

RECORDING REQUESTED BY:

City of Rialto

**MAIL TAX STATEMENTS TO
AND WHEN RECORDED MAIL TO:**

Synergistic Properties, LLC
Attn: Lisa Norkunas
Rialto Animal Hospital
1480 N. Ayala Drive
Rialto, CA 92376

This document is exempt from payment of a recording fee, pursuant to Government Code Section 27383.

(SPACE ABOVE THIS LINE FOR RECORDER’S USE)

APNs: 0264-212-39 and 0264-212-40

MAINTENANCE AGREEMENT

This **MAINTENANCE AGREEMENT** (this “Maintenance Agreement”) is made as of September 10, 2019, by and between the **CITY OF RIALTO**, a municipal corporation (the “**City**”), and **Synergistic Properties, LLC**, a California Limited Liability Company (“**Owner**”), with reference to the following:

A. The Owner acquired certain real property located in the City of Rialto, County of San Bernardino, State of California, more fully described in Exhibit “A” attached hereto and incorporated herein by this reference (the “**Site**”).

B. The Owner intends to construct certain improvements on the Site in accordance with a Precise Plan of Design approved by the City (PPD #2018-0100).

D. The City and Owner agree to waive the condition to construct parkway landscaping for annexation into the Lighting and Landscaping Assessment District No. 2 along Ayala Drive because the parties believe that the area can be better maintained by the Owner because of the small area within the public right-of-way and the opportunity for improved aesthetics and lower costs as a result of consolidating maintenance responsibility. The City and Owner agree to adjust the LMD assessments to acknowledge the shift in responsibility for landscape maintenance. The Owner agrees to annex into LLM #2 solely for median island and streetlight maintenance purposes.

E. This Maintenance Agreement is entered into with respect to the maintenance of all improvements on the Site (the “**Improvements**”) following completion by Owner, including the public landscaped areas.

NOW, THEREFORE, Owner and the City hereby agree as follows:

1. Performance of Maintenance.

(a) Owner shall maintain the Improvements in accordance with the Maintenance Standards, as hereinafter defined. The Improvements shall include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on or appurtenant to the Site.

(b) To accomplish the maintenance, Owner shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Maintenance Agreement.

(c) The following standards (“**Maintenance Standards**”) shall be complied with by Owner and its maintenance staff, contractors or subcontractors, to the extent applicable to the Improvements:

1. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

2. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

3. All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

4. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governing

regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

5. The Improvements shall be maintained in conformance and in compliance with the approved Site construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City, and reasonable commercial development maintenance standards for similar projects, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curb line.

6. The Improvements shall be maintained as required by this subsection (c) in good condition and in accordance with the custom and practice generally applicable to comparable industrial developments located in Southern California.

2. Failure to Maintain Improvements. In the event Owner does not maintain the Improvements in the manner set forth herein and in accordance with the Maintenance Standards, the City shall have the right to maintain such improvements, or to contract for the correction of such deficiencies, after written notice to Owner. However, prior to taking any such action, the City agrees to notify Owner in writing if the condition of said improvements do not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies. Upon notification of any maintenance deficiency, Owner shall have forty-five (45) days within which to correct, remedy or cure the deficiency or to commence such correction and diligently pursue such corrections for maintenance requiring more than 45 days to correct.

In the event the Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then City shall have the right to maintain such improvements. Owner agrees to pay City such charges and costs. Until so paid, the City shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Site. Upon recordation of a Notice of Claim of Lien against the Site, such lien shall constitute a lien on the fee estate in and to the Site prior and superior to all after recorded monetary liens. Any such lien shall be subject and subordinate to any lease or sublease of the interest of Owner in the Site or any portion thereof and to any easement affecting the Site or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice of Claim of Lien. Any lien in favor of the City created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien describing such lien as aforesaid, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgage or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of the City created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is

expressly subordinated to such lien. Upon foreclosure of any mortgage or deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure-Owner shall take title to the Site free of any lien imposed by the City that has accrued up to the time of the foreclosure sale, and upon taking title to the Site, such foreclosure-Owner shall only be obligated to pay costs associated with this Maintenance Agreement accruing after the foreclosure-Owner acquires title to the Site. If the Site is ever legally divided with the written approval of the City and fee title to various portions of the Site is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in this Maintenance Agreement and the charges levied by the City to reimburse the City for the cost of undertaking such maintenance obligations of Owner and its successors and the lien for such charges shall be apportioned among the fee owners of the various portions of the Site under different ownerships according to the square footage of the land contained in the respective portions of the Site owned by them. Upon apportionment, no separate owner of a portion of the Site shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Site, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Site owned in fee by the owner who is liable for the apportioned charges levied by the City and secured by the apportioned lien and against no other portion of the Site. Owner acknowledges and agrees that the City may also pursue any and all other remedies available in law or equity. Owner shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

3. Compliance with Law. Owner shall comply with all local, state and federal laws relating to the uses of or condition of the Site. If any new local laws relating to uses of or condition of the Improvements create a condition or situation that constitutes a lawful nonconforming use as defined by local ordinance with respect to the Site or any portion thereof, then so long as the lawful nonconforming use status remains in effect (*i.e.*, until such lawful status is properly terminated by amortization as provided for in the new local law or otherwise), Owner shall be entitled to enjoy the benefits of such lawful nonconforming use pursuant to the lawful nonconforming uses ordinance.

4. Effect of Violation of the Terms and Provisions of this Maintenance Agreement. The covenants established in this Maintenance Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, as to those covenants that are for its benefit. The covenants contained in this Maintenance Agreement shall remain in effect for the periods of time specified herein. The City is deemed the beneficiary of the terms and provisions of this Maintenance Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Maintenance Agreement and the covenants running with the land have been provided. This Maintenance Agreement and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site or in adjoining lands. The City shall have the right, if the Maintenance Agreement or covenants are breached, to exercise all rights and remedies, and to

maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Maintenance Agreement and covenants may be entitled.

5. Miscellaneous Provisions.

(a) If any provision of this Maintenance Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Maintenance Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Maintenance Agreement; and each provision of this Maintenance Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Maintenance Agreement shall be construed in accordance with the laws of the State of California.

(c) This Maintenance Agreement shall be binding upon and inure to the benefit of the successors and assigns of Owner.

(d) In the event action is instituted to enforce any of the provisions of this Maintenance Agreement, the prevailing party in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorney's fees and costs.

6. Effect of Maintenance Agreement. The covenants and agreements established in this Maintenance Agreement shall, without regard to technical classification and designation, run with the land and be binding on each owner of the Site and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the City and its successor and assigns.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Maintenance Agreement the day and year first hereinabove written.

CITY:

CITY OF RIALTO,
a California municipal corporation

Date: _____

Deborah Robertson, Mayor

ATTEST:

By: _____
Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER

By: _____
Fred Galante, City Attorney

[Signatures Continued on Following Page]

OWNER:

Synergistic Properties, LLC
a California limited liability company

Date: _____

By:

Name: Jeffrey A. Creswell

Its: Co-Manager

ACKNOWLEDGMENT

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, _____,
(insert name of notary)

Notary Public, personally appeared _____,
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 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 _____

(Seal)

ACKNOWLEDGMENT

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, _____,
(insert name of notary)

Notary Public, personally appeared _____,
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 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 _____

(Seal)

EXHIBIT "A"
LEGAL DESCRIPTION OF SITE

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

PARCELS 2 AND 3 OF PARCEL MAP NO. 6608, AS PER PLAT RECORDED IN BOOK 62 OF PARCEL MAPS, PAGE(S) 52 AND 53, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF PARCEL 3 OF PARCEL MAP NO. 6608, AS CONVEYED TO THE CITY OF RIALTO, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS BY GRANT DEED RECORDED AUGUST 01, 2014 AS INSTRUMENT NO. 2014-0278811 OF OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

APN: 0264-212-39 and 0264-212-40