

## DEPOSIT AND REIMBURSEMENT AGREEMENT

**THIS DEPOSIT AND REIMBURSEMENT AGREEMENT** (this “Deposit Agreement”), dated as of July 1, 2024 for identification purposes only, is by and between the City of Rialto, California (the “City”) and Lewis-Hillwood Rialto Company, LLC, a Delaware limited liability company (“Lewis”).

### RECITALS

**WHEREAS**, at the request of Lewis, and having received the Petition of AG EHC II (LEN) CA 4, L.P. requesting, among other things, the formation of a community facilities district, the City has determined to initiate proceedings to create a community facilities district designated “City of Rialto Community Facilities District No. 2024-1 (Renaissance) (the “Community Facilities District”) under the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”); and

**WHEREAS**, in accordance with City’s policy regarding use of the Act, Lewis is required to compensate the City for all costs reasonably incurred in the formation of the Community Facilities District and issuance of bonds for the Community Facilities District; and

**WHEREAS**, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district (including the issuance of bonds thereby); and

**WHEREAS**, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest under all of the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53521 of the Act and in the resolution of formation to establish the community facilities district pursuant to Section 53325.1 of the Act (including the issuance of bonds thereby), (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

**WHEREAS**, the City and Lewis desire to enter into this Deposit Agreement in accordance with Section 53314.9 of the Act in order to provide for the advancement of funds by Lewis to be used to pay costs incurred in connection with the formation of the Community Facilities District and issuance of special tax bonds for the Community Facilities District (the “Bonds”), and to provide for the reimbursement to Lewis of such funds advanced, without interest, from the proceeds of the Bonds;

**NOW, THEREFORE,** for and in consideration of the mutual promises and covenants herein contained, the City, Lewis and when formed, the Community Facilities District (each a “Party,” and, collectively, the “Parties”) hereto agree as follows:

**Section 1. The Deposits and Application Thereof.**

(a) Lewis has previously deposited with the City the amount of \$84,000 (the “Initial Deposit”). The City, by its execution hereof, acknowledges receipt of, and accepts, the Initial Deposit.

(b) The Initial Deposit, together with any subsequent deposit required to be made by Lewis pursuant to the terms hereof (collectively, the “Deposits”), are to be used to pay for any costs incurred for any authorized purpose in connection with the formation of the Community Facilities District and the issuance of the Bonds (other than costs, fees and expenses to be paid directly out of the proceeds of the Bonds), including, without limitation, (i) the fees and expenses of any consultants to the City employed in connection with the formation of the Community Facilities District and the issuance of the Bonds, including an engineer, special tax consultant, financial advisor, bond counsel, disclosure counsel and any other consultant reasonably deemed necessary or advisable by the City, (ii) the costs of appraisals, market absorption and/or feasibility studies and other reports reasonably deemed necessary or advisable by the City in connection with the formation of the Community Facilities District and issuance of the Bonds, (iii) the costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other action or proceeding undertaken in connection with the formation of the Community Facilities District and issuance of the Bonds, (iv) reasonable charges for City staff time incurred in connection with the formation of the Community Facilities District and the issuance of the Bonds by the Community Facilities District, including a reasonable allocation of City overhead expense related thereto, and (v) any and all other actual costs and expenses incurred by the City in connection with the formation of the Community Facilities District and the issuance of the Bonds (collectively, the “Initial Costs”). The City may draw upon the Deposits from time to time to pay the Initial Costs.

(c) If, at any time, the unexpended and unencumbered balance of the Deposits is less than \$5,000, the City may request, in writing, that Lewis make an additional deposit in an amount estimated to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. Lewis shall make such additional deposit with the City within one week of the receipt by Lewis of the City’s written request therefor. If Lewis fails to make any such additional deposit within such one week period, the City may cease all work related to the issuance of the Bonds.

(d) The Deposits may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain accurate & detailed records as to the expenditure of the Deposits.

(e) The City shall provide Lewis with a written monthly summary of expenditures made from the Deposits, and the unexpended balance thereof, within ten business days of receipt of the City of a written request therefor submitted by Lewis. The cost of providing any such summary shall be charged to the Deposits.

## **Section 2. Return of Deposits; Reimbursement.**

(a) As provided in Section 53314.9 of the Act, the approval by the qualified electors of the Community Facilities District of the proposed special tax to be levied therein is a condition to the repayment to Lewis of the funds advanced by Lewis pursuant hereto. Therefore, if the qualified electors of the Community Facilities District do not approve the proposed special tax to be levied thereon, the City shall have no obligation to repay Lewis any portion of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the Community Facilities District do not approve the proposed special tax to be levied therein, the City shall return to Lewis any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed special tax.

(b) If proceedings for the issuance of the Bonds are terminated, the City shall, within ten (10) business days after official action by the City or the Community Facilities District to terminate said proceedings, return the then unexpended and unencumbered portion of the Deposits to Lewis, without interest.

(c) If the Bonds are issued by the Community Facilities District, the City shall reimburse Lewis, without interest, for the portion of the Deposits that has been expended or encumbered, said reimbursement to be made within ten business days after the issuance of such Bonds, solely from the proceeds of such Bonds and only to the extent otherwise permitted under the Act. The City shall, within ten business days after the issuance of such Bonds, return the then unexpended and unencumbered portion of the Deposits to Lewis, without interest.

**Section 3. Abandonment of Proceedings.** Lewis acknowledges and agrees that the issuance of the Bonds shall be in the sole discretion of the City. No provision of this Deposit Agreement shall be construed as an agreement, promise or warranty of the City to issue the Bonds.

**Section 4. Deposit Agreement Not Debt or Liability of City.** As provided in Section 53314.9(b) of the Act, this Deposit Agreement does not constitute a debt or liability of the City, but shall constitute a debt and liability of the Community Facilities District upon its formation. The City shall not be obligated to advance any of its own funds to pay Initial Costs or any other costs incurred in connection with the issuance of the Bonds. No member of the City Council of the City and no officer, employee or agent of the City shall to any extent be personally liable hereunder.

**Section 5. Notices.** Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Deposit Agreement from one Party to another (collectively, “Notices”) may be personally delivered, transmitted by electronic communication, e.g. e-mail (with a PDF attachment, if applicable), delivered by overnight courier or deposited with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section. Notices shall be sent as follows:

If to City:

City of Rialto  
150 South Palm Avenue  
Rialto, CA 92376  
Attn: Community Development Director

If to Lewis:

Lewis-Hillwood Rialto Company, LLC  
c/o Lewis Management Corp  
1156 N. Mountain Avenue  
Upland, CA 91786  
Attn: Glen T. Crosby

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the Party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, upon the sender's receipt of an appropriate answer back or other written acknowledgement, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

**Section 6. California Law.** This Deposit Agreement shall be governed and construed in accordance with the laws of the State of California. The Parties shall be entitled to seek any remedy available at law and in equity. All legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California, in an appropriate municipal court in San Bernardino County, or in the United States District Court for the District of California in which San Bernardino County is located.

**Section 7. Successors and Assigns.** This Deposit Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

**Section 8. Counterparts and Signatures.** This Deposit Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. The Parties agree this Deposit Agreement may be executed and/or transmitted by email of a .pdf document or using electronic signature technology (e.g. via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the Party so signing as a paper copy bearing such Party's handwritten signature. The Parties further consent and agree that (1) to the extent a Party signs this Deposit Agreement using electronic signature technology, by clicking "sign", such Party is signing this Deposit Agreement electronically, and (2) the electronic signature(s) appearing on

this Deposit Agreement shall be treated, for purposes of validity, enforceability and admissibility, the same as hand-written signatures.

**Section 9. Other Agreements.** The obligations of Lewis hereunder shall be that of a Party hereto. Nothing herein shall be construed as affecting the City's or Lewis's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development. This Deposit Agreement shall not confer any additional rights, or waive any rights given, by either Party hereto under any development or other agreement to which they are a Party.

**Section 10. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Deposit Agreement or of any of its terms. Reference to section numbers are to sections in this Deposit Agreement, unless expressly stated otherwise.

**Section 11. Interpretation.** As used in this Deposit Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Deposit Agreement shall be interpreted as though prepared jointly by both Parties.

**Section 12. No Waiver.** A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Deposit Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Deposit Agreement.

**Section 13. Modifications.** Any alteration, change or modification of or to this Deposit Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

**Section 14. Severability.** If any term, provision, condition or covenant of this Deposit Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Deposit Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**Section 15. Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Deposit Agreement, and in signing this Deposit Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Deposit Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Deposit Agreement; and, they have freely signed this Deposit Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Deposit Agreement, and without duress or coercion, whether economic or otherwise.

**Section 16 Cooperation.** Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Deposit Agreement including, but not limited to, releases or additional agreements.

**Section 17. Conflicts of Interest.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Deposit Agreement, nor shall any such member, official or employee participate in any decision relating to the Deposit Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

[Signatures on following page]

**IN WITNESS WHEREOF**, the Parties have executed this Deposit Agreement as of the date set forth on the first page hereof.

**CITY OF RIALTO**

By: \_\_\_\_\_  
Name: Michael Milhiser  
Title: Interim City Manager

**LEWIS-HILLWOOD RIALTO COMPANY, LLC,**  
a Delaware limited liability company

By: LEWIS-RIALTO COMPANY, LLC,  
a Delaware limited liability company  
Its Managing Member

By: LEWIS MANAGEMENT CORP.,  
a California corporation  
Its Sole Manager

By: \_\_\_\_\_  
Name: Bryan T. Goodman  
Title: Executive Vice President/Development

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

By: HGI CA INVESTORS, L.P.,  
a California limited partnership  
A Member

By: HGI GP, LLC  
a Texas limited liability company  
Its General Partner

By: \_\_\_\_\_  
Name: Scott Morse  
Title: Executive Vice President

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