



**PUBLIC IMPROVEMENT AGREEMENT**  
[Non-subdivision development]

**by and between**

**CITY OF RIALTO**

**and**

**CROWN ENTERPRISES, LLC,**  
a Michigan limited liability company

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

**AND**

\_\_\_\_\_ **CROWN ENTERPRISES, LLC** \_\_\_\_\_

**Agreement Date:** \_\_\_\_\_

**Developer Name:** CROWN ENTERPRISES, LLC (hereinafter "Developer")

**Project Name:** Truck and Trailer Storage Lot (hereinafter "Project")  
\_\_\_\_\_

**Estimated Total Cost of Improvements:** \$ 185,450.25

(Including \_\_\_\_\_)

**Security:**

**Bond Nos.:** SB240053, SB240054, and SB240055

**Surety:** Cherokee 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:**

<b>CITY:</b>	<b>DEVELOPER:</b>
City Engineer City of Rialto 150 S. Palm Avenue Rialto, CA 92376 Phone: (909) 820-2602	Name: <u>CROWN ENTERPRISES, LLC</u> Address: <u>12225 Stephens Road</u> <u>Warren, MI 48089</u> Phone: <u>(586) 467-1706</u>
<b>CITY PROJECT INSPECTOR:</b>	<b>SURETY:</b>
City of Rialto Public Works Department 335 W. Rialto Avenue Rialto, CA 92376 Phone: (909) 421-7294	Name: <u>Cherokee Insurance Company</u> Address: <u>34200 Mound Road</u> <u>Sterling Heights, MI 48310</u> Phone: <u>(213) 627-8252</u>

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## PUBLIC IMPROVEMENT AGREEMENT

THIS PUBLIC IMPROVEMENT AGREEMENT (this "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 CROWN ENTERPRISES, LLC, a Michigan limited liability company ("Developer").

### RECITALS

A. Developer has presented to City for approval Precise Plan of Design No. PD2019-0036 (the "Entitlements") in connection with a development of a proposed truck and trailer storage lot (the "Project"), located in the City of Rialto, County of San Bernardino, State of California (the "Property"), as described on Exhibit "A", attached hereto and incorporated herein by reference.

B. The Entitlements have been approved, subject to the requirements and conditions for the development of the Property (the "Conditions") as described in Exhibit "B", attached hereto and incorporated herein by reference.

C. In consideration of the approval of the Entitlements by the Planning Commission, Developer desires to enter into this Agreement, whereby Developer promises to install and complete, at Developer's own expense, all the public improvement work required by City in connection with the proposed Project and set forth in the Conditions. Developer has secured this Agreement by improvement security required by the City and approved by the City Engineer and the City Attorney.

D. Developer 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.

E. Developer's agreement to construct and install the Works of Improvement pursuant to this Agreement is a material consideration to City in approving the Project 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, Developer agrees to timely perform all of its obligations as set forth herein.

#### 1. Construction Obligations.

1.1 Works of Improvement. Developer 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 \$185,450.25.

1.2 Acquisition and Dedication of Easements and Rights-of-Way. If any of the Works of Improvement contemplated by this Agreement is to be constructed or installed on land not owned by City or Developer, no construction or installation shall be commenced before:

(a) The acquisition, or payment of the cost of acquisition by City, and dedication of all rights-of-way, easements and other interests in real property for construction and installation of the Works of Improvement, free and clear of all liens and encumbrances; or

(b) The offer of dedication to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Works of Improvement; or

(c) The dedication to, and acceptance by, City of appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or

(d) The issuance by a court of competent jurisdiction pursuant to State Eminent Domain Law of an order of possession. Developer shall comply in all respects with the order of possession. City shall reasonably cooperate with any such efforts.

1.3 Other Obligations Referenced in Conditions of Entitlement Approval. In addition to the foregoing, Developer shall satisfy all of the Conditions of the Entitlements for the Property. The Conditions associated with the Entitlements are included as Exhibit "B" attached hereto.

1.4 Intent of Plans. The intent of the Plans referenced in Section 1.1 is to prescribe a complete work of improvement which Developer 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. Developer shall complete a functional or operable improvement or facility, even though the Plans may not specifically call out all items of work required for Developer'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, Developer 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.

Developer 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 material change shall be made by Developer or its contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.5 RESERVED.

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

1.7 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 Developer or its contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No material field changes performed or proposed by Developer or its contractor shall be binding on City unless approved in writing by the City Engineer. The City and Developer may mutually agree upon changes to the Works of Improvement, subject to the security requirements in Section 4.

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

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

1.10 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 Developer and its contractor.

1.11 Documents Available at the Site. Developer 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.

1.12 Inspection. Developer 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 Developer, or its design engineer, and Developer's contractor(s) regarding the Works of Improvement. Developer 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 Developer'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 Developer'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 Developer 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.

1.13 Compliance with Law; Applicable Standards for Improvements. In addition to the express provisions of this Agreement and the Plans, Developer 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 Developer 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 Developer shall also give all necessary notices and pay all fees and taxes as required by law.

Developer shall construct the improvements in accordance with the City standards in effect at the time of approval of the Entitlements. City reserves the right to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances.

1.14 Suspension of Work. The City Engineer shall have authority to order suspension of the work for failure of the Developer's contractor to comply with law pursuant to Section 1.12. In case of suspension of work for any cause whatsoever, Developer 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.

1.15 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.

1.16 Final Acceptance of Works of Improvement. After Developer's contractor has completed all of the Works of Improvement, Developer 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 Developer or its contractor of such items. After the Developer's contractor has completed these items, the procedure shall then be the same as specified above for the Developer'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 Developer 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. Developer 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.

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

1.18 Developer's Obligation to Warn Public during Construction. Until recordation of the Notice of Acceptance, Developer 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, Developer shall provide forty-eight (48) hours' advance written notice to all neighboring property owners and tenants affected by Developer's operations or construction of the hours, dates and duration of any planned construction activities.

1.19 Injury to Public Improvements, Public Property or Public Utility. Until recordation of the Notice of Acceptance of the Works of Improvement, Developer assumes responsibility for the care and maintenance of, and any damage to, the Works of Improvements. Developer 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 Developer, prior to the recordation of the Notice of Acceptance. Developer 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, Developer 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 Developer has established good cause for an extension. As a condition of such extension, the City Engineer may require Developer 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 Developer 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 Developer's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Developer 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, Developer 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 Developer 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, Developer'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 Developer, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, acts or failures to act of a public agency (including City), including the City's failure to timely process and issue all required permits and approvals, 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 ten (10) days prior to City's receipt of a written notice from Developer or its contractor detailing the grounds for Developer'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), Developer shall use commercially reasonable efforts to 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.

3. Labor.

3.1 Labor Standards. This Agreement is subject to, and Developer 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. Developer 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.*, Developer agrees that Developer, 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. Developer 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. Developer 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 Developer's contractors and subcontractors shall obtain a valid City of Rialto business license prior to performing any work pursuant to this Agreement. Developer 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. Developer 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 Developer executes this Agreement, Developer 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 Developer's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of \$185,450.25 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 \$185,450.25 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 \$ \_-0- \_ 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, Developer 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 \$18,545.00 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 Developer is in default under its payment or performance obligations hereunder or in the event Developer 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 Developer'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 Developer'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 Developer 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 Developer 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 Developer's Liability. While no action of Developer shall be required in order for City to realize on its security under any Security Instrument, Developer 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, Developer 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 Developer. 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. Developer 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 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) Developer 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) Developer 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, Developer has provided a statutory bond, or otherwise as required by applicable law.

(b) City shall release the Maintenance and Warranty Security Instrument upon Developer'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 Developer Responsible for All Costs of Construction. Developer shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement. In the event Developer 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 Developer and City prior to construction of the Works of Improvement.

5.2 Payment to City for Cost of Related Inspection and Engineering Services. Developer 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, Developer 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 Developer 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 an appropriate resolution or resolutions accepting all offers of dedication for the Property, with acceptance to become effective upon completion and acceptance by City of the Works of Improvement.

7. Warranty of Work. Developer 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, Developer, 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 Developer 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 Developer. 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 Developer. Default by Developer shall include, but not be limited to:

- (a) Subject to Sections 2.2 and 2.3, Developer's failure to timely commence construction of Works of Improvement under this Agreement;
- (b) Subject to Sections 2.2 and 2.3, Developer's failure to timely complete construction of the Works of Improvement;
- (c) Subject to Sections 2.2 and 2.3, Developer's failure to perform substantial construction work for a period for 20 consecutive calendar days after commencement of the work;
- (d) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within 30 days;
- (e) The commencement of a foreclosure action against the Project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or
- (f) Developer'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 Developer'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 Developer. 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 Developer'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 Developer fails to cure any default under this Agreement within 20 days after the City mails a notice of such default to the Developer and the Developer's surety, Developer authorizes the City to perform the obligation for which Developer 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 Developer. In such event, City, without liability for doing so, may complete the Works of Improvement using any of Developer'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 Developer's failure to comply with the terms of this Agreement constitutes Developer's consent for the City to file a notice of violation against all the lots in the Project, or to rescind or otherwise revert the Project to acreage. Developer specifically recognizes that the determination of whether a reversion to acreage or rescission of the Project constitutes an adequate remedy for default by the Developer 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 Developer hereunder, the Developer agrees that the choice

of remedy or remedies for Developer'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 Developer fails to perform any obligation under this Agreement, Developer 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 Developer'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 Developer 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 Developer.

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 Developer, its agents, employees, contractors and subcontractors in the performance of this Agreement. Developer 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 Developer, 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 Project, 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 Developer 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 Developer shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, Developer 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 Developer 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.

Developer shall reimburse the City for all reasonable 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. Developer's Indemnity of Project Approval. Developer 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 Project. The City shall promptly notify the Developer 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 Developer of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the Developer 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. Developer shall not be required to pay or perform any settlement unless the settlement is approved by the Developer.

11. Insurance Requirements.

11.1 Developer, at Developer'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 combined single limit of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, personal injury, and property damage arising out of or in connection with the activities of Developer and its contractors and subcontractors in performance of the work under this Agreement. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001) and shall, in addition to the other coverages specified in this subsection, include coverage for the following:

- (i) Premises-operations; including X, C, and U coverage;
  - (ii) Owners' and contractors' protection;
  - (iii) Independent contractors;
  - (iv) Blanket contractual;
  - (v) Ongoing operations;
  - (vi) Products -completed operations hazard; and
  - (vii) Personal and advertising injury
- (b) Commercial Business Auto policy with a minimum \$1 million per occurrence, combined single limit, for bodily injury and property damage, providing all of the following minimum coverage:
- (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 Developer:
- (i) This policy shall provide coverage for Workers' Compensation (Coverage A); and
  - (ii) This policy shall provide coverage for \$1,000,000 Employers' Liability (Coverage B).
  - (iii) Pursuant to Labor Code section 1861, Developer 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."
  - (iv) Developer shall cause each contractor and subcontractor to provide adequate Workers' Compensation and Employer's Liability Insurance for the protection of employees not otherwise protected.

- (v) Prior to commencement of work, the Developer 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 Commercial General Liability and Commercial Vehicle/Automotive Liability policies are to contain or be endorsed to contain the following provisions:
    - a. Additional Insureds. The City of Rialto, its officials, officers, employees, agents and independent contractors shall be named as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations.
    - b. Primary Insurance. For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City of Rialto, its officials, officers, employees, agents and independent contractors. Any insurance or self-insurance maintained by the City of Rialto, its officials, officers, employees, agents and independent contractors shall be excess of the Developer's insurance and shall not contribute with it. This endorsement is not applicable to the Commercial Vehicle/Automotive Liability Policy.
    - c. Waiver of Subrogation. Endorsements waiving all rights of subrogation against the City of Rialto, its officials, officers, employees, agents and independent contractors shall be provided.
  - (ii) The Workers' Compensation policy shall be endorsed to waive all rights of subrogation against the City of Rialto, its officials, officers, employees, agents and independent contractors.
- (e) Other Insurance Requirements. All policies required under this Agreement shall contain provisions stating that such policies cannot be canceled or reduced except on at least thirty (30) days' prior written notice to Developer ten (10) days' notice for cancellation due to non-payment). Developer further agrees to:
  - (i) provide to City copies of any notices relating to cancellation or reduction of insurance within two (2) days of receipt; and

- (ii) cause all certificates of insurance to include language indicating that the issuers or producers of such policies will endeavor to provide copies of any such notices directly to City.
- (f) Commencement of Work. Developer shall not commence work under this Agreement until Developer has obtained all insurance required pursuant to this Section, and such insurance has been approved by City; nor shall Developer allow any contractor or subcontractor to commence work on the Improvements until all similar insurance required of the contractor or subcontractor has been obtained. Certificates, endorsements, and where applicable, full copies of policies shall be maintained on file with the City Clerk.
- (g) Higher Limits. If Developer maintains higher limits than the minimums specified in this Section 11, the City requires and shall be entitled to coverage for the higher limits maintained by Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- (h) Insurer Rating; Acceptability. Except as set forth otherwise herein, the policies required by this Section shall be issued by a California-admitted insurer with a rating of at least a "B+; VII" in the latest edition of Best's Insurance Guide. A Commercial General Liability policy issued by an insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers ("LASLI") will be acceptable, if no coverage from an admitted insurer can be obtained by Developer, and further provided that such insurer maintains a Best's rating of at least "A-; X" and remains on the LASLI during the term hereof. Workers' Compensation coverage issued by the State Compensation Insurance Fund shall be acceptable if no other coverage can be obtained by Developer, and further provided such insurer remains admitted in California and is otherwise financially acceptable to City.
- (i) Deductibles. Any deductibles or self-insured retentions must be declared in writing by Developer to City and subsequently approved by City prior to its execution of this Agreement and prior to commencement of any work hereunder. At City's option, Developer shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Developer shall procure a bond guaranteeing payment of losses and expenses.
- (j) Proof of Coverage. Developer shall submit to the City original certificates of insurance and endorsements evidencing the coverages required by this Section. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all insurance policies at any time and/or to require Developer to provide reports or status updates to evidence compliance of its contractors and subcontractors with the provisions of this Section. Developer's insurance company(ies) shall mail all required certificates of insurance and endorsements 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, Developer shall provide City with a written warranty in a form substantially similar to Exhibit "C" attached hereto and incorporated herein by reference, that:

(a) To Developer's knowledge following reasonable investigation, neither the property to be dedicated nor Developer are in violation of any environmental law, and neither the property to be dedicated nor the Developer 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) To Developer's knowledge following reasonable investigation, neither Developer nor any other person with Developer'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) Developer 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) Developer'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 Developer 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) Developer'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 Developer's right, title, and interest in and to the Property and any portion thereof. Developer 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 Developer in the City's approval of this Agreement. In the event the Property is subsequently conveyed by Developer to a third party prior to completion of the Works of Improvement, whereby the third party is intended to assume Developer's responsibilities with regard to this Agreement, (the "Replacement Developer"), the rights and obligations of this Agreement shall transfer to the Replacement Developer; however, the Security Instruments required pursuant to Section 4 of this Agreement, and furnished by Developer as a condition of the City's approval of this Agreement, shall remain Developer's responsibility to maintain until such time as Developer and its Replacement Developer enter into a Transfer and Assignment of Public Improvement Agreement, (the "Transfer Agreement"), to acknowledge the transfer of fee title to the Property from the Developer to its Replacement Developer, and to acknowledge the rights and obligations associated with this Agreement upon the Replacement Developer, including Replacement Developer'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 Developer and its Replacement Developer, and replacement Security Instruments meeting City's approval are furnished by the Replacement Developer, Developer 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 Developer 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 Developer of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

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

13.5 Time of the Essence. Time is of the essence of Developer'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 it 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 Developers 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 FOLLOWING PAGES]***

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

**CITY OF RIALTO, CALIFORNIA**

By: \_\_\_\_\_  
G. Michael Milhiser  
Interim City 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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEVELOPER SIGNATURE PAGE**

**CROWN ENTERPRISES, LLC**  
a Michigan limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**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 \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
*Date Here Insert Name and Title of the Officer*  
personally appeared \_\_\_\_\_  
*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 \_\_\_\_\_  
*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"**

**LEGAL DESCRIPTION**

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

**EXHIBIT "B"**

**ENTITLEMENTS CONDITIONS OF APPROVAL**

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

## EXHIBIT "C"

[PROJECT NAME]

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(Developer)

### ENVIRONMENTAL WARRANTY

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

1. To Developer's knowledge following reasonable investigation, neither the property to be dedicated nor Developer are in violation of any environmental law, and neither the property to be dedicated nor the Developer 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. To Developer's knowledge following reasonable investigation, neither Developer nor any other person with Developer'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. Developer 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. Developer'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 Developer hereby represents and warrants, that the signators hereto have the legal power,

right and authority to execute this warranty on behalf of the Developer 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 Developer'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 Developer to the City of Rialto.

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

Dated: \_\_\_\_\_

**DEVELOPER\***

By: \_\_\_\_\_

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