



PUBLIC IMPROVEMENT AGREEMENT
[Non-subdivision development]

by and between

CITY OF RIALTO

and

**AIREF RIALTO COMMERCE CENTER LP, A
DELAWARE LIMITED PARTNERSHIP**

PUBLIC IMPROVEMENT AGREEMENT BETWEEN

THE CITY OF RIALTO

AND

AIREF RIALTO COMMERCE CENTER LP, A DELAWARE LIMITED PARTNERSHIP

Agreement Date: _____

Developer Name: AIREF RIALTO COMMERCE CENTER LP (hereinafter "Developer")

Project Name: AIREF RIALTO COMMERCE CENTER (hereinafter "Project")

Estimated Total Cost of Improvements: \$ 587,257.55

(Including Improvements consistent with Plan No. LS-083, S-0577,
ST-0993, STLT-0064)

Security:

Bond Nos.: 674219636

Surety: Liberty Mutual Insurance Company

-OR-

Irrevocable Standby Letter of Credit No.: _____

Financial Institution: _____

-OR-

Cash/Certificate of Deposit, Agreement Dated: _____

Financial Institution: _____

Designees for the Service of Written Notice:

CITY:	DEVELOPER:
City Engineer City of Rialto 150 S. Palm Avenue Rialto, CA 92376 Phone: (909) 820-2602	Name: AIREF Rialto Commerce Center LP Attn: Legal Department Address: 1200 17 th Street, Suite 2900 Denver, CO 80202 Phone: (303) 869-4600 With copy to: AIREF Rialto Commerce Center LP Attn: Development 4675 MacArthur Court, Suite 625 Newport Beach, CA 92660 (949) 892-4904
CITY PROJECT INSPECTOR:	SURETY:
City of Rialto Public Works Department 335 W. Rialto Avenue Rialto, CA 92376 Phone: (909) 421-7294	Name: Liberty Mutual Insurance Company Address: 175 Berkeley Street Boston, MA 02116 Phone: (617) 357-9500 Agent for Processing: Lockton Companies, LLC 777 S. Figueroa Street, Suite 5200 Los Angeles, CA 90017 (213) 655-9714

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CITY OF RIALTO

LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a license, permit, or other entitlement for use, including all contracts except as specified in the Levine Act, if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the award of the license, permit, other entitlement for use, or contract, and for 12 months following the final decision, from the person or company awarded the license, permit, other entitlement, or contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the Attachment "A" for the complete statutory language.

Current member of the City of Rialto City Council are:

Deborah Robertson, Mayor
Andy Carrizales, Mayor Pro Tem
Ed Scott
Rafael Trujillo
Joe Baca

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any Rialto City Council Member(s) in the 12 months preceding the submittal of any application relating to the matter for which you are seeking or requesting approval of a license, permit, other entitlement for use, or a contract?

___ YES ☒ NO

If yes, please identify the Council Member(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any Rialto City Council Member(s) in the 12 months following the award of the license, permit, other entitlement for use, or a contract?

___ YES ☒ NO

If yes, please identify the Council Member(s):

Answering yes to either of the two questions above does not preclude the City Council from awarding a license, permit, other entitlement for use, or a contract to your firm. It does, however, preclude the identified Council Member(s) from participating in the award process for this license, permit, other entitlement for use, or contract.

Date: 6/14/23

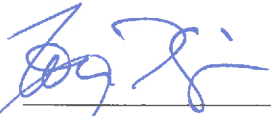
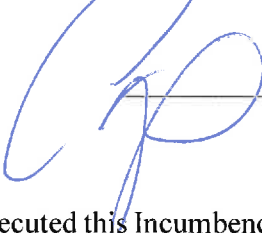
(SIGNATURE OF AUTHORIZED OFFICIAL)

Chris Sanford, Authorized Signatory
(TYPE OR WRITE NAME AND TITLE)

AIRFF Rialto Commerce Center LP
(TYPE OR WRITE NAME OF COMPANY)

INCUMBENCY CERTIFICATE

I, Jonathan Linker, the duly authorized Assistant Secretary of Ares Industrial Real Estate Fund GP LLC, a Delaware limited liability company, the General Partner of Ares Industrial Real Estate Fund OP LP, a Delaware limited partnership, the Sole Member of AIREF Rialto CC GP LLC, a Delaware limited liability company, the General Partner of AIREF Rialto Commerce Center LP, a Delaware limited partnership (collectively, the "Company"), HEREBY CERTIFIES that the persons whose names, titles, and signatures appear below are each a duly qualified and acting representative of the Company on the date hereof. Each representative holds the office set forth beside his name, and the signature appearing opposite his name is the genuine signature of such representative. Each such representative is authorized to act on behalf of Company with respect to matters requiring the direction, consent, or other action of the Company with respect to AIREF Rialto Commerce Center LP.

Name	Title	Signature
Tom Kazarian	Managing Director Construction	
Chris Sanford	Managing Director Development and Construction Management	

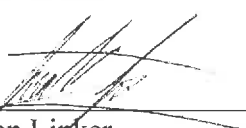
IN WITNESS WHEREOF, the undersigned has executed this Incumbency Certificate for and on behalf of the Company on this 13th day of June 2023.

AIREF Rialto Commerce Center LP,
a Delaware limited partnership

By: AIREF Rialto CC GP LLC,
a Delaware limited liability company, its
General Partner

By: Ares Industrial Real Estate Fund OP LP,
a Delaware limited partnership, its Sole Member

By: Ares Industrial Real Estate Fund GP LLC,
a Delaware limited liability company, its
General Partner

By: 
Jonathan Linker
Assistant Secretary

PUBLIC IMPROVEMENT AGREEMENT

THIS PUBLIC IMPROVEMENT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2023, by and between the CITY OF RIALTO, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California, ("CITY"), and AIREF Rialto Commerce Center LP, a Delaware limited partnership (Developer).

RECITALS

A. Developer has presented to City for approval Conditional Development Permit (CDP) 2021-0032 and Precise Plan of Design (PPD) 2021-0036 (the "Entitlements") in connection with a development of a 201,239 square foot industrial building (the "Project"), located in the City of Rialto, County of San Bernardino, State of California (the "Property"), as described on Exhibit "A", attached hereto and incorporated herein by reference.

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

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

D. Developer has delivered to City, and City has approved, plans and specifications and related documents for certain "Works of Improvement" (as hereinafter defined) which are required to be constructed and installed in order to accommodate the development of the Property.

E. Developer's agreement to construct and install the Works of Improvement pursuant to this Agreement is a material consideration to City in approving the Project and permitting development of the Property to proceed.

COVENANTS

Based upon the foregoing Recitals which are incorporated herein by reference and in consideration of City's approving the Map for the Property and permitting development of the Property to proceed, Developer agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations.

1.1 Works of Improvement. Developer agrees, at its sole cost and expense, to construct or install, or cause to be constructed or installed the street, drainage, domestic water, sanitary sewer, street lighting, landscaping, utility, and other improvements (the "Works of Improvement"), as the same may be supplemented and revised from time to time as set forth in this Agreement (said plans and specifications, together with all related

documents, the "Plans"). The estimated construction cost for the Works of Improvement is \$587,257.55.

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

- (a) The acquisition, or payment of the cost of acquisition by City, and dedication of all rights-of-way, easements and other interests in real property for construction and installation of the Works of Improvement, free and clear of all liens and encumbrances; or
- (b) The offer of dedication to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Works of Improvement; or
- (c) The dedication to, and acceptance by, City of appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or
- (d) The issuance by a court of competent jurisdiction pursuant to State Eminent Domain Law of an order of possession. Developer shall comply in all respects with the order of possession.

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

1.4 Intent of Plans. The intent of the Plans referenced in Section 1.1 is to prescribe a complete work of improvement which Developer shall perform or cause to be performed in a manner acceptable to the City Engineer, (or designee), and in full compliance with all codes and the terms of this Agreement. Developer shall complete a functional or operable improvement or facility, even though the Plans may not specifically call out all items of work required for Developer's contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made or information necessary to carry out the full intent and meaning of the Plans, Developer or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the City Engineer whose decision thereon shall be final.

Developer recognizes that the Plans consist of general drawings. All authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the City Engineer. The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by Developer or its

contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.5 RESERVED.

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

1.7 Changes in the Work. The City Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in Paragraph 4, may order extra work or may make changes by altering or deleting any portion of the Works of Improvement as specified herein or as deemed necessary or desirable by the City Engineer as determined necessary to accomplish the purposes of this Agreement and to protect the public health, safety, or welfare. The City Engineer shall notify Developer or its contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Developer or its contractor shall be binding on City unless approved in writing by the City Engineer. The City and Developer may mutually agree upon changes to the Works of Improvement, subject to the security requirements in Section 4.

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

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

1.10 Authority of the City Engineer. In addition to the authority granted to the City Engineer elsewhere in this Agreement, the City Engineer shall have the authority to decide all questions which may arise as to the quality and acceptability of materials furnished and work performed, and all questions as to the satisfactory and acceptable fulfillment of the terms of this Agreement by Developer and its contractor.

1.11 Documents Available at the Site. Developer shall cause its contractor to keep a copy of all approved Plans at the job site and shall give access thereto to the City's inspectors and engineers at all times.

1.12 Inspection. Developer shall have an authorized representative on the job site at all times during which work is being done who has full authority to act for Developer, or its design engineer, and Developer's contractor(s) regarding the Works of Improvement. Developer shall cause its contractor to furnish the City with every reasonable facility for ascertaining whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the Plans. If the City inspector requests it, the Developer's contractor, at any time before acceptance of the Works of Improvement, shall remove or uncover such portions of the finished work as

may be directed which have not previously been inspected. After examination, the Developer's contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City Engineer (or designee) shall not be considered as direct control of the individual workmen on the job site. City's inspectors shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by City shall not relieve Developer or its contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

1.13 Compliance with Law; Applicable Standards for Improvements. In addition to the express provisions of this Agreement and the Plans, Developer shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules and regulations. In addition, without limiting the foregoing, the Developer shall, at its expense, obtain and comply with the conditions of all necessary permits and licenses for the construction of the Works of Improvement. The Developer shall also give all necessary notices and pay all fees and taxes as required by law.

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

1.14 Suspension of Work. The City Engineer shall have authority to order suspension of the work for failure of the Developer's contractor to comply with law pursuant to Section 1.12. In case of suspension of work for any cause whatsoever, Developer and its contractor shall be responsible for all materials and shall store them properly if necessary, and shall provide suitable interim drainage and/or dust control measures, and erect temporary structures where necessary.

1.15 Erosion and Dust Control and Environmental Mitigation. All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

1.16 Final Acceptance of Works of Improvement. After Developer's contractor has completed all of the Works of Improvement, Developer shall then request a final inspection of the work. If items are found by the City's inspectors to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced

herein, City will inform the Developer or its contractor of such items. After the Developer's contractor has completed these items, the procedure shall then be the same as specified above for the Developer's contractor's initial request for final inspection. If items are found by City's inspectors to be incomplete or not in compliance after two (2) "final" inspections, the City may require the Developer or its contractor, as a condition to performing further field inspections, to submit in writing a detailed statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at that time. Developer shall be responsible for payment to City Engineer of re-inspection fees in the amount necessary to cover the City's costs for additional final inspections, as determined by the City Engineer.

No inspection or acceptance pertaining to specific parts of the Works of Improvement shall be construed as final acceptance of any part until the overall final acceptance by the City Engineer is made. The City Engineer shall make a certification of completion and acceptance on the Works of Improvement by recordation of a Notice of Acceptance on behalf of the City. Final acceptance shall not constitute a waiver by the City Engineer of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be the date of the Notice of Acceptance.

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

1.18 Developer's Obligation to Warn Public during Construction. Until recordation of the Notice of Acceptance, Developer shall give good and adequate warning to the public of any dangerous condition of the Works of Improvements, and shall take reasonable actions to protect the public from such dangerous condition. Until recordation of the Notice of Acceptance, Developer shall provide forty-eight (48) hours' advance written notice to all neighboring property owners and tenants affected by Developer's operations or construction of the hours, dates and duration of any planned construction activities.

1.19 Injury to Public Improvements, Public Property or Public Utility. Until recordation of the Notice of Acceptance of the Works of Improvement, Developer assumes responsibility for the care and maintenance of, and any damage to, the Works of Improvements. Developer shall replace or repair all Works of Improvements, public property, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless whether resulting from the acts of the Developer, prior to the recordation of the Notice of Acceptance. Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage, regardless of cause, occurring to the work or Works of Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

2. Time for Performance.

2.1 Commencement and Completion Dates. Subject to Sections 2.2 and 2.3 below, Developer shall (i) commence with construction and installation of the Works of Improvement thirty (30) days following City's approval of the Plans ("Commencement Date"); and (ii) complete or cause to be completed all of the Works of Improvement two (2) years after the Commencement Date. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the Works of Improvement hereunder may be extended for a period or periods not exceeding two (2) years. Extensions shall be executed in writing by the City Engineer. The City Engineer in his or her sole discretion determines whether or not the Developer has established good cause for an extension. As a condition of such extension, the City Engineer may require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer. If Developer requests and is granted an extension of time for completion of the improvements, City may apply the standards in effect at the time of the extension.

2.2 Phasing Requirements. Notwithstanding the provisions of Section 2.1, the City reserves the right to control and regulate the phasing of completion of specific Works of Improvement as required to comply with applicable City ordinances, regulations, and rules relating to the timely provision of public services and facilities. In addition to whatever other remedies the City may have for Developer's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Developer acknowledges City's right to withhold the issuance of further building permits on the Property until such phasing requirements are satisfied. Prior to issuance of building permits, Developer shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of fees, construction of improvements, or both. Final inspections or issuance of Certificates of Occupancy may be withheld from the Developer by the City, if, upon a determination by the City Engineer, completion of specific Works of Improvements or other requirements associated with the development of the Property have not been completed to the City Engineer's satisfaction.

2.3 Force Majeure. Notwithstanding the provisions of Section 2.1, Developer's time for commencement and completion of the Works of Improvement shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Developer, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, acts or failures to act of a public agency (including City), required changes to the scope of work required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than five (5) days prior to City's receipt of a written notice from Developer or its contractor detailing the grounds for Developer's claim to a right to extend its time for performance hereunder. The City Engineer shall evaluate all claims to Force Majeure and the City Engineer's decision shall be final.

2.4 Continuous Work. After commencement of construction of the Works of Improvement (or separate portion thereof), Developer shall cause such work to be diligently pursued to completion, and shall not abandon the work for a consecutive period or more than thirty (30) days, events of Force Majeure excepted.

3. Labor.

3.1 Labor Standards. This Agreement is subject to, and Developer agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, worker compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including section 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 to 1861, which provisions are specifically incorporated herein by reference as set forth herein in their entirety. Developer shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the Works of Improvement.

3.2 Nondiscrimination. In accordance with the California Fair Employment and Housing Act ("FEHA"), California Government Code Section 12940 *et seq.*, Developer agrees that Developer, its agents, employees, contractors, and subcontractor performing any of the Works of Improvement shall not discriminate, in any way, against any person on the basis of race, ethnicity, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Developer shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of this Agreement.

3.3 Licensed Contractors. Developer shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed. All of Developer's contractors and subcontractors shall obtain a valid City of Rialto business license prior to performing any work pursuant to this Agreement. Developer shall provide the City Engineer with a list of all of its contractors and subcontractors prior to initiating any work, and all valid Contractor's licenses and business licenses issued thereto as a condition of constructing the Works of Improvements.

3.4 Worker's Compensation. Developer shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to City a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

4. Security.

4.1 Required Security.

(a) At the time Developer executes this Agreement, Developer shall furnish to City the following bonds, letters of credit, instruments of credit (assignment of deposit account) or other security acceptable to City in its sole and absolute discretion and satisfying the requirements of the applicable provisions of this Section 4 below (hereinafter "Security Instruments"):

(i) A Security Instrument securing Developer's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of \$587,257.55 equal to 100% of the estimated construction cost referenced in Section 1.1.

(ii) A Security Instrument guaranteeing the payment to contractors, subcontractors, and other persons furnishing labor, materials, and/or equipment ("Labor and Materials Security Instrument") with respect to the Works of Improvement in an amount equal to \$587,257.55 equal to 100% of the estimated construction cost referenced in Section 1.1.

(iii) A Security Instrument guaranteeing the payment of the cost of setting monuments as required in Section 1.4 in the amount of \$1,000.00 equal to 100% of the cost thereof.

This Agreement shall not be effective for any purpose until such Security Instruments are supplied to and approved by City in accordance herewith.

(b) Required Security Instrument for Maintenance and Warranty. Prior to the City Council's acceptance of the Works of Improvement and recordation of a Notice of Completion, Developer shall deliver a Security Instrument warranting the work accepted for a period of one (1) year following said acceptance ("Maintenance and Warranty Security Instrument"), in the amount of \$58,725.76 equal to 10% of the estimated construction cost set forth in Section 1.1 or a suitable amount determined by the City Engineer.

4.2 Form of Security Instruments. All Security Instruments shall be in the amounts required under Section 4.1 (a) or 4.1(b), as applicable, shall meet the following minimum requirements and otherwise shall be in a form provided by City or otherwise reasonably approved by the City Attorney:

(a) Bonds. For Security Instruments provided in the form of bonds, any such bond must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's.

(b) Letters of Credit. For Security Instruments which are letters of credit, any letter of credit shall be an original separate unconditional, irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with

offices in the State of California acceptable to City. Any such letter of credit shall specifically permit City to draw on same by unilateral certification of the City Engineer of the City that Developer is in default under its payment or performance obligations hereunder or in the event Developer fails to deliver a replacement letter of credit not less than thirty (30) days prior to the date of expiration of any such letter of credit and shall further be subject to the provisions of Section 4.4.

(c) Instrument of Credit. For Security Instruments which are Instruments of Credit, any Instrument of Credit shall be an assignment of deposit account assigning as security to City all of Developer's interest in funds on deposit in one or more bank accounts with financial institutions acceptable to City.

(d) General Requirements for all Security Instruments.

(i) Payments under any Security Instruments shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the City of Rialto, State of California (and the Security Instrument shall so provide).

(ii) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Developer's completing the Works of Improvement, in accordance with Section 2.1 (other than Instruments of Credit, which shall have no defined term or expiration date).

(iii) Each Security Instrument shall provide that changes may be made in the Works of Improvement pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

(iv) If the Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by the Developer to the City Engineer; and (3) upon its written acceptance by the City Engineer, be deemed a part of this Agreement. Upon the City Engineer's acceptance of a replacement security, the former security may be released by the City.

4.3 Developer's Liability. While no action of Developer shall be required in order for City to realize on its security under any Security Instrument, Developer agrees to cooperate with City to facilitate City's realization under any Security Instrument, and to take no action to prevent City from such realization of any Security Instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Developer shall be personally liable for performance under this Agreement and for payment of the cost of the labor and materials for the improvements required to be constructed or installed hereby and shall, within ten (10) days after written demand therefor, deliver to City such substitute security as City shall require satisfying the requirements in this Section 4.

4.4 Letters of Credit.

(a) In the event a letter of credit is given pursuant to Section 4.2(b), City shall be entitled to draw on any such letter of credit if a replacement letter of credit (expiring in not less than one (1) year, unless City agrees to a lesser term in City's sole and absolute discretion) is not delivered not less than thirty (30) days prior to the expiration of the original letter of credit, such substitute letter of credit being in the same amount and having the terms and conditions as the initial letter of credit delivered hereunder, issued by a financial institution acceptable to City as of the date of delivery of the replacement letter of credit.

(b) In the event of draw by the City on a letter of credit, the City may elect, in its sole and absolute discretion, to apply any such funds drawn to the obligations secured by such letter of credit or to hold such funds in an account under the control of the City, with no interest accruing thereon for the benefit of the Developer. If the City elects to hold the funds in an account pursuant to the foregoing, City may thereafter at any time elect instead to apply such funds as provided in the foregoing. Developer agrees and hereby grants City a security interest in such account to the extent required for City to realize on its interests therein, and agrees to execute and deliver to City any other documents requested by City in order to evidence the creation and perfection of City's security interest in such account.

4.5 Release of Security Instruments. The City shall release all Security Instruments as follows:

(a) City shall release the Faithful Performance Security Instrument and Labor and Materials Security Instrument when all of the following have occurred:

(i) Developer has made written request for release and provided evidence of satisfaction of all other requirements in this Section 4.5;

(ii) the Works of Improvement have been accepted;

(iii) Developer has delivered the Maintenance and Warranty Security Instrument; and

(iv) after passage of the time within which lien claims are required to be made pursuant to Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California. If lien claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claims have been resolved, Developer has provided a statutory bond, or otherwise as required by applicable law.

(b) City shall release the Maintenance and Warranty Security Instrument upon Developer's written request upon the expiration of the warranty period, and settlement of any claims filed during the warranty period.

(c) The City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

5. Cost of Construction and Provision of Inspection Service.

5.1 Developer Responsible for All Costs of Construction. Developer shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement. In the event Developer is entitled to reimbursement from City for any of the Works of Improvement, such reimbursement shall be subject to a separate Reimbursement Agreement to be entered into between Developer and City prior to construction of the Works of Improvement.

5.2 Payment to City for Cost of Related Inspection and Engineering Services. Developer shall compensate City for all of City's costs reasonably incurred in having its authorized representative make the usual and customary inspections of the Works of Improvement. In addition, Developer shall compensate City for all design, plan check, evaluating any proposed or agreed-upon changes in the work. The procedures for deposit and payment of such fees shall be as established by the City. In no event shall Developer be entitled to additional inspections or a final inspection and acceptance of any of the Works of Improvement until all City fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections.

6. Acceptance of Offers of Dedication. The City Council shall pass an appropriate resolution or resolutions accepting all offers of dedication for the Property, with acceptance to become effective upon completion and acceptance by City of the Works of Improvement.

7. Warranty of Work. Developer shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of final acceptance. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the Plans, Developer, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the City in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should Developer fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by Developer. The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law.

8. Default.

8.1 Default by Developer. Default by Developer shall include, but not be limited to:

(a) Developer's failure to timely commence construction of Works of Improvement under this Agreement;

- (b) Developer's failure to timely complete construction of the Works of Improvement;
- (c) Developer's failure to perform substantial construction work for a period for 20 consecutive calendar days after commencement of the work;
- (d) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within 30 days;
- (e) The commencement of a foreclosure action against the Project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or
- (f) Developer's failure to perform any other obligation under this Agreement.

8.2 Remedies. The City reserves all remedies available to it at law or in equity for a default or breach of Developer's obligations under this Agreement. The City shall have the right, subject to this Section, to draw upon or use the appropriate security to mitigate the City's damages in the event of default by Developer. The City's right to draw upon or use the security is in addition to any other remedy available to City. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the improvements and, therefore, City's damages for Developer's default shall be measured by the cost of completing the required improvements. The City may use the sums provided by the securities for the completion of the Works of Improvement in accordance with the plans. In the event the Developer fails to cure any default under this Agreement within 20 days after the City mails a notice of such default to the Developer and the Developer's surety, Developer authorizes the City to perform the obligation for which Developer is in default and agrees to pay the entire cost of such performance by the City. The City may take over the work and complete the Works of Improvement, by contract or by any other method City deems appropriate, at the expense of the Developer. In such event, City, without liability for doing so, may complete the Works of Improvement using any of Developer's materials, appliances, plans and other property that are at the work site and that are necessary to complete the Works of Improvement.

8.3 Notice of Violation. The Developer's failure to comply with the terms of this Agreement constitutes Developer's consent for the City to file a notice of violation against all the lots in the Project, or to rescind or otherwise revert the Project to acreage. Developer specifically recognizes that the determination of whether a reversion to acreage or rescission of the Project constitutes an adequate remedy for default by the Developer shall be within the sole discretion of the City.

8.4 Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for a default by Developer hereunder, the Developer agrees that the choice of remedy or remedies for Developer's breach shall be in the discretion of the City. Additionally, any remedy specifically provided in this Agreement shall be in addition to,

and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

8.5 Attorney's Fees and Costs. In the event that Developer fails to perform any obligation under this Agreement, Developer agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including costs of suit and reasonable attorney's fees. In the event of any dispute arising out of Developer's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

8.6 Waiver. No waiver by the City of any breach or default by the Developer shall be considered valid unless in writing, and no such waiver by the City shall be deemed a waiver of any subsequent breach or default by the Developer.

9. Indemnity/Hold Harmless. City or any officer, employee or agent thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors and subcontractors in the performance of this Agreement. Developer further agrees to protect, defend, indemnify and hold harmless City, its officials, boards and commissions, and members thereof, agents, and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of Developer, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence or willful misconduct of the City, its officials, boards, commissions, the members thereof, agents and employees, including all claims, demands, causes of action, liability or loss because of or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Project, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other improvements. Recordation of the Notice of Acceptance by the City of the Works of Improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section. City shall not be responsible for the design or construction of the property to be dedicated or the improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction taken by the City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Developer submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After recordation of the Notice of Acceptance, the Developer shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, Developer shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the recordation of the Notice of Acceptance by the City of the Works of Improvements. It is the intent of this section that Developer shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving or reviewing any work or construction. The improvement security shall not be required to cover the provisions of this Paragraph.

Developer shall reimburse the City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section.

10. Developer's Indemnity of Project Approval. Developer shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City, advisory agency, appeal board, or legislative body concerning the Project. The City shall promptly notify the Developer of any claim, action, or proceeding and cooperate fully in the defense of any such claim, action, or proceeding. In the event City fails to promptly notify the Developer of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the Developer shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this Section prohibits the City from participating in the defense of any claim, action, or proceeding if City bears its own attorney's fees and costs and defends the action in good faith. Developer shall not be required to pay or perform any settlement unless the settlement is approved by the Developer.

11. Insurance Requirements.

11.1 Developer, at Developer's sole cost and expense and for the full term of this Agreement and any extensions thereto, shall obtain and maintain all of the following minimum insurance requirements in a form approved by the City's authorized designee for Risk Management prior to commencing any work:

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

- (i) Premises-operations; including X, C, and U coverage;
- (ii) Owners' and contractors' protection;

- (iii) Independent contractors;
- (iv) Blanket contractual;
- (v) Ongoing operations;
- (vi) Products -completed operations hazard; and
- (vii) Personal and advertising injury

(b) Commercial Business Auto policy with a minimum \$1 million per occurrence, combined single limit, for bodily injury and property damage, providing all of the following minimum coverage:

- (i) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and
- (ii) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall have said coverage provided under the Commercial General Liability policy.

(c) Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the Developer:

- (i) This policy shall provide coverage for Workers' Compensation (Coverage A); and
- (ii) This policy shall provide coverage for \$1,000,000 Employers' Liability (Coverage B).
- (iii) Pursuant to Labor Code section 1861, Developer by executing this Agreement certifies: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."
- (iv) Developer shall cause each contractor and subcontractor to provide adequate Workers' Compensation and Employer's Liability Insurance for the protection of employees not otherwise protected.
- (v) Prior to commencement of work, the Developer shall file with the City's Risk Manager a Certificate of Insurance or certification of permission to self-insure workers' compensation conforming to the requirements of the Labor Code.

(d) Endorsements. All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:

(i) The Commercial General Liability and Commercial Vehicle/Automotive Liability policies are to contain or be endorsed to contain the following provisions:

a. Additional Insureds. The City of Rialto, its officials, officers, employees, agents and independent contractors shall be named as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations.

b. Primary Insurance. For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City of Rialto, its officials, officers, employees, agents and independent contractors. Any insurance or self- insurance maintained by the City of Rialto, its officials, officers, employees, agents and independent contractors shall be excess of the Developer's insurance and shall not contribute with it. This endorsement is not applicable to the Commercial Vehicle/Automotive Liability Policy.

c. Waiver of Subrogation. Endorsements waiving all rights of subrogation against the City of Rialto, its officials, officers, employees, agents and independent contractors shall be provided.

(ii) The Workers' Compensation policy shall be endorsed to waive all rights of subrogation against the City of Rialto, its officials, officers, employees, agents and independent contractors.

(e) Other Insurance Requirements. All policies required under this Agreement shall contain provisions stating that such policies cannot be canceled or reduced except on at least thirty (30) days' prior written notice to Developer ten (10) days' notice for cancellation due to non- payment). Developer further agrees to:

(i) provide to City copies of any notices relating to cancellation or reduction of insurance within two (2) days of receipt; and

(ii) cause all certificates of insurance to include language indicating that the issuers or producers of such policies will endeavor to provide copies of any such notices directly to City.

(f) Commencement of Work. Developer shall not commence work under this Agreement until Developer has obtained all insurance required pursuant to this Section, and such insurance has been approved by City; nor shall Developer allow

any contractor or subcontractor to commence work on the Improvements until all similar insurance required of the contractor or subcontractor has been obtained. Certificates, endorsements, and where applicable, full copies of policies shall be maintained on file with the City Clerk.

(g) Higher Limits. If Developer maintains higher limits than the minimums specified in this Section 11, the City requires and shall be entitled to coverage for the higher limits maintained by Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(h) Insurer Rating; Acceptability. Except as set forth otherwise herein, the policies required by this Section shall be issued by a California-admitted insurer with a rating of at least a "B+; VII" in the latest edition of Best's Insurance Guide. A Commercial General Liability policy issued by an insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers ("LASLI") will be acceptable, if no coverage from an admitted insurer can be obtained by Developer, and further provided that such insurer maintains a Best's rating of at least "A-; X" and remains on the LASLI during the term hereof. Workers' Compensation coverage issued by the State Compensation Insurance Fund shall be acceptable if no other coverage can be obtained by Developer, and further provided such insurer remains admitted in California and is otherwise financially acceptable to City.

(i) Deductibles. Any deductibles or self-insured retentions must be declared in writing by Developer to City and subsequently reasonably approved by City prior to its execution of this Agreement and prior to commencement of any work hereunder. At City's option, Developer shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Developer shall procure a bond guaranteeing payment of losses and expenses.

(j) Proof of Coverage. Developer shall submit to the City original certificates of insurance and endorsements evidencing the coverages required by this Section. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require Developer to provide reports or status updates to evidence compliance of its contractors and subcontractors with the provisions of this Section. Developer's insurance company(ies) shall mail all required certificates of insurance and endorsements to:

City of Rialto
Risk Management
150 S. Palm Avenue
Rialto, CA 92376

12. Environmental Warranty.

12.1 Prior to the acceptance of any dedications or Works of Improvement by City, Developer shall provide City with a written warranty in a form substantially similar to Exhibit "C" attached hereto and incorporated herein by reference, that:

(a) Neither the property to be dedicated nor Developer are in violation of any environmental law, and neither the property to be dedicated nor the Developer are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

(b) Neither Developer nor any other person with Developer's permission to be upon the property to be dedicated shall use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

(c) Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(d) Developer's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated.

12.2 Developer shall give prompt written notice to City of:

(a) Any proceeding or investigation by any federal, state or local governmental

(b) authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(c) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(d) Developer's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

13. General Provisions.

13.1 Successors and Assigns. This Agreement shall be binding upon all successors and assigns to Developer's right, title, and interest in and to the Property and any portion thereof. Developer hereby consents to City recording this Agreement as official records of San Bernardino County, affecting fee title interest to the Property to provide constructive notice of the rights and obligations incurred by Developer in the City's approval of this Agreement. In the event the Property is subsequently conveyed by Developer to a third party prior to completion of the Works of Improvement, whereby the third party is intended to assume Developer's responsibilities with regard to this Agreement, (the "Replacement Developer"), the rights and obligations of this Agreement shall transfer to the Replacement Developer; however, the Security Instruments required pursuant to Section 4 of this Agreement, and furnished by Developer as a condition of the City's approval of this Agreement, shall remain Developer's responsibility to maintain until such time as Developer and its Replacement Developer enter into a Transfer and Assignment of Public Improvement Agreement, (the "Transfer Agreement"), to acknowledge the transfer of fee title to the Property from the Developer to its Replacement Developer, and to acknowledge the rights and obligations associated with this Agreement upon the Replacement Developer, including Replacement Developer's responsibility to furnish replacement Security Instruments meeting the City's approval pursuant to Section 4 of this Agreement. Until such time as a Transfer Agreement, meeting the City's approval, is executed by Developer and its Replacement Developer, and replacement Security Instruments meeting City's approval are furnished by the Replacement Developer, Developer retains sole responsibility for maintaining all Security Instruments required pursuant to Section 4 of this Agreement.

13.2 No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Developer intend to create any third party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

13.3 No Vesting Rights. Performance by the Developer of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

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

13.5 Time of the Essence. Time is of the essence of Developer's performance of all of its obligations under this Agreement.

13.6 Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notice shall be provided to the persons listed on Pages 1 and 2 of this Agreement by the parties for this purpose.

Either party may provide a new designated representative and/or address by written notice as provided in this Section.

13.7 No Apportionment. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other Developers for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing therefore. Nor shall anything in the Agreement commit City to any such apportionment.

13.8 Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

13.9 Captions. The captions of this Agreement are for convenience and reference only and shall not be used in the interpretation of any provision of this Agreement.

13.10 Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into the terms of this Agreement.

13.11 Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

13.12 Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

13.13 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

14. Authority. The persons executing this Agreement on behalf of the parties warrant the (i) party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into of this Agreement does not violate any provisions of any other Agreement to which said party is bound.

[SIGNATURES ON NEXT PAGE]

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

CITY OF RIALTO, CALIFORNIA

DEVELOPER

By: _____
Arron Brown, Acting City Manager

By: See attached signature page.

Title: _____

APPROVED BY THE CITY COUNCIL

Date: _____

Agreement No.: _____

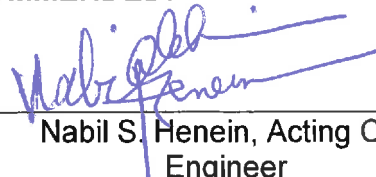
ATTEST:

By: _____
Barbara McGee, City Clerk

APPROVED AS TO FORM:

By: _____
Eric S. Vail ,City Attorney

RECOMMENDED:

By:  _____
Nabil S. Henein, Acting City
Engineer

DEVELOPER

AIREF Rialto Commerce Center LP, a Delaware limited partnership

By: AIREF Rialto CC GP LLC,
a Delaware limited liability company,
its General Partner

By: Ares Industrial Real Estate Fund OP LP,
a Delaware limited partnership,
its Sole Member

By: Ares Industrial Real Estate Fund GP LLC,
a Delaware limited liability company,
its General Partner

By:  _____

Name: Chris Sanford

Title: Managing Director

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)On June 13, 2023 before me, Julie L. Victorino, Notary Public

Date

Here Insert Name and Title of the Officer

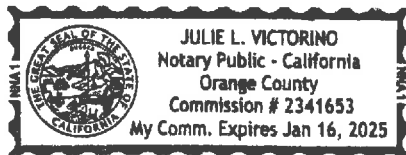
personally appeared Chris Sanford

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that 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 Julie L. Victorino
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL "A" AS SHOWN ON LOT LINE ADJUSTMENT NO. LLA-2021-0006 RECORDED APRIL 21, 2023 AS INSTRUMENT NO. 2023-0095104 OF OFFICIAL RECORDS, COUNTY OF SAN BERNADINO, STATE OF CALIFORNIA, ALSO DESCRIBED IN THE DOCUMENT AS FOLLOWS:

BEING PARCEL 3, TOGETHER WITH PARCELS 4 AND 5 OF PARCEL MAP NO. 12885, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 150 PAGES 70 AND 71 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT “B”

ENTITLEMENTS CONDITIONS OF APPROVAL

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

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WHEREAS, the applicant, AIREF Rialto Commerce Center, LP, proposes to redevelop and reuse an existing industrial site comprised of 9.40 gross acres (9.10 net acres) of land (APN's: 0128-062-25, -26, & -27) located at the northeast corner of Cedar Avenue and Durst Drive within the General Manufacturing (M-2) zone ("Site") with a 201,239 square foot industrial commerce building ("Project"); and

WHEREAS, Pursuant to Chapter 18.65 (Precise Plan of Design) of the Rialto Municipal Code, the Project requires a Precise Plan of Design, and the applicant has agreed to apply for Precise Plan of Design No. 2021-0036 ("PPD No. 2021-0036"); and

WHEREAS, on August 31, 2022, the Planning Commission of the City of Rialto conducted a duly noticed public hearing, as required by law, on PPD No. 2021-0036 and CDP No. 2021-0032, took testimony, at which time it received input from staff, the city attorney, and the applicant;

1 heard public testimony; discussed the proposed PPD No. 2021-0036 and CDP No. 2021-0032; and
2 closed the public hearing; and

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

4 NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Rialto
5 as follows:

6 SECTION 1. The Planning Commission hereby specifically finds that all of the facts set forth
7 in the recitals above of this Resolution are true and correct and incorporated herein.

8 SECTION 2. Based on substantial evidence presented to the Planning Commission during
9 the public hearing conducted with regard to PPD No. 2021-0036, including written staff reports,
10 verbal testimony, site plans, other documents, and the conditions of approval stated herein, the
11 Planning Commission hereby determines that PPD No. 2021-0036 satisfies the requirements of
12 Section 18.65.020E of the Rialto Municipal Code pertaining to the findings which must be made
13 precedent to granting a Precise Plan of Design. The findings are as follows:

- 14 1. The proposed development is in compliance with all city ordinances and regulations,
15 unless in accordance with an approved variance; and

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

17 The Site has a General Plan land use designation of Light Industrial and a zoning
18 designation of General Manufacturing (M-2). Those designations allow for the
19 development and operation of industrial commerce buildings, as proposed by the Project.
20 The Project, as conditioned herein, will comply with all City ordinances and regulations,
21 including those required by the M-2 zoning district and the City's Design Guidelines.
22 Additionally, the Project meets all the required development standards of the M-2 zoning
district and Chapter 18.112 (Indoor Storage Facilities) of the Rialto Municipal Code
including, but not limited to, required building setbacks, parking, landscaping, building
height, floor area ratio, etc.

- 23 2. The site is physically suitable for the proposed development, and the proposed
24 development will be arranged, designed, constructed, and maintained so that it will
25 not be unreasonably detrimental or injurious to property, improvements, or the health,
26 safety or general welfare of the general public in the vicinity, or otherwise be
inharmonious with the city's general plan and its objectives, zoning ordinances or any
applicable specific plan and its objectives; and

27 *This finding is supported by the following facts:*
28

1 The Site is 9.40 gross acres (9.10 net acres) in size, bound by two (2) public streets (Cedar
2 Avenue to the west and Durst Drive to the south), and is within the General Manufacturing
3 (M-2) zoning district. To the north of the project site is the BNSF/Metrolink railroad, and
4 to the east is an approximately 1,100,000 square foot industrial commerce building
5 occupied by All-Ways Pacific. To the south, across Durst Drive, is an approximately
6 49,000 square foot industrial commerce building occupied by Mission Metals and
7 approximately 1.68 acres of vacant land, and to the west, across Cedar Avenue, is an
8 approximately 121,500 square foot industrial commerce building occupied by Martinez &
9 Turek, Inc. The zoning designation of the Site and the properties to the east, south, and
10 west is M-2, and the zoning designation of the property to the north is Transportation
11 Corridor (T-C). The Project is consistent with the M-2 zoning district and the surrounding
12 industrial land uses. The project is not expected to negatively impact any surrounding uses
13 with the successful implementation of measures such as landscape buffering, the
14 installation of solid screen walls, aesthetic building enhancements, and other traffic related
15 measures.

- 16 3. The proposed development will not unreasonably interfere with the use or enjoyment
17 of neighboring property rights or endanger the peace, health, safety or welfare of the
18 general public; and

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

20 The Project's effects will be minimized through the implementation of the Conditions of
21 Approval contained herein, such as extensive landscaping, concrete screen walls, and
22 enhanced architectural features. To the north of the project site is the BNSF/Metrolink
23 railroad, and to the east is an approximately 1,100,000 square foot industrial commerce
24 building occupied by All-Ways Pacific. To the south, across Durst Drive, is an approximately
25 49,000 square foot industrial commerce building occupied by Mission Metals and
26 approximately 1.68 acres of vacant land, and to the west, across Cedar Avenue, is an
27 approximately 121,500 square foot industrial commerce building occupied by Martinez &
28 Turek, Inc. The zoning designation of the Site and the properties to the east, south, and west
is M-2, and the zoning designation of the property to the north is Transportation Corridor (T-
C). The Project is consistent with the M-2 zoning district and the surrounding industrial land
uses. The project is not expected to negatively impact any surrounding uses with the
successful implementation of measures such as landscape buffering, the installation of solid
screen walls, aesthetic building enhancements, and other traffic related measures.

4. The proposed development will not substantially interfere with the orderly or planned
development of the City of Rialto.

This finding is supported by the following facts:

The Project is consistent with the underlying General Manufacturing (M-2) zoning
designation and is a logical addition to the existing industrial developments surrounding the
Site. The design of the Project will ensure a continuation of the public improvements and
aesthetics present in the surrounding area. The City staff have reviewed the design of the

1 Project to ensure compliance with all health, safety, and design requirements to ensure the
2 Project will enhance the infrastructure and aesthetics of the local community.

3 SECTION 3. An Initial Study (Environmental Assessment Review No. 2021-0035) has been
4 prepared for PPD No. 2021-0036 in accordance with the California Environmental Quality Act
5 (CEQA). Based on the findings within the Initial Study, staff determined that the project will not
6 have an adverse impact on the environment and a Mitigated Negative Declaration was prepared. The
7 local newspaper published a copy of the Notice of Intent to adopt the Mitigated Negative Declaration
8 for the project, and the City mailed the notice to all property owners within 1,000 feet of the project
9 site for a public comment period held from July 22, 2022 to August 20, 2022. The Planning
10 Commission directs the Planning Division to file the necessary documentation with the Clerk of the
11 Board of Supervisors for San Bernardino County.

12
13 SECTION 4. PPD No. 2021-0036 is granted AIREF Rialto Commerce Center, LP in
14 accordance with the plans and application on file with the Planning Division, subject to the following
15 Conditions of Approval:

- 16 1. The applicant is granted PPD No. 2021-0036 allowing the development of a 201,239
17 square foot industrial commerce building and associated paving, landscaping, fencing,
18 lighting, and drainage improvements on 9.40 gross acres (9.10 net acres) of land (APN:
19 0128-062-25, -26, & -27) located at the northeast corner of the Cedar Avenue and Durst
20 Drive within the General Manufacturing (M-2) zoning district, subject to the Conditions
21 of Approval contained herein.
- 22 2. The approval of PPD No. 2021-0036 is granted for a one (1) year period from the date
23 of approval. Approval of PPD No. 2021-0036 will not become effective until the
24 applicant has signed a Statement of Acceptance acknowledging awareness and
25 acceptance of the required Conditions of Approval contained herein. Any request for
26 an extension shall be reviewed by the Community Development Director and shall be
27 based on the progress that has taken place toward the development of the project.
- 28 3. The development associated with PPD No. 2021-0036 shall conform to the site plan,
floor plan, exterior elevations, preliminary grading plan, and preliminary landscape plan
attached hereto as Exhibit A, except as may be required to be modified based on the
Conditions of Approval contained herein.
4. The development associated with PPD No. 2021-0036 shall comply with all Conditions
of Approval contained within CDP No. 2021-0032.

- 1
2
3 5. The development associated with PPD No. 2021-0036 shall comply with all applicable
4 sections of the Rialto Municipal Code and all other applicable State and local laws and
5 ordinances.
- 6
7 6. City inspectors shall have access to the site to reasonably inspect the site during
8 normal working hours to assure compliance with these conditions and other codes.
- 9
10 7. The applicant shall indemnify, protect, defend, and hold harmless, the City of Rialto,
11 and/or any of its officials, officers, employees, agents, departments, agencies, and
12 instrumentalities thereof (collectively, the "City Parties"), from any and all claims,
13 demands, law suits, writs of mandamus, and other actions and proceedings (whether
14 legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative
15 dispute resolutions procedures (including, but not limited to arbitrations, mediations,
16 and other such procedures), (collectively "Actions"), brought against the City, and/or
17 any of its officials, officers, employees, agents, departments, agencies, and
18 instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or
19 annul, the any action of, or any permit or approval issued by, the City and/or any of
20 its officials, officers, employees, agents, departments, agencies, and instrumentalities
21 thereof (including actions approved by the voters of the City), for or concerning the
22 Project (collectively, the "Entitlements"), whether such Actions are brought under
23 the California Environmental Quality Act, the Planning and Zoning Law, the
24 Subdivision Map Act, Code of Civil Procedure Chapter 1085 or 1094.5, the
25 California Public Records Act, or any other state, federal, or local statute, law,
26 ordinance, rule, regulation, or any decision of a court of competent jurisdiction. This
27 condition to indemnify, protect, defend, and hold the City harmless shall include, but
28 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 Damages incurred by any of the City Parties in such
Action(s) are a result of the City Parties' fraud, intentional misconduct or gross
negligence in connection with issuing the Entitlements. The applicant shall execute
an agreement to indemnify, protect, defend, and hold the City harmless as stated
herein within five (5) days of approval of PPD No. 2021-0036.
8. In accordance with the provisions of Government Code Section 66020(d)(1), the
imposition of fees, dedications, reservations, or exactions for this Project, if any, are
subject to protest by the applicant at the time of approval or conditional approval of
the Project or within 90 days after the date of the imposition of the fees, dedications,
reservations, or exactions imposed on the Project.
9. The applicant shall make a payment in the sum of \$45,000 to the Rialto Unified School
District (RUSD), as a community benefit for the RUSD to utilize at its sole discretion,

1 prior to the issuance of a Certificate of Occupancy. This payment is in addition to
2 normally assessed school fees for new development.

- 3 10. The applicant shall install decorative pavement within each driveway connected to
4 Cedar Avenue and Durst Drive. The decorative pavement shall extend across the entire
5 width of the driveway and shall have a minimum depth of fifteen (15) feet as measured
6 from the property lines along Cedar Avenue and Durst Drive. Decorative pavement
7 means decorative pavers and/or color concrete with patterns and color variety. The
8 location of the decorative pavement shall be identified on the Precise Grading Plan prior
9 to the issuance of a grading permit. Additionally, the location and type of decorative
10 pavement shall be identified on the formal Landscape Plan submittal, and other on-site
11 improvement plans, prior to the issuance of building permits.
- 12 11. In order to provide enhanced building design in accordance with Chapter 18.61 (Design
13 Guidelines) of the Rialto Municipal Code, the applicant shall route all drainage
14 downspouts through the interior of the building, except those on the east side of the
15 building. The internal downspouts shall be identified within the formal building plan
16 check submittal prior to the issuance of building permits.
- 17 12. In order to provide enhanced building design in accordance with Chapter 18.61 (Design
18 Guidelines) of the Rialto Municipal Code, the applicant shall construct parapet returns,
19 at least three (3) feet in depth from the recessed wall planes, at all height variations on
20 all four (4) sides of the building. The parapet returns shall be demonstrated on the roof
21 plans within the formal building plan check submittal prior to the issuance of building
22 permits.
- 23 13. In order to provide enhanced building design in accordance with Chapter 18.61 (Design
24 Guidelines) of the Rialto Municipal Code, the applicant shall provide internal roof
25 access only for the building. The internal roof access shall be identified within the
26 formal building plan check submittal prior to the issuance of building permits.
- 27 14. Any new walls, including any retaining walls, shall be comprised of decorative masonry
28 block or decorative concrete. Decorative masonry block means tan-colored slumpstone
block, tan-colored split-face block, or precision block with a stucco, plaster, or cultured
stone finish. Decorative concrete means painted concrete with patterns, reveals, and/or
trim lines. Pilasters shall be incorporated within all new walls visible from the public
right-of-way. The pilasters shall be spaced a maximum of fifty (50) feet on-center and
shall be placed at all corners and ends of the wall. All pilasters shall protrude a minimum
of six (6) inches above and to the side of the wall. All decorative masonry walls and
pilasters, including retaining walls, shall include a decorative masonry cap. All walls
and pilasters shall be identified on the site plan and Precise Grading Plan, and an
elevation detail for the walls shall be included in the formal building plan check
submittal prior to the issuance of building permits.

15. Any new fencing installed on site shall be comprised of tubular steel. All fencing shall be identified on the site plan, and an elevation detail for the fencing shall be included in the formal building plan check submittal prior to the issuance of building permits.
16. All light standards installed on site, shall have a maximum height of twenty-five (25) feet, as measured from the finished surface, including the base. Lighting shall be shielded and/or directed toward the site so as not to produce direct glare or "stray light" onto adjacent properties. All light standards shall be identified on the site plan and a note indicating the height restriction shall be included within the formal building plan check submittal prior to the issuance of building permits.
17. The applicant shall submit a formal Landscape Plan to the Planning Division prior to the issuance of building permits. The submittal shall include three (3) sets of planting and irrigation plans, a completed Landscape Plan Review application, and the applicable review fee.
18. The applicant shall plant one (1) tree every three (3) parking spaces. All parking lot trees shall be a minimum of fifteen (15) gallons in size, upon initial planting. Thereafter, the parking lot trees shall be permanently irrigated and maintained. All parking lot tree species shall consist of evergreen broadleaf trees. The trees shall be identified on the formal Landscape Plan submittal prior to the issuance of a landscape permit.
19. The applicant shall plant one (1) tree every thirty (30) feet on-center within the on-site landscape setbacks along Cedar Avenue and Durst Drive. All trees within the landscape setback shall be a minimum of twenty-four (24) inch box in size, upon initial planting. Thereafter, the trees within the landscape setback shall be permanently irrigated and maintained by the property owner. At least fifty (50) percent of the trees within the setback shall consist of evergreen broadleaf trees, while the remaining percentage may consist of broadleaf deciduous trees and/or palm trees. The trees shall be identified on the formal Landscape Plan submittal prior to the issuance of a landscape permit.
20. The applicant shall plant one (1) tree every thirty (30) feet on-center within the public right-of-way parkway along Cedar Avenue. All trees within the public right-of-way parkway shall be a minimum of twenty-four (24) inch box in size, upon initial planting. Thereafter, the trees within the public right-of-way parking shall be permanently irrigated and maintained, as required by the Public Works Department. The street tree species along Cedar Avenue shall be the *Platanus Acerifolia* "London Plane" and/or the *Robinia Idahoensis* "Idaho Locust". The street trees shall be identified on the formal Landscape Plan submittal prior to the issuance of a landscape permit.
21. The applicant shall plant one (1) tree every thirty (30) feet on-center within the public right-of-way parkway along Durst Drive. All trees within the public right-of-way parkway shall be a minimum of twenty-four (24) inch box in size, upon initial planting. Thereafter, the trees within the public right-of-way parking shall be permanently irrigated and maintained, as required by the Public Works Department. The street tree species along Durst Drive shall be the *Quercus Virginianan* "Southern Live Oak" and/or

1 the *Cercis Canadensis* "Canadian Redbud". The street trees shall be identified on the
2 formal Landscape Plan submittal prior to the issuance of a landscape permit.

- 3 22. The applicant shall plant shrubs that surround all ground mounted equipment and utility
4 boxes, including transformers, fire-department connections, backflow devices, etc. for
5 the purpose of providing screening of said equipment and utility boxes. All equipment
6 and utility box screen shrubs shall be a minimum of five (5) gallons in size upon initial
7 planting, and the shrubs shall be spaced no more than three (3) feet on-center.
8 Thereafter, the equipment and utility box screen shrubs shall be permanently irrigated
9 and maintained into a continuous box-shape with a height of no less than three and one-
10 half (3.5) feet above the finished grade. The shrubs shall be identified on the formal
11 Landscape Plan submittal prior to the issuance of a landscape permit.

- 12 23. The applicant shall plant trees, shrubs, and groundcover throughout all land on-site and
13 off-site (adjacent to the project site) that is not covered by structures, walkways, parking
14 areas, and driveways, as approved by the Planning Division. Trees shall be planted a
15 minimum of thirty (30) feet on-center, and all shrubs and groundcover shall be planted
16 an average of three (3) feet on-center or less, or as approved by the Planning Division.
17 All trees shall be minimum of fifteen (15) gallons in size upon initial planting, unless
18 otherwise specified herein. At least fifty (50) percent of the trees shall consist of
19 evergreen broadleaf trees, while the remaining percentage may consist of broadleaf
20 deciduous trees and/or palm trees. All shrubs shall be a minimum of one (1) gallon in
21 size, unless otherwise specified herein. All planter areas shall receive a minimum two
22 (2) inch thick layer of brown bark, organic mulch, and/or decorative rock upon initial
23 planting. Pea gravel and decomposed granite are not acceptable materials to use within
24 planter areas. All planter areas on-site shall be permanently irrigated and maintained.
25 The planting and irrigation shall be identified on the formal Landscape Plan submittal
26 prior to the issuance of a landscape permit.

- 27 24. All planting and irrigation shall be installed on-site in accordance with the approved
28 landscape plans and permit prior to the issuance of a Certificate of Occupancy. The
installation of the planting and irrigation shall be certified in writing by the landscape
architect responsible for preparing the landscape plans prior to the issuance of a
Certificate of Occupancy.

- 25 25. Any tubular steel fencing and/or sliding gates shall be painted black prior to the issuance
26 of a Certificate of Occupancy, unless specified otherwise herein.

- 27 26. All non-glass doors shall be painted to match the color of the adjacent wall prior to the
28 issuance of a Certificate of Occupancy.

- 29 27. The applicant shall comply with all conditions of approval for PPD No. 2021-0036 to
the satisfaction of the City Engineer, prior to the issuance of a Certificate of Occupancy.

- 1 28. The applicant shall pay all applicable development impact fees in accordance with the
2 current City of Rialto fee ordinance, prior to the issuance of any building permit related
3 to the Project.
- 4 29. The applicant shall apply and complete the Special District Annexation for the public
5 street lighting and the public landscape and irrigation, including applicable easement
6 areas, parkway areas, and raised medians along the property frontage, as determined by
7 the City Engineer, prior to the issuance of the Grading/On-site Construction Permit.
- 8 30. A City of Rialto Off-site Construction Permit is required for any improvements within
9 the public right-of-way. In an effort to expedite and facilitate improvements in the public
10 right-of-way, the applicant is responsible for submitting a multi-phase master plan
11 traffic control plan which includes all phases of construction in the public right-of-way
12 i.e. sewer, water, overhead, underground, etc. prior to the issuance of Off-Site
13 Construction Permit/Encroachment Permit. Note, in an effort to simplify the permitting
14 process, a single master Off-Site Construction Permit shall replace individual
15 Encroachment Permits to be pulled by the applicant's contractor.
- 16 31. The applicant shall apply for annexation of the underlying property into City of Rialto
17 Landscape and Lighting Maintenance District No. 2 ("LLMD 2"). An application fee
18 of \$5,000 shall be paid at the time of application. Annexation into LLMD 2 is a
19 condition of acceptance of any new median, landscape easement, and/or parkway
20 landscaping in the public right-of-way, or any new public street lighting improvements
21 conditioned on the project and to be maintained by the City of Rialto post construction.
22 The developer must apply and complete the LLMD2 annexation process prior to
23 issuance of a Certificate of Occupancy. As an alternative to the City maintaining
24 parkway landscaping adjacent to the commercial property via the City's Landscape and
25 Lighting Maintenance District No. 2 ("LLMD 2"), the developer may enter into an
26 agreement with the City to assume responsibility for maintenance of all public parkway
27 landscaping. The agreement will stipulate that the property's annexation into LLMD 2
28 will occur, but with assessments deferred and set to \$0 during such time as the public
parkway landscaping is adequately maintained to the City's satisfaction. The
developer's failure to adequately maintain all public parkway landscaping will require
the City to assume such responsibility, and to commence levying of assessments against
the property via LLMD 2 to recover the City's costs.
32. The applicant shall submit off-site landscaping and irrigation system improvement plans
for review and approval at the time of first (1st) public improvement plan submittal to
the Public Works Department. The parkway irrigation system shall be separately
metered from the on-site private irrigation to be maintained for a period of one (1) year
and annexed into a Special District. The off-site landscape and irrigation plans must
show separate electrical and water meters to be annexed into the Landscape and
Lighting Maintenance District No. 2 via a City Council Public Hearing. The landscape
and irrigation plans shall be approved concurrently with the street improvement plans,
including the median portion, prior to issuance of a building permit. The landscaping
architect must contact the City of Rialto Landscape Contract Specialist at (909) 820-

2602 to ensure all landscape and irrigation guidelines are met prior to plan approval. Electrical and water irrigation meter pedestals must not be designed to be installed at or near street intersections or within a raised median to avoid burdensome traffic control set-up during ongoing maintenance.

33. If the property is accepted in the LLMD, the applicant shall guarantee all new parkway landscaping irrigation for a period of one (1) year from the date of the City Engineer acceptance. Any landscaping that fails during the one-year landscape maintenance period shall be replaced with similar plant material to the satisfaction of the City Engineer and shall be subject to a subsequent one-year landscape maintenance period. The applicant must contact the City of Rialto Landscape Contract Specialist at (909) 820-2602 to confirm a full twelve (12) months' time of non-interrupted ongoing maintenance.
34. The applicant shall install City Engineer approved deep root barriers, in accordance with the Public Works Landscape and Irrigation Guidelines, for all trees installed within ten (10) feet of the public sidewalk and/or curb.
35. All new streetlights shall be installed on an independently metered, City-owned underground electrical system. Using power from an existing LLMD 2 pedestal is encouraged over installing a new pedestal. The developer shall be responsible for applying with Southern California Edison (SCE) for all appropriate service points and electrical meters early in the design process to avoid delays in other key milestones. New meter pedestals shall be installed, and electrical service paid by the developer. The City shall not pay the charges for electrical service until the landscape and irrigation is accepted after the one-year maintenance period and the underlying property is annexed into LLMD 2.
36. If and where deficiencies in the existing system occur, the applicant shall construct a new underground electrical system for public street lighting improvements along the project frontages of Cedar Avenue and Durst Drive, as determined necessary by the City Engineer. New marbelite streetlight poles with LED light fixtures shall be installed in accordance with City of Rialto Standard Drawings. At the discretion of the City Engineer, a new street light shall be installed at the cul-de-sac.
37. The applicant is responsible for requesting any addresses needed for any building(s), electrical pedestal(s), and/or irrigation meter pedestal(s). The main building address shall be included on Precise Grading Plans and Building Plan set along with the PPD number. The electrical meter pedestal addresses (single or dual) shall be included in the public improvement plans.
38. The applicant shall submit street improvement plans by a registered California civil engineer to the Public Works Engineering Division for review. The plans shall be approved by the City Engineer prior to the issuance of building permits.

- 1 39. The applicant shall submit streetlight improvement plans by a registered California civil
2 engineer to the Public Works Engineering Division for review. The plans shall be
3 approved by the City Engineer prior to the issuance of building permits.
- 4 40. The applicant shall submit sewer improvement plans for public sewer main(s) by a
5 registered California civil engineer to the Public Works Engineering Division for
6 review. The plans shall be approved by the City Engineer prior to the issuance of
7 building permits.
- 8 41. The applicant shall submit traffic striping and signage improvement plans prepared by
9 a registered California civil engineer or registered California traffic Engineer to the
10 Public Works Engineering Division for review. The plans shall be approved by the City
11 Engineer prior to the issuance of building permits.
- 12 42. The applicant shall submit copies of approved water improvement plans prepared by a
13 registered California civil engineer to the Public Works Engineering Division for record
14 purposes. The plans shall be approved by Rialto Water Services, the water purveyor,
15 prior to the issuance of building permits.
- 16 43. The applicant shall submit a Precise Grading/Paving Plan prepared by a California
17 registered civil engineer to the Public Works Engineering Division for review and
18 approval. The Grading Plan shall be approved by the City Engineer prior to the issuance
19 of building permits.
- 20 44. The applicant shall submit a Geotechnical/Soils Report, prepared by a California
21 registered Geotechnical Engineer, for and incorporated as an integral part of the grading
22 plan for the proposed development. A copy of the Geotechnical/Soils Report shall be
23 submitted to the Public Works Engineering Division with the first submittal of the
24 Precise Grading Plan.
- 25 45. The applicant shall submit a wet-signed and stamped Earthwork Cut and Fill
26 Certification Letter prepared by a Civil Engineer registered in the State of California to
27 the Public Works Engineering Division for review.
- 28 46. The applicant shall provide pad elevation certification for all building pads, in
conformance with the approved Precise Grading Plan, to the Engineering Division prior
to construction of any building foundation.
47. The public street improvements outlined in these Conditions of Approval are intended
to convey to the developer an accurate scope of required improvements, however, the
City Engineer reserves the right to require reasonable additional improvements as may
be determined in the course of the review and approval of street improvement plans
required by these conditions.
48. The applicant shall construct asphalt concrete paving for streets in two separate lifts.
The final lift of asphalt concrete pavement shall be postponed until such time that on-

1 site construction activities are complete. Unless the City Engineer provide prior
2 authorization, paving of streets in one lift prior to completion of on-site construction is
3 not allowed. If City Engineer authorized, completion of asphalt concrete paving for
4 streets prior to completion of on-site construction activities, requires additional paving
5 requirements prior to acceptance of the street improvements, including, but not limited
6 to: removal and replacement of damaged asphalt concrete pavement, overlay, slurry
7 seal, or other repairs.

8 49. The applicant shall repair all street cuts for utilities in accordance with City Standard
9 SC-231 within 72 hours of completion of the utility work; and any interim trench repairs
10 shall consist of compacted backfill to the bottom of the pavement structural section
11 followed by placement of standard base course material in accordance with the Standard
12 Specifications for Public Work Construction ("Greenbook"). The base course material
13 shall be placed the full height of the structural section to be flush with the existing
14 pavement surface and provide a smooth pavement surface until permanent cap paving
15 occurs using an acceptable surface course material.

16 50. In accordance with City Ordinance No. 1589, adopted to preserve newly paved streets,
17 any and all street and/or trench cuts in newly paved streets will be subject to moratorium
18 street repair standards as reference in Section 11.04.145 of the Rialto Municipal Code.
19 Contact the Engineering Division for a list of streets subject to the moratorium.

20 51. The applicant shall backfill and/or repair all utility trenches or other excavations within
21 existing asphalt concrete pavement of off-site streets resulting from the proposed
22 development, in accordance with City of Rialto Standard Drawings. The applicant shall
23 be responsible for removing, grinding, paving and/or overlaying existing asphalt
24 concrete pavement of off-site streets including pavement repairs in addition to pavement
25 repairs made by utility companies for utilities installed for the benefit of the proposed
26 development (i.e. Fontana Water Company, Southern California Edison, Southern
27 California Gas Company, Time Warner, Verizon, etc.). Multiple excavations, trenches,
28 and other street cuts within existing asphalt concrete pavement of off-site streets
resulting from the proposed development may require complete grinding and asphalt
concrete overlay of the affected off-site streets, at the discretion of the City Engineer.
The pavement condition of the existing off-site streets shall be returned to a condition
equal to or better than what existed prior to construction of the proposed development.

52. In accordance with Chapter 15.32 of the City of Rialto Municipal Code, all existing and
new electrical distribution lines of sixteen thousand volts or less and overhead service
drop conductors, and all telephone, television cable service, and similar service wires or
lines, which are on-site, abutting, and/or transecting, shall be installed underground prior
to the issuance of a Certificate of Occupancy. The existing overhead utilities along the
west property line (adjacent to Cedar Avenue) are subject to this requirement. Utility
undergrounding shall extend to the nearest off-site power pole; no new power poles shall
be installed unless otherwise approved by the City Engineer. A letter from the owners
of the affected utilities shall be submitted to the City Engineer prior to approval of the
Grading Plan, informing the City that they have been notified of the City's utility

1 undergrounding requirement and their intent to commence design of utility
2 undergrounding plans. When available, the utility undergrounding plan shall be
3 submitted to the City Engineer identifying all above ground facilities in the area of the
project to be undergrounded.

4 53. The applicant shall replace all damaged, destroyed, or modified pavement legends,
5 traffic control devices, signing, striping, and streetlights, associated with the proposed
6 development shall be replaced as required by the City Engineer prior to issuance of a
Certificate of Occupancy.

7 54. The applicant shall reconstruct any broken, chipped, or unsatisfactory sidewalks or
8 curbs along the entire project frontage, in accordance with the General Plan and the City
9 of Rialto Standard Drawings, as required by the City Engineer, prior to the issuance of
a Certificate of Occupancy.

10 55. The applicant shall provide construction signage, lighting and barricading shall be
11 provided during all phases of construction as required by City Standards or as directed
12 by the City Engineer. As a minimum, all construction signing, lighting and barricading
13 shall be in accordance with Part 6 "Temporary Traffic Control" of the 2014 California
Manual on Uniform Traffic Control Devices, or subsequent editions in force at the time
14 of construction.

15 56. Upon approval of any improvement plan by the City Engineer, the applicant shall
16 provide the improvement plan to the City in digital format, consisting of a DWG
17 (AutoCAD drawing file), DXF (AutoCAD ASCII drawing exchange file), and PDF
(Adobe Acrobat) formats. Variation of the type and format of the digital data to be
submitted to the City may be authorized, upon prior approval by the City Engineer.

18 57. The applicant shall construct 4-inch conduit within the parkway area along the entire
19 project frontages of Cedar Avenue and Durst Drive for future use, prior to the issuance
of a Certificate of Occupancy.

20 58. The applicant shall dedicate additional right-of-way along the entire frontage of Cedar
21 Avenue, as necessary, to provide the ultimate half-width of 60 feet, as required by the
22 City Engineer.

23 59. The applicant shall apply for a summary vacation of vehicular access rights previously
24 dedicated to the City via Parcel Map 12885 prohibiting ingress and egress rights to and
25 from Cedar Avenue. Summary vacation will be limited to the proposed access points
for Driveway 1 and Driveway 2 as shown on the site plan included in Exhibit A.

26 60. The applicant shall dedicate additional right-of-way along the entire frontage of Durst
27 Drive, as necessary, to provide the ultimate half-width of 30 feet, as required by the City
28 Engineer.

- 1 61. The applicant shall dedicate additional right-of-way as may be required to provide a
2 property line corner cutback at the northeast corner of the intersection of Cedar Avenue
3 and Durst Drive, in accordance with City Standard SC-235, as required by the City
4 Engineer.
- 5 62. The applicant shall construct an 8-inch curb and gutter along the entire frontage of Cedar
6 Avenue 48 feet east of centerline in accordance with City of Rialto Standard Drawings
7 and the General Plan or applicable Specific Plan, prior to the issuance of a Certificate
8 of Occupancy. This condition may be deferred subject to an Agreement approved by
9 the City Manager to pay in-lieu cash equivalent of this future improvement.
- 10 63. The applicant shall modify the existing raised median in Cedar Avenue along the project
11 frontage to pull back the nose of the median by 25 feet from the southern end in order
12 to accommodate westbound left turn egress traffic, prior to the issuance of a Certificate
13 of Occupancy.
- 14 64. The applicant shall construct one (1) new forty (40) foot wide commercial driveway
15 approach on the north end of the Cedar Avenue frontage, as shown on the plans attached
16 as Exhibit A, in accordance with City of Rialto Standard Drawings, or as otherwise
17 approved by the City Engineer. The driveway approach shall be constructed so the top
18 of "X" is at least 5 feet from the property line, or as otherwise approved by the City
19 Engineer. Nothing shall be constructed or planted in the corner cut-off area which does
20 exceed or will exceed 30 inches in height in order to maintain an appropriate corner
21 sight distance, as required by the City Engineer. If necessary, additional right of way
22 shall be dedicated on-site to construct a path of travel meeting ADA guidelines for the
23 public sidewalk. Install a stop sign on the westbound approach and accommodate a
24 westbound left turn lane. This driveway shall be restricted to right-in and left-out access
25 only for both passenger cars and trucks.
- 26 65. The applicant shall construct one (1) new twenty-six (26) foot wide commercial
27 driveway approach on the south end of the Cedar Avenue frontage, as shown on the
28 plans attached as Exhibit A, in accordance with City of Rialto Standard Drawings, or as
otherwise approved by the City Engineer. The driveway approach shall be constructed
so the top of "X" is at least 5 feet from the property line, or as otherwise approved by
the City Engineer. Nothing shall be constructed or planted in the corner cut-off area
which does exceed or will exceed 30 inches in height in order to maintain an appropriate
corner sight distance, as required by the City Engineer. If necessary, additional right of
way shall be dedicated on-site to construct a path of travel meeting ADA guidelines for
the public sidewalk. Install a stop sign on the westbound approach and accommodate a
westbound right turn lane. This driveway shall be restricted to right-in/right-out access
and shall only serve passenger cars; truck access shall be prohibited.
66. The applicant shall construct one (1) new forty (40) foot wide commercial driveway
approach on the east end of the Durst Drive frontage, as shown on the plans attached as
Exhibit A, in accordance with City of Rialto Standard Drawings, or as otherwise
approved by the City Engineer. The driveway approach shall be constructed so the top

1 of "X" is at least 5 feet from the property line, or as otherwise approved by the City
2 Engineer. Nothing shall be constructed or planted in the corner cut-off area which does
3 exceed or will exceed 30 inches in height in order to maintain an appropriate corner
4 sight distance, as required by the City Engineer. If necessary, additional right of way
5 shall be dedicated on-site to construct a path of travel meeting ADA guidelines for the
6 public sidewalk. Install a stop sign on the southbound approach and accommodate a
7 southbound shared left-right turn lane. This driveway will allow full access and will
8 serve both passenger cars and trucks.

67. The applicant shall construct a curb ramp that meets current California State
9 Accessibility standards at the northeast corner of the intersection of Cedar Avenue and
10 Durst Drive, in accordance with the City of Rialto Standard Drawings, prior to the
11 issuance of a Certificate of Occupancy. The developer shall ensure that an appropriate
12 path of travel, meeting ADA guidelines, is provided across the westerly driveway, and
13 shall adjust the location of the access ramps, if necessary, to meet ADA guidelines,
14 subject to the approval of the City Engineer. If necessary, additional pedestrian and
15 sidewalk easements shall be provided on-site to construct a path of travel meeting ADA
16 guidelines.
68. The applicant shall construct curb ramps that meet current California State Accessibility
17 standards at both the northeast and southeast corners of the intersections of Cedar
18 Avenue and the proposed driveways connected to Cedar Avenue, in accordance with
19 the City of Rialto Standard Drawings, prior to the issuance of a Certificate of
20 Occupancy. The developer shall ensure that an appropriate path of travel, meeting ADA
21 guidelines, is provided across the easterly driveway, and shall adjust the location of the
22 access ramps, if necessary, to meet ADA guidelines; subject to the approval of the City
23 Engineer. If necessary, additional pedestrian and sidewalk easements shall be provided
24 on-site to construct a path of travel meeting ADA guidelines.
69. The applicant shall construct curb ramps that meet current California State Accessibility
25 standards at both the northeast and northwest corners of the intersection of Durst Drive
26 and the proposed driveway connected to Durst Drive, in accordance with the City of
27 Rialto Standard Drawings, prior to the issuance of a Certificate of Occupancy. The
28 developer shall ensure that an appropriate path of travel, meeting ADA guidelines, is
provided across the easterly driveway, and shall adjust the location of the access ramps,
if necessary, to meet ADA guidelines, subject to the approval of the City Engineer. If
necessary, additional pedestrian and sidewalk easements shall be provided on-site to
construct a path of travel meeting ADA guidelines.
70. The applicant shall remove the existing raised median along Cedar Avenue across the
project frontage and construct a new 16-foot wide raised and landscaped median island
along the centerline of Cedar Avenue extending across the project frontage to Durst
Drive, in accordance with City Standards and any applicable Specific Plan as approved
by the City Engineer. The median nose width shall be constructed at 4 feet wide and
shall have stamped concrete. The left turn pocket at Durst Drive shall be designed in
accordance with Section 405 of the current edition of the Caltrans Highway Design

Manual, and/or as approved by the City Engineer. This condition may be deferred subject to an Agreement approved by the City Manager to pay in-lieu cash equivalent of this future improvement.

71. The applicant shall construct a 5-foot-wide Americans with Disabilities Act (ADA) and California Building Code compliant sidewalk adjacent to the curb along the entire project frontage of Cedar Avenue, in accordance with City of Rialto Standard Drawings, prior to the issuance of a Certificate of Occupancy. Join the existing non-compliant sidewalk, if any, outside the project frontage. This condition may be deferred subject to an Agreement approved by the City Manager to pay in-lieu cash equivalent of this future improvement.
72. The applicant shall remove existing curb and gutter at the easterly end of Durst Drive and construct a partial cul-de-sac in accordance with applicable City standards and as approved by the City Engineer, prior to the issuance of a Certificate of Occupancy. Remove existing asphalt concrete pavement as necessary to reconstruct the partial cul-de-sac in accordance with applicable City standards and as approved by the City Engineer.
73. The applicant shall construct a 5-foot-wide Americans with Disabilities Act (ADA) compliant sidewalk adjacent to the curb along the entire project frontage of Durst Drive, in accordance with City of Rialto Standard Drawings, prior to the issuance of a Certificate of Occupancy.
74. The applicant shall install "No Stopping Anytime" R26A(S)(CA) signage along the entire project frontages of Cedar Avenue and Durst Drive, as required by the City Engineer, prior to the issuance of a Certificate of Occupancy.
75. The applicant shall be responsible for coordinating with Omnitrans regarding the location of existing, proposed, and future bus stops along the property frontage of all public streets. The developer shall design street and sidewalk improvements in accordance with the latest Omnitrans bus stop guidelines and in compliance with current accessibility standards pursuant to the Americans with Disabilities Act (ADA) requirements. The developer shall design all bus stops to accommodate the Omnitrans Premium Shelters. Prior to Certificate of Occupancy, the developer shall submit to Public Works verification from Omnitrans acknowledging concurrence with the existing, proposed, and future bus stop improvements in conformance with the Premium Shelter design guidelines. Additionally, bus turnouts are required to accommodate proposed bus stops in accordance with the City Standards and as approved by the City Engineer.
76. The applicant shall remove existing pavement and construct new pavement with a minimum pavement section of 5 inches asphalt concrete pavement over 6 inches crushed aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, or equal, along the entire half-width street frontage of Cedar Avenue in accordance with City of Rialto Standard Drawings. The pavement section shall be

determined using a Traffic Index ("TI") of 10. The pavement section shall be designed by a California registered Geotechnical Engineer using "R" values from the project site and submitted to the City Engineer for approval. Alternatively, depending on the existing street condition and as approved by the City Engineer, a street overlay, slurry seal, or other repair can be performed to preserve existing pavement improvements. This condition may be deferred subject to an Agreement approved by the City Manager to pay in-lieu cash equivalent of this future improvement.

77. The minimum pavement section for all on-site pavements shall be 2½ inches asphalt concrete pavement over 4 inches crushed aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, or equal. If an alternative pavement section is proposed, the proposed pavement section shall be designed by a California registered Geotechnical Engineer using "R" values from the project site and submitted to the City Engineer for approval.
78. The applicant shall connect the project to the City of Rialto sewer system and apply for a sewer connection account with Rialto Water Services.
79. The applicant is advised that domestic water service is provided by Rialto Water Services. The developer shall be responsible for coordinating with Rialto Water Services and complying with all requirements for establishing domestic water service to the property.
80. The applicant shall install a new domestic water line lateral connection to the main water line within Cedar Avenue, pursuant to the Rialto Water Services requirements. A water line plan shall be approved by Rialto Water Services prior to the issuance of building permits.
81. The applicant shall provide certification from Rialto Water Services that demonstrates that all water and/or wastewater service accounts for the project are documented, prior to the issuance of a Certificate of Occupancy or final inspection approval from the Public Works Engineering Division.
82. Any sewer mains constructed by the applicant, as necessary, are to become part of the public sewer system and shall be pressure tested and digitally video recorded by the City's wastewater system operator (Veolia) prior to acceptance of the sewer system for maintenance by the City. The developer shall be responsible for all costs associated with testing and inspection services. Any defects of the sewer main shall be removed, replaced, or repaired to the satisfaction of the City Engineer prior to acceptance.
83. The applicant shall submit a Water Quality Management Plan identifying site specific Best Management Practices ("BMPs") in accordance with the Model Water Quality Management Plan ("WQMP") approved for use for the Santa Ana River Watershed. The site specific WQMP shall be submitted to the City Engineer for review and approval with the Precise Grading Plan. A WQMP Maintenance Agreement shall be required, obligating the property owner(s) to appropriate operation and maintenance obligations

1 of on-site BMPs constructed pursuant to the approved WQMP. The WQMP and
2 Maintenance Agreement shall be approved prior to issuance of a building permit, unless
3 otherwise allowed by the City Engineer. The development of the Site is subject to the
4 requirements of the National Pollution Discharge Elimination System (NPDES) Permit
5 for the City of Rialto, issued by the Santa Ana Regional Water Quality Control Board,
6 Board Order No. R8-2010-0036. Pursuant to the NPDES Permit, the Applicant shall
7 ensure development of the site incorporates post-construction Best Management
8 Practices ("BMPs") in accordance with the Model Water Quality Management Plan
9 ("WQMP") approved for use for the Santa Ana River Watershed. The Applicant is
10 advised that applicable Site Design BMPs will be required to be incorporated into the
11 final site design, pursuant to a site specific WQMP submitted to the City Engineer for
12 review and approval.

- 13 84. The applicant shall prepare a Notice of Intent (NOI) to comply with the California
14 General Construction Stormwater Permit (Water Quality Order 2009-0009-DWQ as
15 modified September 2, 2009) is required via the California Regional Water Quality
16 Control Board online SMARTS system. A copy of the executed letter issuing a Waste
17 Discharge Identification (WDID) number shall be provided to the City Engineer prior
18 to issuance of a grading or building permit. The applicant's contractor shall prepare and
19 maintain a Storm Water Pollution Prevention Plan ("SWPPP") as required by the
20 General Construction Permit. All appropriate measures to prevent erosion and water
21 pollution during construction shall be implemented as required by the SWPPP.
- 22 85. Prior to issuance of a certificate of occupancy or final City approvals, the applicant shall
23 demonstrate that all structural BMP's have been constructed and installed in
24 conformance with approved plans and specifications, and as identified in the approved
25 WQMP.
- 26 86. All stormwater runoff passing through the site shall be accepted and conveyed across
27 the property in a manner acceptable to the City Engineer. For all stormwater runoff
28 falling on the site, on-site retention or other facilities approved by the City Engineer
shall be required to contain the increased stormwater runoff generated by the
development of the property. Provide a hydrology study, prepared by a Civil Engineer,
to determine the volume of increased stormwater runoff due to development of the site,
and to determine required stormwater runoff mitigation measures for the proposed
development. Final retention basin sizing and other stormwater runoff mitigation
measures shall be determined upon review and approval of the hydrology study by the
City Engineer and may require redesign or changes to site configuration or layout
consistent with the findings of the final hydrology study. The volume of increased
stormwater runoff to retain on-site shall be determined by comparing the existing "pre-
developed" condition and proposed "developed" condition, using the 100-year
frequency storm. Infiltration of stormwater in the developed condition analysis shall be
considered negligible. All on-site and off-site designs must comply with Federal
(NPDES), State, Regional, and City stormwater regulations.

1 87. Direct release of on-site nuisance water or stormwater runoff shall not be permitted to
2 the adjacent public streets. Provisions for the interception of nuisance water from
3 entering adjacent public streets from the project site shall be provided through the use
4 of a minor storm drain system that collects and conveys nuisance water to landscape or
5 parkway areas, and in only a stormwater runoff condition, pass runoff directly to the
streets through parkway or under sidewalk drains. All on-site and off-site designs must
comply with NPDES stormwater regulations.

6 88. The applicant shall pay the Project Fair Share Cost of \$170,258 established by the
7 Traffic Analysis (March 17, 2022) prepared for the project, and as recommended by the
8 Transportation Commission on July 6, 2022, prior to the issuance of any building
permits. The fee breakdown is as follows:

Fair Share of Traffic Mitigation Improvements	
Local Fair Share Payment (19.4%) of New Traffic Signal at Cedar Ave. / Durst Dr.	\$116,442
Local Fair Share Payment (6.3% of Cedar Ave. / Valley Blvd. Improvements (to be paid to San Bernardino County)	\$5,083
Local Fair Share Payment (3.6%) of Cedar Ave. / I-10 WB Ramps (to be paid to San Bernardino County)	\$30,666
Local Fair Share Payment (1.5%) of Cedar Ave. / I-10 EB Ramps (to be paid to San Bernardino County)	\$18,067

16
17 89. The original improvement plans prepared for the proposed development and approved
18 by the City Engineer (if required) shall be documented with record drawing "as-built"
19 information and returned to the Engineering Division prior to issuance of a final
certificate of occupancy. Any modifications or changes to approved improvement plans
shall be submitted to the City Engineer for approval prior to construction.

20 90. The applicant shall adhere to the City Council approved franchise agreements and
21 disposal requirements during all construction activities, in accordance with Section 8.08
22 (Refuse Collection of the City of Rialto Municipal Code).

23 91. Prior to commencing with any grading, the applicant shall implement the required
24 erosion and dust control measures shall be in place. In addition, the following shall be
included if not already identified:

- 25 a. 6 foot high tan colored perimeter screened fencing
- 26 b. Contractor information signage including contact information along the street
27 frontages of Cedar Avenue and Durst Drive.
- 28

1 c. Post dust control signage with the following verbiage: "Project Name, WDID No.,
2 IF YOU SEE DUST COMING FROM THIS PROJECT CALL: NAME (XXX)
3 XXX-XXX, If you do not receive a response, please call the AQMD at 1-800-
4 CUT-SMOG/1-800-228-7664"

- 4 92. The applicant shall remove any graffiti within 24 hours, before, during, and post
5 construction.
- 6 93. The existing parcels identified by Assessor's Parcel Number (APN) 0128-062-25, -26,
7 and -27 shall be merged. Apply for a parcel merger to consolidate the parcels into a
8 single parcel. Evidence through recordation of a Parcel Merger Deed shall be provided
9 to the City Engineer prior to issuance of a Certificate of Occupancy.
- 10 94. The applicant shall submit full architectural and structural plans with all mechanical,
11 electrical, and plumbing plans, structural calculations, truss calculations and layout,
12 rough grading plans approved by Public Works Engineering, Water Quality
13 Management Plan, Erosion Control Plan, Stormwater Pollution Prevention Plan, and
14 Title 24 Energy Calculations to the Building Division for plan check and review, prior
15 to the issuance of building permits.
- 16 95. The applicant shall provide a Scope of Work on the title page of the architectural plan
17 set. The Scope of Work shall call out all work to be permitted (ex. Main structure,
18 perimeter walls, trash enclosure, etc.).
- 19 96. The applicant shall design the structures in accordance with the 2019 California
20 Building Code, 2019 California Mechanical Code, 2019 California Plumbing Code, and
21 the 2019 California Electrical Code, 2019 Residential Code and the 2019 California
22 Green Buildings Standards adopted by the State of California.
- 23 97. The applicant shall design the structures to withstand ultimate wind speed of 130 miles
24 per hour, exposure C and seismic zone D.
- 25 98. The applicant shall obtain an Electrical Permit from the Building Division for any
26 temporary electrical power required during construction. No temporary electrical power
27 will be granted to a project unless one of the following items is in place and approved
28 by the Building Division: (A) Installation of a construction trailer, or, (B) Security
fencing around the area where the electrical power will be located.
99. The applicant shall install any required temporary construction trailer on private
property. No trailers are allowed to be located within the public right-of-way. The trailer
shall be removed prior to the issuance of a Certificate of Occupancy.
100. The applicant shall design and construct accessible paths of travel from the building's
accessible entrances to the public right-of-way, accessible parking, and the trash
enclosure. Paths of travel shall incorporate (but not limited to) exterior stairs, landings,
walks and sidewalks, pedestrian ramps, curb ramps, warning curbs, detectable warning,

1 signage, gates, lifts and walking surface materials, as necessary. The accessible route(s)
2 of travel shall be the most practical direct route between accessible building entrances,
3 site facilities, accessible parking, public sidewalks, and the accessible entrance(s) to the
4 site, California Building Code, (CBC) Chapter 11, Sec, 11A and 11B.

5 101. Prior to issuance of a Building Permit all of the following must be in place on the Site:
6 a portable toilet with hand wash station, all BMP's, fencing and signage on each adjacent
7 street saying "If there is any dust or debris coming from this site please contact
8 (superintendent number here) or the AQMD if the problem is not being resolved" or
9 something similar to this.

10 102. The applicant shall provide temporary toilet facilities for the construction workers. The
11 toilet facilities shall always be maintained in a sanitary condition. The construction
12 toilet facilities of the non-sewer type shall conform to ANSI ZA.3.

13 103. The applicant shall underground all on site utilities to the new proposed structures, prior
14 to the issuance of a Certificate of Occupancy, unless prior approval has been obtained
15 by the utility company or the City.

16 104. Prior to issuance of Building Permits, site grading final and pad certifications shall be
17 submitted to the Building Division and Engineering Division, which include elevation,
18 orientation, and compaction. The certifications are required to be signed by the engineer
19 of record.

20 105. The applicant shall provide proof of payment to the Rialto Unified School District for
21 all required school fees, prior to the issuance of a building permit.

22 106. Site facilities such as parking open or covered, recreation facilities, and trash dumpster
23 areas, and common use areas shall be accessible per the California Building Code,
24 Chapter 11.

25 107. The applicant shall place a copy of the Conditions of Approval herein on within the
26 building plan check submittal set and include the PPD number on the right bottom
27 corner cover page in 20 point bold, prior to the issuance of a building permit.

28 108. The applicant shall ensure that a minimum of 65% of all construction and demo debris
shall be recycled using an approved City of Rialto recycling facility during construction.
Copies of receipts for recycling shall be provided to the City Inspector and a copy shall
be placed in the office of the construction site.

109. Prior to issuance of Building Permits, on site water service shall be installed and
approved by the responsible agency. On site fire hydrants shall be approved by the Fire
Department. No flammable materials will be allowed on the site until the fire hydrants
are established and approved.

- 1 110. The applicant shall comply with all applicable requirements of the California Fire Code
2 and Chapter 15.28 (Fire Code) of the Rialto Municipal Code.
- 3 111. The applicant shall illuminate all walkways, passageways, and locations where
4 pedestrians are likely to travel with a minimum of 1.5-foot candles (at surface level) of
5 light during the hours of darkness. Lighting shall be designed/constructed in such a
6 manner as to automatically turn on at dusk and turn off at dawn.
- 7 112. The applicant shall illuminate all alleyways, driveways, and uncovered parking areas
8 with a minimum of 1.5-foot candles (at surface level) of light during the hours of
9 darkness. Lighting shall be designed/constructed in such a manner as to automatically
10 turn on at dusk and turn off at dawn.
- 11 113. The applicant shall illuminate all loading dock areas, truck well areas, and delivery areas
12 with a minimum of 2.0 foot-candles (at surface level) of light during the hours of
13 darkness. Lighting shall be designed/constructed in such a manner as to automatically
14 turn on at dusk and turn off at dawn.
- 15 114. The applicant shall design/construct all lighting fixtures and luminaries, including
16 supports, poles and brackets, in such a manner as to resist vandalism and/or destruction
17 by hand.
- 18 115. The applicant shall provide an illuminated channel letter address prominently placed on
19 the building to be visible to the front of the location and if applicable, visible from the
20 main street to which they are located (e.g. commercial building facing the interior of the
21 property would require two address signs if located adjacent to a roadway), prior to the
22 issuance of a Certificate of Occupancy.
- 23 116. At the discretion of the Rialto Police Department, the applicant shall install exterior
24 security cameras at the location that cover the entire Site, prior to the issuance of a
25 Certificate of Occupancy. The security cameras shall be accessible to the Rialto Police
26 Department via FusionONE web application.
- 27 117. The applicant shall install Knox boxes immediately adjacent to the main entrance of the
28 building and at least one (1) rear entrance on the building to facilitate the entry of safety
personnel. The Knox boxes shall be installed in such a manner as to be alarmed, resist
vandalism, removal, or destruction by hand, and be fully recessed into the building. The
Knox boxes shall be equipped with the appropriate keys, for each required location,
prior to the first day of business. The Knox-Box placement shall be shown on the formal
building plan review submittal prior to the issuance of a building permit.
118. The applicant shall prominently display the address on the building rooftop to be visible
to aerial law enforcement or fire aircraft. Specifications to be followed for alphanumeric
characters are as follows: Three (3) foot tall and six (6) inches thick alphanumeric
characters. The alphanumeric characters shall be constructed in such a way that they are
in stark contrast to the background to which they are attached (e.g. white numbers and

1 letters on a black background), and resistant weathering that would cause a degradation
2 of the contrast.

3 119. The applicant shall provide an audible alarm within the building, prior to the issuance
4 of a Certificate of Occupancy. The building shall be alarmed in such a way as to emit a
5 continuous audible notification until reset by responsible personnel (e.g. alarmed exit
6 device / crash bar).

7 120. The applicant or General Contractor shall identify each contractor and subcontractor
8 hired to work at the job site on a Contractor Sublist form and return it to the Business
9 License Division with a Business License application and the Business License tax fee
10 based on the Contractors tax rate for each contractor.

11 121. Prior to issuance of a Certificate of Occupancy, the Lessor of the property shall pay a
12 business license tax based on the Rental Income Property tax rate.

13 SECTION 5. The Planning Commission hereby finds that the removal of the restriction on
14 ingress and egress to and from Cedar Avenue that runs along Assessor Parcel Numbers 0128-062-25
15 and 0128-062-27, as shown on Parcel Map No. 12885, which is attached as Exhibit B to this
16 Resolution, is consistent with the City's General Plan.

17 SECTION 6. The Chairman of the Planning Commission shall sign the passage and
18 adoption of this resolution and thereupon the same shall take effect and be in force.

19 PASSED, APPROVED AND ADOPTED this 31st day of August, 2022.

20 
21 JERRY GUTIERREZ, CHAIR
22 CITY OF RIALTO PLANNING COMMISSION
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF RIALTO)
4

5 I, Kimberly Dame, Administrative Analyst of the City of Rialto, do hereby certify that the
6 foregoing Resolution No. **2022-50** was duly passed and adopted at a regular meeting of the Planning
7 Commission of the City of Rialto held on the 31st day of August 2022.

8 Upon motion of Commissioner Dale Estvander, second by Commissioner Frank Gonzalez
9 foregoing Resolution No. **2022-50** was duly passed and adopted.

10
11 Vote on the motion:

12 AYES: 4

13 NOES: 1

14 ABSTENTION: 0

15 ABSENT: 0

16 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
17 Rialto this 31st day of August 2022.

18
19
20
21 
22 _____
23 Kimberly Dame, Administrative Analyst
24
25
26
27
28

EXHIBIT "C"

AIREF RIALTO COMMERCE CENTER

(PPD2021-0036)

AIREF RIALTO COMMERCE CENTER LP
(Developer)

ENVIRONMENTAL WARRANTY

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

1. Neither the property to be dedicated nor Developer are in violation of any environmental law, and neither the property to be dedicated nor the Developer are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.
2. Neither Developer nor any other person with Developer's permission to be upon the property to be dedicated has used, generated, manufactured, produced, or released, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this warranty, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.
3. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.
4. Developer's prior and present use of the property to be dedicated has not resulted in the release of any Hazardous Substance on the property to be dedicated.
5. All persons executing this warranty hereby represent and warrant to the City of Rialto, and Developer hereby represents and warrants, that the signators hereto have the legal power, right and authority to execute this warranty on behalf of the Developer and that the signators

hereto have sufficient knowledge or expertise, either personally, through reasonable inspection and investigation of the property, or through reasonable reliance upon the investigation and professional opinion of Developer's environmental experts, to make the representations herein, and that no consent of any other party is required to execute this warranty and make the representations herein on behalf of the Developer to the City of Rialto.

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

Dated: _____

DEVELOPER*

AIREF Rialto Commerce Center LP, a Delaware limited partnership

By: AIREF Rialto CC GP LLC,
a Delaware limited liability company,
its General Partner

By: Ares Industrial Real Estate Fund OP LP,
a Delaware limited partnership,
its Sole Member

By: Ares Industrial Real Estate Fund GP LLC,
a Delaware limited liability company,
its General Partner

By: _____

Name: Chris Sanford

Title: Managing Director

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

Exhibit "C"

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)On June 13, 2023 before me, Julie L. Victorino, Notary Public,
Date Here Insert Name and Title of the Officerpersonally appeared Chris Sanford
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that 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 Julie L. Victorino
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____