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RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, APPROVING VARIANCE NO. 2020-0001 TO INCREASE THE MAXIMUM BUILDING HEIGHT FROM 35 FEET TO 49 FEET FOR A PROPOSED 492,410 SQUARE FOOT INDUSTRIAL WAREHOUSE BUILDING ON 22.49 GROSS ACRES (20.99 NET ACRES) OF LAND (APN: 0132-181-01, 0132-201-03, 0254-261-14, & 0254-261-17) LOCATED AT THE NORTHWEST CORNER OF VALLEY BOULEVARD AND WILLOW AVENUE.

WHEREAS, the applicant, QR Birtcher Willow Ave Owner, LLC, proposes to develop a 492,410 square foot industrial warehouse building (“Development”) on 22.49 gross acres (20.99 net acres) of land (APN: 0132-181-01, 0132-201-03, 0254-261-14, & 0254-261-17) located at the northwest corner of Valley Boulevard and Willow Avenue (“Site”); and

WHEREAS, the three (3) northernmost parcels of land within the Site (APN: 0132-201-03, 0254-261-14, & 0254-261-17) contain a general plan land use designation of Business Park (BP) with a Specific Plan Overlay; and

WHEREAS, in conjunction with the Development, the applicant has submitted General Plan Amendment No. 2020-0001 (“GPA No. 2020-0001”) to change the general plan land use designation of the southernmost parcel of land within the Site (APN: 0132-181-01) from General Commercial (GC) with a Specific Plan Overlay to Business Park (BP) with a Specific Plan Overlay; and

WHEREAS, the three (3) northernmost parcels of land within the Site (APN: 0132-201-03, 0254-261-14, & 0254-261-17) contain a zoning designation of Industrial Park (I-P) within the Gateway Specific Plan; and

WHEREAS, in conjunction with the Development, the applicant has submitted Specific Plan Amendment No. 2020-0001 (“SPA No. 2020-0001”) to change the specific plan zoning designation of the southernmost parcel of land within the Site (APN: 0132-181-01) from Freeway

1 Commercial (F-C) within the Gateway Specific Plan to Industrial Park (I-P) within the Gateway
2 Specific Plan; and

3 **WHEREAS**, in conjunction with the Development, the applicant has submitted
4 Conditional Development Permit No. 2020-0006 (“CDP No. 2020-0006”) and Precise Plan of
5 Design No. 2020-0012 (“PPD No. 2020-0012”) to facilitate the development and operation of a
6 492,410 square foot industrial warehouse building on the Site; and

7 **WHEREAS**, pursuant to Section 18.35.030A of the Rialto Municipal Code, the maximum
8 building height allowed within the I-P zone is 35 feet; and

9 **WHEREAS**, the proposed building height of the Development is 49 feet from the finished
10 floor of the building; and

11 **WHEREAS**, the building height of the Development does not comply with Section
12 18.35.030A of the Rialto Municipal Code, thus requiring an increase in the maximum allowable
13 building height in order to facilitate the Development (“Project”); and

14 **WHEREAS**, pursuant to Section 18.64.030 of the Rialto Municipal Code, the Project
15 requires the approval of a Variance, and the applicant has applied for Variance No. 2020-0001
16 (“VAR No. 2020-0001”) to increase the maximum allowable building height from 35 feet to 49
17 feet from the finished floor; and

18 **WHEREAS**, on July 27, 2022, the Planning Commission of the City of Rialto conducted
19 a duly noticed public hearing, as required by law, on VAR No. 2020-0001, GPA No. 2020-0001,
20 SPA No. 2020-0001, CDP No. 2020-0006, and PPD No. 2020-0012, took testimony, at which time
21 it received input from staff, the city attorney, and the applicant; heard public testimony; discussed
22 the VAR No. 2020-0001, GPA No. 2020-0001, SPA No. 2020-0001, CDP No. 2020-0006, and
23 PPD No. 2020-0012; and closed the public hearing; and

24 **WHEREAS**, on July 27, 2022, the Planning Commission voted 6-0 (1 vacancy) to
25 recommend denial of VAR No. 2020-0001, GPA No. 2020-0001, SPA No. 2020-0001, CDP No.
26 2020-0006, and PPD No. 2020-0012 to the City Council; and

27 **WHEREAS**, on November 15, 2022, the City Council conducted a duly noticed public
28 hearing, as required by law, on VAR No. 2020-0001, GPA No. 2020-0001, SPA No. 2020-0001,

1 CDP No. 2020-0006, and PPD No. 2020-0012, took testimony, at which time it received input
2 from staff, the city attorney, and the applicant; heard public testimony, discussed VAR No. 2020-
3 0001, GPA No. 2020-0001, SPA No. 2020-0001, CDP No. 2020-0006, and PPD No. 2020-0012;
4 and closed the public hearing; and

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

6 **NOW, THEREFORE**, the City Council hereby finds, determines, and resolves as follows:

7 **SECTION 1.** The City Council hereby specifically finds that all of the facts set forth in the
8 recitals above of this Resolution are true and correct and incorporated herein.

9 **SECTION 2.** Based on substantial evidence presented to the City Council during the public
10 hearing conducted with regard to VAR No. 2020-0001, including written staff reports, verbal
11 testimony, site plan, other documents, and the conditions of approval stated herein, the City Council
12 hereby determines that VAR No. 2020-0001 satisfies the requirements of the Section 18.64.020 of
13 the Rialto Municipal Code pertaining to the findings which must be made precedent to granting a
14 variance. The findings are as follows:

- 15
16 1. There are exceptional circumstances or conditions applicable to the property involved,
17 or to the intended use of the property, that do not apply generally to the property or
18 class of use in the same vicinity or district.

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

20 Strict enforcement of the maximum building height restriction of 35 feet required by the I-
21 P zone will prevent the applicant from providing the highest quality design and securing a
22 tenant and/or buyer for the proposed building. The applicant will construct the proposed
23 project as a modern industrial building. There is a high demand for buildings with higher
24 clear ceilings in order to accommodate the storage/racking needs my industrial users now
25 require. This is due in large part to the rapidly expanding e-commerce sector. For this
26 reason, the marketplace views existing industrial buildings with lower clear heights as
27 inferior and often face difficulty competing with higher clear height buildings. Over time,
28 this requirement for higher clear heights will become more stringent, rendering existing
buildings with lower clear heights potentially obsolete, thereby increasing the likelihood
of extended periods of vacancy.

2. This variance is necessary for the preservation and enjoyment of a substantial property
right of the applicant as possessed by other property owners in the same vicinity and
district.

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

3 The proposed development offers the highest and best use of the property under the current
4 zoning. However, in order to develop a viable warehouse building that allows for the
5 installation of the latest technologies and equipment used by logistics companies, a
6 building height in excess of 35 feet is required. The variance will further assist the
7 developer in securing a tenant, which otherwise might not be possible. Another warehouse
8 development approximately 0.38 miles to the west recently received a variance allowing a
9 building height of 47 feet (Variance No. 2017-0011). Without a variance, the applicant
10 cannot construct a competitive distribution warehouse on the site, thereby giving an unfair
11 advantage to the warehouse development to the west that is not restricted by the 35-foot
12 building height limitation.

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3. The granting of this variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and district in which the property is located.

This finding is supported by the following facts:

The 14-foot difference in building height is negligible considering the proposed warehouse to the west stands at approximately the same height (47 feet vs. 49 feet) and a hotel approximately 350 feet to the west features a tower element that reaches up to 58.8 feet. The warehouse building will have a high-quality design and will not be unsightly or otherwise injurious to the property or improvements in the vicinity or detrimental to public welfare.

4. The proposed use and development are consistent with the General Plan and objectives of the zoning ordinance.

This finding is supported by the following facts:

Granting the variance will facilitate the development of a high-quality warehouse building in keeping with General Plan Land Use Element Goal 2-22, which requires the City to “Promote commercial and/or industrial development planned that is well designed, people-oriented, environmentally sustainable, sensitive to the needs of the visitor or resident, and functionally efficient for its purpose”. Additionally, a precedent has already been set to allow I-P projects beyond the 35-foot maximum building height, as established by Variance No. 2017-0011 for Panattoni Development Company, Inc., as many warehousing projects require building heights with an interior clearance of at least 35 feet and an exterior height well above that to shield rooftop equipment.

SECTION 3. An Environmental Impact Report (Environmental Assessment Review No. 2020-0007) has been prepared for the proposed Project in accordance with the California

1 Environmental Quality Act (CEQA) and it has been determined that the Project will create
2 unavoidable significant impacts to air quality, greenhouse gas emissions, and transportation/traffic.
3 On November 15, 2022, the City Council adopted the Final Environmental Impact Report prepared
4 for the Project.

5 **SECTION 4.** The City Council hereby approves VAR No. 2020-0001 to allow an increase
6 in the maximum allowable building height on the Site from 35 feet to 49 feet from the finished floor
7 for a proposed 492,410 square foot industrial warehouse building, in accordance with the plans and
8 application on file with the Planning Division, subject to the following conditions:

- 9 1. Variance No. 2020-0001 is approved to increase the maximum building height on the Site
10 from 35 feet to 49 feet from the finished floor for a proposed 492,410 square foot industrial
11 warehouse building, as shown on the plans attached as Exhibit A, and as approved by the
12 City Council.
- 13 2. City inspectors shall have access to the Site to reasonably inspect the Site during normal
14 working hours to assure compliance with these conditions and other codes.
- 15 3. The applicant shall indemnify, protect, defend, and hold harmless, the City of Rialto,
16 and/or any of its officials, officers, employees, agents, departments, agencies, and
17 instrumentalities thereof (collectively, the “City Parties”), from any and all claims,
18 demands, law suits, writs of mandamus, and other actions and proceedings (whether
19 legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative
20 dispute resolutions procedures (including, but not limited to arbitrations, mediations,
21 and other such procedures), (collectively “Actions”), brought against the City, and/or
22 any of its officials, officers, employees, agents, departments, agencies, and
23 instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or
24 annul, the any action of, or any permit or approval issued by, the City and/or any of its
25 officials, officers, employees, agents, departments, agencies, and instrumentalities
26 thereof (including actions approved by the voters of the City), for or concerning the
27 Project (collectively, the “Entitlements”), whether such Actions are brought under the
28 California Environmental Quality Act, the Planning and Zoning Law, the Subdivision
Map Act, Code of Civil Procedure Chapter 1085 or 1094.5, the California Public
Records Act, or any other state, federal, or local statute, law, ordinance, rule, regulation,
or any decision of a court of competent jurisdiction. This condition to indemnify,
protect, defend, and hold the City harmless shall include, but not be limited to (i)
damages, fees and/or costs awarded against the City, if any, and (ii) cost of suit,
attorneys’ fees and other costs, liabilities and expenses incurred in connection with
such proceeding whether incurred by applicant, Property owner, or the City and/or
other parties initiating or bringing such proceeding (collectively, subparts (i) and (ii)
are the “Damages”). Notwithstanding anything to the contrary contained herein, the
Applicant shall not be liable to the City Parties under this indemnity to the extent the

1 Damages incurred by any of the City Parties in such Action(s) are a result of the City
2 Parties' fraud, intentional misconduct or gross negligence in connection with issuing
3 the Entitlements. The applicant shall execute an agreement to indemnify, protect,
4 defend, and hold the City harmless as stated herein within five (5) days of approval of
5 VAR No. 2020-0001.

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- 7 4. In accordance with the provisions of Government Code Section 66020(d)(1), the
8 imposition of fees, dedications, reservations, or exactions for this Project, if any, are
9 subject to protest by the applicant at the time of approval or conditional approval of the
10 Project or within 90 days after the date of the imposition of the fees, dedications,
11 reservations, or exactions imposed on the Project.
- 12 5. Approval of VAR No. 2020-0001 will not be valid until such time that the City Council
13 of the City of Rialto has approved General Plan Amendment No. 2020-0001 and Specific
14 Plan Amendment No. 2020-0001, which were prepared in conjunction with the Project.
- 15 6. The applicant shall comply with all conditions of approval contained in GPA No. 2020-
16 0001, SPA No. 2020-0001, CDP No. 2020-0006, and PPD No. 2020-0012, to the extent
17 they are not in conflict with any condition of approval herein.

18 **SECTION 5.** The Mayor shall sign as to the passage and adoption of this resolution and
19 thereupon the same shall take effect and be in force.

20 **PASSED, APPROVED AND ADOPTED** this 15th day of November, 2022.

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DEBORAH ROBERTSON, MAYOR

1 **ATTEST:**

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5 BARBARA MCGEE, CITY CLERK

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7 **APPROVED AS TO FORM:**

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10 ERIC S. VAIL, CITY ATTORNEY

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

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I, BARBARA MCGEE, City Clerk of the City of Rialto, do hereby certify that the foregoing Resolution No. _____ was duly passed and adopted at a regular meeting of the City Council of the City of Rialto held on the _____ day of _____, 2022.

Upon motion of Councilmember _____, seconded by Councilmember _____, the foregoing Resolution No. _____ was duly passed and adopted.

Vote on the motion:
AYES:
NOES:
ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of Rialto this _____ day of _____, 2022.

BARBARA MCGEE, CITY CLERK

Exhibit A

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