

**RECORDING REQUESTED BY:  
AND  
WHEN RECORDED MAIL TO:**

City Clerk  
City of Rialto  
150 S. Palm Avenue  
Rialto, California 92376

Exempt From Recorder's Fees Pursuant  
to GOVERNMENT CODE § 6103

---

(ABOVE SPACE FOR RECORDER'S USE ONLY)

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**CITY OF RIALTO**

**AND**

**OAKMONT EL RIVINO, LLC**

TABLE OF CONTENTS

	<b>Page</b>
<b>1. Definitions.....</b>	<b>4</b>
<b>2. Development of the Property.....</b>	<b>12</b>
2.1 <b>Uses.....</b>	<b>12</b>
2.2 <b>Intensity.....</b>	<b>12</b>
2.3 <b>Size.....</b>	<b>12</b>
2.4 <b>Description of the Development.....</b>	<b>12</b>
2.5 <b>Issuance of Building Permits.....</b>	<b>13</b>
2.6 <b>Timing of Development.....</b>	<b>13</b>
2.7 <b>Compliance with Laws.....</b>	<b>13</b>
2.8 <b>Bidding and Award.....</b>	<b>14</b>
2.9 <b>Design and Management Professionals' Cost Estimate; Storm Drain     Improvements Budget.....</b>	<b>15</b>
2.10 <b>No Liability of the City for Obligations of Owner or Development of the     Project.....</b>	<b>16</b>
<b>3. Development Exactions.....</b>	<b>16</b>
3.1 <b>Reservations, Dedications, and Improvements.....</b>	<b>16</b>
3.2 <b>Owner's Obligation to Pay Fees.....</b>	<b>16</b>
3.3 <b>Development Impact Fee Lock Term.....</b>	<b>17</b>
3.4 <b>Right of Way Acquisition, Dedication, and Improvement.....</b>	<b>17</b>
3.5 <b>Deferral of Storm Drain Facilities Fee; Eligibility for Storm Drain Credit.....</b>	<b>18</b>
3.6 <b>Conditions Precedent to Application of Storm Drain Credit.....</b>	<b>19</b>
<b>4. Vested Rights.....</b>	<b>20</b>
4.1 <b>Project Entitlements/Density.....</b>	<b>20</b>
4.2 <b>Enforcement.....</b>	<b>20</b>
4.3 <b>Moratoria.....</b>	<b>20</b>

**TABLE OF CONTENTS**

*(continued)*

4.4 **Commensurate Term of Existing Entitlements** ..... 20

4.5 **Conflicts** ..... 20

**5. Reserved Powers** ..... 21

5.1 **Processing Fees and Charges** ..... 21

5.2 **Procedural Regulations** ..... 21

5.3 **Uniform Building Codes** ..... 21

5.4 **Police Power** ..... 21

5.5 **Non-Conflicting Regulations** ..... 21

5.6 **Conflicting Regulations** ..... 21

5.7 **End Users** ..... 21

5.8 **Laws** ..... 21

5.9 **Immediate Threat** ..... 22

5.10 **Regulation by Other Public Agencies** ..... 22

**6. Amendments** ..... 22

6.1 **Material Changes** ..... 22

6.2 **Operating Memoranda** ..... 22

6.3 **Nature of Change in Law** ..... 23

**7. Owner Obligations** ..... 23

7.1 **Compliance With Law** ..... 23

7.2 **Nature of Dedications** ..... 23

7.3 **Processing Fees** ..... 23

7.4 **Completed Value of the Project** ..... 23

7.5 **Costs of City Actions** ..... 23

7.6 **Obligation to Construct the Required Off-Site Improvements** ..... 23

**TABLE OF CONTENTS**  
*(continued)*

<b>8.</b>	<b>City Obligations</b> .....	24
8.1	<b>Processing</b> .....	24
8.2	<b>Review</b> .....	24
8.3	<b>Assistance From Other Governments</b> .....	24
8.4	<b>Mitigation Fee Act</b> .....	24
8.5	<b>Recordation of Agreement</b> .....	24
<b>9.</b>	<b>Term</b> .....	24
9.1	<b>Commencement</b> .....	24
9.2	<b>Duration</b> .....	24
9.3	<b>Termination</b> .....	25
9.4	<b>Effect of Termination</b> .....	26
9.5	<b>Effect of Agreement on Title</b> .....	26
9.6	<b>Force Majeure Extensions</b> .....	26
<b>10.</b>	<b>Financing</b> .....	26
10.1	<b>Right to Encumber</b> .....	26
10.2	<b>Notice</b> .....	26
<b>11.</b>	<b>Binding Effect</b> .....	26
11.1	<b>Entirety of Property</b> .....	26
11.2	<b>Property and Agreement Remain Linked</b> .....	26
11.3	<b>Binding on Financiers</b> .....	27
11.4	<b>City Consent</b> .....	27
<b>12.</b>	<b>Compliance Review</b> .....	27
12.1	<b>Annual Review</b> .....	27
12.2	<b>Special Review</b> .....	27
12.3	<b>Procedure for Annual Review and/or Special Review</b> .....	28

## TABLE OF CONTENTS

*(continued)*

12.4	Certificate of Agreement Compliance.....	28
12.5	Failure by the City.....	28
13.	Default.....	28
13.1	Default by Owner.....	28
13.2	Default by the City.....	29
13.3	Notice of Default.....	29
13.4	Remedies for Default.....	29
13.5	Acceptance of Service of Process.....	29
13.6	Rights and Remedies Are Cumulative.....	29
13.7	Inaction Not a Waiver of Default.....	30
13.8	Right of Financier to Cure.....	30
13.9	Estoppel Certificate.....	30
14.	Appeal of Administrative Decision.....	30
15.	Indemnification.....	30
16.	Insurance Requirements.....	31
16.1	Owner's Liability Insurance.....	31
16.2	Insurance During Construction.....	31
16.3	Property Insurance.....	32
16.4	Terms of Insurance.....	32
16.5	Additional Insured.....	33
17.	Representations and Warranties.....	33
17.1	City Representations.....	33
17.2	Owner's Representations.....	34
18.	Miscellaneous.....	34
18.1	Time of Essence.....	34

**TABLE OF CONTENTS**  
*(continued)*

18.2 **Further Documents** ..... 34

18.3 **Notices** ..... 35

18.4 **Entire Agreement**..... 36

18.5 **Waiver**..... 36

18.6 **Relationship of the Parties** ..... 36

18.7 **No Third Party Beneficiaries**..... 36

18.8 **Non Liability of Certain Individuals**..... 36

18.9 **City Approvals and Actions**..... 37

18.10 **Counterparts**..... 37

18.11 **Rules of Construction** ..... 37

18.12 **Computation of Time**..... 37

18.13 **Legal Advice** ..... 37

18.14 **Governing Law and Venue**..... 37

18.15 **Attorneys' Fees**..... 37

18.16 **Severability** ..... 38

18.17 **Recitals and Attachments**..... 38

18.18 **Mutual Covenants**..... 38

**TABLE OF CONTENTS**  
**(continued)**  
**EXHIBITS**

Attachment No. 1	Legal Description of the Property
Attachment No. 2	Development Impact Fees
Attachment No. 3	Site Plan
Attachment No. 4	Description of Required Off-Site Improvements
Attachment No. 5	Description of Storm Drain Improvements
Attachment No. 6	Bidding and Contract Requirements for Storm Drain Improvements
Attachment No. 7	Storm Drain Improvements Budget
Attachment No. 8	Fair Share Fees

## DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (this "**Agreement**") dated for reference purposes only as of \_\_\_\_, 2018, is made and entered into by and between the **CITY OF RIALTO**, a California municipal corporation (the "**City**"), and **OAKMONT EL RIVINO, LLC**, a Delaware limited liability company ("**Owner**").

### RECITALS

A. All initially-capitalized words, terms, and phrases used, but not otherwise defined, in the Recitals shall have the meanings assigned to them in Section 1 of this Agreement, unless the context clearly indicates otherwise.

B. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the legislature of the State of California adopted the "Development Agreement Act," Government Code Sections 65864 through 65869.5. Pursuant to the Development Agreement Act and the Development Agreement Ordinance, the City is authorized to enter into an agreement with any person having a legal or equitable interest in real property, to provide for the development of such property and to vest certain development rights therein.

C. To ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the legislature, the City: (1) accepts restraints on its police powers contained in this Agreement only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset such restraints, seeks the public benefits which are provided in this Agreement.

D. Owner owns an approximately 122 acre area consisting of three (3) parcels of land generally located west of Cactus Avenue, and north of El Rivino Road, in the City of Rialto, California (collectively, the "**Property**"), which Property is legally described in the Legal Description attached hereto as Attachment No. 1 and incorporated herein. The Property is part of a larger entitled development project referred to as Rialto Commerce Center (the "**Master Development**"), which the City approved for 3,659,000 square feet of industrial and warehouse uses as further detailed in Recital E. A portion of the Master Development (commonly known as the Federal Express Expansion facility) has been developed and is in operation. The proposed development at the Property, or the Project (as defined below), constitutes the development of the remaining 2,252,867 entitled square feet on the western portion of the Master Development, located west of Cactus Avenue.

E. On April 12, 2011, the City of Rialto City Council held a duly noticed public hearing and approved the following entitlements for the Master Development: (1) rescission of the Rancho El Rivino Specific Plan No. 7, (2) General Plan Amendment No. 36 to change the General Plan Land Use Designation from Medium Density Residential to Light Industrial, (3) Zone Change No. 239 to change the zoning classification from Single Family Estate/Single Family/Open Space Recreation to M-1 (Light Industrial), and (4) Resolution No. 5965 certifying the Final Environmental Impact Report for the Rialto Commerce Center Project State Clearinghouse Number 2008031088 (the "**FEIR**") and adopting the FEIR's Mitigation Monitoring and Reporting Plan (the "**MMRP**") and the Statement of Overriding Considerations ("**SOC**") (collectively, the "**Rialto Commerce Center EIR**") (items (1) through (4) herein are the "**Master Development Approvals**.")

F. On December 11, 2012, the City of Rialto Development Review Committee approved Precise Plan of Design 2235 for Scannell Properties, which proposed to develop a 307,100 square foot logistics terminal building on approximately 36 acres of land for the Federal Express Expansion facility ("**FedEx Project**"). The FedEx Project site was included within the scope of development for the Master Development, and the developer (Oakmont El Rivino, LLC) plotted the site with approximately 806,000 square feet of industrial warehouse buildings.

G. Consistent with the Master Development Approvals, Owner proposes to complete the Master Development through the development of two (2) industrial warehouse/distribution buildings at the Property containing 2,252,867 square feet of space (comprised of a 1,264,102 square foot building ("**Building 1**") and a 988,765 square foot building ("**Building 2**") (Building 1 and Building 2 are the "**Buildings**" and each a "**Building**") with certain onsite improvements and landscaping (collectively, the "**Private Improvements**") as set forth in more detail in this Agreement. The Private Improvements may be constructed in two or more phases, with each Building and its related onsite improvements and landscaping being constructed in a separate phase (each a "**Phase**"); it is anticipated that Owner will first develop Building 1 and the onsite improvements (including a detention basin) and landscaping related to Building 1 (collectively hereinafter referred to as the "**Phase 1 Private Improvements**"), to be followed by the construction of Building 2 and the onsite improvements and landscaping related to Building 2 (collectively hereinafter referred to as the "**Phase 2 Private Improvements**"); *provided, however*, Owner reserves the right to develop the Property, the Phase 1 Private Improvements and/or the Phase 2 Private Improvements in any other configuration or order of development so long as such configuration and the proposed Project (as hereinafter defined) is consistent with the Land Use Regulations (as hereinafter defined) and applicable Entitlements (as hereinafter defined). Owner also intends to construct certain off-site improvements required as a condition of approval of the Project and/or required under the CEQA Compliance Documents approved for the Master Development and/or the Project (the "**Required Off-Site Improvements**," which are more specifically defined herein). Finally, as required for the Project and for the benefit of the City, Owner also intends to construct certain off-site public storm drain improvements (the "**Storm Drain Improvements**," which are more specifically defined herein). The foregoing improvements constitute the Project as further defined below.

H. Following the City's Master Development Approvals, the City approved a number of Precise Plans of Design ("**PPDs**") for the development of the remainder of the Master Development. Due to changes in building design and configuration, Owner sought, and the City approved new PPDs to authorize the Project.

I. On December 20, 2017, the City of Rialto Development Review Committee approved Precise Plan of Design No. 2017-0082 ("**PPD 2017-0082**") for the Property, which amends and supersedes all prior PPDs for the Phase I Private Improvements. PPD 2017-0082 contemplates the development of the Phase I Private Improvements on 67.83 gross acres of the Property and the Required Off-Site Improvements .

J. On December 20, 2017 the City of Rialto Development Review Committee approved Precise Plan of Design No. 2017-0083 ("**PPD 2017-0083**") for the Property, which amends and supersedes all prior PPDs for the Phase 2 Private Improvements. PPD 2017-0083 contemplates the development of the Phase 2 Private Improvements on 54 gross acres of the Property. PPD 2017-0082 and PPD 2017-0083 are collectively referred to as "**Project PPDs**".

K. In connection with the City's approval of the Project PPDs, an Addendum to the Rialto Center Commerce EIR dated December 2017 (the "**Addendum**") was prepared, which analyzed the potential environmental impacts associated with the expansion of the scope of allowed warehouse, industrial, logistics and distribution (including fulfillment center) uses, particularly with respect to vehicular and truck traffic. The Addendum and the CEQA findings concluded that: (1) the Project would result in no new significant impacts that were not analyzed in the Rialto Commerce Center EIR, nor would the Project cause a substantial increase in the severity of any previously identified environmental impacts; (2) the potential impacts associated with the Project would be the same or less than those described in the Rialto Commerce Center EIR; (3) there are no substantial changes to the circumstances under which the Project will be undertaken that would result in new or more severe environmental impacts than previously addressed in the Rialto Commerce Center EIR; and (4) no new information regarding the potential for new or more severe significant environmental impacts were identified since the Rialto Commerce Center EIR was certified as complete. Therefore, in accordance with Section 15164 of the State CEQA Guidelines, the City concluded that the Addendum to the previously certified Rialto Commerce Center EIR was the appropriate environmental documentation for the Project PPDs approval.

L. On \_\_\_\_\_, 2018, as required by California Government Code Section 65867, the Planning Commission held a duly noticed public hearing to consider this Agreement in connection with its recommendation to the City Council regarding adoption or certification, as applicable, of the approval of this Agreement. The Planning Commission found and determined that: (i) this Agreement is within the scope of the CEQA Compliance Documents (as defined below); (ii) this Agreement is consistent with the City's General Plan; (iii) this Agreement is compatible with the orderly development of the Property and the surrounding area; (iv) this Agreement will have an overall positive impact on the health, safety, and welfare of the residents of and visitors to the City; (v) this Agreement constitutes a lawful, present exercise of the City's police power and authority under the Development Agreement Act and the Development Agreement Ordinance; and (vi) this Agreement will be entered into pursuant to and in compliance with the requirements of the Development Agreement Act and the Development Agreement Ordinance. Based on these findings and determinations, the Planning Commission approved a motion recommending to the City Council the approval of this Agreement.

M. On \_\_\_\_\_, 2018, the City Council held a duly noticed public hearing to consider this Agreement. On \_\_\_\_\_, 2018, the City Council found and determined that: (i) this Agreement is within the scope of the CEQA Compliance Documents; (ii) this Agreement is consistent with the City's General Plan; (iii) this Agreement is compatible with the orderly development of the Property and the surrounding area; (iv) this Agreement will have an overall positive effect on the health, safety, and welfare of the residents of and visitors to the City; (v) this Agreement constitutes a lawful, present exercise of the City's police power and authority under the Development Agreement Act and Development Agreement Ordinance; (vi) this Agreement is entered into pursuant to and in compliance with the requirements of the Development Agreement Act and the Development Agreement Ordinance; and (vii) introduced for first reading Ordinance No. \_\_\_\_ (the "**Enabling Ordinance**"). On \_\_\_\_\_, 2018, the City Council conducted the second reading of the Enabling Ordinance thereby approving this Agreement, to become effective thirty (30) days after the adoption thereof (i.e., effective on \_\_\_\_\_, 2018).

N. The City and Owner wish to enter into this Agreement in order to set forth the terms and conditions of the vesting of certain development rights and to effectuate and memorialize the Parties' negotiated agreement of various fee and improvement matters for the Project. By electing to enter into this

Agreement, the City shall be bound by the obligations specified herein and limit the future exercise of certain governmental and police powers of the City, subject to the Reserved Powers.

O. The terms and conditions of this Agreement have undergone extensive review by the City's Planning Commission and the City Council and have been found to be fair, just, and reasonable.

P. All of the procedures required by CEQA have been satisfied based on the Rialto Commerce Center EIR and the Addendum and the completion of certain studies evaluating the environmental impacts of the Project. The City has made certain findings and determinations that this Agreement and the Project have been adequately analyzed and are supported by the CEQA Compliance Documents (as defined below) in compliance with all applicable requirements of CEQA.

Q. This Agreement and the Project are consistent with the Master Development Approvals, the Rialto General Plan, the Rialto Municipal Code, the Project PPDs, the Existing Entitlements and the Applicable Land Use Regulations, as applicable.

R. The various exchanges contemplated in this Agreement are in the vital and best interest of the City and the welfare of its residents and are in accordance with the public purposes and provisions of applicable Laws.

S. The foregoing Recitals constitute a substantive part of this Agreement and are hereby incorporated herein.

## AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

**"Agreement"** shall mean this Development Agreement.

**"Annual Review"** is defined in Section 12.1.

**"Applicable Land Use Regulations"** means the Land Use Regulations in effect on the Effective Date.

**"Applicable Rules"** means this Agreement, the Existing Entitlements, the Applicable Land Use Regulations, the Development Agreement Act, the Development Agreement Ordinance, the Development Impact Fees described in Sections 3.2 and 3.3 and Attachment No. 2 attached hereto and the Fair Share Fees described in Attachment No. 8 attached hereto.

**"Building Codes"** shall mean standard, uniform codes governing construction then in effect at the time of submittal of the plans by Owner in connection with the Project.

**"Building Permit"** shall mean, with respect to each Phase of the Project, the permit issued by the Building Division of the Development Services Department of the City of Rialto for the construction of the foundations, footings and vertical Private Improvements for such Phase.

**"Business Day"** means Monday through Thursday, excepting holidays.

**"Cactus – Dry Utility Undergrounding"** means the Required Off-Site Improvements described as Item 3 on Attachment No. 4 attached hereto.

**"Cactus North Improvements"** means the Required Off-Site Improvements described as Item 1 on Attachment No. 4 attached hereto.

**"Cactus South Improvements"** means the Required Off-Site Improvements described as Item 2 on Attachment No. 4. The Cactus North Improvements and the Cactus South Improvements are sometimes collectively referred to as the **"Cactus Improvements."**

**"CEQA"** means the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* and the implementing regulations promulgated thereunder, set forth in Title 14 Cal. Code Regs. Section 15000, *et seq.*

**"CEQA Compliance Documents"** means the Rialto Commerce Center EIR and the Addendum as well as the CEQA findings made in connection with the Existing Entitlements including the Project PPDs. The Addendum and CEQA findings concluded that: (1) the Project would result in no new significant impacts that were not analyzed in the Rialto Commerce Center EIR nor would the Project cause a substantial increase in the severity of any previously identified environmental impacts in the Rialto Commerce Center EIR; (2) the potential impacts associated with the Project would be the same or less than those described in the Rialto Commerce Center EIR; (3) there are no substantial changes to the circumstances under which the Project will be undertaken that would result in new or more severe significant environmental impacts than previously addressed in the Rialto Commerce Center EIR; and (4) no new information regarding the potential for new or more severe environmental impacts not previously identified in the Rialto Commerce Center EIR were identified since the Rialto Commerce Center EIR was certified as complete. The CEQA appeal period in which to challenge the City's adoption of the Addendum and the Project PPDs has expired without any appeal or legal challenge being initiated or filed.

**"City"** shall mean the City of Rialto.

**"City Administrator"** means the Administrator of the City and his or her authorized designees.

**"City Agency"** means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and Planning Commission.

**"City Council"** shall mean the City's duly-elected and/or appointed City Council.

**"Conditions Precedent"** means the requirements set forth in Section 3.6.

**"Construction Manager"** means the construction manager or general contractor, as applicable, that is hired by Owner to oversee construction of the Project. Construction Manager shall not perform actual construction work but shall enter into subcontracts for construction of the Project. The subcontracts for the Storm Drain Improvements shall only be awarded after competitive bidding in accordance with Section 2.8. Owner's contract with Construction Manager shall be in the manner of a "cost plus" construction contract. The Construction Manager's fee shall be subject to the reasonable approval of the City, which approval shall not be withheld if such fee is equal to or less than four percent (4%) of the actual Hard Costs of constructing the Storm Drain Improvements.

**"Convey"** and **"Conveyance"** shall include the sale, transfer or assignment, but not the leasing, of any portion of the Property or the sale, transfer or assignment of more than fifty percent (50%), cumulatively, of the ownership interests in Owner; *provided, however,* that a sale, transfer or assignment of the Property or any portion thereof or of the ownership interests in Owner to any corporation, partnership, limited liability company or other entity controlling, under the control of or in common control with Owner shall not constitute a **"Conveyance"** hereunder; *provided, further,* expressly excluded from the definition of **"Convey"** and/or **"Conveyance"** is (a) any granting by Owner of any easements, access or use rights to any third party for utilities, right of way, reciprocal access or parking rights to adjacent or nearby property owners or occupants, or other similar rights reasonably and customarily granted to third parties in connection with similar development projects, and due diligence studies and/or inspections by prospective purchasers or tenants, (b) any Dedications or Reservations, (c) any sale, transfers or assignments of the Property or any portion thereof by Owner to any Financier for security purposes or otherwise included within the definitions of **"Encumber"** or **"Encumbrance,"** and/or (d) any sale, transfer or assignment of the Property to an entity in which Owner and/or Owner's affiliates has a direct or indirect ownership interest. Owner, upon request from the City, shall deliver to the City reasonably satisfactory evidence of compliance with this provision.

**"County"** means the County of San Bernardino, California.

**"Dedication"** and **"Dedicate"** shall mean Owner's grant of real property or an interest therein to the City or another governmental, public agency or non-profit entity for a public purpose.

**"Developer Manager Fee"** means the fee payable to Owner for management of the construction of the Storm Drain Improvements which shall be subject to the reasonable approval of the City and such approval shall not be withheld if such fee is equal to or less than four percent (4%) of the actual Hard Costs of constructing the Storm Drain Improvements.

**"Development"** shall have the same definition as in California Government Code Section 65927, as that statute exists on the date the Enabling Ordinance is adopted.

**"Default"** means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 13.3.3 hereof.

**"Development Agreement Act"** means Government Code Sections 65864 through 65869.5.

**"Development Agreement Ordinance"** means Ordinance No. 1121, adopted in 1990 (§§ 18.79.010, *et seq.* of the Rialto Municipal Code) pursuant to which the City has adopted procedures and requirements for considering, approving and administering development agreements.

**"Development Exaction"** shall mean and include Development Impact Fees, Fair Share Fees, Dedications, Reservations, special taxes, general taxes as they pertain to development of the Property (but not including ad valorem property taxes or such taxes applicable City-wide), improvements, and any other obligation to pay money, construct facilities, or provide land as a condition of Development of the Project or of obtaining an Entitlement as required by the Existing Entitlements.

**"Development Impact Fee"** means any impact fees, linkage fees, or exactions or other similar impact fees or charges (whether collected as a condition to issuance of demolition, grading and/or building

permits, or otherwise) imposed by the City on and in connection with new development pursuant to the Applicable Land Use Regulations. Development Impact Fees do not include (a) Processing Fees and Charges, (b) impact fees, linkage fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental entities regardless of whether the City is required to collect or assess such fees pursuant to applicable Laws (e.g., school district impact fees pursuant to Government Code Section 65995 or Transportation Mitigation Fees imposed by the San Bernardino Association of Governments) or (c) Fair Share Fees (as defined below). The Development Impact Fees to be imposed on the Project pursuant to Sections 3.2 and 3.3 of this Agreement is set forth in Attachment No. 2, which is attached hereto and incorporated herein.

**"Development Project"** shall have the same definition as in California Government Code Section 65928, as that statute exists on the date the Enabling Ordinance is adopted.

**"Discretionary Action"** means an action proposed by Owner which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency or City commission or committee in the process of approving or disapproving a particular activity, as distinguished from an activity such as the issuance of Ministerial Permits and Approvals, which merely requires the City and/or any City Agency to determine whether there has been compliance with applicable, objective statutes, ordinances and/or regulations.

**"DO Date"** is defined in Section 7.6.

**"Effective Date"** shall mean thirty (30) days after the City Council's approval by second reading of the Enabling Ordinance.

**"El Rivino Improvements"** means the Required Off-Site Improvements described as Item 4 on Attachment No. 4.

**"Enabling Ordinance"** shall mean City Ordinance No. \_\_\_\_\_ by which this Agreement was approved.

**"Encumber"** and **"Encumbrance"** shall refer to mortgages, deeds of trust, and any other device by which Owner uses all or any portion of Owner's interest in the Property to secure a loan.

**"Entitlements"** shall mean all statutes, ordinances, decisions, resolutions, permits, rules, regulations, and official policies of the City that govern permitted uses, density, design, construction standards and specifications, density or intensity of use, height and size of buildings, Reservation or Dedication of land for public purposes, growth management, development impact fees, fair share fees, special taxes and special assessments used to mitigate the impacts of Development, environmental analysis, and/or environmental mitigation, applicable to property or prerequisite to the construction and occupancy of a Development Project including any Existing Entitlements (as defined herein). Examples of **"Entitlements"** include but are not limited to general plans, community plans, specific plans, designations in such plans, zoning designations and regulations, subdivision maps, use permits, special use permits, conditional use permits, temporary use permits, home occupation permits, Municipal Code and zoning ordinance provisions, development plans, site plans, design reviews, variances, building permits, agreements governing parks, improvement agreements, conditions of approval, Precise Plan of Design, and certificates of occupancy. The term **"Entitlements"** is not dependent on the nature (such as legislative, quasi-judicial, ministerial, or administrative) of the matter in question.

**"Existing Entitlements"** shall include all Entitlements applicable to Development of the Property that have been approved by the City pertaining to the Project as of the date the Enabling Ordinance is adopted, including, without limitation, the General Plan Amendment No. 36 changing the Property's designation to M-1 (Light Industrial), Zone Change No. 239 changing the Property's zoning to M-1 (Light Industrial), certification of the Rialto Commerce Center EIR, and the Project PPDs. The Existing Entitlements expressly set forth all of the applicable authorizations, restrictions and conditions of approval for the Development of the Project (the **"Conditions of Approval"**), and other than the Conditions of Approval and other restrictions as set forth in the Existing Entitlements (and approved by Owner) and the requirements of this Agreement, there shall be no other conditions for approval for the Development of the Project imposed by the City or any City Agency.

**"Fair Share Fees"** shall mean the fees described in Attachment No. 8, which is attached hereto and incorporated herein by this reference.

**"Fee Vesting Term"** is defined in Section 3.3. The Fee Vesting Term may be modified by amendment of this Agreement in accordance with Section 6.

**"Financier"** shall mean any mortgagee, beneficiary, or trustee as to an Encumbrance.

**"Force Majeure"** shall mean problems or occurrences beyond the control of the affected Party that delay a Party's performance of its obligations under this Agreement. Examples of Force Majeure include but are not limited to floods, earthquakes, adverse weather conditions (with respect to weather sensitive work), and other Acts of God; fires; wars; civil commotion, riots, and similar hostilities; strikes, picketing, and other labor difficulties; shortages of materials or supplies; inability of any government agency, including but not limited to the City, to provide adequate levels of public services or facilities to the Property, including, by way of illustration only, a lack of water caused by drought; Laws of other agencies (including but not limited to voter initiative or referenda, moratoria, and judicial decisions); and Litigation brought by a third Party challenging the validity of this Agreement or an existing City Law; *provided, however*, expressly excluded from the definition of **"Force Majeure"** with respect to the City's performance of any of the obligations of the City is any action which is prevented or delayed as a result of the City's actions or failure to act. For the avoidance of doubt, the City's legislative or police actions which impair the City's performance of the City's obligations under this Agreement shall not be deemed or construed to be conditions of **"Force Majeure."**

**"Hard Costs"** mean and include direct costs of construction including materials and labor as included in the Construction Contract (as defined in Section 2.8.2), but shall exclude Soft Costs and further shall exclude the internal administrative salaries of the entity performing the work in question.

**"Hazardous Materials"** means any substance, material or waste which is or becomes regulated by any Laws, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "acutely hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a

"hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (42 U.S.C. § 6903), (x) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* (42 U.S.C. § 9601), (xi) Methyl-Tertiary Butyl Ether, or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Laws either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment.

**"Indemnitees"** shall mean the City and its elected and appointed officials, employees, volunteers, agents, and representatives.

**"Indemnitor"** shall mean Owner and its permitted successors in interest to the Property and/or the Project, and/or permitted assignees of Owner's rights under this Agreement.

**"Land Use Regulations"** means all ordinances, resolutions, codes, rules, regulations and official policies of the City adopted by ordinance or resolution governing the development and use of land, including, without limitation, the Development Agreement Ordinance and/or any other ordinance or resolution governing the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property and the design, improvement and construction standards and specifications applicable to the Development of the Project and/or any actions of the City and/or any City Agency in connection with either the Existing Entitlements, whether Discretionary Actions or Ministerial Actions and Approvals, provided that any such Land Use Regulations shall not conflict with the this Agreement (including the Project PPDs) and shall not expand or modify any Development Exaction or other vested Project Conditions of Approval. The term **"Land Use Regulations"** does not include any City ordinance, resolution, code, rule, regulation, or official policy, governing:

- (a) the conduct of businesses, professions, and occupations except subdivisions;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances; and/or
- (d) the exercise of the power of eminent domain.

**"Law"** shall mean and include any official legislative enactment of a governmental agency, public body, or court that binds the Parties. The term **"Laws"** shall include but not be limited to case law, constitutional provisions, statutes, ordinances, initiatives, resolutions, policies, orders, rules, and regulations. A matter is a Law regardless of whether it was imposed by a legislative body (such as the City Council or State Legislature), an administrative agency (such as the Public Utilities Commission), the electorate (as by initiative or referendum), court (by judgment, order or opinion), or any other official body (such as the Planning Commission), and regardless of whether it is federal, state, or local.

**"Legal Description"** means the description of the Property which is attached hereto as Attachment No. 1 and incorporated herein.

**"Liabilities"** are defined in Section 15.

**"Litigation"** shall include all forms of judicial or quasi-judicial proceedings, including but not limited to complaints (for damages, declaratory relief, or otherwise), arbitrations, judicial references, petitions (for traditional mandate, administrative mandate, or otherwise), and appeals, no matter how denominated.

**"M-1 (Light Industrial)"** means the zoning designation referred to in the City of Rialto, Official Zoning Map last updated July 8, 2013 and the City of Rialto Municipal Code Chapter 18.38 as of the Effective Date, and also sometimes referred to as M-1 (Light Manufacturing) in the City of Rialto Municipal Code.

**"Material Change in the Project"** shall mean any change in intensity, use or configuration of the Project as described in the Existing Entitlements that the City determines would require preparation of a subsequent or supplemental environmental impact report or mitigated negative declaration in accordance with Sections 15162 and 15163 of Title 14 of the California Code of Regulations, and such subsequent or supplemental environmental impact report or mitigated negative declaration concludes that the impact from such change in the Project would result in a new significant adverse environmental impact or a substantial increase in the severity of previously identified significant impact, and such new impact cannot be mitigated to a less than significant level.

**"Ministerial Permits and Approvals"** means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in connection with the implementation of the Entitlements which merely require the City and/or any City Agency to determine whether there has been compliance with applicable, objective statutes, ordinances and/or regulations, including without limitation, building permits, public works permits, grading permits, encroachment permits and other similar permits and approvals. The term **"Ministerial Permits and Approvals"** shall not include any Discretionary Actions.

**"Municipal Code"** shall mean the City's municipal code.

**"Notice"** means any approval, disapproval, demand, appeal, document or other notice to be delivered to a Party or otherwise pursuant to this Agreement.

**"Owner"** shall mean Oakmont El Rivino, LLC, a Delaware limited liability company, and its successors in interest as to the Property.

**"Party"** shall mean the City or Owner.

**"Parties"** shall mean the City and Owner.

**"Permits"** means all grading, building, and other permits required to be obtained by Owner prior to and as a condition precedent to the commencement of construction of the Private Improvements, the Required Off-Site Improvements, or the Storm Drain Improvements.

**"Phase-by-Phase"** means with respect to either the Phase 1 Private Improvements or the Phase 2 Private Improvements individually, as applicable.

**"Planning Commission"** shall mean the City's duly-appointed Planning Commission.

**"Precise Plan of Design"** or **"PPD"** means a Discretionary Action of a design plan for the Project that is required to be submitted by Owner and approved by the City, which shall include a Precise Plan of Design application, a plot plan, floor plan, colored elevation details for all sides of the proposed building, color and material board, a landscaping plan, and other information reasonably requested by the City Planning Division.

**"Private Improvements"** is defined in Recital G. The Private Improvements are depicted in Attachment No. 3 attached hereto and incorporated herein by this reference.

**"Processing Fees and Charges"** means all processing fees and charges required by the City uniformly in connection with all new construction, including, but not limited to, fees for land use applications, project permits, building permit applications, building permits, grading permits, encroachment permits, tract maps, parcel maps, lot line adjustments, air right lots, street vacations, certificates of occupancy and other similar permits. **"Processing Fees and Charges"** shall not include Development Impact Fees, Fair Share Fees or any exaction, impact fee, sharing fee or other fee or charge that is in the nature of a development impact fee or fair share fee.

**"Project"** shall mean the Development of the Private Improvements, the Required Off-Site Improvements and the Storm Drain Improvements, pursuant to the Existing Entitlements and the Applicable Land Use Regulations.

**"Project PPDs"** shall mean the PPD 2017-0082 and PPD 2017-0083 approved by the City on December 20, 2017 as set forth in Recitals I and J.

**"Property"** shall mean the real property legally described in Attachment No. 1, which is attached hereto and incorporated herein by this reference.

**"Regional Traffic Fee"** and **"Regional Traffic Impact Fee"** shall mean the Regional Traffic Impact Fee assessed by the City of Rialto with respect to the Project pursuant to the San Bernardino Associated Governments ("**SANBAG**") - Regional Traffic Fee Nexus Study, as described in Attachment No. 2.

**"Required Off-Site Improvements"** means and includes all public improvements required as a condition of approval of the Project and/or required by the CEQA Compliance Documents approved for the Project, which are described in items 1, 2, 3, and 4 in Attachment No. 4. For the avoidance of doubt, **"Required Off-Site Improvements"** do not include the Storm Drain Improvements.

**"Reservation"** shall mean the setting aside of land for future public use, without any legal right, title, or interest being conveyed other than the promise to convey an interest upon payment of fair market value for such land.

**"Reserved Powers"** means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to the City under Section 5 of this Agreement.

**"Site Plan"** means the Site Plan depicted in Attachment No. 3, which is attached hereto and incorporated herein. Owner shall be entitled to develop the Property in accordance with the Site Plan, which is consistent with the Existing Entitlements, unless Owner proposes an alternate Project design and configuration and such alternate design and configuration is approved by the City in accordance with the provisions set forth herein.

**"Soft Costs"** mean and include with respect to the Storm Drain Improvements, indirect or design costs of construction, including architectural, engineering, financing, inspection and testing, legal, permits and fees, and other pre- and post-construction professional services expenses, delay costs, management fees (including, without limitation, the Developer Manager Fee), and administrative expenses. In order for Soft Costs to be reimbursable to Owner pursuant to this Agreement, the City must be able to verify that such Soft Costs are specifically attributable to the Storm Drain Improvements for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by the City Administrator.

**"Special Review"** is defined in Section 12.2.

**"State"** means the State of California.

**"Storm Drain Improvements"** means those certain off-site public storm drain improvements described in Attachment No. 5 attached hereto, which Owner may elect to design and construct and may elect to be entitled to the fee credit set forth in Section 3.5.1(a) hereof.

**"Storm Drain Improvements Construction Costs"** means the costs of constructing the Storm Drain Improvements as set forth in the Construction Contract (defined in Section 2.8.2) and other costs associated with the construction, installation, and completion of the Storm Drain Improvements, including, but not limited to bond costs, plan check fees, permit fees, engineering costs, construction management fees, delivery costs, and reasonable and customary costs of bid administration.

**"Term"** is defined in Section 9.2.

**2. Development of the Property.** While this Agreement is in effect, Owner shall have the vested right to Develop the Project at the Property, and the City shall have the right to control Development in accordance with the terms and conditions of all Applicable Rules.

2.1 **Uses.** The Property may be used in accordance with the Existing Entitlements and the Applicable Land Use Regulations, which uses shall include but are not limited to warehouse, industrial, logistics, and distribution (including fulfillment center) uses, and as described in Section 2.4.2 below.

2.2 **Intensity.** Permitted density and intensity of use vested hereby shall be the maximum permitted by the Existing Entitlements and the Applicable Land Use Regulations.

2.3 **Size.** The maximum height and size of buildings vested hereby shall be as set forth in the Existing Entitlements and the Applicable Land Use Regulations.

2.4 **Description of the Development.** Owner shall construct the Project at the Property in accordance with all Applicable Rules and any and all other documents submitted by Owner and

approved by the City as set forth herein; *provided, however*, nothing contained herein shall be deemed or construed as requiring Owner to construct the Private Improvements or any Phase thereof, which may be constructed or not in accordance with Owner's discretion. In connection with and as a condition of approval for the Development of the Project as set forth in the Existing Entitlements, Owner will be required to construct the Required Off-Site Improvements in connection with the Private Improvements as may be constructed on a Phase-by-Phase basis. All construction on the Property shall adhere to the Building Codes.

2.4.1 This Agreement and the Development of the Project at the Property have been determined to be consistent with the current Rialto General Plan, and the existing zoning restrictions affecting the Property in effect as of the Effective Date of this Agreement. To the extent that there is a conflict between this Agreement and the Existing Entitlements and any future amendments to the Rialto General Plan and zoning restrictions, this Agreement and the Existing Entitlements shall control and supersede such General Plan and zoning changes.

2.4.2 The Property is located within the Light Industrial land use designation of the Rialto General Plan (2010 Update) and the M-1 (Light Industrial) zone of the Rialto Municipal Code. The Light Industrial General Plan designation and the M-1 (Light Industrial) zone allow light industrial activity including but not limited to distribution plants, warehouse, logistic centers, ice and cold storage plants, lumber yards, building materials storage or sales, contractors storage yard or plant, storage warehouses, truck terminals or any other uses permitted within the General Plan and Municipal Code in effect on the Effective Date of this Agreement and otherwise consistent with the Existing Entitlements.

2.5 **Issuance of Building Permits.** No building permit, final inspection, or certificate of occupancy shall be withheld from Owner if Owner has complied with the requirements of this Agreement and the terms of the Existing Entitlements. If necessary, the City shall use reasonable, good faith efforts to process in a prompt and timely manner any other Entitlements that are necessary for the completion of construction and occupancy of the Project, or portion thereof.

2.6 **Timing of Development.** In order to avoid the result in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the City and Owner agree that Owner shall have the right, without obligation, to develop the Project (and any Phase thereof) in such order and at such rate and times as Owner deems appropriate within the exercise of its subjective business judgment, subject only to the Existing Entitlements. Furthermore, the City shall not (whether by City Council action, initiative or otherwise) limit the rate or timing of Development of the Project (or any Phase thereof) except as expressly authorized by the Existing Entitlements. Nothing in this section shall be construed to limit the City's right to require that Owner timely provide all Required Off-Site Improvements in accordance with the Existing Entitlements and this Agreement.

2.7 **Compliance with Laws.** Owner shall carry out the design and construction of the Project in conformity with all Land Use Regulations and applicable Laws to the extent they do not conflict with the Applicable Rules.

2.7.1 **Public Works Requirements.** [pending review by PW Counsel] To the extent Owner elects to construct the Storm Drain Improvements and Owner elects to receive the Storm Drain Credit pursuant to Section 3.5.1(a), Owner shall design and construct the Storm Drain Improvements in conformity with all applicable federal and State labor Laws (including, without limitation, the requirements

under California Law to pay prevailing wages and to hire apprentices and all applicable public bidding requirements) (collectively "**Labor Laws**"). The City and Owner acknowledge and agree that, due to the provision of reimbursements by the City for Hard Costs and/or, if applicable, Soft Costs incurred by Owner for the Storm Drain Improvements, the construction and installation of the Storm Drain Improvements shall be considered "public works" pursuant to Labor Code Section 1720, *et seq.* Owner hereby agrees that, with respect to Owner's construction and installation of the Storm Drain Improvements (and Storm Drain Improvements only), Owner and its contractors and subcontractors shall pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Upon the periodic request of the City, Owner shall certify to the City that it is in compliance with these requirements. Owner shall be solely responsible for determining and effectuating compliance with such Labor Laws, and the City makes no representation as to the applicability or non-applicability of any such Labor Laws to the Development of the Private Improvements or the Required Off-Site Improvements. Nothing herein shall be deemed to make any part of the Project other than the Storm Drain Improvements a public work, provided that Owner elects to construct the Storm Drain Improvements and Owner elects to receive the Storm Drain Credit pursuant to Section 3.5.1(a).

2.7.2 **Prevailing Wage Indemnification.** Owner shall indemnify, protect, defend and hold harmless the Indemnitees, from and against any and all loss, liability, damage, claim, cost (including "**Increased Costs**" (as hereinafter defined)), and/or expense (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the Project, results or arises from the following: (1) the noncompliance by Owner of any applicable Labor Laws, including, without limitation, if applicable, the requirement to pay State prevailing wages and to hire apprentices; (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar Labor Law; and/or (3) failure by Owner to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar Labor Law. It is agreed by the Parties that, in connection with the Project, including, without limitation, any and all public works (as defined by applicable Law), Owner shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California Law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar Law. "**Increased Costs**," as used in this Section 2.7.2, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing obligations set forth in this Section 2.7.2 shall survive termination of this Agreement and shall terminate upon the expiration of all statutes of limitation applicable to claims with respect to which Owner is required to indemnify the Indemnitees pursuant to this Section 2.7.2.

2.7.3 **Owner Election to Forgo Storm Drain Credit.** In the event Owner elects not to pursue the Storm Drain Credit pursuant to Section 3.5.1(b), the provisions set forth in Sections 2.7.1 and 2.7.2 shall be inapplicable, null and void.

## 2.8 **Bidding and Award.**

2.8.1 Unless Owner delivers written notice to City that Owner waives the Storm Drain Credit pursuant to Section 3.5.1(b) below, Owner or Owner's Construction Manager shall competitively bid and award construction contracts with subcontractors for the Storm Drain Improvements in accordance with the City's requirements, which requirements are attached hereto as Attachment No. 6

and incorporated herein. Alternately, subcontractors may be pre-qualified in accordance with Public Contract Code Section 20101.

2.8.2 Unless Owner delivers written notice to City that Owner waives the Storm Drain Credit pursuant to Section 3.5.1(b) below, prior to awarding the bid for any portion of the Storm Drain Improvements, Owner shall submit the bid packet and a set of construction drawings for the work being bid to the Public Works Director of the City for review and approval which approval shall be granted or denied within twenty (20) calendar days after submission of such bid packet (or such additional time as reasonably requested by the Public Works Director); *provided, however*, the Public Works Director's failure to respond within such time periods, plus ten (10) days after written notice to the Public Works Director of the requirement to respond within such time periods, shall be deemed approval of the bid packet submission. If the City's Public Works Director denies approval of such bid packet and construction drawings, the City's Public Works Director shall specify the reasons for such disapproval and Owner may resubmit a revised bid packet for review and approval until such approval is obtained. Owner shall provide the Public Works Director with copies of all bids received from subcontractors and a bid summary in a form approved by the Public Works Director to assure that Construction Manager adheres to the applicable legal requirements for public works projects. Construction Manager shall enter into a construction contract with each subcontractor selected to perform work on the Storm Drain Improvements (after competitive bidding as set forth above) (each, a "**Construction Contract**") for the performance of the work set forth in the selected subcontractor's bid, and the terms of each Construction Contract entered into by Construction Manager and a subcontractor shall be reasonably acceptable to City Administrator. Owner shall submit to the City a copy of each executed Construction Contract for the Storm Drain Improvements within fifteen (15) days after execution thereof.

2.8.3 The City finds that full compliance with the otherwise applicable requirements of the Public Contracts Code for the bidding of design and construction management services would be unavailing, would not produce an advantage for the City, and would thus be undesirable, impractical, and impossible as authorized by *Graydon v. Pasadena Redevelopment Agency et al.* (1980) 104 Cal. App. 3rd 631 and the cases cited therein. To that end, the City hereby approves the following design and construction management professionals for the Project:

- (a) Thienes Engineering, Inc., for civil engineering, traffic control plans, and staking services; and
- (b) Southern California Geotechnical, for geotechnical and testing services; and
- (c) Either Fullmer Construction, Inc., Alston Construction Company, or Oltmans Construction Company, as the Construction Manager.

2.9 **Design and Management Professionals' Cost Estimate; Storm Drain Improvements Budget.** Owner has submitted a "**Storm Drain Improvements Budget**" which is attached hereto as Attachment No. 7 and incorporated herein by this reference. The Storm Drain Improvements Budget includes the following cost estimates relating to the Development of the Storm Drain Improvements: (1) plan check and permit fees, (2) construction labor and material with unit costs and quantities as applicable, (3) inspection and testing fees, (4) the cost of labor, materials, and performance bonds, (5) traffic control costs, (6) construction management and insurance costs, and (7) contingency reserves.

After the Effective Date, any changes to the Storm Drain Improvements Budget in excess of ten percent (10%) of the total Storm Drain Improvements Budget shall be submitted to the City Administrator for his or her written approval (which shall not be unreasonably withheld, conditioned or delayed).

2.10 **No Liability of the City for Obligations of Owner or Development of the Project.** Nothing set forth in this Agreement shall be construed to impose any liability on the City with respect to or arising from Owner's obligations set forth in this Agreement or in the Existing Entitlements or any other Applicable Rules, including without limitation Development of the Project or any portion thereof.

### 3. **Development Exactions.**

3.1 **Reservations, Dedications, and Improvements.** Reservations and Dedications of land and the provision of improvements and facilities for public purposes shall be those, and only those Development Exactions appearing in the Existing Entitlements and/or this Agreement.

3.2 **Owner's Obligation to Pay Fees.** In connection with the issuance of a Building Permit for the Private Improvements (on a Phase-by-Phase basis), Owner shall pay (on a Phase-by-Phase basis) all required Development Impact Fees (subject to Sections 3.3 and 3.5), Fair Share Fees (subject to Section 3.2.1), Processing Fees and Charges imposed by the City, and any and all other fees and charges imposed by any other regulatory agency with jurisdiction over the Property or the Project within the time and in the manner prescribed by such agency or the City and shall receive such credits and/or reimbursements for improvements constructed in accordance with the provisions set forth in the Rialto Municipal Code and as set forth in this Agreement.

3.2.1 **Fair Share Fees.** Prior to the issuance of a Building Permit for the Private Improvements (on a Phase-by-Phase basis), Owner shall be required to pay (on a Phase-by-Phase basis) the Fair Share Fees outlined in Attachment No. 8 to satisfy all of the Fair Share Fees as required in the Existing Entitlements, which Fair Share Fees shall be paid on a per acreage basis based upon the Permits then being issued. Additionally, Owner shall obtain evidence from the County of Riverside confirming that the payment of the TUMF Fee (defined below) to the County of Riverside satisfies the Fair Share Fees for Owner's applicable share of the amounts for (a) the improvements at Rubidoux Boulevard (NS) at the State Route 60 Freeway eastbound ramps and 30<sup>th</sup> Street (EW) [i.e., \$22,722.00], and (b) the improvements at Agua Mansa Road (NS) at Market Street (EW) [i.e., \$38,300.00], Item Nos. 13 and 24, respectively, (the "**County Fair Share Fees**") as outlined in Attachment No. 8 (Fair Share Fees). If Owner obtains such confirmation, Owner shall not be required to pay such Fair Share Fees to the City or to the County of Riverside, and Owner's payment of the TUMF Fee to the County of Riverside in accordance with Section 3.2.2 below shall conclusively be deemed Owner's satisfaction of any requirement for payment of such County Fair Share Fees to the City and the County of Riverside. In no event shall Owner's failure to obtain such confirmation be a default by Owner under this Agreement, however, if Owner is unable to provide such confirmation, then notwithstanding the payment of the TUMF Fee to the County of Riverside, Owner shall remain obligated to pay such County Fair Share Fees to the City or to the County of Riverside, but not both.

3.2.2 **Riverside County Transportation Unified Mitigation Fee.** Pursuant to that certain Settlement Agreement dated as of December 20, 2011 (the "**TUMF Fee Settlement Agreement**"), by and among the County of Riverside, the City of Riverside, the City, City of Rialto City Council, and Oakmont Industrial Group, LLC, a Delaware limited liability company, Owner's predecessor-in-

interest, prior to the issuance of a Building Permit for the Private Improvements (on a Phase-by-Phase basis), Owner shall pay (on a Phase-by-Phase basis) to the County of Riverside c/o Riverside County Director of Transportation a Transportation Uniform Mitigation Fee ("**TUMF Fee**") in the amount shown on Attachment No. 2 as required under the TUMF Fee Settlement Agreement on a gross square foot basis based upon the Building Permit for each Phase then being issued, or portion thereof.

3.3 **Development Impact Fee Lock Term.** Commencing on the Effective Date and continuing until the fourth (4th) anniversary of the Effective Date (subject to extension for Force Majeure, the "**Fee Vesting Term**"), the Development Impact Fees imposed by the City with respect to the Project shall be those Development Impact Fees as described and set forth in Attachment No. 2, attached hereto and incorporated herein, which represent a negotiated continuation of the Development Impact Fee schedule in effect upon the Effective Date of this Agreement; *provided, however*, if construction on the first Phase of the Private Improvements (which may be either the Phase 1 Improvements or the Phase 2 Improvements) is not commenced on or before the first (1<sup>st</sup>) anniversary of the Effective Date (subject to extension for Force Majeure), then the "**Fee Vesting Term**" shall commence on the Effective Date and continue until the second (2<sup>nd</sup>) anniversary of the Effective Date (subject to extension for Force Majeure). As noted in Attachment No. 2, neither the Regional Traffic Fee (levied by the City as required by SANBAG), the Colton Joint Unified School District Developer Fee ("**School Fee**"), nor any other fee levied by any agency other than the City are fixed or locked in by this Agreement. If, during the Fee Vesting Term, there is no Material Change in the Project, the Development Impact Fees imposed by the City on the Project may not be increased in amount (for the avoidance of any doubt, such limitation on increase during the Fee Vesting Term includes a restriction on the City's ability to annually adjust such Development Impact Fees); *provided, however*, any Material Change in the Project may result in decreased or increased Development Impact Fees; *provided, further*, it is acknowledged and agreed that no Development Impact Fees shall be applicable with respect to any Phase of the Private Improvements until the issuance of a Building Permit for such Phase of the Private Improvements. After the expiration of the Fee Vesting Term, development of the Project shall be subject to any and all Development Impact Fees imposed by the City in accordance with any applicable Law and/or the Municipal Code. Owner acknowledges that the City has completed one or more Nexus Fee Studies and has increased the generally applicable Development Impact Fees imposed by the City effective as of the Effective Date of this Agreement, and the City may increase such generally applicable Development Impact Fees annually thereafter, and that, in the absence of this Agreement, the Project would be subject to the Development Impact Fees in place at the time any Building Permits are issued by the City for the Private Improvements, or as otherwise required by the Municipal Code. As further set forth in Sections 5.8 and 5.10 below, nothing in this Agreement is intended to prevent the imposition of fees or other exactions by any governmental entity not affiliated with the City.

3.4 **Right of Way Acquisition, Dedication, and Improvement.** In the event the construction of the Required Off-Site Improvements and/or the Storm Drain Improvements (to the extent Owner elects to design and construct the Storm Drain Improvements) requires the dedication of a right of way of City or other third-party owned land, Owner shall provide the City with documentation (executed and acknowledged by Owner, as applicable) identifying such required right of way dedication with reasonable specificity within ninety (90) days of the Effective Date. To the extent real property owned by the City as of the Effective Date is needed for right of way for Required Off-Site Improvements and/or the Storm Drain Improvements (to the extent Owner elects to design and construct the Storm Drain Improvements), the City shall Dedicate such property for public right of way at no cost to Owner, unless prevented from doing so by applicable Laws. Owner shall construct all Required Off-Site Improvements as contemplated by Attachment No. 4, and, to the extent Owner elects to design and construct the Storm Drain Improvements,

the Storm Drain Improvements as contemplated by Attachment No. 5; *provided, however*, Owner's obligations with respect to Required Off-Site Improvements on such public right of way shall be conditioned upon such Dedication and the City providing access to such public right of way as needed to fulfill Owner's obligations hereunder. Owner shall use commercially-reasonable efforts to obtain any required right of way or access to private property not owned by the City in connection with any Dedication or construction of the Required Off-Site Improvements (as defined in Items 1, 2, 3, and 4 of Attachment No. 4), and, to the extent Owner elects to design and construct the Storm Drain Improvements, the Storm Drain Improvements (as contemplated by Attachment No. 5); *provided however*, if Owner is unable to obtain such required right of way, Owner shall request that the City obtain such required right of way (at Owner's sole cost and expense). Thereafter, the City shall use good faith efforts to obtain such required right of way, subject to Owner's payment of all costs incurred by the City to obtain such right of way excluding, however, any costs for acquisition of the right of way for the Storm Drain Improvements, which cost shall be borne by the City. Nothing herein shall obligate the City to pursue eminent domain proceedings to acquire such public right of way and the City retains full discretion to consider same in accordance with State Law. In the event the City is unable to obtain the required right of way, Owner and the City shall meet and confer regarding potential changes to the design of the Required Off-Site Improvements and/or the Storm Drain Improvements (to the extent Owner elects to design and construct the Storm Drain Improvements), and/or the waiver of specified conditions and/or a monetary payment in lieu of the obligation to construct the Required Off-Site Improvements, the Storm Drain Improvements or any portion thereof; *provided, however*, nothing in this Agreement or Attachment No. 4 shall be construed to waive any required condition of approval of the Project or to allow a change in the Project due to the inability to secure a required right of way that results in an adverse impact to, or diminution in value of, the Project.

### 3.5 Deferral of Storm Drain Facilities Fee; Eligibility for Storm Drain Credit.

Provided Owner elects to design and construct the Storm Drain Improvements, at the issuance of the Building Permit for each Phase, the City hereby agrees to defer Owner's obligation to pay the applicable Storm Drain Facilities Fee as set forth in Attachment No. 2 with respect to such Phase, which deferred Storm Drain Facilities Fee would otherwise be payable (on a Phase-by-Phase basis) to the City in connection with the issuance of a Building Permit for such Phase of the Project:

#### 3.5.1 Fee Credits.

(a) Credit Against Storm Drain Facilities Fee. Owner shall have the right to receive a credit (the "**Storm Drain Credit**") against the Storm Drain Facilities Fee otherwise payable by Owner (on a Phase-by-Phase basis) as set forth in Attachment No. 2 hereto (the "**Storm Drain Facilities Fee**") in an amount equal to the actual Hard Costs and Soft Costs of construction of the Storm Drain Improvements described in Attachment No. 5; *provided, however*, with respect to the Storm Drain Credit, the credit for such Soft Costs shall not exceed the lesser of fifteen percent (15%) of the Hard Costs of the Storm Drain Improvements or \$350,000.00, and in no event shall the Storm Drain Credit exceed the Storm Drain Facilities Fee calculated as if the Project were fully developed. The actual amount of the Storm Drain Credit shall be determined upon completion of construction of the Storm Drain Improvements and acceptance of the same by the City. If the actual amount of the Storm Drain Credit is less than the Storm Drain Facilities Fee required to be paid by Owner with respect to any Phase of the Private Improvements for which a building Permit has been issued, then Owner shall pay such difference to the City within thirty (30) days of such determination. If the actual Storm Drain Credit is more than the Storm Drain Facilities Fee required to be paid by Owner with respect to any Phase of the Private Improvements for which a Building Permit has been issued, then Owner (or any affiliate of Owner) may elect, by written

notice delivered to the City (an "**Offset Notice**"), to offset such excess Storm Drain Credit against amounts that become due to the City in the future as Storm Drain Facilities Fees with respect to any subsequent Phase of the Private Improvements. Owner's offset rights under this Section may be transferred to a third party (with the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, to the extent such third party is an affiliate of Owner, only notice to, and not consent from, the City shall be required) that may owe amounts to the City in the future as Storm Drain Facilities Fees in connection with any project in the City, which transfer shall be effective and honored by the City upon receipt of notice from Owner to the City (an "**Offset Transfer Notice**") setting forth the excess Storm Drain Credit transferred and the transferee of such offset right.

(b) **Owner Opt Out.** Notwithstanding anything to the contrary contained in this Section 3.5 or 3.6 below, Owner may elect to waive the Storm Drain Credit by written notice to the City delivered before the commencement of construction of the Storm Drain Improvements, whereupon the provisions of this Section 3.5 and 3.6 below, and Sections 2.7.1, 2.7.2, 2.8 and 2.9 shall have no further force or effect.

### 3.5.2 **Deadline for Construction; Payment of Storm Drain Facilities Fees.**

So long as the DO Date has occurred for any Phase of the Project, and Owner has elected to design and construct the Storm Drain Improvements and Owner has not waived its right to receive the Storm Drain Credit, then Owner shall complete the Storm Drain Improvements on or before the actual termination of this Agreement pursuant to Section 9.3.7; failing which Owner's right to defer payment of the Storm Drain Facilities Fee with respect to such Phase shall be terminated and such Storm Drain Facilities Fee applicable to such Phase shall be due and payable to the City within thirty (30) days thereafter.

3.6 **Conditions Precedent to Application of Storm Drain Credit.** The City's obligation to apply the Storm Drain Credit pursuant to Section 3.5.1(a) above is conditioned upon the prior satisfaction by Owner or written waiver by the City of each of the following Conditions Precedent within the times designated below:

3.6.1 **Payment of Acquisition Costs.** To the extent required under Section 3.4, if applicable, Owner shall have fully and completely reimbursed the City, or provided an advance to the City, for any and all actual, third party, out-of-pocket costs incurred by the City to acquire real property right of way needed for Required Off-Site Improvements (other than the Property) and/or the Storm Drain Improvements required for the Required Off-Site Improvements and/or Storm Drain Improvements and included within Section 3.4).

3.6.2 **Costs of City Actions.** Owner shall have paid all out-of-pocket third party costs actually incurred by the City to the date of the request in connection with the negotiation, preparation, enforcement, monitoring, and otherwise in connection with this Agreement pursuant to Section 7.5.

3.6.3 **Completion of Construction of Storm Drain Improvements.** Owner shall have completed the construction of the Storm Drain Improvements, and as applicable, notices of completion shall have been recorded in relation to the Storm Drain Improvements in accordance with California Civil Code Section 9204 (as applicable), and sixty-five (65) days shall have elapsed since the recordation of such notices of completion. The purpose of this provision is to ensure that the Storm Drain

Improvements will be independently functional, and nothing herein shall be deemed to make any part of the Project other than the Storm Drain Improvements a public work.

3.6.4 **Submission of Bills/Invoices.** Owner shall have made full and complete payment of all undisputed claims for work performed on the Storm Drain Improvements, or in the event of a dispute between Owner and the general contractor or a subcontractor, Owner shall have obtained a commercially reasonable bond reasonably satisfactory to the City to release any applicable mechanics' lien or stop notice and Owner shall have submitted and the City shall have approved a written request for the reimbursement, including copies of all bills and/or invoices evidencing the Hard Costs of constructing the Storm Drain Improvements actually incurred by Owner.

3.6.5 **As-Built Drawings.** Owner shall have submitted two (2) sets of final as-built drawings for the Storm Drain Improvements to the City Public Works Director.

3.6.6 **Approval and Acceptance of Storm Drain Improvements by the City.** The City, through the City Council, shall have approved the Storm Drain Improvements and accepted the Storm Drain Improvements, if applicable. The City agrees it will not unreasonably withhold or condition its approval and acceptance of the Storm Drain Improvements, if applicable.

4. **Vested Rights.** The following provisions shall apply to the Project until the expiration of the Term (as set forth in Section 9):

4.1 **Project Entitlements/Density.** Owner is hereby granted the vested right to construct, develop and operate the Project, subject to the terms and conditions of the Existing Entitlements and Applicable Rules, and the Reserved Powers.

4.2 **Enforcement.** Except to the extent this Agreement has been amended, canceled, modified or suspended in accordance with the terms of this Agreement, this Agreement shall be enforceable by any Party notwithstanding any change in any applicable general or specific plan, zoning, subdivision or building regulations adopted by the City which purports to alter or amend the Existing Entitlements.

4.3 **Moratoria.** In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates to the rate, amount, timing, sequencing, or phasing purportedly applying to the development of the Project on all or any part of the Property or the implementation or construction of the Project, the City agrees that, unless required by applicable state or federal Law or adopted pursuant to the City's exercise of the Reserved Powers, such ordinance, resolution or other measure shall not apply to the Project, Property or this Agreement. If any such development moratorium would limit or allocate capacity in any City facilities (such as water, sewer, or streets), the City shall reserve capacity for the Project.

4.4 **Commensurate Term of Existing Entitlements.** Notwithstanding Section 18.66.070 of the Rialto Municipal Code, the term of any Existing Entitlements issued in connection with the Project shall be commensurate with the Term of this Agreement in accordance with Section 9.

4.5 **Conflicts.** In the event of conflict between the Existing Entitlements and this Agreement, this Agreement shall prevail.

5. **Reserved Powers.** Notwithstanding any other provision of this Agreement, the following regulations shall apply to the development of the Project as and to the extent that such regulations apply generally to similar developments proposed or approved within the City:

5.1 **Processing Fees and Charges.** The City's Processing Fees and Charges at the rates in effect when each application and decision subject thereto is deemed complete.

5.2 **Procedural Regulations.** Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and/or any other matter of procedure so long as such procedural regulations are uniformly and consistently applied by the City in a non-discriminatory manner.

5.3 **Uniform Building Codes.** Written regulations, policies and rules governing objective engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all Building Codes and similar codes adopted by the City and any local amendments to those codes adopted by the City.

5.4 **Police Power.** Any City ordinance, resolution, regulation, or official policy, which is reasonably necessary to protect persons on the Property and in the immediate community, or both, from conditions dangerous to their health, safety, or both, shall apply to the Project notwithstanding that the application of such ordinance, resolution, regulation, or official policy or other similar limitation would result in the impairment of Owner's vested rights under this Agreement. Any such regulations must constitute a valid exercise of the City's police power, applied and enforced in a uniform, consistent and non-discriminatory manner and must be applied and construed so as to provide the Owner, to the maximum extent possible, with the rights and assurances provided under this Agreement.

5.5 **Non-Conflicting Regulations.** Written regulations approved by the City that are not in material conflict with the Applicable Rules and do not materially and adversely impact the development of the Project. Any regulation adopted after the Effective Date, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property or impacting and/or increasing any Development Exaction shall be deemed to materially conflict with the Applicable Rules and shall therefore not be applicable to the development of the Project.

5.6 **Conflicting Regulations.** Written regulations approved by the City that are in material conflict with the Applicable Rules shall only be applicable and binding upon Owner and the Project only if Owner has given its written consent to the application of such regulations to development of the Property and/or the Project.

5.7 **End Users.** Laws of the City that impose, levy, alter or amend fees, charges, or Land Use Regulations relating solely to post-Development conduct of consumers or end users, so long as the City applies and enforces those later enactments in a uniform, consistent and non-discriminatory manner and such enactments do not (a) impair Owner's vested rights to Develop or operate the Project and/or (b) conflict with the Existing Entitlements.

5.8 **Laws.** Laws of the state and/or federal governments, including those of regional agencies or departments such as the Regional Water Quality Control Board, which override Owner's vested rights set forth in this Agreement shall apply to the Project and the Property, together with any City ordinances, resolutions, regulations and official policies to the extent necessary to enable the City to

comply with such overriding Laws; *provided, however*, that (A) Owner does not hereby waive its right to challenge or contest the validity of any Laws; and (B) in the event that any such Law (or City ordinance, resolution, regulation or official policy enacted pursuant thereto) prevents or precludes compliance with one or more provisions of this Agreement, the Parties shall negotiate in good faith the amendment or suspension of such provisions of this Agreement to ensure the minimal necessary interference with Owner's rights hereunder; provided that no Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption and amendment of development agreements as set forth in the Development Agreement Act, the Development Agreement Ordinance, and this Agreement and each Party retains full discretion with respect thereto; *provided, further*, that the Fee Vesting Term shall be extended for any such period during which Owner is pursuing such challenge or contest, up to two (2) additional years.

5.9 **Immediate Threat.** If the City Council finds that there is a severe and immediate threat to the health or safety of the City's residents due to the Development of the Project, the City may unilaterally suspend this Agreement for a period not to exceed the time required for notice and a public hearing pursuant to Section 12.3; provided, that all applicable time limits set forth herein shall be extended for any such period of suspension.

5.10 **Regulation by Other Public Agencies.** The Parties acknowledge that other public agencies, not within the control of the City, may possess authority to regulate aspects of the Development of the Project and the Property separately from the City. This Agreement does not limit the authority of such other public agencies. Nothing contained in this Agreement shall be construed as limiting, in any way, the authority of the City to impose on the Project any new or increased development impact fees or other fees or charges imposed by any other public agency with jurisdiction over the Property or Project, but collected by the City.

6. **Amendments.** This Agreement may be amended or canceled in whole or in part only in the manner provided for in Government Code Section 65868 and the Development Agreement Ordinance. This provision shall not limit any remedy of the City or Owner as provided by this Agreement.

6.1 **Material Changes.** Either Party may request other changes in the Existing Entitlements without risk to any rights that have vested pursuant to this Agreement. Any Material Change to the Project shall be subject to the City's review and approval, and shall require an amendment to this Agreement to cover such Material Change to the Project. The City may condition such Material Change approval to ensure compliance with CEQA. Changes that are not Material Changes to the Project shall not require an amendment to this Agreement.

6.2 **Operating Memoranda.** This Agreement requires a close degree of coordination between the City and Owner. Refinements of planned Development of the Property may demonstrate that clarifications are appropriate with respect to the details of the City's and Owner's performance. The City and Owner may effectuate such clarifications through operating memoranda approved by both Parties which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice and hearing pursuant to Section 6. The City Attorney shall be authorized to make the determination whether a requested clarification requires an amendment to this Agreement. Upon City Attorney approval, the City Administrator may execute any operating memoranda without City Council action.

6.3 **Nature of Change in Law.** The provisions of this Agreement shall apply to the Development of the Project regardless of whether a change in the Existing Entitlements is the result of the City Council or voter action. The Parties again intend hereby to avoid the result in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984).

## 7. **Owner Obligations.**

7.1 **Compliance With Law.** Owner shall comply with all Laws and the Existing Entitlements.

7.2 **Nature of Dedications.** All Dedications made by Owner to the City shall be made free and clear of liens and encumbrances, other than easements or restrictions that in the reasonable determination of the City do not preclude or interfere with the dedicated purpose.

7.3 **Processing Fees.** Owner shall pay all Processing Fees and Charges pursuant to the fee schedules in effect at the time of application for such City approval. Owner shall also pay any additional third party, out-of-pocket costs reasonably incurred by the City for expedited processing. Owner shall pay the City's reasonable third party out-of-pocket costs incurred for the Annual Review and any Special Review described in Sections 12.1 and 12.2.

7.4 **Completed Value of the Project.** Upon completion of construction of any Phase of the Project, the assessed value of the Project shall not be less than \$40/square foot for each Building of such completed Phase based upon the square feet actually constructed (the "**Valuation Amount**"). Owner and/or Owner's successors in interest to the Property shall not file an appeal or other action seeking to establish an assessed valuation of the Property for a value less than the Valuation Amount commencing with the first assessment lien date (January 1) after the construction of each Phase of the Project is complete and continuing for ten (10) years thereafter. City and Owner acknowledge that the Project may be completed in phases, and that the Valuation Amount shall be based upon completed construction for each Phase.

7.5 **Costs of City Actions.** Owner shall pay all third party, out-of-pocket costs the City reasonably incurs in furtherance of this Agreement within fifteen (15) calendar days following receipt of appropriate documentation (including, for example, invoices) showing such costs. This includes but is not limited to the City's out-of-pocket, third party costs incurred to negotiate and draft this Agreement, the City's out-of-pocket, third party costs incurred to in connection with the City's efforts to seek assistance from other governments pursuant to Section 8.3; monitoring and review costs pursuant to Section 12; and the costs of condemnation, if any, required for Required Off Site Improvements and/or the Storm Drain Improvements (if applicable) in accordance with Section 3.4 of this Agreement.

7.6 **Obligation to Construct the Required Off-Site Improvements.** Notwithstanding anything to the contrary contained in this Agreement, (a) nothing contained in this Agreement shall be deemed or construed as creating any obligation on Owner to construct the Required Off-Site Improvements for any Phase unless and until the date the City issues and Owner obtains a Building Permit for any Phase of the Private Improvements (the "**DO Date**"); *provided, further,* prior to the DO Date, Owner shall not be deemed to be in Default under this Agreement for the failure to commence construction of the Required Off-Site Improvements required for the Project, or applicable Phase thereof. Until the DO Date, or at any time after the completion and acceptance of the Required Off-Site Improvements and the Storm Drain

Improvements (if applicable, to the extent Owner has elected to design and construct the Storm Drain Improvements and receive the Storm Drain Credit), Owner shall have the right, exercisable upon the delivery of written notice to the City (a "**Termination Notice**"), to terminate this Agreement, in which event (i) Owner shall reimburse the City for all out-of-pocket third party costs actually incurred by the City in connection with this Agreement prior to the delivery of such Termination Notice, and (ii) the City shall execute and deliver to Owner for recordation a notice of termination of this Agreement, and thereafter this Agreement shall be of no further force or effect and neither Party shall have any further obligations hereunder.

**8. City Obligations.**

8.1 **Processing.** The City shall accept and process with reasonable promptness all completed applications for Permits. In addition, the City shall use its reasonable, good faith efforts to make its staff available so as to expeditiously complete processing of all Permits for the Project.

8.2 **Review.** The City shall provide sufficient staff to review compliance with this Agreement.

8.3 **Assistance From Other Governments.** The City shall use reasonable good faith efforts to seek, assist and cooperate with Owner in seeking all of the following as Owner requests to further Development of all or any part of the Project:

8.3.1 Necessary permits under the jurisdiction of the state or federal governments.

8.3.2 Available tax benefits from the state or federal governments, including but not limited to sales tax exemptions and free trade/enterprise zone designations.

8.3.3 Available grants, loans, bonds, and subsidies from the state or federal governments.

8.4 **Mitigation Fee Act.** The City shall comply with Government Code Section 66006 with respect to any fee it receives or cost it recovers pursuant to this Agreement.

8.5 **Recordation of Agreement.** The City Clerk shall file this Agreement for recordation with the County Recorder of the County of San Bernardino within ten (10) days after the date this Agreement is signed by the City and Owner. In connection with the expiration of the Term or any earlier termination of this Agreement, the City shall execute and deliver to Owner a recordable notice of termination of this Agreement in form and substance reasonably acceptable to the Parties.

**9. Term.**

9.1 **Commencement.** This Agreement shall become effective on the Effective Date.

9.2 **Duration.** Unless terminated earlier pursuant to another provision hereof, this Agreement shall be in full force and effect until the twentieth (20th) anniversary of the Effective Date ("**Term**"). Except with respect to the Fee Vesting Term, all provisions of this Agreement, including the term of any Existing Entitlements and the Fair Share Fees shall be valid and vested for the Term.

9.3 **Termination.** This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

9.3.1 Expiration of the Term.

9.3.2 Entry of a final judgment setting aside, voiding or annulling the adoption of the Enabling Ordinance.

9.3.3 The timely adoption of a referendum measure overriding or repealing the Enabling Ordinance. Owner acknowledges that, pursuant to Article 2, Section 11 of the California Constitution and California Elections Code Section 9235, *et seq.* (collectively, the "**Referendum Laws**"), the electors of the City may, within thirty (30) days after adoption of the Enabling Ordinance, file a petition in accordance with Elections Code Section 9237 to require the City to either repeal such ordinance or hold an election to obtain voter approval of such Enabling Ordinance and this Agreement. In the event a valid referendum petition challenging the validity of the Enabling Ordinance is timely filed in accordance with the Referendum Laws, the City may, in its sole and absolute discretion, either (1) terminate this Agreement or (2) submit the Enabling Ordinance to the voters for approval in accordance with the Referendum Laws.

9.3.4 Termination of this Agreement based on any material Default of any Party (except as provided herein) and following the termination proceedings required by this Agreement.

9.3.5 Termination of this Agreement pursuant to Section 7.6.

9.3.6 Subject to Section 9.6, failure of Owner to commence construction on any Phase of the Private Improvements and the Required Off-Site Improvements on or before the fifth (5<sup>th</sup>) anniversary of the Effective Date; *provided, however*, unless the DO Date has occurred, such failure shall not be a "default" by Owner under this Agreement. The purpose of this provision is to ensure that the Required Off-Site Improvements will be independently functional and to maintain consistency with vesting rights and nothing herein shall be deemed to make any part of the Project a public work, other than the Storm Drain Improvements (to the extent Owner elects to construct the Storm Drain Improvements and Owner elects to receive the Storm Drain Credit pursuant to Section 3.5.1(a)).

9.3.7 Subject to Section 9.6, failure of Owner to complete construction of the Phase of the Private Improvements commenced pursuant to Section 9.3.6 above and the Required Off-Site Improvements on or before the eighth (8<sup>th</sup>) anniversary of the Effective Date; *provided, however*, unless the DO Date has occurred, such failure shall not be a "default" by Owner under this Agreement. The purpose of this provision is to ensure that the Required Off-Site Improvements will be independently functional and to maintain consistency with vesting rights and nothing herein shall be deemed to make any part of the Project a public work, other than the Storm Drain Improvements (to the extent Owner elects to construct the Storm Drain Improvements and Owner elects to receive the Storm Drain Credit pursuant to Section 3.5.1(a)).

9.3.8 For the avoidance of doubt, the requirements contained in Sections 9.3.6 and/or 9.3.7 shall apply only to the first Phase of the Private Improvements commenced, constructed and completed and nothing contained in this Agreement shall impose any timing requirements for any subsequent Phase of the Private Improvements; it being acknowledged and agreed that the order or phasing of construction of the Private Improvements shall be determined by Owner in its sole discretion.

9.4 **Effect of Termination.** This Agreement does not impact, and shall not be deemed or construed as impacting, the effectiveness or validity of the Existing Entitlements issued by the City. Termination of this Agreement pursuant to this Section 9 shall not affect any right or duty arising from the Existing Entitlements issued by the City prior to termination, nor shall it destroy any vested right arising from the commencement or completion of construction of the Project in good faith reliance on an Existing Entitlement.

9.5 **Effect of Agreement on Title.** The Parties shall record an appropriate release upon termination of this Agreement as to all or any part of the Property, in form and substance mutually acceptable to the Parties.

9.6 **Force Majeure Extensions.** The Term, the Fee Vesting Term of this Agreement and the time for performance by either Party of any of its obligations hereunder shall be extended by the period of time that a Force Majeure event exists. Such delay shall not be deemed to be a default. In addition, the Term and Fee Vesting Term of this Agreement shall be extended day-for-day by delays arising from the pendency of Litigation relating to this Agreement or to the Development contemplated hereby. There shall be no extension for Force Majeure unless the Party claiming that Force Majeure event exists shall give notice thereof to the other Party within thirty (30) days of actually learning thereof; *provided, however,* a failure to give such notice shall not nullify the right to an extension except to the extent that the other Party is actually prejudiced by such failure to notify.

## 10. **Financing.**

10.1 **Right to Encumber.** Owner may, in its sole discretion, obtain or allow one or more Encumbrances as will assist Development of the Project. Unless otherwise required by Law, neither entering into nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Encumbrance made in good faith and for value. Nothing herein authorizes Owner to Encumber any interest in the Property other than its own. In connection with any Encumbrance, the City shall execute and deliver to such Financier a commercially reasonable form of consent to Encumbrance (and assignment of this Agreement) and estoppel certificate as requested by such Financier in accordance with Section 13.9.

10.2 **Notice.** Owner and/or any Financiers shall have the right to give notice to the City of the existence of an Encumbrance. Thereafter, the City shall also serve each Financier with copies of all Notices given to Owner pursuant to this Agreement.

## 11. **Binding Effect.**

11.1 **Entirety of Property.** All of the Property shall be and shall remain subject to this Agreement throughout the Term.

11.2 **Property and Agreement Remain Linked.** Subject to Section 11.4, Owner shall have the right to sell, transfer or assign the Property or any portion thereof and its rights under the Agreement. However, any person acquiring any interest in the Property shall do so subject to this Agreement. Conversely, no sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with a corresponding sale, transfer or assignment as to the Property or any portion thereof. If less than all of the Property is sold, the new owner of that portion of the Property shall be responsible for all Development related to such acquired portion, including Development Exactions and the Required Off-Site Improvements applicable to that portion of the Property or Project acquired by such new

owner, and the original Owner (or its successors as to the entire Property) shall remain responsible for all such matters outside that portion of the Property or Project unless such obligations are (i) assigned or retained by Owner, (ii) assumed by the new owner as documented in writing by and between Owner and the new owner, or (iii) no longer applicable because such obligations have been completed prior to the date of such transfer.

11.3 **Binding on Financiers.** This Agreement shall bind all Financiers and every owner of the Property, or part thereof, whose title is acquired through a Financier by foreclosure or deed-in-lieu of foreclosure; *provided, however,* such Financier and their respective successors and assigns shall not be liable for any interest, penalties or fines or any damages from any pre-foreclosure (or deed-in-lieu) Default accruing prior to the date such party takes title to the Property or any part thereof through completion of a foreclosure action or execution and delivery of a deed-in-lieu of foreclosure.

11.4 **City Consent.** Subject to the definition of "Convey" and "Conveyance" contained in Section 1 of this Agreement, the City, through the City Administrator, shall have the right to consent to any Conveyance, but only until the Required Off-Site Improvements have been completed and accepted by the City. Upon the completion and acceptance of the Required Off-Site Improvements, the City shall have no further right to notice or consent of any Conveyance. Prior to the completion and acceptance of the Required Off-Site Improvements, Owner shall give the City written notice of its intent to Convey the Property, or portion thereof, to a new owner along with documentation demonstrating the new owner's financial resources as it relates to the ability to complete the development of the Project, or applicable portion thereof. The City shall have not less than fifteen (15) Business Days following its receipt of such notice along with documentation of financial resources to evaluate the new owner's financial resources and to approve or disapprove the Conveyance. The City Administrator may withhold his/her consent to the Conveyance only if he/she reasonably determines that the proposed new owner lacks the financial resources to consummate Development of the Project, or portion thereof, as contemplated hereby. If approved in writing by the City Administrator, then upon such assignment of this Agreement, Owner shall be released from any post-assignment obligations hereunder. With respect to conveyances where the City approval is required, if the City does not approve or disapprove of the Conveyance within such fifteen (15) Business Day period, then the Conveyance shall be automatically deemed approved. .

## 12. **Compliance Review.**

12.1 **Annual Review.** The City shall review this Agreement annually ("**Annual Review**"), on or before each anniversary date of the Effective Date and/or conduct Special Review, as described in Section 12.2, in order to ascertain the good faith compliance by Owner with the terms of the Agreement. Within thirty (30) days of receipt of written notice from the City Administrator of the City's intent to conduct a Special Review and/or Annual Review, Owner shall submit a report, in a form reasonably required by the City Administrator, describing its compliance with this Agreement during the immediately preceding twelve (12) month period. Such notice shall include the form of the report.

12.2 **Special Review.** A "**Special Review**" of compliance with this Agreement may be made either by agreement of the Parties or by initiation in one or more of the following ways:

12.2.1 Recommendation of the City's Development Services Director, including, without limitation, based on an alleged default of Owner;

12.2.2 Action of the City Council.

12.3 **Procedure for Annual Review and/or Special Review.** With respect to either Annual Review or Special Review, the provisions of Section 18.79.070 of the Municipal Code shall be followed.

12.4 **Certificate of Agreement Compliance.** If, at the conclusion of an Annual Review or Special Review, Owner is found to be in compliance with this Agreement, the City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("**Certificate**") to Owner (and any Financier) stating that, after the most recent Annual Review or Special Review and based upon the information known or made known to the City Administrator and City Council: (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after an Annual Review or Special Review and shall state the anticipated date of commencement of the next Annual Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, the City shall not be bound by a Certificate if a default existed at the time of the Annual Review or Special Review, but was concealed from or otherwise could not be known to the City Administrator or City Council, and the Certificate shall so state.

12.5 **Failure by the City.** The failure of the City to conduct any Annual Review shall not constitute a breach of this Agreement, affect Owner's obligations hereunder, or render this Agreement invalid or void.

**13. Default.**

13.1 **Default by Owner.** Owner shall be in "**Default**" under this Agreement if it does any or any combination of the following and does not cure the same within the applicable notice and cure period, if any, set out below:

13.1.1 Practices, or attempts to practice, any intentional fraud or deceit upon the City, as reasonably determined by the City Council, in which case no right to cure shall apply; *provided, however,* Owner shall be given prior notice of such determination and the opportunity to respond to any allegations. No provision of this Agreement is intended to take away Owner's right to contest such determination by appropriate proceedings.

13.1.2 Willfully and intentionally violates any order, ruling or decision of any non-City administrative or judicial body having jurisdiction over the Property or the Project; *provided, however,* Owner may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no Default of this Agreement shall be deemed to have occurred unless and until there is a final, non-appealable judicial decision that Owner willfully violated such obligation.

13.1.3 Fails to cure a material default of this Agreement within the time set forth in a written notice of default from the City to Owner; *provided, however,* with respect to any payment default, such cure period shall not be less than ten (10) Business Days following Owner's receipt of such written notice from the City, and with respect to any non-payment default, such cure period shall not be less than thirty (30) days from Owner's receipt of written notice from the City; *provided, further,* if such default cannot reasonably be cured within such thirty (30) days period, then Owner shall not be deemed in

**"Default"** under this Agreement if Owner commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period.

13.2 **Default by the City.** The City shall be in **"Default"** under this Agreement only if it fails to cure a material breach of this Agreement within the time set forth in a written notice of default from Owner to the City; *provided, however,* with respect to any payment default, such cure period shall not be less than ten (10) Business Days following the City's receipt of such written notice from Owner, and with respect to any non-payment default, such cure period shall not be less than thirty (30) days following the City's receipt of such written notice from Owner; *provided, further,* if such default cannot reasonably be cured within such thirty (30) days period, then the City shall not be deemed in **"Default"** under this Agreement if the City commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period; *provided, further,* the Term, Fee Vesting Term and the time for Owner's performance of its obligations hereunder shall be extended on a day-for-day basis during such cure period to the extent Owner is actually prejudiced by the City's breach or default hereunder.

13.3 **Notice of Default.** A Party alleging a default by the other Party shall serve written notice thereof. Each such notice shall state with specificity all of the following:

13.3.1 The nature of the alleged default.

13.3.2 The manner in which the alleged default may be satisfactorily cured.

13.3.3 Subject to the provisions of Sections 13.1 and 13.2, a period of time in which the default may be cured.

13.4 **Remedies for Default.** The Parties acknowledge and agree that the nature of the Project and the terms of this Agreement render ordinary remedies at law inadequate for a breach of this Agreement. The Parties also acknowledge and agree that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that, except as otherwise expressly provided in this Agreement, the remedies for breach of this Agreement shall be limited to one or more of the following:

13.4.1 The remedies for Default by the City shall be limited to injunctive relief, mandate (traditional and/or administrative), specific performance, and/or restitution/reimbursement for unused fees and for Dedications and improvements to the extent not required for Development completed as of the date Owner gave the City notice of Default pursuant to Section 13.3.

13.4.2 The remedies for Default by Owner shall be limited to injunctive relief, specific performance, termination, and/or restitution.

13.5 **Acceptance of Service of Process.** In the event that any legal action is commenced by Owner against the City, service of process on the City shall be made in such manner as may be provided by Law. In the event that any legal action is commenced by the City against Owner, service of process on Owner shall be made in such manner as may be provided by Law.

13.6 **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of

one or more of such 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.

13.7 **Inaction Not a Waiver of Default.** Any failures or delays by either 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 such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

13.8 **Right of Financier to Cure.** Any Financier for whom notice has been given pursuant to Section 10.2 shall have the same right to cure a default as Owner. The deadline for a Financier to cure a default shall commence with the giving of a notice of default to that Financier, rather than pursuant to notice sent to Owner.

13.9 **Estoppel Certificate.** Each of the Parties shall at any time and from time to time upon not less than thirty (30) days' prior notice by the other, execute, acknowledge and deliver to such other Party a statement in writing certifying that this Agreement is in full force and effect, stating which provisions of this Agreement have been fully performed, and stating whether or not to the best knowledge of the signer of such certificate such other Party is in default in performing or observing any provision of this Agreement, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other Party may reasonably request. It is intended that any such statement delivered by Owner may be relied upon by the City or any successor in interest to the City, and it is further intended that any such statement delivered by the City may be relied upon by any prospective assignee of Owner's interest in this Agreement or any Financier. Reliance on any such certificate shall not extend to any Default as to which the signer of the certificate had no actual knowledge at the time the statement was signed. The City's obligation to deliver a statement in accordance with this Section 13.9 is expressly subject to Owner's prior payment of all third party costs incurred by the City in connection with the review, analysis, drafting, execution and delivery of such statement.

14. **Appeal of Administrative Decision.** Owner may appeal directly to the City Council any decision by City staff, including the City Administrator, concerning the interpretation and/or administration of this Agreement. Owner shall file any such appeal with the City Clerk within twenty (20) days after Owner receives notice of the staff decision; *provided, however,* that a failure to timely file for an appeal shall not nullify the right to such appeal except to the extent the City is actually prejudiced by such failure to timely appeal. The City Council shall render a decision at an open, public meeting held within sixty (60) days following Owner's delivery of the appeal to the City Clerk.

15. **Indemnification.** Indemnitor shall pay for, save, protect, defend, indemnify and hold harmless the Indemnitees from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, third party tort claims, civil or criminal penalties, fines and/or monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "**Liabilities**") which may now or in the future be incurred or suffered by the Indemnitees (or any of them) by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of any of the following: (i) any claim, action or proceeding brought by a third party against any Indemnitee to attack, set aside, void or annul the approval of this Agreement or the Entitlements (provided that claims, actions or proceedings to attack any Specific Plan or the General Plan are expressly excluded from the indemnification obligations of Owner under this Section

15 except to the extent such attack on the Specific Plan or the General Plan arises from and is related to this Agreement or the approval by the City of the Entitlements or the Project), (ii) any Indemnitor's release of water from the Property or the Project, and/or (iii) Development of the Project; *provided, however*, that the foregoing indemnity shall not apply to any Liabilities to the extent arising or occurring as a result of the gross negligence or willful misconduct of any Indemnitee. The City shall have the right to reject or consent to any particular law firm or attorney engaged by Owner to represent the City; *provided, however*, the City's consent shall not be unreasonably withheld. The City shall cooperate in good faith with Owner when Owner is acting pursuant to this Section 15. Indemnitor's obligations under this Section 15 shall survive termination of this Agreement with respect to any Liabilities covered by this Section 15 that arose during the Term and shall terminate upon the expiration of the applicable statute of limitation applicable to such surviving Liabilities covered under this Section 15.

**16. Insurance Requirements.** Owner shall take out and maintain and shall cause its contractors to take out and maintain, until the completion of all Development contemplated by this Agreement, the following policies of insurance:

16.1 **Owner's Liability Insurance.** Liability insurance with at least the minimum insurance coverages set forth below:

16.1.1 Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. The City shall be an "additional insured" under such policy as it applies to Owner's activities under this Agreement. The insurance provided herein shall be considered "primary" insurance.

16.1.2 Workers' compensation and employer's liability insurance as required by any applicable law or regulation.

16.2 **Insurance During Construction.** Prior to commencing Project construction activities within the Property, Owner shall obtain and require its Construction Manager to obtain and thereafter maintain, so long as such Project construction activity is occurring and until the completion of such Project construction, the minimum insurance coverages set forth below:

16.2.1 Workers' compensation and employer's liability insurance as required by any applicable law or regulation.

16.2.2 Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

- (a) Required coverages:
  - (i) Premises and Operations.
  - (ii) Products and Completed Operations.
  - (iii) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.

- (iv) Broad Form Property Damage (including Completed Operations).
  - (v) Explosion, Collapse and Underground Hazards.
  - (vi) Personal Injury Liability.
- (b) Minimum limits of liability:
- (i) \$1,000,000 each occurrence (for bodily injury and property damage).
  - (ii) \$1,000,000 for Personal Injury Liability.
  - (iii) \$2,000,000 aggregate for Products and Completed Operations.
  - (iv) \$2,000,000 general aggregate applying separately to this Project.

16.2.3 Automobile liability insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Construction Manager shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

16.2.4 Construction Manager shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$5,000,000.

16.3 **Property Insurance.** Owner or Construction Manager shall carry "Builder's Risk" insurance in the amount of one hundred percent (100%) of the full replacement cost thereof and property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations), with the exception of coverage for earthquake, which shall be at commercially reasonable limits.

16.4 **Terms of Insurance.** All insurance required by this Section 16 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-VIII, and which are authorized to do business in California. All insurance may be provided under (i) a combination of primary and excess policies, (ii) an individual policy covering the Property, (iii) a blanket policy or policies which includes other liabilities, properties and locations of Owner; *provided, however*, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$5,000,000, then Owner shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$5,000,000, (iv) a plan of self-insurance, provided that Owner notifies the City of its intent to self-insure and shall, upon request, deliver to the City each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that Owner has \$250,000,000 of both net worth and net current assets, or (v) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy pursuant to this Section 16, Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance;

*provided, however,* that in no event shall any deductible exceed \$50,000.00 (with the exception of earthquake insurance which shall be at a commercially reasonable deductible) unless Owner complies with the requirements regarding self-insurance pursuant to (iv) above. Owner shall furnish to the City, upon request, a certificate(s) or memorandum(s) of insurance, or statement of self-insurance or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by Owner is in full force and effect.

16.5 **Additional Insured.** Any insurance policy under which the City is an "additional insured" shall include the following provisions:

16.5.1 Shall provide for severability of interests.

16.5.2 Shall provide that an act or omission of one (1) of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.

16.5.3 Shall provide for contractual liability coverage with respect to any indemnity obligation set forth in this Agreement.

The procurer of such insurance shall promptly notify (and in any event within five (5) business days) the City of any intent to cancel, reduce (in amount or in coverage provided) or other material modification of such insurance as soon as such procurer has actual knowledge thereof and shall deliver a copy of any notices received from the insurer related thereto.

## 17. **Representations and Warranties.**

17.1 **City Representations.** The City represents and warrants to Owner as follows, which warranties and representations are effective as of the date of this Agreement:

17.1.1 **Existence.** The City is a municipal corporation, duly incorporated pursuant to the laws of the State of California.

17.1.2 **Authority.** The execution, performance, and delivery of this Agreement by the City have been fully authorized by all requisite actions on the part of the City.

17.1.3 **No Default.** The City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the City is a party or by which it is bound.

17.1.4 **No Assessment Districts.** Except as set forth in the Existing Entitlements, the City has not and, prior to the earlier to occur of (a) six (6) months following completion of construction of the Project or (b) the date this Agreement is terminated, shall not initiate or participate in the formation of any assessment districts or other similar public financings of public improvements which would affect the Property.

Until the disbursement of all Hard Cost and Soft Cost reimbursements and the application of all reimbursements and other benefits by the City for construction of Storm Drain Improvements, the City shall, upon learning of any fact or condition which would cause any of the warranties and representations in

this Section 17.1.1 through 17.1.4 become untrue as of such date, immediately give written notice of such fact or condition to Owner. Such exception(s) to a representation shall not be deemed a breach by the City hereunder, but shall constitute an exception which Owner shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Property or the Project.

17.2 **Owner's Representations.** Owner represents and warrants to the City as follows, which warranties and representations are effective as of the date of this Agreement and shall be effective until the disbursement of all Hard Costs and Soft Costs reimbursements and the application of all reimbursements and other benefits by the City for construction of Storm Drain Improvements and the completion of the Private Improvements and the Required Off-Site Improvements:

17.2.1 **Experience.** Owner is experienced as a developer and operator of commercial warehouse, industrial, logistics and distribution facilities similar to the Project.

17.2.2 **Authority.** Owner has full right, power and lawful authority to develop the Private Improvements, the Required Off-Site Improvements and the Storm Drain Improvements and to undertake all obligations as provided herein. The execution, performance, and delivery of this Agreement by Owner has been fully authorized by all requisite actions on the part of Owner.

17.2.3 **Interest in Property.** Owner represents that Owner (or its affiliates) owns or has entered into agreements to acquire fee title to the Property. Owner further represents that it (or its affiliates) has the legal authority to bind the Property by recordation of this Agreement.

17.2.4 **No Conflict.** To the best of Owner's knowledge, Owner's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which Owner is a party or by which it is bound.

17.2.5 **No Owner Bankruptcy.** To the best of Owner's knowledge, Owner is not the subject of a current or threatened bankruptcy proceeding.

Until the disbursement of all Hard Costs and Soft Costs reimbursements, the application of all reimbursements and other benefits by the City for construction of the Storm Drain Improvements, and the completion of construction of the Private Improvements and the Required Off-Site Improvements, Owner shall, upon learning of any material fact or condition which would cause any of the warranties and representations in this Section 17.2.1 through 17.2.5 become untrue as of such date, immediately give written notice of such material fact or condition to the City. Such exception(s) to a representation shall not be deemed a breach by Owner hereunder, but shall constitute an exception that the City shall have a right to approve or disapprove as a condition to further performance under this Agreement.

## 18. **Miscellaneous.**

18.1 **Time of Essence.** Time is of the essence of each provision hereof in which time is an element.

18.2 **Further Documents.** The City and Owner shall sign, deliver and if appropriate record any additional documents necessary to effectuate the purposes of this Agreement.

18.3 **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when personally delivered, upon the first Business Day after prepaid deposit with a recognized overnight delivery service with instructions to deliver the next Business Day, or upon the fifth calendar day after deposit in the United States mail, first-class, registered or certified, postage prepaid, return receipt requested at the following addresses:

**If to City:** City of Rialto  
150 South Palm Avenue  
Rialto, California 92376  
Attn: Rob Steel, City Administrator  
Tel: (909) 820-8008  
Email: Rsteel@rialtoca.gov

**With copies to:** Aleshire & Wynder LLP  
18881 Von Karman Avenue  
Suite 1700  
Irvine, California 92612  
Attn: Fred Galante, City Attorney  
Tel: (949) 223-1170  
Email: fgalante@awattorneys.com

**If to Owner:** Oakmont El Rivino, LLC.  
20411 S.W. Birch Street  
Suite 200  
Newport Beach, California 92660  
Attention: Jacob LeBlanc  
Telephone: (949) 296-2943  
Email: [jleblanc@panattoni.com](mailto:jleblanc@panattoni.com)

**With a copy to:** PGIM Real Estate  
7 Giralda Farms  
Madison, New Jersey 07940  
Attention: Steven Oliveira  
Telephone: (973) 734-1359  
Email: [steven.oliveira@pgim.com](mailto:steven.oliveira@pgim.com)

**and to:** PGIM Real Estate  
101 California Street, 40th Floor  
San Francisco, CA 94111  
Attention: Kristin Paul  
Telephone: (415) 291-5087  
Email: kristin.paul@pgim.com

**and to:** SSL Law Firm  
575 Market Street  
Suite 2700  
San Francisco, California 94105  
Attention: Diane K. Hanna  
Telephone: (415) 814-6400  
Email: diane@sslfirm.com

Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one specified above.

18.4 **Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein.

18.5 **Waiver.** No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

18.6 **Relationship of the Parties.** Nothing contained herein, nor any action taken or document created pursuant hereto, shall be construed as creating the relationship of partners, joint venturers, or any other association of any kind or nature between the City and Owner.

18.7 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole benefit of the Parties, any Financiers and their respective successors in interest. No other person (such as a taxpayer or citizens' group) shall have any right of action based upon any provision of this Agreement.

18.8 **Non Liability of Certain Individuals.**

18.8.1 **Officials and Employees of the City.** No official or employee of the City shall be personally liable to Owner or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to Owner or its successors, or on any obligations under the terms of this Agreement.

18.8.2 **Owner Parties.** No officer, director, manager, member, or employee of Owner (or any of their respective officers, directors, shareholders, partners, members, managers, employees, trustees, or beneficiaries) (collectively, "**Owner Parties**") shall be personally liable to the City or its successor in interest, in the event of any Default by Owner or for any amount which may become due from Owner or its successors, or on any obligations of Owner under the terms of this Agreement; *provided, however,* the foregoing shall not be deemed or construed as waiving or limiting the rights of the City with respect to (a) any fraud, willful misconduct or criminal activities of any of the Owner Parties, or (b) any recourse that may be granted in a final judgment from a court of competent jurisdiction against any of the Owner Parties for the liability of Owner based upon a legal theory or equitable right which would allow the City to ignore or 'pierce' the separate legal existence of Owner as a limited liability company.

18.9 **City Approvals and Actions.** The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Administrator (or his or her duly authorized representative). The City Administrator shall have the authority to make approvals, issue interpretations, waive provisions, execute implementing documents, and/or make and execute further agreements on behalf of the City so long as such actions do not materially change the uses or Development permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or further agreements may include extensions of time to perform. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. The City Administrator retains full discretion to submit any matter to the City Council for approval notwithstanding that such matters may be considered immaterial.

18.10 **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

18.11 **Rules of Construction.** Captions and headings in this Agreement are for convenience only, and are not guides for interpretation. This Agreement is the result of negotiations between Parties who were each represented by counsel, so no ambiguity in this Agreement shall be interpreted against one Party. This Agreement has been prepared and negotiated jointly and equally by the Parties. This Agreement shall not be construed against either Party on the ground that a Party prepared the Agreement.

18.12 **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday or Friday, Saturday or Sunday, and then that day is also excluded. The term "**holiday**" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

18.13 **Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

18.14 **Governing Law and Venue.** This Agreement is entered into and will be performed in the County of San Bernardino, California, and shall be governed by the laws of the State of California. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California or the federal District Court for the Central District of California. Each Party hereto irrevocably consents to the personal jurisdiction of those courts.

18.15 **Attorneys' Fees.** In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action or other proceeding shall be entitled, in addition to injunctive relief or any other

relief to which it might be entitled, to reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and attorneys' fees.

18.16 **Severability**. If a Court invalidates part of this Agreement, the remainder shall remain in force and effect unless the invalidation materially impairs a Party's consideration, in which event this entire Agreement shall terminate.

18.17 **Recitals and Attachments**. All recitals and attachments to this Agreement are incorporated herein.

18.18 **Mutual Covenants**. The covenants contained herein are mutual covenants which constitute conditions to the concurrent or subsequent performance of the other covenants.

**[Signatures appear on following page.]**

**IN WITNESS WHEREOF**, Owner and the City have executed this Agreement on the date first above written.

**City:**

**CITY OF RIALTO,**  
a California municipal corporation

\_\_\_\_\_  
Deborah Robertson, Mayor

**Owner:**

**OAKMONT EL RIVINO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Barbara McGee, City Clerk

**APPROVED AS TO FORM (City):**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Fred Galante, Esq., City Attorney

**APPROVED AS TO FORM (Owner):**

SSL LAW FIRM LLP

\_\_\_\_\_  
Diane Hanna, Esq., Partner

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

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

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

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

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

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

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE PROPERTY

*[to be updated pending completion of LLA/recordation of COC]*

**ATTACHMENT NO. 2**  
**DEVELOPMENT IMPACT FEES<sup>1</sup>**

<b>Impact Fee Category</b>	<b>RMC Code Section</b>	<b>Agency</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Fixed/ Not Fixed</b>
Fire Protection Facilities Development Fee	\$3.33.220	City of Rialto	bsf	\$0.08081	Fixed
General Municipal Facilities Development Impact Fee	\$3.33.190	City of Rialto	bsf	\$0.06744	Fixed
Law Enforcement Development Impact Fee	\$3.33.210	City of Rialto	bsf	\$0.04938	Fixed
Library Facilities Development Impact Fee	\$3.33.200	City of Rialto		N/A	Fixed
Open Space Development Impact Fee	\$3.33.230	City of Rialto	bsf	\$0.12	Fixed
Parks and Recreation Development Impact Fee	\$3.33.150	City of Rialto		N/A	Fixed
Storm Drain Facilities Development Impact Fee (bsf) <b>OR</b>	\$3.33.270	City of Rialto	bsf	\$1.93032	Fixed
Storm Drain Facilities Development Impact Fee (acre) <sup>2</sup>	\$3.33.270	City of Rialto	acre	\$33,618.00	Fixed
Street Median Development Impact Fee	\$3.33.180	City of Rialto	bsf	\$0.02	Fixed
Regional Traffic Development Impact Fee	\$3.33.160	City of Rialto	bsf	\$2.80	Not Fixed
Additional Regional Traffic Development Impact Fee <sup>3</sup>	\$3.33.160	City of Rialto	acre	\$383.50	Fixed
Sewage Collection Facilities Development Impact Fee	\$3.33.240	City of Rialto	ff	\$76.32	Fixed
Sewage Treatment Facilities Development Impact Fee <sup>4</sup>	\$3.33.250	City of Rialto	bsf	\$0.26711	Fixed
School Fee	---	CJUSD	bsf	\$0.56	Not Fixed
TUMF Fee	---	County of Riverside	bsf	\$1.038	Fixed

<b>Legend</b>	
bsf	Building Square Foot
acre	Acre
ff	Frontage Foot (for frontage of main Building entrance only)
CJUSD	Colton Joint Unified School District
RMC	Rialto Municipal Code

<sup>1</sup> Notwithstanding anything to the contrary contained in this Agreement, the Development Impact Fees payable with respect to the Project shall not be payable with respect to any Phase of the Private Improvements unless and until the issuance of a Building Permit for the construction of such Phase of the Private Improvements.

<sup>2</sup> Storm Drain Facilities Development Impact Fee will be assessed by either a per bsf amount or a per acre amount (on a Phase-by-Phase basis), per the amounts listed in the table above, whichever is higher, but not both.

<sup>3</sup> Additional Traffic Fee is \$46,810.01 for the Project, allocated on a Phase-by-Phase basis based upon the acreage for each Phase.

<sup>4</sup> [Sewage Treatment Facilities Development Impact Fee is based upon a standard warehouse user (Group II Commercial Low Strength). The Sewage Treatment Facilities Development Impact Fee shall be levied based upon the characteristics of the actual occupant in accordance with the schedule in effect as of July 1, 2017. **\*\*\* CITY OF RIALTO TO PROVIDE LANGUAGE\*\*\***]

ATTACHMENT NO. 3

SITE PLAN

**[final Site Plan to be inserted]**

## ATTACHMENT NO. 4

## DESCRIPTION OF REQUIRED OFF-SITE IMPROVEMENTS

**Required Off-Site Improvements (To be constructed and paid for by Owner)**

The description of the Required Off-Site Improvements set forth in Items 1 through 4 below is intended to clarify any ambiguity in, and set forth the full extent of, the description of the corresponding off-site public improvement obligations imposed by the City in the Conditions of Approval for the Project (as set forth in PPD 2017-0082 and PPD 2017-0083) (but not public or private improvement obligations imposed by other entities (not affiliated with the City of Rialto), such as utility companies or water companies, regardless of whether such improvement obligations are referenced in PPD 2017-0082 and PPD 2017-0083).

To the extent any requirements and condition(s) listed in the Conditions of Approval for the Project (as set forth in PPD 2017-0082 and PPD 2017-0083) or the Existing Entitlements are ambiguous, the scope of the Required Off-Site Improvements as defined in Items 1 through 4 below shall prevail; *provided, however*, Owner shall design and construct the Required Off-Site Improvements in compliance with the City's standard plans and drawings for public improvements then in effect and uniformly applied, subject to the review and approval of the Director of Public Works/City Engineer or his designee, which approval shall not be unreasonably withheld or delayed.

1. **Cactus Avenue (Between the northerly Property boundary and approximately 300' north of the intersection of Cactus Avenue and Cricket Drive) (collectively, the "Cactus North Improvements"):** Construct improvements along and in Cactus Avenue (ultimate half-width of 32' west of centerline) along Property frontage. The Cactus North Improvements shall consist of the following: Property frontage 5' wide sidewalk, street lights, and signage & striping. All Cactus North Improvements are to meet standard City requirements as stated in the City's standard plans and drawings for public improvements then in effect and uniformly applied. (The foregoing are the "Cactus North Improvements" referred to in the Development Agreement).
2. **Cactus Avenue (Between El Rivino Road and approximately 300' north of the intersection of Cactus Avenue and Cricket Drive) (collectively, the "Cactus South Improvements"):** Construct improvements along and in Cactus Avenue (ultimate half-width of 32' west of centerline) along Property frontage. The Cactus South Improvements shall consist of the following: Property frontage 8" curb & gutter, 5' wide sidewalk, asphalt paving and grind/overlay of existing asphalt paving (varying width as required to complete the ultimate half-width of asphalt improvements of 22' east of the curb and gutter), street lights and signage & striping. All Cactus South Improvements are to meet standard City requirements as stated in the City's standard plans and drawings for public improvements then in effect and uniformly applied. (The foregoing are the "Cactus South Improvements" referred to in the Development Agreement). The Cactus North Improvements and the Cactus South Improvements are sometimes collectively referred to as the "Cactus Improvements."
3. **Cactus Avenue – Dry Utility Undergrounding (Between El Rivino Road and the northerly Property boundary) (collectively, the "Cactus – Dry Utility Undergrounding"):** Underground the overhead dry utilities on the existing poles for the service providers (e.g., SCE, AT&T, etc.) with lines 16,000 volts or less; *provided, however*, if there are any lines 16,000 volts or more, Owner shall not be required to underground any of the lines currently on the poles and the poles/lines shall remain in place above ground.
4. **El Rivino Road (Between Cactus Avenue and the westerly Property boundary) (collectively, the "El Rivino Improvements"):** Construct improvements along and in El Rivino Road (modified ultimate half-width of 39.5' north of centerline) along the Property frontage. The ultimate right-of-way (north of centerline) has been reduced from a previously required width of 44' to 39.5' due to an existing SCE easement that

runs along El Rivino Road that prevents dedication of the full width of 44'. The El Rivino Improvements shall consist of the following: Property frontage 8" curb & gutter, 5' wide sidewalk, 30' wide asphalt paving (as required) grind and overlay of existing asphalt paving (south of centerline up to approximately 3'), street lights, hydrants, signage & striping, and underground storm drain retention system to accept El Rivino storm water runoff at the historic low point in El Rivino Road. Unless otherwise set forth herein, all El Rivino Improvements are to meet standard City requirements as stated in the City's standard plans and drawings for public improvements then in effect and uniformly applied. (The foregoing are the "**El Rivino Improvements**" referred to in the Development Agreement)

For the avoidance of doubt or ambiguity, with respect to all of the Required Off-Site Improvements as defined above in Items 1 through 4, Owner's obligation to construct such Required Off-Site Improvements shall be subject to the right of way provisions set forth in Section 3.4 of the Agreement.

ATTACHMENT NO. 5

DESCRIPTION OF STORM DRAIN IMPROVEMENTS

**Storm Drain Improvements (To the extent constructed and paid for by Owner)**

The description of the Storm Drain Improvements set forth below is intended to clarify any ambiguity in, and set forth the full extent of, the description of the Storm Drain Improvements.

**Storm Drain Improvements shall mean the Storm Drain in El Rivino Road and Agua Mansa Road (between the eastern most driveway of the Property on El Rivino Road and the point of connection to the existing storm drain in Agua Mansa Road) (collectively, the "Storm Drain Improvements"):** Construction of an approximately 4,400-linear foot 48-inch/54-inch storm drain line, laterals, CMP risers, catch basins, manholes, junction structures, removal and replacement of asphalt paving, signage and striping to complete the Storm Drain Improvements, traffic control, testing and inspection in connection therewith, and related improvements. The Storm Drain Improvements shall meet standard City requirements as stated in the City's standard plans and drawings for public improvements then in effect and uniformly applied, and County of San Bernardino and City of Jurupa Valley requirements, as applicable.

For the avoidance of doubt or ambiguity, with respect to all of the Storm Drain Improvements as defined above, Owner's obligation to construct the Storm Drain Improvements shall be subject to the right of way provisions set forth in Section 3.4 of the Agreement.

**ATTACHMENT NO. 6**

**BIDDING AND CONTRACT REQUIREMENTS FOR  
STORM DRAIN IMPROVEMENTS**

**Bidding Phase**

- A. Bidding Documents. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements and shall be submitted to the City for its prior written approval before release for bid. The City shall review and approve, conditionally approve, or disapprove the bidding documents within fifteen (15) days after receipt:
1. Unless impractical due to the nature of the Storm Drain Improvements, the bid proposal shall be unit priced rather than lump sum or time and materials.
  2. It is recommended that the bidding documents require the bidder/contractor to provide the following bonds:
    - a. Bid Bond - 10% of the amount of the bid.
  3. The bidding documents shall require the successful bidder to provide evidence of comprehensive public liability insurance in the amount of at least \$2,000,000 prior to the award of the contract.
  4. The bidding documents shall provide for monthly progress payments to the contractor.
  5. The contractor shall be required to pay prevailing wages pursuant to Section 2.7 of this Agreement.
  6. The bidding documents must clearly state the time, date, and place where bids are to be submitted and opened.
  7. The bidding documents shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplementally bid, and are not eligible for public finance unless previously approved by the City's Public Works Director.
  8. The bid documents must require the contractor to provide 100% faithful performance and 100% labor/materials bonds.
  9. Owner shall keep a bidders list with e-mail addresses, and addenda should be sent via email to ensure quick receipt
  10. Conditioned bids shall not be accepted.
- B. Owner may pre-qualify bidders in accordance with California Public Contract Code Section 20101, by requiring all persons interested in bidding on any portion of the Storm Drain Improvements to

submit current financial statements and a pre-qualification questionnaire in a form approved by the City, and by scoring each submission based on reasonable, objective criteria reasonably acceptable to the City. Owner must implement an appeals procedure for responding to disputes in compliance with California Public Contract Code Section 20101(d). If Owner elects to pre-qualify bidders, only those bidders who have submitted complete pre-qualification packets and obtained the minimum required score based on the objective rating system adopted by Owner (and approved by the City) shall be permitted to bid on any portion of the construction work for the Storm Drain Improvements.

- C. Owner shall keep a log of all persons obtaining pre-qualification questionnaires and/or bidding documents and all persons who submit pre-qualification questionnaires and/or bids and their mailing addresses.
- D. Addenda shall be mailed by first class mail (or submitted by confirmed electronic transmission) to all bidding document holders and the City's Public Works Director at the same time. The last addendum shall be issued no later than three (3) Business Days prior to the date of opening bids.
- E. Submitted bids shall be in sealed envelopes.
- F. Bids shall not be accepted after the stated time for submission.
- G. Bid opening shall be conducted by Owner at Owner's place of business or other site mutually acceptable to Owner and the City's Public Works Director.
- H. Sealed bids shall be opened and read aloud immediately following the submission time. The City's Public Works Director shall be invited to attend the bid opening.
- I. Conditioned bids, unless the bid proposal lists them for all to bid on, shall not be accepted.
- J. The arithmetic of the lowest bid proposals received shall immediately be checked for errors.
- K. All bids received shall be provided to the City's Public Works Director. The City's Public Works Director may, in his or her reasonable discretion, reject any and all bids that he or she determines to be nonresponsive.
- L. Award shall be made to the lowest responsible qualified bidder within five (5) Business Days after the bid opening. No fewer than three (3) bids must be received for each Construction Contract to be awarded (other than the Construction Contract between Owner and Construction Manager).
- M. A preconstruction meeting shall be held with the contractor prior to beginning the work. A City representative shall be invited to attend the meeting.
- N. The Notice to Proceed shall be issued within a reasonable period of time following the contract execution.

**Construction Phase**

- A. The City's Public Works Director shall be provided a copy of the construction schedule.
- B. Owner shall require the contractor to conduct weekly construction status meetings to which the City's Public Works Director shall be invited.
- C. Any additional costs incurred for the benefit of Owner, such as accelerating the construction schedule, shall not be eligible for reimbursement unless previously approved by the City's Public Works Director.
- D. Any additional construction costs incurred due solely to unexcused delays caused by Owner shall not be eligible for reimbursement under this Agreement.
- E. All contracts and construction related records shall be available to the City as and when required for the final determination of eligible costs for reimbursement.
- F. Owner must file a Notice of Completion within 30 days of the City's approval of the Storm Drain Improvements (determining substantial completion).
- G. Owner must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Owner shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice filed against Owner or the City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Owner are subject to inspection by or on behalf of the City Engineer. Construction shall be scheduled to allow for periodic inspection by the City Engineer or his or her designee. Owner's contractor will be required to provide adequate quality assurance and quality control measures to ensure all public improvements are constructed in accordance with the Standard Specifications for Public Works Construction or Caltrans Standard Specifications, as appropriate for the work to be constructed.

**General**

Any deviation from these rules must be approved by the Public Works Director.

**ATTACHMENT NO. 7**  
**STORM DRAIN IMPROVEMENTS BUDGET**

<u>Description of Costs</u>	<u>Construction Cost (est.)</u>
Storm Drain Improvements	\$3,327,523.00
Soft Costs for the Storm Drain Improvements	\$350,000.00
<b>GRAND TOTAL</b>	<b>\$3,677,523.00</b>
<p>* The amounts set forth above for Construction Costs for the Storm Drain Improvements are estimates and are only provided for reference purposes. The actual Construction Costs will be obtained when bidding for the Storm Drain Improvements is complete.</p>	

ATTACHMENT NO. 8

FAIR SHARE FEES

Master Development Square Feet (SF)	3,659,000	SF
Property SF	2,252,867	SF
Property SF % of Master Development SF	61.6%	%
Property Acreage	122.06	Acres

Location	Cost	Cost/Acre
<b>Improvement</b>		
4 Cedar Ave (NS) at Valley Blvd (EW) - SANBAG Eligible	\$ 20,471	\$ 167.71
5 Cedar Ave (NS) at I-10 Fwy WB Ramps (EW) - SANBAG Eligible	\$ 77,145	\$ 632.03
6 Cedar Ave (NS) at I-10 Fwy EB Ramps (EW) - SANBAG Eligible	\$ 69,605	\$ 570.25
7 Cedar Ave (NS) at Slover Ave (EW) - SANBAG Eligible (Sphere)	\$ 72,083	\$ 590.55
9 Cedar Ave (NS) at Jurupa Ave (EW) - SANBAG Eligible (Sphere)	\$ 88,515	\$ 725.18
10 Cedar Ave (NS) at El Rivino Rd (EW) - SANBAG Eligible (Sphere)	\$ 400,000	\$ 3,277.08
13 Rubidoux Blvd (NS) at SR-60 Fwy EB Ramps / 30th St (EW) - TUMF Eligible	\$ 36,887	\$ 302.20
17 Cactus Ave (NS) at Slover Ave (EW) - SANBAG Eligible (Sphere)	\$ 80,321	\$ 658.05
18 Cactus Ave (NS) at Santa Ana Ave (EW) - SANBAG Eligible (Sphere)	\$ 102,829	\$ 842.45
19 Cactus Ave (NS) at Jurupa Ave (EW) - SANBAG Eligible (Sphere)	\$ 223,546	\$ 1,831.45
20 Cactus Ave (NS) at El Rivino Rd (EW) - Improvement Complete	\$ 400,000	\$ 3,277.08
23 Agua Mansa Rd (NS) at El Rivino Rd (EW) - SANBAG Eligible (Sphere)	\$ 400,000	\$ 3,277.08
24 Agua Mansa Rd (NS) at Market St (EW) - TUMF Eligible	\$ 62,175	\$ 509.38
25 Market St (NS) at SR-60 Fwy WB Ramps (EW) - Not TUMF Eligible	\$ 7,238	\$ 59.30
28 Riverside Ave (NS) at Valley Blvd (EW) - Rialto/Not in Nexus	\$ 36,095	\$ 295.72
30 Riverside Ave (NS) at RR Bridge S of I-10 Fwy - SANBAG Eligible	\$ 3,378,003	\$ 27,674.93
35 Riverside Ave (NS) at Agua Mansa Rd (EW) - Rialto/Not in Nexus	\$ 763	\$ 6.25
<b>TOTAL</b>	<b>\$ 5,455,676</b>	<b>\$ 44,696.68</b>

Location	Amount	Amount/Acre
<b>Mitigation Fair Share Fees<sup>1</sup></b>		
Total Master Development Fair Share Improvement Costs	\$ 5,455,676	\$ 44,696.68
4 Cedar Ave (NS) at Valley Blvd (EW) - SANBAG Eligible	\$ (20,471)	\$ (167.71)
5 Cedar Ave (NS) at I-10 Fwy WB Ramps (EW) - SANBAG Eligible	\$ (77,145)	\$ (632.03)
6 Cedar Ave (NS) at I-10 Fwy EB Ramps (EW) - SANBAG Eligible	\$ (69,605)	\$ (570.25)
30 Riverside Ave (NS) at RR Bridge S of I-10 Fwy - SANBAG Eligible	\$ (3,378,003)	\$ (27,674.93)
20 Cactus Ave (NS) at El Rivino Rd (EW) - Improvement Complete	\$ (400,000)	\$ (3,277.08)
<b>BALANCE OF TOTAL MASTER DEVELOPMENT FAIR SHARE IMPROVEMENTS COSTS</b>	<b>\$ 1,510,452</b>	<b>\$ 12,374.67</b>
<b>PROPERTY PORTION OF FAIR SHARE IMPROVEMENT COSTS</b>	<b>\$ 930,439</b>	<b>\$ 7,622.80</b>

Location	Amount	Amount/Acre
<b>Additional Mitigation Fair Share Fees<sup>2</sup></b>		
Total Master Development Fair Share Improvement Costs	\$ 5,455,676	\$ 44,696.68
13 Rubidoux Blvd (NS) at SR-60 Fwy EB Ramps / 30th St (EW) - TUMF Eligible	\$ (36,887)	\$ (302.20)
24 Agua Mansa Rd (NS) at Market St (EW) - TUMF Eligible	\$ (62,175)	\$ (509.38)
<b>ADJUSTED BALANCE OF TOTAL MASTER DEVELOPMENT FAIR SHARE IMPROVEMENTS COSTS</b>	<b>\$ 1,411,390</b>	<b>\$ 11,563.09</b>
<b>ADJUSTED PROPERTY PORTION OF FAIR SHARE IMPROVEMENT COSTS</b>	<b>\$ 869,416</b>	<b>\$ 7,122.86</b>

<sup>1</sup> See Section 3.2.1. Assumes confirmation from County of Riverside not obtained

<sup>2</sup> See Section 3.2.1. Assumes confirmation from County of Riverside obtained