



SUBDIVISION IMPROVEMENT AGREEMENT

by and between

CITY OF RIALTO

and

SIRWIN ENTERPRISES LLC

4740 Green River Rd #108 Corona Ca 92880

**SUBDIVISION IMPROVEMENT AGREEMENT BETWEEN
THE CITY OF RIALTO**

AND

SIRWIN ENTERPRISES LLC

Agreement Date: _____

Subdivider Name: SIRWIN ENTERPRISES LLC (hereinafter "Subdivider")

Subdivision Name: RIALTO CENTER (hereinafter "Subdivision")

Tract No.: _____ **(No. of Lots:** _____ **)**

Tentative: PARCEL **Map No.:** 20154 (hereinafter "Approved Tentative Map")

(Approval Date: August 14, 2019 **)**

Improvement Plans Approved On: _____ (hereinafter "Plans")

Estimated Total Cost of Improvements: \$ 570,795.33

(Including Off-Site Landscaping)

Estimated Total Cost of Monumentation: \$ 1,300.00 (Based upon the Plans, including Individual lots, subdivision boundary and public improvements)

Security:

Bond Nos.: Performance Bond # 4437181 :: Monument Bond # 4439241

Surety: SureTec Insurance Company

-OR-

Irrevocable Standby Letter of Credit No.: _____

Financial Institution: _____

-OR-

Cash/Certificate of Deposit, Agreement Dated: _____

Financial Institution: _____

Designees for the Service of Written Notice:

CITY: City Engineer City of Rialto 150 S. Palm Avenue Rialto, CA 92376 Phone: (909) 820-2602	SUBDIVIDER: Name: <u>SIRWIN ENTERPRISES LLC</u> Address: <u>4740 Green River Rd #108</u> <u>Corona, Ca 92880</u> Phone: <u>714-719-8100</u>
CITY PROJECT INSPECTOR: City of Rialto Public Works Department 335 W. Rialto Avenue Rialto, CA 92376 Phone: (909) 421-7294	SURETY: Name: <u>Sure Tech Insurance Company</u> Address: <u>3033 Fifth Av, Suite 300</u> <u>San Diego, Ca 92103</u> Phone: <u>619-400-4100</u>

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SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2020, by and between the CITY OF RIALTO, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California, ("CITY"), and SIRWIN ENTERPRISES, a California (Subdivider").

RECITALS

A. Subdivider is the owner of, and has obtained approval of a subdivision map identified as **Tentative (Tract/Parcel) Map No. 20154**, (the "Map"), located in the City of Rialto, County of San Bernardino, State of California (the "Property"), as described on Exhibit "A". The Map requires Subdivider to comply with certain conditions of approval for the development of the Property (the "Conditions") as described on Exhibit "B".

B. Pursuant to the Conditions, Subdivider, by the Map, has offered for dedication to City for public use of the streets and easements shown on the Map. City desires to accept the streets and easements shown on the Map for public use, and certain other improvements described in this Agreement.

C. Subdivider has delivered to City, and City has approved, plans and specifications and related documents for certain "Works of Improvement" (as hereinafter defined) which are required to be constructed and installed in order to accommodate the development of the Property.

D. Subdivider's agreement to construct and install the Works of Improvement pursuant to this Agreement and its offer of dedication of the streets, easements and other improvements and facilities, as shown on the Map, are a material consideration to City in approving (**Final/Parcel) Map No. 20154** for the Property and permitting development of the Property to proceed.

COVENANTS

Based upon the foregoing Recitals which are incorporated herein by reference and in consideration of City's approving the Map for the Property and permitting development of the Property to proceed, Subdivider agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations.

1.1. Works of Improvement. Subdivider agrees, at its sole cost and expense, to construct or install, or cause to be constructed or installed the street, drainage, domestic water, sanitary sewer, street lighting, landscaping, utility, and other improvements (the "Works of Improvement"), as the same may be supplemented and revised from time to time as set forth in this Agreement (said plans and specifications, together with all related documents, the "Plans"). The estimated construction cost for the Works of Improvement is \$ 570,795.33.

1.2. Other Obligations Referenced in Conditions of Tentative Map Approval. In addition to the foregoing, Subdivider shall satisfy all of the Conditions on the Map for the Property. The Conditions associated with the Map are included as Exhibit "B" attached hereto.

1.3. Intent of Plans. The intent of the Plans referenced in Section 1.1 is to prescribe a complete work of improvement which Subdivider shall perform or cause to be performed in a manner acceptable to the City Engineer, (or designee), and in full compliance with all codes and the terms of this Agreement. Subdivider shall complete a functional or operable improvement or facility, even though the Plans may not specifically call out all items of work required for Subdivider's contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made or information necessary to carry out the full intent and meaning of the Plans, Subdivider or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the City Engineer whose decision thereon shall be final.

Subdivider recognizes that the Plans consist of general drawings. All authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the City Engineer. The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by Subdivider or its contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.4. Survey Monuments. Before final approval of street improvements, Subdivider shall place survey monuments as shown on **(Final/Parcel) Map No. 20154** in accordance with the provisions of the State Subdivision Map Act and the Subdivision Ordinance of the City of Rialto. Subdivider shall provide security for such obligation as provided in Section 4.1(a)(iii) and, after setting the monuments, Subdivider shall furnish the City Engineer written notice of the setting of said monuments and written proof of having paid the engineer or surveyor for the setting of said monuments.

1.5. Performance of Work. Subdivider shall furnish or cause to be furnished all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform Subdivider's obligations under this Agreement.

1.6. Changes in the Work. The City Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in Paragraph 4, may order extra work or may make changes by altering or deleting any portion of the Works of Improvement as specified herein or as deemed necessary or desirable by the City Engineer as determined necessary to accomplish the purposes of this Agreement and to protect the public health, safety, or welfare. The City Engineer shall notify Subdivider or its contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Subdivider or its contractor shall be binding on City unless approved in writing by the

City Engineer. The City and Subdivider may mutually agree upon changes to the Works of Improvement, subject to the security requirements in Section 4.

1.7. Defective Work. Subdivider shall cause its contractor to repair, reconstruct, replace, or otherwise make acceptable any work found by the City Engineer to be defective.

1.8. No Warranty by City. The Plans for the Works of Improvement have been prepared by or on behalf of Subdivider or its consultants or contractors, and City makes no representation or warranty, express or implied, to Subdivider or to any other person regarding the adequacy of the Plans or related documents.

1.9. Authority of the City Engineer. In addition to the authority granted to the City Engineer elsewhere in this Agreement, the City Engineer shall have the authority to decide all questions which may arise as to the quality and acceptability of materials furnished and work performed, and all questions as to the satisfactory and acceptable fulfillment of the terms of this Agreement by Subdivider and its contractor.

1.10. Documents Available at the Site. Subdivider shall cause its contractor to keep a copy of all approved Plans at the job site and shall give access thereto to the City's inspectors and engineers at all times.

1.11. Inspection. Subdivider shall have an authorized representative on the job site at all times during which work is being done who has full authority to act for Subdivider, or its design engineer, and Subdivider's contractor(s) regarding the Works of Improvement. Subdivider shall cause its contractor to furnish the City with every reasonable facility for ascertaining whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the Plans. If the City inspector requests it, the Subdivider's contractor, at any time before acceptance of the Works of Improvement, shall remove or uncover such portions of the finished work as may be directed which have not previously been inspected. After examination, the Subdivider's contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City Engineer (or designee) shall not be considered as direct control of the individual workmen on the job site. City's inspectors shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by City shall not relieve Subdivider or its contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

1.12. Compliance With Law; Applicable Standards for Improvements. In addition to the express provisions of this Agreement and the Plans, Subdivider shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules and regulations. In addition, without limiting the foregoing, the Subdivider shall, at its expense, obtain and comply with the

conditions of all necessary permits and licenses for the construction of the Works of Improvement. The Subdivider shall also give all necessary notices and pay all fees and taxes as required by law.

Subdivider shall construct the improvements in accordance with the City standards in effect at the time of the adoption of the Approved Tentative Map. City reserves the right to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances.

1.13. Suspension of Work. The City Engineer shall have authority to order suspension of the work for failure of the Subdivider's contractor to comply with law pursuant to Section 1.12. In case of suspension of work for any cause whatsoever, Subdivider and its contractor shall be responsible for all materials and shall store them properly if necessary, and shall provide suitable interim drainage and/or dust control measures, and erect temporary structures where necessary.

1.14. Erosion and Dust Control and Environmental Mitigation. All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

1.15. Final Acceptance of Works of Improvement. After Subdivider's contractor has completed all of the Works of Improvement, Subdivider shall then request a final inspection of the work. If items are found by the City's inspectors to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City will inform the Subdivider or its contractor of such items. After the Subdivider's contractor has completed these items, the procedure shall then be the same as specified above for the Subdivider's contractor's initial request for final inspection. If items are found by City's inspectors to be incomplete or not in compliance after two (2) "final" inspections, the City may require the Subdivider or its contractor, as a condition to performing further field inspections, to submit in writing a detailed statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at that time. Subdivider shall be responsible for payment to City Engineer of re-inspection fees in the amount necessary to cover the City's costs for additional final inspections, as determined by the City Engineer.

No inspection or acceptance pertaining to specific parts of the Works of Improvement shall be construed as final acceptance of any part until the overall final acceptance by the City Engineer is made. The City Engineer shall make a certification of completion and acceptance on the Works of Improvement by recordation of a Notice of Acceptance on behalf of the City. Final acceptance shall not constitute a waiver by the City Engineer of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be the date of the Notice of Acceptance.

1.16. Vesting of Ownership. Upon recordation of the Notice of Acceptance, ownership of the Works of Improvement shall vest in the City.

1.17. Subdivider's Obligation to Warn Public During Construction. Until recordation of the Notice of Acceptance, Subdivider shall give good and adequate warning to the public of any dangerous condition of the Works of Improvements, and shall take reasonable actions to protect the public from such dangerous condition. Until recordation of the Notice of Acceptance, Subdivider shall provide forty-eight (48) hours' advance written notice to all neighboring property owners and tenants affected by Subdivider's operations or construction of the hours, dates and duration of any planned construction activities.

1.18. Injury to Public Improvements, Public Property or Public Utility. Until recordation of the Notice of Acceptance of the Works of Improvement, Subdivider assumes responsibility for the care and maintenance of, and any damage to, the Works of Improvements. Subdivider shall replace or repair all Works of Improvements, public property, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless whether resulting from the acts of the Subdivider, prior to the recordation of the Notice of Acceptance. Subdivider shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage, regardless of cause, occurring to the work or Works of Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

2. Time for Performance.

2.1. Commencement and Completion Dates. Subject to Sections 2.2 and 2.3 below, Subdivider shall (i) commence with construction and installation of the Works of Improvement thirty (30) days following City's approval of the Plans ("Commencement Date"); and (ii) complete or cause to be completed all of the Works of Improvement two (2) years after the Commencement Date. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the Works of Improvement hereunder may be extended for a period or periods not exceeding two (2) years. Extensions shall be executed in writing by the City Engineer. The City Engineer in his or her sole discretion determines whether or not the Subdivider has established good cause for an extension. As a condition of such extension, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer. If Subdivider requests and is granted an extension of time for completion of the improvements, City may apply the standards in effect at the time of the extension.

2.2. Phasing Requirements. Notwithstanding the provisions of Section 2.1, the City reserves the right to control and regulate the phasing of completion of specific Works of Improvement as required to comply with applicable City ordinances, regulations, and rules relating to the timely provision of public services and facilities. In addition to whatever other remedies the City may have for Subdivider's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Subdivider acknowledges City's right to withhold the issuance of further building permits on the Property until such phasing requirements are satisfied. Prior to issuance of building permits, Subdivider shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of fees, construction of improvements, or both. Final inspections or issuance of Certificates of Occupancy may be withheld from the Subdivider by the City, if, upon a determination by the City Engineer, completion of specific Works of Improvements or other requirements associated with the development of the Property have not been completed to the City Engineer's satisfaction.

2.3. Force Majeure. Notwithstanding the provisions of Section 2.1, Subdivider's time for commencement and completion of the Works of Improvement shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Subdivider, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, acts or failures to act of a public agency (including City), required changes to the scope of work required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than five (5) days prior to City's receipt of a written notice from Subdivider or its contractor detailing the grounds for Subdivider's claim to a right to extend its time for performance hereunder. The City Engineer shall evaluate all claims to Force Majeure and the City Engineer's decision shall be final.

2.4. Continuous Work. After commencement of construction of the Works of Improvement (or separate portion thereof), Subdivider shall cause such work to be diligently pursued to completion, and shall not abandon the work for a consecutive period or more than thirty (30) days, events of Force Majeure excepted.

2.5. Reversion to Acreage. In addition to whatever other rights City may have due to Subdivider's failure to timely perform its obligations hereunder, Subdivider recognizes that City reserves the right to revert the Property to acreage subject to the limitations and requirements set forth in California Government Code Section 66499.11 through Section 66499.20.1. In this regard, Subdivider agrees that if the Works of Improvement have not been completed on or before the later of two (2) years from the date of this Agreement or within the time allowed herein, whichever is the later, and if City thereafter initiates proceedings to revert the Property to acreage, pursuant to Government Code Section 66499.16, Subdivider hereby consents to such reversion to acreage and agrees that any improvements made by or on behalf of Subdivider shall not be considered in determining City's authority to revert the Property to acreage.

3. Labor.

3.1. Labor Standards. This Agreement is subject to, and Subdivider agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, worker compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including section 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 to 1861, which provisions are specifically incorporated herein by reference as set forth herein in their entirety. Subdivider shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the Works of Improvement.

3.2. Nondiscrimination. In accordance with the California Fair Employment and Housing Act ("FEHA"), California Government Code Section 12940 *et seq.*, Subdivider agrees that Subdivider, its agents, employees, contractors, and subcontractor performing any of the Works of Improvement shall not discriminate, in any way, against any person on the basis of race, ethnicity, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Subdivider shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of this Agreement.

3.3. Licensed Contractors. Subdivider shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed. All of Subdivider's contractors and subcontractors shall obtain a valid City of Rialto business license prior to performing any work pursuant to this Agreement. Subdivider shall provide the City Engineer with a list of all of its contractors and subcontractors prior to initiating any work, and all valid Contractor's licenses and business licenses issued thereto as a condition of constructing the Works of Improvements.

3.4. Worker's Compensation. Subdivider shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to City a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

4. Security.

4.1. Required Security.

(a) At the time Subdivider executes this Agreement, Subdivider shall furnish to City the following bonds, letters of credit, instruments of credit (assignment of deposit account) or other security acceptable to City in its sole and absolute discretion and satisfying the requirements of the applicable provisions of this Section 4 below (hereinafter "Security Instruments"):

(i) A Security Instrument securing Subdivider's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of \$ 570,795.33 equal to 100% of the estimated construction cost referenced in Section 1.1.

(ii) A Security Instrument guaranteeing the payment to contractors, subcontractors, and other persons furnishing labor, materials, and/or equipment ("Labor and Materials Security Instrument") with respect to the Works of Improvement in an amount equal to \$ 570,795.33 equal to 100% of the estimated construction cost referenced in Section 1.1.

(iii) A Security Instrument guaranteeing the payment of the cost of setting monuments as required in Section 1.4 in the amount of \$ 1,300.00 equal to 100% of the cost thereof.

This Agreement shall not be effective for any purpose until such Security Instruments are supplied to and approved by City in accordance herewith.

(b) Required Security Instrument for Maintenance and Warranty. Prior to the City Council's acceptance of the Works of Improvement and recordation of a Notice of Completion, Subdivider shall deliver a Security Instrument warranting the work accepted for a period of one (1) year following said acceptance ("Maintenance and Warranty Security Instrument"), in the amount of \$ 57,079.53 equal to 10% of the estimated construction cost set forth in Section 1.1 or a suitable amount determined by the City Engineer.

4.2. Form of Security Instruments. All Security Instruments shall be in the amounts required under Section 4.1 (a) or 4.1(b), as applicable, shall meet the following minimum requirements and otherwise shall be in a form provided by City or otherwise approved by the City Attorney:

(a) Bonds. For Security Instruments provided in the form of bonds, any such bond must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's.

(b) Letters of Credit. For Security Instruments which are letters of credit, any letter of credit shall be an original separate unconditional, irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with offices in the State of California acceptable to City. Any such letter of credit shall specifically permit City to draw on same by unilateral certification of the City Engineer of the City that Subdivider is in default under its payment or performance obligations hereunder or in the event Subdivider fails to deliver a replacement letter

of credit not less than thirty (30) days prior to the date of expiration of any such letter of credit and shall further be subject to the provisions of Section 4.4.

(c) Instrument of Credit. For Security Instruments which are Instruments of Credit, any Instrument of Credit shall be an assignment of deposit account assigning as security to City all of Subdivider's interest in funds on deposit in one or more bank accounts with financial institutions acceptable to City.

(d) General Requirements for all Security Instruments.

(i) Payments under any Security Instruments shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the City of Rialto, State of California (and the Security Instrument shall so provide).

(ii) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Subdivider's completing the Works of Improvement, in accordance with Section 2.1 (other than Instruments of Credit, which shall have no defined term or expiration date).

(iii) Each Security Instrument shall provide that changes may be made in the Works of Improvement pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

(iv) If the Subdivider seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by the Subdivider to the City Engineer; and (3) upon its written acceptance by the City Engineer, be deemed a part of this Agreement. Upon the City Engineer's acceptance of a replacement security, the former security may be released by the City.

4.3. Subdivider's Liability. While no action of Subdivider shall be required in order for City to realize on its security under any Security Instrument, Subdivider agrees to cooperate with City to facilitate City's realization under any Security Instrument, and to take no action to prevent City from such realization of any Security Instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Subdivider shall be personally liable for performance under this Agreement and for payment of the cost of the labor and materials for the improvements required to be constructed or installed hereby and shall, within ten (10) days after written demand therefor, deliver to City such substitute security as City shall require satisfying the requirements in this Section 4.

4.4. Letters of Credit.

(a) In the event a letter of credit is given pursuant to Section 4.2(b), City shall be entitled to draw on any such letter of credit if a replacement letter of credit

(expiring in not less than one (1) year, unless City agrees to a lesser term in City's sole and absolute discretion) is not delivered not less than thirty (30) days prior to the expiration of the original letter of credit, such substitute letter of credit being in the same amount and having the terms and conditions as the initial letter of credit delivered hereunder, issued by a financial institution acceptable to City as of the date of delivery of the replacement letter of credit.

(b) In the event of draw by the City on a letter of credit, the City may elect, in its sole and absolute discretion, to apply any such funds drawn to the obligations secured by such letter of credit or to hold such funds in an account under the control of the City, with no interest accruing thereon for the benefit of the Subdivider. If the City elects to hold the funds in an account pursuant to the foregoing, City may thereafter at any time elect instead to apply such funds as provided in the foregoing. Subdivider agrees and hereby grants City a security interest in such account to the extent required for City to realize on its interests therein, and agrees to execute and deliver to City any other documents requested by City in order to evidence the creation and perfection of City's security interest in such account.

4.5. Release of Security Instruments. The City shall release all Security Instruments consistent with Government Code Sections 66499.7 and 66499.8 and as follows:

(a) City shall release the Faithful Performance Security Instrument and Labor and Materials Security Instrument when all of the following have occurred:

(i) Subdivider has made written request for release and provided evidence of satisfaction of all other requirements in this Section 4.5;

(ii) the Works of Improvement have been accepted;

(iii) Subdivider has delivered the Maintenance and Warranty Security Instrument; and

(iv) after passage of the time within which lien claims are required to be made pursuant to Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California. If lien claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claims have been resolved, Subdivider has provided a statutory bond, or otherwise as required by applicable law.

(b) City shall release the Maintenance and Warranty Security Instrument upon Subdivider's written request upon the expiration of the warranty period, and settlement of any claims filed during the warranty period.

(c) The City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

5. Cost of Construction and Provision of Inspection Service.

5.1. Subdivider Responsible for All Costs of Construction. Subdivider shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement. In the event Subdivider is entitled to reimbursement from City for any of the Works of Improvement, such reimbursement shall be subject to a separate Reimbursement Agreement to be entered into between Subdivider and City prior to construction of the Works of Improvement.

5.2. Payment to City for Cost of Related Inspection and Engineering Services. Subdivider shall compensate City for all of City's costs reasonably incurred in having its authorized representative make the usual and customary inspections of the Works of Improvement. In addition, Subdivider shall compensate City for all design, plan check, evaluating any proposed or agreed-upon changes in the work. The procedures for deposit and payment of such fees shall be as established by the City. In no event shall Subdivider be entitled to additional inspections or a final inspection and acceptance of any of the Works of Improvement until all City fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections.

6. Acceptance of Offers of Dedication. The City Council shall pass as appropriate resolution or resolutions accepting all offers of dedication shown on the Map for the Property, with acceptance to become effective upon completion and acceptance by City of the Works of Improvement. Such resolution(s) shall authorize the City Clerk to execute the Certificate made a part of the Map regarding said acceptance of the offer of dedication.

7. Warranty of Work. Subdivider shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of final acceptance. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the Plans, Subdivider, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the City in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should Subdivider fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by Subdivider. The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law.

8. Default.

8.1. Default by Subdivider. Default by Subdivider shall include, but not be limited to:

(a) Subdivider's failure to timely commence construction of Works of Improvement under this Agreement;

- (b) Subdivider's failure to timely complete construction of the Works of Improvement;
- (c) Subdivider's failure to perform substantial construction work for a period for 20 consecutive calendar days after commencement of the work;
- (d) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Subdivider fails to discharge within 30 days;
- (e) The commencement of a foreclosure action against the subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or
- (f) Subdivider's failure to perform any other obligation under this Agreement.

8.2. Remedies. The City reserves all remedies available to it at law or in equity for a default or breach of Subdivider's obligations under this Agreement. The City shall have the right, subject to this Section, to draw upon or use the appropriate security to mitigate the City's damages in the event of default by Subdivider. The City's right to draw upon or use the security is in addition to any other remedy available to City. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the improvements and, therefore, City's damages for Subdivider's default shall be measured by the cost of completing the required improvements. The City may use the sums provided by the securities for the completion of the Works of Improvement in accordance with the plans. In the event the Subdivider fails to cure any default under this Agreement within 20 days after the City mails a notice of such default to the Subdivider and the Subdivider's surety, Subdivider authorizes the City to perform the obligation for which Subdivider is in default and agrees to pay the entire cost of such performance by the City. The City may take over the work and complete the Works of Improvement, by contract or by any other method City deems appropriate, at the expense of the Subdivider. In such event, City, without liability for doing so, may complete the Works of Improvement using any of Subdivider's materials, appliances, plans and other property that are at the work site and that are necessary to complete the Works of Improvement.

8.3. Notice of Violation. The Subdivider's failure to comply with the terms of this Agreement constitutes Subdivider's consent for the City to file a notice of violation against all the lots in the Subdivision, or to rescind or otherwise revert the Subdivision to acreage. Subdivider specifically recognizes that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the Subdivider shall be within the sole discretion of the City.

8.4. Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for a default by Subdivider hereunder, the Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be in the discretion of the City. Additionally, any remedy specifically provided in this Agreement shall be in addition to,

and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

8.5. Attorney's Fees and Costs. In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including costs of suit and reasonable attorney's fees. In the event of any dispute arising out of Subdivider's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

8.6. Waiver. No waiver by the City of any breach or default by the Subdivider shall be considered valid unless in writing, and no such waiver by the City shall be deemed a waiver of any subsequent breach or default by the Subdivider.

9. Indemnity/Hold Harmless. City or any officer, employee or agent thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement. Subdivider further agrees to protect, defend, indemnify and hold harmless City, its officials, boards and commissions, and members thereof, agents, and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence of the City, its officials, boards, commissions, the members thereof, agents and employees, including all claims, demands, causes of action, liability or loss because of or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other improvements. Recordation of the Notice of Acceptance by the City of the Works of Improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section. City shall not be responsible for the design or construction of the property to be dedicated or the improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction taken by the City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Subdivider submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After recordation of the Notice of Acceptance, the Subdivider shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the recordation of the Notice of Acceptance by the City of the Works of Improvements. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving or reviewing any work or construction. The improvement security shall not be required to cover the provisions of this Paragraph.

Subdivider shall reimburse the City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section.

10. Subdivider's Indemnity of Project Approval. Subdivider shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City, advisory agency, appeal board, or legislative body concerning the Subdivision. The City shall promptly notify the Subdivider of any claim, action, or proceeding and cooperate fully in the defense of any such claim, action, or proceeding. In the event City fails to promptly notify the Subdivider of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the Subdivider shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this Section prohibits the City from participating in the defense of any claim, action, or proceeding if City bears its own attorney's fees and costs and defends the action in good faith. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the Subdivider.

11. Insurance Requirements. Subdivider, at Subdivider's sole cost and expense and for the full term of this Agreement and any extensions thereto, shall obtain and maintain all of the following minimum insurance requirements in a form approved by the City's authorized designee for Risk Management prior to commencing any work:

- (a) Commercial General Liability policy with a minimum \$1 million combined single limit for bodily injury and property damage providing all of the following minimum coverage without deductibles:
 - (i) Premises operations; including X, C, and U coverage;
 - (ii) Owners' and contractors' protection;
 - (iii) Blanket contractual;
 - (iv) Completed operations; and
 - (v) Products.

(b) Commercial Business Auto policy with a minimum \$1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles:

(i) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and

(ii) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall have said coverage provided under the Commercial General Liability policy.

(c) Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the Subdivider:

(i) This policy shall provide coverage for Workers' Compensation (Coverage A); and

(i) This policy shall provide coverage for \$1,000,000 Employers' Liability (Coverage B).

(ii) Pursuant to Labor Code section 1861, Subdivider by executing this Agreement certifies: *"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."*

(iii) Prior to commencement of work, the Subdivider shall file with the City's Risk Manager a Certificate of Insurance or certification of permission to self-insure workers' compensation conforming to the requirements of the Labor Code.

(d) Endorsements. All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:

(i) "The City of Rialto, its officers, employees and agents are hereby added as additional insureds."

(ii) "This policy shall be considered primary insurance with respect to any other valid and collectible insurance the City may possess, including any self-insured retention the City may have and any other insurance the City does possess shall be considered excess insurance only."

(iii) "This insurance shall act for each insured and additional insured as though a separate policy has been written for each. This, however, will not act to increase the limit of the insuring company."

(iv) "Thirty (30) days prior written notice of cancellation shall be given to the City of Rialto in the event of cancellation and/or reduction in coverage, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium." Such notice shall be sent to the Risk Manager at the address indicated in Subsection f below.

(v) Subsection d(iv) hereinabove "Cancellation Notice" is the only endorsement required of the Workers' Compensation and Employers' Liability policy.

(e) Admitted Insurers. All insurance companies providing insurance to the Subdivider under this Agreement shall be admitted to transact the business of insurance by the California Insurance Commissioner.

(f) Proof of Coverage. Copies of all required endorsements shall be attached to the Certificate of Insurance which shall be provided by the Subdivider's insurance company as evidence of the coverage required herein and shall be mailed to:

City of Rialto
Risk Management
150 S. Palm Avenue
Rialto, CA 92376

12. Environmental Warranty.

12.1. Prior to the acceptance of any dedications or Works of Improvement by City, Subdivider shall provide City with a written warranty in a form substantially similar to Exhibit "C" attached hereto and incorporated herein by reference, that:

(a) Neither the property to be dedicated nor Subdivider are in violation of any environmental law, and neither the property to be dedicated nor the Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

(b) Neither Subdivider nor any other person with Subdivider's permission to be upon the property to be dedicated shall use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to

time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

(c) Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(d) Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated.

12.2. Subdivider shall give prompt written notice to City of:

(a) Any proceeding or investigation by any federal, state or local governmental

(b) authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(c) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(d) Subdivider's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

13. General Provisions.

13.1. Successors and Assigns. This Agreement shall be binding upon all successors and assigns to Subdivider's right, title, and interest in and to the Property and any portion thereof. Subdivider hereby consents to City recording this Agreement as official records of San Bernardino County, affecting fee title interest to the Property to provide constructive notice of the rights and obligations incurred by Subdivider in the City's approval of this Agreement. In the event the Property is subsequently conveyed by Subdivider to a third party prior to completion of the Works of Improvement, whereby the third party is intended to assume Subdivider's responsibilities with regard to this Agreement, (the "Replacement Subdivider"), the rights and obligations of this Agreement shall transfer to the Replacement Subdivider; however, the Security Instruments required pursuant to Section 4 of this Agreement, and furnished by Subdivider as a condition of the City's approval of this Agreement, shall remain Subdivider's responsibility to maintain until such time as Subdivider and its Replacement Subdivider enter into a Transfer and Assignment of Subdivision Agreement, (the "Transfer Agreement"), to acknowledge the transfer of fee title to the Property from the Subdivider to its Replacement Subdivider, and to acknowledge the rights and obligations associated with this Agreement upon the

Replacement Subdivider, including Replacement Subdivider's responsibility to furnish replacement Security Instruments meeting the City's approval pursuant to Section 4 of this Agreement. Until such time as a Transfer Agreement, meeting the City's approval, is executed by Subdivider and its Replacement Subdivider, and replacement Security Instruments meeting City's approval are furnished by the Replacement Subdivider, Subdivider retains sole responsibility for maintaining all Security Instruments required pursuant to Section 4 of this Agreement.

13.2. No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Subdivider intend to create any third party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

13.3. No Vesting Rights. Performance by the Subdivider of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

13.4. Subdivider is Not Agent of City. Neither Subdivider nor Subdivider's agents, contractors, or subcontractors are agents or contractors of the City in connection with the performance of Subdivider's obligations under this Agreement.

13.5. Time of the Essence. Time is of the essence of Subdivider's performance of all of its obligations under this Agreement.

13.6. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notice shall be provided to the persons listed on Pages 1 and 2 of this Agreement by the parties for this purpose.

Either party may provide a new designated representative and/or address by written notice as provided in this Section.

13.7. No Apportionment. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing therefore. Nor shall anything in the Agreement commit City to any such apportionment.

13.8. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

13.9. Captions. The captions of this Agreement are for convenience and reference only and shall not be used in the interpretation of any provision of this Agreement.

13.10. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into the terms of this Agreement.

13.11. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

13.12. Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

13.13. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

14. Authority. The persons executing this Agreement on behalf of the parties warrant the (i) party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into of this Agreement does not violate any provisions of any other Agreement to which said party is bound.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and the Subdivider have caused this Agreement to be executed the day and year first above written.

CITY OF RIALTO, CALIFORNIA

SUBDIVIDER

By: _____
Deborah Robertson, Mayor

By: _____
Title: Tony Dehbozorgi-Owner/Manager

APPROVED BY THE CITY COUNCIL

Date: _____

Agreement No.: _____

ATTEST:

By: _____
Barbara McGee, City Clerk

APPROVED AS TO FORM:

By: _____
Eric S. Vail ,City Attorney

RECOMMENDED:

By: _____
Savat Khamphou, P.E.
Public Works Director/City
Engineer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 Riverside

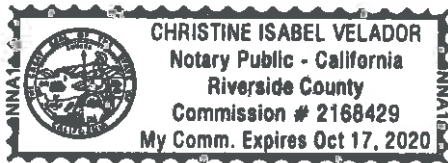
On 6/24/2020 before me, Christine Isabel Velador - Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Tony Dehbozorgi
Name(s) of Signer(s)

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 they 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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer is Representing: _____

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer is Representing: _____

EXHIBIT "A"

_____ MAP _____ LEGAL DESCRIPTION

_____ Map No. _____, as recorded in Map Book _____, Pages _____ through _____ inclusive,
records of San Bernardino County, California.

LEGAL DESCRIPTION

Real property in the City of Rialto, County of San Bernardino, State of California, described as follows:

PARCEL 1:

THE NORTH ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM THOSE PORTIONS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JANUARY 24, 1961 IN [BOOK 5333 PAGE 269](#), OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 18, 1961 IN [BOOK 5406 PAGE 392](#) OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 18, 1961 IN [BOOK 5406 PAGE 396](#) OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE COUNTY OF SAN BERNARDINO BY DEED RECORDED OCTOBER 13, 1965 IN [BOOK 6491 PAGE 881](#) OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE COUNTY OF SAN BERNARDINO BY DEED RECORDED OCTOBER 28, 1965 IN [BOOK 6502 PAGE 323](#) OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 9, 1989 AS INSTRUMENT NO. [89-084684](#) OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JUNE 30, 2004 AS INSTRUMENT NO. [2004-0467454](#) OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY AMENDED FINAL ORDER OF CONDEMNATION RECORDED APRIL 12, 2017 AS INSTRUMENT NO. [2017-0150781](#), OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE LAND DESCRIBED IN A DEED TO RICHLAND ASSOCIATES, L.P., RECORDED JUNE 13, 2000 AS INSTRUMENT NO. [00-0210857](#) OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID LAND, SOUTH 00° 27' 34" EAST 63.971 METERS TO THE TRUE POINT OF BEGINNING; THENCE NORTH 81° 38' 09" EAST 178.015 METERS; THENCE NORTH 64° 31' 40" EAST 8.009 METERS; THENCE SOUTH 01° 10' 48" WEST 29.258 METERS; THENCE SOUTH 89° 30' 49" WEST 19.692 METERS; THENCE SOUTH 85° 48' 25" WEST 163.399 METERS; THENCE NORTH 00° 27' 34" WEST 12.027 METERS TO THE TRUE POINT OF BEGINNING.

APN: 1133-521-04-0-000

EXHIBIT "B"

TENTATIVE _____ MAP _____ CONDITIONS OF APPROVAL

The Conditions issued to Subdivider for development of the Property follow this page.

RESOLUTION NO. 19-45

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIALTO, CALIFORNIA APPROVING TENTATIVE PARCEL MAP NO. 2019-0001 TO ALLOW THE SUBDIVISION OF A 2.98 ACRE PARCEL (APN: 1133-521-04) OF LAND INTO THREE (3) PARCELS TO FACILITATE THE COMMERCIAL RETAIL CENTER LOCATED AT THE SOUTHWEST CORNER OF CASMALIA STREET AND AYALA DRIVE WITHIN THE FREEWAY INCUBATOR (FI) ZONE OF THE RENAISSANCE SPECIFIC PLAN.

WHEREAS, the applicant, Pacific Oil, LLC, proposes to subdivide one 2.98-acre parcel (APN: 1133-521-04) into three parcels ("Project") located at the southwest corner of Casmalia Street and Ayala Drive within the Freeway Incubator (FI) zone of the Renaissance Specific Plan ("Site"); and

WHEREAS, the Project will result in the creation of two new parcels of land to facilitate the development of a commercial retail center consisting of a gas station, a free-standing drive-thru restaurant, and a multi-tenant retail building ("Development"); and

WHEREAS, the Project requires the approval of a tentative parcel map, and the applicant has agreed to apply for Tentative Parcel Map No. 2019-0001 ("TPM No. 20154") in accordance with Government Code Sections 66473.5 and 66474; and

WHEREAS, the development requires separate conditional development permits for a convenience market use, the off-sale of beer and wine within the convenience market, fuel sales, a car wash, and a restaurant drive-thru on the Site; and

WHEREAS, in relation to the Development, on November 28, 2018, the Planning Commission approved Conditional Development Permit Nos. 2018-0036, 2018-0037, 2018-0038, 2018-0039, and 2018-0017 for a convenience market use, the off-sale of beer and wine within the convenience market, fuel sales, car wash, and restaurant drive-thru, respectively; and

WHEREAS, on November 28, 2018, the Planning Commission also adopted a Mitigated Negative Declaration for the Development in accordance with the requirements of the California Environmental Quality Act (CEQA), which encompassed the proposed Project, so no further environmental review is required; and

1 WHEREAS, on November 28, 2018, the Planning Commission of the City of Rialto
2 conducted a duly noticed public hearing, as required by law, on TPM No. 20154, took testimony,
3 at which time it received input from staff, the city attorney, and the applicant; heard public
4 testimony; discussed the proposed TPM No. 20154; and closed the public hearing; and

5 WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

6 NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of
7 Rialto as follows:

8 SECTION 1. The Planning Commission hereby specifically finds that all of the facts set
9 forth in the recitals above of this Resolution are true and correct and incorporated herein.

10 SECTION 2. Based on substantial evidence presented to the Planning Commission during
11 the public hearing conducted with regard to TPM No. 20154, including written staff reports, verbal
12 testimony, site plans, other documents, and the conditions of approval stated herein, the Planning
13 Commission hereby determines that TPM No. 20154 satisfies the requirements of Government
14 Code Sections 66473.5 and 66474 pertaining to the findings which must be made precedent to
15 approving a tentative map. The findings are as follows:

- 16 1. That the proposed Tentative Parcel Map is consistent with the General Plan of the
17 City of Rialto and the Freeway Incubator (FI) zone of the Renaissance Specific Plan;
18 and

19 *This finding is supported by the following facts:*

20 The Site has a General Plan designation of Specific Plan, and a zoning designation of FI
21 (Freeway Incubator) within the Renaissance Specific Plan. The Project will subdivide
22 the Site into three (3) parcels of land, to facilitate the development of a commercial retail
23 center. Per Table 3-5 (Development Standards), of the Renaissance Specific Plan, the
24 required minimum parcel size within the FI (Freeway Incubator) zone is twenty-two
25 thousand five hundred (22,500) square feet for commercial uses. Additionally, per Table
26 3-5, the required minimum parcel width and minimum parcel depth within the FI
27 (Freeway Incubator) zone is one hundred and fifty (150) feet for commercial uses. The
28 proposed parcels exceed all minimum requirements of Renaissance Specific Plan, Table
3-5.

2. That the design and improvement of the proposed Tentative Parcel Map is consistent
with the Subdivision Ordinance, the General Plan of the City of Rialto and the FI
(Freeway Incubator) zone of the Renaissance Specific Plan.

1 *This finding is supported by the following facts:*

2 The Project will comply with all technical standards required by Subdivision Map Act,
3 the General Plan of the City of Rialto, and the FI zone of the Renaissance Specific Plan.
4 The proposed parcel is consistent and meets the minimum lot area, lot width, and lot
 depth as required by the FI zone of the Renaissance Specific Plan.

- 5 3. The site for the proposed use is adequate in size, shape, topography, accessibility
6 and other physical characteristics to accommodate the proposed use in a manner
7 compatible with existing land uses.

8 *This finding is supported by the following facts:*

9 The Site contains 2.98 acres, is fairly level, and adjacent to a major arterial street and a
10 secondary arterial street, which will be able to accommodate the proposed use. The
11 development will have two (2) points of access via two (2) driveways connected directly to
12 Casmalia Street. The easterly driveway along Casmalia Street will be limited to right-
 in/right-out access only, while the westerly driveway along Casmalia Street will be full
 access.

- 13 4. That the site is physically suitable for the proposed density of development.

14 *This finding is supported by the following facts:*

15 The Project will subdivide the site into three (3) parcels of land, to facilitate the development
16 of a commercial retail center. The Project meets all criteria on Table 3-5 (Development
17 Standards), of the Renaissance Specific Plan, and the proposed use is compatible with the
18 zone and surrounding uses. The Development review Committee (DRC) has reviewed the
19 Development to ensure compliance with Section 3 (Development Criteria) of the
20 Renaissance Specific Plan. Therefore, the site is physically suitable and has been designed
21 to accommodate the proposed density.

- 22 5. That the design of the land division is not likely to cause substantial environmental
23 damage or substantially injure fish or wildlife or their habitat.

24 *This finding is supported by the following facts:*

25 The subject site is 2.98 acres of vacant land within an urbanized area surrounded by other
26 development with except of the adjacent parcel. Furthermore, the potential
27 environmental impacts of the development were previously analyzed (Environmental
28 Assessment Review No. 2018-0096) in accordance with the requirements of the
 California Environmental Quality Act (CEQA). Based on the findings and recommended
 mitigation measures within the Initial Study, staff determined that the project would not
 have an adverse impact on the environment, provided implementation of mitigation
 measures.

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2 6. That the design of the land division is not likely to cause serious public health
3 problems.

4 *This finding is supported by the following facts:*

5 The Project is consistent with the General Plan and the Freeway Incubator (FI) zone
6 within the Renaissance Specific Plan. The Development Review Committee (DRC) has
7 reviewed and conditioned the Precise Plan of Design to ensure that the design of the
8 Project meets the City's Design Guidelines. The Development Project is consistent with
9 the surrounding developments. The Project is not expected to negatively impact any uses,
10 construction impacts will be limited to Rialto's allowable construction hours in Section
11 9.50.070 of the Rialto Municipal Code, as well as enforcement of regular watering of the
12 site to limit airborne dust and other particulate matter. As a result, the Project is not
13 likely to cause any public health problems.

14 7. That the design of the land division or proposed improvements will not conflict with
15 easements, acquired by the public at large, for access through or use of, property
16 within the proposed land division.

17 *This finding is supported by the following facts:*

18 Upon completion of the Final Map and the required street dedication, and landscape
19 easements will be recorded and approved by the Public Works Department. Additionally,
20 all required site adjacent improvements will be reviewed and approved by the Public Works
21 Department and will be constructed prior to the issuance of the Certificate of Occupancy.

22 **SECTION 3.** Potential environmental impacts of the proposed Development, including the
23 Project, were previously analyzed (Environmental Assessment Review No. 2018-0096) in
24 accordance with the requirements of the California Environmental Quality Act (CEQA) and a
25 Mitigated Negative Declaration was adopted by the Planning Commission on November 28, 2018
26 and no further environmental review is required.

27 **SECTION 4.** The Planning Commission hereby approves TPM No. 20154 to allow the
28 subdivision of one 2.98 acre parcel of land into three (3) parcels of land to facilitate the
development commercial retail center located at the southwest corner of Casmalia Street and Ayala
Drive within the Freeway Incubator (FI) zone of the Renaissance Specific Plan, in accordance with
the plans and application on file with the Planning Division, subject to the following conditions:

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1. TPM No. 20154 is granted allowing the subdivision of one 2.98 acre parcel of land (APN: 1133-521-04) into three (3) parcels of land to facilitate the development commercial retail center located at the southwest corner of Casmalia Street and Ayala Drive, as shown on the plans submitted to the Planning Division on August 1, 2019, and as approved by the Planning Commission subject to all requirements of the Freeway Incubator (FI) zone of the Renaissance Specific Plan. If the Conditions of Approval specified herein are not satisfied or otherwise completed, the Project shall be subject to revocation.
2. City inspectors shall have access to the Site to reasonably inspect the Site during normal working hours to assure compliance with these conditions and other codes.
3. The applicant shall defend, indemnify and hold harmless the City of Rialto, its agents, officers, or employees from any claims, damages, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul any approval of the City, its advisory agencies, appeal boards, or legislative body concerning TPM No. 20154. The City will promptly notify the applicant of any such claim, action, or proceeding against the City, and the parties will cooperate fully in the defense.
4. In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this Project, if any, are subject to protest by the applicant at the time of approval or conditional approval of the Project or within 90 days after the date of the imposition of the fees, dedications, reservations, or exactions imposed on the Project.
5. All conditions of approval for TPM No. 20154 shall be completed to the satisfaction of the City Engineer prior to the issuance of a Certificate of Occupancy.
6. The Applicant shall pay all applicable development impact fees in accordance with the City of Rialto fee ordinance in effect at the time the fees are due, prior to the issuance of any building permits related to the Project.
7. The Applicant shall submit street improvement plans prepared by a registered California civil engineer to the Engineering Division for review. Unless otherwise approved, street improvement plans shall be approved concurrently with any other public improvement plans associated with the project. The plans shall be approved by the City Engineer prior to the issuance of any building permits.
8. The Applicant shall submit landscape and irrigation system improvement plans for review and approval by the City Engineer. The median, parkway, or landscape easement irrigation system shall be separately metered from the on-site private landscaping to be maintained by the developer, for future use by the City upon acceptance of the median, parkway, and/or landscape easement landscaping by the City.

1 The plans shall be approved concurrently with the street improvement plans for the
2 median and prior to issuance of a building permit, unless otherwise allowed by the City
3 Engineer.

- 4 9. All median, parkway, and/or landscaping easement landscaping shall be guaranteed for a
5 period of one-year from the date of acceptance by the City Engineer. Any landscaping
6 that fails during the one year landscape maintenance period shall be replaced with
7 similar plant material to the satisfaction of the City Engineer, and shall be subject to a
8 subsequent one-year landscape maintenance period.
- 9 10. All new street lights shall be installed on an independently metered, City-owned
10 underground electrical system. The developer shall be responsible for applying with
11 Southern California Edison ("SCE") for all appropriate service points and electrical
12 meters. New meter pedestals shall be installed and electrical service paid by the
13 developer, until such time as the improvements have been accepted and the underlying
14 property is annexed into LLMD 2.
- 15 11. The applicant shall apply for annexation of the underlying property into City of Rialto
16 Landscape and Lighting Maintenance District No. 2 ("LLMD 2"). An application fee of
17 \$5,000 shall be paid at the time of application. Annexation into LLMD 2 is a condition
18 of acceptance of any new median, parkway, and/or landscaping easement landscaping in
19 the public right-of-way, or any public street lighting improvements, to be maintained by
20 the City of Rialto. Due to required Public Hearing meetings, the annexation may take
21 months and as such the applicant is advised to apply for Special District annexation
22 early in the process to avoid delays at Certificate of Occupancy.
- 23 12. Any improvements within the public right-of-way require a City of Rialto
24 Encroachment Permit.
- 25 13. Construct asphalt concrete paving for streets in two separate lifts. The final lift of asphalt
26 concrete pavement shall be postponed until such time that on-site construction activities
27 are complete. Unless the City Engineer provides prior authorization, paving of streets in
28 one lift prior to completion of on-site construction is not allowed. If City Engineer
authorized, completion of asphalt concrete paving for streets prior to completion of on-
site construction activities, requires additional paving requirements prior to acceptance
of the street improvements, including, but not limited to: removal and replacement of
damaged asphalt concrete pavement, overlay, slurry seal, or other repairs.
14. All street cuts for utilities shall be repaired in accordance with City Standard SC-231
within 72 hours of completion of the utility work; and any interim trench repairs shall
consist of compacted backfill to the bottom of the pavement structural section followed
by replacement of standard base course material in accordance with the Standard
Specifications for Public Work Construction ("Greenbook"). The base course material
shall be placed the full height of the structural section to be flush with the existing

1 pavement surface and provide a smooth pavement surface until permanent cap paving
2 occurs using an acceptable surface course material.

- 3 15. The development of the Site is subject to the requirements of the National Pollution
4 Discharge Elimination System (NPDES) Permit for the City of Rialto, issued by the
5 Santa Ana Regional Water Quality Control Board, Board Order No. R8-2010-0036.
6 Pursuant to the NPDES Permit, the Applicant shall ensure development of the site
7 incorporates post-construction Best Management Practices (“BMPs”) in accordance
8 with the Model Water Quality Management Plan (“WQMP”) approved for use for the
9 Santa Ana River Watershed. The Applicant is advised that applicable Site Design
10 BMPs will be required to be incorporated into the final site design, pursuant to a site
11 specific WQMP submitted to the City Engineer for review and approval.
- 12 16. An accessible pedestrian path of travel shall be provided throughout the site, as required
13 by applicable state and federal laws.
- 14 17. The Applicant shall connect the development to the City of Rialto sewer system and
15 apply for a sewer connection account with Rialto Water Services.
- 16 18. The Applicant shall submit sewer improvement plans prepared by a California registered
17 civil engineer to the Engineering Division. The plans shall be approved by the City
18 Engineer prior to issuance of any building permits.
- 19 19. All sewer mains constructed by the applicant and to become part of the public sewer
20 system shall be pressure tested and digitally video recorded by the City’s wastewater
21 system operator (Veolia) prior to acceptance of the sewer system for maintenance by the
22 City. The developer shall be responsible for all costs associated with testing and
23 inspection services. Any defects of the sewer main shall be removed, replaced, or
24 repaired to the satisfaction of the City Engineer prior to acceptance.
- 25 20. The Applicant shall provide certification from Rialto Water Services demonstrating that
26 all wastewater service accounts have been documented, prior to the issuance of a
27 Certificate of Occupancy.
- 28 21. In accordance with Section 8.08 – Refuse Collection of the City of Rialto Municipal
Code, any and all refuse (including recycling) generation and disposal due to
construction activities must adhere to City Council approved franchise agreements. Only
City Council approved waste and recycling franchisee vendors can be used to disposed
of generated construction waste and recyclable materials.
22. The Applicant shall submit a Precise Grading Plan prepared by a California registered
civil engineer to the Engineering Division for review and approval. The Precise
Grading Plan shall be approved by the City Engineer prior to issuance of a building
permit.

- 1 23. The Applicant shall submit a Water Quality Management Plan identifying site-specific
2 Best Management Practices (“BMPs”) in accordance with the Model Water Quality
3 Management Plan (“WQMP”) approved for use for the Santa Ana River Watershed.
4 The site specific WQMP shall be submitted to the City Engineer for review and
5 approval with the Precise Grading Plan. A WQMP Maintenance Agreement shall be
6 required, obligating the property owner(s) to appropriate operation and maintenance
7 obligations of on-site BMPs constructed pursuant to the approved WQMP. The WQMP
8 and Storm Water BMP Transfer, Access, and Maintenance Agreement shall be
9 approved by the City Engineer and recorded by the City Clerk prior to issuance of a
10 Certificate of Occupancy.
- 11 24. A Notice of Intent (NOI) to comply with the California General Construction
12 Stormwater Permit (Water Quality Order 2009-0009-DWQ as modified September 2,
13 2009) is required via the California Regional Water Quality Control Board online
14 SMARTS system. A copy of the executed letter issuing a Waste Discharge
15 Identification (WDID) number shall be provided to the City Engineer prior to issuance
16 of a grading or building permit. The Applicant’s contractor shall prepare and maintain a
17 Storm Water Pollution Prevention Plan (“SWPPP”) as required by the General
18 Construction Permit. All appropriate measures to prevent erosion and water pollution
19 during construction shall be implemented as required by the SWPPP.
- 20 25. A Geotechnical/Soils Report prepared by a California registered Geotechnical Engineer
21 shall be required for and incorporated as an integral part of the grading plan for the
22 proposed development. A copy of the Geotechnical/Soils Report shall be submitted to
23 the Engineering Division with the first submittal of the Precise Grading Plan.
- 24 26. The Applicant shall provide pad elevation certifications for all building pads in
25 conformance with the approved Precise Grading Plan, to the Engineering Division prior
26 to construction of any building foundation.
- 27 27. Prior to issuance of a certificate of occupancy or final City approvals, the Applicant shall
28 demonstrate that all structural BMP’s have been constructed and installed in
conformance with approved plans and specifications, and as identified in the approved
WQMP.
- 28 28. All stormwater runoff passing through the Site shall be accepted and conveyed across
the property in a manner acceptable to the City Engineer. For all stormwater runoff
falling on the site, on-site detention or other facilities approved by the City Engineer
shall be required to contain the increased stormwater runoff generated by the
development of the property. Provide a hydrology study to determine the volume of
increased stormwater runoff due to development of the site, and to determine required
stormwater runoff mitigation measures for the proposed development. Final detention
basin sizing and other stormwater runoff mitigation measures shall be determined upon
review and approval of the hydrology study by the City Engineer and may require
redesign or changes to site configuration or layout consistent with the findings of the

1 final hydrology study. The volume of increased stormwater runoff to retain on-site shall
2 be determined by comparing the existing "pre-developed" condition and proposed
3 "developed" condition, using the 100-year frequency storm.

4 29. Direct release of on-site nuisance water or storm-water runoff shall not be permitted to
5 the adjacent public streets. Provisions for the interception of nuisance water from
6 entering adjacent public streets from the Project Site shall be provided through the use of
7 a minor storm drain system that collects and conveys nuisance water to landscape or
8 parkway areas, and in only a storm-water runoff condition, pass runoff directly to the
9 streets through parkway or under sidewalk drains.

10 30. Any utility trenches or other excavations within existing asphalt concrete pavement of
11 off-site streets required by the proposed development shall be backfilled and repaired in
12 accordance with City of Rialto Standard Drawings. The Applicant shall be responsible
13 for removing, grinding, paving and/or overlaying existing asphalt concrete pavement of
14 off-site streets as required by and at the discretion of the City Engineer, including
15 additional pavement repairs to pavement repairs made by utility companies for utilities
16 installed for the benefit of the proposed development (i.e. Fontana Water Company,
17 Southern California Edison, Southern California Gas Company, Time Warner, Verizon,
18 etc.). Multiple excavations, trenches, and other street cuts within existing asphalt
19 concrete pavement of off-site streets required by the proposed development may require
20 complete grinding and asphalt concrete overlay of the affected off-site streets, at the
21 discretion of the City Engineer. The pavement condition of the existing off-site streets
22 shall be returned to a condition equal to or better than existed prior to construction of the
23 proposed development.

24 31. In accordance with Chapter 15.32 of the City of Rialto Municipal Code, all existing
25 electrical distribution lines of sixteen thousand volts or less and overhead service drop
26 conductors, and all telephone, television cable service, and similar service wires or lines,
27 which are on-site, abutting, and/or transecting, shall be installed underground. Utility
28 undergrounding shall extend to the nearest off-site power pole; no new power poles shall
be installed unless otherwise approved by the City Engineer. A letter from the owners
of the affected utilities shall be submitted to the City Engineer prior to approval of the
Grading Plan, informing the City that they have been notified of the City's utility
undergrounding requirement and their intent to commence design of utility
undergrounding plans. When available, the utility undergrounding plan shall be
submitted to the City Engineer identifying all above ground facilities in the area of the
project to be undergrounded.

32. Upon approval of any improvement plan by the City Engineer, the improvement plan
shall be provided to the City in digital format, consisting of a DWG (AutoCAD drawing
file), DXF (AutoCAD ASCII drawing exchange file), and PDF (Adobe Acrobat)
formats. Variation of the type and format of the digital data to be submitted to the City
may be authorized, upon prior approval by the City Engineer.

- 1 33. The original improvement plans prepared for the proposed development and approved
2 by the City Engineer (if required) shall be documented with record drawing "as-built"
3 information and returned to the Engineering Division prior to issuance of a final
4 certificate of occupancy. Any modifications or changes to approved improvement plans
5 shall be submitted to the City Engineer for approval prior to construction.
- 6 34. All proposed trees within the public right-of-way and within 10 feet of the public
7 sidewalk and/or curb shall have City approved deep root barriers installed, as required
8 by the City Engineer.
- 9 35. A Tentative Parcel Map shall be prepared by a California registered Land Surveyor or
10 qualified Civil Engineer and submitted to the Engineering Division for review and
11 approval. A Title Report prepared for subdivision guarantee for the subject property, the
12 traverse closures for the existing parcel and all lots created therefrom, and copies of
13 record documents shall be submitted with the Parcel Map to the Engineering Division as
14 part of the review of the Map. The Tentative Parcel Map shall be approved by the City
15 Council prior to issuance of any building permits.
- 16 36. All damaged, destroyed, or modified pavement legends, traffic control devices, signing,
17 striping, and street lights, associated with the proposed development shall be replaced as
18 required by the City Engineer prior to issuance of a Certificate of Occupancy.
- 19 37. The applicant shall submit traffic striping and signage plans prepared by a California
20 registered civil engineer, for review and approval by the City Engineer. All required
21 traffic striping and signage improvements shall be completed concurrently with required
22 street improvements, to the satisfaction of the City Engineer, and prior to issuance of a
23 building permit final.
- 24 38. The applicant shall modify the traffic signal at Casmalia Street/Ayala Drive to add an
25 eastbound right-turn overlap phase to the satisfaction of the City Engineer, and prior to
26 issuance of a building permit final.
- 27 39. The applicant shall modify the striping on Ayala Drive to extend the northbound left
28 turn lanes providing additional left turn storage to the satisfaction of the City Engineer,
and prior to issuance of a building permit final.
40. The applicant shall install Class II thermoplastic Bicycle Facilities as referenced on the
San Bernardino County Non-Motorized Transportation Plan – May 2014, Figure 5.41,
Sheet 5-134 along the entire project frontage to the satisfaction of the City Engineer,
prior to issuance of a building permit final.
41. The applicant shall install "No Stopping Anytime" R26(S) (CA) signage along the entire
frontage along Casmalia Street and Ayala Drive to the satisfaction of the City Engineer,
prior to issuance of a building permit final.

- 1 42. The developer shall be responsible for coordinating with Omnitrans regarding the
2 location of existing, proposed, and future bus stops along the property frontage of all
3 public streets. The developer shall design street and sidewalk improvements in
4 accordance with the latest Omnitrans bus stop guidelines and in compliance with current
5 accessibility standards pursuant to the Americans with Disabilities Act (ADA)
6 requirements. The developer shall design all bus stops to accommodate the Omnitrans
7 Premium Shelters. Prior to Certificate of Occupancy, the developer shall submit to
8 Public Works verification from Omnitrans acknowledging concurrence with the
9 existing, proposed, and future bus stop improvements in conformance with the Premium
10 Shelter design guidelines
- 11 43. Construction signing, lighting and barricading shall be provided during all phases of
12 construction as required by City Standards or as directed by the City Engineer. As a
13 minimum, all construction signing, lighting and barricading shall be in accordance with
14 Part 6 "Temporary Traffic Control" of the 2012 California Manual on Uniform Traffic
15 Control Devices, or subsequent editions in force at the time of construction.
- 16 44. The applicant shall pay the Project Fair Share Cost established by the approved traffic
17 impact analysis and as recommended by the Transportation Commission on July 12,
18 2018.
- 19 45. The applicant shall install a 4-inch conduit within the parkway area along the entire
20 frontage of Casmalia Street and Ayala Drive to allow for future use.
- 21 46. Construct or pay in-lieu/fair share contribution fees for a 14-foot wide raised and
22 landscaped median island for Casmalia Street along frontage of property, as required
23 by the Renaissance Specific Plan and approved by Public Works. The median nose
24 width shall be constructed at 4 feet wide and shall have stamped concrete. The left
25 turn pockets shall be designed in accordance with Section 405 of the current edition
26 of the Caltrans Highway Design Manual, and/or as approved by the City Engineer
- 27 47. Dedicate additional right-of-way along the entire frontage as may be required to
28 provide a property line at ultimate right-of-way of 50 feet from street centerline along
Casmalia Street and provide a corner cutback at the corner of Casmalia Street and
Ayala Drive as required by the Renaissance Specific Plan. Nothing shall be
constructed or planted in the corner cut-off area which does or will exceed 30 inches
in height required to maintain an appropriate corner sight distance.
48. Dedicate a 10-foot-wide landscape easement along the project frontage of Casmalia
Street in accordance with the Renaissance Specific Plan. No permanent structures
including retention basins, underground chambers, etc. are allowed to be constructed
within this easement.
49. Remove existing, and construct new pavement with a minimum pavement section of
5 inches asphalt concrete pavement over 6 inches crushed aggregate base with a

1 minimum subgrade of 24 inches at 95% relative compaction, or equal, along the
2 entire frontage of Casmalia Street in accordance with City of Rialto Standard
3 Drawings. The pavement section shall be determined using a Traffic Index (TI) of 10.
4 The pavement section shall be designed by a California registered Geotechnical
5 Engineer using "R" values from the project site and submitted to the City Engineer
6 for approval. Alternatively, depending on the existing street condition and as
7 approved by the City Engineer, a street overlay, slurry seal, or other repair can be
8 performed to preserve recent pavement improvements.

9 50. Construct an 8-inch curb and gutter, located at 36 feet south of centerline along the
10 entire frontage of Casmalia Street in accordance with City of Rialto Standard
11 Drawings.

12 51. Construct a 6-foot-wide Americans with Disabilities Act (ADA) compliant sidewalk
13 located 8 feet behind curb along the entire frontage of Casmalia Street in accordance
14 with City of Rialto Standard Drawings.

15 52. Construct a new underground electrical system for public street lighting
16 improvements along Casmalia Street and Ayala Drive. New marbelite street light
17 poles with LED light fixtures shall be installed as approved by the City Engineer, in
18 accordance with City of Rialto Standard Drawings

19 53. Construct any proposed commercial driveway approaches in accordance with City of
20 Rialto Standard Drawings. The driveway approach shall be constructed so the top of
21 X is 5 feet from the property line, or as otherwise approved by the City Engineer.
22 Nothing shall be constructed or planted in the corner cut-off area which does or will
23 exceed 30 inches in height required to maintain an appropriate corner sight distance

24 54. Construct a curb ramp meeting current California State Accessibility standard along
25 both sides of a proposed commercial driveway approach. The developer shall ensure
26 that an appropriate path of travel, meeting ADA guidelines, is provided across the
27 driveway, and shall adjust the location of the access ramps, if necessary, to meet
28 ADA guidelines, subject to the approval of the City Engineer. If necessary, additional
pedestrian and sidewalk easements shall be provided on-site to construct a path of
travel meeting ADA guidelines

55. Construct a curb ramp meeting current California State Accessibility standard at the
corner of Casmalia Street and Ayala Drive, in accordance with City of Rialto
Standard Drawings.

56. Dedicate additional right-of-way along the entire frontage as may be required to provide
a property line at the ultimate right-of-way of 50 feet from street centerline along Ayala
Drive and provide a corner cutback at the corner of Casmalia Street and Ayala Drive as
required by the Renaissance Specific Plan. Nothing shall be constructed or planted in

1 the corner cut-off area which does or will exceed 30 inches in height required to
2 maintain an appropriate corner sight distance.

- 3 57. Dedicate a 10 foot wide landscape easement along the project frontage of Ayala
4 Drive in accordance with the Renaissance Specific Plan. No permanent structures
5 including retention basins, underground chambers, etc. are allowed to be constructed
6 within this easement.
- 7 58. Reconstruct any broken or damaged pavement with a minimum pavement section of 5
8 inches asphalt concrete pavement over 6 inches crushed aggregate base with a
9 minimum subgrade of 24 inches at 95% relative compaction, or equal, along the
10 entire frontage of Ayala Drive in accordance with City of Rialto Standard Drawings.
11 The pavement section shall be determined using a Traffic Index (TI) of 10. The
12 pavement section shall be designed by a California registered Geotechnical Engineer
13 using "R" values from the project site and submitted to the City Engineer for
14 approval. Alternatively, depending on the existing street condition and as approved
15 by the City Engineer, a street overlay, slurry seal, or other repair can be performed
16 to preserve recent pavement improvements.
- 17 59. Reconstruct any broken, chipped, damaged, or missing 8-inch curb and gutter along the
18 entire frontage in accordance with City of Rialto Standard Drawings.
- 19 60. Reconstruct a 6 foot wide Americans with Disabilities Act (ADA) compliant sidewalk
20 located 8 feet behind curb along the entire frontage of Ayala Drive in accordance with
21 City of Rialto Standard Drawings.
- 22 61. Submit sewer improvement plans prepared by a California registered civil engineer to
23 the Engineering Division. The plans shall be approved by the City Engineer prior to
24 issuance of any building permits
- 25 62. The developer is advised that domestic water service is provided by West Valley
26 Water District. The developer shall be responsible for coordinating with West Valley
27 Water District and complying with all requirements for establishing domestic water
28 service to the property
63. Prior to commencing with any grading, the required erosion and dust control
measures shall be in place. In addition, the following shall be included if not already
identified:
- a. Perimeter screened fencing
 - b. Contractor shall install AQMD information signage including contact
information along Casmalia Street and Ayala Drive. "PROJECT NAME,
WDID NO., IF YOU SEE DUST COMING FROM THIS PROJECT CALL:
NAME (XXX) XXX-XXXX, IF YOU DO NOT RECEIVE A RESPONSE,
PLEASE CALL THE AQMD AT 1-800-CUT-SMOG/1-800-288-7664"

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2 64. Remove all graffiti within 24 hours pre-construction, during construction, and after a
Certificate of Occupancy is issued

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4 65. Applicant shall comply with all conditions of approval listed in Conditional
Development Permit Nos. 2018-0036, 2018-0037, 2018-0038, 2018-0039, and 2018-
5 0017, to the extent they are not in conflict or inconsistent with the conditions of
approval stated herein.

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7 66. Approval of TPM No. 20154 shall be granted for a period of twenty-four (24) months
from the effective date of this resolution. An extension of time for TPM No. 20154
8 may be granted by the Planning Commission for a period or periods not to exceed a
total of thirty-six (36) months. An application for extension together with the
9 required fee shall be filed with the Planning Division prior to the expiration date of
TPM No. 20154.

10
11 SECTION 5. The Chairman of the Planning Commission shall sign the passage and
12 adoption of this resolution and thereupon the same shall take effect and be in force.

13 PASSED, APPROVED AND ADOPTED this 14th day of August 2019.

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16 
17 JOHN FEUKERT, CHAIR
18 CITY OF RIALTO PLANNING COMMISSION

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF RIALTO)
4

5 I, Adrianna Martinez, Administrative Assistant of the City of Rialto, do hereby certify that
6 the foregoing Resolution No. 19-45 was duly passed and adopted at a regular meeting of the
7 Planning Commission of the City of Rialto held on the 14th day of August 2019.

8 Upon motion of Planning Commissioner Jerry Gutierrez, second by Commissioner Dale
9 Estvander the foregoing Resolution No. 19-45 was duly passed and adopted.

10
11 Vote on the motion:

12 AYES: 7

13 NOES: 0

14 ABSENT:

15 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
16 Rialto this 14th day of August 2019.


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20 
Adrianna Martinez, Administrative Assistant

EXHIBIT "C"

TRACT NO.

(Subdivision/Unit No.)

SIRWIN ENTERPRISES LLC

(Subdivider)

ENVIRONMENTAL WARRANTY

As a condition precedent to acceptance of the dedications and public improvements to be conveyed by the above-named Subdivider to the City of Rialto for the above-referenced Subdivision, Subdivider hereby warrants to the City of Rialto that:

1. Neither the property to be dedicated nor Subdivider are in violation of any environmental law, and neither the property to be dedicated nor the Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

2. Neither Subdivider nor any other person with Subdivider's permission to be upon the property to be dedicated has used, generated, manufactured, produced, or released, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this warranty, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

3. Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

4. Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any Hazardous Substance on the property to be dedicated.

5. All persons executing this warranty hereby represent and warrant to the City of Rialto, and Subdivider hereby represents and warrants, that the signators hereto have the legal power, right and authority to execute this warranty on behalf of the Subdivider and that the signators hereto have sufficient knowledge or expertise, either personally, through reasonable inspection and investigation of the property, or through reasonable reliance upon the investigation and professional opinion of Subdivider's environmental experts, to make the representations herein, and that no consent of any other party is required to execute this warranty and make the representations herein on behalf of the Subdivider to the City of Rialto.

Each of the undersigned persons declares under penalty of perjury that the foregoing is true and correct.

Dated: June 22, 2020

SUBDIVIDER*

By:  _____

*Proof of authorization for Subdivider's signatures is required to be submitted concurrently with this environmental warranty.