

CITY CLERK
ORIGINAL

WHEN RECORDED RETURN TO:

City Clerk
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City of Glendale C-_____

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is effective as of the 16th day of December, 2015 (the "Effective Date"), by and between the CITY OF GLENDALE, an Arizona municipal corporation (the "City"), and Conair Corporation, a Delaware corporation ("Developer").

WHEREAS, the City is authorized pursuant to Article I, Section 3 of its Charter and A.R.S. §§ 9-500.05 and 9-500.11 to enter into economic development agreements with businesses or landowners located in the City and to appropriate and spend public monies for and in conjunction with economic development activities; and

WHEREAS, Developer is the owner of that certain real property located between North Glen Harbor Boulevard and North New River Road, north of West Glendale Avenue and south of West Northern Avenue, in the City of Glendale, Arizona consisting of approximately 45 acres and which is more particularly described in Exhibit A attached hereto and made a part hereof by this reference (the "Property"); and

WHEREAS, on May 3, 2012, the City filed a Complaint in condemnation against Developer in the Maricopa County Superior Court, Case Number CV2012-007528, seeking to acquire approximately 38.5 acres of Developer's Property located north of the Glendale Municipal Airport for airport and related purposes (the "Condemnation Action").

WHEREAS, Developer desires to make certain improvements to the Property for new development and to expand the current employment opportunities at the Property (the "Project") which will benefit the City; and

WHEREAS, the Property is currently vacant land; and

WHEREAS, the Project is consistent with Glendale 2025, the City's General Plan; and

WHEREAS, the City and Developer also desire to settle the Condemnation Action without further litigation; and

WHEREAS, on this date, the City and Developer have entered into a Settlement Agreement settling the Condemnation Action, contingent upon the City's agreement to this Development Agreement and satisfaction of each of the terms and conditions hereof; and

WHEREAS, the City and Developer acknowledge that this Agreement constitutes a "Development Agreement" within the meaning of A.R.S. §9-500.05; and

WHEREAS, this Agreement is entered into for public purposes and is in the public interest of the residents of the City; and

WHEREAS, the public benefits anticipated to accrue to the City from the development contemplated in this Agreement are substantial relative to any economic incentives granted to Developer pursuant to this Agreement; and

WHEREAS, the City is willing to participate in the Project on the terms and conditions specified below.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions, the City and Developer hereby agree as follows:

AGREEMENT

1. Scope of the Project. The Project consists of the construction of new and additional facilities for the Conair campus on the Property.

2. Development of the Project.

2.1. Development Rights. The City agrees that Developer's intended use is permitted under the current zoning, and for the term of this Agreement, Developer and successor owners of the Property shall have a right to undertake and complete the development and use of the Property in accordance with this Agreement, without being subject to subsequent amendment to the Zoning Ordinance of the City of Glendale. For purposes of this Agreement, the zoning for the Property is deemed vested for the term of this Agreement. The City hereby represents and warrants that the Property is zoned M-1, Light Industrial as approved in Rezoning Application Z-84-30 and that all land uses permitted in the M-1 district are allowed on the Property. The City further represents and warrants that buildings can be developed on the Property with a maximum height of fifty six (56) feet. A small portion of Parcel No. 142-59-002G has a maximum height of

twenty (20) feet adjacent to Glendale Avenue. The City shall not require any additional right-of-way or other dedications on the Property to the City in connection with or as a condition to the City's approval of the Project.

2.2. Rezoning and Development Agreement Amendments. The City shall not initiate any changes or modifications to the current zoning for the Property, except at the request of Developer. The City shall not initiate any changes or modifications to the site plan and design review approval, once such approval is final, except at the written request of Developer. Any such request by Developer for a change will be processed in the manner then set forth in the City's Zoning Ordinance. The City agrees that pursuant to the City Code, the site plan and design review process for the Property will be administrative and will not require public hearings by the Planning & Zoning Commission or City Council.

2.3. Zoning Ordinance Provisions Applicable to the Development of the Property. During the term of this Agreement, development of the Property shall be governed by the Zoning Ordinance in effect at the time of approval of this Agreement, subject to changes or modifications, if any, to such Zoning Ordinance made pursuant to Section 2.2. If the Zoning Ordinance is made less restrictive or revoked after the date hereof, such change shall also benefit Developer.

2.4. Foreign Trade Zone. Developer previously applied for and obtained Foreign Trade Zone status for certain portions of its real property in the City. The City shall endorse and use its best efforts to support and assist Developer with its application for Foreign Trade Zone status for the Project, the Property and any adjacent or nearby real property owned by Developer that is not currently in, or has the status of, a Foreign Trade Zone.

3. Fee Waivers. The City shall waive and Developer shall not pay the first \$676,258.00 due and owing to the City for any City fees related to the initial design and construction of, or the issuance of a certificate of occupancy for, the Project, including, but not limited to, any development fee (other than development impact fees), buy-in or connection fee, permit fee, review fee, inspection fee and the like (collectively, "Fees").

4. No Obligation to Construct. The City and Developer agree that nothing in this Agreement or the Settlement Agreement obligates Developer to construct the Project. Notwithstanding anything to the contrary in this Agreement or the Settlement Agreement, if Developer does not begin construction of the Project on or before the fourth installment payment of \$1,838,276.75 as described in Section 2(b)(iv) of the Settlement Agreement is due and payable, the City shall not be obligated to waive Fees as described in Section 3 above.

5. Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to make any non-party a third party beneficiary of this Agreement. Except as provided in Section 7, no term or provision of this Agreement is intended to, or shall, be

John_Mayorek@conair.com

With copies to:

Withey Morris, P.L.C.
ATTN: Michael B. Withey
2525 E. Biltmore Circle, Suite A-212
Phoenix, Arizona 85016
m@witheymorris.com

and

Steven A. Hirsch
Bryan Cave LLP
Two North Central, Suite 2200
Phoenix, Arizona 85004
sahirsch@bryancave.com

Any notice given by certified mail shall be deemed to be received on the third business day after the date of mailing, and notice given by any other method shall be deemed received when actually delivered to the addressee. Any notice party hereto may change his, her or its address on five days prior notice to all other notice parties hereto.

9. Governing Law; Litigation. The laws of the State of Arizona shall govern this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the parties hereby waive any right to object to such venue. In the event of any litigation arising out of this Agreement, the successful party shall be entitled to recover its attorneys' fees (regardless of whether in-house or outside counsel is used), expert witness fees and other costs incurred in such litigation.

10. Severability. If any portion of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severed from this Agreement, and the remaining terms of this Agreement shall remain effective; provided that if either party is materially prejudiced by such severance, the parties shall promptly negotiate in good faith to amend this Agreement so that it is consistent with the parties' original intent and enforceable with regard to the severed provision.

11. Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters. This Agreement shall be interpreted and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either party,

regardless of which party may have drafted any of its provisions. Each party to this Agreement has been represented by counsel in the negotiations to draft this Agreement and this Agreement is the result of such negotiations. No provision of this Agreement may be waived except by a writing signed by the party against whom such waiver is sought to be enforced. This Agreement may be amended or cancelled, in whole or in part, only with the mutual written consent of the City and Developer, and within ten (10) days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by the City in the Official Records of Maricopa County, Arizona.

12. Default.

12.1. Events Constituting Developer Default. Developer shall be deemed to be in default under this Agreement if Developer breaches any obligations required to be performed by Developer hereunder, and such breach continues for a period of thirty (30) days after receipt of written notice thereof from City.

12.2. Remedies to City. In the event of a Developer default, which default is not cured within any applicable cure period, the City shall have the right, as its sole and exclusive right and remedy to either: (i) waive Developer's default and this Agreement shall continue in full force and effect, or (ii) to terminate this Agreement, whereupon neither party shall have any further obligation or liability hereunder; provided, the default of Developer under this Agreement or the termination of this Agreement shall have no effect on the Settlement Agreement and Developer's and the City's rights and obligations thereunder (including, without limitation, to the extent they are the same as those herein).

12.3. Events of Default by City. The City shall be deemed to be in default under this Agreement if City breaches any obligations required to be performed by the City hereunder and such breach continues for a period of fifteen (15) days after receipt of written notice thereof from Developer with respect to monetary defaults or for a period of thirty (30) days after receipt of written notice thereof from Developer for non-monetary defaults.

12.4. Remedies of Developer. In the event the City is in default hereunder, Developer shall have all remedies available to it at law or in equity, including the remedy of specific performance.

13. No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a partnership or joint venture between the City and Developer, or as a lending of the City's taxing or condemnation power or credit to Developer, or as constituting Developer as the agent or representative of the City for any purpose or in any manner whatsoever.

14. Expedited City Decisions. The City shall expedite the review by the City of all plans and other materials submitted by Developer to the City hereunder or pursuant to any zoning, platting, permit or other governmental procedure pertaining to the development of the Property. The implementation of this Agreement shall be in accordance with the administrative development review process of the City. Accordingly, the parties agree that if at any time Developer or the City believes that an impasse has been reached with the City staff or Developer's staff, respectively, on any issue affecting the Property, the parties shall have the right to immediately appeal to the City Representative or the Developer Representative for an expedited decision pursuant to this Section 14. If the issue on which an impasse has been reached is an issue where the City staff could reach a final decision without Council action or the Developer Representative could reach a final decision without consultation with Developer, the City Representative or the Developer Representative shall give Developer or the City a final decision within fifteen (15) days after the request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council or the City of Glendale Planning and Zoning Commission, the City Representative shall be responsible for scheduling a public hearing on the issue by the appropriate City body to be held within thirty (30) days after Developer's request for an expedited decision. The City and Developer each agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision. Each of the City and Developer shall designate a City Representative and a Developer Representative, respectively, from time to time and notify the other party of such designation and any changes thereto.

15. Cooperation of the City. The City and Developer acknowledge and agree that certain aspects of the development of the Property and acquisition of Foreign Trade Zone status, as contemplated in this Agreement, likely will require consultation with and/or the approval or action of presently known and unknown third parties, including, without limitation, certain governmental bodies such as the City of Phoenix and/or various School Districts. The City agrees to cooperate with, and will take such prompt action as may be necessary or appropriate for, Developer to procure any authorizations, approvals, variances, permits or the like which Developer, in its sole and absolute discretion, determines are necessary or appropriate to facilitate the development of the Property and the approval of Foreign Trade Zone status, as contemplated in this Agreement.

16. Developer Representations. Developer represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and its execution, delivery and performance of this Agreement is and has been duly authorized.

17. City Representations. The City represents and warrants that (i) its execution, delivery and performance of this Agreement has been duly authorized and entered into in compliance with the City's codes, ordinances, regulations and rules; (ii) no further

action needs to be taken in connection with such execution and delivery; and (iii) this Agreement is valid and enforceable in accordance with its terms.

18. Approval by City Council. This Agreement is subject to approval by the City Council at a formal meeting of the same. By execution below, the City acknowledges that the City Council approved this Agreement at a duly held meeting of the City Council.

19. Term. The term of this Agreement is for twenty (20) years. Upon termination, the City and Developer shall execute, acknowledge and record a termination of this Agreement in the records of the Maricopa County Recorder's Office, although failure to record such a termination will not extend the term of this Agreement.

20. Captions. The headings and captions used in this Agreement are for convenience of reference only and shall not affect the meaning of this Agreement in any way.

21. Exhibits and Recitals. All exhibits attached hereto and recitals set forth at the beginning of this Agreement are incorporated herein by reference as though fully set forth herein, and the parties acknowledge that the recitals are true and accurate.

22. Cumulative Remedies. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

23. No Waiver. No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement. Nothing herein shall constitute or be deemed to be a waiver by Developer of its right to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to the City's procedures and requirements existing at the time of the request.

24. Consents and Approvals. The City and Developer shall at all times act reasonably with respect to any and all matters which require either party to review, consent or approve any act or matter hereunder.

25. Recordation. This Agreement and any subsequent amendments shall be recorded in their entirety in the Official Records of Maricopa County, Arizona by the City not later than ten (10) days after this Agreement is executed by the City and Developer.

26. Conflicts of Interest. A.R.S. §38-511 provides political subdivisions a right to cancel contracts under certain circumstances. The City and Developer acknowledge that the provisions of A.R.S. § 38-511, which are incorporated herein by reference, may create a situation where the City may have a right to cancel this Agreement pursuant to the rights given the City under A.R.S. § 38-511. Developer agrees not to knowingly take any action which would create any right of cancellation pursuant to the provisions of A.R.S. § 38-511, to the extent they may be applicable to this Agreement or any amendment to this Agreement.

27. No Additional Developer Representations. Nothing contained herein shall be deemed to obligate Developer to initiate or complete any part or all of the development of the Property. Developer makes no representations to the City or anyone else except as expressly provided herein.

28. Status Statements. Any party to this Agreement (the "requesting party") may, at any time, and from time to time, deliver written notice to the other party requesting such other party (the "providing party") to provide in writing that, to the knowledge of the providing party: (i) this Agreement is in full force and effect and a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of the requesting party's obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults (a "Status Statement"). A party receiving a request hereunder shall execute and return such Status Statement within five (5) days following the receipt thereof. The City acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees. The City shall have no liability for monetary damages to Developer, or any transferee or mortgagee or any other person, in connection with, resulting from or based upon the lack of issuance of any Status Statement hereunder.

29. Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than the normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.

30. Nonliability of Officials, Partners and Employees. No member, official or employee of the City will be personally liable to Developer, or any successor in interest, in the event of a default or breach by the City for any amount which may become due to Developer or successor, or on any obligation under the terms of this Agreement. No member, interest holder, stockholder, director, officer, manager,

partner, advisor or employee of Developer will be personally liable to the City in the event of a default or breach by Developer under the terms of this Agreement.

31. Community Facilities or Similar Districts. During the term of this Agreement, the City shall not include the Property in any improvement district, community facilities district or similar public improvement district.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY:

THE CITY OF GLENDALE,
an Arizona municipal corporation

By: [Signature]

Name: Richard A. Bowers

Title: Acting City manager

ATTEST:

[Signature]
City Clerk, PAMELA HANNA

APPROVED AS TO FORM:

[Signature]
Name: PAMELA HANNA
Title: CITY CLERK

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 16 day of December, 2015, by Richard Bowers, in his capacity as Acting City manager of the City of Glendale, an Arizona municipal corporation.

[Signature]
Notary Public

My Commission Expires:

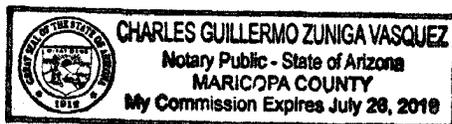


EXHIBIT A

Legal Description of Property

DESCRIPTION OF SURVEYED LAND

All of Parcel A-3 and that portion of Parcels A-1 and A-2, REPLAT OF PART OF TRACT A OF GLEN HARBOR AIR BUSINESS PARK, Book 337 of Maps, Page 36, records of Maricopa County, Arizona, described as follows:

Beginning at the Southwest corner of Parcel A-2; thence along the exterior lines of Parcels A-2 and A-3 the following 7 courses: North 88 degrees 41 minutes 56 seconds West 450.36 feet; thence North 43 degrees 53 minutes 51 seconds West 55.34 feet; thence North 00 degrees 54 minutes 14 seconds East 199.15 feet; thence North 04 degrees 48 minutes 24 seconds West 50.25 feet; thence North 00 degrees 54 minutes 14 seconds East 536.18 feet; thence along a curve to the right with a radius of 719 feet, a central angle of 67 degrees 30 minutes 23 seconds, a distance of 847.13 feet; thence North 68 degrees 24 minutes 37 seconds East 1073.00 feet to the most southerly Northwest corner of Parcel A-1 identical with the Northeast corner of Parcel A-2; thence South 02 degrees 06 minutes 54 seconds West along the East line of Parcel A-2 identical with the West line of Parcel A-1, a distance of 198.89 feet to a point on the Northwesterly projection of the Northerly line of that certain parcel of land described in Instrument No. 20120461500, records of Maricopa County, Arizona; thence South 63 degrees 30 minutes 39 seconds East along said projection, 174.86 feet to the Northwest corner of said parcel; thence along the exterior lines of said parcel the following 3 courses: South 17 degrees 41 minutes 32 seconds West 1033.54 feet; thence North 63 degrees 30 minutes 39 seconds West 174.86 feet; thence South 17 degrees 41 minutes 32 seconds West 749.04 feet to a point on the South line of Parcel A-2; thence North 88 degrees 41 minutes 56 seconds West along said South line, 421.87 feet to the Point of Beginning.

Michael Wier



EXPIRES 12-31-16

JOB NO. 10-16-15
MICHAEL WIER—LAND SURVEYOR
1538 E. FRIESS DR., PHOENIX, AZ 85022
602-789-0337 MIKEWIER@COX.NET

Recorded by:
City Clerk's Office
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

CITY OF GLENDALE, ARIZONA

DOCUMENT TO BE RECORDED:

**Development Agreement With Conair Corporation
(Agreement C-10538)**

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)