (both on and off the job site). DEVELOPER shall be responsible for observing all laws. DEVELOPER shall provide for public convenience and safety of workers, including DEVELOPER'S workers, if any, and those of DEVELOPER'S subcontractors, suppliers and others contributing to the work. DEVELOPER shall protect CITY property and property rights of others, including the location, maintenance and replacement of utilities, whether shown on the plans or not. DEVELOPER shall give prior notification to utility owners. DEVELOPER shall notify Underground Service Alert at 1-800-422-4133 at least 48 hours prior to start of construction. DEVELOPER shall protect against and prevent drainage from storm runoff. DEVELOPER shall not interfere with easements, rights-of-way and encroachment permits. Nothing in this agreement, the specifications, or other contract documents, or CITY'S approval of the plans and specifications or inspection of the work is intended to include CITY'S review, inspection, acknowledgment of or responsibility for any such matters. CITY, City Council members, CITY'S engineer, and their consultants and each of their officials, directors, officers, employees and agents

shall have absolutely no responsibility or liability for the above.

**4. DEVELOPER'S INDEMNIFICATION:** DEVELOPER shall indemnify and hold harmless CITY, City Council members, CITY'S engineer and their consultants and each of their officials, directors, officers, agents and employees from and against all liability, claims, damages, losses, expenses and other costs, including costs of defense and attorneys' fees arising out of or resulting from or in connection with the design or construction of the work, both on and off the job site, and during and after completion. The indemnity provided above relates to liability, claims, damages, losses, expenses and other costs: (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself), including the loss of use resulting therefrom, and (2) caused in whole or, or subject to the remainder of this paragraph, in part by any act or omission of DEVELOPER, DEVELOPER'S engineer, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable. If any liability, claims, damages, losses, expenses and other costs are caused in part by any act or omission (active, passive or comparative negligence included) of a party indemnified hereunder, DEVELOPER's indemnification obligations hereunder shall only extend to the proportionate share of such liability, claims, damages, losses, expenses and other costs caused by any act or omission of DEVELOPER, DEVELOPER'S engineer, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable. The indemnification and agreement to hold harmless provided for hereunder shall extend to damages to or taking of property resulting from the design or construction of said improvements or the diversion of waters or from the design or construction or maintenance of drainage systems, streets and other improvements. Acceptance of these improvements by CITY shall not constitute an assumption by CITY of any responsibility for such damage or taking.

As to any and all claims which fall within the indemnification provided for hereunder against the indemnified parties by any employee of DEVELOPER, any contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnity obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the DEVELOPER, subcontractor, supplier or other person under workers' compensation acts, disability benefit acts or other employee acts.

DEVELOPER shall also indemnify and hold harmless CITY, City Council members, CITY'S engineer, and their consultants, and each of their officials, directors, officers, employees and agents from and against all losses, expenses, damages attorneys' fees and other costs, including costs of defense, which any of them may incur both during and after completion with respect to any latent deficiency in the design, specifications, surveying, planning, supervision, observation of or construction of the work referred to herein or any injury to a person or property, real or personal, as a result of any such latent defect or portions of the work which CITY reasonably suspects may also be defective by reason of such latent defects in the work performed by DEVELOPER or DEVELOPER'S subcontractors, or suppliers or designed by their representatives. Provisions of this paragraph shall remain in effect ten (10) years following acceptance of improvements by the CITY. Nothing contained herein shall limit CITY'S remedies pursuant to Code of Civil Procedure, Section 337.15.

**5. SECURITY:** With the execution of this agreement, DEVELOPER shall furnish and deliver to CITY, at no expense to CITY, a payment security and a performance security. Each shall be in the

amount of CITY-approved estimate specified in Schedule A. Security shall be furnished by surety companies satisfactory to CITY, on the forms provided by CITY. No alterations or substitution of said forms shall be allowed except on approval of City Attorney. To be acceptable, surety companies must be authorized to do business in, and have an agent for, service of process in California, be on the accredited list of the United States Treasury Department, and/or have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating. The security shall be limited to amounts acceptable to the Treasury Department.

None of the following shall in any way affect the obligations of any surety. Each surety waives notice thereof: (a) any change, extension of time, alteration or additions to the terms of the agreement, or the work to be performed, or the plans and specifications therefor; (b) any matters unknown to surety which might affect surety's risk, except that CITY shall advise surety upon request of the following: (1) any written claims it receives from unpaid subcontractors or suppliers, (2) any written orders received from other public authorities charging violations of laws, ordinances or regulations, and (3) failure of DEVELOPER to comply with any written notice to correct defective work. The obligations of DEVELOPER shall not be limited by the amount of such bonds.

6. **TYPES/AMOUNT OF SECURITY:** If specified in Schedule A, in lieu of payment and performance bonds, DEVELOPER may furnish CITY either cash, a Letter of Credit, or an Agreement of Deposit or other security satisfactory to City Attorney as security for performance (see Schedule B). Said security shall be in an amount not less than 100% of the cost estimate and, in addition, for payment of those furnishing materials, labor or equipment in an amount not less than 50% of the cost estimate. Said security agreements shall be on forms furnished by CITY. No alterations or substitution of said forms shall be allowed. The obligations of DEVELOPER shall not be limited by the amount of the security required. No interest shall be paid DEVELOPER on any cash deposit made pursuant to this paragraph.

7. **COSTS AND DEPOSITS:** DEVELOPER agrees to pay CITY, on demand, the full amount of all of CITY'S costs incurred before, within or after acceptance in connection with the work and this agreement. These costs include but are not limited to plan checking, inspection, materials furnished, attorneys' fees incurred in connection with preparing and negotiating this agreement, and all other expenses, including engineers' and attorneys' fees of CITY, directly attributable to the work and this agreement. These costs shall include a reasonable amount for CITY'S overhead in connection therewith, plus any applicable fees of CITY. CITY'S costs shall include the cost of inspecting and restoring other portions of the work both during and after acceptance which CITY reasonably suspects may also be defective by reason of known defects in the work or other work performed by DEVELOPER or DEVELOPER'S contractors, subcontractors, or suppliers or designed by their representatives. DEVELOPER shall deposit with the CITY, concurrently with the execution of this agreement, such sums as the CITY established as deposits set forth in Schedule A. Should the actual expenses be in excess of the deposit set forth in Schedule A, DEVELOPER shall pay the amount of such excess on demand. Should the actual expenses be less than the estimated deposit in Schedule A, CITY shall refund the difference, without interest. unless held in an interest-bearing account, to DEVELOPER within ninety (90) days of acceptance of work. CITY may terminate its activity herein if DEVELOPER fails to make additional deposits on demand. Said deposit is not a trust fund and said deposit may be commingled with other similar deposits.

8. **PARTIAL UTILIZATION:** Until all work has been completed and accepted by CITY and all other public authorities having jurisdiction, DEVELOPER shall be responsible for the care and

maintenance of, or any damage to, the work.

When the work or any portion of it is sufficiently complete to be utilized or placed into service, CITY shall have the right, upon written notification to DEVELOPER, to utilize or allow the utilization of such portions of the work and to place or cause the placement of the operable portions into service. With this notice and commencement of utilization or operation by CITY or any other third party, DEVELOPER shall be relieved of the duty of maintaining the portions so utilized or placed into operation. However, such use and operation shall not relieve DEVELOPER of the full responsibility for completing the work in its entirety, for making good any defective work or materials, for protecting the work from damage by DEVELOPER, DEVELOPER'S engineer, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, and for being responsible for damage to the work by DEVELOPER, DEVELOPER'S engineer, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable. Nor shall such action by CITY be deemed completion and acceptance. Further, such action shall not relieve DEVELOPER or DEVELOPER'S sureties and insurers of the provisions hereof relating to indemnity and guarantees.

**9. ACCEPTANCE OF PUBLIC IMPROVEMENTS:** Acceptance of any public improvements constituting any of the work shall be by action of the City Engineer. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by CITY of any defects in the work. From and after acceptance, the public improvements constituting any of the work shall be owned, operated and maintained by CITY. As a condition to acceptance, DEVELOPER and DEVELOPER'S contractor shall certify to CITY in writing that all of the public improvements constituting any of the work have been performed in strict conformity with the agreement and that all costs have been paid or supplied to CITY security, satisfactory to CITY, guaranteeing such performance.

DEVELOPER shall be required to maintain the payment bond in its full amount for up to 6 months after CITY acceptance of the work. The payment bond shall secure payment to the contractor, subcontractors, and to persons renting equipment or furnishing labor or materials. Following the 6 month period, the payment bond may either be released or reduced to an amount no less than any claims on which an action has been filed and notice given to the CITY in writing.

In addition to DEVELOPER'S other obligations under the agreement DEVELOPER warrants all work and materials to be good quality and fit for the purpose and intended use. DEVELOPER shall also repair, replace and restore any and all such work which may prove defective in workmanship and/or materials without expense whatsoever to CITY; ordinary wear and tear and unusual abuse or neglect excepted. DEVELOPER shall also repair, replace and restore any other work which is displaced in correcting defective work as well as other portions of the work which CITY by reason of such defects reasonably suspects may also be defective. DEVELOPER shall provide a bond or other security satisfactory to CITY for a period of one (1) year to secure a portion of the obligations in this Section 9. Said bond or other security shall be in an amount satisfactory to CITY but in no case less than 15% of cost of the onsite and offsite work referred to on Schedule A. Said bond or other security shall in no way limit the time within which CITY may bring action for breach of this warrant (CCP 337) or action for latent defects (CCP 337.15) nor the amount of such claim or judgment.

In the event of a failure to commence with the compliance of above-mentioned conditions in this Section 9 within seven (7) calendar days after being notified in writing or failure to diligently pursue such compliance to completion, CITY is hereby authorized to proceed to have the defects repaired and made good at the expense of Contractor, who hereby agrees to pay the cost and charges therefor immediately on demand.

If, in the opinion of CITY, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to CITY or to prevent interruption of operations, CITY shall attempt to give the DEVELOPER notice. If DEVELOPER cannot be contacted or does not comply with CITY'S request for correction within a reasonable time as determined by CITY, CITY may proceed to make such correction or provide such repair. The costs of such correction or repair shall be charged against DEVELOPER, who agrees to make payment for said costs upon demand.

Corrective action by CITY shall not relieve DEVELOPER or DEVELOPER'S sureties or insurers of the guarantees and indemnities of this agreement.

This paragraph does not in any way limit CITY'S remedies pursuant to Code of Civil Procedure, Section 337 and 337.15, or the guarantee on any items for which a longer guarantee is expressly specified or on any items for which a manufacturer or supplier gives a longer guarantee period. DEVELOPER agrees to act as a co-guarantor with such manufacturer or supplier and shall furnish CITY all appropriate and available guarantee or warranty certificates upon completion of the work. No manufacturer's guarantee period shall in any way limit the liability of DEVELOPER or DEVELOPER'S sureties and insurers under the indemnity or insurance provisions of this agreement.

**10. EASEMENTS AND FEE INTERESTS:** DEVELOPER shall, at DEVELOPER'S sole cost and expense, furnish CITY with appropriate easements and fee title as may be requested by CITY to required facilities sites for the entire work, free and clear of all liens, encumbrances, restrictions and covenants other than current real property taxes then a lien but not yet payable. At DEVELOPER'S cost and expense, DEVELOPER shall furnish CITY with an acceptable title insurance policy insuring CITY has title as above required with an endorsement insuring CITY against mechanic's lien claims arising out of the performance of the work. Easements shall be in standard form acceptable to CITY, shall be not less than the with CITY determines necessary to maintain the work, and shall be executed and delivered to CITY concurrent with execution of this agreement. Easements shall be recorded prior to CITY accepting the work or furnishing services to any portions of the property under development (other than those as may be delivered under a temporary service agreement with DEVELOPER).

**11. DEVELOPER AND AGENTS:** DEVELOPER shall be as fully responsible to CITY for the acts and omissions in respect of the work of DEVELOPER'S subcontractors and of the persons directly or indirectly employed by DEVELOPER'S subcontractors as DEVELOPER is for the acts and omissions of persons directly or indirectly employed by DEVELOPER. To that end, DEVELOPER shall take such steps as are reasonably necessary to ensure that its subcontractors do not take any steps in relation to the work which would cause DEVELOPER to be in breach of this agreement and to ensure that such subcontractors shall take such steps as are reasonably necessary to ensure that they do not take any steps in relation to the work which would cause DEVELOPER to be in breach of this agreement. To that end, DEVELOPER shall bind every subcontractor to be bound by the terms of this agreement, as applicable and appropriate. Nothing contained in the agreement shall create any contractual relationship between any of DEVELOPER'S subcontractors and CITY.

Consent is hereby given DEVELOPER to have the work performed by the California licensed Class A Contractor(s) named in Schedule A. DEVELOPER or DEVELOPER'S contractor may satisfy the requirements of this section by having, in lieu of said Class A license, an appropriate alternate license as determined by CITY.

**12. DEFAULT BY DEVELOPER:** If DEVELOPER refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure its completion within the time specified herein, or any written extension thereof, or fails to complete such work within such time, or if DEVELOPER should be adjudged a bankrupt, make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of DEVELOPER'S insolvency, or if DEVELOPER or any of their subcontractors violate any of the provisions of this agreement, or if DEVELOPER fails to make prompt payment for materials or labor, or if DEVELOPER disregards laws, ordinances, or instructions of CITY, then CITY may thereafter serve written notice upon the DEVELOPER and DEVELOPER'S surety of its intention to declare this agreement in default. Said notice shall contain the reasons for such intention to declare a default. Unless, within ten (10) days after the service of such notice, such violations shall cease and satisfactory arrangements for the corrections thereof be made (or in the case of any violation that would require more than ten (10) days to correct, DEVELOPER having commenced reasonably diligent steps towards correction within such ten (10) day period), this agreement shall upon the expiration of said time be in default.

Upon this agreement being in default as provided for herein, CITY shall serve written notice thereof upon the surety and DEVELOPER, and the surety shall have the right to take over and perform this agreement. If the surety does not, within fifteen (15) days after the serving upon it of a notice of this agreement being in default, give CITY written notice of its intention to take over and perform this agreement or does not commence performance thereof within thirty (30) days from the date of CITY'S notice, CITY may take over the work and prosecute the same to the extent of completion it deems necessary by contract or by any other method it may deem advisable for the account and at the expense of DEVELOPER, and the surety shall be liable to CITY for any cost or other damage occasioned CITY thereby. In such event CITY may, without liability for so doing, take possession of, and utilize in completing such work, such materials, appliances, plants, and other property belonging to DEVELOPER that may be on the site of the work and be necessary therefor. Should surety fail to take over and diligently perform the agreement upon DEVELOPER being in default under this agreement, surety agrees to promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of DEVELOPER'S obligations. For any such work the CITY elects to complete by furnishing its own employees, materials, tools, and equipment, CITY shall receive reasonable compensation therefor, including costs of supervision and overhead.

In the event that DEVELOPER is in default under this agreement, CITY may, at its option, elect not to complete any or all of the work and may elect not to accept any of the work already completed. If CITY elects not to accept any of the work, then all CITY'S obligations under this agreement to DEVELOPER and the lands to be served shall terminate. CITY'S obligations to DEVELOPER and the lands to be served shall continue to the extent of any acceptance, subject to CITY'S right to offset any sums due the CITY.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to CITY.

13. **DELAY BY DEVELOPER**: If the work is suspended or otherwise not continuously prosecuted for any cause whatsoever, within or without the time for completion, DEVELOPER shall, at DEVELOPER'S sole cost and expense, remove and replace all or any portion of the work already completed and inspected which CITY, in its sole discretion, determines is or can be damaged as a result of being in place while the work is suspended or otherwise not continuously being prosecuted.

14. **ATTORNEYS' FEES AND COSTS**: Should CITY engage an attorney to enforce any provision of this agreement or to defend any claim brought by anyone arising out of the failure of DEVELOPER to perform any of DEVELOPER'S obligations under this agreement, DEVELOPER shall pay all of CITY'S attorneys' fees incurred in connection therewith, whether or not said attorneys are in the regular employ of the CITY.

15. **REIMBURSEMENT**: Provided DEVELOPER has fully complied with all the terms of this agreement, CITY shall, without interest, reimburse DEVELOPER to the extent set forth on a separate Reimbursement Schedule. DEVELOPER accepts as the amount and conditions governing DEVELOPER'S entitlement to reimbursement and refund under CITY'S existing rules, regulations, ordinances and policies. If no amount is specified in Schedule A, DEVELOPER is to receive no reimbursement from CITY.

16. **FUTURE CHARGES**: Nothing in this agreement shall relieve DEVELOPER or DEVELOPER'S successors or assigns of any obligation to pay any connection, installation, expansion or other fees, charges, or other expenses, including operation and maintenance expenses, required under any present or future established ordinances, rules, regulations and policies of CITY.

17. **ASSIGNMENT**: The performance of the agreement may not be assigned except upon the written consent of CITY. Consent will not be given to any proposed assignment which would relieve DEVELOPER, or DEVELOPER'S sureties of their responsibilities under the agreement unless CITY finds that assignee can perform this agreement and provide security comparable to that provided by DEVELOPER.

18. **NOTICE**: All notices required hereunder shall be deemed served or given upon the earlier of actual receipt or deposit in the U.S. Postal Service, first class postage prepaid, addressed to DEVELOPER at the address set forth below, to the surety at the address in the security instrument, and to CITY at 65950 Pierson Boulevard, Desert Hot Springs, CA 92240.

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**CITY OF DESERT HOT SPRINGS  
SUBDIVISION IMPROVEMENT AGREEMENT SIGNATURE  
REQUIREMENTS**

(Limited Partnership / General Partnership / Corporation)

**1. WHERE PRINCIPAL IS A LIMITED PARTNERSHIP**

- A. General Partner shall execute on behalf of the limited partnership.
- B. General Partner shall furnish City of Desert Hot Springs a copy of the recorded Certificate of Limited Partnership to authenticate the authority of the General Partner to sign on behalf of the limited partnership.

**2. WHERE PRINCIPAL IS A GENERAL PARTNERSHIP**

- A. General Partner shall execute on behalf of general partnership.
- B. General Partner shall furnish City of Desert Hot Springs a copy of the General Partnership Agreement authenticating that the General Partner who signs the document has authority to do so.

**3. WHERE PRINCIPAL IS A CORPORATION**

- A. Officer or officers shall execute on behalf of corporation.
- B. Officers shall furnish City of Desert Hot Springs a copy of a corporate resolution indicating that the officer or officers who sign the document are the officers of the corporation and authorized to bind the corporation to contract. Corporation requires two signatures.

For example, John Doe may sign on behalf of either partnership or the corporation as the General Partner and/or president thereof, but then, in addition, John Doe is required to sign the document individually as an individual obligor.

**4. WHERE PRINCIPAL IS A LIMITED LIABILITY COMPANY (LLC)**

- A. Agreement may be executed as follows:
  - 1. By any member, unless the articles of organization or operating agreement provide otherwise;
  - 2. By any manager; if LLC is manager-managed, unless the articles of organization or operating agreement provide otherwise; or
  - 3. By any officer, if the operating agreement provides for the appointment of officers, unless the articles of organization or operating agreement provide otherwise.
- B. The individual(s) executing the agreement shall provide certified copies of the LLC's articles of organization and operating agreement.

By: \_\_\_\_\_  
(Authorized Representative of CITY)  
Scott Matas, Mayor of DHS

By: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Jennifer Mizrahi, City Attorney

By: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

By: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

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(SIGNATURES MUST BE NOTARIZED)

(Seal: Partnership/Corporation)

\_\_\_\_\_  
**COACHILLIN HOLDINGS LLC**  
**Managing Member; Kenneth Dickerson**

Date: \_\_\_\_\_

## SCHEDULE A SUBDIVISION IMPROVEMENT AGREEMENT

This schedule is attached to and made a part of the Subdivision Improvement Agreement between CITY and DEVELOPER for the above-referenced property.

1.  
**31-2018**

Completion Date: **12-**

2. General Liability

\$2,000,000	Each Occurrence (Includes Bodily Injury and Property Damage)
\$1,000	Medical Expense
\$1,000,000	Personal & Advertising Injury
\$2,000,000	General Aggregate
\$2,000,000	Products-Completed/Operations Aggregate

Automobile Liability

Combined Single Limit      \$1,000,000 each accident, \$2,000,000  
Aggregate Workers Compensation   Statutory

3.    Approved Security Amounts:  
      (To be posted prior to acceptance of improvements)

Grading Bond (Total Security minus Cash Deposit)

Performance (on-site) (100%)

Materials (on-site) (50%)

Performance (off-site) (100%)

Materials (off-site) (50%)

4. Bond Substitute Acceptable:                      **Yes**

5. Deposit/Fee Amount

6. Warranty/Performance (15%)

Security Amount: .....

(To be in place at acceptance of work)

7.    Contractor(s):

EcoMaster Corporation &  
Jones Construction

**CLASS A**

<b>EcoMaster Corporation 46-883 Monroe Street, Ste 203, Indio, CA 92201</b>	<b>Class A -B</b>	<b>CA #890682</b>
<b>Jones Bros. Construction</b>	<b>Class A</b>	<b>CA #406921</b>

<b>Co.</b> <b>P.O. Box 905</b> <b>Coachella, CA 92236</b>		
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Reimbursement:  
 (If an amount is specified, see separate schedule.)

See Attached Schedules

(        ) Initials of CITY REPRESENTATIVE

(        ) Initials of DEVELOPER or  
 (        ) DEVELOPER REPRESENTATIVE

\_\_\_\_\_  
**COACHILLIN HOLDINGS LLC**  
**Kenneth Dickerson, Managing Member**  
 Date: \_\_\_\_\_

**ATTACHMENT TO SCHEDULE A  
OF SUBDIVISION IMPROVEMENT  
AGREEMENT**

Applicable fees/deposits payable by DEVELOPER prior to or concurrent with this agreement are as follows:

## **FEES NONREFUNDABLE**

Plan Check Fee (Final Map, Grading & Street Improvement plans)	\$
Inspection Fees (Grading, Onsite, Offsite, & PM10)	\$
Parkland Fees	\$ N/A
Final Map Filing Fee	\$ _____
CFD Annex Fee	\$ _____
<b>TOTAL NONREFUNDABLE FEES</b>	<b>\$</b>

## FEES REFUNDABLE

Cash Grading Deposit	\$
<b>TOTAL REFUNDABLE DEPOSITS</b>	<b>\$</b>

In accordance with Section 7 of this agreement, costs incurred by CITY in excess of deposit shall be billed to DEVELOPER; if less, CITY will refund.  
(If an amount is specified, see separate schedule.)

( ) Initials of CITY REPRESENTATIVE      ( ) Initials of DEVELOPER or  
( ) DEVELOPER REPRESENTATIVE

**COACHILLIN HOLDINGS LLC**  
**Kenneth Dickerson, Managing Member**

Date: \_\_\_\_\_

**ATTACHMENT TO SCHEDULE A  
OF SUBDIVISION IMPROVEMENT AGREEMENT**

**SECURITY CALCULATIONS**

**TPM #37158**

<u>Onsite Improvements</u>	
Street (paving, curb and gutter, curb inlet catch basins, sidewalk)	
Storm Drain Improvements ( <i>Refer to file for detailed cost estimate breakdown</i> )	
Subtotal	
(+) 15% contingency	
<b>Total Performance Bond (onsite improvements)</b>	
Payment Bond = 50% of Performance bond	
<b>Total Payment Bond (on site improvements)</b>	
<u>Offsite Improvements</u>	
Street (remove and replace AC pavement, inlet and catch basin; access ramp, curb ramp, spandrel/cross gutter)	
Water and Sewer	
Storm Drain Improvements (storm drain, catch basin)	
Parkway/Retention Basin/Planter Landscaping and Irrigation	
Entry Area Improvements (entry gate/motors/call box) ( <i>Refer to file for detailed cost estimate breakdown</i> )	
Subtotal	
(+)15% contingency	
<b>Total Performance Bond (offsite improvements)</b>	
Payment Bond = 50% of Performance Bond	
<b>Total Payment Bond (offsite improvements)</b>	
<b>Warranty Bond = 15% of Total Performance Bonds</b>	

<b>Monumentation Bond</b>	
---------------------------	--

<b>Estimate for Inspection Fees</b>	
Onsite/Offsite Inspection Fees Due (3% of Performance Bond Total)	
Grading Inspection Fee (5.0 acres)	
PM10 Inspection Fee (Subdivision)	

**BOND NO.:**\_\_\_\_\_  
**BOND FEE:**\_\_\_\_\_

**SCHEDULE B  
BOND**

## **PERFORMANCE SECURITY**

### **SURVEY OF MONUMENTS**

#### **Map No. 37158**

*(California Government Code §§ 66499 and 66499.1)*

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California ("City") and Coachillin' Holdings, LLC ("Principal"), a California Limited Liability Corporation, have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length, and have agreed pursuant to Section 66499 of the Government Code to execute this bond to secure the performance of the following obligation:

Principal hereby agrees to install survey monuments in accordance with any terms and conditions set forth in the Agreement, permit and the requirements and specifications of all applicable laws and ordinances. Said installation shall be completed on or before December 31, 2018, or as otherwise provided by any lawful extension of time granted by the City Council.

**WHEREAS**, we, the Principal and \_\_\_\_\_, as surety ("Surety"), are held and firmly bound unto the City, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

**WHEREAS**, should Principal fail to install survey monuments in accordance with any terms and conditions set forth in the Agreement, permit and the requirements and specifications of all applicable laws and ordinances and/or should Principal fail to complete said installation of survey monuments within the time period prescribed therein or otherwise provided by any lawful extension of time granted by the City Council, the City may, at its option, cause all required work to be done in the manner required herein, and the parties executing this bond shall be firmly bound for the payment of all necessary costs therefore.

**NOW, THEREFORE**, we, the Principal and Surety, are held and firmly bound unto the City, in the penal sum of Ten Thousand Dollars (\$ 10,000.00) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the foregoing work, on his or their part, to be kept and performed at the time and in the manner specified above, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain

in full force and effect, at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the work to be performed hereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the scope of work to be performed or to the specifications.

**[THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by Principal and Surety named herein, on \_\_\_\_\_, 2017.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature  
Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***\*Note: Principal and Sureties  
signatures must be notarized and 3  
originals must be executed.***

**DEPOSIT AGREEMENT**  
**PERFORMANCE SECURITY**  
**(CITY AS DEPOSITORY)**  
**SURVEY OF MONUMENTS**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and Coachillin' Holdings, LLC, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit (\$10,000.00) ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing performance of that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor ("Agreement") pursuant to Government Code Section 66499(a)(2); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing to City the faithful performance of Depositor's obligation to install survey monuments in accordance with any terms and conditions set forth in the permit issued for such installation, the Agreement, and the requirements and specifications of all applicable laws and ordinances, in the time and manner required by said Agreement, permit, and/or laws and ordinances.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset.

Paragraph 3. Depositor shall deposit \$10,000.00 with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been concurrently executed with the Agreement for the purpose of securing the faithful performance of Depositor's obligations under said Agreement, provided that Depositor's obligations thereunder are not completed by another party during the term of this Deposit Agreement. If said obligations are completed by another party, then the Deposited Funds shall be returned to Depositor. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein. Notwithstanding anything else to the contrary herein, under no circumstances shall Depositor be entitled to a refund of any portion of the Bookkeeping Fee, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall faithfully perform its obligations to install survey

monuments in accordance with any terms and conditions set forth in the permit issued for such installation, the Agreement, and the requirements and specifications of all applicable laws and ordinances, all in the time and manner required by the Agreement, permit, and/or applicable laws and ordinances. In the event such obligations are not completed by said date, City shall cause Depositor's unperformed obligations to be completed as specified utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations under the Agreement.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs its obligations under the Agreement, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's obligation under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                                Richard Kopecky, City Engineer  
City of Desert Hot Springs  
65950 Pierson Boulevard  
Desert Hot Springs, CA 92240

To Depositor:                        Coachillin Holdings LLC  
Kenneth Dickerson, Managing Member  
71-713 Highway 111, Suite 100  
Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors,

subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Deposit Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or proceedings arising from or related to this Deposit Agreement shall be brought in the County of Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**DEPOSITOR**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

**LETTER OF CREDIT**

City of Desert Hot Springs  
65950 Pierson Boulevard  
Desert Hot Springs, CA 92240

Attention: Charles Maynard, City Manager

Reference: Irrevocable Letter of Credit No. \_\_\_\_\_

Gentlemen:

This Letter of Credit is given to fulfill the requirements of that certain agreement entered into between the City of Desert Hot Springs, a political subdivision of the State of California, hereinafter referred to as "CITY", and Coachillin' Holdings, LLC, hereinafter referred to as "Principal" covering certain improvements to be installed in that certain project known and designated as **COACHILLIN' Industrial Cultivation & Ancillary Canna-Business Park** by Principal and in accordance with said agreement.

As required by said agreement, and for that purpose only, we hereby establish in favor of CITY our Irrevocable Letter of Credit No. \_\_\_\_\_ in the amount of \_\_\_\_\_, to be paid by drafts at sight on us if accompanied by the following documents:

CITY'S written statement (signed by the City Manager or City Attorney) certifying that there has been failure of the Principal to perform the above agreement. Said statement shall declare the amount of the sight draft on us and that the amount of this draft is, therefore, now due and payable.

IT IS AGREED that the above funds are on deposit and guaranteed for payment and said funds shall become trust funds for the purposes set forth herein as required by Section 66499.6 of the Government Code of the State of California.

Upon our receipt, from time to time, of a signed and dated certificate, in the form below, from the City of Desert Hot Springs, the amount of this Letter of Credit will be reduced by the amount stated in such certificate. Said certificate must read as follows:

Required improvements have been performed in that certain project known and designated as **COACHILLIN' Industrial Cultivation & Ancillary Canna-Business Park**. The amount and liability under Letter of Credit No. \_\_\_\_\_ is hereby reduced to \$ \_\_\_\_\_.

All drafts under this Letter of Credit shall be marked:

\_\_\_\_\_  
Name of Bank  
\_\_\_\_\_  
Address

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

We expressly agree with you that all drafts drawn under and in compliance with the terms of this Letter of Credit shall meet with due honor upon representation. "Due honor" requires payment to

CITY within three (3) banking days after presentation of demand.

This Letter of Credit shall be deemed automatically extended without amendment one year from the present and annually thereafter unless sixty (60) days prior to any such date bank shall notify City Clerk, by registered letter, that bank elects not to renew for such additional one year. In any event, this guaranteed Letter of Credit shall expire forty-five (30) days after CITY'S approval of the foregoing improvements, the recordation of the Notice of Acceptance and notification thereof to bank.

DATED:\_\_\_\_\_

\_\_\_\_\_  
Name of Bank

\_\_\_\_\_  
By: Authorizing Agent or Representative

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

Note: Letter must be submitted on bank letterhead with resolution or other documentation identifying signature as bank officer authorized to sign on behalf of bank.

**BOND NO.:** \_\_\_\_\_  
**BOND FEE:** \_\_\_\_\_

**BOND**

**PERFORMANCE SECURITY**

**GRADING**

**Map No. 37158**

(California Government Code §§ 66499 and 66499.1)

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California ("City") and Coachillin Holdings LLC (hereinafter "Principal"), a California Limited Liability Company, have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length, and have agreed pursuant to Section 66499 of the Government Code to execute this bond to secure the performance of the following obligation:

Principal hereby agrees to conduct its grading activities in accordance with the plans and specifications prepared by Heptagon Seven, Brad Donais, registered Civil Engineer, the terms and conditions set forth in the grading permit issued by the Office of the Civil Engineer of the City, and all applicable laws and ordinances.

**WHEREAS**, we, the Principal and \_\_\_\_\_, as surety ("Surety"), are held and firmly bound unto the City, in the penal sum of Four Million one hundred forty-four thousand three hundred seventeen dollars and 16/100 cents (\$4,144,317.16) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

**WHEREAS**, should Principal fail to conduct its grading activities in accordance with the plans and specifications prepared by David Rice, registered Civil Engineer, the terms and conditions set forth in the grading permit issued by the Office of the Civil Engineer of the City, the Agreement, and all applicable laws and ordinances, the City may, at its option, cause all required work to be done in the manner required herein and the parties executing this bond shall be firmly bound for the payment of all necessary costs therefor.

**NOW THEREFORE**, we, the Principal and Surety, are held and firmly bound unto the City, in the penal sum of Four Million one hundred forty-four thousand three hundred seventeen dollars and 16/100 cents (\$4,144,317.16) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the foregoing activity, on his or their part, to be kept and performed at

the time and in the manner specified above, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect, at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the work to be performed hereunder or the specifications accompanying the same, or any matters unknown to Surety which might affect Surety's risk, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the scope of the work to be performed or to the specifications.

**[THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by Principal and Surety named herein, on \_\_\_\_\_, 2017.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature  
Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***\*Note: Principal and Surety's  
signatures must be notarized and 3  
originals must be executed.***

**DEPOSIT AGREEMENT**  
**PERFORMANCE SECURITY**  
**(CITY AS DEPOSITORY)**

**GRADING**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and Coachillin Holdings LLC, a California Limited Liability Company, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit (\$10,000.00) ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing performance of that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor ("Agreement") pursuant to Government Code Section 66499(a)(2); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing to City the faithful performance of Depositor to insure Depositor's performance of the grading activities in accordance with the plans and specifications prepared by Heptagon Seven, Brad Donais, registered Civil Engineer, the terms and conditions set forth in the grading permit issued by the Office of the Civil Engineer of City, all the provisions of the Municipal Code and other applicable laws, and the terms described in the Agreement, all in the time and manner required in the Agreement, the grading permit, and/or the applicable provisions of the Municipal Code.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset.

Paragraph 3. Depositor shall deposit \$10,000.00 with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been concurrently executed with the Agreement for the purpose of securing the faithful performance of Depositor's obligations under said Agreement, provided that Depositor's obligations thereunder are not completed by another party during the term of this Deposit Agreement. If said obligations are completed by another party, then the Deposited Funds shall be returned to Depositor. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein. Notwithstanding anything else to the contrary herein, under no circumstances shall Depositor be entitled to a refund of any portion of the Bookkeeping Fee, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall faithfully perform its obligations under the Agreement in the manner and within the time period set forth in the grading permit issued by the Office of the Civil Engineer of City, the applicable provisions of the Municipal Code, and/or the Agreement or any extensions thereof as may be granted by City. In the event such obligations are not completed by said date, City shall cause Depositor's unperformed obligations to be completed as specified utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations under the Agreement.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs its obligations under the Agreement, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's obligation under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                      Richard Kopecky, City Engineer  
                                    City of Desert Hot Springs  
                                    65950 Pierson Boulevard  
                                    Desert Hot Springs, CA 92240

To Depositor:              Coachillin Holdings LLC  
                                    71-713 Highway 111, Suite 100  
                                    Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors,

subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Deposit Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or proceedings arising from or related to this Deposit Agreement shall be brought in the County of Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**COACHILLIN HOLDINGS LLC**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

**BOND NO.:** \_\_\_\_\_  
**BOND FEE:** \_\_\_\_\_

**BOND**

**PERFORMANCE SECURITY**

**SUBDIVISION IMPROVEMENTS (ON-SITE)**

**Map No. 37158**

*(California Government Code §§ 66499 and 66499.1)*

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California ("City") and Coachillin Holdings LLC, a California Limited Liability Company ("Principal"), have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length; and

**WHEREAS**, under the terms of said Agreement, Principal is required before commencing performance of the work, to file a good and sufficient bond for the faithful performance of said Agreement; and

**WHEREAS**, \_\_\_\_\_ ("Surety") is a \_\_\_\_\_ and duly licensed to conduct general surety business in the State of California.

**NOW, THEREFORE**, we, Principal and Surety, are held firmly bound unto the City in the performance of the aforesaid Agreement in the penal sum of **Four Million one hundred forty-four thousand three hundred seventeen dollars and 16/100 cents (\$4,144,317.16)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal, its heirs, executors, administrators, successors, or assigns, shall in all things to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said Agreement and any alteration thereof made as therein provides, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Agreement or the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

**[THIS PORTION OF PAGE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by Principal and Surety named herein, on \_\_\_\_\_, 20\_\_.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature  
Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***Note: Principal and Surety's signatures must be notarized and 3 originals must be executed.***

## **DEPOSIT AGREEMENT**

### **PERFORMANCE SECURITY**

#### **(CITY AS DEPOSITORY)**

#### **SUBDIVISION IMPROVEMENTS (ON-SITE)**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and Coachillin Holdings LLC, a California Limited Liability Company, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit **(\$2,168,926.22)** ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing performance of that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor ("Agreement") pursuant to Government Code Section 66499(a)(2); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing to City the faithful performance of Depositor to insure the installation and completion of the public improvements described in said Agreement in the time and manner required by said Agreement.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset.

Paragraph 3. Depositor shall deposit **\$2,277,372.53** with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been concurrently executed with the Agreement for the purpose of securing the faithful performance of Depositor's obligations under said Agreement, provided that Depositor's obligations thereunder are not completed by another party during the term of this Deposit Agreement. If said obligations are completed by another party, then the Deposited Funds shall be returned to Depositor. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein. Notwithstanding anything else to the contrary herein, under no circumstances shall Depositor be entitled to a refund of any portion of the Bookkeeping Fee, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall faithfully perform its obligations to complete, and shall insure the installation and completion of the public improvements described in the Agreement, in the time and manner required by the Agreement. In the event such obligations are not completed

by said date, City shall cause Depositor's unperformed obligations to be completed as specified utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations under the Agreement.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs its obligations under the Agreement, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's obligation under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                      Richard Kopecky, City Engineer  
                                        City of Desert Hot Springs  
                                        65950 Pierson Boulevard  
                                        Desert Hot Springs, CA 92240

To Depositor:              Coachillin Holdings LLC  
                                        71-713 Highway 111, Suite 100  
                                        Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors, subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any

alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Deposit Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or

proceedings arising from or related to this Deposit Agreement shall be brought in the County of Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**COACHILLIN HOLDINGS LLC**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

BOND NO.: \_\_\_\_\_  
BOND FEE: \_\_\_\_\_

**BOND**

**PERFORMANCE SECURITY**

**SUBDIVISION IMPROVEMENTS (OFF-SITE)**

**Map No. 37158**

*(California Government Code §§ 66499 and 66499.1)*

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California ("City") and Coachillin Holdings LLC, a California Limited Liability Company ("Principal"), have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length; and

**WHEREAS**, under the terms of said Agreement, Principal is required before commencing performance of the work, to file a good and sufficient bond for the faithful performance of said Agreement; and

**WHEREAS**, \_\_\_\_\_ ("Surety") is a \_\_\_\_\_ and duly licensed to conduct general surety business in the State of California.

**NOW, THEREFORE**, we, Principal and Surety, are held firmly bound unto the City in the performance of the aforesaid Agreement in the penal sum of **One million nine hundred seventy-five thousand three hundred ninety dollars and 94/100 cents (\$ 1,975,390.94)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal, its heirs, executors, administrators, successors, or assigns, shall in all things to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said Agreement and any alteration thereof made as therein provides, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable

attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Agreement or the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

**[THIS PORTION OF PAGE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by Principal and Surety named herein, on \_\_\_\_\_, 2017.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature  
Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***Note: Principal and Surety's signatures must be notarized and 3 originals must be executed.***

## **DEPOSIT AGREEMENT**

### **PERFORMANCE SECURITY**

#### **(CITY AS DEPOSITORY)**

#### **SUBDIVISION IMPROVEMENTS (OFF-SITE)**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and Coachillin Holdings LLC, a California Limited Liability Company, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit **(\$1,975,390.94)** ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing performance of that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor ("Agreement") pursuant to Government Code Section 66499(a)(2); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing to City the faithful performance of Depositor to insure the installation and completion of the public improvements described in said Agreement in the time and manner required by said Agreement.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset.

Paragraph 3. Depositor shall deposit **\$1,995,144.85** with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been concurrently executed with the Agreement for the purpose of securing the faithful performance of Depositor's obligations under said Agreement, provided that Depositor's obligations thereunder are not completed by another party during the term of this Deposit Agreement. If said obligations are completed by another party, then the Deposited Funds shall be returned to Depositor. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein. Notwithstanding anything else to the contrary herein, under no circumstances shall Depositor be entitled to a refund of any portion of the Bookkeeping Fee, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall faithfully perform its obligations to complete, and shall insure the installation and completion of the public improvements described in the Agreement, in the time and manner required by the Agreement. In the event such obligations are not completed by said date, City shall cause Depositor's unperformed obligations to be completed as specified

utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations under the Agreement.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs its obligations under the Agreement, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's obligation under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                      Richard Kopecky, City Engineer  
                                    City of Desert Hot Springs  
                                    65950 Pierson Boulevard  
                                    Desert Hot Springs, CA 92240

To Depositor:              Coachillin Holdings LLC  
                                    71-713 Highway 111, Suite 100  
                                    Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors, subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or

proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Deposit Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or proceedings arising from or related to this Deposit Agreement shall be brought in the County of

Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**COACHILLIN HOLDINGS LLC**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

**BOND NO.:** \_\_\_\_\_  
**BOND FEE:** \_\_\_\_\_

**BOND**

**PERFORMANCE SECURITY**

**GUARANTEE REPAIR AND MAINTENANCE OF ALL IMPROVEMENTS**

**Map No.** \_\_\_\_\_

*(California Government Code §§ 66499 and 66499.1)*

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California (hereinafter "City"), and Coachillin Holdings LLC (hereinafter "Principal"), a California Limited Liability Company, have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length, and have agreed pursuant to Section 66499 of the Government Code to execute this bond to secure the performance of the following obligation:

Principal hereby agrees to guarantee the material and workmanship relative to the installation of all improvements in and adjoining **COACHILLIN' Industrial Cultivation & Ancillary Canna-Business Park** against all defects and to promptly perform work and supply material as required by the City which are needed to repair or replace such defective work and material.

**WHEREAS**, we, the Principal and \_\_\_\_\_, as surety ("Surety"), are held and firmly bound unto the City, in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

**WHEREAS**, should Principal fail to promptly repair and replace materials or work required to be done by it and in accordance with the Agreement and all applicable laws and ordinances and/or should Principal fail to complete said repair and replacement work within the time allowed by the City, the City may, at its option, cause all required work to be done in the manner required herein and the parties executing this bond shall be firmly bound for the payment of all necessary costs therefore.

NOW THEREFORE, we, the Principal and Surety, are held and firmly bound unto the City, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents. Surety shall guarantee replacement and repair of improvements for a period of one (1) year following final acceptance of said improvements.

The condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the foregoing activity, on his or their part, to be kept and performed at the time and in the manner specified above, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect, at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the work to be performed hereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the scope of the work to be performed or to the specifications.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by the Principal and

Surety above named, on \_\_\_\_\_, \_\_\_\_, 2017.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature  
Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***\*Note: Principal and Surety's  
signatures must be notarized and 3  
originals must be executed.***

**DEPOSIT AGREEMENT**  
**PERFORMANCE SECURITY**  
**(CITY AS DEPOSITORY)**

**GUARANTEE REPAIR AND MAINTENANCE OF ALL IMPROVEMENTS**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and \_\_\_\_\_, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit (\$\_\_\_\_\_) ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing performance of that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor ("Agreement") pursuant to Government Code Section 66499(a)(2); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing to City the material and workmanship relative to the installation of all improvements as set forth under the Agreement and the requirements and specifications of all applicable laws and ordinances, in the time and manner required by said Agreement and/or laws and ordinances.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset.

Paragraph 3. Depositor shall deposit \$\_\_\_\_\_ with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been concurrently executed with the Agreement for the purpose of securing the faithful performance of Depositor's obligations under said Agreement, provided that Depositor's obligations thereunder are not completed by another party during the term of this Deposit Agreement. If said obligations are completed by another party, then the Deposited Funds shall be returned to Depositor. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein. Notwithstanding anything else to the contrary herein, under no circumstances shall Depositor be entitled to a refund of any portion of the Bookkeeping Fee, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall faithfully perform its obligations to provide, and shall for no less than one (1) year guarantee to City the material and workmanship relative to the installation of all improvements as set forth under the Agreement and the requirements and specifications of all

applicable laws and ordinances, all in the time and manner required by the Agreement and/or applicable laws and ordinances. In the event such obligations are not completed by said date, City shall cause Depositor's unperformed obligations to be completed as specified utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations under the Agreement.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs its obligations under the Agreement, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's obligation under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                      Richard Kopecky, City Engineer  
                                    City of Desert Hot Springs  
                                    65950 Pierson Boulevard  
                                    Desert Hot Springs, CA 92240

To Depositor:              Coachillin Holdings LLC  
                                    71-713 Highway 111, Suite 100  
                                    Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors, subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any

alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Deposit Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or

proceedings arising from or related to this Deposit Agreement shall be brought in the County of Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**COACHILLIN HOLDINGS LLC**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

**BOND NO.:** \_\_\_\_\_  
**BOND FEE:** \_\_\_\_\_

**BOND**

**PAYMENT SECURITY**

**LABOR AND MATERIAL (ON-SITE)**

**Map No.** \_\_\_\_\_

*(California Government Code §§ 66499 and 66499.2)*

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California ("City") and Coachillin Holdings LLC, a California Limited Liability Company ("Principal"), have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length; and

**WHEREAS**, under the terms of said Agreement, Principal is required before commencing performance of the work, to file a good and sufficient payment bond with the City to secure claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code; and

**WHEREAS**, \_\_\_\_\_ ("Surety") is a \_\_\_\_\_ and duly licensed to conduct general surety business in the State of California.

**NOW, THEREFORE**, Principal and Surety, their heirs, representatives, successors and assigns, jointly and severally, are held firmly bound unto the City and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid Agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of **Nine hundred forty-three thousand eleven dollars and forty cents Dollars (\$943,011.40)** lawful money of the United States for material furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

Surety agrees that it shall pay the amounts due City and diligently perform the Agreement upon Principal's default after notice and within the time specified in the Agreement. If Surety fails to perform within the times specified in the Agreement, Surety shall promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and City regarding Principal's failure under the Agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed proper payment as between Principal and Surety.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect, at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

**[THIS PORTION OF PAGE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by Principal and Surety named herein, on \_\_\_\_\_, 2017.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature  
Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***\*Note: Principal and Surety's signatures must be notarized and 3 originals must be executed.***

## **DEPOSIT AGREEMENT**

### **PAYMENT SECURITY**

### **(CITY AS DEPOSITORY)**

### **LABOR AND MATERIAL (ON-SITE)**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and Coachillin Holdings LLC, a California Limited Liability Company, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit **(\$471,505.70)** ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing performance of that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor ("Agreement") pursuant to Government Code Section 66499(a)(2); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing payment to City, to insure the payment to the contractor, its subcontractors and to persons renting equipment or furnishing labor or materials to the above for the construction of improvements provided for in said Agreement.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset.

Paragraph 3. Depositor shall deposit **\$476,220.76** with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been concurrently executed with the Agreement for the purpose of securing payment to the contractor, its subcontractors and to persons renting equipment or furnishing labor or materials to the above for the construction of improvements provided for in said Agreement. If said obligations are completed by another party, then the Deposited Funds shall be returned to Depositor. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein. Notwithstanding anything else to the contrary herein, under no circumstances shall Depositor be entitled to a refund of any portion of the Bookkeeping Fee, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall perform its obligations under the Agreement securing the payment for labor and materials in connection with construction of improvements as set forth in the Agreement, in the time and manner required by said Agreement. In the event such obligations

are not completed by said date, City shall cause Depositor's unperformed obligations to be completed as specified utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations under the Agreement.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs its obligations under the Agreement, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's obligation under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                      Richard Kopecky, City Engineer  
                                    City of Desert Hot Springs  
                                    65950 Pierson Boulevard  
                                    Desert Hot Springs, CA 92240

To Depositor:              Coachillin Holdings LLC  
                                    71-713 Highway 111, Suite 100  
                                    Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors, subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the

declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Deposit Agreement is

made and entered into in the County of Riverside, State of California, and any legal actions or proceedings arising from or related to this Deposit Agreement shall be brought in the County of Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**COACHILLIN HOLDINGS LLC**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

BOND NO.: \_\_\_\_\_  
BOND FEE: \_\_\_\_\_

**BOND**

**PAYMENT SECURITY**

**LABOR AND MATERIAL (OFF-SITE)**

**Map No. 37158**

*(California Government Code §§ 66499 and 66499.2)*

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California ("City") and Coachillin Holdings LLC, a California Limited Liability Company ("Principal"), have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length; and

**WHEREAS**, under the terms of said Agreement, Principal is required before commencing performance of the work, to file a good and sufficient payment bond with the City to secure claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code; and

**WHEREAS**, \_\_\_\_\_ ("Surety") is a \_\_\_\_\_ and duly licensed to conduct general surety business in the State of California.

**NOW, THEREFORE**, Principal and Surety, their heirs, representatives, successors and assigns, jointly and severally, are held firmly bound unto the City and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid Agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of **Nine hundred eighty-seven thousand six hundred ninety-five dollars and forty-seven cents Dollars (\$987,695.47)** lawful money of the United States for material furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

Surety agrees that it shall pay the amounts due City and diligently perform the Agreement upon Principal's default after notice and within the time specified in the Agreement. If Surety fails to perform within the times specified in the Agreement, Surety shall promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and City regarding Principal's failure under the Agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed

proper payment as between Principal and Surety.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect, at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

**[THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by Principal and Surety named herein, on \_\_\_\_\_, 2017.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature  
Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***\*Note: Principal and Surety's signatures must be notarized and 3 originals must be executed.***

## **DEPOSIT AGREEMENT**

### **PAYMENT SECURITY**

### **(CITY AS DEPOSITORY)**

### **LABOR AND MATERIAL (OFF-SITE)**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and Coachillin Holdings LLC, a California Limited Liability Company, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit **(\$493,847.74)** ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing performance of that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor ("Agreement") pursuant to Government Code Section 66499(a)(2); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing payment to City, to insure the payment to the contractor, its subcontractors and to persons renting equipment or furnishing labor or materials to the above for the construction of improvements provided for in said Agreement.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset.

Paragraph 3. Depositor shall deposit **\$498,786.21** with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been concurrently executed with the Agreement for the purpose of securing payment to the contractor, its subcontractors and to persons renting equipment or furnishing labor or materials to the above for the construction of improvements provided for in said Agreement. If said obligations are completed by another party, then the Deposited Funds shall be returned to Depositor. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein. Notwithstanding anything else to the contrary herein, under no circumstances shall Depositor be entitled to a refund of any portion of the Bookkeeping Fee, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall perform its obligations under the Agreement securing the

payment for labor and materials in connection with construction of improvements as set forth in the Agreement, in the time and manner required by said Agreement. In the event such obligations are not completed by said date, City shall cause Depositor's unperformed obligations to be completed as specified utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations under the Agreement.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs its obligations under the Agreement, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's obligation under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                      Richard Kopecky, City Engineer  
                                    City of Desert Hot Springs  
                                    65950 Pierson Boulevard  
                                    Desert Hot Springs, CA 92240

To Depositor:              Coachillin Holdings LLC  
                                    71-713 Highway 111, Suite 100  
                                    Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors, subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed

and enforced in accordance with, the laws of the State of California. This Deposit Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or proceedings arising from or related to this Deposit Agreement shall be brought in the County of Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**COACHILLIN HOLDINGS LLC**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

**BOND NO.:** \_\_\_\_\_  
**BOND FEE:** \_\_\_\_\_

**BOND**

**PERFORMANCE SECURITY**

**LANDSCAPE IMPROVEMENTS**

**Map No. 37158**

*(California Government Code §§ 66499 and 66499.1)*

**WHEREAS**, the City Council of the City of Desert Hot Springs, a municipal corporation and political subdivision of the State of California ("City") and Coachillin Holdings LLC ("Principal"), a California Limited Liability Company, have entered into an agreement pursuant to California Government Code Section 66462 whereby Principal agrees to install and complete certain designated improvements, which said agreement, dated \_\_\_\_\_, and identified as Subdivision Improvement Agreement \_\_\_\_\_ ("Agreement"), is hereby incorporated by this reference as though set forth at length, and have agreed pursuant to Section 66499 of the Government Code to execute this bond to secure the performance of the following obligation:

Principal hereby agrees to install landscape improvements in accordance with the City approved landscaping plans prepared by Stimpson Design for Principal, and the requirements and specifications of all applicable laws and ordinances. Said installation shall be completed on or before December 31, 2018, or as otherwise provided by any lawful extension of time granted by the City Council.

**WHEREAS**, we, the Principal and \_\_\_\_\_, as surety ("Surety"), are held and firmly bound unto the City, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

**WHEREAS**, should Principal fail to install the subject landscape improvements in accordance with the City approved landscaping plans prepared by Stimpson Design for Principal, and the requirements and specifications in the Agreement and all applicable laws and ordinances and/or should Principal fail to complete said installation of landscape improvements within the time period prescribed therein or otherwise provided by any lawful extension of time granted by the City Council, the City may, at its option, cause all required work to be done in the manner required herein, and the parties executing this bond shall be firmly bound for the payment of all necessary costs therefore.

**NOW, THEREFORE**, we, the Principal and Surety, are held and firmly bound unto the City, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or its heirs,

executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the foregoing work, on his or their part, to be kept and performed at the time and in the manner specified above, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect, at least until the time City accepts the work required to be performed by Principal under the Agreement, notwithstanding whether or not Principal should abandon its obligations under the Agreement without having commenced construction of any improvements and whether such abandonment arises from foreclosure upon Principal's property or otherwise.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the work to be performed hereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the scope of work to be performed or to the specifications.

**[THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, this instrument has been duly executed by Principal and Surety named herein, on August \_\_\_\_\_, 2017.

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**PRINCIPAL**

COACHILLIN HOLDINGS LLC

71-713 Highway 111, Suite 100

\_\_\_\_\_  
Signature

Kenneth Dickerson  
Managing Member

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
City

**SURETY**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***\*Note: Principal and Surety's  
signatures must be notarized and 3  
originals must be executed.***

## **DEPOSIT AGREEMENT**

### **PERFORMANCE SECURITY**

#### **(CITY AS DEPOSITORY)**

### **LANDSCAPE INSTALLATION**

*(California Government Code §66499)*

This Deposit Agreement ("Deposit Agreement") is made on \_\_\_\_\_, 2017, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation, hereinafter referred to as "City", and Coachillin Holdings LLC, a California Limited Liability Company, hereinafter referred to as "Depositor," and the parties hereby acknowledge the following:

**WHEREAS**, Depositor pledges to deposit (\$\_\_\_\_\_) ("Deposited Funds") plus a bookkeeping fee of one (1) percent of the Deposited Funds ("Bookkeeping Fee") pursuant to Section 16.08.080 of the City of Desert Hot Springs Municipal Code ("Municipal Code"), with City for the purpose of securing the installation of landscaping improvements as required by \_\_\_\_\_ and any extension thereof and that certain Subdivision Improvement Agreement dated \_\_\_\_\_, 2017, between City and Depositor or any extension thereof ("Agreement") pursuant to Government Code Section 66499(a)(2) (collectively, referred to as the "Entitlements"); and

**WHEREAS**, said Deposited Funds are reserved for the sole purpose of guaranteeing to City the faithful performance of Depositor's obligations to install landscaping improvements in accordance with any terms and conditions set forth in the Entitlements and/or the requirements and specifications of all applicable laws and ordinances (collectively, "Depositor's Obligations"), in the time and manner required by said Entitlements and/or applicable laws and ordinances.

**NOW THEREFORE**, it is agreed between the parties hereto as follows:

Paragraph 1. The recitals set forth above are true and correct and are hereby incorporated into this Deposit Agreement by this reference, as though fully set forth herein.

Paragraph 2. The funds so set aside pursuant to this instrument constitute an irrevocable commitment and are not and shall not be subject to recall or offset. The term of this Deposit Agreement shall expire upon the completion of the installation of landscape improvements pursuant to the terms and conditions of the Entitlements and/or applicable laws and ordinances.

Paragraph 3. Depositor shall deposit \$\_\_\_\_\_ with City, which deposit shall comprise the Deposited Funds plus the Bookkeeping Fee. This Deposit Agreement has been executed for the purpose of securing the faithful performance of Depositor's Obligations, provided that Depositor's Obligations are not completed by another party during the term of this Deposit Agreement. If said obligations are completed by another party ("Replacement Developer"), then the Deposited Funds shall not be returned to Depositor, but rather, shall be released to Replacement Developer provided that Replacement Developer shall undertake and fully perform Depositor's Obligations. If the obligations are completed by another party after Depositor is in breach of this Deposit Agreement, then City shall have available to it all remedies as set forth herein, under the Entitlements, and under all applicable laws and ordinances. Notwithstanding

anything else to the contrary herein, Depositor agrees that the Deposited Funds shall not be released until Depositor's Obligations are fully performed, or unless and until a replacement deposit in the amount of the Deposited Funds is made with City by Replacement Developer. Under no circumstances shall Depositor or Replacement Developer be entitled to a refund of any portion of the Bookkeeping Fee or a replacement thereof, it being understood that City shall incur such fee in connection with its administrative costs in processing this Deposit Agreement.

Paragraph 4. Depositor shall faithfully perform Depositor's Obligations in the time and manner required by the terms and conditions of the Entitlements and/or applicable laws and ordinances. In the event such obligations are not completed by said date, in addition to having available to it the rights and remedies set forth in Paragraph 3 herein, City may cause Depositor's unperformed obligations to be completed as specified utilizing the Deposited Funds. The Deposited Funds may also be used under such circumstances to pay for reasonable fees and expenses incurred as a result of Depositor's failure to perform its obligations as specified herein.

Paragraph 5. Notwithstanding anything else to the contrary herein, City's liability under this instrument shall not exceed the amount of the Deposited Funds.

Paragraph 6. City agrees that it shall hold said funds on deposit for the uses and purposes set forth herein and should any excess funds from the Deposited Funds be left on deposit after Depositor fully performs Depositor's Obligations, such excess funds shall be returned to Depositor without interest.

Paragraph 7. The parties agree that no change, extension of time, alteration or addition to the work to be performed or to the plans or specifications relating to Depositor's Obligations hereunder, shall in any way affect the parties' obligations under this instrument and Depositor hereby waives notice of any such change, extension of time, alteration, or addition on the understanding that no such change, extension of time, alteration, or addition shall increase Depositor's Obligations under this instrument.

Paragraph 8. Any notice to be provided pursuant to this Deposit Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To City:                      Richard Kopecky, City Engineer  
                                    City of Desert Hot Springs  
                                    65950 Pierson Boulevard  
                                    Desert Hot Springs, CA 92240

To Depositor:              Coachillin Holdings LLC  
                                    71-713 Highway 111, Suite 100  
                                    Rancho Mirage, CA 92270

Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit in the United States mail.

Paragraph 9. Depositor hereby agrees to, and shall defend, save and hold City and its

elected and appointed boards, commissions, officers, officials, employees, agents and contractors, harmless from, any and all claims, demands, actions, proceedings, costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Depositor or Depositor's contractors', subcontractors', agents or employees' operations under this Deposit Agreement, whether such negligent operations be by Depositor or by any of Depositor contractors, subcontractors, agents or employees.

Paragraph 10. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Deposit Agreement or as a result of any alleged breach of any provision of this Deposit Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Paragraph 11. This Deposit Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by each party. City and Depositor do not intend to confer any benefit hereunder on any person, firm, corporation or entity, other than City, Depositor and their successors and assigns.

Paragraph 12.

A. Failure or delay by any party to this Deposit Agreement to perform any material term or provision of this Deposit Agreement shall constitute a default under this Deposit Agreement; provided, however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default, within five (5) calendar days after receipt of written notice specifying such default, and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

B. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice as specified herein.

C. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. The exercise by a party of one or more rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. In the event that a default of any party to this Deposit Agreement may remain uncured for more than five (5) calendar days following receipt of written notice of default, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings pursuant to all applicable laws and to the terms of this Deposit Agreement.

Paragraph 13. In the event of a breach or default of this Deposit Agreement, the non-breaching party shall be entitled to all remedies available pursuant to the terms of this Deposit Agreement, at law and in equity, including, but not limited to, specific performance of this Deposit

Agreement, and all such remedies are cumulative in nature and may be asserted by such party in the alternative and the assertion of a remedy by a party shall not be deemed an exclusive election of remedies or waiver of any other rights conferred on that party by the terms of this Deposit Agreement.

Paragraph 14. This Deposit Agreement shall not be assignable by either party without the prior written consent of the other party.

Paragraph 15. This Deposit Agreement shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California. This Deposit Agreement is made and entered into in the County of Riverside, State of California, and any legal actions or proceedings arising from or related to this Deposit Agreement shall be brought in the County of Riverside, State of California.

Paragraph 16. Every provision of this Deposit Agreement is intended to be severable. If any provision of this Deposit Agreement or the application of any provision hereof to any party or circumstance is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the other terms and provisions hereof or the application of the provision in question to any other party or circumstance, all of which shall continue in full force and effect.

Paragraph 17. This Deposit Agreement may be executed in several counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

**[THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Deposit Agreement effective the day and year first written above.

**COACHILLIN HOLDINGS LLC**

**CITY OF DESERT HOT SPRINGS**

By: \_\_\_\_\_  
Kenneth Dickerson

\_\_\_\_\_  
Charles Maynard, City Manager

Its: Managing Member

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

## MAINTENANCE BOND

Bond No: \_\_\_\_\_

Rating: \_\_\_\_\_

### KNOW ALL MEN BY THESE PRESENTS:

We, Coachillin Holdings LLC, as Principal, and \_\_\_\_\_, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Desert Hot Springs ("City") and those for whose benefit this bond insures in the sum of Ten thousand dollars U.S. Dollars (\$10,000.00).

### THE CONDITION OF THE OBLIGATION IS SUCH THAT:

**WHEREAS**, the above-named Principal entered into an Agreement or Agreements with the City for **COACHILLIN' Industrial Cultivation & Ancillary Canna-Business Park**.

**WHEREAS**, said Agreement provided that Principal shall guarantee replacement and repair of improvements as described therein for a period of one (1) year following final acceptance of said improvements;

**NOW THEREFORE**, if the above principal shall indemnify the City for all loss that the City may sustain by reason of any defective materials or workmanship which become apparent during the period of one (1) year from and after acceptance of the said improvements by the City, then this obligation shall be void; otherwise to remain in full force and effect.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Seal of Corporation

By \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Principal

Title \_\_\_\_\_

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone No.

By \_\_\_\_\_

\_\_\_\_\_  
Attorney in Fact or Other  
Representative

**(ATTACH ACKNOWLEDGMENT OF AUTHORIZED REPRESENTATIVES)**

## **SCHEDULE “C”**

### **CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE**

I certify that, in the performance of the work required under the Subdivision Improvement Agreement, Coachillin Holdings LLC, shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of the California Labor Code, I shall forthwith comply with those provisions.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_, 2017

\_\_\_\_\_  
Kenneth Dickerson, Managing Member