

**CONSTRUCTION AND  
CREDIT AGREEMENT  
DEVELOPMENT IMPACT FEE PROGRAM**

**(CapRock Distribution Center III)**

This CONSTRUCTION AND CREDIT AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF RIALTO, a California municipal corporation (“**City**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Developer**”). City and Developer are sometimes hereinafter referred to individually as “**Party**” and collectively as “**Parties**”.

**RECITALS**

A. Developer is proposing to develop approximately 24.37 acres of partially improved real property located at the northeast corner of Santa Ana Avenue and Willow Avenue within the Heavy Industrial (H-IND) zone of the Agua Mansa Specific Plan in the City of Rialto, County of San Bernardino, California, and more specifically described in the legal description attached to and incorporated within this Agreement as Exhibit A (“**Property**”).

B. To facilitate development of the Property (the “**Project**”), Developer has requested from City the following approvals:

- a. Tentative Parcel Map No. 19639 (the “TPM”) which will consolidate six parcels into one 24.37 acre parcel; and
- b. Precise Plan of Design No. 2391 (the “Precise Plan”) which permits the construction of 525,110 square feet of building area on the Property, comprised of 515,110 square feet of warehouse uses and 10,000 square feet of office uses, and certain off-site public improvements.

C. The City’s conditions of approval for the Project (the “Conditions of Approval”) require Developer to, among other things, irrevocably offer to dedicate a portion of Riverside Avenue, widen and construct improvements to Riverside Avenue, relocate certain utilities, and improve certain storm drains (collectively, the “**Public Improvements**”), as generally described in Exhibit B. Pursuant to the Conditions of Approval, Developer shall prepare and submit to the City plans and specifications for the Public Improvements (together with any changes approved by City and Developer, the “**Plans and Specifications**”).

D. Chapter 3.33 of the Rialto Municipal Code establishes development impact fees (“**DIF**”) to finance public facilities in furtherance of the goals and objectives of the City’s general plan, various facility master plans, capital improvement plans, and the nexus reports described in Section 3.33.030, as they may be amended from time to time (collectively, “**Nexus Reports**”). The imposition of DIF ensures that new development in the City bears its proportionate share of the cost of public facilities necessary to accommodate such development, which thereby promotes and protects the public health, safety, and welfare.

E. Developer has paid or will pay all DIF and fair share fees as identified in Exhibit C, along with other DIF and fair share fees as required by the City.

F. Pursuant to Section 3.33.100 of the Rialto Municipal Code, Developer is eligible to receive and the City shall grant credit towards the DIF for construction of eligible portions of the Public Improvements in accordance with the Nexus Reports (the "Fee Credit"). The amount of the Fee Credit shall not exceed the amount of the DIF assessed for which the Fee Credit is granted, unless the City Council also approves a reimbursement agreement.

G. City and Developer desire to enter into this Agreement for the following purposes: (i) to provide for the timely construction and completion of the Public Improvements, (ii) to ensure that construction of the Public Improvements is undertaken in accordance with the Plans and Specifications, and (iii) to provide a means by which the Developer's costs for construction of the Public Improvements is offset against Developer's obligation to pay any applicable DIF for the Project.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and City hereby agree as follows:

## **TERMS**

**1. Incorporation of Recitals.** The Recitals above are a substantive part of this Agreement.

**2. Construction of Public Improvements.** Prior to the issuance of a Certificate of Occupancy, unless both Parties agree to an extension in writing, and except as provided in this Agreement, Developer shall construct or have constructed, at its own cost and expense, the Public Improvements in accordance with the Plans and Specifications. Developer (or its contractors) shall provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the Public Improvements.

**2.1 Pre-approval of Plans and Specifications.** Developer is prohibited from commencing work on any portion of the Public Improvements until the Plans and Specifications for that portion of the Public Improvements have been submitted to and approved by City. Approval by City shall not relieve Developer from ensuring that all Public Improvements conform to all other requirements and standards set forth in this Agreement.

**2.2 Permits and Notices.** Prior to commencing any work, Developer (through its contractors) shall, at its sole cost and expense, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer (through its contractors) shall conduct the work in full compliance with the regulations, rules, and other requirements contained in this Agreement, any applicable law, and any permit or license issued to Developer.

**2.3 Public Works Requirements.** Developer shall ensure that the bidding, awarding, and construction of the Public Improvements are undertaken as if such Public Improvements were constructed as a public works project under the direction and authority of

City, pursuant to the applicable provisions of the Public Contract Code. Thus, without limitation, Developer shall comply with the requirements in Exhibit D with respect to the construction of the Public Improvements.

(a) Developer will obtain bids for the construction of the Public Improvements in a manner which has been approved by the City. The contract or contracts for the construction of the Public Improvements will be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the Public Improvements.

(b) Developer shall require its General Contractor for the construction of the Public Improvements to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code, and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of City with respect to the construction of its public works projects or as otherwise approved by the City.

(c) All contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Public Improvements which they will construct in conformance with Section 13.0 of this Agreement.

2.4 Compliance with Plans and Specifications. The Public Improvements shall be completed in accordance with the Plans and Specifications as approved by City.

2.5 Standard of Performance. Developer and its contractors shall perform all work required in constructing the Public Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications, and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Public Improvements. All work shall be done and the Public Improvements completed as shown on the Plans and Specifications, and any changes to the Plans and Specifications mutually agreed upon by City and Developer. If Developer desires to make any changes to the Plans and Specifications, it shall provide written notice to the City of the proposed changes. City shall have ten (10) business days after receipt of such written notice to administratively approve or disapprove the changes, which approval shall not be unreasonably withheld, conditioned, or delayed. If City fails to provide written notice to Developer of its approval or disapproval of the changes within such ten (10) business day period, City will be deemed to have disapproved the changes to the Plans and Specifications. Any and all changes in the Plans and Specifications to be completed may be accomplished without first giving prior notice of those changes to Developer's surety for this Agreement.

**3. Maintenance of Improvements.** City shall not be responsible or liable for the maintenance or care of, and shall exercise no control over, the Public Improvements until the

Public Improvements are accepted by City. Developer shall have no obligation to make the Public Improvements available for public use at any time before the Public Improvements are accepted by City pursuant to Section 8 below. Prior to City's acceptance of the Public Improvements, any use by any person of all or any portion of the Public Improvements shall be at the sole and exclusive risk of Developer. Developer shall maintain all of the Public Improvements in a state of good repair until they are completed by Developer and accepted by City, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if Developer fails to do so, Developer shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may, upon written notice and Developer's failure to remedy as provided in Section 11, do all work necessary for such maintenance, and the cost of that maintenance shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance, except to the extent such damage or injury is caused by the negligence or willful misconduct of City, its elected officials, employees and/or agents.

**4. Fees and Charges.** Prior to the issuance of a Certificate of Occupancy for the Project, Developer shall pay all required DIF, fair share fees, and all other normal and customary taxes, processing fees, and charges arising out of the construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by the City. Developer shall receive such credits for the Public Improvements constructed in accordance with the provisions set forth in the Rialto Municipal Code and as set forth in this Agreement.

**5. Credits for Public Improvements.**

5.1 Required Fees. The Project is required to pay the following fees:

(a) *Storm Drain Facilities Development Impact Fee.* The requirement for Storm Drain Facilities Development Impact Fees levied in accordance with Section 3.33.270 of the Rialto Municipal Code is One Million Thirteen Thousand and Six Hundred Thirty Dollars (\$1,013,630) ("**Storm Drain Fee Obligation**").

(b) *Transportation Fair Share Contribution Fees.* The requirement for Transportation Fair Share Contribution Fees levied in accordance with Section 3.33.380 of the Rialto Municipal Code is One Million Two Hundred Twenty Nine and Six Hundred Fifty Two Dollars (\$1,229,652) ("**Fair Share Road Fee Obligation**").

The Storm Drain Fee Obligation and the Fair Share Road Fee Obligation are collectively referred to as the "**Fee Obligations.**"

5.2 Fee Credits. Credit against the Fee Obligations (the "Fee Credit") shall be applied as follows:

5.2.1 *Riverside Avenue Improvements.* The Conditions of Approval require Developer to pay the Fair Share Fee Obligation to the City for improving Riverside Avenue, particularly the widening of the bridge over the UPRR Railroad. (the "Riverside Avenue Improvements"). The City shall credit Developer's Fair Share Road Fee Obligation with

the eligible cost of the Riverside Avenue Improvements required only along the Project's frontage, including street, curb/gutter, sidewalk, street lighting, power pole / line enhancements, striping, related improvements necessitated by the widening of the roadway (excluding parkway landscaping).

5.2.2 *Relocation of Storm Drain and/or Catch Basins.* As a result of the required Riverside Avenue Improvements, the existing drainage improvements require relocation. The City shall credit Developer for the cost of completing the storm drain and/or catch basin relocations against the Storm Drain Fee Obligation.

5.2.3 *Estimated Amount of Fee Credit.* The Fee Credit shall be applied to all eligible costs actually incurred by Developer. At the time of this Agreement, the estimated amount of the cost to construct the Public Improvements is Three Hundred Ninety Six Thousand Seven Hundred Dollars (\$396,700) (collectively, the "**Estimated Credit Amount**"), as set forth in Exhibit E. The actual amount of the Fee Credits shall be calculated as provided in Sections 5.3 and 5.4.

5.2.4 *Estimated Fee Obligation.* Based upon the amounts of the Fee Obligations and the Estimated Credit Amount, the Parties estimate that, after the Fee Credit, the adjusted amount of the Fee Obligations (the "Adjusted Fee Obligations") will be One Million Eight Hundred Forty Six Thousand Two Hundred Eighty Two Dollars (\$1,846,282), which is the Fee Obligations less the Estimated Credit Amounts. The actual amount of the Adjusted Fee Payment will be calculated as provided in Sections 5.3 and 5.4 below.

5.2.5 *Other Fee Obligations.* In addition to the Fee Obligations, the Developer may owe the City additional monies for development impact fees, fair share fees, and other fees unrelated to the Public Improvements Fee Obligations.

5.3 Reconciliation; Final Offset against the Fee Obligations. Upon completion of the Public Improvements by Developer, Developer shall submit to the Public Works Director such information as the Public Works Director may require to calculate and verify the total eligible and actual costs incurred by Developer to construct the Public Improvements (the "**Verified Construction Costs**").

The term "**Actual Fee Credit**" shall refer to the amount that is equal to the Verified Construction Costs for each of the eligible improvements, subject to a maximum fee credit equal to the Fee Obligations contained in Section 5.1, and shall be used for the purposes of the final reconciliation.

If the Actual Fee Credit is less than the Estimated Credit Amount, then Developer shall pay the remaining balance to the City to fully satisfy Developer's Fee Obligations within thirty (30) days. If the Actual Fee Credit exceeds the Estimated Credit Amount, then the City shall reimburse the Developer within thirty (30) days, subject to the limitations contained in Section 5.4.

5.4 Fee Credit Limits. Notwithstanding anything to the contrary in this Section 5, the following limits apply with respect to credit and reimbursement of DIF:

5.4.1 DIF Categories. Developer acknowledges that DIF are imposed in various separate categories to fund specific public facilities. Credit against DIF may only be applied for eligible improvements identified in the specific DIF category. As an example, if Developer constructs a street improvement that is eligible for credit against the Regional Traffic Fee, Developer shall not receive credit against any other DIF (e.g., storm drainage fee) for the street improvement, provided that Developer has received credit in one specific DIF category.

5.4.2 Maximum Credit. The amount of the Actual Fee Credits shall not exceed the amount of the Verified Construction Costs for each respective DIF category as approved by the Public Works Director.

5.4.3 Soft Costs. The Public Works Director shall, in his/her sole reasonable discretion, determine the amount of reasonable soft costs eligible for reimbursement under the Fee Credit provision of Rialto Municipal Code Section 3.33.100. Such amounts may include the reasonable soft costs of the Developer related to the Public Improvements, such as indirect costs of construction, professional engineering, and design services, construction management, soils testing, administrative costs, permits, plan check fees, and inspections. For soft costs to be reimbursable to Developer pursuant to this Agreement, City must be able to verify that such soft costs are specifically attributable to the specified Public Improvements for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by the City. The total amount of the soft costs shall not exceed fifteen percent (15%) of the amount eligible for reimbursement. The Public Works Director may, in his/her reasonable discretion, reduce or disallow reimbursement for any costs he/she finds excessive or unreasonable.

5.5 Conditions Precedent to Final Credit. The City's obligation to provide fee credits for the Public Improvements pursuant to this Agreement is conditioned upon the prior satisfaction by Developer or written waiver by the City Administrator of each of the following Conditions Precedent within the times designated below:

5.5.1 Completion of Construction. Developer shall have completed the construction of the entire Project and the Public Improvements, and notices of completion shall have been recorded in relation to the Project and the Public Improvements, in accordance with California Civil Code Sections 8182 (as applicable), and thirty-five (35) days shall have elapsed since the recordation of such notices of completion. 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.

5.5.2 Submission of Bills/Invoices. Developer shall have made full and complete payment of all undisputed claims for work performed on the Public Improvements, or in the event of a dispute between Developer and the General Contractor or a subcontractor, Developer shall have obtained a commercially reasonable bond reasonably satisfactory to the City to release any applicable mechanics' lien or stop notice, and Developer 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 Public Improvements actually incurred by Developer.

5.5.3 As-Built Drawings. Developer shall have submitted two (2) sets of final as-built drawings for the Public Improvements to the Public Works Director, as provided in Section 8.

5.5.4 Acceptance of Required Public Improvements by the City. The City, through the City Council, shall have accepted title to the Public Improvements, and Developer 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 Public Improvements.

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

5.6 Median In-Lieu Fee. The City and Developer acknowledge that Developer is required to construct an 18' raised median island for Riverside Avenue along the Property frontage, but in-lieu of constructing said median island, Developer shall pay half of the cost of the median in the total amount of One Hundred Thousand Dollars (\$100,000) ("**In-Lieu Fee**"). The Developer shall pay the In-Lieu Fee prior to the issuance of a building permit for the Project.

**6. City/County Inspection of Public Improvements.** Developer shall, at its sole cost and expense, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

**7. Liens.** Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the Public Improvements, Developer shall provide to the City such evidence or proof as the City shall reasonably require that all persons, firms, and corporations supplying work, labor, materials, supplies, and equipment to the construction of the Public Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm, or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to the City a title insurance policy or other security reasonably acceptable to the City guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

**8. Acceptance of Improvements; As-Built or Record Drawings.** If the Public Improvements are completed by Developer in accordance with the Plans and Specifications, the City shall be authorized to accept the Public Improvements. The City may, in its reasonable discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements. Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of San Bernardino a notice of completion for the accepted Public Improvements in accordance with California Civil Code Section 8182 ("**Notice of Completion**"), at which time the accepted Public Improvements shall become the sole and exclusive property of City without any payment therefor. Notwithstanding the foregoing, City may not accept any Public

Improvements (or the applicable portion thereof) unless and until Developer provides two (2) sets of “as-built” or record drawings or plans to the City for all such Public Improvements (or the applicable portion thereof). The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

**9. Warranty and Guaranty.** Developer hereby warrants and guarantees all the Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the Public Improvements, for a period of one (1) year following completion of the work and acceptance by City (“**Warranty**”). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise materially unsatisfactory portion of the Public Improvements, in accordance with the Plans and Specifications. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost and expense of Developer. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer hereby agree to provide a warranty for a one (1) year period following City acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer’s warranty obligation under this section shall survive the expiration or termination of this Agreement.

**10. Administrative Costs.** If Developer fails to construct and install all or any part of the Public Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorneys’ fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

**11. Default; Notice; Remedies.**

11.1 Notice. Subject to the *force majeure* provisions of Section 15.16 below, if Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation or code, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation (“**Notice of Default**”). Developer shall substantially commence the work required to remedy the default or violation within five (5) business days of the Notice of Default. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice of Default verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City’s issuance of the Notice of Default, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs or expenses, as provided for in Section 10 of this Agreement.

11.2 Failure to Remedy; City/County Action. If the work required to remedy the noticed default or violation is not commenced within the time required under Section 11.1 of this Agreement and diligently prosecuted to completion, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its



reasonable discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost and expense of Developer and its surety, without the necessity of giving any further notice to Developer or surety. In the event City elects to complete or arrange for completion of the remaining work and the Public Improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City.

11.3 Other Remedies. No action by City pursuant to this Section 11 shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

**12. Security; Surety Bonds.** Prior to the commencement of any work on the Public Improvements, Developer or its contractor shall provide City with surety bonds in the amounts and under the terms set forth below or, at the City's request, in lieu of surety bonds, a letter of credit or letters of credit by a banking institution with a rating to be approved by the City and terms to be approved by the City ("**Security**"). The amount of the Security shall be based on the estimated actual costs (the "**Estimated Costs**") to construct the Public Improvements, as determined by City after Developer has awarded a contract for construction of the Public Improvements to the lowest responsive and responsible bidder in accordance with this Agreement. If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by City. Developer's compliance with this Section 12 shall in no way limit or modify Developer's indemnification obligation provided in Section 13 of this Agreement.

12.1 Performance Bond. To guarantee the construction of the Public Improvements and faithful performance of all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 11, and to secure the Warranty of the Public Improvements, Developer or its contractor shall provide City a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City may, in its reasonable discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than twenty percent (20%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, provided that Developer is not in default on any provision of this Agreement.

12.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer or its contractor shall provide City a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section shall be released by City six (6) months after the date City accepts the Public Improvements.

12.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to

do business in California. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer and, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the Plans and Specifications shall in any way affect its obligation on the Security.

12.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit F unless other forms are deemed acceptable by the City, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit F and incorporated herein by this reference.

13. Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence or willful misconduct of Developer in connection with the performance of this Agreement (“**Claims**”). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused by and to the extent of the negligence or willful misconduct of City, its elected officials, employees and/or agents, as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

14. Insurance.

14.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below (“**Required Insurance**”). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

14.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

14.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

14.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

14.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

14.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

14.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name City as an additional insured with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, or agents.

14.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waive all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

14.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

14.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall, to the extent available from commercially reasonable insurance providers, be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to City.

14.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A-" and FSC-VIII.

## **15. Miscellaneous.**

15.1 Assignment. Developer may assign by contract all or a portion of its rights and obligations pursuant to this Agreement to a third party purchaser of Developer ("Assignment"), subject to the approval of the City Administrator in his/her reasonable discretion. Developer and purchaser/assignee ("Assignee") shall provide to the City Administrator such reasonable proof as it may require that Assignee has the ability and financial commitment to undertake the Project and complete the Public Improvements. Developer and Assignee shall provide documentation and proof as may be deemed necessary to satisfy the City Administrator. Any assignment pursuant to this section shall not be effective unless approved by the City and Developer and Assignee have executed an assignment agreement in a form reasonably similar to the form attached hereto as Exhibit G. Upon completion of the foregoing, and upon Assignee's provisions of adequate surety bonds as required under Section 12, the City shall release Developer's surety bonds.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

15.3 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Notices. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any person shall be in writing and either served personally, communicated by fax or electronic mail, or sent by prepaid, first-class mail to the address set forth below. Notice shall be deemed communicated immediately upon personal delivery, fax or email receipt, or seventy-two (72) hours from the time of mailing if mailed as provided in this Section:

To City: City of Rialto  
150 S. Palm Avenue  
Rialto, CA 92376  
Attn: City Administrator  
Fax: (909) 820-2527

with a copy to: Aleshire & Wynder, LLP  
188881 Von Karman Ave., Suite 1700  
Irvine, CA 92612  
Attn: Fred Galante, Esq.  
Fax: (949) 223-1180  
Email: [fgalante@awattorneys.com](mailto:fgalante@awattorneys.com)

To Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.6 Construction; References; Captions. The Parties agree that the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days, unless specified therein. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.7 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.8 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.9 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.10 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.12 Governing Law; Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that

a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.13 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.15 City Officers and Employees. No officer or employee of the City shall be personally liable to Developer or any successors in interest in the event of any default or breach by the City or for any amount that may become due to Developer or any successor(s) in interest or for breach of any obligation of the terms of this Agreement. No officer or employee of Developer shall be personally liable to the City or any successor(s) in interest in the event of any default or breach by Developer or for any amount that may become due to the City or their successors in interest or for breach of any obligation of the terms of this Agreement.

15.16 Force Majeure. Developer agrees that the time within which it shall be required to perform any act under this Agreement shall not be extended except as follows: (i) the Developer is delayed by the City (including, without limitation, restrictions on priority, initiative or referendum, or moratoria), in which case Developer shall provide written notice to the City specifically describing the nature and extent of the delay caused by the City and Developer's detailed efforts to avoid such delay, which references this Section and deliver such notice within twenty (20) days of discovering such delay, and Developer's obligations shall be extended for such time as the City deems reasonable as a result of the delay if and only if Developer provides such written notice to the City within such time; or (ii) the Developer is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, processing with any governmental agencies, unusually severe weather, economic recession or depression as defined by the National Bureau of Economic Research, or any other similar causes beyond the control of Developer or without the fault of Developer. An extension of time for any such cause shall be for the period of the enforced delay equal to the number of days during which Developer's performance was delayed and shall commence to run from the time of the commencement of the cause, if written notice by Developer claiming such extension is sent to the City within twenty (20) days of knowledge of the commencement of the cause.

15.17 Entire Agreement. This Agreement contains the entire agreement between City and Developer and supersedes any prior oral or written statements or agreements between City and Developer.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY:**

CITY OF RIALTO,  
a California municipal corporation

By: \_\_\_\_\_  
Deborah Robertson, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Fred Galante, Esq., City Attorney

**DEVELOPER:**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**



## **EXHIBIT B**

### **PUBLIC IMPROVEMENTS**

“Public Improvements” as defined in the Agreement shall consist of the following:

1. Construction of approximately 465 lineal feet of new curb and gutter improvements along the Riverside Avenue frontage of the Property, including demolition and removal of existing improvements.
2. Construction of approximately 2,325 square feet of sidewalk improvements along Riverside Avenue within the parkway.
3. Relocation of electrical, phone, cable TV, fiber optic, or other dry utility facilities along Riverside Avenue necessitated by the construction of the street improvements.
4. Relocation of two existing fire hydrants.
5. Reconstruction of approximately 150 lineal feet of 24” storm drain and two catch basins on Riverside Avenue.

**EXHIBIT C**

**DEVELOPMENT IMPACT FEES**

Impact Fee	Unit	Fee/Unit	Computations	Actual Fee
Storm Drainage	525,110 sf	\$ 1,930.32 tsf	\$ 1,013,630	<b>\$ 1,013,630</b>
Fair Share Traffic	1 ls	\$ 1,229,652.00 ls	\$ 1,229,652	<b>\$ 1,229,652</b>

Note:

The Storm Drainage Fee is calculated as the greater of the fee computed based upon the size of the building or the area of the Property. The Storm Drain Fee Obligation will be computed based upon this formula at the time building permits are issued based upon the schedule of development impact fees in effect at that time. This Construction and Credit Agreement does not fix the Storm Drain Fee Obligation.

## **EXHIBIT D**

### **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 City for its prior written approval before release for bid. 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 2.3 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. Developer 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. Developer 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 City, and by scoring each submission based on reasonable, objective criteria reasonably acceptable to City. Developer must implement an appeals procedure for responding to disputes in compliance with California Public Contract Code Section 20101(d). If Developer 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 Developer (and approved by City) shall be permitted to bid on any portion of the construction work for the Public Improvements.
- C. Developer 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 Developer at Developer's place of business or other site mutually acceptable to Developer and 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.
- 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. Developer 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 Developer, 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 Developer shall not be eligible for reimbursement under this Agreement.
- E. All contracts and construction related records shall be available to City as and when required for the final determination of eligible costs for reimbursement.
- F. Developer must file a Notice of Completion within 30 days of City's approval of the Public Improvements (determining substantial completion).
- G. Developer must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Developer shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice filed against Developer or City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Developer are subject to inspection by or on behalf of the Public Works Director. Construction shall be scheduled to allow for periodic inspection by the Public Works Director or his/her designee. The Developer'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**

The Public Works Director must approve any deviation from these rules.

## EXHIBIT E

### ESTIMATED CONSTRUCTION COSTS

Scope of Work	Traffic Fair Share	Storm Drain DIF	Totals
Removal And Grading Of 465 Lineal of Curb/Gutter, 2325 SF of Sidewalk, 2 Commercial Driveways	22,000		22,000
Construct 465 Lineal Feet of Curb/Gutter	7,000		7,000
Construct 2325 Sf Of New Sidewalk	11,000		11,000
Construct (2) New Driveways For Neighbors	15,000		15,000
Remove And Replace Landscape On Riverside Avenue	15,000		15,000
Relocate Underground Fiber Optics: Includes Only Conduit & Structure	39,000		39,000
Allowance For Utility Fees	43,000		43,000
Relocate Existing Fiber Pole At South End Of Site	20,000		20,000
Relocate Existing SCE Pole At The North End Of Site	25,000		25,000
Allowance For Traffic Control	10,000		10,000
Allowance For Minor Asphalt Repair/Asphalt Transition Curb.	25,000		25,000
Relocate (2) City Fire Hydrants	17,000		17,000
Reconstruct 2 Catch Basins		25,000	25,000
Reconstruct 150 Lineal Feet Of 24" Storm Drain		13,000	13,000
Prevailing Wage Impact	68,000	10,000	78,000
	=====	=====	=====
<b>Sub-Total Hard Construction Costs</b>	<b>317,000</b>	<b>48,000</b>	<b>365,000</b>
Contingency	2.00% of Hard Costs	6,300	1,000
Insurance/Bonds	0.68% of Hard Costs	2,200	300
GC Profit/OH	6.00% of Hard Costs	19,000	2,900
General Conditions			0
<b>Total Costs</b>	<b>344,500</b>	<b>52,200</b>	<b>396,700</b>

**EXHIBIT F**

**FORMS FOR SECURITY**

[ATTACHED BEHIND THIS PAGE]

BOND NO. \_\_\_\_\_  
INITIAL PREMIUM: \_\_\_\_\_  
SUBJECT TO RENEWAL

### PERFORMANCE BOND

WHEREAS the City of Rialto has executed an agreement with \_\_\_\_\_ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Construction and Credit Agreement dated \_\_\_\_\_, (hereinafter the "Agreement"); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, \_\_\_\_\_, as Principal and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Rialto in the sum of \_\_\_\_\_ (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.



The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this \_\_\_\_ day on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

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 this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (surety) and acknowledged to me that he subscribed the name of the \_\_\_\_\_ (surety) thereto and his own name as Attorney-in-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

My Commission Expires \_\_\_\_\_

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Secretary of the corporation named as principal in the attached bond, that  
\_\_\_\_\_ who signed the said bond on behalf of the principal was  
then \_\_\_\_\_ of said corporation; that I know his signature, and  
his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in  
behalf of said corporation by authority of its governing Board.

(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

BOND NO. \_\_\_\_\_  
INITIAL PREMIUM: \_\_\_\_\_  
SUBJECT TO RENEWAL

### LABOR & MATERIAL BOND

WHEREAS the City of Rialto has executed an agreement with \_\_\_\_\_ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Credit and Construction Agreement dated \_\_\_\_\_, (hereinafter the "Agreement"); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, \_\_\_\_\_, as Principal and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Rialto and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of \_\_\_\_\_ (\$\_\_\_\_\_), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of

California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430 or 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this \_\_\_\_ day on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

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 this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me,  
\_\_\_\_\_, a Notary Public in and for said state,  
personally appeared \_\_\_\_\_, known to me (or proved to  
be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within  
instrument as the Attorney-in-Fact of the \_\_\_\_\_ (surety) and  
acknowledged to me that he subscribed the name of the \_\_\_\_\_ (surety)  
thereto and his own name as Attorney-in-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

My Commission Expires \_\_\_\_\_

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Secretary of the corporation named as principal in the attached bond, that  
\_\_\_\_\_ who signed the said bond on behalf of the principal was  
then \_\_\_\_\_ of said corporation; that I know his signature, and  
his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in  
behalf of said corporation by authority of its governing Board.

(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

## **EXHIBIT G**

### **ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the “Assignment”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by: (i) \_\_\_\_\_, a \_\_\_\_\_ (“Assignor”), and (ii) \_\_\_\_\_, a \_\_\_\_\_ (“Assignee”).

#### **RECITALS**

A. Concurrently with the execution and delivery hereof, pursuant to a certain Agreement of Purchase and Sale dated \_\_\_\_\_, \_\_\_\_\_ (the “Purchase Agreement”) between Assignor and Assignee, Assignor is conveying to Assignee all of Assignor’s right, title and interest in and to the real property described on Exhibit A attached hereto and made a part hereof (the “Property”).

B. It is the desire of Assignor to hereby sell, assign, transfer, convey, set-over and deliver to Assignee all of Assignor’s right, title and interest in and to that certain Construction and Credit Agreement between Assignor, as Developer, and the City of Rialto, a California municipal corporation, dated as of \_\_\_\_\_, 2017 (the “Agreement”).

#### **AGREEMENT**

1. Subject to the terms of the Purchase Agreement, Assignor does hereby sell, assign, transfer, set-over and deliver unto Assignee, its successors and assigns, all right, title and interest of Assignor in and to the Agreement.

2. Assignee accepts the foregoing assignment and assumes and agrees to be bound by and to perform and observe all of the obligations, covenants, terms and conditions to be performed or observed under the Agreement arising on or after the date hereof. Assignee further agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including, without limitation, attorneys’ fees and expenses) asserted against or incurred by Assignor by reason of or arising out of any failure by Assignee to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder arising in connection with the Agreement and related to the period on or after the date hereof.

3. Notwithstanding anything to the contrary set forth in this Assignment, Section \_\_\_\_\_ of the Purchase Agreement shall govern the allocation of the “Estimated Costs” and the “Credit” (as such terms are defined in the Agreement) between Assignor and Assignee.

4. This Assignment may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Assignment.



IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption to be executed as of the date first written above.

Assignor:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Assignee:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_