

ORDINANCE NO. 1708

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF RIALTO AND IV5 LOCUST GATEWAY LOGISTICS CENTER, LLC REGARDING THE LOCUST GATEWAY DEVELOPMENT PROJECT.

WHEREAS, the applicant, IV5 Locust Gateway Logistics Center LLC, (“Applicant”) proposes to develop and operate a 664,859 square foot industrial warehouse building with associated paving, landscaping, fencing, lighting, and drainage improvements (“Project”) on approximately 38.89 gross acres (38.78 net acres) of land (APN: 0239-192-23) located at the southwest corner of Locust Avenue and Lowell Street within the General Manufacturing (I-GM) land use district of the Rialto Airport Specific Plan (“Site”); and

WHEREAS, the Project is also referred to as the Locust Gateway Development Project; and

WHEREAS, in accordance with the provisions of Chapter 18.79 (Development Agreements) of the Rialto Municipal Code, the applicant intends to enter into a development agreement with the City of Rialto to memorialize certain benefits and terms related to the Project, and the applicant agreed to apply for Development Agreement No. 2024-0002 (“Development Agreement”); and

WHEREAS, in conjunction with the Project, the applicant has applied for Tentative Parcel Map No. 2023-0006, also referred to as Tentative Parcel Map No. 20809 (“TPM No. 20809”) to provide public right-of-way dedications and to resolve underlying past recordings and instruments related to the Site; and

WHEREAS, in conjunction with the Project, the applicant has applied for Conditional Development Permit No. 2023-0032 (“CDP No. 2023-0032”) to facilitate the development and operation of a 664,859 square foot industrial warehouse building on the Site; and

WHEREAS, in conjunction with the Project, the applicant has applied for Precise Plan of Design No. 2023-0041 (“PPD No. 2023-0041”) to facilitate the development of a 664,859 square foot industrial warehouse building with associated paving, landscaping, fencing, lighting, and drainage improvements on the Site; and

1 **WHEREAS**, as part of the Development Agreement, the Applicant agrees to contribute
2 \$4,000,000 to the City of Rialto, prior to the issuance of a Certificate of Occupancy for the Project; and

3 **WHEREAS**, as part of the Development Agreement, City Council of the City of Rialto may
4 use the \$4,000,000 contribution at its sole discretion; and

5 **WHEREAS**, as part of the Development Agreement, the City of Rialto agrees to vest the
6 Project entitlements for five (5) years, with a possible five (5) year extension, and freeze the
7 Development Impact Fee rates for the Project at the current Fiscal Year 2025/2026 rates; and

8 **WHEREAS**, California Government Code Section 65864 and Chapter 18.79 of Title 18 of the
9 Rialto Municipal Code authorizes the City Council to enter into development agreements; and

10 **WHEREAS**, pursuant to Section 18.79.040 of the Rialto Municipal Code, the Planning
11 Commission shall hold a public hearing for any proposed development agreement and forward a
12 recommendation to the City Council for action; and

13 **WHEREAS**, on December 17, 2025, the Planning Commission of the City of Rialto conducted
14 a duly noticed public hearing, as required by law, on the Development Agreement, took testimony, at
15 which time it received input from staff, the City Attorney, and the Applicant; heard public testimony;
16 discussed the Development Agreement; closed the public hearing; and adopted a resolution
17 recommending that the City Council adopt an ordinance approving the Development Agreement; and

18 **WHEREAS**, on January 27, 2026, the City Council of the City of Rialto conducted a duly
19 noticed public hearing, as required by law, on the Development Agreement, took testimony, at which
20 time it received input from the staff, the City Attorney, and the Applicant; heard public testimony;
21 discussed the Development Agreement; and closed the public hearing; and

22 **NOW THEREFORE, THE CITY COUNCIL AND RIALTO HOUSING AUTHORITY**
23 **OF THE CITY OF RIALTO FINDS AND ORDAINS AS FOLLOWS:**

24 **Section 1.** The above recitals are all true and correct and are hereby adopted as findings.

25 **Section 2.** An Environmental Impact Report (Environmental Assessment Review No. 2023-
26 0051) has been prepared for the proposed Project in accordance with the California Environmental
27 Quality Act (CEQA) and it has been determined that the Project will create unavoidable significant
28

1 impacts to greenhouse gas emissions. On January 27, 2026, by Resolution No. _____, the City
2 Council certified the above-reference Environmental Impact Report, made certain findings, and adopted
3 a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Plan, which
4 Resolution together with the above-referenced Environmental Impact Report are incorporated herein by
5 reference. The City Council finds that the Development Agreement is within the scope of the above-
6 referenced Environmental Impact Report.

7 **Section 3.** Based upon the forgoing and substantial evidence presented to the City Council,
8 including, but not limited to, the staff report to the City Council, the presentation to the City Council,
9 supporting documents, and public testimony, the City Council finds that the Development Agreement
10 between the City of Rialto and the Applicant, attached hereto as Exhibit A, is consistent with the General
11 Plan and the Rialto Airport Specific Plan because it will strengthen and diversify the economic base,
12 provide employment opportunities, and maintain a positive business climate.

13 **Section 4.** Based upon the forgoing and substantial evidence presented to the City Council,
14 including, but not limited to, the staff report to the City Council, the presentation to the City Council,
15 supporting documents, and public testimony, the Development Agreement between the City of Rialto
16 and the Applicant, as set forth in Exhibit A, is hereby approved, subject to minor, conforming and
17 clarifying changes consistent with the terms thereof as may be approved by the City Manager in
18 consultation with the City Attorney. The City Council hereby authorizes the City Manager to execute
19 the Development Agreement and all documents required to implement the Development Agreement on
20 behalf of the City.

21 **Section 5.** The City Clerk shall certify to the adoption of this Ordinance, and cause the
22 same to be published in the local newspaper, and the same shall take effect thirty (30) days after its
23 date of adoption.

24 ///

25
26
27
28

PASSED, APPROVED AND ADOPTED this 27th day of January, 2026.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOE BACA, Mayor

ATTEST:

BARBARA A. McGEE, City Clerk

APPROVED AS TO FORM:

ERIC S. VAIL, City Attorney

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

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Barbara A. McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing Ordinance No. 1708 was duly passed and adopted at a regular meeting of the City Council of the City of Rialto held on the 27th day of January, 2026.

Upon motion of Councilmember Mayor Pro Tem Scott, seconded by Mayor Baca the foregoing Ordinance No. 1708 was duly passed and adopted.

Vote on the motion:

- AYES: Mayor Baca, Mayor Pro Tem Scott, Council Member Carrizales, Montoya & Perez
- NOES: None
- ABSENT: None

IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of Rialto this 27th day of January 2026.

BARBARA A. McGEE, City Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

*Recording Requested by and
When Recorded Return to:*

City Clerk
City of Rialto
290 W. Rialto Avenue
Rialto, CA 92376

*Exempt from Recording Fees per Govt.
Code §§ 6103 and 27383*

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No: _____

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF RIALTO

AND

IV5 Locust Gateway Logistics Center, LLC

**FOR LOCUST GATEWAY DEVELOPMENT PROJECT
(SCH# 2024061274)**

Effective Date: _____, 2026

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS.....	3
1.1 Definitions.....	3
ARTICLE 2. GENERAL PROVISIONS	6
2.1 Ownership of Property.....	6
ARTICLE 3. EFFECTIVE DATE; OPERATIVE DATE; TERM; FORCE MAJEURE; REPRESENTATIONS	6
3.1 Effective Date	6
3.2 Term.....	6
3.3 City Representations and Warranties.....	6
3.4 Developer Representations and Warranties	7
ARTICLE 4. DEVELOPMENT OF PROPERTY.....	7
4.1 Vested Rights	8
4.2 Development and Design Standards	8
4.3 Reservations of Authority	8
4.4 Regulation by Other Public Agencies.....	9
4.5 Life of Project Approvals.....	9
4.6 Initiatives.....	10
4.7 Timing of Development.....	10
4.8 Expansion of Development Rights	10
4.9 No Reservation of Sanitary Sewer or Potable Water Capacity.....	11
ARTICLE 5. OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES	11
5.1 Fees	11
5.2 Exactions.....	12
5.3 Prevailing Wage.....	12
5.4 Other Financing Mechanisms	12
5.5 Taxes and Assessments.....	13
ARTICLE 6. PUBLIC BENEFITS.....	14
ARTICLE 7. ANNUAL REVIEW	14
7.1 Periodic Review	14
7.2 Process	14
7.3 No Waiver.....	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE 8. MORTGAGEE PROTECTION.....15

- 8.1 Mortgagee protection.....15
- 8.2 Mortgagee Not Obligated16
- 8.3 Notice of Default to Mortgagee16
- 8.4 Right to Cure.....16
- 8.5 No Supersedure.....16
- 8.6 Technical Amendments to Article 817

ARTICLE 9. AMENDMENT.....17

- 9.1 Amendment of Agreement By Mutual Consent17
- 9.2 Insubstantial Amendments to Agreement.....17
- 9.3 Requirement for Writing.....17
- 9.4 Amendments to Development Agreement Statute.....17
- 9.5 Operating Memoranda18

ARTICLE 10. ASSIGNMENT18

- 10.1 Assignment18
- 10.2 Notice of Assignment18
- 10.3 Release of Developer19
- 10.4 Partial Assignment.....19
- 10.5 Successive Assignment.....19
- 10.6 Other Permitted Transfers.....19

ARTICLE 11. COOPERATION AND IMPLEMENTATION20

- 11.1 Subsequent Project Approvals20
- 11.2 Scope of Review of Subsequent Project Approvals20
- 11.3 Processing20
- 11.4 Other Agency Approvals21
- 11.5 Mitigation Measures21
- 11.6 Cooperation in the Event of Legal Challenge.....21
- 11.7 Subsequent CEQA Review23

ARTICLE 12. DEFAULT; REMEDIES; TERMINATION23

- 12.1 Breach and Default23
- 12.2 Termination.....24
- 12.3 Legal Actions24
- 12.4 Rights and Remedies Are Cumulative.....24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12.5 No Damages24
12.6 Resolution of Disputes25
12.7 Survival25
12.8 Effects of Litigation25
12.9 California Claims Act25
ARTICLE 13. MISCELLANEOUS25
13.1 Incorporation of Recitals; Introductory Paragraph; Exhibits25
13.2 Permitted Delay25
13.3 Indemnity26
13.4 Severability26
13.5 Construction26
13.6 Covenants Running with the Land27
13.7 Notices27
13.8 Counterparts and Exhibits; Entire Agreement28
13.9 Recordation of Agreement28
13.10 No Joint Venture or Partnership28
13.11 Waivers29
13.12 Headings29
13.13 California Law; Venue29
13.14 City Approvals and Actions29
13.15 Estoppel Certificates29
13.16 No Third Party Beneficiaries30
13.17 Signatures30
13.18 Time of the Essence30
13.19 Limitation on Liability30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) dated for reference purposes as of _____, 2026 (“**Agreement Date**”), is entered into by and between IV5 Locust Gateway Logistics Center, LLC (“**Developer**”) and the CITY OF RIALTO, a California municipal corporation (“**City**”). Developer and City are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq.* of the Government Code (“**Development Agreement Statute**”), which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council has adopted a development agreement ordinance codified as Chapter 18.79 of the City’s Municipal Code (“**Development Agreement Ordinance**”), which authorizes the execution of development agreements and sets forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City’s Development Agreement Ordinance are collectively referred to herein as the “**Development Agreement Law**.”

C. Developer is the fee owner of that certain real property consisting of approximately 39.91 acres located at the southwest corner of Locust Avenue and Lowell Street, designated as APN: 0239-192-23 and more particularly described and depicted in Exhibit A attached hereto and incorporated herein (“**Property**”). The Property is currently undeveloped.

D. Developer intends to develop the Property with an approximately 665,000 square foot industrial warehouse building and associated paving, landscaping, lighting, fencing, and drainage improvements, as more particularly shown in those certain Development Plans, prepared by [_____], dated _____, 202_, entitled “Planning Package for ___ Locust Gateway Development Project” (“**Project**”). The Project site plan is depicted in Exhibit B.

E. This Agreement sets forth, among other things, the applicable fees, policies and zoning requirements that apply to development of the Project, and provides Developer with a vested right to develop the Project on the Property in accordance with the entitlements approved by the City for the Project as well as the City’s General Plan, and the other relevant land use designations and zoning provisions applicable to the Property, each as in effect as of the Effective Date, and more particularly defined in Recital H, below as “Existing Approvals” and this Agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. The City has prepared a draft Initial Study and Environmental Impact Report for the Project (“EIR”) and held hearings pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code §§ 21000 *et seq.*). On _____, 202__, the City circulated the Draft EIR for public review and comment for a period through _____, 202__. City published the Final EIR, including Response to Comments, on _____, 202__.

G. The Planning Commission on _____, 202__, recommended the following action by adoption of Resolutions Nos. _____ and _____ to the City Council: certification of the EIR, approval of Tentative Parcel Map No. 2023-0006, Conditional Development Permit No. 2023-0032, Precise Plan of Design No. 2023-0041, and this Agreement.

H. Prior to or concurrently with approval of this Agreement, the City has taken or will take the following actions to review and plan for the future development and use of the Project (collectively, the “Existing Approvals”):

1. Certification of the EIR by Resolution No. 20__ - ____ adopted by the City Council on _____, 20__;
2. Adoption of the Mitigation Monitoring and Reporting Program by Resolution No. 20__ - ____, adopted by the City Council on _____, 20__;
3. Approval of Tentative Parcel Map No. 2023-0006, by Resolution No. 20__ - ____, adopted by the City Council on _____, 20__; and
4. Approval of Conditional Development Permit No. 2023-0032, by Resolution No. 20__ - ____, adopted by the City Council on _____, 20__; and
5. Approval of Precise Plan of Design No. 2023-0041, by Resolution No. 20__ - ____, adopted by the City Council on _____, 20__.

I. Under this Agreement, Developer will provide substantial public benefits in connection with the Project including a contribution of \$4,000,000 to the City in community benefits, as more specifically described in Article 6 and Exhibit D to this Agreement.

J. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Ordinance and City will benefit from public benefits provided by the Developer to complete improvements within the Rialto Airport Specific Plan area and other areas of the City, with specific projects yet to be determined by the City Council.

K. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Development of the Property in accordance with the terms of this Agreement will in turn provide substantial public benefits to the City, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

L. The terms and conditions of this Agreement have undergone review by City staff,

1
2
3 the Planning Commission and the City Council at publicly noticed meetings, and have been found
4 to be fair, just and reasonable, in conformance with the Development Agreement Law and the
5 goals, policies, standards and land use designations specified in the General Plan, and consistent
6 with the requirement under Government Code Section 65867.5, and further, the City Council finds
7 that the economic interests of City’s citizens and the public health, safety and welfare will be best
8 served by entering into this Agreement.

9
10 M. City has approved this Agreement by Ordinance No. _____, adopted by the City
11 Council on _____, 202_ (“**Enacting Ordinance**”).

12
13 NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions
14 set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as
15 follows:

16
17 A G R E E M E N T

18
19 **ARTICLE 1.**
20 **DEFINITIONS**

21 Definitions.

22 “**Agreement**” means this Development Agreement.

23 “**Agreement Date**” means the reference date identified in the preamble to this Agreement.

24 “**Annual Review Form**” is defined in Section 7.2.1.

25 “**Applicable City Regulations**” means (a) the permitted uses of the Property, , the
26 regulations for industrial uses, the intensity of use, the height, bulk and space requirements,
27 including massing, of the proposed buildings, off-street parking and loading, provisions for
28 reservation or dedication of land for public purposes, the conditions, terms, restrictions, and
requirements for subsequent discretionary actions, the provisions for public improvements and
financing of public improvements, and other terms and conditions of development applicable to
the Property as set forth in the General Plan of the City on the Effective Date, the Municipal Code
of the City on the Effective Date, and the other ordinances, policies, rules, regulations, standards
and specifications of the City in effect on the Effective Date; (b) New City Laws that apply to the
Property as set forth in Section 4.3.3, 4.3.4 or 4.3.6 herein; and (c) regulations that apply to the
Property as set forth in Section 4.3.1 and 4.3.2 herein.

“**Applicable Law**” means (a) all State and Federal laws and regulations applicable to the
Property and the Project as enacted, adopted and amended from time to time and (b) the Applicable
City Regulations.

“**CEQA**” is defined in Recital F.

“**Changes in the Law**” is defined in Section 4.3.6.

“**City**” means city of Rialto, a California municipal corporation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“**City Council**” means City Council of the City of Rialto.

“**City Parties**” means the City and its elected Councilmembers, boards, commissioners, officers, agents, and employees.

“**City Manager**” means the City of Rialto’s City Manager, or his or her designee.

“**Claims**” means liabilities, obligations, orders, claims, losses, damages, fines, penalties and expenses, including, but not limited to, reasonable attorneys’ fees and costs.

“**Connection Fees**” means those fees charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

“**Default**” is defined in Section 12.1.

“**Developer**” means IV5 Locust Gateway Logistics Center, LLC and its successors and assigns.

“**Development Agreement Law**” is defined in Recital B.

“**Development Agreement Ordinance**” is defined in Recital B.

“**Development Agreement Statute**” is defined in Recital A.

“**Effective Date**” is defined in Section 3.1.

“**Enacting Ordinance**” is defined in Recital M.

“**Environmental Impact Report**” or “**EIR**” is defined in Recital F.

“**Exactions**” means exactions imposed by City as a condition of developing the Project as more particularly set forth in Section 5.2 and in connection with Subsequent Project Approvals, as set forth in Section 11.2 of this Agreement which may include requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“**Existing Approvals**” is defined in Recital H.

“**General Plan**” means the General Plan of the City of Rialto in effect as of the Effective Date.

“**Impact Fees**” means the monetary fees and impositions more particularly set forth in Section 5.1.1, below and in Exhibit C, attached, hereto, other than taxes and assessments, charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or development of the public facilities

1
2
3 and services related to a development project, including any “fee” as that term is defined by
4 Government Code section 66000(b). For purposes of this Agreement, a monetary fee or imposition
5 that meets both the definition of an Impact Fee and the definition of an Exaction will be considered
6 an Impact Fee.

7 “**Initial Term**” is defined in Section 3.2.1.

8 “**Insubstantial Amendment**” is defined in Section 9.2.

9 “**Litigation Challenge**” is defined in Section 11.6.2.

10 “**MMRP**” means the Mitigation Monitoring and Reporting Program adopted by the City
11 Council in connection with its certification of the EIR.

12 “**Mortgage**” is defined in Section 8.1.

13 “**Mortgagee**” is defined in Section 8.1.

14 “**Municipal Code**” means the Municipal Code of the City of Rialto in effect as of the
15 Effective Date.

16 “**New City Laws**” means and includes any ordinances, resolutions, orders, rules, official
17 policies, standards, specifications, guidelines or other regulations, which are promulgated or
18 adopted by the City (including but not limited to any City agency, body, department, officer or
19 employee) or its electorate (through the power of initiative or otherwise) after the Effective Date.

20 “**Notice**” is defined in Section 13.7.

21 “**Other Agency Fees**” is defined in Section 5.1.4.

22 “**Other Agency Subsequent Project Approvals**” means Subsequent Project Approvals to
23 be obtained from entities other than City.

24 “**Party/Parties**” is defined in the introductory paragraph preceding the Recitals of this
25 Agreement.

26 “**Permitted Delay**” is defined in Section 13.2.

27 “**Planning Commission**” means the Planning Commission of the City of Rialto.

28 “**Prevailing Wage Laws**” is defined in Section 5.3.

“**Processing Fees**” means all fees charged on a City-wide basis to cover the cost of City
processing of development project applications, including any required supplemental or other
further environmental review, plan checking (time and materials) and inspection and monitoring
for land use approvals, design review, grading and building permits, General Plan maintenance
fees, and other permits and entitlements required to implement the Project, which are in effect at
the time those permits, approvals or entitlements are applied for, and which fees are intended to
cover the City’s actual and reasonable costs of processing the foregoing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“Project” is defined in Recital D.

“Project Approvals” means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Project Approvals.

“Property” is defined in Recital C.

“Subsequent Project Approvals” is defined in Section 11.1.

“Term” is defined in Section 3.2.1.

**ARTICLE 2.
GENERAL PROVISIONS**

Ownership of Property. The Parties hereby acknowledge that, as of the Effective Date, Developer has a fee interest in the Property.

**ARTICLE 3.
EFFECTIVE DATE; OPERATIVE DATE; TERM; FORCE MAJEURE;
REPRESENTATIONS**

Effective Date. This Agreement shall become effective the date that is thirty (30) days after the date the Enacting Ordinance is adopted (“Effective Date”).

Term.

3.2.1 Term of Agreement. The “Term” of this Agreement shall commence on the Effective Date and shall expire on the fifth (5th) anniversary of the Effective Date, unless extended or earlier terminated as provided herein.

3.2.2 Extension of Term. Upon Developer’s request made by Notice given no earlier than six (6) months, but no later than two (2) months, prior to expiration of the original Term, the Term of this Agreement shall be automatically extended for one (1) additional five (5) year period beyond the original Term, so long as Developer is not, as of the date of the Notice, in material uncured breach of this Agreement and is not in the process of curing said breach, as determined by City following a special review pursuant to Article 6, so long as City undertakes the special review on its own initiative and completes the special review no later than six (6) months prior to expiration of the original Term.

3.2.3 Upon extension of the Term in accordance with Section 3.2.2, City will execute, in recordable form, any instrument which Developer may reasonably require to evidence the extension, provided that Developer requests in writing that the City execute such instrument.

3.2.4 Effect of Termination. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 12.7.

City Representations and Warranties. City represents and warrants to Developer that:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.3.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

3.3.2 The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

3.3.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

3.3.4 The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.3 not to be true, immediately give written Notice of such fact or condition to Developer.

Developer Representations and Warranties. Developer represents and warrants to City that:

3.4.1 Developer is duly organized, validly existing and in good standing under the laws of the State of California and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

3.4.2 The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals have been obtained.

3.4.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

3.4.4 Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.4 not to be true, immediately give written Notice of such fact or condition to City.

**ARTICLE 4.
DEVELOPMENT OF PROPERTY**

1
2
3 Vested Rights. City hereby grants to Developer a vested right to develop and construct the Project
4 at the Property, including all on-site and off-site improvements authorized by, and in accordance
5 with, the Project Approvals. Except as otherwise provided in this Agreement, no New City Laws
6 that conflict with this Agreement, the Applicable City Regulations, or the Project Approvals shall
7 apply to the Project or the Property. For purposes of this Section and Section 4.3, the word
8 “**conflict**” means any modifications that purport to: (i) limit the Project Approvals, including but
9 not limited to the permitted uses of the Property, the intensity of use, the height, bulk and space
10 requirements, including massing and location, of the proposed buildings, and off-street parking
11 and loading; (ii) impose requirements for reservation or dedication of land for public purposes or
12 requirements for infrastructure, public improvements, or public utilities, other than as provided in
13 the Project Approvals; (iii) impose conditions upon development of the Property other than as
14 permitted by Applicable Law, Changes in the Law, and the Project Approvals; (iv) limit the timing,
15 phasing, sequencing, or rate of development of the Property; (v) limit the location of building sites,
grading or other improvements on the Property in a manner that is inconsistent with the Existing
Approvals; (vi) limit or control the ability to obtain public utilities, services, infrastructure, or
facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property
from any water use rationing requirements that may be imposed on a City-wide basis from time to
time in the future or be construed as a reservation of any existing sanitary sewer or potable water
capacity); (vii) require the issuance of additional permits or approvals by the City other than those
required by Applicable Law and the Existing Approvals; (viii) increase the permitted Impact Fees
or add new Impact Fees, except as permitted by Section 5.1 of this Agreement; (ix) establish, enact,
increase, or impose against the Project or the Property any special taxes or assessments other than
those specifically permitted by this Agreement, including Section 5.5; or (x) impose against the
Project any condition, dedication or other Exaction not specifically authorized by Applicable Law
or the Project Approvals. To the extent that New City Laws conflict with the vested rights granted
pursuant to this Agreement, they shall not apply to the Property or the Project, except as provided
in Section 4.3, below.

16 Development and Design Standards. The Project shall be developed in conformance with the
17 Existing Approvals and Applicable City Regulations, including the General Plan and the zoning
18 in effect as of the Effective Date. The design, permitted uses, FAR, maximum height and size of
buildings, massing and location regulations, number and type of parking spaces and loading docks,
and development standards shall all be in accordance with the Existing Approvals and Applicable
City Regulations.

19 Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary,
20 the following regulations and provisions shall apply to the development of the Project:

21 4.3.1 Procedural Rules. Regulations relating to hearing bodies, petitions,
22 applications, notices, findings, records, hearings, reports, recommendations, appeals and any other
23 matter of procedure then applicable in City at the time of building permit application;

24 4.3.2 Uniform Construction Codes. Regulations governing construction
25 standards and specifications, including but not limited to City’s building code, plumbing code,
26 mechanical code, electrical code, fire code and grading code, and all other uniform construction
27 codes then applicable in City at the time of building permit application;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4.3.3 New City Laws Not in Conflict. New City Laws applicable to the Property or Project, which do not conflict with this Agreement or the Project Approvals, including but not limited to Developer’s vested rights under Section 4.1 above;

4.3.4 New City Laws- Health and Safety. New City Laws which may be in conflict with this Agreement, but which are necessary to protect the physical health and safety of the public.

4.3.5 Exactions. Exactions for Subsequent Project Approvals, if applicable, permitted by Section 11.2.

4.3.6 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California (“**Changes in the Law**”). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise.

Regulation by Other Public Agencies. Developer acknowledges and agrees that other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer’s construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all required fees when due to such public agencies. Developer acknowledges that City does not control the amount of any such fees. City shall reasonably cooperate with Developer in Developer’s effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement by Developer, or to amend any policy, regulation or ordinance of City in connection therewith.

Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Initiatives. If any New City Law is enacted or imposed by an initiative or referendum, which New City Law would conflict with the Project Approvals or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting subdivision maps, use permits, building permits, occupancy permits, or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall reasonably cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement.

Timing of Development. Developer shall meet its obligation to provide the public benefits described in Article 6 within the times provided therein. However, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in the Existing Approvals, Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment.

Expansion of Development Rights. If any New City Laws or Changes in Law expand, extend, enlarge or broaden Developer's rights to develop the Project, then, (a) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (b) if such law is permissive, the provisions of this Agreement may be modified by mutual written agreement of the Parties. Immediately after enactment of any such new mandatory law, upon Developer's written request, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to prepare such modification, and Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Agreement, and in the event such challenge is successful, this Development Agreement shall be modified to comply with, or conform to, the new law. After enactment of any such new permissive law, upon Developer's written request, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by written consent of the Parties) to discuss and, if applicable, prepare such proposed modification, provided that such modification shall be subject to City's written approval in its sole and absolute discretion,

1
2
3 No Reservation of Sanitary Sewer or Potable Water Capacity. City has found the Project to be
4 consistent with the General Plan which anticipates that there will be sufficient potable water and
5 sanitary sewer capacity to serve future development contemplated by the General Plan, including
6 the Project. However, nothing in this Agreement is intended to exempt the Project from any water
7 use rationing requirements that may be imposed on a City-wide basis from time to time in the
8 future or be construed as a reservation of any existing sanitary sewer or potable water capacity.

9
10
11 **ARTICLE 5.**
12 **OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES**

13 Fees.

14 5.1.1 Impact Fees. City and Developer understand and agree that the Impact Fees
15 associated with the Project are as set forth in Exhibit C, attached hereto, are a material
16 consideration for Developer agreeing to develop the Project, whereby the Developer shall pay the
17 Impact Fees prior to issuance of the final Certificate of Occupancy for the building shown in the
18 Existing Approvals. Once the Impact Fees are paid Developer shall not be required to re-pay the
19 Impact fees in the event of an act of God which requires re-construction of the project according
20 to the Existing Approvals. For the period commencing on the Effective Date and continuing until
21 expiration of the Impact Fee Limitation Period (defined below), Developer shall pay when due all
22 existing Impact Fees applicable to the Project in accordance with this Agreement in effect as of
23 the Agreement Date at the lower of (i) the rates in effect as of the Agreement Date, including all
24 existing fee escalation provisions or (ii) the rates in effect when such existing Impact Fees are due
25 and payable, and shall not be required to pay any escalations in such Impact Fees in excess of the
26 fee escalation provisions in any Impact Fee in effect as of the Agreement Date or new Impact Fees
27 enacted or established after the Agreement Date. As used herein the term "**Impact Fee Limitation
28 Period**" means the period commencing on the Effective Date and expiring on the 10th anniversary
thereof. Except as otherwise provided in this Section 5.1.1, Developer agrees to pay when due any
and all existing, increased or modified Impact Fees, at the rates then in effect at the time
Certificates of Occupancy are issued on any or all portions of the Project so long as any new fees
or increases in existing fees from the amount existing as of the Agreement Date are uniformly
applied by City to all substantially similar types of development projects and properties and are
consistent with the provisions of applicable California law, including the provisions of
Government Code Section 66000 et seq., and all applicable nexus and rough proportionality tests
and other legal requirements.

5.1.2 Processing Fees. Subject to Developer's right to protest and/or pursue a
challenge in law or equity to any new or increased Processing Fees, City may charge and
Developer agrees to pay all Processing Fees which are in effect on a City-wide basis at the time
permits, approvals or entitlements are applied for.

5.1.3 Connection Fees. Developer shall pay connection fees assessed by utility
providers and other agencies assessing such fees at the rates in effect from time to time.

5.1.4 Other Agency Fees. Nothing in this Agreement shall preclude City from
collecting fees from Developer that are lawfully imposed on the Project by another agency having

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law (“Other Agency Fees”).

Exactions. City may impose and Developer shall comply with those Exactions required by this Agreement and the Existing Approvals, and Subsequent Project Approvals, if applicable, in accordance with Section 11.2 below.

Prevailing Wage.

5.3.1 Prevailing Wage Indemnity. Developer shall defend (with counsel reasonably acceptable to the City), indemnify, assume all responsibility for, and hold harmless City Parties from and against any and all present and future Claims arising out of or in any way connected with Developer’s or its contractors’ or subcontractors’ obligations to comply with all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to “public works,” including the payment of prevailing wages for any work identified in the Existing Approvals that may constitute a “public work” (collectively, “**Prevailing Wage Laws**”), including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781.

5.3.2 Release of City. Developer hereby waives and releases City Parties from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of directly or indirectly, or in any way connected with Developer’s obligation to comply with all Prevailing Wage Laws. Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

INITIALS: DEVELOPER _____

5.3.2 This Section 5.3 shall survive the expiration or sooner termination of this Agreement.

Other Financing Mechanisms. Without limitation of and in addition to the provisions of this Agreement, upon Developer’s request, City will give good faith consideration to establishing any other mechanism that is legal and available to the City to aid in financing the construction of Project facilities and infrastructure. These mechanisms may include, without limitation, direct funding of condemnation costs and construction costs, acquisition of improvements, establishing reserve accounts to fund capital improvement program projects, Landscaping and Lighting Districts, Geological Hazard Abatement Districts or other similar mechanisms. Any such request by Developer must be made to the City Manager in written form and must outline the purposes for

1
2
3 which any such mechanism will be established or issued, the general terms and conditions upon
4 which it will be established or issued and a proposed timeline for its establishment or issuance.
5 City reserves full and complete discretion with respect to consideration of any proposed alternative
6 funding mechanisms and nothing in this Agreement is intended to or shall limit City's ability to
7 approve or disapprove such mechanisms in its sole discretion and nothing in this Agreement is
8 intended to or shall prejudice or commit to City regarding the findings and determinations to be
9 made with respect thereto.

10 Taxes and Assessments. Developer covenants and agrees to pay prior to delinquency all existing
11 taxes and assessments and any and all new taxes or assessments that are adopted after the Effective
12 Date and which conform to the terms of this Agreement, including this Section. As of the
13 Agreement Date, City is unaware of any pending efforts to initiate, or consider applications for
14 new or increased special taxes or assessments covering the Property, or any portion thereof. City
15 shall retain the ability to initiate or process applications for the formation of new assessment
16 districts or imposition of new taxes covering all or any portion of the Property. City may impose
17 new taxes and assessments, other than Impact Fees, on the Property in accordance with the then
18 applicable laws, but only if such taxes or assessments are adopted by or after Citywide voter
19 approval, or approval by landowners subject to such taxes or assessments, and are imposed on
20 other land and projects of the same category within the jurisdiction of City in a reasonably
21 proportional manner as determined by City, and, as to assessments, only if the impact thereof does
22 not fall disproportionately on the Property as compared to the benefits accruing to the Property as
23 indicated in the engineers report for such assessment district. Nothing herein shall be construed
24 so as to limit Developer from exercising whatever rights it may otherwise have in connection with
25 protesting or otherwise objecting to the imposition of taxes or assessments on the Property.

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

5.5.1 Tax Localization Plan and Requirements.

(a) Developer shall use commercially reasonable efforts to require the incorporation of requirements substantially in the form set forth in Exhibit F in its contracts with general contractors performing work at the Project Site, in connection with causing sales and use tax arising from purchases of materials, fixtures or equipment for the Project to be allocated to the City, to the extent allowed by law (the "**Tax Localization Plan**"). Developer shall use commercially reasonable efforts to direct its general contractors to comply with the Tax Localization Plan. In order to monitor compliance with the Tax Localization Plan, Developer shall designate a representative for the purpose of semiannual review with the City of relevant documents and filings with the State Board of Equalization that are not subject to a confidentiality agreement. Developer shall be responsible for the administrative expenses incurred in connection with the implementation of the Tax Localization Plan and, further, Developer shall assist City, at Developer's sole expense, in defending against any administrative proceedings instituted by the State Board of Equalization or the California Department of Tax and Fee Administration ("CDTFA") relating to whether the City is the proper point of sale location.

5.6 City Acceptance of Project Offsite Public Improvements. City agrees and acknowledges that City's timely acceptance of the Project Offsite Public Improvements upon their completion is crucial for the release of Developer's bonds for the improvements, provided that the Project Offsite Public Improvements are constructed in accordance with the City's requirements, including, but not limited to, the City's standard plans and drawings for public improvements,

1
2
3 Standard Specifications for Public Works Construction or Caltrans Standard Specifications
4 (“Public Improvements Requirements”). After the completion of the Project Offsite Public
5 Improvements, Developer shall notify City in writing of such completion. Within thirty (30) days
6 of receipt of such notice, the City’s Director of Public Works/City Engineer (or his or her designee)
7 shall review the Project Offsite Public Improvements to determine compliance thereof with the
8 Public Improvements Requirements, and shall provide notice of such determination to Developer.
9 If City’s Director of Public Works/City Engineer (or his or her designee) determines that the
10 Project Offsite Public Improvements are in compliance with the Public Improvements
11 Requirements, then City shall accept the Project Offsite Public Improvements. In the event that
12 the City’s Director of Public Works/City Engineer (or his or her designee) determines that the
13 Project Offsite Public Improvements are not in compliance with the Public Improvements
14 Requirements, Developer shall carry out such work as may be required to achieve such
15 compliance.

16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE 6.
PUBLIC BENEFITS

In consideration of the rights and benefits conferred by City to Developer under this Agreement, upon issuance of a Certificate of Occupancy for the building shown in the Existing Approvals, Developer shall perform and provide the Public Benefit obligations described in Exhibit D, some of which exceed those dedications, conditions, and exactions which may be imposed under Applicable Law. Once the Public Benefits are paid, Developer shall not be required to re-pay the Public Benefit fees in the event of an act of God which requires re-construction of the project according to the Existing Approvals.

ARTICLE 7.
ANNUAL REVIEW

Periodic Review. As required by California Government Code Section 65865.1 and the Development Agreement Ordinance, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City’s annual review shall be conducted for the purposes of determining good faith compliance by Developer with its obligations under this Agreement. Each annual review shall also document Developer’s progress toward completion of Project components.

Process. The annual review shall be conducted as provided in the Development Agreement Law and City’s Development Agreement Ordinance, as modified by this Agreement, as follows:

7.2.1 By the anniversary of the Effective Date each year, the Developer shall provide documentation of its good faith compliance with the Agreement during the previous calendar year, including a completed Annual Review Form in the form prepared and approved by the City Manager (“**Annual Review Form**”). Promptly upon receipt of Developer’s completed Annual Review Form, the City Manager shall review the Annual Review Form and shall reasonably determine, on the basis of substantial evidence, whether the Developer has complied with the provisions of this Agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7.2.2 City Manager’s Report to Council.

(a) If the City Manager reasonably finds good faith compliance by Developer with the terms of this Agreement, the City Manager shall provide a report and such finding of compliance to the City Council at a regular meeting of the City Council. If the City Manager reasonably finds that Developer has not complied in good faith with the terms of this Agreement, the City Manager shall notify the Developer thereof in writing and, thereafter, City Manager shall provide a report and such finding of noncompliance to the City Council at a meeting of the City Council that describes the manner in which Developer has failed to comply; reasonable terms of compliance, if any; and reasonable time for Developer to meet the terms of compliance, if any. The report and finding of compliance or noncompliance pursuant to this Section 7.2.2(a) shall also be provided to Developer at least 10 days prior to any such meeting of the City Council. At a meeting held pursuant to this Section 7.2.2(a), the City Council may, on the basis of substantial evidence, take one of the following actions:

- a. Issue a finding of compliance with or without modification.
- b. Issue a finding of noncompliance, with or without modification, that includes reasonable terms of compliance and reasonable time for Developer to meet such terms of compliance. If Developer fails to act in good faith to comply with such terms of compliance within such time period, then the City may terminate this Agreement.
- c. Amend this Agreement, provided that any such amendment shall be subject to Section 9.1.
- d. Issue a finding of noncompliance, with or without modification, and terminate this Agreement.

No Waiver. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

**ARTICLE 8.
MORTGAGEE PROTECTION**

Mortgagee protection. This Agreement shall not prevent or limit Developer in any manner, at Developer’s sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property (“**Mortgage**”). This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee (“**Mortgagee**”), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that unless a new entitlement application for a new project is approved, a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 8.2, all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

Notice of Default to Mortgagee. If City receives a notice requesting a copy of any Notice of Default given to Developer hereunder to be given to Developer’s Mortgagee, specifying the address for service thereof, either from: (i) a Mortgagee that includes a copy of the recorded deed of trust or other security instrument securing the Mortgagee’s interest in the Property, or (ii) from Developer acknowledging that the Mortgagee is the mortgagee for the Property (“Mortgagee Notice”), then City agrees to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default given to Developer, provided that the Parties agree that City’s obligations under this Section 8.3 shall be considered satisfied if City delivers any such Notice of Default to the last known address of service that the City has on record pursuant to a Mortgagee Notice. Notwithstanding anything to the contrary, City’s noncompliance with the requirements of this Section 8.3 shall not affect the City’s rights to enforce this Agreement against Developer, as set forth in Article 12.

Right to Cure. In the event of a Default by Developer, any Mortgagee shall have the right during the same period and for an additional 20 day period thereafter, and in the same manner that is available to Developer pursuant to section 12.1 to cure, remedy, or cause to be cured or remedied, such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default cannot reasonably be cured within the timeframes set forth in this Section 8.4, a Mortgagee shall be allowed additional time as is reasonably necessary to cure the failure so long as such Mortgagee commences to cure such Default within the timeframes provided in this Section 8.4 and thereafter diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days of the Notice of Default being sent by the City in accordance with the provisions of Section 8.3, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Further, any such cure provided by Mortgagee pursuant to this Agreement shall be in compliance with the Project Approvals and Article 12 shall apply thereto.

No Supersedure. Nothing in this Article 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee’s obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside of this Agreement, nor shall any

1
2
3 provision of this Article 8 constitute an obligation of City to such Mortgagee, except as to the
4 notice requirements of Section 8.3 and the acceptance of cure pursuant to Section 8.4.

5 Technical Amendments to Article 8. City agrees to reasonably consider and approve
6 interpretations and/or technical amendments to the provisions of this Agreement that are required
7 by lenders for the acquisition and construction of the Project on the Property or any refinancing
8 thereof and to otherwise cooperate in good faith, at Developer's expense, to facilitate Developer's
9 negotiations with lenders.

10
11 **ARTICLE 9.**
12 **AMENDMENT**

13 Amendment of Agreement By Mutual Consent. This Agreement may be amended in writing from
14 time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns.

15 Insubstantial Amendments to Agreement. Any amendment to this Agreement which, in the
16 context of the overall Project contemplated by this Agreement, does not substantially affect (i) the
17 Term of this Agreement; (ii) permitted uses of the Property; (iii) provisions for the reservation or
18 dedication of land, if applicable; (iv) conditions, terms, restrictions or requirements for subsequent
19 discretionary actions; (v) the approved FAR; (vi) the maximum height or size of proposed
20 buildings; or (vi) the nature, timing of delivery, or scope of public improvements required by the
21 Existing Approvals or Subsequent Project Approvals (if applicable), shall be deemed an
22 "**Insubstantial Amendment**" and shall not, except to the extent otherwise required by law or this
23 Agreement, require notice or public hearing before the parties may execute an amendment hereto.
24 The City Manager shall have the authority to execute an Insubstantial Amendment or, in his or her
25 reasonable discretion, seek approval of an Insubstantial Amendment by City resolution.

26 Requirement for Writing. No modification, amendment or other change to this Agreement or any
27 provision hereof shall be effective for any purpose unless specifically set forth in a writing which
28 refers expressly to this Agreement and is signed by duly authorized representatives of both Parties
or their successors.

Amendments to Development Agreement Statute. This Agreement has been entered into in
reliance upon the provisions of the Development Agreement Statute as those provisions existed as
of the Agreement Date. No amendment or addition to those provisions which would materially
affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement,
unless such amendment or addition is specifically required by the California State Legislature, or
is mandated by a court of competent jurisdiction. In the event of the application of such a change
in law, the Parties shall meet in good faith to determine the feasibility of any modification or
suspension that may be necessary to comply with such new law or regulation and to determine the
effect such modification or suspension would have on the purposes and intent of this Agreement.
Following the meeting between the Parties, the provisions of this Agreement may, to the extent
feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the
minimum extent necessary to comply with such new law or regulation. If such amendment or
change is permissive (as opposed to mandatory), this Agreement shall not be affected by same
unless the Parties mutually agree in writing to amend this Agreement to permit such applicability.
Developer and/or City shall have the right to challenge any new law or regulation preventing

1
2
3 compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

4 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation
5 between City and Developer and development of the Property hereunder may demonstrate that
6 refinements and clarifications are appropriate with respect to the details of performance of City
7 and Developer. If and when, from time to time, during the Term of this Agreement, City and
8 Developer agree that such clarifications are necessary or appropriate, City and Developer may
9 effectuate such clarifications through operating memoranda approved by City and Developer,
10 which, after execution, shall be attached hereto as addenda and become a part hereof, and may be
11 further clarified from time to time as necessary with future approval by City and Developer. No
12 such operating memoranda shall constitute an amendment to this Agreement requiring public
13 notice or hearing. The City Manager, in consultation with the City Attorney, shall make the
14 determination on behalf of City whether a requested clarification may be effectuated pursuant to
15 this Section 9.5 or whether the requested clarification is of such a character to constitute an
16 amendment hereof pursuant to Section 9.1 or Section 9.2 above. The City Manager shall be
17 authorized to execute any operating memoranda hereunder on behalf of City.

12 **ARTICLE 10.**
13 **ASSIGNMENT**

14 Assignment. Because of the necessity to coordinate development of the entirety of the Property
15 pursuant to plans for the Project, particularly with respect to the provision of on- and off-site public
16 improvements and public services and benefits, certain restrictions on the right of Developer to
17 assign or transfer its interest under this Agreement with respect to the Property, or any portion
18 thereof, are necessary in order to assure the achievement of the goals, objectives and public
19 benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set
20 forth in this Article 10 as reasonable and as a material inducement to City to enter into this
21 Agreement.

22 Notice of Assignment. Developer shall provide the City with written notice of any proposed
23 transfer or assignment of Developer's rights or obligations hereunder (each, an "Assignment")
24 at least thirty (30) days prior to such Assignment. The Developer, without the consent of the City,
25 may assign rights or delegate obligations under this Agreement in whole or in part to a subsidiary,
26 parent or other affiliated entity. If the Developer proposes a transfer or assignment to a non-
27 affiliated entity, it shall request City's reasonable consent to such Assignment, as provided herein.
28 Each such notice of proposed Assignment shall be accompanied by reasonable (non-confidential)
evidence of the corporate, limited liability company or other legal entity's existence and good
standing and a proposed form of Assignee's assumption of Developer's obligations hereunder
substantially in the form of Exhibit E, which would be recorded in the Official Records of San
Bernardino County concurrent with the transfer. Developer shall pay the actual costs borne by
City in connection with its review of the proposed Assignment, including the costs incurred by the
City Attorney's Office.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Release of Developer. Notwithstanding any sale, transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Agreement as to all or the portion of the Property so transferred unless City has consented to the Assignment as provided above, or where the City's consent is not required as is the case for any Other Permitted Transfer, as defined below in Section 10.6. If the required City consent is given (or City consent is not required), then Developer shall be released from any further liability or obligation under this Agreement related to the transferred Property provided: (i) neither Developer nor Assignee is in Default under this Agreement at the time of such transfer; (ii) Developer and Assignee have executed and acknowledged and delivered to City for recordation in the Official Records of the County of San Bernardino an assignment and assumption agreement substantially in the form of Exhibit E attached hereto; and (iii) the Assignee has expressly assumed for the benefit of City the obligations of Developer as to the portion of the Property so transferred. No release of Developer shall be effective unless and until each of the above conditions have been met. Notwithstanding anything to the contrary contained in this Agreement, if an Assignee Defaults under this Agreement, such Default shall not constitute a Default by Developer (or any other Assignee) with respect to any other portion of the Property hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Property.

Partial Assignment. Subject to the limitations set forth in this Article 10, in the event of a transfer of a portion of the Property, Developer shall have the right to assign its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City, at Developer's expense, shall cooperate with Developer and any proposed Assignee to allocate rights, duties and obligations under this Agreement and the Project Approvals between the assigned portion of the Property and the retained Property. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels, or portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Agreement with respect to any remaining portions of the Property retained by Developer and not assigned.

Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 10, the provisions of this Article 10 shall apply to each successive Assignment and Assignee.

Other Permitted Transfers. Notwithstanding anything herein to the contrary, the Developer is not required to obtain the City's consent or approval for any of the following: (i) granting easements, leases or licenses or modifying existing easements to facilitate development or operation of the Property consistent with the Project Approvals; (ii) encumbering the Property or any portion hereof or of the improvements thereon by a Mortgage securing financing with respect to the Property or Project; (iii) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, or to any transferee from a Mortgagee or owner of the Property upon foreclosure or after a conveyance in lieu of foreclosure; (iv) transferring any completed components of the Project, provided the City has issued an Occupancy Permit for such components and all Impact and Public Benefit fees have been paid according to this Agreement; (v) transfers to an affiliate of Developer; and (vi) transfers to a qualified third-party developer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ARTICLE 11.
COOPERATION AND IMPLEMENTATION**

Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, may be necessary or desirable for implementation of the Project (“**Subsequent Project Approvals**”). The Subsequent Project Approvals may include, the following: major amendments of the Existing Approvals that are not Insubstantial Amendments as described in Section 9.2 above, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications including those necessary to incorporate California Green Building Standards or to pursue LEED certification, parcel maps and/or subdivision maps, conditional use permits, variances, design review, demolition permits, improvement agreements, encroachment permits, and any amendments to, or repealing of, any of the foregoing. As required by Government Code Section 65867.5, any tentative map prepared for the Project shall comply with the water supply verification requirements set forth in Government Code Section 66473.7.

Scope of Review of Subsequent Project Approvals. With the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Applications for Subsequent Project Approvals that are consistent with this Agreement and the Existing Approvals shall be processed and considered in a manner consistent with the vested rights granted by this Agreement and shall be deemed to be tools to implement those final policy decisions, and shall be reasonably approved by City so long as they are consistent with this Agreement and the Existing Approvals. While City expressly reserves its discretion with respect to all Subsequent Project Approvals, City agrees that it shall not use its authority in considering any application for a Subsequent Project Approval to change the policy decisions reflected by the Existing Approvals, including by reducing the density, massing, permitted parking, or changing the permitted uses of the Property or the permitted rate of development, or otherwise to prevent development of the Project as set forth in the Existing Approvals.

City reserves reasonable discretion to impose appropriate reasonable future Exactions in connection with issuance of Subsequent Project Approvals, provided that in exercising its discretion in connection with consideration of Subsequent Project Approvals, City agrees that City shall not revisit the fundamental policy decisions reflected by the Existing Approvals or impose any Exactions that would (i) conflict with the Applicable City Regulations or the Existing Approvals as set forth in Section 4.1 herein unless expressly permitted by Sections 4.3 or Section 11.6.6. Subject to the foregoing, Exactions imposed on Subsequent Project Approvals shall be reasonable and may include dedications of land for public uses and requirements that Developer construct or cause the construction of ancillary public rights-of-way and internal streets, utilities, and public facilities, including all applicable in-tract subdivision improvements. At such time as any Subsequent Project Approval applicable to the Property is approved by City, then such Subsequent Project Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Agreement.

11.3 Processing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11.3.1 Developer Covenant. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer’s planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

11.3.2 City Covenant. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Project Approval, City shall, to the full extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer’s currently pending Subsequent Project Approval applications including: (i) providing at Developer’s expense and subject to Developer’s request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Project Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

Other Agency Approvals. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developer, at Developer’s expense, to the extent appropriate and as permitted by law, in Developer’s efforts to obtain, as may be required, Other Agency Subsequent Project Approvals.

Mitigation Measures. Developer shall, at its sole cost and expense, comply with or cause compliance with the MMRP requirements as applicable to the Property and Project.

Cooperation in the Event of Legal Challenge.

11.6.1 No Delay. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or construction of the Project shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project Approvals, unless the third party obtains a court order preventing the activity, and in such case, the Term shall toll unless or until the dispute is resolved City shall not stipulate to or cooperate in the issuance of any such order.

11.6.2 Cooperation by Parties. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals (“**Litigation Challenge**”), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but shall have the right to do so at its own expense.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11.6.3 Potential Joint Defense. If Developer desires to contest or defend a Litigation Challenge and the Parties determine to undertake a joint defense or contest of such Litigation Challenge: i) the Parties will cooperate in the joint defense or contest of such challenge; ii) Developer shall select the attorney(s) to undertake such defense, subject to City's approval, which shall not be unreasonably withheld; iii) Developer will take the lead role in defending such Litigation Challenge; iv) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege; v) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made on a quarterly basis, during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge.

11.6.4 Potential Separate Defense. If Developer desires to contest or defend any Litigation Challenge and if at any time one or both of the Parties determine that they require separate representation: i) Developer shall take the lead role in defending such Litigation Challenge; ii) Developer shall be separately represented by legal counsel of its choice; iii) in any action or proceeding, City shall be separately represented by the legal counsel of its choice, selected after consultation with Developer, with reasonable costs of such representation to be paid by Developer; iv) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge; and v) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege.

11.6.5 Cost Awards and Proposed Settlements. Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Developer will promptly pay any judgment rendered against the City Parties in connection with a Litigation Challenge Developer will save and hold the City Parties from any failure to so pay any such judgment. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto.

11.6.6 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, the City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

1
2
3 11.6.7 Extension of Term. Anything in this Agreement to the contrary
4 notwithstanding, the Term and any extension thereof will automatically be extended by the number
5 of days in the period commencing on the date of filing of any claim, action, or proceeding of the
6 type described in Section 11.6.1 and ending on the date that the claim, action, or proceeding is
7 either settled or fully and finally resolved in City's and Developer's favor, as evidenced by the
8 expiration of all appeal periods with no further appeal being filed or the issuance of a full, final,
9 and non-appealable judgment or decision. City will execute, in recordable form, any instrument
10 which Developer may reasonably require to evidence the extension.

11
12 11.6.8. The obligations to indemnify, defend, and hold harmless under this
13 Section 11.6 shall survive the expiration or sooner termination of this Agreement.

14 Subsequent CEQA Review. The City has prepared and certified the EIR, which evaluates the
15 environmental effects of the Project, and has imposed all feasible mitigation measures to reduce
16 the significant environmental effects of the Project. The Parties understand that the EIR is intended
17 to be used not only in connection with the Existing Approvals, but also, to the extent legally
18 permitted, in connection with any necessary Subsequent Project Approvals. However, the Parties
19 acknowledge that certain Subsequent Project Approvals may legally require additional analysis
20 under CEQA. Nothing contained in this Agreement is intended to prevent or limit the City from
21 complying with CEQA. In acting on Subsequent Project Approvals, City will rely on the EIR to
22 the fullest extent permissible by CEQA as determined by City in its reasonable discretion. In the
23 event supplemental or additional review is required for a Subsequent Project Approval, City shall
24 limit such supplemental or additional review to the scope of analysis mandated by CEQA in light
25 of the scope of City's reasonable discretion to be exercised in connection with the Subsequent
26 Project Approval. Developer acknowledges that, if the City determines based upon supplemental
27 or additional CEQA review that the Project will result in new significant effects or substantially
28 increase the severity of effects that were identified in the EIR, City may require additional feasible
mitigation measures necessary to mitigate such impacts. In the event further mitigation measures
are identified by such additional environmental review, City may require, and Developer shall
comply at its expense with, all feasible mitigation measures necessary to substantially lessen new
or substantially more severe significant environmental impacts of the Project, which were not
foreseen at the time of execution of this Agreement.

18 **ARTICLE 12.**
19 **DEFAULT; REMEDIES; TERMINATION**

20 Breach and Default. Subject to Permitted Delay and a Mortgagee's right to cure under Section
21 8.4, failure by a Party to perform any material action or covenant required by this Agreement (not
22 including any failure by Developer to perform any term or provision of any other Project Approval)
23 within thirty (30) days following receipt of written Notice from the other Party specifying the
24 failure shall constitute a "Default" under this Agreement; provided, however, that if the failure to
25 perform cannot be reasonably cured within such thirty (30) day period, a Party shall be allowed
26 additional time as is reasonably necessary to cure the failure so long as such Party commences to
27 cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to
28 completion. Any Notice of Default given hereunder shall specify in detail the nature of the failures
in performance that the noticing Party claims constitutes the Default, all facts constituting evidence
of such failure, and the manner in which such failure may be satisfactorily cured in accordance

1
2
3 with the terms and conditions of this Agreement. During the time periods herein specified for cure
4 of a failure of performance, the Party charged therewith shall not be considered to be in Default
5 for purposes of (a) termination of this Agreement, (b) institution of legal proceedings with respect
6 thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of
7 any Default under this Agreement shall not operate as a waiver of any subsequent breach of the
8 same or any other provision of this Agreement.

9 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to
10 institute legal proceedings pursuant to Section 12.3 and/or terminate this Agreement upon giving
11 notice of intent to terminate pursuant to Government Code Section 65868. Following notice of
12 intent to terminate, the matter shall be scheduled for consideration and review in the manner set
13 forth in Government Code Section 65867. Following consideration of the evidence presented in
14 said review before the City Council, a Party alleging Default by the other Party may give written
15 notice of termination of this Agreement to the other Party. Termination of this Agreement shall
16 be subject to the provisions of Section 12.7 hereof. In the event that this Agreement is terminated
17 pursuant to Section 7.2.4 herein or this Section 12.2 and the validity of such termination is
18 challenged in a legal proceeding that results in a final decision that such termination was improper,
19 then this Agreement shall immediately be reinstated as though it had never been terminated.

20 Legal Actions.

21 12.3.1 Institution of Legal Actions. In addition to any other rights or remedies, a
22 Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants
23 or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other
24 remedies consistent with the terms of this Agreement.

25 12.3.2 Acceptance of Service of Process. In the event that any legal action is
26 commenced by Developer against City, service of process on City shall be made by personal
27 service upon the City Clerk of City or in such other manner as may be provided by law. In the
28 event that any legal action is commenced by City against Developer, service of process on
Developer shall be made by personal service upon Developer's registered agent for service of
process, or in such other manner as may be provided by law.

Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and
the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise
by it, at the same or different times, of any other rights or remedies for the same Default or any
other Default by the other Party, except as otherwise expressly provided herein.

No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees,
be liable in damages for any Default under this Agreement, it being expressly understood and
agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement
by the other Party shall be an action in mandamus, specific performance or other injunctive or
declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate
this Agreement. This limitation on damages shall not preclude actions by a Party to enforce
payments of monies or the performance of obligations requiring an obligation of money from the
other Party under the terms of this Agreement, including, but not limited to, obligations to pay
attorneys' fees and obligations to advance monies or reimburse monies. In connection with the

1
2
3 foregoing provisions, each Party acknowledges, warrants and represents that it has been fully
4 informed with respect to, and represented by counsel of such Party's choice in connection with,
5 the rights and remedies of such Party hereunder and the waivers herein contained, and after such
6 advice and consultation has presently and actually intended, with full knowledge of such Party's
7 rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and
8 remedies to the extent specified herein, and to rely to the extent herein specified solely on the
9 remedies provided for herein with respect to any breach of this Agreement by the other Party.

10
11 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which
12 is not provided for by this Agreement or Applicable Law, a Party shall, at the request of the other
13 Party, meet with designated representatives of the requesting Party promptly following its request.
14 The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing
15 in this Section 12.6 shall in any way be interpreted as requiring that Developer and City reach
16 agreement with regard to those matters being addressed, nor shall the outcome of these meetings
17 be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to
18 such meetings.

19
20 Survival. In the event this Agreement expires or is terminated, neither Party shall have any further
21 rights or obligations hereunder, except for those obligations of Developer set forth in Section 5.3
22 (Prevailing Wage Requirements), Section 11.6 (Cooperation in the Event of Legal Challenge) or
23 expressly set forth herein as surviving the expiration or termination of this Agreement. The
24 termination or expiration of this Agreement shall not affect the validity of the Project Approvals
25 (other than this Agreement).

26
27 Effects of Litigation. In the event litigation is timely instituted, and a final judgment is obtained,
28 which invalidates in its entirety this Agreement, neither Party shall have any obligations
whatsoever under this Agreement, except for those obligations which by their terms survive
termination hereof.

California Claims Act. Compliance with the procedures set forth in this Article shall be deemed
full compliance with the requirements of the California Claims Act (Government Code Section
900 et seq.) including, but not limited to, the notice of an event of default hereunder constituting
full compliance with the requirements of Government Code Section 910.

**ARTICLE 13.
MISCELLANEOUS**

Incorporation of Recitals; Introductory Paragraph; Exhibits. The Recitals contained in this
Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are
hereby incorporated into this Agreement as if fully set forth herein.

Permitted Delay. Performance by either of the Parties of an obligation hereunder shall be excused
during any period of "**Permitted Delay.**" Permitted Delay shall mean delay beyond the reasonable
control of a Party caused by (a) calamities, including without limitation earthquakes, floods, and
fire; (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor
disputes; (e) shortages of materials or supplies; or (f) vandalism. A Party's financial inability to
perform or obtain financing or adverse economic conditions generally shall not be grounds for

1
2
3 claiming a Permitted Delay. The Party claiming a Permitted Delay shall notify the other Party of
4 its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period
5 of the Permitted Delay within thirty (30) business days after the occurrence of the conditions which
6 establish the grounds for the claim. If notice by the Party claiming such extension is sent to the
7 other Party more than thirty (30) business days after the commencement of the cause, the period
8 shall commence to run only thirty (30) business days prior to the giving of such notice. The period
9 of Permitted Delay shall last no longer than the conditions preventing performance (“**Duration of
10 Permitted Delay**”). The Permitted Delay shall extend the Term of this Agreement by the Duration
11 of Permitted Delay.

12 13.4 Indemnity. Developer shall indemnify, at City’s request defend, and hold the City
13 Parties harmless from and against any and all Claims arising directly as a result of Developer’s
14 acts, omissions, negligence or willful misconduct in connection with Developer’s performance
15 under this Agreement or arising directly as a result of Developer’s (or Developer’s contractors,
16 subcontractors, agents, or employees) work performed in connection with the development of the
17 Property or the Project, including but not limited to Claims involving bodily injury, death or
18 property damage. Developer’s indemnification obligations set forth in this Section shall not
19 apply to the extent any such Claims are the result of the active negligence or willful misconduct
20 of any City Party.

- 21 i. Developer will defend any action or actions filed against the City Parties in
22 connection with any Claims and will pay all costs and expenses, including but not limited
23 to reasonable legal costs and attorneys’ fees incurred in connection therewith.
- 24 ii. Developer will promptly pay any judgment rendered against the City Parties for
25 any Claims arising out of or in connection with the Developer’s performance under this
26 Agreement and Developer will save and hold the City Parties from any failure to so pay
27 any such judgment.
- 28 iii. In the event any of the City Parties is made a party to the action or proceeding
filed or prosecuted against for such damages or other claims caused directly by a Default
of Developer under this Agreement, Developer agrees to pay the City Parties any and all
reasonable out-of-pocket costs and expenses actually incurred by the City Parties in such
action or proceeding, including by not limited to reasonable legal costs and attorneys’
fees.

The obligations to indemnify, defend, and hold harmless under this Section 13.3 shall survive the expiration or sooner termination of this Agreement.

13.4 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

13.5 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Subsequent Project Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (iv) "or" is not exclusive; (v) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation," and (vi) "days" means calendar days unless specifically provided otherwise.

13.6 Covenants Running with the Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein or portion thereof, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

13.7 Notices. Any notice or communication required hereunder between City and Developer, or assignee, if applicable ("**Notice**") must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their respective addresses set forth below.

To City:	City of Rialto Community Development Department 150 S. Palm Avenue Rialto, CA 92376 Attention: City Manager
----------	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

With a copy to: Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240
Riverside, CA 92507
Attention: Eric S. Vail, Rialto City Attorney

To Developer: IV5 Locust Gateway Logistics Center, LLC
Attn: Carly Smith, Senior Vice President, Deputy
General Counsel
1180 Peachtree Street NE, Suite 1575
Atlanta, GA 30309

With a copy to: IV5 Locust Gateway Logistics Center, LLC
c/o Brookfield
333 South Grand Avenue, Suite 300
Los Angeles, CA 90071

With a copy to: Matthew Wm. Nelson, Esq.
Fennemore LLP
550 East Hospitality Lane, Suite 350
San Bernardino, CA 92408

13.8 Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. This Agreement, together with the Project Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

13.9 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Bernardino. Thereafter, if this Agreement is terminated, modified or amended, the City Clerk shall record notice of such action in the Official Records of the County of San Bernardino.

13.10 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed

1
2
3 in connection herewith shall be construed as creating any such relationship between City and Developer.

4 13.11 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays
5 by any Party in asserting any of its rights and remedies under this Agreement shall not operate as
6 a waiver of any such rights or remedies, or deprive any such Party of its right to institute and
7 maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any
8 such rights or remedies. A Party may specifically and expressly waive in writing any condition or
9 breach of this Agreement by the other Party, but no such waiver shall constitute a further or
10 continuing waiver of any preceding or succeeding breach of the same or any other provision.
11 Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver
12 of the necessity of obtaining such consent for the same or similar acts in the future.

13 13.12 Headings. Section headings in this Agreement are for convenience only and are not
14 intended to be used in interpreting or construing the terms, covenants, or conditions of this
15 Agreement.

16 13.12 California Law; Venue. This Agreement shall be construed and enforced in accordance
17 with the laws of the State of California, without reference to choice of law provisions. The
18 exclusive venue for any disputes or legal actions shall be the Superior Court of California in and
19 for the County of San Bernardino, except for actions that include claims in which the Federal
20 District Court for the Central District of the State of California has original jurisdiction, in which
21 case the Central District of the State of California shall be the proper venue.

22 13.13 City Approvals and Actions. Whenever reference is made herein to an action or approval
23 to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of
24 City, unless specifically provided otherwise or the context requires otherwise.

25 13.14 Estoppel Certificates. A Party may, at any time during the Term of this Agreement, and
26 from time to time, deliver written Notice to the other Party requesting such Party to certify in
27 writing that, to the best of knowledge of the certifying Party, (i) this Agreement is in full force and
28 effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified
either orally or in writing, or if amended, identifying the amendments; (iii) the requesting Party is
not in default in the performance of its obligations under this Agreement, or if in default, to
describe therein the nature and amount of any such defaults; and (iv) any other information
reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred
by the Party from whom such certification is requested and shall reimburse such costs within thirty
(30) days of receiving the certifying Party's request for reimbursement. The Party receiving a
request hereunder shall execute and return such certificate, or give a written, detailed response
explaining why it will not do so, within twenty (20) days following the receipt thereof. The failure
of either Party to provide the requested certificate within such twenty (20) day period shall
constitute a confirmation that this Agreement is in full force and effect and no modification or
default exists. The City Manager shall have the right to execute any certificate requested by
Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by
transferees and Mortgagees.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13.15 No Third Party Beneficiaries. Except as otherwise set forth herein, including Articles 8 and 10, City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

13.15 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City and that all necessary board of directors', shareholders', partners', city councils' or other approvals have been obtained.

13.16 Time of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

13.17 Limitation on Liability. In no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY:

CITY OF RIALTO, a California municipal corporation

By: _____
Tanya Williams
City Manager
[signature must be notarized]

ATTEST:

By: _____
Barbara McGee, City Clerk

ATTEST:

By: _____
Eric S. Vail, City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEVELOPER:

IV5 Locust Gateway Logistics Center, LLC

By: _____

[signature must be notarized]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, _____, 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)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, _____, 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)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A: LEGAL DESCRIPTION

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

APN:

4931-6049-3674 v15
61145708.1/200475.0016

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit B: Site Plan

4931-6049-3674 v15
61145708.1/200475.0016

Exhibit B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit C: Impact Fees as of Effective Date

Note: Per Section 5.1.1 of the Agreement, the amount of the Impact Fees listed below are effective as of the date of the Agreement and are to be paid prior to the issuance of the permanent Certificate of Occupancy.

General Facilities:	\$75.31 per 1,000 square feet
Law Enforcements:	\$55.13 per 1,000 square feet
Fire Protection:	\$90.23 per 1,000 square feet
Parks:	Not applicable
Open Space:	\$120.00 per 1,000 square feet
Library Facilities:	Not applicable
Regional Traffic:	The amount of the Regional Traffic impact fee shall be calculated using the fee amounts and methodology that is in effect and applicable to the Project at the time Certificates of Occupancy are issued for the Project.
Street Medians:	\$20.00 per 1,000 square feet
Storm Drains:	The higher of \$2,155.43 per 1,000 square feet or \$37,538.29 per acre
Sewage Collection:	\$9.00 per line linear foot
Sewage Treatment:	\$206.96 per 1,000 square feet (warehouse)

Exhibit C

4931-6049-3674 v15
61145708.1/200475.0016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit D: Public Benefits

Community Benefits: Contribute \$4,000,000 to the City in community benefits (“Community Benefits Contribution”). Developer shall pay the Community Benefits Contribution prior to the issuance of a Certificate of Occupancy. The use of the funds to be determined by the City Council.

4931-6049-3674 v15
61145708.1/200475.0016

Exhibit D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit E: Form Assignment and Assumption Agreement

4931-6049-3674 v15
61145708.1/200475.0016

Exhibit E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**RECORDING
REQUESTED BY:**

**WHEN RECORDED
MAIL TO:**

CITY OF RIALTO
150 S. Palm Avenue
Rialto, CA 92376
Attn: City Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT ("**Assignment**") is entered into this _____ ("**Effective Date**"), between _____ ("**Assignor**"), and _____ ("**Assignee**"). Hereinafter, Assignor and the Assignee may be referred to individually as a "**Party**," or jointly as the "**Parties**."

RECITALS

- A. The Development Agreement was recorded against certain real property in the City of Rialto, San Bernardino County, California, more particularly described in the Development Agreement (the "**Property**").
- B. Assignor and Assignee entered into _____, pursuant to which, Assignee will acquire from Assignor the Property.
- C. In conjunction with the _____ in accordance with Article 10 of the Development Agreement, Assignor desires to assign to the Assignee, and the Assignee desires to assume from Assignor, all of Assignor's right, title and interest in and to Development Agreement.
- D. In accordance with Article 10 of the Development Agreement, the City consents to the assignment and assumption herein and to release Assignor, as provided by its signature.
- E. Unless otherwise defined herein, all capitalized terms have the same meanings attributed to them in the Development Agreement.

1
2
3 NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals
4 are incorporated herein by this reference, and for other good and valuable consideration, the
5 receipt and sufficiency of which are hereby acknowledged, and for the mutual covenants
6 contained herein, the Parties hereby agree as follows:

7
8
9 **AGREEMENT**

10 1. Assignment and Assumption. Effective as of the Effective Date, Assignor hereby
11 assigns, transfers, conveys and delivers to the Assignee all of Assignor's right, title and interest
12 in and to the Development Agreement. The Assignee hereby accepts the assignment of
13 Assignor's right, title and interest in and to the same, and hereby assume and agree to perform
14 and discharge all of Assignor's duties and obligations under the Development Agreement with
15 respect to the Property, as applicable, from and after the Effective Date.

16 2. City Release of Assignor. The City agrees that, by the City's approval of this
17 Assignment, Assignor is hereby released and discharged from all rights, privileges, obligations
18 and liabilities under the Development Agreement relating to the Property and first arising and
19 accruing from and after the Effective Date, and the City and the Assignee each hereby
20 acknowledge that, as of the Effective Date, the Assignee shall enjoy all such rights and privileges
21 and shall be responsible for satisfying all such obligations and liabilities under the Development
22 Agreement, as they relate to the Property, as applicable as if the Development Agreement had
23 originally been executed between the City and the Assignee.

24 3. Indemnification. Each Party agrees to indemnify and hold the other Party
25 harmless from and against any and all claims, liabilities, damages, losses, costs and expenses
26 ("Claims") to the extent caused by said Party defaulting under the Development Agreement with
27 respect to its portion of the Property.

28 4. Binding Effect. This Assignment shall be binding upon and shall inure to the
benefit of the successors and assigns of the respective parties hereto.

5. Development Agreement. This Assignment does not amend or otherwise modify
any term or provision of the Development Agreement.

6. Further Assurances. The parties covenant and agree that they will execute such
other and further instruments and documents as are or may become necessary or convenient to
effectuate and carry out this Assignment.

7. Governing Law. This Assignment shall be governed by, and construed and
enforced in accordance with, the laws of the State of California.

8. Captions. Captions and section headings are included as a matter of convenience
only, are not part of this Assignment, do not modify the terms of this Assignment, and shall not
be used to interpret this Assignment.

9. Severability. In the event any term or provision of this Assignment is declared by
any court of competent jurisdiction to be invalid or unenforceable, the remainder of this
Assignment will not be affected, and each term or provision of this Assignment will be valid and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

enforced to the fullest extent permitted by law.

10. Entire Agreement; Amendments. This Assignment constitutes the final, complete and exclusive statement between the Parties regarding the assignment and assumption of the Development Agreement and supersedes all prior and contemporaneous understandings or agreements of the Parties. Any agreement made after the Effective Date is ineffective to modify, waive or terminate this Assignment, in whole or in part, unless that agreement is in writing, signed by the Parties to this Assignment, and specifically states that the agreement modifies this Assignment.

11. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

[Signatures Follow on Next Page]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the date set forth below.

[signature blocks]

4931-6049-3674 v15
61145708.1/200475.0016

Exhibit E

1
2
3
4 Exhibit F

5 **TAX LOCALIZATION PLAN**

6 *California Sales and Use Tax.* As Owner so directs, Contractor and all Subcontractors shall take
7 measures to ensure that, to the fullest extent permitted by applicable laws and regulations, all sales,
8 purchases, and uses of tangible personal property subject to sales or use tax are located at the Site
9 for purposes of state and local sales and use tax law, with the objective of maximizing the
10 allocation to the City of construction sales and use tax revenues derived from the Project.

11 The measures taken by the Contractor or Subcontractors to satisfy this provision shall be subject
12 to Developer's prior review and approval, and all calculations and payments are subject to an audit
13 by City that are not subject to a confidentiality agreement. Without limiting the generality of the
14 foregoing, Contractor shall:

15 (i) obtain all permits and licenses necessary to maximize the City's allocation of construction sales
16 and use taxes derived from the Project, including but not limited to California Seller's Permits,
17 Use Tax Direct Payment Permits, and any other license or permit necessary or desirable to
18 maximize the City's allocation of sales and use taxes derived from the Project;

19 (ii) designate, and require all Subcontractors to designate, the Site as the place of sale of all
20 "fixtures" furnished and/or installed as part of the Project;

21 (iii) designate, and require all Subcontractors to designate, the Site as the place of use of all
22 "materials" used in the construction of the Project; and

23 (iv) allocate, and require all Subcontractors to allocate, the local sales and use taxes derived from
24 the Construction Contract and all Subcontracts directly to the City.

25 If required by Developer, Contractor shall establish a purchasing entity or purchasing office
26 located in the City. Contractor shall complete and file, and require all Subcontractors to complete
27 and file, any forms the State Board of Equalization (the "SBOE") or the California Department of
28 Tax and Fee Administration (CDTFA) required to affect the allocation of sales and use tax required
by this Section pursuant to applicable regulations of the SBOE/CDTFA, as amended or
supplemented from time to time. If required by Developer, Contractor shall, and shall cause its
Subcontractors to, maintain a monitoring report or other documentation, in such detail as Owner
may specify, tracking the amount and categories of construction sales and use tax revenues
allocated to the City under this Section.

In this clause the "City" means the City Rialto and "Site" means the Property. "Owner" means
Developer.

29 Exhibit F

4931-6049-3674 v15
61145708.1/200475.0016

30 END OF EXHIBIT A