

**DRAFT FOR DISCUSSION PURPOSES ONLY 9-21-22**

**MIRO WAY COLLECTIVE DISPOSITION AGREEMENT**

This COLLECTIVE DISPOSITION AGREEMENT (this “**Agreement**”) is entered into as of September \_\_\_\_, 2022 (the “**Effective Date**”), by the CITY OF RIALTO, a municipal corporation (the “**City**”), the Successor Agency to the City of Rialto Redevelopment Agency, a California public body (“**SARDA**”), and LEWIS-HILLWOOD RIALTO COMPANY, LLC, a Delaware limited liability company (“**LHR**”). The City, SARDA, and LHR are herein referred to collectively as the “**Parties**” and individually as a “**Party**.”

**RECITALS**

A. The City and LHR entered into that certain Second Amended and Restated Contract of Sale for Areas B, C and D (the “**BCD Contract**”) dated September 25, 2012 pursuant to which the City agreed to sell to LHR approximately 438 acres of real property within the boundaries of the former Rialto Municipal Airport (the “**BCD Property**”).

B. The City and LHR entered into the Area A Contract of Sale on January 10, 2017 (“**Area A Contract**”) pursuant to which the City agreed to sell to LHR approximately 58 acres of real property adjacent to the BCD Property (the “**Area A Property**”).

C. The City and LHR entered into that certain First Implementation Agreement Re Second Amended and Restated Contract of Sale for Areas B, C, and D and the Area A Contract of Sale as of December 13, 2016 (the “**First Implementation Agreement**”).

D. Concurrent with entering into the First Implementation Agreement, the City and LHR entered into a Development Agreement dated December 13, 2016, regarding the development of the Area A Property and the BCD Property (the “**Development Agreement**”).

E. Subject to certain conditions set forth in Section 8.1 of the Development Agreement, the Development Agreement provides for the City’s construction of a 20+ acre public park in accordance with the Renaissance Specific Plan (the “**Specific Plan**”) that would include approximately 7.1 acres of the BCD Property (the “**Option Parcel**”), 9.7 acres of approximately 18.77 acres owned by SARDA (collectively the “**SARDA Parcels**”) and 3.4 acres owned by the City (the “**Linden/Miro Parcel**”). Four of the SARDA Parcels and a portion of a fifth SARDA Parcel totaling approximately 22.31 acres are collectively referred to herein as the “**Rialto Parcels**”). A map of the Rialto Parcels and Option Parcel is attached hereto as ***Exhibit A***.

F. Pursuant to the First Implementation Agreement, LHR waived its right to exercise its option set forth in Section 2.01 of the BCD Contract with respect to the Option Parcel provided that the Option Parcel is developed as a public park in accordance with the Development Agreement.

G. On February 27, 2018, the City Council authorized the acquisition of the Linden/Miro Parcel for which a grant deed was recorded in the official records of San Bernardino

County on April 10, 2018, and on September 14, 2021, the City Council adopted its Resolution No. 7770, declaring the Linden/Miro Parcel surplus land. The City received confirmation of its compliance with the Surplus Land Act from the Department of Housing and Community Development (“**HCD**”) by letter dated July 8, 2022.

H. On April 26, 2022, SARDA adopted its Resolution No. 7860, declaring the SARDA Parcels surplus land. SARDA received confirmation of its compliance with the Surplus Land Act from the HCD by letter dated August 2, 2022.

I. The Rialto Parcels and the Option Parcel are subject to the Renaissance Specific Plan and are zoned for public park use.

J. The City and LHR now intend, pursuant to the terms of a separate Reimbursement Agreement, to process (i) an amendment to the Renaissance Specific Plan to revise the permitted land uses therein for the Rialto Parcels and Option Parcel by eliminating the park and school site designations and replacing them with business center land uses to support industrial warehousing and similar development (the “**SPA**”), (ii) an amendment to the Development Agreement to delete Section 8.1 and to modify Section 5.3.1 upon terms reasonably acceptable to City and LHR (the “**DA Amendment**”), (iii) all related and necessary CEQA approvals (“**CEQA Approvals**”), and (iv) and any other related entitlements requested by LHR or City. The Parties understand and agree that nothing set forth herein commits or otherwise requires the City to approve, in whole or in part, the SPA or DA Amendment and that the City shall retain the discretion in accordance with CEQA and all other applicable laws to approve or deny the SPA and DA Amendment and to identify and impose mitigation measures to mitigate any significant environmental impacts resulting from the SPA and DA Amendment.

K. The City, SARDA and LHR intend to collectively market and sell the Rialto Parcels and Option Parcel pursuant to a competitive process designed to obtain the highest possible price for those parcels assuming business center land uses to support industrial warehousing and similar development. That sale will be contingent upon the City’s approval of the SPA and DA Amendment and all CEQA Approvals.

L. Because the Option Parcel will not be developed as a public park, LHR retains its right to exercise its option with respect to the Option Parcel as set forth in Section 2.01 of the BCD Contract.

M. The Parties concur that collectively marketing the Rialto Parcels and the Option Parcel will maximize the value of all of the property.

N. The Parties desire to cooperate with respect to the entitlement, marketing and disposition of the Rialto Parcels and the Option Parcel on the terms and conditions set forth herein.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, SARDA, and LHR agree as follows:

### 1. Recitals.

The recitals set forth above are true and correct and incorporated herein by this reference.

2. Combined Sealed Proposal Bid Process.

The Parties shall first approve legal descriptions of the Rialto Parcels and Option Parcel (collectively the “**Property**”) and agree that the Property shall be marketed and sold together to the highest bidder at a public sealed proposal process in accordance with the following procedures:

A. The City Council shall adopt a resolution declaring its intention to sell the Property. The resolution shall describe the Property proposed to be sold in a manner as to identify it and shall specify the minimum price and the terms upon which it will be sold, the minimum buyer qualifications, such as development experience, net worth, litigation history, and shall fix a time, not less than three weeks thereafter, and specify a location, at which sealed proposals to purchase will be received and considered. The resolution shall designate the City officer who will conduct the receipt and opening of the sealed proposals. LHR and SARDA shall each have a right to reasonably approve the minimum price, terms and bidder qualifications with regards to the Option Parcel and SARDA parcels, respectively, before the Resolution is adopted.

B. Notice of the adoption of the resolution and of the time and place at which the sealed proposals to purchase will be received shall be given by publishing the notice pursuant to Government Code Section 6063. The notice shall also disclose that (i) LHR has a legal interest in the Option Parcel, (ii) LHR may participate as a bidder in the public auction, (iii) the winning proposal to purchase will be determined on the basis of the highest price per square foot, and (iv) if LHR is not the winning bidder, it will convey the Option Parcel to the winning bidder. In addition, the City Council may direct the purchase of advertising space and may advertise the proposed sale of the Property in such newspapers, magazines, and other periodicals as, in their judgment, will best publicize the sale to those qualified persons most likely to bid for purchase of the Property. LHR is not required to participate as a bidder.

C. At the time and place fixed in the resolution for the receipt of sealed proposals, all sealed proposals which have been received shall be opened, examined, and declared by the designated City officer. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell and which are made by responsible and qualified bidders, the proposal which is the highest, determined on the price per square foot basis, shall be finally accepted, unless a higher oral bid is accepted or the City Council rejects all bids.

D. Before accepting any written proposal, the designated City officer shall call for oral bids. If, upon the call for oral bidding, any responsible and qualified bidder offers to purchase the Property upon the terms and conditions specified in the resolution, for a price exceeding by at least five percent (5%), the highest written proposal, determined on the price per square foot basis, which is made by a responsible and qualified bidder, such highest oral bid shall be finally accepted.

E. The final acceptance by the City Council may be made either at the public hearing after completion of the oral bidding or at a subsequent public meeting held within the 15 days next following the receipt of sealed proposals and completion of the oral bidding.

F. The City Council may at its meeting, if it deems such action to be for the best public interest, reject any and all bids, either written or oral, and withdraw the Property from sale.

G. The responsible and qualified bidder submitting the highest bid and accepted by the City Council shall enter into a purchase and sale agreement (the “PSA”) within thirty (30) days of the date of the auction. LHR and SARDA shall each have a right to reasonably approve the form and terms of the purchase and sale agreement which concern the Option Parcel and SARDA Parcels, respectively, before its execution by the parties.

H. The close of escrow and conveyance of the SARDA Parcels shall be subject to approval by the Oversight Board and DOF of the purchase and sale.

I. The close of escrow and conveyance of the Property shall be contingent upon the prior approval by the City of the SPA and DA Amendment and all required CEQA Approvals.

***Drafting Note***-this Agreement needs to identify how the costs of sale and net sales proceeds will be allocated between City and SARDA if LHR is the purchaser, and between City, SARDA and LHR if LHR is not the purchaser---if all acres are deemed to be of equivalent value then allocations should simply be based on relative acreages owned by each party—suggest an example of each of those 2 scenarios be attached as an Exhibit B]

3. Lewis-Hillwood Rialto Company, LLC Obligations.

LHR agrees to cooperate with the City and SARDA in the collective disposition of the Rialto Parcels and the Option Parcel. LHR may submit a sealed proposal to purchase the Property pursuant to the process set forth in Section 2. LHR shall be subject to the following obligations as a condition of its participation in the collective disposition of the Rialto Parcels and the Option Parcel and the sealed written proposal process relating to such disposition.

A. LHR shall exercise its option for the Option Parcel pursuant to the BCD Contract in sufficient time for the conveyance of the Option Parcel to LHR at the price set forth in the BCD Contract (the “**Option Parcel Payment**”) to be completed prior to the date set by the City Council and the SARDA Board for the receipt and opening of sealed proposals to purchase the Property, but in no event later than December 31, 2022.

B. If LHR submits the highest written proposal and is awarded the right, by the City Council and the SARDA Board, to purchase the Property, it shall pay to the City the allocated price per square foot for the Linden/Miro Parcel and Option Parcel (with credit for the Option Payment) and LHR shall pay to SARDA the allocated price per square foot for the SARDA Parcels [***Drafting Note***-this allocation of sales proceeds should be defined in Section 2] .

C. If LHR is not the winning bidder, LHR shall convey the Option Parcel to the winning bidder in accordance with the terms and conditions of the purchase and sale agreement entered into by the winning bidder and receive the allocated price per square foot for the Option Parcel.

4. Mutual Obligations.

A. LHR designates the City as the party to market the Property, including the Option Parcel, and to conduct the sealed written proposal sale proceedings, and the City agrees to market the Property, including the Option Parcel, and to conduct the sealed written proposal sale proceedings in accordance with the procedures set forth in Section 2 of this Agreement.

B. The City and LHR will complete the conveyance of the Option Parcel to LHR prior to the date set for the receipt and opening of sealed proposals to purchase the Property but no later than December 31, 2022.

C. The sales proceeds allocated to the Option Parcel shall be subject to the terms of that certain Amended and Restated Agreement Regarding Transfer of Certain Aviation Assets, entered into as of July 23, 2013, by the San Bernardino International Airport Authority, a California joint powers authority existing and acting pursuant to Government Code Sections 6500, *et seq.* and the City (the “**SBIAA Agreement**”).

D. City and LHR agree to negotiate the DA Amendment in good faith to include terms reasonable acceptable to the City and LHR, including, without limitation, the deletion and replacement of Section 5.3.1(ii) with either (i) the obligation that all residential units within the Project will pay the City’s Park and Open Space Fees when building permits are issued in the amount of those fees that existed as of the Effective Date of the Development Agreement, which amount shall be fixed for the period of time set forth in Exhibit C Note B (4) of the Development Agreement; thereafter the fees shall increase to the then current amount of such fees as and when building permits are issued, or (ii) such other comparable payment obligation agreed upon by LHR and the City.

E. City, SARDA and LHR agree that any party may terminate this Agreement in the event the City does not approve the SPA Amendment or DA Amendment.

5. Miscellaneous.

A. Entire Agreement / Other Agreements Still in Effect: This Agreement contains the entire agreement between the Parties with respect to the matters herein provided for. Unless explicitly amended or contradicted by this Agreement, the terms and provisions of the BCD Contract, Area A Contract, First Implementation Agreement and Development Agreement shall remain in effect. In the event of a conflict between the terms and provisions of this Agreement and the BCD Contract, Area A Contract, First Implementation Agreement and Development Agreement, the terms and provisions of this Agreement shall control.

B. Amendments: This Agreement can only be amended by an instrument in writing executed and delivered by the City, SARDA and the Developer.

C. Waivers: No waiver of, or consent with respect to, any provision of this Agreement by a Party hereto shall in any event be effective unless the same shall be in writing and signed by such Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

D. No Third Party Beneficiaries: No person or entity, other than the City, shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City and the Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

E. Notices: Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the Party entitled thereto at its address set forth below, or at such other address as such Party may provide to the other Party in writing from time to time, namely:

CITY/SARDA: City Manager  
City of Rialto  
150 S. Palm Ave.  
Rialto, CA 92376

With a copy to: Burke, Williams & Sorensen, LLP  
1770 Iowa Avenue, Suite 240  
Riverside, CA 92507-2479  
Attention: Eric Vail, Esq.

LHR: Lewis-Hillwood Rialto Development Company, LLC  
c/o Lewis Management Corp.  
1156 North Mountain Avenue  
Upland, CA 91786  
P. O. Box 670  
Upland, CA 91785-0670  
Attn: Bryan Goodman

With a copy to: Lewis Management Corp.  
1156 North Mountain Avenue  
Upland, CA 91786  
P. O. Box 670  
Upland, CA 91785-0670  
Attn: W. Bradford Francke, Esq.

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the Party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (c) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (d) if given by any other means, upon delivery at the address specified in this Section. [**Drafting Note**-suggest we add email notice]

F. Jurisdiction and Venue: Each of the Parties agrees that any suit action or other legal proceeding arising out of or relating to this Agreement shall be brought in the Superior Court of California, County of San Bernardino. Each of the Parties agrees that a final and non-

appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

G. Attorneys' Fees: If any action is instituted to interpret or enforce any of the provisions of this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party thereto reasonable attorney's fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

H. Law: This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

I. Usage of Words: As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

J. Interpretation: The Parties to this Agreement and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting Parties shall not be employed in the interpretation of this Agreement.

K. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original. Facsimile, .pdf, or other electronically-transmitted signatures (including signatures generated using electronic signature technology (e.g., DocuSign or similar technology)) shall be deemed effective as originals, and such electronic signatures shall, for purposes of validity, enforceability and admissibility, be deemed to be valid, binding and effective signatures of the parties so signing to the same effect as if such signing party signed and delivered a handwritten original signature.

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

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

N. Authority: The persons executing this Agreement on behalf of the parties warrant the 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 parties hereto have duly executed this Agreement as of the dates set forth below.

CITY:

DEVELOPER:

CITY OF RIALTO, a municipal  
corporation

LEWIS-HILLWOOD RIALTO COMPANY, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Marcus Fuller, City Manager

By: LEWIS-RIALTO COMPANY, LLC,  
a Delaware limited liability company  
Its Managing Member

Attest:

By: \_\_\_\_\_  
Barbara A. McGee, City Clerk

By: LEWIS MANAGEMENT CORP., a  
Delaware corporation, Its Sole  
Member

Approved as to form:

By: \_\_\_\_\_  
Bryan T. Goodman  
Its Authorized Agent

By: \_\_\_\_\_  
Eric S. Vail, City Attorney

By: HGI CA INVESTORS, L.P.,  
a California limited partnership

By: HGI GP, LLC, a Texas limited  
liability company, its general partner

By: \_\_\_\_\_  
John M. Magness  
Senior Vice-President

WBF:aa Z:\Legal\PROJECT DEV - CALIFORNIA\Rialto - Renaissance G2339\Miro Way Disposition Agreement\Miro Way Collective  
Disposition Agreement.v.2.(09.21. 22) LHR Revisions -clean.docx

Exhibit A-Map of Rialto Parcels

Exhibit B-Sample Relative Allocation of Sales Proceeds