



SUBDIVISION IMPROVEMENT AGREEMENT

by and between

CITY OF RIALTO

and

CDRE Holdings 14 LLC

A Nevada Limited Liability Company

Designees for the Service of Written Notice:

CITY:	SUBDIVIDER:
City Engineer City of Rialto 150 S. Palm Avenue Rialto, CA 92376 Phone: (909) 820-2602	Name: <u>CDRE HOLDINGS 14 LLC</u> Address: <u>523 MAIN STREET</u> <u>EL SEGUNDO, CA 90245</u> Phone: <u>310.428.3302</u>
CITY PROJECT INSPECTOR:	SURETY:
City of Rialto Public Works Department 335 W. Rialto Avenue Rialto, CA 92376 Phone: (909) 421-7294	Name: <u>PHILADELPHIA INDEMNITY INSURANCE</u> Address: <u>800 E. COLORADO BLVD 6th Floor</u> <u>PASADENA, CA 91101</u> Phone: <u>626.639.1328</u>

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SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (this "Agreement") is entered into this 1st day of Nov., 2021, 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 G CORE HOLDINGS 14 LLC, A NEVADA LLC, a _____ (Subdivider").

RECITALS

A. Subdivider is the owner of, and has obtained approval of a subdivision map identified as **Tentative (Tract/Parcel) Map No. 20152**, (the "Map"), located in the City of Rialto, County of San Bernardino, State of California (the "Property"), as described on Exhibit "A". The Map requires Subdivider to comply with certain conditions of approval for the development of the Property (the "Conditions") as described on Exhibit "B".

B. Pursuant to the Conditions, Subdivider, by the Map, has offered for dedication to City for public use of the streets and easements shown on the Map. City desires to accept the streets and easements shown on the Map for public use, and certain other improvements described in this Agreement.

C. Subdivider 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.

D. Subdivider's agreement to construct and install the Works of Improvement pursuant to this Agreement and its offer of dedication of the streets, easements and other improvements and facilities, as shown on the Map, are a material consideration to City in approving **(Final/Parcel) Map No. 20152** for the Property 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, Subdivider agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations.

1.1. Works of Improvement. Subdivider 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 \$ 473,144.84

1.2. Other Obligations Referenced in Conditions of Tentative Map Approval. In addition to the foregoing, Subdivider shall satisfy all of the Conditions on the Map for the Property. The Conditions associated with the Map are included as Exhibit "B" attached hereto.

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

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

1.4. Survey Monuments. Before final approval of street improvements, Subdivider shall place survey monuments as shown on **(Final/Parcel) Map No. 20152** in accordance with the provisions of the State Subdivision Map Act and the Subdivision Ordinance of the City of Rialto. Subdivider shall provide security for such obligation as provided in Section 4.1(a)(iii) and, after setting the monuments, Subdivider shall furnish the City Engineer written notice of the setting of said monuments and written proof of having paid the engineer or surveyor for the setting of said monuments.

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

1.6. 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 Subdivider 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 Subdivider or its contractor shall be binding on City unless approved in writing by the

City Engineer. The City and Subdivider may mutually agree upon changes to the Works of Improvement, subject to the security requirements in Section 4.

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

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

1.9. 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 Subdivider and its contractor.

1.10. Documents Available at the Site. Subdivider 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.

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

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

Subdivider shall construct the improvements in accordance with the City standards in effect at the time of the adoption of the Approved Tentative Map. City reserves the right to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances.

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

1.14. 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.

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

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

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

1.18. Injury to Public Improvements, Public Property or Public Utility. Until recordation of the Notice of Acceptance of the Works of Improvement, Subdivider assumes responsibility for the care and maintenance of, and any damage to, the Works of Improvements. Subdivider 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 Subdivider, prior to the recordation of the Notice of Acceptance. Subdivider 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, Subdivider 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 Subdivider has established good cause for an extension. As a condition of such extension, the City Engineer may require Subdivider 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 Subdivider 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 Subdivider's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Subdivider 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, Subdivider 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 Subdivider 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, Subdivider'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 Subdivider, 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 Subdivider or its contractor detailing the grounds for Subdivider'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), Subdivider 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.

2.5. Reversion to Acreage. In addition to whatever other rights City may have due to Subdivider's failure to timely perform its obligations hereunder, Subdivider recognizes that City reserves the right to revert the Property to acreage subject to the limitations and requirements set forth in California Government Code Section 66499.11 through Section 66499.20.1. In this regard, Subdivider agrees that if the Works of Improvement have not been completed on or before the later of two (2) years from the date of this Agreement or within the time allowed herein, whichever is the later, and if City thereafter initiates proceedings to revert the Property to acreage, pursuant to Government Code Section 66499.16, Subdivider hereby consents to such reversion to acreage and agrees that any improvements made by or on behalf of Subdivider shall not be considered in determining City's authority to revert the Property to acreage.

3. Labor.

3.1. Labor Standards. This Agreement is subject to, and Subdivider agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, worker compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including section 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 to 1861, which provisions are specifically incorporated herein by reference as set forth herein in their entirety. Subdivider 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.*, Subdivider agrees that Subdivider, 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. Subdivider 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. Subdivider 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 Subdivider's contractors and subcontractors shall obtain a valid City of Rialto business license prior to performing any work pursuant to this Agreement. Subdivider 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. Subdivider 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 Subdivider executes this Agreement, Subdivider 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 Subdivider's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of \$_____ equal to 100% of the estimated construction cost referenced in Section 1.1. *# 473,144.84*

(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 \$_____ equal to 100% of the estimated construction cost referenced in Section 1.1. *# 473,144.84*

(iii) A Security Instrument guaranteeing the payment of the cost of setting monuments as required in Section 1.4 in the amount of \$_____ equal to 100% of the cost thereof. *# 6,100.00*

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, Subdivider 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 \$_____ equal to 10% of the estimated construction cost set forth in Section 1.1 or a suitable amount determined by the City Engineer. *# 47,314.48*

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

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

(b) Letters of Credit. For Security Instruments which are letters of credit, any letter of credit shall be an original separate unconditional, irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with offices in the State of California acceptable to City. Any such letter of credit shall specifically permit City to draw on same by unilateral certification of the City Engineer of the City that Subdivider is in default under its payment or performance obligations hereunder or in the event Subdivider 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 Subdivider'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 Subdivider'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 Subdivider 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 Subdivider 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. Subdivider's Liability. While no action of Subdivider shall be required in order for City to realize on its security under any Security Instrument, Subdivider 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, Subdivider 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 Subdivider. 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. Subdivider 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 consistent with Government Code Sections 66499.7 and 66499.8 and 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) Subdivider 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) Subdivider 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, Subdivider has provided a statutory bond, or otherwise as required by applicable law.

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

5.2. Payment to City for Cost of Related Inspection and Engineering Services. Subdivider 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, Subdivider 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 Subdivider 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 as appropriate resolution or resolutions accepting all offers of dedication shown on the Map for the Property, with acceptance to become effective upon completion and acceptance by City of the Works of Improvement. Such resolution(s) shall authorize the City Clerk to execute the Certificate made a part of the Map regarding said acceptance of the offer of dedication.

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

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

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

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 Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement. Subdivider 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 Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence of the City, its officials, boards, commissions, the members thereof, agents and employees, including all claims, demands, causes of action, liability or loss because of or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Subdivision, 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 Subdivider 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 Subdivider shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, Subdivider 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 Subdivider 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.

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

11. Insurance Requirements. Subdivider, at Subdivider'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 \$1 million combined single limit for bodily injury and property damage providing all of the following minimum coverage without deductibles:
 - (i) Premises operations; including X, C, and U coverage;
 - (ii) Owners' and contractors' protection;
 - (iii) Blanket contractual;
 - (iv) Completed operations; and
 - (v) Products.

(b) Commercial Business Auto policy with a minimum \$1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles:

(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 Subdivider:

(i) This policy shall provide coverage for Workers' Compensation (Coverage A); and

(i) This policy shall provide coverage for \$1,000,000 Employers' Liability (Coverage B).

(ii) Pursuant to Labor Code section 1861, Subdivider 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."*

(iii) Prior to commencement of work, the Subdivider 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 City of Rialto, its officers, employees and agents are hereby added as additional insureds."

(ii) "This policy shall be considered primary insurance with respect to any other valid and collectible insurance the City may possess, including any self-insured retention the City may have and any other insurance the City does possess shall be considered excess insurance only."

(iii) "This insurance shall act for each insured and additional insured as though a separate policy has been written for each. This, however, will not act to increase the limit of the insuring company."

(iv) "Thirty (30) days prior written notice of cancellation shall be given to the City of Rialto in the event of cancellation and/or reduction in coverage, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium." Such notice shall be sent to the Risk Manager at the address indicated in Subsection f below.

(v) Subsection d(iv) hereinabove "Cancellation Notice" is the only endorsement required of the Workers' Compensation and Employers' Liability policy.

(e) Admitted Insurers. All insurance companies providing insurance to the Subdivider under this Agreement shall be admitted to transact the business of insurance by the California Insurance Commissioner.

(f) Proof of Coverage. Copies of all required endorsements shall be attached to the Certificate of Insurance which shall be provided by the Subdivider's insurance company as evidence of the coverage required herein and shall be mailed 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, Subdivider 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 Subdivider are in violation of any environmental law, and neither the property to be dedicated nor the Subdivider 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 Subdivider nor any other person with Subdivider'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) Subdivider 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) Subdivider'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. Subdivider 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) Subdivider'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 Subdivider's right, title, and interest in and to the Property and any portion thereof. Subdivider 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 Subdivider in the City's approval of this Agreement. In the event the Property is subsequently conveyed by Subdivider to a third party prior to completion of the Works of Improvement, whereby the third party is intended to assume Subdivider's responsibilities with regard to this Agreement, (the "Replacement Subdivider"), the rights and obligations of this Agreement shall transfer to the Replacement Subdivider; however, the Security Instruments required pursuant to Section 4 of this Agreement, and furnished by Subdivider as a condition of the City's approval of this Agreement, shall remain Subdivider's responsibility to maintain until such time as Subdivider and its Replacement Subdivider enter into a Transfer and Assignment of Subdivision Agreement, (the "Transfer Agreement"), to acknowledge the transfer of fee title to the Property from the Subdivider to its Replacement Subdivider, and to acknowledge the rights and obligations associated with this Agreement upon the

Replacement Subdivider, including Replacement Subdivider'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 Subdivider and its Replacement Subdivider, and replacement Security Instruments meeting City's approval are furnished by the Replacement Subdivider, Subdivider 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 Subdivider 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 Subdivider of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

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

13.5. Time of the Essence. Time is of the essence of Subdivider'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 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 subdividers 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 Subdivider have caused this Agreement to be executed the day and year first above written.

CITY OF RIALTO, CALIFORNIA

By: _____
Deborah Robertson, Mayor

APPROVED BY THE CITY COUNCIL

Date: _____

Agreement No.: _____

SUBDIVIDER

By: _____

Name: MARK BACHLI

Title: AUTHORIZED SIGNER


ATTEST:

By: _____
Barbara McGee, City Clerk

APPROVED AS TO FORM:

By: _____
Eric S. Vail, City Attorney

RECOMMENDED:

By: 
~~Gabor Pakozdi, P.E.~~ DAVID S. HAMMER, PE
Acting City Engineer

California All Purpose Acknowledgment

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

State of California

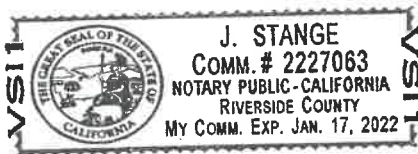
County of Riverside

On November 1, 2021, before me, J. Stange, Notary Public, personally appeared Mark Bachli

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.



Notary Public in and for
State of California
County of Riverside

Description of attached document:

*Subdivision Agreement
Improvement*

Date of document: *11-1-21* Number of pages: *20* (excluding this page and attachments)

Additional Information:

Capacity claimed by signer: ☐ Individual ☐ Trustee ☐ Co-Trustee

Corporate Officer ☐ Partner-Limited/General ☐ Other: ☐

Attorney-in-Fact for: ☐

EXHIBIT "A"

____ MAP ____ LEGAL DESCRIPTION

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

EXHIBIT 'A'
LEGAL DESCRIPTION

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

TENTATIVE PARCEL MAP NO. 20152, BEING A SUBDIVISION OF THE FOLLOWING:

THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND DESCRIBED AS FOLLOWS:

COMMENCING ON THE EAST LINE OF SAID SECTION 28, DISTANT ALONG SAID EAST LINE, NORTH 0° 21' 21" WEST, 30.00 FEET FROM A 3-INCH IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID SECTION 28;
THENCE ALONG SAID EAST LINE, NORTH 0° 21' 21" WEST, 767.78 FEET;
THENCE SOUTH 89° 34' 54" WEST, 30.00 FEET;
THENCE A NON-TANGENT CURVE CONCAVE NORTHWESTERLY WITH A RADIUS OF 20 FEET, FROM A TANGENT BEARING OF SOUTH 0° 21' 21" EAST, THROUGH AN ANGLE OF 90° 01' 53", A DISTANCE OF 31.43 FEET;
THENCE SOUTH 89° 40' 32" WEST, 1272.00 FEET TO THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4;
THENCE ALONG SAID WEST LINE, SOUTH 0° 24' 46" EAST, 66.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 89° 40' 32" EAST, 1251.96 FEET;
THENCE ALONG A TANGENT CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 20 FEET, THROUGH AN ANGLE OF 89° 58' 07", A DISTANCE OF 31.40 FEET;
THENCE SOUTH 19° 44' 37" WEST, 145.49 FEET;
THENCE SOUTH 59° 09' 14" WEST, 184.70 FEET;
THENCE ALONG A NON-TANGENT CURVE CONCAVE NORTHERLY WITH A RADIUS OF 2930 FEET, FROM A TANGENT BEARING OF SOUTH 75° 22' 04" WEST, THROUGH AN ANGLE OF 12° 53' 52", A DISTANCE OF 659.57 FEET;
THENCE SOUTH 88° 15' 56" WEST, 410.52 FEET TO SAID WEST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 28;
THENCE NORTH ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 28 TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF RIALTO BY DEEDS RECORDED DECEMBER 22, 1989, INSTRUMENT NO. [89-500121](#), OFFICIAL RECORDS; AND OCTOBER 31, 1990, INSTRUMENT NO. [90-437172](#), OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THE WEST 30 FEET OF THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST LINE OF SAID SECTION 28, DISTANT ALONG SAID EAST LINE, NORTH 0° 21' 21" WEST, 30.00 FEET FROM A 3-INCH IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID SECTION 28;
THENCE ALONG SAID EAST LINE, NORTH 0° 21' 21" WEST, 767.78 FEET;
THENCE SOUTH 89° 34' 54" WEST, 30.00 FEET;
THENCE ALONG A NON-TANGENT CURVE CONCAVE NORTHWESTERLY WITH A RADIUS OF 20 FEET, FROM A TANGENT BEARING OF 0° 21' 21" EAST, THROUGH AN ANGLE OF 90° 01' 53", A DISTANCE OF 31.43 FEET;
THENCE SOUTH 89° 40' 32" WEST, 1272.00 FEET TO THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4;

THENCE ALONG SAID WEST LINE, SOUTH 0° 24' 46" EAST, 66.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 89° 40' 32" EAST, 1251.96 FEET;
THENCE ALONG A TANGENT CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 20 FEET, THROUGH AN ANGLE OF 89° 58' 07", A DISTANCE OF 31.40 FEET;
THENCE SOUTH 19° 44' 37" WEST, 145.49 FEET;
THENCE SOUTH 59° 09' 14" WEST, 184.70 FEET;
THENCE ALONG A NON-TANGENT CURVE CONCAVE NORTHERLY WITH A RADIUS OF 2930 FEET, FROM A TANGENT BEARING OF SOUTH 75° 22' 04" WEST, THROUGH AN ANGLE OF 12° 53' 52", A DISTANCE OF 659.57 FEET;
THENCE SOUTH 88° 15' 56" WEST, 410.52 FEET TO SAID WEST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 28;
THENCE NORTH ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 28 TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION CONDEMNED BY FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 03, 2005 AS INSTRUMENT NO. [2005-0738606](#) OF OFFICIAL RECORDS.

TOGETHER WITH THE EASTERLY 30 FEET OF MAPLE AVENUE LYING ADJACENT TO SAID PROPERTY BY DOCUMENT RECORDED SEPTEMBER 7, 2021 AS INSTRUMENT NO. [2021-0404644](#) OF OFFICIAL RECORDS.

APN: 1133-271-01-0-000 (Referenced for informational purposes only)

EXHIBIT "B"

TENTATIVE Tract MAP 20092 CONDITIONS OF APPROVAL

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

RESOLUTION NO. 2020-24

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIALTO, CALIFORNIA APPROVING TENTATIVE PARCEL MAP NO. 2019-0003 TO ALLOW THE SUBDIVISION OF ONE (1) 6.84 NET ACRE PARCEL OF LAND (APN: 1133-271-01) LOCATED AT THE SOUTHWEST CORNER OF CASMALIA STREET AND LINDEN AVENUE WITHIN THE FREEWAY INCUBATOR (FI) ZONE OF THE RENAISSANCE SPECIFIC PLAN INTO THREE (3) NEW PARCELS OF LAND – PARCEL 1 (1.66 NET ACRES), PARCEL 2 (2.37 NET ACRES), AND PARCEL 3 (2.81 NET ACRES) – TO FACILITATE THE DEVELOPMENT OF ONE (1) 26,432 SQUARE FOOT INDUSTRIAL WAREHOUSE BUILDING, ONE (1) 41,266 SQUARE FOOT INDUSTRIAL WAREHOUSE BUILDING, AND ONE (1) 49,009 SQUARE FOOT INDUSTRIAL WAREHOUSE BUILDING THEREON.

WHEREAS, the applicant, CDRE Holdings 14, LLC, proposes to subdivide one 6.84 net acre parcel of land (APN: 1133-271-01) located at the southwest corner of Casmalia Street and Linden Avenue within the Freeway Incubator (FI) zone of the Renaissance Specific Plan (“Site”) into three (3) new parcels of land – Parcel 1 (1.66 net acres), Parcel 2 (2.37 net acres), and Parcel 3 (2.81 net acres) (“Project”); and

WHEREAS, the Project will facilitate the development of one (1) 26,432 square foot industrial warehouse building, one (1) 41,266 square foot industrial warehouse building, and one (1) 49,009 square foot industrial warehouse building on each of the three new parcels; and

WHEREAS, the Project within the Freeway Incubator (FI) zone requires the approval of a tentative parcel map, and the Applicant has agreed to apply for a TPM No. 2019-0003, also referred to as Tentative Parcel Map No. 20152, (“TPM No. 20152”), in accordance with Government Code Sections 66473.5 and 66474; and

WHEREAS, on June 24, 2020, the Planning Commission of the City of Rialto conducted a duly noticed public hearing, as required by law, on TPM No. 20152, took testimony, at which time it received input from staff, the city attorney, and the applicant; heard public testimony; discussed the proposed TPM No. 20152; and closed the public hearing; and

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

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

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

5 SECTION 2. Based on substantial evidence presented to the Planning Commission during
6 the public hearing conducted with regard to TPM No. 20152, including written staff reports, verbal
7 testimony, site plan, other documents, and the conditions of approval stated herein, the Planning
8 Commission hereby determines that TPM No. 20152 satisfies the requirements of Government Code
9 Sections 66473.5 and 66474 pertaining to the findings which must be made precedent to approving a
10 tentative map. The findings are as follows:

- 11 1. That the proposed Tentative Parcel Map is consistent with the General Plan of the City
12 of Rialto and the Freeway Incubator (FI) zone of the Renaissance Specific Plan; and

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

14 The Site has a General Plan designation of Specific Plan with a Specific Plan Overlay, and a
15 zoning designation of Freeway Incubator (FI) within the Renaissance Specific Plan. The
16 Project will subdivide the Site into three (3) new parcels of land – Parcel 1 (1.66 net acres),
17 Parcel 2 (2.37 net acres), and Parcel 3 (2.81 net acres) – to facilitate the development of three
18 (3) new industrial warehouse buildings. Per Table 3-5 (Development Standards), of the
19 Renaissance Specific Plan, the required minimum parcel size within the Freeway Incubator
20 (FI) zone is twenty-two thousand five hundred (22,500) square feet. The proposed parcels
21 greatly exceed the required minimum size.

- 22 2. That the design and improvements of the proposed tentative parcel map are consistent
23 with the Subdivision Ordinance, the General Plan of the City of Rialto, and the
24 Freeway Incubator (FI) zone of the Renaissance Specific Plan.

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

26 The Project will comply with all technical standards required by Subdivision Map Act, the
27 General Plan of the City of Rialto, and the FI zone of the Renaissance Specific Plan. The
28 proposed parcels exceed the minimum lot dimensions as required by the FI zone of the
Renaissance Specific Plan.

3. That the site is physically suitable for the type of proposed development; and

This finding is supported by the following facts:

1 The Site is a relatively flat piece of land and development of the land should be easily
2 accommodated. The Applicant will be required to submit a grading plan and
3 geotechnical/soils report to the Public Works Department for review and approval prior to
4 issuance of any building permits.

4. That the site is physically suitable for the proposed density of the development; and

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

6 The Project will subdivide the Site into three (3) new parcels of land – Parcel 1 (1.66 net
7 acres), Parcel 2 (2.37 net acres), and Parcel 3 (2.81 net acres) – to facilitate the construction
8 of one (1) 26,432 square foot industrial warehouse building, one (1) 41,266 square foot
9 industrial warehouse building, and one (1) 49,009 square foot industrial warehouse building.
10 Per Footnote 6 of Table 3-5 (Development Standards – Business and Commercial Uses) of
11 the Renaissance Specific Plan, the maximum allowable Floor Area Ratio (FAR) for parcels
12 less than 5.0 acres within Planning Area 5 is 40.0 percent. The FAR proposed for each parcel
13 is as follows:

- 14 • Parcel 1 – 36.6%
- 15 • Parcel 2 – 40.0%
- 16 • Parcel 3 – 40.0%

14 The proposed FAR for each parcel is within the allowable limit established by the Renaissance
15 Specific Plan.

16 5. That the design of the land division is not likely to cause substantial environmental
17 damage or substantially injure fish, wildlife, or their habitat; and

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

19 The Site is completely undeveloped and covered by natural grasses and shrubs. The Initial
20 Study (Environmental Assessment Review No. 2019-0067) and supporting technical
21 studies prepared for the project identified that the Site did not have suitable habitat for any
22 threatened or endangered species.

22 6. That the design of the land division is not likely to cause serious public health
23 problems; and

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

25 The Project is consistent with the General Plan and the Freeway Incubator (FI) zone within
26 the Renaissance Specific Plan. Following Planning Commission consideration of the
27 project, the Development Review Committee (DRC) will finalize all Precise Plan of Design
28 development-related conditions, in accordance with Resolution No. 2507, to ensure that
the design of the Project meets the City's Design Guidelines.

To the north of the project site, across Casmalia Street, is a 428,164 square foot industrial warehouse building occupied by Guitar Center and Kuehne+Nagel, and to the east, across Linden Avenue, is a 36,581 square foot industrial warehouse building nearing completion of construction. To the south is both a San Bernardino County Flood Control Channel and the SR-210 Freeway, and to the west is approximately 3.07 acres of vacant land. The proposed development pertaining to the land consolidation is consistent with the FI zoning designation. The project is not expected to negatively impact any uses with the successful implementation of mitigation measures. Measures, such as landscape buffering and the installation of solid screen walls, will be implemented as a part of the Project to prevent any negative impacts to the nearby land uses. Furthermore, construction impacts on the site will be limited through the strict enforcement of the allowable construction hours listed in Section 9.50.070 of the Rialto Municipal Code, as well as enforcement of regular watering of the site to limit airborne dust and other particulate matter. As a result, the Project is not likely to cause any public health problems.

7. That the design of the land division or proposed improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed land division.

This finding is supported by the following facts:

Prior to the completion of the Project, the Final Map, the required street dedication, and the required landscape easements will be recorded and approved by the Public Works Department. Additionally, all required site adjacent improvements will be reviewed and approved by the Public Works Department and will be constructed prior to the issuance of the Certificate of Occupancy.

SECTION 3. An Initial Study (Environmental Assessment Review No. 2019-0067) has been prepared for the Project in accordance with the California Environmental Quality Act (CEQA). Based on the findings and recommended mitigation with the Initial Study, staff determined that the project will not have an adverse impact on the environment, provided that mitigation measures are implemented, and a Mitigated Negative Declaration was prepared. The local newspaper published a copy of the Notice of Intent to adopt the Mitigated Negative Declaration for the project, and the City mailed the notice to all property owners within 300 feet of the project site for a public comment period held from February 26, 2020 to March 16, 2020. The Mitigated Negative Declaration was prepared in accordance with CEQA. The Planning Commission hereby adopts the Mitigated Negative Declaration and direct the Planning Division to file the necessary documentation with the Clerk of the Board of Supervisors for San Bernardino County.

1 SECTION 4. The Planning Commission hereby approves TPM No. 20152 to allow the
2 subdivision of one (1) 6.84 net acre parcel of land (APN: 1133-271-01) located at the southwest corner
3 of Casmalia Street and Linden Avenue within the Freeway Incubator (FI) zone of the Renaissance
4 Specific Plan into three (3) new parcels of land – Parcel 1 (1.66 net acres), Parcel 2 (2.37 net acres),
5 and Parcel 3 (2.81 net acres), in accordance with the plans and application on file with the Planning
6 Division, subject to the following conditions:

- 7 1. TPM No. 20152 is approved allowing the subdivision of one (1) 6.84 net acre parcel of
8 land (APN: 1133-271-01) located at the southwest corner of Casmalia Street and
9 Linden Avenue within the Freeway Incubator (FI) zone of the Renaissance Specific
10 Plan into three (3) new parcels of land – Parcel 1 (1.66 net acres), Parcel 2 (2.37 net
11 acres), and Parcel 3 (2.81 net acres) – for the purpose of developing one (1) 26,432
12 square foot industrial warehouse building, one (1) 41,266 square foot industrial
13 warehouse building, and one (1) 49,009 square foot industrial warehouse building, as
14 shown on the tentative parcel map submitted to the Planning Division on December 10,
15 2019, and as approved by the Planning Commission. If the Conditions of Approval
16 specified herein are not satisfied or otherwise completed within the required time, the
17 Project shall be subject to revocation.
- 18 2. Prior to the issuance of building or grading permits for the proposed development, a
19 Precise Plan of Design shall be approved by the City's Development Review Committee
20 (DRC).
- 21 3. City inspectors shall have access to the Site to reasonably inspect the Site during normal
22 working hours to assure compliance with these conditions and other codes.
- 23 4. The applicant shall defend, indemnify and hold harmless the City of Rialto, its agents,
24 officers, or employees from any claims, damages, action, or proceeding against the City
25 or its agents, officers, or employees to attack, set aside, void, or annul any approval of
26 the City, its advisory agencies, appeal boards, or legislative body concerning TPM No.
27 20152. The City will promptly notify the applicant of any such claim, action, or
28 proceeding against the City and will cooperate fully in the defense.
5. 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.
6. The applicant shall complete and abide by all mitigation measures contained within the
Mitigation Monitoring and Reporting Program associated with Environmental
Assessment Review No. 2019-0067 prior to issuance of any Certificate of Occupancy.

- 1 7. The applicant shall secure the services of a tribal cultural monitor to be present during
2 all ground disturbance activities associated with the construction of this project. The
3 tribal cultural monitor shall be approved by the Gabrieleño Band of Mission Indians-
4 Kizh Nation, and documentation of coordination between the applicant and the
5 Gabrieleño Band of Mission Indians-Kizh Nation on this matter shall be provided to
6 the Planning Division prior to the issuance of a grading permit.
- 7 8. The applicant shall pay all applicable development impact fees in accordance with the
8 current City of Rialto fee ordinance, including any Transportation and Traffic Fair
9 Share Contribution fees, as applicable.
- 10 9. All conditions of approval for TPM No. 20152 shall be completed to the satisfaction of
11 the City Engineer prior to the issuance of a Certificate of Occupancy.
- 12 10. The applicant shall apply for annexation of the underlying property into City of Rialto
13 Landscape and Lighting Maintenance District No. 2 ("LLMD 2"). An application fee of
14 \$5,000 shall be paid at the time of application. Annexation into LLMD 2 is a condition
15 of acceptance of any new median, parkway, and/or easement landscaping, or any new
16 public street lighting improvements, to be maintained by the City of Rialto.
- 17 11. The applicant shall submit off-site landscaping and irrigation system improvement plans
18 for review and approval at the time of first (1st) public improvement plan submittal to the
19 Public Works Department. The parkway irrigation system shall be separately metered
20 from the on-site private irrigation to be maintained for a period of one (1) year and
21 annexed into a Special District. The off-site landscape and irrigation plans must show
22 separate electrical and water meters to be annexed into the Landscape and Lighting
23 Maintenance District No. 2 via a City Council Public Hearing. The landscape and
24 irrigation plans shall be approved concurrently with the street improvement plans,
25 including the median portion, prior to issuance of a building permit. The landscaping
26 architect must contact the City of Rialto Landscape Contract Specialist at (909) 772-2635
27 to ensure all landscape and irrigation guidelines are met prior to plan approval. Electrical
28 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.
12. 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) 772-2635 to confirm a full twelve (12) months' time of non-
interrupted ongoing maintenance.
13. 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.

14. All new street lights shall be installed on an independently metered, City-owned underground electrical system. The developer shall be responsible for applying with Southern California Edison ("SCE") for all appropriate service points and electrical meters. New meter pedestals shall be installed, and electrical service paid by the developer, until such time as the underlying property is annexed into LLMD 2.
15. 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 approval of Parcel Map No. 20152.
16. The applicant shall submit street light 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 approval of Parcel Map No. 20152.
17. The applicant shall submit sewer 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 approval of Parcel Map No. 20152.
18. The applicant shall submit traffic and signage 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 approval of Parcel Map No. 20152.
19. The applicant shall submit copies of approved water improvement plans prepared by a registered California civil engineer to the Public Works Engineering Division for record purposes. The plans shall be approved by West Valley Water District, the water purveyor, prior to the approval of Parcel Map No. 20152.
20. The applicant shall submit a Precise Grading/Paving Plan prepared by a California registered civil engineer to the Public Works Engineering Division for review and approval. The Grading Plan shall be approved by the City Engineer prior to approval of Tract Map No. 20152 and prior to the issuance of any building permit.
21. The applicant shall submit a Geotechnical/Soils Report, prepared by a California registered Geotechnical Engineer, for and incorporated as an integral part of the grading plan for the proposed development. A copy of the Geotechnical/Soils Report shall be submitted to the Public Works Engineering Division with the first submittal of the Precise Grading Plan.
22. The applicant shall provide pad elevation certifications for all building pads in conformance with the approved Precise Grading Plan, to the Engineering Division prior to construction of any building foundation.
23. The public and 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.

24. 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-site construction activities are complete. Unless the City Engineer provide prior authorization, paving of streets in one lift prior to completion of on-site construction is not allowed. If City Engineer authorized, completion of asphalt concrete paving for streets prior to completion of on-site construction activities, requires additional paving requirements prior to acceptance of the street improvements, including, but not limited to: removal and replacement of damaged asphalt concrete pavement, overlay, slurry seal, or other repairs.
25. The applicant shall repair all street cuts for utilities in accordance with City Standard SC-231 within 72 hours of completion of the utility work; and any interim trench repairs shall consist of compacted backfill to the bottom of the pavement structural section followed by placement of standard base course material in accordance with the Standard Specifications for Public Work Construction ("Greenbook"). The base course material shall be placed the full height of the structural section to be flush with the existing pavement surface and provide a smooth pavement surface until permanent cap paving occurs using an acceptable surface course material.
26. The applicant shall backfill and/or repair any and all utility trenches or other excavations within existing asphalt concrete pavement of off-site streets resulting from the proposed development, in accordance with City of Rialto Standard Drawings. The applicant shall be responsible for removing, grinding, paving and/or overlaying existing asphalt concrete pavement of off-site streets including pavement repairs in addition to pavement repairs made by utility companies for utilities installed for the benefit of the proposed development (i.e. Fontana Water Company, Southern California Edison, Southern California Gas Company, Time Warner, Verizon, etc.). Multiple excavations, trenches, 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.
27. The applicant shall install underground all existing 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 the site, in accordance with Chapter 15.32 of the Rialto Municipal Code. Utility undergrounding shall extend to the nearest off-site power pole. Unless City Engineer approved, no new power poles shall be installed. A letter from the owners of the affected utilities shall be submitted to the City Engineer prior to approval of the Precise Grading/Paving Plan, informing the City that they have been notified of the City's utility undergrounding requirement and their intent to commence design of utility undergrounding plans. When available, the utility undergrounding plan shall be submitted

1 to the City Engineer identifying all above ground facilities in the area of the project to be
2 undergrounded.

3 28. The applicant shall replace all damaged, destroyed, or modified pavement legends, traffic
4 control devices, signing, striping, and street lights, associated with the proposed
5 development prior to the issuance of a Certificate of Occupancy.

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

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

16 31. The applicant shall construct and include in the project design any and all improvements
17 recommended by the Transportation Commission on September 4, 2019.

18 32. The applicant shall construct 4-inch conduit within the parkway area along the entire
19 project frontage of Casmalia Street and Linden Avenue for future use.

20 33. The applicant shall dedicate additional right-of-way along the entire frontage of Casmalia
21 Street, as necessary, to provide the ultimate half-width of 50 feet, as required by the City
22 Engineer.

23 34. The applicant shall dedicate additional right-of-way along the entire frontage of Linden
24 Avenue, as necessary, to provide the ultimate half-width of 40 feet, as required by the City
25 Engineer.

26 35. The applicant shall dedicate a 10-foot-wide landscape easement along the entire project
27 frontage of Casmalia Street in accordance with Figure 3-8 of the Renaissance Specific
28 Plan, and as required by the City Engineer.

36. The applicant shall dedicate additional right-of-way as may be required to provide a
property line corner cutback at the southwest corner of the intersection of Casmalia Street
and Linden Avenue, in accordance with City Standard SC-235, as required by the City
Engineer.

37. The applicant shall construct three (3) new commercial driveway approaches on Casmalia
Street, 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 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.

38. The applicant shall provide documentation of a recorded reciprocal access easement with the owner of the property adjacent to the west of the project site (APN: 1133-251-05), prior to the issuance of a grading permit. The easement shall grant the adjacent property owner access to the proposed shared driveway connected to Casmalia Street at the west end of the project site.
39. The applicant shall construct an 8-inch curb and gutter, located at 36 feet south of the centerline along the entire frontage of Casmalia Street in accordance with City of Rialto Standard Drawings, as required by the City Engineer.
40. The applicant shall construct an 8-inch curb and gutter, located at 39 feet west of centerline along the entire frontage of Linden Avenue in accordance with City of Rialto Standard Drawings, as required by the City Engineer.
41. The applicant shall construct a 6-foot-wide sidewalk located 8 feet behind the edge of the curb along the entire project frontage of Casmalia Street in accordance with City of Rialto Standard Drawings.
42. The applicant shall construct a 6-foot-wide sidewalk located adjacent to the curb along the entire frontage of Linden Avenue in accordance with City of Rialto Standard Drawings.
43. The applicant shall construct a curb ramp meeting current California State Accessibility standards at the southwest corner of the intersection of Casmalia Street and Linden Avenue, in accordance with the City of Rialto Standard Drawings.
44. The applicant shall construct a curb ramp meeting current California State Accessibility standards along both sides of each commercial driveway approach. The developer shall ensure that an appropriate path of travel, meeting ADA guidelines, is provided across each 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.
45. The applicant shall construct a new underground electrical system for public street lighting improvements along the project frontages of Casmalia Street and Linden Avenue, as determined necessary by the City Engineer. New marbelite street light poles with LED light fixtures shall be installed in accordance with City of Rialto Standard Drawings.
46. The applicant shall remove existing pavement and construct new pavement with a minimum pavement section of 4 inches asphalt concrete pavement over 6 inches crushed aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, or

1 equal, along the entire frontages of Casmalia Street and Linden Avenue in accordance
2 with City of Rialto Standard Drawings, as determined to be necessary by the City
3 Engineer. The pavement section shall be determined using a Traffic Index ("TI") of 6.
4 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.
Pavement shall extend from clean sawcut edge of pavement at centerline of each street.

- 5 47. The development of the site is subject to the requirements of the National Pollution
6 Discharge Elimination System (NPDES) Permit for the City of Rialto, under the Santa
7 Ana Regional Water Quality Control Board, Board Order No. R8-2010-0036. Pursuant to
8 the NPDES Permit, the applicant shall ensure development of the site incorporates post-
9 construction Best Management Practices ("BMPs") in accordance with the Model Water
10 Quality Management Plan ("WQMP") approved for use for the Santa Ana River
11 Watershed. The applicant is advised that applicable Site Design BMPs will be required to
12 be incorporated into the final site design, pursuant to a site specific WQMP submitted to
13 the City Engineer for review and approval.
- 14 48. The applicant shall connect the project to the City of Rialto sewer system and apply for a
15 sewer connection account with Rialto Water Services.
- 16 49. The applicant shall provide certification from Rialto Water Services that demonstrates
17 that all water and/or wastewater service accounts for the project are documented, prior to
18 the issuance of a Certificate of Occupancy or final inspection approval from the Public
19 Works Engineering Division.
- 20 50. The applicant shall submit a Water Quality Management Plan identifying site specific
21 Best Management Practices ("BMPs") in accordance with the Model Water Quality
22 Management Plan ("WQMP") approved for use for the Santa Ana River Watershed. The
23 site specific WQMP shall be submitted to the City Engineer for review and approval with
24 the Grading Plan. A WQMP Maintenance Agreement shall be required, obligating the
25 property owner(s) to appropriate operation and maintenance obligations of on-site BMPs
26 constructed pursuant to the approved WQMP. The WQMP and Maintenance Agreement
27 shall be approved prior to the issuance of any building permit and shall be recorded at the
28 San Bernardino County Recorder's Office prior to the issuance of a Certificate of
Occupancy.
51. A applicant shall prepare a Notice of Intent (NOI) to comply with the California General
Construction Stormwater Permit (Water Quality Order 2009-0009-DWQ as modified
September 2, 2009) is required via the California Regional Water Quality Control Board
online SMARTS system. A copy of the executed letter issuing a Waste Discharge
Identification (WDID) number shall be provided to the City Engineer prior to issuance of
a grading or building permit. The applicant's contractor shall prepare and maintain a
Storm Water Pollution Prevention Plan ("SWPPP") as required by the General
Construction Permit. All appropriate measures to prevent erosion and water pollution
during construction shall be implemented as required by the SWPPP.

- 1 52. Prior to issuance of a certificate of occupancy or final City approvals, the applicant shall
2 demonstrate that all structural BMP's have been constructed and installed in conformance
3 with approved plans and specifications, and as identified in the approved WQMP.
- 4 53. All stormwater runoff passing through the site shall be accepted and conveyed across the
5 property in a manner acceptable to the City Engineer. For all stormwater runoff falling
6 on the site, on-site retention or other facilities approved by the City Engineer shall be
7 required to contain the increased stormwater runoff generated by the development of the
8 property. Provide a hydrology study to determine the volume of increased stormwater
9 runoff due to development of the site, and to determine required stormwater runoff
10 mitigation measures for the proposed development. Final retention basin sizing and other
11 stormwater runoff mitigation measures shall be determined upon review and approval of
12 the hydrology study by the City Engineer and may require redesign or changes to site
13 configuration or layout consistent with the findings of the final hydrology study. The
14 volume of increased stormwater runoff to retain on-site shall be determined by comparing
15 the existing "pre-developed" condition and proposed "developed" condition, using the
16 100-year frequency storm.
- 17 54. Direct release of on-site nuisance water or stormwater runoff shall not be permitted to the
18 adjacent public streets. Provisions for the interception of nuisance water from entering
19 adjacent public streets from the project site shall be provided through the use of a minor
20 storm drain system that collects and conveys nuisance water to landscape or parkway
21 areas, and in only a stormwater runoff condition, pass runoff directly to the streets through
22 parkway or under sidewalk drains. All on-site and off-site designs must comply with
23 NPDES stormwater regulations.
- 24 55. Any utility trenches or other excavations within existing asphalt concrete pavement of off-
25 site streets required by the proposed development shall be backfilled and repaired in
26 accordance with City of Rialto Standard Drawings. The Applicant shall be responsible
27 for removing, grinding, paving and/or overlaying existing asphalt concrete pavement of
28 off-site streets as required by and at the discretion of the City Engineer, including
additional pavement repairs to pavement repairs made by utility companies for utilities
installed for the benefit of the proposed development (i.e. West Valley Water District,
Southern California Edison, Southern California Gas Company, Spectrum, Verizon, etc.).
Multiple excavations, trenches, and other street cuts within existing asphalt concrete
pavement of off-site streets required by 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 existed prior to construction of the proposed
development.
56. The original improvement plans prepared for the proposed development and approved by
the City Engineer (if required) shall be documented with record drawing "as-built"
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.

- 1 57. The applicant shall adhere to the City Council approved franchise agreements and disposal
2 requirements during all construction activities, in accordance with Section 8.08 (Refuse
3 Collection of the City of Rialto Municipal Code).
- 4 58. Prior to commencing with any grading, the applicant shall implement the required erosion
5 and dust control measures shall be in place. In addition, the following shall be included if
6 not already identified:
- 7 a. 6 foot high tan colored perimeter screened fencing
 - 8 b. Contractor information signage including contact information along the street
9 frontage of Casmalia Street and Linden Avenue.
 - 10 c. Post dust control signage with the following verbiage: "Project Name, WDID No.,
11 IF YOU SEE DUST COMING FROM THIS PROJECT CALL: NAME (XXX)
12 XXX-XXX, If you do not receive a response, please call the AQMD at 1-800-
13 CUT-SMOG/1-800-228-7664"
- 14 59. The applicant shall remove any graffiti within 24 hours, before, during, and post
15 construction.
- 16 60. The applicant shall replace all damaged, destroyed, or modified pavement legends, traffic
17 control devices, signing, striping, and street lights, associated with the proposed
18 development shall be replaced as required by the City Engineer prior to issuance of a
19 Certificate of Occupancy.
- 20 61. The applicant shall provide construction signage, lighting and barricading shall be
21 provided during all phases of construction as required by City Standards or as directed by
22 the City Engineer. As a minimum, all construction signing, lighting and barricading shall
23 be in accordance with Part 6 "Temporary Traffic Control" of the 2012 California Manual
24 on Uniform Traffic Control Devices, or subsequent editions in force at the time of
25 construction.
- 26 62. The applicant is advised that domestic water service is provided by West Valley Water
27 District. The developer shall be responsible for coordinating with West Valley Water
28 District and complying with all requirements for establishing domestic water service to
the property.
63. The applicant shall submit a final parcel map (Parcel Map No. 20152), prepared by a
California registered Land Surveyor or qualified Civil Engineer, to the Public Works
Engineering Division for review and approval. A Title Report prepared for subdivision
guarantee for the subject property, the traverse closures for the existing parcel and all
lots created therefrom, and copies of record documents shall be submitted with Parcel
Map No. 20152 to the Public Works Engineering Division as part of the review of the
Map. Parcel Map No. 20152 shall be approved by the City Council prior to issuance
of any building permits.

1 64. In accordance with Government Code 66462, all required public improvements shall be
2 completed prior to the approval of a final map (Parcel Map No. 20152). Alternatively,
3 the applicant may enter into a Subdivision Improvement Agreement to secure the cost of
4 all required public improvements at the time of requesting the City Engineer's approval
5 of Parcel Map No. 20152. If a Subdivision Improvement Agreement is requested by the
6 applicant, a fee of \$2,000 shall be paid for preparation and processing of the Subdivision
7 Improvement Agreement. The applicant will be required to secure the Subdivision
8 Improvement Agreement pursuant to Government Code 66499 in amounts determined by
9 the City Engineer.

10 65. The applicant shall comply with all other applicable State and local ordinances.

11 66. Pursuant to Section 17.16.050A of the Rialto Municipal Code, approval of TPM No.
12 20152 is granted for a period of twenty-four (24) months from the effective date of this
13 resolution. Pursuant to Section 17.16.050C of the Rialto Municipal Code, an extension
14 of time for TPM No. 20152 may be granted by the Planning Commission for a period
15 or periods not to exceed a total of thirty-six (36) months. The period or periods of
16 extension shall be in addition to the original twenty-four (24) months. An application
17 shall be filed with the Planning Division for each extension together with the required
18 fee prior to the expiration date of TPM No. 20152.

19 SECTION 6. The Chair of the Planning Commission shall sign the passage and adoption of
20 this resolution and thereupon the same shall take effect and be in force.

21 PASSED, APPROVED AND ADOPTED this 24th day of June, 2020.

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JOHN PUKERT, CHAIR
CITY OF RIALTO PLANNING COMMISSION

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

5 I, Adrianna Martinez, Administrative Assistant of the City of Rialto, do hereby certify that
6 the foregoing Resolution No. **2020-24** was duly passed and adopted at a regular meeting of the
7 Planning Commission of the City of Rialto held on the 9th day of September 2020.

8 Upon motion of Commissioner Jerry Gutierrez, second by Vice Chair Frank Gonzalez the
9 foregoing Resolution No. **2020-24** was duly passed and adopted.
10

11 Vote on the motion:

12 AYES: 7

13 NOES: 0

14 ABSENT: 0

15 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
16 Rialto this 9th day of September 2020.
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Adrianna Martinez, Administrative Assistant

EXHIBIT "C"

TRACT NO.

(Subdivision/Unit No.)

CDRE Holdings 14 LLC
(Subdivider)

ENVIRONMENTAL WARRANTY

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

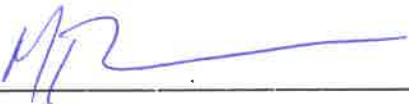
1. Neither the property to be dedicated nor Subdivider are in violation of any environmental law, and neither the property to be dedicated nor the Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.
2. Neither Subdivider nor any other person with Subdivider'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. Subdivider 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. Subdivider'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 Subdivider hereby represents and warrants, that the signators hereto have the legal power, right and authority to execute this warranty on behalf of the Subdivider 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 Subdivider'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 Subdivider to the City of Rialto.

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

Dated: 11/1/2021

SUBDIVIDER*

By: 
AUTHORIZED SIGNER
CORE HOLDINGS 14 LLC

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

LIMITED LIABILITY COMPANY AGREEMENT
OF
CDRE HOLDINGS 14 LLC
a Nevada limited liability company

THIS LIMITED LIABILITY COMPANY AGREEMENT dated July 19, 2018 as amended from time to time (this "Agreement") of **CDRE HOLDINGS 14 LLC**, a Nevada limited liability company (the "Company") is entered into by COMPASS DANBE REAL ESTATE PARTNERS, LLC, a Delaware limited liability company, as its sole member ("Member").

RECITALS

A. The Company was formed as a Nevada limited liability company in accordance with Chapter 86 of the Nevada Limited Liability Companies Statutes (the "Nevada LLC Statutes").

B. The undersigned desire to execute this Agreement to set forth the terms and conditions under which the management, business, and financial affairs of the Company will be conducted.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties hereby covenant and agree as follows:

Article I.

PURPOSE AND POWERS OF COMPANY

Section 1.01 Business and Purpose. The business and purpose of the Company is to acquire, own, hold, lease, mortgage, finance, improve, sell and dispose of land and improvements located at 1354 Alder Avenue, Rialto, CA, County of San Bernardino (APN's 0240-201-41 & 0240-201-08) (the "Property"), together with such other activities as may be necessary, incidental or appropriate in connection therewith and any other lawful act or activity not prohibited by the Nevada LLC Statutes or this Agreement.

Section 1.02 Powers. The Company shall have all powers of a limited liability company formed under the Nevada LLC Statutes and not prohibited by the Nevada LLC Statutes or this Agreement.

Section 1.03 Title to Company Property. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, the Member shall have any ownership interest in any Company property in its individual name or right, and the Member's Membership Interest shall be personal property for all purposes.

Section 1.04 Term. This Agreement shall not terminate until the Company is terminated in accordance with this Agreement.

Section 1.05 Registered Office and Registered Agent. The Company's initial registered office and initial registered agent shall be as provided in the Articles of Organization. The registered office and registered

agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent pursuant to the Nevada LLC Statutes.

Section 1.06 Formation and Authorized Person. The Articles of Organization has been filed with the Secretary of State of the State of Nevada in accordance with and pursuant to the Nevada LLC Statutes.

Article II.

MEMBERS

Section 2.01 Initial Member.

- (a) The name, address and Membership Interest of the Member is as follows:

Address: COMPASS DANBE REAL ESTATE PARTNERS, LLC
c/o Compass Group Management
2010 Main Street, Suite 1220
Irvine, CA 92614

Membership
Interest: 100%

- (b) "Membership Interest" shall mean the Member's limited liability company interest in the Company and the other rights and obligations with respect thereto as set forth in this Agreement. The Membership Interest of the Member is set forth beside the Member's name in Article II of this Agreement.
- (c) The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

Section 2.02 Classification of the Company. The Member and the Company intend that the Company be disregarded for federal income tax purposes and, therefore, covenant and agree that each of them at all times shall treat the Company as a disregarded entity for federal income tax purposes.

Article III.

MANAGEMENT BY MEMBER AND OFFICERS

Section 3.01 In General. The powers of the Company shall be exercised by, or under the authority of, the Member. In addition, the business and affairs of the Company shall be managed under the direction of the Member. Subject to the limitations set forth in this Agreement, the Member shall be entitled to make all decisions and take all actions for the Company.

Section 3.02 Management by Member. The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all

powers, statutory or otherwise. The Member shall be entitled to make all decisions and take all actions for the Company, and the Member has the authority to bind the Company.

Section 3.03 Authorization. In furtherance of the conduct of the purposes described herein, the Company shall possess and may exercise all of the powers and privileges granted by the Nevada LLC Statutes, and the Company is hereby authorized to do any act, enter into any agreement, contract or other instrument, and otherwise to engage in any activity and to do any action not prohibited under the Nevada LLC Statutes or other applicable law which is necessary, useful, desirable or convenient to the conduct, promotion and attainment of the business and purposes of the Company.

Section 3.04 Officers. The Member hereby appoints the following individuals as Officers of the Company:

Elias Sabo	President
Dave Swanson	Vice President
Mark Bachli	Vice President and Secretary
Robert Guilford	Vice President and Treasurer

Any Officer shall have the authority to execute and deliver on behalf of the Company any and all documents or instruments such Officers may determine to be necessary or advisable in the conduct of the business of the Company, including, without limitation, opening bank accounts in the name of the Company, executing purchase and sale agreements, escrow instructions, closing documents, leases, construction contracts, maintenance contracts, loan documents or other financing and/or financial instruments for or on behalf of the Company. Any acts of the Officers taken prior to the formation of the Company are hereby approved as the acts of the Officers in the name of and on behalf of the Company. The Member may from time to time designate additional persons as Officers or remove or replace any person or persons previously designated as Officers from such office. In addition, the Member may appoint one or more Officers for any limited purpose as the Member may designate. The appointment of any additional Officers, the removal or replacement of any Officers and any limitations on the authority of any Officer shall be carried out by a written instrument to that effect.

Article IV.

CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS

Section 4.01 Member Capital Contributions. The Member has made or is deemed to have made a capital contribution to the Company in the amount of \$100. The Member is not required to make any additional capital contributions to the Company. "Capital Contribution" shall mean any contribution to the capital of the Company by the Member in cash, property, or services, or a binding obligation to contribute cash, property, or services, whenever made.

Section 4.02 Distributions and Allocations. All distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of the Nevada LLC Statutes

and Article VI hereof) and all allocations of income, profits, and loss shall be made 100% to the Member in accordance with its Membership Interest and at the Member's election.

Article V.

INDEMNIFICATION AND LIMITED LIABILITY

Section 5.01 Liability and Indemnity. The Member, any officer or authorized person of the Company (each an "Indemnatee") shall not be liable or accountable in damages or otherwise to the Company for any error of judgment or any mistake of fact or law or for anything that such Indemnatee may do or refrain from doing hereafter, except in the case of willful misconduct or gross negligence. To the maximum extent permitted by law, the Company hereby indemnifies, defends, protects and agrees to hold the each Indemnatee wholly harmless from and against any loss, expense or damage suffered by such Indemnatee by reason of anything which the Indemnatee may do or refrain from doing hereafter for and on behalf of the Company and in furtherance of its interest; provided, however, the Company shall not be required to indemnify, defend, protect or hold any Indemnatee from any loss, expense or damage which the Indemnatee may suffer as a result of such Indemnatee's willful misconduct or gross negligence in performing or in failing to perform such Indemnatee's duties hereunder and/or for any acts in contravention of this Agreement.

Section 5.02 Reimbursement and Fees. The Company shall pay the expenses incurred by any Indemnatee in defending any action, suit or proceeding described above in advance of the final disposition of such action, suit or proceeding upon the receipt of an undertaking by or on behalf of such Indemnatee to repay such advance if it shall ultimately be determined that such Indemnatee is not entitled to be indemnified by the Company pursuant to this Section 5.

Section 5.03 Limited Liability. Except as otherwise provided by the Nevada Statutes, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member of the Company.

Article VI.

ASSIGNMENTS; RESIGNATIONS

The Member may assign in whole or in part its Membership Interest in the Company. If the Member transfers all or any portion of its Membership Interest pursuant to this Section 6, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement.

Article VII.

DISSOLUTION AND TERMINATION

Section 7.01 Dissolution. Subject to the other provisions of this Agreement, the Company shall be dissolved upon the first to occur of the following: (a) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Nevada LLC Statutes (b) the entry of a decree of judicial dissolution under the Nevada LLC Statutes, (c) the bankruptcy of the Company; or (d) at the election of the Member.

Section 7.02 Liquidation. Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Nevada LLC Statutes by the Member (or the person(s) or entity carrying out the liquidation) shall determine.

Section 7.03 Orderly Liquidation. A reasonable time as determined by the Member (or the person(s) or entity carrying out the liquidation) shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

Section 7.04 Termination. The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Articles of Organization shall have been canceled in the manner required by the Act. The existence of the Company as a separate legal entity shall continue until cancellation of the Articles of Organization as provided in the Act.

Article VIII.

MISCELLANEOUS PROVISIONS

Section 8.01 Governing Law. This Agreement shall be construed, enforced, and interpreted in accordance with the laws of the State of Nevada, without regard to conflicts of law provisions and principles thereof.

Section 8.02 Integrated and Binding Agreement; Amendment. This Agreement contains the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties among the parties hereto other than those set forth herein. This Agreement may be amended only as provided in this Agreement. Notwithstanding any other provision of this Agreement, the parties hereto agree that this Agreement constitutes a legal, valid and binding agreement, and is enforceable against each of them in accordance with its terms.

Section 8.03 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

Section 8.04 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

Section 8.05 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Section 8.06 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

Section 8.07 Notices. All notices under this Agreement shall be in writing and shall be given to the party entitled thereto by personal service or by mail, posted to the address maintained by the Company for such person or at such other address as he may specify in writing.

Section 8.08 Rights and Remedies Cumulative; Waivers. The rights and remedies provided by this Agreement are cumulative and the use of anyone right or remedy by any party shall not preclude or waive the right to use any or all other remedies, and are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 8.09 Heirs, Successors, and Assigns. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

Section 8.10 Tax Status. It is the intention of the Member and the Company that the Company be a disregarded entity for federal income tax purposes.

Section 8.11 Effective Date. This Agreement shall be effective as of the time of the filing of the Articles of Organization with the Office of the Nevada Secretary of State.

[signature follows on next page]

The undersigned hereby agrees, acknowledges, and certifies that the foregoing constitutes the sole and entire Limited Liability Company Agreement of the Company.

COMPASS DANBE REAL ESTATE PARTNERS, LLC
a Delaware limited liability company

By: Robert Guilford
Name: Robert Guilford
Title: Authorized Signatory