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AND
WHEN RECORDED MAIL TO:**

City Clerk
City of Rialto
150 S. Palm Avenue
Rialto, California 92376

Exempt From Recorder's Fees Pursuant
to GOVERNMENT CODE § 6103

(ABOVE SPACE FOR RECORDER'S USE ONLY)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF RIALTO

AND

ALDER OPPORTUNITY, LLC

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DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** ("**Agreement**") dated for reference purposes only as of _____, 2016, is made and entered into by and between the **CITY OF RIALTO**, a California municipal corporation (the "**City**"), and **ALDER OPPORTUNITY, LLC**, a Delaware limited liability company ("**Owner**").

RECITALS

A. All initially-capitalized words, terms, and phrases used, but not otherwise defined, in the Recitals shall have the meanings assigned to them in Section 1 of this Agreement, unless the context clearly indicates otherwise.

B. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the legislature of the State of California adopted the "Development Agreement Act," Government Code Sections 65864 through 65869.5. Pursuant to the Development Agreement Act and the Development Agreement Ordinance, the City is authorized to enter into an agreement with any person having a legal or equitable interest in real property, to provide for the development of such property and to vest certain development rights therein.

C. To ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the legislature, the City: (1) accepts restraints on its police powers contained in this Agreement only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset such restraints, seeks the public benefits which are provided in this Agreement.

D. Owner owns an approximately 9.24 acre area consisting of eight (8) parcels of land generally located west of Alder Avenue, and north of Walnut Avenue, in the City of Rialto, California (collectively, the "**Property**"), which Property is legally described in the Legal Description attached hereto as Attachment No. 1 and incorporated herein. The Property is located within the EMP (Employment) zone of the Renaissance Specific Plan (Planning Area 13).

E. Owner wishes to develop an approximately 200,845 square foot warehouse/distribution facility with certain onsite improvements and landscaping (collectively, the "**Private Improvements**") as set forth in more detail in this Agreement. Owner also intends to construct certain public improvements required as a condition of approval of the Project and/or required under the CEQA Compliance Documents approved for the Project ("**Required Public Improvements**," which are more specifically defined herein).

F. On February 24 2016, the City of Rialto Development Review Committee reviewed and established conditions for Tentative Parcel Map No. 19726 (the "**Tentative Map**") and recommended approval to the Planning Commission.

G. On March 2, 2016, the City of Rialto Transportation Commission approved the Project (hereinafter more specifically defined) traffic study.

H. On May 25, 2016, the City of Rialto Planning Commission held a duly noticed public hearing to consider the Environmental Assessment Review Number 16-12 ("**EAR**") for the Project, all

studies evaluating environmental impacts of the Project undertaken pursuant to the EAR, the Mitigated Negative Declaration (the "**MND**") for the Project, Tentative Parcel Map No. 19726 (the "**Tentative Map**"), Conditional Development Permit No. 804 (the "**CDP**") for the Project, and the Precise Plan of Design No. 2441 (the "**PPD**") for the Project (i.e., the CEQA Compliance Documents). On May 25, 2016, the Planning Commission (a) found and determined that the CEQA Compliance Documents complied with all requirements of CEQA; and (b) approved the CEQA Compliance Documents.

I. On May 26, 2016, a Notice of Determination for the MND was filed.

J. On June 8, 2016, Owner received approval for the Project, including Precise Plan of Design No. 2441 (the "**PPD**"), from the City of Rialto Development Review Committee. Development of the Project shall comply in all material aspects with the PPD and the Existing Entitlements.

K. On June 29, 2016, as required by California Government Code Section 65867, the Planning Commission held a duly noticed public hearing to consider this Agreement in connection with its recommendation to the City Council regarding adoption or certification, as applicable, of the approval of this Agreement. The Planning Commission found and determined that: (i) this Agreement is within the scope of the CEQA Compliance Documents; (ii) this Agreement is consistent with the City's General Plan and the Renaissance Specific Plan; (iii) this Agreement is compatible with the orderly development of property in the surrounding area; (iv) this Agreement will have an overall positive impact on the health, safety, and welfare of the residents of and visitors to the City; (v) this Agreement constitutes a lawful, present exercise of the City's police power and authority under the Development Agreement Act and the Development Agreement Ordinance; and (vi) this Agreement will be entered into pursuant to and in compliance with the requirements of the Development Agreement Act and the Development Agreement Ordinance. Based on these findings and determinations, the Planning Commission approved a motion recommending to the City Council the approval of this Agreement.

L. On July 26, 2016, the City Council held a duly noticed public hearing to consider this Agreement. On July 26, 2016, the City Council found and determined that: (i) this Agreement is within the scope of the CEQA Compliance Documents; (ii) this Agreement is consistent with the City's General Plan and the Renaissance Specific Plan; (iii) this Agreement is compatible with the orderly development of the Property and the surrounding area; (iv) this Agreement will have an overall positive effect on the health, safety, and welfare of the residents of and visitors to the City; (v) this Agreement constitutes a lawful, present exercise of the City's police power and authority under the Development Agreement Act and Development Agreement Ordinance; (vi) this Agreement is entered into pursuant to and in compliance with the requirements of the Development Agreement Act and the Development Agreement Ordinance; and (vii) introduced for first reading Ordinance No. ____ (the "**Enabling Ordinance**"). On August 9, 2016, the City Council conducted the second reading of the Enabling Ordinance thereby approving this Agreement, to become effective thirty (30) days after the adoption thereof (i.e., effective on September 8, 2016).

M. The City and Owner wish to enter into this Agreement in order to set forth the terms and conditions of the vesting of certain development rights and to effectuate and memorialize the Parties' negotiated agreement of various fee and improvement matters. By electing to enter into this Agreement, the City shall bind the City and future City Councils to the obligations specified herein and limit the future exercise of certain governmental and police powers of the City, subject to the Reserved Powers.

N. The terms and conditions of this Agreement have undergone extensive review by the City's Planning Commission and the City Council and have been found to be fair, just, and reasonable.

O. All of the procedures required by CEQA have been satisfied based on the EAR, the completion of certain studies evaluating the environmental impacts of the Project, and the MND. The City has made certain findings and determinations that this Agreement and the Project can be supported by the CEQA Compliance Documents (defined below) in compliance with all applicable requirements of CEQA.

P. This Agreement and the Project are consistent with the Rialto General Plan, the Renaissance Specific Plan, and the Rialto Municipal Code, as applicable.

Q. The various exchanges contemplated in this Agreement are in the vital and best interest of the City and the welfare of its residents and are in accordance with the public purposes and provisions of applicable Laws.

R. The foregoing Recitals constitute a substantive part of this Agreement.

AGREEMENT

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Agreement" shall mean this Development Agreement.

"Alder Improvements" means the Required Public Improvements described as Item 2 on Attachment No. 4.

"Annual Review" is defined in Section 12.1.

"Applicable Land Use Regulations" means the Land Use Regulations in effect on the Effective Date.

"Applicable Rules" means this Agreement, the Existing Entitlements, the Applicable Land Use Regulations, the Development Agreement Act, the Development Agreement Ordinance, the Development Impact Fees described in Sections 3.2 and 3.3 and Attachment No. 2 and the Fair Share Fees described in Attachment No. 7.

"Building Codes" shall mean standard, uniform codes governing construction. Examples of Building Codes include the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, Grading Code, the 2013 California Plumbing Code, the 2013 California Mechanical Code, the 2011 National Electric Code, the 2013 California Electrical Code, the 2013 California Energy Code, the 2013 California Administrative Code and the 2013 California Fire Code (including amendments thereto by the San Bernardino Fire Authority), as modified and amended by official action of the City in accordance with the provisions of Health and Safety Code Section 17958.7.

"Business Day" means Monday through Thursday, excepting holidays.

"**CEQA**" means the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* and the implementing regulations promulgated thereunder, set forth in Title 14 Cal. Code Regs. Section 15000, *et seq.*

"**CEQA Compliance Documents**" means the Environmental Assessment Review Number 16-12 ("**EAR**") for the Project, all studies evaluating environmental impacts of the Project undertaken pursuant to the EAR, the Mitigated Negative Declaration (the "**MND**") for the Project, Tentative Parcel Map No. 19726 (the "**Tentative Map**"), Conditional Development Permit No. 804 (the "**CDP**") for the Project, and the Precise Plan of Design No. 2441 (the "**PPD**") or the Project, all as approved by the Planning Commission in compliance with CEQA.

"**City**" shall mean the City of Rialto.

"**City Administrator**" means the Administrator of the City and his or her authorized designees.

"**City Agency**" means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and Planning Commission.

"**City Council**" shall mean the City's duly-elected and/or appointed City Council.

"**Conditions Precedent**" means the requirements set forth in Section 3.6.

"**Construction Manager**" means the construction manager or general contractor, as applicable, that is hired by Owner to oversee construction of the Project. Construction Manager shall not perform actual construction work but shall enter into subcontracts for construction of the Project. The subcontracts for the Public Improvements shall only be awarded after competitive bidding in accordance with Section 2.8. Owner's contract with Construction Manager shall be in the manner of a "cost plus" construction contract. The Construction Manager's fee shall be subject to the reasonable approval of the City, which approval shall not be withheld if such fee is equal to or less than four percent (4%) of the actual Hard Costs of constructing the applicable Public Improvements.

"**Convey**" and "**Conveyance**" shall include the sale, transfer or assignment, but not the leasing, of any portion of the Property or the sale, transfer or assignment of more than fifty percent (50%), cumulatively, of the ownership interests in Owner; *provided, however*, that a sale, transfer or assignment of the Property or any portion thereof to any corporation, partnership, limited liability company or other entity controlling, under the control of or in common control with Owner shall not constitute a "**Conveyance**" hereunder so long as original Owner is not released from its obligations hereunder in connection with such sale, transfer or conveyance; *provided, further*, expressly excluded from the definition of "**Convey**" and/or "**Conveyance**" is (a) any granting by Owner of any easements, access or use rights to any third party for utilities, right of way, reciprocal access or parking rights to adjacent or nearby property owners or occupants, or other similar rights reasonably and customarily granted to third parties in connection with similar development projects, and due diligence studies and/or inspections by prospective purchasers or tenants, (b) any Dedications or Reservations, (c) any sale, transfers or assignments of the Property or any portion thereof by Owner to any Financier for security purposes or otherwise included within the definitions of "**Encumber**" or "**Encumbrance**," and/or (d) any sale, transfer or assignment of the Property to an entity in which Owner and/or Owner's affiliates has a direct or indirect ownership interest. Owner, upon request from the City, shall deliver to the City reasonably satisfactory evidence of compliance with this provision.

"County" means the County of San Bernardino, California.

"Dedication" and **"Dedicate"** shall mean Owner's grant of real property or an interest therein to the City or another governmental, public agency or non-profit entity for a public purpose.

"Development" shall have the same definition as in California Government Code Section 65927, as that statute exists on the date the Enabling Ordinance is adopted.

"Default" means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 13.3.3 hereof.

"Development Agreement Act" means Government Code Sections 65864 through 65869.5.

"Development Agreement Ordinance" means Ordinance No. 1121, adopted in 1990 (§§ 18.79.010, *et seq.* of the Rialto Municipal Code) pursuant to which the City has adopted procedures and requirements for considering, approving and administering development agreements.

"Development Exaction" shall mean and include Development Impact Fees, Fair Share Fees, Dedications, Reservations, special taxes, general taxes (other than ad valorem property taxes), improvements, and any other obligation to pay money, construct facilities, or provide land as a condition of Development or of obtaining an Entitlement.

"Development Impact Fee" means any impact fees, linkage fees, or exactions or other similar impact fees or charges (whether collected as a condition to issuance of demolition, grading and/or building permits, or otherwise) imposed by the City on and in connection with new development pursuant to the Applicable Land Use Regulations. Development Impact Fees do not include (a) Processing Fees and Charges or (b) impact fees, linkage fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental entities regardless of whether the City is required to collect or assess such fees pursuant to applicable Laws (e.g., school district impact fees pursuant to Government Code Section 65995 or Transportation Mitigation Fees imposed by the San Bernardino Association of Governments). The formulas for calculating the Development Impact Fees to be imposed on the Project pursuant to Sections 3.2 and 3.3 of this Agreement are set forth in Attachment No. 2, which is attached hereto and incorporated herein.

"Development Project" shall have the same definition as in California Government Code Section 65928, as that statute exists on the date the Enabling Ordinance is adopted.

"Discretionary Action" means an action proposed by Owner which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency in the process of approving or disapproving a particular activity, as distinguished from an activity such as the issuance of Ministerial Permits and Approvals, which merely requires the City and/or any City Agency to determine whether there has been compliance with applicable, objective statutes, ordinances and/or regulations.

"DO Date" is defined in Section 7.6.

"Effective Date" shall mean the earlier to occur of September 30, 2016 or the date of recordation of this Agreement.

"Enabling Ordinance" shall mean City Ordinance No. _____ by which this Agreement was approved.

"Encumber" and **"Encumbrance"** shall refer to mortgages, deeds of trust, and any other device by which Owner uses all or any portion of Owner's interest in the Property to secure a loan.

"Entitlements" shall mean all statutes, ordinances, decisions, resolutions, permits, rules, regulations, and official policies of the City that govern permitted uses, density, design, construction standards and specifications, density or intensity of use, height and size of buildings, Reservation or Dedication of land for public purposes, growth management, development impact fees, fair share fees, special taxes and special assessments used to mitigate the impacts of Development, environmental analysis, and/or environmental mitigation, applicable to property or prerequisite to the construction and occupancy of a Development Project. Examples of **"Entitlements"** include but are not limited to general plans, community plans, specific plans, designations in such plans, zoning designations and regulations, subdivision maps, use permits, special use permits, conditional use permits, temporary use permits, home occupation permits, Municipal Code and zoning ordinance provisions, development plans, site plans, design reviews, variances, building permits, agreements governing parks, improvement agreements, conditions of approval, Precise Plan of Design, and certificates of occupancy. The term **"Entitlements"** is not dependent on the nature (such as legislative, quasi-judicial, ministerial, or administrative) of the matter in question.

"Existing Entitlements" shall mean all Entitlements applicable to Development of the Property as of the date the Enabling Ordinance is adopted. The Existing Entitlements include the EAR, the MND, the Tentative Map, the CDP and the PPD. The Existing Entitlements expressly set forth all of the applicable conditions for approval for the Development of the Project (the **"Conditions for Approval"**), and other than the Conditions for Approval as set forth in the Existing Entitlements (and approved by Owner) and the requirements of this Agreement, there shall be no other conditions for approval for the Development of the Property imposed by the City or any City Agency.

"Fair Share Fees" shall mean the fees described in Attachment No. 7, which is attached hereto and incorporated herein by this reference.

"Financier" shall mean any mortgagee, beneficiary, or trustee as to an Encumbrance.

"Force Majeure" shall mean problems or occurrences beyond the control of the affected Party that delay a Party's performance of its obligations under this Agreement. Examples of Force Majeure include but are not limited to floods, earthquakes, adverse weather conditions (with respect to weather sensitive work), and other Acts of God; fires; wars; civil commotion, riots, and similar hostilities; strikes, picketing, and other labor difficulties; shortages of materials or supplies; inability of any government agency, including but not limited to the City, to provide adequate levels of public services or facilities to the Property, including, by way of illustration only, a lack of water caused by drought; Laws of other agencies (including but not limited to voter initiative or referenda, moratoria, and judicial decisions); and Litigation brought by a third Party challenging the validity of this Agreement, an Existing City Law, or a Subsequent Approval; provided, however, expressly excluded from the definition of **"Force Majeure"** with respect to the City's performance of any of the obligations of the City is any action which is prevented or delayed as a result of the City's actions or failure to act. For the avoidance of doubt, the City's legislative or police actions which

impair the City's performance of the City's obligations under this Agreement shall not be deemed or construed to be conditions of "**Force Majeure**."

"**Hard Costs**" mean and include direct costs of construction including materials and labor as included in the Construction Contract, but shall exclude Soft Costs and further shall exclude the internal administrative salaries of the entity performing the work in question.

"**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any Laws, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "acutely hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (42 U.S.C. § 6903), (x) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* (42 U.S.C. § 9601), (xi) Methyl-Tertiary Butyl Ether, or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Laws either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment.

"**Indemnitees**" shall mean the City and its elected and appointed officials, employees, volunteers, agents, and representatives.

"**Indemnitor**" shall mean Owner and its permitted successors in interest to the Property and/or the Project, and/or permitted assignees of Owner's rights under this Agreement.

"**Land Use Regulations**" means all ordinances, resolutions, codes, rules, regulations and official policies of the City adopted by ordinance or resolution governing the development and use of land, including, without limitation, the Development Agreement Ordinance and/or any other ordinance or resolution governing the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property and the design, improvement and construction standards and specifications applicable to the Development of the Project and/or any actions of the City and/or any City Agency in connection with either the Existing Entitlements or Subsequent Approvals, whether Discretionary Actions or Ministerial Actions and Approvals. The term "**Land Use Regulations**" does not include any City ordinance, resolution, code, rule, regulation, or official policy, governing:

- (a) the conduct of businesses, professions, and occupations except subdivisions;

- (b) taxes and assessments;
- (c) the control and abatement of nuisances; and/or
- (d) the exercise of the power of eminent domain.

"Law" shall mean and include any official legislative enactment of a governmental agency, public body, or court that binds the Parties. The term **"Laws"** shall include but not be limited to case law, constitutional provisions, statutes, ordinances, initiatives, resolutions, policies, orders, rules, and regulations, including all Relocation Laws. A matter is a Law regardless of whether it was imposed by a legislative body (such as the City Council or State Legislature), an administrative agency (such as the Public Utilities Commission), the electorate (as by initiative or referendum), court (by judgment, order or opinion), or any other official body (such as the Planning Commission), and regardless of whether it is federal, state, or local.

"Legal Description" means the description of the Property which is attached hereto as Attachment No. 1 and incorporated herein.

"Liabilities" are defined in Section 15.

"Litigation" shall include all forms of judicial or quasi-judicial proceedings, including but not limited to complaints (for damages, declaratory relief, or otherwise), arbitrations, judicial references, petitions (for traditional mandate, administrative mandate, or otherwise), and appeals, no matter how denominated.

"Material Change in the Project" shall mean any change in intensity, use, or configuration from the Project as described in the Existing Entitlements that would require preparation of a subsequent or supplemental environmental impact report, mitigated negative declaration, or an addendum to the MND pursuant to CEQA if such environmental impact report, mitigated negative declaration, or an addendum to the MND concludes that the impact from such change in the Project is greater than the impacts under the Existing Entitlements.

"Ministerial Permits and Approvals" means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in connection with the implementation of the Entitlements which merely require the City and/or any City Agency to determine whether there has been compliance with applicable, objective statutes, ordinances and/or regulations, including without limitation, building permits, public works permits, grading permits, encroachment permits and other similar permits and approvals. The term **"Ministerial Permits and Approvals"** shall not include any Discretionary Actions.

"Municipal Code" shall mean the City's municipal code.

"Notice" means any approval, disapproval, demand, appeal, document or other notice to be delivered to a Party or otherwise pursuant to this Agreement.

"Owner" shall mean Alder Opportunity, LLC, a Delaware limited liability company, and its successors in interest as to the Property.

"Party" shall mean the City or Owner.

"Parties" shall mean the City and Owner.

"Permits" means all grading, building, and other permits required to be obtained by Owner prior to and as a condition precedent to the commencement of construction of the Private Improvements and/or Public Improvements.

"Planning Commission" shall mean the City's duly-appointed Planning Commission.

"Precise Plan of Design" means a design plan for the Project that is required to be submitted by Owner and approved by the City, which shall include a Precise Plan of Design application, a plot plan, floor plan, colored elevation details for all sides of the proposed building, color and material board, a landscaping plan, and other information reasonably requested by the City Planning Division.

"Private Improvements" is defined in Recital E. The Private Improvements are depicted in Attachment No. 3 attached hereto and incorporated herein by this reference.

"Processing Fees and Charges" means all processing fees and charges required by the City uniformly in connection with all new construction, including, but not limited to, fees for land use applications, project permits, building permit applications, building permits, grading permits, encroachment permits, tract maps, parcel maps, lot line adjustments, air right lots, street vacations, certificates of occupancy and other similar permits. **"Processing Fees and Charges"** shall not include Development Impact Fees, Fair Share Fees or any exaction, impact fee, sharing fee or other fee or charge that is in the nature of a development impact fee or fair share fee.

"Project" shall mean the Development of the Private Improvements and Required Public Improvements pursuant to the Existing Entitlements and Applicable Land Use Regulations.

"Property" shall mean the real property legally described in Attachment No. 1, which is attached hereto and incorporated herein by this reference.

"Public Improvement Construction Costs" means the costs of constructing the Required Public Improvements as set forth in the Construction Contract (defined in Section 2.8.2) and other costs associated with the construction, installation, and completion of the Public Improvements, including bond costs, permit fees, engineering costs, third party construction management fees, delivery costs, and reasonable and customary costs of bid administration.

"Public Improvements" means the Required Public Improvements.

"Regional Traffic Fee" and **"Regional Traffic Impact Fee"** shall mean the Regional Traffic Impact Fee assessed by the City of Rialto with respect to the Project pursuant to the San Bernardino Associated Governments ("**SANBAG**") - Regional Traffic Fee Nexus Study, as described in Attachment No. 2.

"Relocation" and **"Relocation Laws"** shall mean all applicable federal and state relocation laws and regulations, including without limitation, (i) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("**URA**"), 42 U.S.C. §§ 4201–4655, and the implementing regulations thereto set forth in 49 CFR Part 24, (ii) the California Relocation Assistance Act, Government Code Section 7260, *et seq.*, and the implementing regulations thereto set forth in Title 25, Section 6000, *et seq.*, of the California Code of Regulations, and (iii) any other applicable federal, state or local enactment,

regulation or practice providing for relocation assistance, benefits, or compensation for moving and for property interests (including without limitation goodwill and furnishings, fixtures and equipment, and moving expenses).

"RSP/EIR Fee" shall mean the Renaissance Specific Plan (RSP)/Environmental Impact Report (EIR) Fair Share Fee assessed by the City of Rialto with respect to the Project to reimburse the planning and environmental costs related to the preparation of the Renaissance Specific Plan, as described in Attachment No. 2.

"RSP Traffic Impact Fee" shall mean the Renaissance Specific Plan (RSP) – Traffic Mitigation Fair Share Fee assessed by the City of Rialto with respect to the Project to mitigate the traffic impacts of development within the Renaissance Specific Plan, as described in Attachment No. 2.

"Required Public Improvements" means and includes all public improvements required as a condition of approval of the Project and/or required by the CEQA Compliance Documents approved for the Project, which are described as the improvements described in items 1 and 2 in Attachment No 4.

"Reservation" shall mean the setting aside of land for future public use, without any legal right, title, or interest being conveyed other than the promise to convey an interest upon payment of fair market value for such land.

"Reserved Powers" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to the City under Section 5 of this Agreement.

"Site Plan" means the Site Plan depicted in Attachment No. 3, which is attached hereto and incorporated herein.

"Soft Costs" mean and include indirect or design costs of construction, including architectural, engineering, financing, inspection and testing, legal, permits and fees, and other pre- and post-construction professional services expenses, delay costs, management fees, and administrative expenses. In order for Soft Costs to be reimbursable to Owner pursuant to this Agreement, the City must be able to verify that such Soft Costs are specifically attributable to the specified Public Improvement(s) for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by the City Administrator.

"Special Review" is defined in Section 12.2.

"State" means the State of California.

"Subsequent Approvals" shall mean and include all Entitlements requested by Owner that are not yet existing and are necessary for Development of the Project.

"Term" is defined in Section 9.2.

"Vesting Term" is defined in Section 3.3. The Vesting Term may be modified by amendment of this Agreement in accordance with Section 6.

“Walnut Improvements” means the Required Public Improvements described as Item 1 on Attachment No. 4.

2. Development of the Property. While this Agreement is in effect, Owner shall have the vested right to Develop the Project at the Property pursuant to the Applicable Rules and the City shall have the right to control Development in accordance with the terms and conditions of the Existing Entitlements, all Applicable Rules, and this Agreement.

2.1 Uses. The Property may be used in accordance with the Existing Entitlements, all Subsequent Approvals, and the Applicable Land Use Regulations.

2.2 Intensity. Permitted density and intensity of use vested hereby shall be the maximum permitted by the Existing Entitlements, all Subsequent Approvals, and the Applicable Land Use Regulations.

2.3 Size. The maximum height and size of buildings vested hereby shall be as set forth in the Existing Entitlements, all Subsequent Approvals, and the Applicable Land Use Regulations.

2.4 Description of the Development. Owner shall construct the Project at the Property substantially in accordance with all Applicable Rules, all Subsequent Approvals, and any and all other documents submitted by Owner and approved by the City as set forth herein. In connection with and as a condition of regulatory approval for the Development of the Project as set forth in the Existing Entitlements, Owner will be required to construct the Required Public Improvements. All construction on the Property shall adhere to the Building Codes.

2.4.1 This Agreement and the Development of the Project at the Property have been determined to be consistent with the current Rialto General Plan, the Renaissance Specific Plan, and the existing zoning restrictions affecting the Property. To the extent that there is a conflict between this Agreement and any future amendments to the Rialto General Plan and zoning restrictions, this Agreement shall supersede such changes to the extent set forth in Sections 2, 3, 4 and 5 of this Agreement.

2.4.2 The Property is located within the EMP (Employment) zone of the Renaissance Specific Plan (Planning Area 13). The EMP zone accommodates a mixture of professional office, light industrial, research and development, business park, light manufacturing, assembly, and related storage and support services uses.

2.5 Issuance of Building Permits. No building permit, final inspection, or certificate of occupancy shall be withheld from Owner if Owner has complied with the requirements of this Agreement and the terms of the Existing Entitlements and any Subsequent Approvals. If necessary, the City shall use reasonable, good faith efforts to process in a prompt and timely manner any other Entitlements that are necessary to accomplish this goal.

2.6 Timing of Development. In order to avoid the result in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the City and Owner agree that Owner shall have the right, without obligation, to develop the Project in such order and at such rate and times as Owner deems appropriate within the exercise of its subjective business judgment, subject only to the Existing Entitlements. Furthermore, the City shall not (whether by City Council action, initiative or otherwise) limit

the rate or timing of Development of the Project except as expressly authorized by the Existing Entitlements. Nothing in this section shall be construed to limit the City's right to require that Owner timely provide all Required Public Improvements in accordance with the Existing Entitlements and this Agreement.

2.7 **Compliance with Laws.** Owner shall carry out the design and construction of the Project in conformity with all applicable Laws.

2.7.1 **Public Works Requirements.** Owner shall design and (as applicable) construct the Project in conformity with all applicable federal and State labor Laws (including, without limitation, with respect to the Required Public Improvements, the requirements under California Law to pay prevailing wages and to hire apprentices and all applicable public bidding requirements). The City and Owner acknowledge and agree that, due to the provision of reimbursements by the City for Hard Costs and/or, if applicable, Soft Costs incurred by Owner for the Public Improvements, the construction and installation of the Public Improvements shall be considered "public works" pursuant to Labor Code Section 1720, *et seq.* Notwithstanding anything to the contrary set forth in this Agreement, Owner shall be solely responsible for determining and effectuating compliance with such Laws, and the City makes no representation as to the applicability or non-applicability of any of such Laws to the performance of the Project or any part thereof. Owner hereby expressly acknowledges and agrees that the City has not previously affirmatively represented to Owner or its contractor(s) for the Project, in writing or otherwise, in a call for bids or otherwise, that the Project is not a "public work," as defined in Section 1720 of the Labor Code. Owner hereby agrees that, with respect to the construction and installation of the Public Improvements, Owner and its contractors and subcontractors shall pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Upon the periodic request of the City, Owner shall certify to the City that it is in compliance with these requirements.

2.7.2 **Prevailing Wage Indemnification.** Owner shall indemnify, protect, defend and hold harmless the Indemnitees, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or "**Increased Costs**" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the Project, results or arises from the following: (1) the noncompliance by Owner of any applicable Law, including, without limitation, any applicable federal and/or State labor Laws (including, without limitation, if applicable, the requirement to pay State prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar Law; and/or (3) failure by Owner to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar Law. It is agreed by the Parties that, in connection with the Project, including, without limitation, any and all public works (as defined by applicable Law), Owner shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California Law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar Law. "**Increased Costs**," as used in this Section 2.7.2, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing obligations set forth in this Section 2.7.2 shall survive termination of this Agreement and shall terminate upon the expiration of all statutes of limitation applicable to claims with respect to which Owner is required to indemnify the Indemnitees pursuant to this Section 2.7.2.

2.8 **Bidding and Award.**

2.8.1 Unless Owner delivers written notice to City that Owner waives the Fee Credit pursuant to Section 3.5.1(d) below, Owner or Owner's Construction Manager shall competitively bid and award construction contracts with subcontractors for the Required Public Improvements in accordance with the City's requirements, which requirements are attached hereto as Attachment No. 5 and incorporated herein. Alternately, subcontractors may be pre-qualified in accordance with Public Contract Code Section 20101.

2.8.2 Unless Owner delivers written notice to City that Owner waives the Fee Credit pursuant to Section 3.5.1(d) below, prior to awarding the bid for any portion of the Required Public Improvements, Owner shall submit the bid packet and a set of construction drawings for the work being bid to the Public Works Director of the City for review and approval which approval shall be granted or denied within twenty (20) calendar days after submission of such bid packet (or such additional time as reasonably requested by the Public Works Director) or the Construction Manager's bid packet submission will be deemed approved. If the City's Public Works Director denies approval of such bid packet and construction drawings, the City's Public Works Director shall specify the reasons for such disapproval and Owner may resubmit a revised bid packet for review and approval until such approval is obtained. Owner shall provide the Public Works Director with copies of all bids received from subcontractors and a bid summary in a form approved by the Public Works Director to assure that Construction Manager adheres to the applicable legal requirements for public works projects. Construction Manager shall enter into a construction contract with each subcontractor selected to perform work on the Public Improvements (after competitive bidding as set forth above) (each, a "**Construction Contract**") for the performance of the work set forth in the selected subcontractor's bid, and the terms of each Construction Contract entered into by Construction Manager and a subcontractor shall be reasonably acceptable to City Administrator. Owner shall submit to the City a copy of each executed Construction Contract for the Required Public Improvements within fifteen (15) days after execution thereof.

2.8.3 The City finds that full compliance with the otherwise applicable requirements of the Public Contracts Code for the bidding of design and construction management services would be unavailing, would not produce an advantage for the City, and would thus be undesirable, impractical, and impossible as authorized by *Graydon v. Pasadena Redevelopment Agency et al.* (1980) 104 Cal. App. 3rd 631 and the cases cited therein. To that end, the City hereby approves the following design and construction management professionals for the Project:

- (a) Thienes Engineering, Inc., for civil engineering and staking services; and
- (b) Southern California Geotechnical, for geotechnical and testing services; and
- (c) Hunter Landscape, Inc., for landscape and irrigation design services; and
- (d) Thienes Engineering, Inc., for street lighting planning services; and

(e) Either Fullmer Construction, Inc. or Alston Construction Company, as the Construction Manager.

2.9 **Design and Management Professionals' Cost Estimate; Public Improvement Budget.** Owner has submitted a "**Public Improvement Budget**" which is attached hereto as **Attachment No. 6** and incorporated herein by this reference. The Public Improvement Budget includes the following cost estimates relating to the Development of the Required Public Improvements: (1) plan check and permit fees, (2) construction labor and material with unit costs and quantities as applicable, (3) inspection and testing fees, (4) the cost of labor, materials, and performance bonds, (5) construction management costs, and (6) contingency reserves. Any changes to the Public Improvement Budget after the Effective Date shall be submitted to the City Administrator for his or her written approval.

2.10 **No Liability of the City for Obligations of Owner or Development of the Project.** Nothing set forth in this Agreement shall be construed to impose any liability on the City with respect to or arising from Owner's obligations set forth in this Agreement or in the Existing Entitlements or any other Applicable Rules, including without limitation Development of the Project or any portion thereof.

3. **Development Exactions.**

3.1 **Reservations, Dedications, and Improvements.** Reservations and Dedications of land and the provision of improvements and facilities for public purposes shall be those, and only those, appearing in the Existing Entitlements, any and all Subsequent Approvals, the Applicable Land Use Regulations, and/or this Agreement.

3.2 **Owner's Obligation to Pay Fees.** In connection with the issuance of a building Permit for the Private Improvements, Owner shall pay all required Development Impact Fees (subject to **Sections 3.3** and **3.5**), Fair Share Fees (subject to **Section 3.2.1**), Processing Fees and Charges imposed by the City, and any and all other fees and charges imposed by any other regulatory agency with jurisdiction over the Property or the Project within the time and in the manner prescribed by such agency or the City and shall receive such credits and/or reimbursements for improvements constructed in accordance with the provisions set forth in the Rialto Municipal Code and as set forth in this Agreement.

3.2.1 **Fair Share Fees.** Owner shall not be required to pay the Fair Share Fees described in **Attachment No. 7** under the heading "In-Lieu Fees," totaling \$10,732 ("**In-Lieu Fees**"); provided that Owner has paid (or received credits for) the RSP Traffic Impact Fee and the Regional Traffic Fee, both as set forth in **Attachment No. 2**. Owner shall pay the full amount of the RSP/EIR Fee prior to the issuance of a building Permit for the Property.

3.3 **Development Impact Fee Lock Term.** Commencing on the Effective Date and continuing until the third (3rd) anniversary of the Effective Date (subject to extension for Force Majeure, the "**Vesting Term**"), the Development Impact Fees imposed by the City with respect to the Project shall be those Development Impact Fees as described and set forth in **Attachment No. 2**, which is attached hereto and incorporated herein, which represent a negotiated continuation of the Development Impact Fee schedule in effect upon the Effective Date of this Agreement. As noted in **Attachment No. 2**, neither the Regional Traffic Fee (levied by City as required by SANBAG), the Fontana Unified School District Developer Fee, nor any other fee levied by any agency other than the City are fixed or locked in by this Agreement. If, during the Vesting Term, there is no Material Change in the Project and the Project remains

materially consistent with the terms of this Agreement and the Entitlements, the Development Impact Fees imposed by the City on the Project may not be increased in amount (for the avoidance of any doubt, such limitation on increase during the Vesting Term includes a restriction on the City's ability to annually adjust such Development Impact Fees); provided, however, any Material Change in the Project may result in decreased or increased Development Impact Fees. After the expiration of the Vesting Term, development of the Project shall be subject to any and all Development Exactions imposed by the City in accordance with any applicable Law and/or the Municipal Code. Owner acknowledges that the City has completed one or more Nexus Fee Studies and has increased the generally applicable Development Impact Fees imposed by the City effective as of the Effective Date of this Agreement, and the City may increase such generally applicable Development Impact Fees annually thereafter, and that, in the absence of this Agreement, the Project would be subject to the Development Impact Fees in place at the time any building Permits are issued by the City for the Private Improvements, or as otherwise required by the Municipal Code. As further set forth in Sections 5.8 and 5.10 below, nothing in this Agreement is intended to prevent the imposition of fees or other exactions by any governmental entity not affiliated with the City.

3.4 Right of Way Acquisition, Dedication, and Improvement.

3.4.1 Owner shall provide the City with documentation (executed and acknowledged by Owner, as applicable) required for the City to dedicate right of way within ninety (90) days of acquiring all parcels comprising the Property, and Owner shall construct all Required Public Improvements as contemplated by Attachment No. 4. To the extent real property owned by the City as of the Effective Date is needed for right of way for Public Improvements, the City shall Dedicate such property for public right of way at no cost to Owner, unless prevented from doing so by applicable Laws; provided, however, Owner's obligations with respect to Public Improvements on such public right of way shall be conditioned upon such Dedication and the City providing access to such public right of way as needed to fulfill Owner's obligations hereunder. Owner shall use all commercially-reasonable efforts to obtain any required right of way or access to private property not owned by the City in connection with any Dedication or construction of the Required Public Improvements (as defined in Items 1 and 2 of Attachment No. 4); however, if the Owner is unable to obtain such required right of way, Owner shall request that the City obtain such required right of way (at Owner's sole cost and expense). Thereafter, the City shall use good faith efforts to obtain such required right of way, subject to Owner's payment of all costs incurred by the City to obtain such right of way. Nothing herein shall obligate the City to pursue eminent domain proceedings to acquire such public right of way and City retains full discretion to consider same in accordance with State law. In the event the City is unable to obtain the required right of way, Owner and the City shall meet and confer regarding potential changes to the design of the Project and/or the Required Public Improvements and/or the waiver of specified conditions and/or a monetary payment in lieu of the obligation to construct the Required Public Improvements or any portion thereof; provided, however, nothing in this Agreement or Attachment No. 4 shall be construed to waive any required condition of approval of the Project.

3.4.2 To the extent that there are any costs or expenses in connection with the acquisition of any land (other than the Property) as required for the Alder Improvements and/or the Walnut Improvements, then to the extent provided in Section 3.4.3, the City shall reimburse Owner for the same (or credit Owner for the same in the form of the Fee Credits provided in Section 3.5.1). Prior to incurring any such costs, Owner shall prepare and deliver to the City for the City's review and approval an estimate of such acquisition costs.

3.4.3 With respect to any costs or expenses in connection with the acquisition of any land (other than the Property) as required for the Required Public Improvements, Owner shall be responsible for a portion of such costs ("**Owner's Share**") in an amount equal to the fifty percent (50%) of such costs. The City shall cooperate with Owner and provide Owner access to all information necessary in order to determine Owner's Share. Within forty-five (45) days after the determination of Owner's Share, the City shall reimburse Owner (or credit Owner in the form of Fee Credits provided in Section 3.5.1) in an amount equal to any such costs in excess of Owner's Share.

3.5 **Deferrals of Development Impact Fees for the Alder Improvements.** The City hereby agrees to defer Owner's obligation to pay the following Development Impact Fees, which deferred Development Impact Fees would otherwise be payable to the City in connection with the issuance of any building Permits for the Project:

3.5.1 **Fee Credits.**

(a) **Alder Improvements; Regional Traffic Fee.** Upon completion of construction of the Alder Improvements by Owner and satisfaction of the Conditions Precedent set forth in Section 3.6, the City shall provide a credit against the Regional Traffic Fee applicable to the Project in an amount (the "**Alder Improvements Credit**") equal to the actual Hard Costs and Soft Costs of constructing the Alder Improvements (*provided, however*, with respect to such Alder Improvements Credit, the credit for such Soft Costs shall not exceed the lesser of fifteen percent (15%) of the Hard Costs of the Alder Improvements or \$25,000.00). At the issuance of the building Permit for the Property, the City hereby agrees to defer Owner's obligation to pay a portion of the Regional Traffic Fee to the City in an amount (the "**Deferred Alder Improvements Amount**") equal to the then estimated Alder Improvements Credit, based upon the estimated Hard Costs and Soft Costs (the credit for such Soft Costs shall not exceed the lesser of fifteen percent (15%) of the Hard Costs of the Alder Improvements or \$25,000) of constructing the Alder Improvements. The actual amount of the Alder Improvements Credit shall be determined upon completion of construction of the Alder Improvements and acceptance of the same by the City. If the actual amount of the Alder Improvements Credit is more than the Deferred Alder Improvements Amount, then the City shall reimburse Owner for such difference within ten (10) Business Days of such determination, but not later than the date of the last approval or inspection signoff on the building inspection card or permit for the Private Improvements or equivalent (the "**C/O Date**"). If the actual amount of the Alder Improvements Credit is less than the Deferred Alder Improvements Amount, then Owner shall pay such difference to the City within ten (10) Business Days of such determination, but not later than the C/O Date.

(b) **City Deferral of Reimbursement.** In the event that the City has a reimbursement obligation under Sections 3.5.1(a) above and, at the time such reimbursement is due, there are insufficient funds in the City's account for Regional Traffic Fees, then the City may elect, exercisable by written notice delivered to Owner (a "**Deferral Notice**"), to defer the payment of such amounts until the time that funds become available in the City's account for Regional Traffic Fees, which Deferral Notice shall set forth the amount of such Deferral (the "**Deferral Amount**"), the applicable Section of this Agreement to which such reimbursement obligation relates and shall set forth the City's continuing obligation to reimburse Owner for the Deferral Amount. Such Deferral Amount shall accrue interest at an annual rate of five percent (5.0%) per annum compounded annually commencing on the first anniversary of the date of the applicable Deferral Notice until the date fully paid to Owner. Upon written request from Owner from time to time, the City shall execute a statement prepared by Owner acknowledging the then outstanding Deferral Amount as of the date of such request (a "**Deferral Amount Statement**"). Owner (or

any affiliate of Owner) may elect, by written notice delivered to the City (an "**Offset Notice**"), to offset such Deferral Amounts (and any interest accrued thereon) against amounts that become due to the City in the future as Regional Traffic Fees with respect to any project in the City. Owner's offset rights under this Section may be transferred to a third party (with the City's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, to the extent such third party is an affiliate of Owner, only notice to, and not consent from, the City shall be required) that may owe amounts to the City in the future as Regional Traffic Fees in connection with any project in the City, which transfer shall be effective and honored by the City upon receipt of a notice from Owner to the City (an "**Offset Transfer Notice**") setting forth the Deferral Amount transferred and the transferee of such offset right.

(c) **Eligibility.** Notwithstanding anything to contrary contained in this Section 3.5.1, costs for sidewalks, streetlights, and median island within the Alder Improvements shall be eligible for reimbursement or as a Fee Credit under this Section 3.5.1.

(d) **Owner Opt Out.** Notwithstanding anything to contrary contained in this Section 3.5 or Section 3.6 below, Owner may elect to waive the Fee Credit by written notice to the City delivered before the commencement of construction of the Alder Improvements, whereupon the provisions of this Section 3.5 and Section 3.6 below shall have no further force or effect.

3.5.2 **Deadline for Construction; Payment of Fees.** Notwithstanding anything to the contrary set forth in Section 3.5.1, so long as the DO Date has occurred and Owner has obtained the building Permit for the Property, Owner shall pay the entire Regional Traffic Fee and the entire RSP Traffic Impact Fee calculated in accordance with Attachment No. 2, without any offset or credit, upon the sixth (6th) anniversary of the Effective Date in the event that all Conditions Precedent set forth in Section 3.6 (including completion of construction of the entire Project) have not been satisfied in full on or before such date.

3.6 **Conditions Precedent to Disbursement for Fee Credits.** The City's obligation to provide fee credits pursuant to Section 3.5.1(a) above is conditioned upon the prior satisfaction by Owner or written waiver by the City of each of the following Conditions Precedent within the times designated below:

3.6.1 **Payment of Acquisition Costs.** To the extent required under Section 3.4, if applicable, Owner shall have fully and completely reimbursed the City, or provided an advance to the City, for any and all actual, third party, out-of-pocket costs incurred by the City to acquire real property needed for Required Public Improvements (other than acquisition costs of land (other than the Property) required for the Required Public Improvements and included within Section 3.4).

3.6.2 **Costs of City Actions.** Owner shall have paid all out-of-pocket third party costs actually incurred by the City to the date of the request in connection with the negotiation, preparation, enforcement, monitoring, and otherwise in connection with this Agreement pursuant to Section 7.5.

3.6.3 **Completion of Construction.** Owner shall have completed the construction of the entire Project and all Required Public Improvements, notices of completion shall have been recorded in relation to all such Private Improvements and Required Public Improvements in accordance with California Civil Code Sections 3093 and/or 8182 (as applicable), and thirty-five (35) days

shall have elapsed since the recordation of such notices of completion. The purposes of this provision is to ensure that the Required Public Improvements will be independently functional and to maintain consistency with vesting rights, and nothing herein shall be deemed to make any part of the Project other than the Public Improvements a public work.

3.6.4 **Submission of Bills/Invoices.** Owner shall have made full and complete payment of all undisputed claims for work performed on the Required Public Improvements, or in the event of a dispute between Owner and the general contractor or a subcontractor, Owner shall have obtained a commercially reasonable bond reasonably satisfactory to the City to release any applicable mechanics' lien or stop notice and Owner shall have submitted and the City shall have approved a written request for the reimbursement, including copies of all bills and/or invoices evidencing the Hard Costs of constructing the applicable Required Public Improvements actually incurred by Owner.

3.6.5 **As-Built Drawings.** Owner shall have submitted two (2) sets of final as-built drawings for the Required Public Improvements to the City Public Works Director.

3.6.6 **Acceptance of Required Public Improvements by the City.** The City, through the City Council, shall have accepted title to the Required Public Improvements, and Owner shall have provided the maintenance guarantees and landscaping requirements reasonably required by the City. The City agrees it will not unreasonably withhold or condition its acceptance of title to the Required Public Improvements.

3.6.7 **No Default.** Owner shall not be in Default in any of its obligations under the terms of this Agreement and all representations and warranties of Owner contained herein shall be true and correct in all material respects.

4. **Vested Rights.** The following provisions shall apply to the Project until the expiration of the Vesting Term:

4.1 **Project Entitlements/Density.** Owner is hereby granted the vested right to develop and operate the Project, subject to the terms and conditions of the Applicable Rules, any and all Subsequent Approvals, and the Reserved Powers.

4.2 **Enforcement.** Except to the extent it has been amended, canceled, modified or suspended, this Agreement shall be enforceable by any Party notwithstanding any change in any applicable general or specific plan, zoning, subdivision or building regulation adopted by the City which purports to alter or amend the Existing Entitlements.

4.3 **Subsequent Approvals.** The City shall not require Owner to obtain any Subsequent Approvals that are not required by the Applicable Rules or the Reserved Powers. The City hereby agrees that it shall not unreasonably withhold or unreasonably delay its approval of any Discretionary Actions relating to Subsequent Approvals.

4.4 **Moratoria.** In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates to the rate, amount, timing, sequencing, or phasing purportedly applying to the development of the Project on all or any part of the Property or the implementation or construction of the Project, the City agrees that, unless required by applicable state or federal Law or adopted pursuant to the City's exercise of the Reserved Powers, such

ordinance, resolution or other measure shall not apply to the Project, Property or this Agreement. If any such development moratorium would limit or allocate capacity in any City facilities (such as water, sewer, or streets), the City shall reserve capacity for the Project.

4.5 **Conditional Development Permit.** Notwithstanding Section 18.66.070 of the Rialto Municipal Code, any conditional development permit issued in connection with the Project shall not expire or become null or void so long as Developer is otherwise in compliance with the Existing Entitlements or this Agreement, including but not limited to the timelines set forth in Sections 9.3.6 and 9.3.7.

4.6 **Conflicts.** In the event of conflict between the Existing Entitlements and this Agreement, this Agreement shall prevail.

5. **Reserved Powers.** Notwithstanding any other provision of this Agreement, the following regulations shall apply to the development of the Project as and to the extent that such regulations apply generally to similar developments proposed or approved within the City:

5.1 **Processing Fees and Charges.** The City's Processing Fees and Charges at the rates in effect when each application and decision subject thereto is deemed complete.

5.2 **Procedural Regulations.** Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and/or any other matter of procedure so long as such procedural regulations are uniformly and consistently applied by the City in a non-discriminatory manner.

5.3 **Uniform and Building Codes.** Written regulations, policies and rules governing objective engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all Building Codes and similar codes adopted by the City and any local amendments to those codes adopted by the City.

5.4 **Police Power.** Any City ordinance, resolution, regulation, or official policy, which is reasonably necessary to protect persons on the Property and in the immediate community, or both, from conditions dangerous to their health, safety, or both, shall apply to the Project notwithstanding that the application of such ordinance, resolution, regulation, or official policy or other similar limitation would result in the impairment of Owner's vested rights under this Agreement. Any such regulations must constitute a valid exercise of the City's police power, applied and enforced in a uniform, consistent and non-discriminatory manner and must be applied and construed so as to provide the Owner, to the maximum extent possible, with the rights and assurances provided under this Agreement.

5.5 **Non-Conflicting Regulations.** Written regulations approved by the City that are not in material conflict with the Applicable Rules and do not materially and adversely impact the development of the Project. Any regulation adopted after the Effective Date, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to materially conflict with the Applicable Rules and shall therefore not be applicable to the development of the Project.

5.6 **Conflicting Regulations.** Written regulations approved by the City that are in material conflict with the Applicable Rules only if Owner has given its written consent to the application of such regulations to development of the Property and/or the Project.

5.7 **End Users.** Laws of the City that impose, levy, alter or amend fees, charges, or Land Use Regulations relating solely to post-Development conduct of consumers or end users, such as, without limitation, trash can placement, service charges and limitations on vehicle parking, so long as those later enactments are applied and enforced in a uniform, consistent and non-discriminatory manner and do not impair Owner's vested rights to Develop the Project.

5.8 **Laws.** Laws of the state and/or federal governments, including those of regional agencies or departments such as the Regional Water Quality Control Board, which override Owner's vested rights set forth in this Agreement shall apply to the Project and the Property, together with any City ordinances, resolutions, regulations and official policies to the extent necessary to enable the City to comply with such overriding Laws; *provided, however*, that (A) Owner does not hereby waive its right to challenge or contest the validity of any Laws; and (B) in the event that any such Law (or City ordinance, resolution, regulation or official policy enacted pursuant thereto) prevents or precludes compliance with one or more provisions of this Agreement, the Parties shall negotiate in good faith the amendment or suspension of such provisions of this Agreement to ensure the minimal necessary interference with Owner's rights hereunder; provided that no Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption and amendment of development agreements as set forth in the Development Agreement Act, the Development Agreement Ordinance, and this Agreement and each Party retains full discretion with respect thereto; *provided, further*, that the Vesting Term shall be extended for any such period during which Owner is pursuing such challenge or contest, up to two (2) additional years.

5.9 **Immediate Threat.** If the City Council finds that there is a severe and immediate threat to the health or safety of the City's residents, the City may unilaterally suspend this Agreement for a period not to exceed the time required for notice and a public hearing pursuant to Section 12.2; provided, that the Vesting Term shall be extended for any such period of suspension.

5.10 **Regulation by Other Public Agencies.** The Parties acknowledge that other public agencies, not within the control of the City, possess authority to regulate aspects of the Development of the Project and the Property separately from the City. This Agreement does not limit the authority of such other public agencies. Nothing contained in this Agreement shall be construed as limiting, in any way, the authority of the City to impose on the Project any new or increased development impact fees or other fees or charges imposed by any other public agency, but collected by the City.

6. **Amendments.** This Agreement may be amended or canceled in whole or in part only in the manner provided for in Government Code Section 65868 and the Development Agreement Ordinance. This provision shall not limit any remedy of the City or Owner as provided by this Agreement.

6.1 **Material Changes.** Either Party may request other changes in the Existing Entitlements and Subsequent Approvals without risk to any rights that have vested pursuant to this Agreement. Any Material Change to the Project shall be subject to the City's review and approval, and shall require an amendment to this Agreement to cover such Material Change to the Project. The City may condition such approval to ensure compliance with CEQA. Changes that are not Material Changes to the Project shall not require an amendment to this Agreement.

6.2 **Operating Memoranda.** This Agreement requires a close degree of coordination between the City and Owner. Refinements of planned Development of the Property may demonstrate that

clarifications are appropriate with respect to the details of the City's and Owner's performance. The City and Owner may effectuate such clarifications through operating memoranda approved by both Parties which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice and hearing pursuant to Section 6. The City Attorney shall be authorized to make the determination whether a requested clarification requires an amendment to this Agreement. Upon City Attorney approval, the City Administrator may execute any operating memoranda without City Council action.

6.3 **Nature of Change in Law.** The provisions of this Agreement shall apply to the Development of the Project regardless of whether a change in the Existing Entitlements is the result of the City Council or voter action. The Parties again intend hereby to avoid the result in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984).

7. **Owner Obligations.**

7.1 **Compliance With Law.** Owner shall comply with all Laws, the Existing Entitlements and all Subsequent Approvals that are consistent with this Agreement and the Existing Entitlements.

7.2 **Nature of Dedications.** All Dedications made by Owner to the City shall be made free and clear of liens and encumbrances, other than easements or restrictions that in the reasonable determination of the City do not preclude or interfere with the Dedicated purpose.

7.3 **Processing Fees.** Owner shall pay all Processing Fees and Charges for all Subsequent Approvals pursuant to the fee schedules in effect at the time of application for such Subsequent Approvals. Owner shall also pay any additional third party, out-of-pocket costs reasonably incurred by the City for expedited processing. Owner shall pay the City's reasonable third party out-of-pocket costs incurred for the Annual Review and any Special Review described in Sections 12.1 and 12.2.

7.4 **Completed Value of the Project.** Upon completion of construction of the Project, the assessed value of the Project shall not be less than Eight Million and no/100ths Dollars (\$8,000,000.00). Owner and/or Owner's successors in interest to the Property shall not file an appeal or other action seeking to establish an assessed valuation of the Property for a value less than Eight Million and no/100ths Dollars (\$8,000,000.00) commencing with the first assessment lien date (January 1) after the construction of the Project is complete and continuing for ten (10) years thereafter.

7.5 **Costs of City Actions.** Owner shall pay all third party, out-of-pocket costs the City reasonably incurs in furtherance of this Agreement within fifteen (15) calendar days following receipt of appropriate documentation (including, for example, invoices) showing such costs. This includes but is not limited to the City's out-of-pocket, third party costs incurred to negotiate and draft this Agreement, the City's out-of-pocket, third party costs incurred to in connection with the City's efforts to seek assistance from other governments pursuant to Section 8.3; monitoring and review costs pursuant to Section 12; and the costs of condemnation, if any, required for Public Improvements in accordance with Section 3.4 of this Agreement.

7.6 **Obligation to Construct the Project.** Notwithstanding anything to the contrary contained in this Agreement, (a) nothing contained in this Agreement shall be deemed or construed as creating any obligation on Owner to construct the Project unless and until the date (the "**DO Date**") Owner obtains the issuance of a building Permit for the Private Improvements and actually receives any credit

against or deferral of any Development Impact Fees and/or Fair Share Fees from the City, and (b) prior to the DO Date, Owner shall not be deemed to be in Default under this Agreement for the failure to so construct the Project or any portion thereof. Until the DO Date, Owner shall have the right, exercisable upon the delivery of written notice to the City (a "**Termination Notice**"), to terminate this Agreement, in which event (i) Owner shall reimburse the City for all out-of-pocket third party costs actually incurred by the City in connection with this Agreement prior to the delivery of such Termination Notice, and (ii) the City shall execute and deliver to Owner for recordation a notice of termination of this Agreement, and thereafter this Agreement shall be of no further force or effect and neither Party shall have any further obligations hereunder.

8. City Obligations.

8.1 **Processing.** The City shall accept and process with reasonable promptness all completed applications for Subsequent Approvals. In addition, the City shall use its reasonable, good faith efforts to make its staff available so as to expeditiously complete processing of all Subsequent Approvals for the Project.

8.2 **Review.** The City shall provide sufficient staff to review compliance with this Agreement.

8.3 **Assistance From Other Governments.** The City shall use commercially reasonable good faith efforts to seek, assist and cooperate with Owner in seeking, all of the following as Owner requests to further Development of all or any part of the Project:

8.3.1 Necessary permits under the jurisdiction of the state or federal governments.

8.3.2 Available tax benefits from the state or federal governments, including but not limited to sales tax exemptions and free trade/enterprise zone designations.

8.3.3 Available grants, loans, bonds, and subsidies from the state or federal governments.

8.4 **Mitigation Fee Act.** The City shall comply with Government Code Section 66006 with respect to any fee it receives or cost it recovers pursuant to this Agreement.

8.5 **Recordation of Agreement.** The City Clerk shall file this Agreement for recordation with the County Recorder of the County of San Bernardino within ten (10) days after the date this Agreement is signed by the City and Owner. In connection with the expiration of the Term or any earlier termination of this Agreement, the City shall execute and deliver to Owner a recordable notice of termination of this Agreement in form and substance reasonably acceptable to the Parties.

9. Term.

9.1 **Commencement.** This Agreement shall become effective on the Effective Date.

9.2 **Duration.** Unless terminated earlier pursuant to another provision hereof, this Agreement shall be in full force and effect until the twentieth (20th) anniversary of the Effective Date ("**Term**").

9.3 **Termination.** This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

9.3.1 Expiration of the Term.

9.3.2 Entry of a final judgment setting aside, voiding or annulling the adoption of the Enabling Ordinance.

9.3.3 The adoption of a referendum measure overriding or repealing the Enabling Ordinance. Owner acknowledges that, pursuant to Article 2, Section 11 of the California Constitution and California Elections Code Section 9235, *et seq.* (collectively, the "**Referendum Laws**"), the electors of the City may, within 30 days after adoption of the Enabling Ordinance, file a petition in accordance with Elections Code Section 9237 to require the City to either repeal such ordinance or hold an election to obtain voter approval of such Enabling Ordinance and this Agreement. In the event a valid referendum petition challenging the validity of the Enabling Ordinance is filed in accordance with the Referendum Laws, the City may, in its sole and absolute discretion, either (1) terminate this Agreement or (2) submit the Enabling Ordinance to the voters for approval in accordance with the Referendum Laws.

9.3.4 Termination of this Agreement based on any material Default of any Party (except as provided herein) and following the termination proceedings required by this Agreement.

9.3.5 Termination of this Agreement pursuant to **Section 7.6**.

9.3.6 Subject to **Section 9.6**, failure of the Owner to commence construction of the Private Improvements and the Public Improvements on or before the third (3rd) anniversary of the Effective Date; *provided, however*, unless the DO Date has occurred such failure shall not be a "Default" by Owner under this Agreement. The purposes of this provision are to ensure that the Required Public Improvements will be independently functional and to maintain consistency with vesting rights, and nothing herein shall be deemed to make any part of the Project other than the Public Improvements a public work.

9.3.7 Subject to **Section 9.6**, failure of the Owner to complete construction of the Private Improvements and the Public Improvements on or before the sixth (6th) anniversary of the Effective Date; *provided, however*, unless the DO Date has occurred such failure shall not be a "Default" by Owner under this Agreement. The purposes of this provision are to ensure that the Public Improvements will be independently functional and to maintain consistency with vesting rights, and nothing herein shall be deemed to make any part of the Project other than the Public Improvements a public work.

9.4 **Effect of Termination.** This Agreement does not impact, and shall not be deemed or construed as impacting, the effectiveness or validity of the Existing Entitlements issued by the City. Termination of this Agreement pursuant to this **Section 9** shall not affect any right or duty arising from the Existing Entitlements issued by the City prior to termination, nor shall it destroy any vested right arising from the completion of construction in good faith reliance on an Existing Entitlement.

9.5 **Effect of Agreement on Title.** The Parties shall record an appropriate release upon termination of this Agreement as to all or any part of the Property, in form and substance mutually acceptable to the Parties.

9.6 **Extensions.** The Term of this Agreement and the time for performance by either Party of any of its obligations hereunder shall be extended by the period of time that a Force Majeure event exists. Such delay shall not be deemed to be a default. In addition, the Term of this Agreement shall be extended day-for-day by delays arising from the pendency of Litigation relating to this Agreement or to the Development contemplated hereby. There shall be no extension for Force Majeure unless the Party claiming that Force Majeure event exists shall give notice thereof to the other Party within thirty (30) days of actually learning thereof; *provided, however,* a failure to give such notice shall not nullify the right to an extension except to the extent that the other Party is actually prejudiced by such failure to notify.

10. Financing.

10.1 **Right to Encumber.** Owner may, in its sole discretion, obtain or allow one or more Encumbrances as will assist Development of the Project. Unless otherwise required by Law, neither entering into nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Encumbrance made in good faith and for value. Nothing herein authorizes Owner to Encumber any interest in the Property other than its own. In connection with any Encumbrance, the City shall execute and deliver to such Financier a commercially reasonable form of consent to Encumbrance (and assignment of this Agreement) and estoppel certificate as requested by such Financier in accordance with Section 13.9.

10.2 **Notice.** Owner and/or any Financiers shall have the right to give notice to the City of the existence of an Encumbrance. Thereafter, the City shall also serve each Financier with copies of all Notices given to Owner pursuant to this Agreement.

11. Binding Effect.

11.1 **Entirety of Property.** All of the Property shall be and shall remain subject to this Agreement throughout the Term.

11.2 **Property and Agreement Remain Linked.** Subject to Section 11.4, Owner shall have the right to sell, transfer or assign the Property and its rights under the Agreement. However, any person acquiring any interest in the Property shall do so subject to this Agreement. Conversely, no sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with a corresponding sale, transfer or assignment as to the Property. If less than all of the Property is sold, the new owner of that portion shall be responsible for all Development, including Dedications and the provision of public facilities, within that portion, and the original Owner (or its successors as to the entire Property) shall remain responsible for all such matters outside that portion of the Property.

11.3 **Binding on Financiers.** This Agreement shall bind all Financiers and every owner of the Property, or part thereof, whose title is acquired through a Financier by foreclosure or deed-in-lieu of foreclosure; *provided, however,* such Financier and their respective successors and assigns shall not be liable for any interest, penalties or fines or any damages from any pre-foreclosure (or deed-in-lieu) Default accruing prior to the date such party takes title to the Property or any part thereof through completion of a foreclosure action or execution and delivery of a deed-in-lieu of foreclosure.

11.4 **City Consent.** The City, through the City Administrator, shall have the right to consent to any Conveyance, but only until the Required Public Improvements have been completed and accepted by the City. Owner shall give the City written notice of its intent to Convey the Property and the City shall have not less than fifteen (15) Business Days following a complete submittal of all documentation necessary for the City Administrator to evaluate the assignee's financial resources to approve or disapprove the Conveyance. The City Administrator may only withhold his/her consent to the Conveyance if he/she reasonably determines that the proposed new Owner lacks the financial resources to consummate Development of the Project as contemplated hereby. If approved in writing by the City Administrator, then upon such assignment of this Agreement, Owner shall be released from any post-assignment obligations hereunder.

12. **Compliance Review.**

12.1 **Annual Review.** The City shall review this Agreement annually ("**Annual Review**"), on or before each anniversary date of the Effective Date and/or conduct Special Review, as described in Section 12.2, in order to ascertain the good faith compliance by Owner with the terms of the Agreement. Owner shall submit a report describing its compliance with this Agreement during the immediately preceding twelve (12) months, in the form required by the City Administrator, within thirty (30) days after written notice from the City Administrator, which notice shall include the form of the report.

12.2 **Special Review.** A "**Special Review**" of compliance with this Agreement may be made either by agreement of the Parties or by initiation in one or more of the following ways:

12.2.1 Recommendation of the City's Planning Department staff, including, without limitation, based on an alleged default of Owner;

12.2.2 Action of the City Council.

12.3 **Procedure for Annual Review and/or Special Review.** With respect to either Annual Review or Special Review, the provisions of Section 18.79.070 of the Municipal Code shall be followed.

12.4 **Certificate of Agreement Compliance.** If, at the conclusion of an Annual Review or Special Review, Owner is found to be in compliance with this Agreement, the City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("**Certificate**") to Owner (and any Financier) stating that, after the most recent Annual Review or Special Review and based upon the information known or made known to the City Administrator and City Council: (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after an Annual Review or Special Review and shall state the anticipated date of commencement of the next Annual Review. Owner may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, the City shall not be bound by a Certificate if a default existed at the time of the Annual Review or Special Review, but was concealed from or otherwise not known to the City Administrator or City Council, and the Certificate shall so state.

12.5 **Failure by City.** The failure of the City to conduct any Annual Review shall not constitute a breach of this Agreement, affect Owner's obligations hereunder, or render this Agreement invalid or void.

13. **Default.**

13.1 **Default by Owner.** Owner shall be in "**Default**" under this Agreement if it does any or any combination of the following and does not cure the same within the applicable notice and cure period, if any, set out below:

13.1.1 Practices, or attempts to practice, any fraud or deceit upon the City, as reasonably determined by the City Council, in which case no right to cure shall apply; *provided, however,* Owner shall be given prior notice of such determination and the opportunity to respond to any allegations. No provision of this Agreement is intended to take away Owner's right to contest such determination by appropriate proceedings.

13.1.2 Willfully violates any order, ruling or decision of any non-City administrative or judicial body having jurisdiction over the Property or the Project; *provided, however,* Owner may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no Default of this Agreement shall be deemed to have occurred unless and until there is a final, non-appealable judicial decision that Owner willfully violated such obligation.

13.1.3 Fails to cure a material default of this Agreement within the time set forth in a written notice of default from the City to Owner; *provided, however,* with respect to any payment default, such cure period shall not be less than ten (10) Business Days, and with respect to any non-payment default, such cure period shall not be less than thirty (30) days; *provided, further,* if such default cannot reasonably be cured within such thirty (30) days period, then Owner shall not be deemed in "**Default**" under this Agreement if Owner commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period.

13.2 **Default by City.** The City shall be in "**Default**" under this Agreement only if it fails to cure a material breach of this Agreement within the time set forth in a written notice of default from Owner to the City; *provided, however,* with respect to any payment default, such cure period shall not be less than ten (10) Business Days, and with respect to any non-payment default, such cure period shall not be less than thirty (30) days; *provided, further,* if such default cannot reasonably be cured within such thirty (30) days period, then the City shall not be deemed in "**Default**" under this Agreement if the City commences such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion within a reasonable period; *provided, further,* the Vesting Term and the time for Owner's performance of its obligations hereunder shall be extended on a day-for-day basis during such cure period to the extent Owner is actually prejudiced by the City's breach or default hereunder.

13.3 **Notice of Default.** A Party alleging a default by the other Party shall serve notice thereof. Each such notice shall state with specificity all of the following:

13.3.1 The nature of the alleged default.

13.3.2 The manner in which the alleged default may be satisfactorily cured.

13.3.3 Subject to the provisions of Sections 13.1 and 13.2, a period of time in which the default may be cured.

13.4 **Remedies for Default.** The Parties acknowledge and agree that the nature of the Project and the terms of this Agreement render ordinary remedies at law inadequate for a breach of this Agreement. The Parties also acknowledge and agree that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that, except as otherwise expressly provided in this Agreement, the remedies for breach of this Agreement shall be limited to one or more of the following:

13.4.1 The remedies for Default by the City shall be limited to injunctive relief, mandate (traditional and/or administrative), specific performance, and/or restitution/reimbursement for unused fees and for Dedications and improvements to the extent not required for Development completed as of the date Owner gave the City notice of Default pursuant to Section 13.3.

13.4.2 The remedies for Default by Owner shall be limited to injunctive relief, specific performance, termination, and/or restitution.

13.5 **Acceptance of Service of Process.** In the event that any legal action is commenced by Owner against the City, service of process on the City shall be made in such manner as may be provided by Law. In the event that any legal action is commenced by the City against Owner, service of process on Owner shall be made in such manner as may be provided by Law.

13.6 **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

13.7 **Inaction Not a Waiver of Default.** Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

13.8 **Right of Financier to Cure.** Any Financier for whom notice has been given pursuant to Section 10.2 shall have the same right to cure a default as Owner. The deadline for a Financier to cure a default shall commence with the giving of a notice of default to that Financier, rather than pursuant to notice sent to Owner.

13.9 **Estoppel Certificate.** Each of the Parties shall at any time and from time to time upon not less than thirty (30) days' prior notice by the other, execute, acknowledge and deliver to such other Party a statement in writing certifying that this Agreement is in full force and effect, stating which provisions of this Agreement have been fully performed, and stating whether or not to the best knowledge of the signer of such certificate such other Party is in default in performing or observing any provision of this Agreement, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other Party may reasonably request. It is intended that any such statement delivered by Owner may be relied upon by the City or any successor in interest to the City, and it is further intended that any such statement delivered by the City may be relied upon by any prospective assignee of Owner's interest in this Agreement or any Financier. Reliance on any such certificate shall not extend to any Default as to which the signer of the certificate had no actual knowledge at the time the statement was signed. The City's obligation to deliver a statement in accordance with this Section 13.9 is expressly

subject to Owner's prior payment of all third party costs incurred by the City in connection with the review, analysis, drafting, execution and delivery of such statement.

14. Appeal of Administrative Decision. Owner may appeal directly to the City Council any decision by City staff, including the City Administrator, concerning the interpretation and/or administration of this Agreement. Owner shall file any such appeal with the City Clerk within twenty (20) days after Owner receives notice of the staff decision; provided, however, that a failure to timely file for an appeal shall not nullify the right to such appeal except to the extent the City is actually prejudiced by such failure to timely appeal. The City Council shall render a decision at an open, public meeting held within sixty (60) days following Owner's delivery of the appeal to the City Clerk.

15. Indemnification. Indemnitor shall pay for, save, protect, defend, indemnify and hold harmless the Indemnitees from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, third party tort claims, civil or criminal penalties, fines and/or monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "**Liabilities**") which may now or in the future be incurred or suffered by the Indemnitees (or any of them) by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of any of the following: (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials in violation of applicable Laws, (ii) the environmental, soils or physical condition of the Property in violation of applicable Laws, (iii) any Liabilities under any Laws relating to Hazardous Materials, soils, geotechnical, or other physical condition of the Property (provided, however, expressly excluded from the foregoing indemnity under clauses (i), (ii) or (iii) above is any release resulting from passive migration of pre-existing Hazardous Materials at, in, on, under or in the vicinity of the Property which originated from property owned by Indemnitees or which was caused by Indemnitees on or to the Property unrelated to this Agreement), (iv) any claim, action or proceeding brought by a third party against any Indemnitee to attack, set aside, void or annul the approval of this Agreement or the Entitlements (provided that claims, actions or proceedings to attack any Specific Plan or the General Plan are expressly excluded from the indemnification obligations of Owner under this Section 15 except to the extent such attack on the Specific Plan or the General Plan arises from and is related to this Agreement or the approval by the City of the Entitlements or the Project), (v) any release of water from the Property or the Project, (vi) application of any Relocation Laws to the Property (including Owner's acquisition of the Property) or the Project, and/or (vii) Development of the Project; provided, however, that the foregoing indemnity shall not apply to any Liabilities to the extent arising or occurring as a result of the negligence or willful misconduct of any Indemnitee. The City shall have the right to reject or consent to any particular law firm or attorney engaged by Owner to represent the City; provided, however, the City's consent shall not be unreasonably withheld. The City shall cooperate in good faith with Owner when Owner is acting pursuant to this Section 15. Indemnitor's obligations under this Section 15 shall survive termination of this Agreement with respect to any Liabilities covered by this Section 15 that arose during the Term and shall terminate upon the expiration of the applicable statute of limitation applicable to such surviving Liabilities covered under this Section 15.

16. Insurance Requirements. Owner shall take out and maintain and shall cause its contractors to take out and maintain, until the completion of all Development contemplated by this Agreement, the following policies of insurance:

16.1 **Owner's Liability Insurance.** Liability insurance with at least the minimum insurance coverages set forth below:

16.1.1 Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. The City shall be an "additional insured" under such policy as it applies to Owner's activities under this Agreement. The insurance provided herein shall be considered "primary" insurance.

16.1.2 Workers' compensation and employer's liability insurance as required by any applicable law or regulation.

16.2 **Insurance During Construction.** Prior to commencing construction activities within the Property, Owner shall obtain and require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

16.2.1 Workers' compensation and employer's liability insurance as required by any applicable law or regulation.

16.2.2 Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

- (a) Required coverages:
 - (i) Premises and Operations.
 - (ii) Products and Completed Operations.
 - (iii) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
 - (iv) Broad Form Property Damage (including Completed Operations).
 - (v) Explosion, Collapse and Underground Hazards.
 - (vi) Personal Injury Liability.
- (b) Minimum limits of liability:
 - (i) \$1,000,000 each occurrence (for bodily injury and property damage).
 - (ii) \$1,000,000 for Personal Injury Liability.
 - (iii) \$2,000,000 aggregate for Products and Completed Operations.

- (iv) \$2,000,000 general aggregate applying separately to this Project.

16.2.3 Automobile liability insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The contractor shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

16.2.4 The contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$5,000,000.

16.3 **Property Insurance.** Owner shall carry "Builder's Risk" insurance in the amount of one hundred percent (100%) of the full replacement cost thereof and property insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations).

16.4 **Terms of Insurance.** All insurance required by this Section 16 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X, and which are authorized to do business in California. All insurance may be provided under (i) a combination of primary and excess policies, (ii) an individual policy covering the Property, (iii) a blanket policy or policies which includes other liabilities, properties and locations of Owner; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$5,000,000, then Owner shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$5,000,000, (iv) a plan of self-insurance, provided that Owner notifies the City of its intent to self-insure and shall, upon request, deliver to the City each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that Owner has \$250,000,000 of both net worth and net current assets, or (v) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy pursuant to this Section 16, Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 unless Owner complies with the requirements regarding self insurance pursuant to (iv) above. Owner shall furnish to the City, upon request, a certificate(s) or memorandum(s) of insurance, or statement of self-insurance or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by Owner is in full force and effect.

16.5 **Additional Insured.** Any insurance policy under which the City is an "additional insured" shall include the following provisions:

16.5.1 Shall provide that the policy shall not be canceled or reduced in amount or coverage below the requirements of this Agreement, nor shall such policy be allowed to expire, without at least thirty (30) days prior notice by the insurer to the City.

16.5.2 Shall provide for severability of interests.

16.5.3 Shall provide that an act or omission of one (1) of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.

16.5.4 Shall provide for contractual liability coverage with respect to any indemnity obligation set forth in this Agreement.

17. Representations and Warranties.

17.1 **City Representations.** The City represents and warrants to Owner as follows, which warranties and representations are effective as of the date of this Agreement:

17.1.1 **Existence.** The City is a municipal corporation, duly incorporated pursuant to the laws of the State of California.

17.1.2 **Authority.** The execution, performance, and delivery of this Agreement by the City have been fully authorized by all requisite actions on the part of the City.

17.1.3 **No Default.** The City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the City is a party or by which it is bound.

17.1.4 **No Assessment Districts.** Except as set forth in the Existing Entitlements, the City has not and, prior to the earlier to occur of (a) six (6) months following completion of construction of the Project or (b) the sixth (6th) anniversary of the Effective Date, shall not initiate or participate in the formation of any assessment districts or other similar public financings of public improvements which would affect the Property.

Until the disbursement of all Hard Cost and Soft Cost reimbursements and the application of all reimbursements and other benefits by the City for construction of Public Improvements, the City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 17.1.1 through 17.1.4 become untrue as of such date, immediately give written notice of such fact or condition to Owner. Such exception(s) to a representation shall not be deemed a breach by the City hereunder, but shall constitute an exception which Owner shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Improvements.

17.2 **Owner's Representations.** Owner represents and warrants to the City as follows, which warranties and representations are effective as of the date of this Agreement and shall be effective as of the disbursement of all Hard Cost and Soft Cost reimbursements and the application of all reimbursements and other benefits by the City for construction of Public Improvements and the completion of the Private Improvements and Public Improvements:

17.2.1 **Experience.** Owner is experienced as a developer and operator of commercial warehouse and distribution facilities similar to the Project.

17.2.2 **Authority.** Owner has full right, power and lawful authority to develop the Private Improvements and the Public Improvements and undertake all obligations as provided herein. The execution, performance, and delivery of this Agreement by Owner have been fully authorized by all requisite actions on the part of Owner.

17.2.3 **Interest in Property.** Owner represents that Owner (or its affiliates) owns or has entered into agreements to acquire fee title to the Property. Owner further represents that it (or its affiliates) has the legal authority to bind the Property by recordation of this Agreement.

17.2.4 **No Conflict.** To the best of Owner's knowledge, Owner's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which Owner is a party or by which it is bound.

17.2.5 **No Owner Bankruptcy.** To the best of Owner's knowledge, Owner is not the subject of a current or threatened bankruptcy proceeding.

Until the disbursement of all Hard Cost and Soft Cost reimbursements and the application of all reimbursements and other benefits by the City for construction of Public Improvements and the completion of construction of all Private Improvements and Public Improvements by Owner, Owner shall, upon learning of any material fact or condition which would cause any of the warranties and representations in this Section 17.2.1 through 17.2.5 become untrue as of such date, immediately give written notice of such material fact or condition to the City. Such exception(s) to a representation shall not be deemed a breach by Owner hereunder, but shall constitute an exception that the City shall have a right to approve or disapprove as a condition to further performance under this Agreement.

18. Miscellaneous.

18.1 **Time of Essence.** Time is of the essence of each provision hereof in which time is an element.

18.2 **Further Documents.** The City and Owner shall sign, deliver and if appropriate record any additional documents necessary to effectuate the purposes of this Agreement.

18.3 **Notices.** All Notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when personally delivered, upon the first Business Day after prepaid deposit with a recognized overnight delivery service with instructions to deliver the next Business Day, or upon the fifth calendar day after deposit in the United States mail, first-class, registered or certified, postage prepaid, return receipt requested at the following addresses:

If to City: City of Rialto
150 South Palm Avenue
Rialto, California 92376
Attn: City Administrator
Tel: (909) 820-2689
Fax: (909) 820-2527

With copies to: Aleshire & Wynder LLP
18881 Von Karman Avenue
Tower 17, Suite 1700
Irvine, California 92612
Attn: Fred Galante, City Attorney
Tel: (949) 223-1170
Fax: (949) 223-1180

If to Owner: Alder Opportunity, LLC
c/o Panattoni Development Company, Inc.
20411 S.W. Birch Street
Suite 200
Newport Beach, California 92660
Attention: Jacob LeBlanc
Telephone: (949) 296-2943
Email: jleblanc@panattoni.com

With a copy to: Liner LLP
1100 Glendon Avenue
14th Floor
Los Angeles, California 90024
Attention: Todd Evan Stark, Esq.
Telephone: (310) 500-3628
Facsimile: (310) 388-5415
Email: tstark@linerlaw.com

and to: Metropolitan Life Insurance Company
333 South Hope Street
Suite 3650
Los Angeles, California 90071
Attention: Panattoni Rialto / Alder Opportunity Asset Manager

and to: Metropolitan Life Insurance Company
425 Market Street
Suite 1050
San Francisco, California 94105
Attention: Associate General Counsel

Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one specified above.

18.4 **Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein.

18.5 **Waiver.** No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

18.6 **Relationship of the Parties.** Nothing contained herein, nor any action taken or document created pursuant hereto, shall be construed as creating the relationship of partners, joint venturers, or any other association of any kind or nature between the City and Owner.

18.7 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole benefit of the Parties, any Financiers and their respective successors in interest. No other person (such as a taxpayer or citizens' group) shall have any right of action based upon any provision of this Agreement.

18.8 **Non Liability of Certain Individuals.**

18.8.1 **Officials and Employees of City.** No official or employee of the City shall be personally liable to Owner or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to Owner or its successors, or on any obligations under the terms of this Agreement.

18.8.2 **Owner Parties.** No officer, director, manager, member, or employee of Owner (or any of their respective officers, directors, shareholders, partners, members, managers, employees, trustees, or beneficiaries) (collectively, "**Owner Parties**") shall be personally liable to the City or its successor in interest, in the event of any Default by Owner or for any amount which may become due from Owner or its successors, or on any obligations of Owner under the terms of this Agreement; *provided, however,* the foregoing shall not be deemed or construed as waiving or limiting the rights of the City with respect to (a) any fraud, willful misconduct or criminal activities of any of the Owner Parties, or (b) any recourse that may be granted in a final judgment from a court of competent jurisdiction against any of the Owner Parties for the liability of Owner based upon a legal theory or equitable right which would allow the City to ignore or 'pierce' the separate legal existence of Owner as a limited liability company.

18.9 **City Approvals and Actions.** The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Administrator (or his or her duly authorized representative). The City Administrator shall have the authority to make approvals, issue interpretations, waive provisions, execute implementing documents, and/or make and execute further agreements on behalf of the City so long as such actions do not materially change the uses or Development permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or further agreements may include extensions of time to perform. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. The City Administrator retains full discretion to submit any matter to the City Council for approval notwithstanding that such matters may be considered immaterial.

18.10 **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

18.11 **Rules of Construction.** Captions and headings in this Agreement are for convenience only, and are not guides for interpretation. This Agreement is the result of negotiations between Parties who were each represented by counsel, so no ambiguity in this Agreement shall be interpreted against one Party. This Agreement has been prepared and negotiated jointly and equally by the Parties. This Agreement shall not be construed against either Party on the ground that a Party prepared the Agreement.

18.12 **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is a holiday or Friday, Saturday or Sunday, and then that day is also excluded. The term "**holiday**" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

18.13 **Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

18.14 **Governing Law and Venue.** This Agreement is entered into and will be performed in the County of San Bernardino, California, and shall be governed by the laws of the State of California. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California or the federal District Court for the Central District of California. Each Party hereto irrevocably consents to the personal jurisdiction of those courts.

18.15 **Attorneys' Fees.** In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, to reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and attorneys' fees.

18.16 **Severability.** If a Court invalidates part of this Agreement, the remainder shall remain in force and effect unless the invalidation materially impairs a Party's consideration, in which event this entire Agreement shall terminate.

18.17 **Recitals and Attachments.** All recitals and attachments to this Agreement are incorporated herein.

18.18 **Mutual Covenants.** The covenants contained herein are mutual covenants which constitute conditions to the concurrent or subsequent performance of the other covenants.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Owner and the City have executed this Agreement on the date first above written.

City:

CITY OF RIALTO,
a California municipal corporation

Deborah Robertson, Mayor

ATTEST:

Barbara McGee, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Fred Galante, Esq., City Attorney

Owner:

ALDER OPPORTUNITY, LLC,
a Delaware limited liability company

By: **ALDER OPPORTUNITY OC/IE, LLC**,
a Delaware limited liability company,
its Managing Member

By: **PDC OC/IE LLC**,
a Delaware limited liability company,
its Manager

By: _____
Jacob R. LeBlanc,
Local Partner

APPROVED AS TO FORM:

LINER LLP

By: **STARK LAW GROUP, P.C.**,
a California professional corporation,
as Partner

By: _____
Todd Evan Stark,
President

Attorneys for Owner

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 _____) ss.

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

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)
) ss.
 COUNTY OF _____)

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

 SIGNATURE OF NOTARY PUBLIC

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF RIALTO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THE NORTH ½ OF THE FOLLOWING DESCRIBED PARCEL:

THAT PORTION OF THE EAST ½ OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO GOVERNMENT TOWNSHIP PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 530 FEET NORTH OF THE SOUTHEAST CORNER OF THE EAST ½ OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SAID SECTION 32; THENCE NORTH 100 FEET; THENCE WEST 435.60 FEET; THENCE SOUTH 100 FEET; THENCE EAST 435.60 FEET TO THE POINT OF BEGINNING.

APN(S): 240-191-023-0-000

PARCEL 2:

THE NORTH 30 FEET OF THE EAST 435.60 FEET OF THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF.

NOTE: THE EASTERLY AND WESTERLY LINES OF THE ABOVE DESCRIBED REAL PROPERTY ARE TO BE PROLONGATED OR SHORTENED SO AS TO BE ADJACENT TO AND CONTIGUOUS WITH THE NORTHERLY LINE OF PARCEL 1 ABOVE.

APN(S): 240-191-025-0-000

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE EAST 635.6 FEET.

APN(S): 240-191-28-0-000

PARCEL 4:

THAT PORTION OF THE EAST ½ OF THE SOUTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO GOVERNMENT TOWNSHIP PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 435.60 FEET WEST OF THE SOUTHEAST CORNER OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 32; THENCE NORTH 660 FEET TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 32; THENCE WEST 200 FEET; THENCE SOUTH 660 FEET TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 32; THENCE EAST 200 FEET TO THE POINT OF BEGINNING.

APN(S): 0240-191-29-0-000

PARCEL 5:

A PORTION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE & MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

BEGINNING AT A POINT 330 FEET NORTH OF THE SOUTHEAST CORNER OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 32; THENCE NORTH 100 FEET; THENCE WEST 435.60 FEET; THENCE SOUTH 100 FEET; THENCE EAST 435.60 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE CITY OF RIALTO ON MAY 3, 1984 AS INSTRUMENT NO. 84-104198 OF OFFICIAL RECORDS.

APN: 0240-191-18-0-000

PARCEL 6:

THAT PORTION OF THE EAST 1/2 OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO GOVERNMENT TOWNSHIP PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 430 FEET NORTH OF THE SOUTHEAST CORNER OF THE EAST 1/2 OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 32; THENCE NORTH 100 FEET; THENCE WEST 435.60 FEET; THENCE SOUTH 100 FEET; THENCE EAST 435.60 FEET TO THE POINT OF BEGINNING.

APN: 0240-191-22-0-000

PARCEL 7:

THE NORTH 50 FEET OF THE SOUTH 580 FEET OF THE EAST 435.6 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO U.S. GOVERNMENT TOWNSHIP PLAT FILED IN THE OFFICE OF THE SURVEYOR GENERAL ON JUNE 24, 1898.

APN:0240-191-26-0-000

PARCEL 8:

THE SOUTH 330 FEET OF THE EAST 435.60 FEET OF THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 32, TOWNSHIP 1 NORTH,

RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO U.S. GOVERNMENT SURVEY THEREOF.

EXCEPTING THEREFROM THE EAST 50 FEET AS CONVEYED TO THE CITY OF RIALTO IN DEED RECORDED MARCH 16, 1984, AS INSTRUMENT NO. 84-061685 OF OFFICIAL RECORDS.

APN: 0240-191-27-0-000

ATTACHMENT NO. 2
DEVELOPMENT IMPACT FEES

<i>Impact Fee Categories</i>	<i>Agency</i>	<i>Unit</i>	<i>Unit Cost</i>	<i>Notes</i>
General Facilities	City of Rialto	bsf	\$ 0.0646	FIXED
Law Enforcement	City of Rialto	bsf	\$ 0.0473	FIXED
Fire Protection	City of Rialto	bsf	\$ 0.0774	FIXED
Park Development	City of Rialto		N/A	FIXED
Open Space	City of Rialto	bsf	\$ 0.120	FIXED
Library Facilities	City of Rialto	bsf	N/A	FIXED
Regional Traffic Fee	City of Rialto	bsf	\$ 2.26 (IND)	STC
Street Medians	City of Rialto	bsf	\$ 0.0200	FIXED
Storm Drain Facilities*	City of Rialto	acre	\$ 32,201.15	FIXED
	or	bsf	\$ 1.84897	
Sewage Collection	City of Rialto	lff	\$ 73.10	FIXED
Sewage Treatment**	City of Rialto	bsf	\$ 0.25585	FIXED
RSP/EIR Fee	City of Rialto	acre	\$ 3,327.02	FIXED
RSP-Traffic Mitigation Fair Share Fee	City of Rialto	bsf	\$ 0.14553	FIXED

Legend

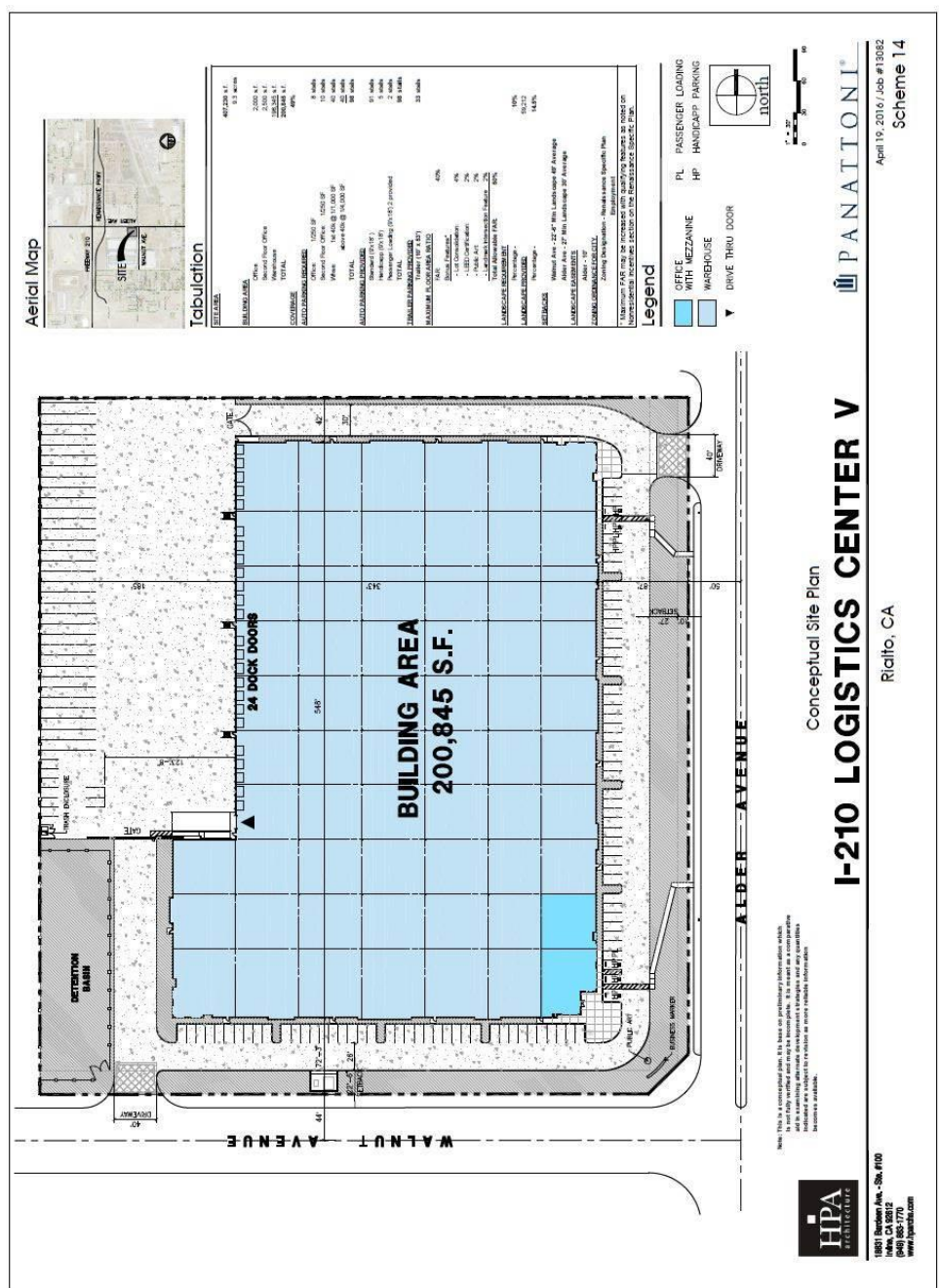
acre	Acre
bsf	Building Square Footage
HC	High Cube Industrial
IND	Standard Industrial
lff	Linear Frontage Foot
STC	Subject To Change

*Storm Drain Facilities Fee shall be the higher of the two calculations.

**Sewage Treatment Fee is based upon a standard warehouse user (Group II Commercial Low Strength). The Sewage Treatment Fee shall be levied based upon the characteristics of the occupant in accordance with the schedule in effect as of July 1, 2016.

ATTACHMENT NO. 3

SITE PLAN



ATTACHMENT NO. 4

DESCRIPTION OF REQUIRED PUBLIC IMPROVEMENTS

Required Public Improvements (To be constructed by Owner)

The description of the Required Public Improvements set forth in Items 1 and 2 is intended to clarify any ambiguity in, and set forth the full extent of, the description of the corresponding public improvement obligations imposed by the City in the Conditions of Approval for the Project (Precise Plan of Design No. 2441 (but not public or private improvement obligations imposed by other entities (not affiliated with the City of Rialto), such as utility companies or water companies, regardless of whether such improvement obligations are referenced in Precise Plan of Design No. 2441).

To the extent any requirements and condition(s) listed in the Conditions of Approval for the Project (Precise Plan of Design No. 2441) or the Existing Entitlements are ambiguous, the scope of the Required Public Improvements as defined in Items 1 and 2 shall prevail; provided, however, Owner shall design and construct all public improvements in compliance with the City's Standard Plans and Drawings for Public Improvements then in effect and uniformly applied, subject to the review and approval of the Director of Public Works/City Engineer or his or her designee, which approval shall not be unreasonably withheld or delayed.

1. **Walnut Avenue (between Alder Avenue and the west boundary of the Property) (collectively, the "Walnut Improvements"):** Construct improvements along and in Walnut Avenue (88' ROW) (between Alder Avenue and the west boundary of the Property) pursuant to the final Renaissance Specific Plan for the City of Rialto dated November 2010 (the "RSP November 2010"). The Walnut Improvements shall consist of the following: Property frontage landscaping, parkway, street lights, grind and overlay of existing asphalt on the north side of Walnut Avenue to the centerline (if deemed to be required by the City's Public Works Director (or his or her designee) or City Engineer (or his or her designee)), and such other improvements as may be required to meet standard City requirements as stated in the City's Standard Plans and Drawings for Public Improvements then in effect and uniformly applied. Nothing contained herein shall require any subsurface wet utility improvements in Walnut Avenue except for utility connections that will be required for the Property. (The foregoing are the "Walnut Improvements" referred to in the Development Agreement).
2. **Alder Avenue (between Walnut Avenue and north boundary of the Property)(collectively, the "Alder Improvements")**:** Construct improvements along and in Alder Avenue (100' ROW) (between Walnut Avenue and north boundary of the Property) pursuant to the RSP November 2010.

The Alder Improvements shall consist of the following: Property frontage landscaping, sidewalk, parkway, street lights, the 16' wide street median, and such other improvements as may be required to meet standard City requirements as stated in the City's Standard Plans and Drawings for Public Improvements then in effect and uniformly applied. Nothing contained herein shall require any subsurface wet utility improvements in Alder Avenue except for utility connections that will be required for the Property. (The foregoing are the "Alder Improvements" referred to in the Development Agreement.)

** Hard Costs and Soft Costs of the Alder Improvements (other than Property frontage landscaping) are subject to reimbursement by the City in accordance with the terms of this Agreement (including, without limitation, the provisions of Section 3.5.1(a)).

For items 1 and 2 above in this Attachment No. 4, with the approval of the City (granted or denied in the City's sole and absolute discretion), Owner shall have the option to reimburse the City (instead of completing the Required Public Improvements) for the cost of constructing the Required Public Improvements in the form of an in-lieu fee, which fee shall be agreed upon by Owner and City and documented in an Operating Memorandum (as defined in this Agreement). Payment of such in-lieu fees shall fully satisfy Owner's obligation to construct the applicable Required Public Improvements.

ATTACHMENT NO. 5
BIDDING AND CONTRACT REQUIREMENTS FOR
PUBLIC IMPROVEMENTS

Bidding Phase

- A. Bidding Documents. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements and shall be submitted to the City for its prior written approval before release for bid. The City shall review and approve, conditionally approve, or disapprove the bidding documents within fifteen (15) days after receipt:
1. Unless impractical due to the nature of the Public Improvements, the bid proposal shall be unit priced rather than lump sum or time and materials.
 2. It is recommended that the bidding documents require the bidder/contractor to provide the following bonds:
 - a. Bid Bond - 10% of the amount of the bid.
 3. The bidding documents shall require the successful bidder to provide evidence of comprehensive public liability insurance in the amount of at least \$2,000,000 prior to the award of the contract.
 4. The bidding documents shall provide for monthly progress payments to the contractor (with respect to the Additional Public Improvements).
 5. The contractor shall be required to pay prevailing wages pursuant to Section 2.7 of this Agreement.
 6. The bidding documents must clearly state the time, date, and place where bids are to be submitted and opened.
 7. The bidding documents shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplementally bid, and are not eligible for public finance unless previously approved by the City's Public Works Director.
 8. The bid documents must require the contractor to provide 100% faithful performance and 100% labor/materials bonds.
 9. Owner shall keep a bidders list with e-mail addresses, and addenda should be sent via email to ensure quick receipt
 10. Conditioned bids shall not be accepted.

- B. Owner may pre-qualify bidders in accordance with California Public Contract Code Section 20101, by requiring all persons interested in bidding on any portion of the Public Improvements to submit current financial statements and a pre-qualification questionnaire in a form approved by the City, and by scoring each submission based on reasonable, objective criteria reasonably acceptable to the City. Owner must implement an appeals procedure for responding to disputes in compliance with California Public Contract Code Section 20101(d). If Owner elects to pre-qualify bidders, only those bidders who have submitted complete pre-qualification packets and obtained the minimum required score based on the objective rating system adopted by Owner (and approved by the City) shall be permitted to bid on any portion of the construction work for the Public Improvements.
- C. Owner shall keep a log of all persons obtaining pre-qualification questionnaires and/or bidding documents and all persons who submit pre-qualification questionnaires and/or bids and their mailing addresses.
- D. Addenda shall be mailed by first class mail (or submitted by confirmed electronic transmission) to all bidding document holders and the City's Public Works Director at the same time. The last addendum shall be issued no later than three (3) Business Days prior to the date of opening bids.
- E. Submitted bids shall be in sealed envelopes.
- F. Bids shall not be accepted after the stated time for submission.
- G. Bid opening shall be conducted by Owner at Owner's place of business or other site mutually acceptable to Owner and the City's Public Works Director.
- H. Sealed bids shall be opened and read aloud immediately following the submission time. The City's Public Works Director shall be invited to attend the bid opening.
- I. Conditioned bids, unless the bid proposal lists them for all to bid on, shall not be accepted.
- J. The arithmetic of the lowest bid proposals received shall immediately be checked for errors.
- K. All bids received shall be provided to the City's Public Works Director. The City's Public Works Director may, in his or her reasonable discretion, reject any and all bids that he or she determines to be nonresponsive.
- L. Award shall be made to the lowest responsible qualified bidder within five (5) Business Days after the bid opening. No fewer than three (3) bids must be received for each Construction Contract to be awarded (other than the Construction Contract between Owner and Construction Manager).
- M. A preconstruction meeting shall be held with the contractor prior to beginning the work. A City representative shall be invited to attend the meeting.
- N. The Notice to Proceed shall be issued within a reasonable period of time following the contract execution.

Construction Phase

- A. The City's Public Works Director shall be provided a copy of the construction schedule.
- B. Owner shall require the contractor to conduct weekly construction status meetings to which the City's Public Works Director shall be invited.
- C. Any additional costs incurred for the benefit of Owner, such as accelerating the construction schedule, shall not be eligible for reimbursement unless previously approved by the City's Public Works Director.
- D. Any additional construction costs incurred due solely to unexcused delays caused by Owner shall not be eligible for reimbursement under this Agreement.
- E. All contracts and construction related records shall be available to the City as and when required for the final determination of eligible costs for reimbursement.
- F. Owner must file a Notice of Completion within 30 days of the City's approval of the Public Improvements (determining substantial completion).
- G. Owner must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Owner shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice filed against Owner or the City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Owner are subject to inspection by or on behalf of the City Engineer. Construction shall be scheduled to allow for periodic inspection by the City Engineer or his or her designee. Owner's contractor will be required to provide adequate quality assurance and quality control measures to ensure all public improvements are constructed in accordance with the Standard Specifications for Public Works Construction or Caltrans Standard Specifications, as appropriate for the work to be constructed.

General

Any deviation from these rules must be approved by the Public Works Director.

ATTACHMENT NO. 6
PUBLIC IMPROVEMENT BUDGET

Construction Costs*	Construction Cost Estimates
REQUIRED PUBLIC IMPROVEMENTS	
1. Alder Improvements:**	\$150,000
2. Walnut Improvements:	\$95,000
Soft Costs - Alder Improvements**	\$25,000.00
Soft Costs – Walnut Improvements	\$15,000.00
Total	\$285,000

*The amounts set forth above for Construction Costs for the Required Public Improvements are estimates and are only provided for reference purposes. The actual Construction Costs will be obtained when bidding for the Required Public Improvements is complete.

**Regional Traffic Fee eligible for Fee Credits.

ATTACHMENT NO. 7

FAIR SHARE FEES

<u>Improvement</u>	<u>Amount</u>
Alder Avenue at SR-210 WB Ramps* Add 2 nd WB Left Turn Movement	\$1,147
Alder Avenue at SR-210 EB Ramps* Add Dedicated NB Right Turn Lane	\$8,431
Alder Avenue at Renaissance Parkway* Convert SB Right Turn Lane to Shared Through Right Lane	\$1,154
TOTAL	\$ 10,732

* As noted in the Development Agreement, payment (or receipt of credit against) of the Regional Traffic Fee and RSP Traffic Impact Fee to the City shall satisfy the Fair Share Fees outlined above.