CONSTRUCTION FEE CREDIT AND REIMBURSEMENT AGREEMENT

DEVELOPMENT IMPACT FEE PROGRAM

Renaissance Marketplace / Bldg. 5 / Bldg. 6

This CONSTRUCTION FEE CREDIT AND REIMBURSEMENT AGREEMENT ("**Agreement**") is entered into this ___ day of _____, 2017 , by and between the CITY OF RIALTO**,** a California municipal corporation ("**City**"), and Lewis-Hillwood Rialto Company, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes hereinafter referred to individually as "**Party**" and collectively as "**Parties**".

RECITALS

A. Developer and the City are parties to that certain Second Amended and Restated Contract of Sale for Areas B, C, and D, dated September 25, 2012 (the "**BCD Agreement**"), pursuant to which the City granted to Developer an option to purchase all or a portion of certain real property that comprises or formerly comprised the Rialto Municipal Airport (the "**Airport**") on the terms and conditions set forth therein. Developer and the City also are parties to that certain Area A Contract of Sale, dated as of January 10, 2017 (the "**Area A Agreement**") which provides for the acquisition and development of that certain real property formerly owned by the Redevelopment Agency of the City of Rialto along the 210 Freeway between Ayala Drive and Locust Avenue. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in the BCD Agreement or the Area A Agreement as applicable;

B. Developer has exercised its option to purchase from the City approximately 51.5 acres of unimproved real property bounded by the Monster project to the south, Locust Avenue to the west, Linden Avenue to the east, and vacant PA 108 property to the north in the City of Rialto, County of San Bernardino, State of California and more specifically described in the legal description set forth in Exhibit "A" attached hereto and incorporated herein by this reference ("**Development Parcel A**"). Developer has also exercised its option to purchase from the City approximately 59.3 acres of unimproved real property south of the SR 210, west of Ayala Drive, and east of Linden Avenue, in the City of Rialto, County of San Bernardino, State of California and more specifically described in the legal description set forth in Exhibit "A-1" attached hereto and incorporated herein by this reference ("**Development Parcels A-1**"). Developer has exercised its option to purchase from the City approximately 58.88 acres of unimproved real property bounded by the Bldg. 5 project to the south, Locust Avenue to the west, Linden Avenue to the east, and vacant property to the north in the City of Rialto, County of San Bernardino, State of California and more specifically described in the legal description set forth in Exhibit "A-2" attached hereto and incorporated herein by this reference ("**Development Parcel A-2**").

C. Developer and Bldg 5 Project, LLC, ("**BLDG 5**") have consummated the transfer of Development Parcel A to BLDG 5. Developer, LHR Renaissance Marketplace North, LLC,

and LHR Renaissance Marketplace South, LLC (jointly, "**Renaissance Marketplace**") have consummated the transfer of Development Parcel A-1 to Renaissance Marketplace. Developer and Bldg 6 Project, LLC, ("**BLDG 6**") have consummated the transfer of Development Parcel A-2 to BLDG 6.

D. BLDG 5 has requested from City certain entitlements and/or permits for the construction of certain improvements on Development Parcel A, including a 614,848 square foot distribution warehouse and certain off-site public improvements which are more particularly described within the Conditions of Approval for Precise Plan of Design ("PPD") 2503 and the Declaration of Construction Covenants **(**the "**Warehouse Project 1**"). Renaissance Marketplace has requested from City certain entitlements and/or permits for the construction of certain improvements on Development Parcel A-1, including a 428,593 square foot retail center and certain off-site public improvements which are more particularly described within the Conditions of Approval for PPD MC2017-0006, TPM No. 19779, and the Declaration of Construction Covenants **(**the "**Retail Project**"). BLDG 6 has requested from City certain entitlements and/or permits for the construction of certain improvements on Development Parcel A-2, including a 855,000 square foot distribution warehouse and certain off-site public improvements which are more particularly described within the Conditions of Approval for PPD 2017-0051 and the Declaration of Construction Covenants **(**the "**Warehouse Project 2**").

E. As a condition to City's approval of the Warehouse Project 1, Warehouse Project 2, and Retail Project (sometimes collectively, "**Project(s)**"), City has required Developer to, among other things, widen and construct Renaissance Parkway, a public street within the City (the "**Renaissance Improvements**") widen and construct Linden Avenue, a public street within the City (the **"Linden Improvements"**), install storm drain improvements in Renaissance Parkway and Linden Avenue, (the "**Storm Drain Improvements")**, install an off-site sewer system in Renaissance Parkway and Linden Avenue ("**Sewer Line Improvements**"), and relocate the waterline improvements in Renaissance Parkway and Linden Avenue (**"Waterline Relocation Improvements**"), and modify a traffic signal at Renaissance Parkway and Linden Avenue (the "**RSP Traffic Improvements**") all of which collectively may be referred to herein as the "**Public Improvements**", as described on the approved plans and specifications attached hereto as Exhibit B (such plans and specifications, with any changes approved by City and Developer, are collectively referred to herein as the "**Plans and Specifications**").

F. 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.

G. Developer, BLDG 5, BLDG 6 or Renaissance Marketplace has paid or will pay all DIF and fair share fees as identified in **Exhibit C** related to the implementation of this Agreement, except as they may be adjusted pursuant to this Agreement.

H. Pursuant to Section 3.33.100 of the Rialto Municipal Code, Developer, BLDG 5, BLDG 6 or Renaissance Marketplace may be eligible to receive and the City may grant credit towards the DIF for construction of eligible public improvements or facilities as contained in and in accordance with the Nexus Reports; provided, however, the amount of the fee credit or reimbursement shall not exceed the amount of the DIF assessed for which the fee credit or reimbursement is granted, unless the City Council also approves a reimbursement agreement.

I. City and Developer now 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 bidding and contracting procedures, and (iii) to provide a means by which the Developer's costs for construction of the Public Improvements is offset against the obligation of the Developer, BLDG 5, BLDG 6, and/or Renaissance Marketplace to pay the applicable Regional Traffic Development Impact Fee ("**Traffic Fee**"), the Storm Drain Facilities Development Impact Fee ("**Storm Drain Fee**") the Sewage Collection Facilities Development Impact Fee ("**Wastewater Fee**"), the Domestic and Recycled Water Facilities Development Impact Fee ("**Water Fee**"), and the Renaissance Specific Plan Fair Share Traffic Mitigation Fee ("**RSP Traffic Fee**") for the Project, in accordance with the Nexus Reports.

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 Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2. Construction of Public Improvements. Prior to the issuance of a Certificate of Occupancy, unless both parties agree to an extension in writing, 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 all Plans and Specifications for 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) Prior to soliciting or awarding the bid for any portion of the Public Improvements, Developer shall submit the bid packet and a set of construction drawings signed by Developer or another authorized representative designated by Developer for the work being bid to the City's Public Works Director/City Engineer ("**Public Works Director**") for review and approval, which approval shall be granted or denied within fifteen (15) calendar days after submission of such bid packet. If the Public Works Director denies approval of such bid packet and construction drawings, the Public Works Director shall specify the reasons for such disapproval and Developer shall resubmit a revised bid packet for review and approval until such approval is obtained.

(b) Developer shall obtain bids for the construction of the Public Improvements in a manner which has been approved by the Public Works Director. Developer shall provide the Public Works Director with copies of all bids received from contractors and a bid summary in a form approved by the Public Works Director to assure that the contractor/subcontractors adhere to the applicable legal requirements for public works projects. The contract or contracts for the construction of the Public Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the Public Improvements. Developer shall enter into a construction contract with each contractor 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 bid, and the terms of each Construction Contract entered into by Developer and each contractor/subcontractor shall be reasonably acceptable to the Public Works Director. Developer shall submit to City a copy of each executed Construction Contract for the Public Improvements within fifteen (15) days after execution thereof.

(c) Developer's general contractor for the construction of the Public Improvement ("**General Contractor**") shall 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 directed by the Public Works Director.

(d) 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 14 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, 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 subsequent alterations thereto mutually agreed upon by City and Developer. If Developer desires to make any alterations to the Plans and Specifications, it shall provide written notice to the City of such proposed alterations. City shall have ten (10) business days after receipt of such written notice to administratively approve or disapprove such alterations, 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 alterations within such ten (10) business day period, City will be deemed to have disapproved such alterations to the Plans and Specifications. Any and all alterations in the Plans and Specifications and the Public Improvements to be completed may be accomplished without first giving prior notice thereof 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 such 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. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Improvements. 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 it shall fail to do so, it 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 thereof 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. Developer shall pay all required 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, development impact fees, and other service or impact fees established by the City.

Developer shall receive such credits and/or reimbursements 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. Fees Credit and Reimbursement.

5.1 Regional Traffic Fee, Storm Drain Fee, Wastewater Fee, Water Fee, and RSP Traffic Fee. **Exhibit C** provides an accounting of the subject DIF and fair share fees that Developer has actually paid or is expected to pay as of the date of this Agreement. The total amount of Regional Traffic Impact Fee either paid or estimated as owing to the City for the Project is Seven Million Five Hundred Seventy Eight Thousand Six Hundred Five Dollars ($7,578,605) (the "**Regional Traffic Fee Obligation**"). The total amount of the Storm Drain Fee either paid or owing to the City for the Project is Five Million Three Hundred Twenty Eight Thousand Nine Hundred Fifty Three Dollars ($5,328,953) (the "**Storm Drain Fee Obligation**"). The total amount of the Wastewater Fee either paid or owing to the City for the Project is Two Hundred Forty Thousand One Hundred Eighty-Eight Dollars ($240,188) (the **"Wastewater Fee Obligation"**). The total amount of the Water Fee either paid or owing to the City for the project is Six Hundred Twenty Nine Thousand Three Hundred Eighty Two Dollars ($629,382) (the "**Water Fee Obligation**"). The total amount of the RSP Traffic Fee either paid or owing to the City for the Project is One Hundred Eighty-Eight Thousand Two Hundred Five Dollars ($188,205) (the "**RSP Traffic Fee Obligation**"). The Regional Traffic Fee Obligation, the Storm Drain Fee Obligation, the Wastewater Fee Obligation, the Water Fee Obligation, and the RSP Traffic Fee Obligation are, collectively, the "**Fee Obligations**". The Fee Obligations may adjust due to changes in the Project scope or the applicable rate for each Fee Obligation.

5.1.1 Credit Offset Against Fee Obligations. In consideration for Developer's obligation under this Agreement to construct the Public Improvements (if not constructed by others), the City shall apply a credit to offset the Fee Obligations (the "**Fee Credits**"). At the time of this Agreement, the estimated cost to construct the Public Improvements is as follows: Five Million Seven Hundred Twenty-Three Thousand Dollars ($5,723,000) for the Renaissance and Linden Improvements; Five Million Nine Hundred Ninety-Eight Thousand Dollars ($5,998,000) for Storm Drain Improvements; One Million Two Hundred Sixty Seven Thousand Dollars ($1,267,000) for Sewer Line Improvements; and One Million Three Hundred Thirty Fourt Thousand Dollars ($1,334,000) for the Waterline Relocation Improvements, and Two Hundred Twenty Eight Thousand Dollars for the RSP Traffic Improvements as set forth in Exhibit E (collectively, the "**Estimated Credit Amounts**"). The actual amount of such credit and, if applicable, any reimbursement amount shall be calculated as provided in Sections 5.2 and 5.3.

5.1.2 Developer Prior Payment of Fee Obligations. The Developer, BLDG 5, BLDG 6, or Renaissance Marketplace previously paid to the City the amount of Four Million One Hundred Fifteen Thousand Five Hundred Seventy Four Dollars ($4,115,574) toward the Regional Traffic Fee Obligation, Three Million Four Hundred Thirty Two Thousand Six Hundred Forty Two Dollars ($3,432,642) toward the Storm Drain Fee Obligation, One Hundred Thirty Seven Thousand Nine Hundred Ninety Four Dollars ($137,994) toward the Wastewater Fee Obligation, Six Hundred Twenty Nine Thousand Three Hundred Eighty Four Dollars ($629,384) toward the Water Fee Obligation, and Three Hundred Fifty Thousand Seven Hundred

Dollars ($350,700) toward the RSP Traffic Fee Obligation (the "Prior Payments"). These Prior Payments factor into the computations to determine the Estimated Credit Amount and/or Estimated Reimbursement Amount.

5.1.3 Application of the Estimated Credit/Reimbursement Amount Against the Fee Obligations. In consideration for Developer's obligation under this Agreement to construct the Public Improvements and acknowledging the Prior Payments, the City shall grant the following credits and/or reimbursements to Developer, BLDG 5, BLDG 6, or Renaissance Marketplace:

(i) The City shall grant Developer a full credit when due for the Regional Traffic Impact Fee related to the Bldg 6 Project (estimated at $2,394,000.00), reimburse Developer the amount of Three Million Sixty Four One Hundred Seventy Nine and Dollars ($3,064,179.00) from Prior Payments, and grant additional credits for the Retail Project in the amount of Two Hundred Sixty Four Thousand Eight Hundred Twenty One Dollars ($264,821.00) – the City shall retain the amount of One Million Eight Hundred Fifty Five Thousand Six Hundred Five Dollars ($1,855,605.00), which is equal to the Regional Traffic Fee Obligation less the Estimated Credit Amount;

(ii) The City shall grant the Developer a full credit when due for the Storm Drain Fee related to the Bldg 6 Project in the amount of One Million Eight Hundred Ninety Six Thousand Three Hundred Eleven Dollars ($1,896,311) and reimburse the Developer the amount of Three Million Four Hundred Thirty Two Thousand Six Hundred Forty Two Dollars ($3,432,642) from Prior Payments, leaving an Estimated Reimbursement Amount due from the City of Six Hundred Sixty Nine Thousand Two Hundred Sixty Nine Dollars ($669,269.00) for the Storm Drain Improvements – which is equal to the Estimated Credit Amount less the Storm Drain Fee Obligation;

(iii) The City shall grant the Developer a full credit when due for the Wastewater Fee related to the Bldg 6 Project in the amount of One Hundred Two Thousand One Hundred Ninety Four Dollars ($102,194) and reimburse the Developer $137,994 from Prior Payments, leaving an Estimated Reimbursement Amount of One Million Twenty Six Thousand Eight Hundred Twelve Dollars ($1,026,812).

(iv) The City shall reimburse the Developer Six Hundred Twenty Nine Thousand Three Hundred Eighty Four Dollars ($629,384) from Prior Payments for Water Fees, leaving an Estimated Reimbursement Amount of Seven Hundred Twelve Thousand Four Hundred Seventy Three Dollars ($712,473).

(v) The City shall grant the Developer a full credit when due for the RSP Traffic Fee related to the Bldg 6 Project in the amount of Ninety Eight Thousand Seven Hundred Twenty Six Dollars ($98,726.00) and reimburse the Developer One Hundred Twenty Nine Thousand Two Hundred Seventy Four ($129,724.00) from RSP Traffic Fees previously paid -- the City shall retain the amount of Two Hundred Twenty One Thousand Four Hundred Twenty Six Dollars ($221,426.00), which is equal to the RSP Traffic Fee Obligation less the Estimated Credit Amount

The Estimated Credit Amounts that exceed the Fee Obligations may be reimbursed to Developer as provided in Sections 5.2 and 5.3 ("**Estimated Reimbursement Amounts**").

5.2 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 Actual Fee Credits and, if applicable, Actual Reimbursement Amounts owed to Developer for construction of the Public Improvements shall be equal to the Verified Construction Costs, subject to the limits contained in Section 5.3, and shall be used for the purposes of the final reconciliation.

If the Verified Construction Costs are less than the Fee Credits, then Developer shall pay the remaining balance to the City to fully satisfy Developer's Fee Obligations within thirty (30) days. If the Verified Construction Costs exceed the Fee Credits, then the City shall reimburse the Developer within thirty (30) days, subject to the limitations contained in Section 5.3.

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

5.3.1 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.

5.3.2 Maximum Credit/Reimbursement. The amount of the Actual Fee Credits and, if applicable, Reimbursement Amounts shall not exceed the amount of the Verified Construction Costs for each respective DIF category as approved by the Public Works Director.

5.3.3 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 City related to the 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.

5.3.4 Reimbursement of Future Development Impact Fees. In the event that the City has a reimbursement obligation under this Section 5, the City may elect, exercisable

by written notice delivered to Developer at the time such reimbursement is due (a "**Deferral Notice**"), to defer the payment of such amounts until the time the funds become available from Developer's future obligations for Storm Drain Fees, Wastewater Fees, and Water 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 Developer for the Deferral Amount. Such Deferral Amount shall not accrue interest. Upon written request from Developer from time to time, the City shall execute a statement prepared by Developer acknowledging the then outstanding Deferral Amount as of the date of such request (a "**Deferral Amount Statement**"). Developer (or any affiliate of Developer) may elect, by written notice delivered to the City (an "**Offset Notice**"), to offset such Deferral Amounts against amounts that become due to the City in the future as Storm Drain Fees, Wastewater Fees, Water Fees, and/or the RSP Traffic Fees with respect to any project developed by Developer within the Renaissance Specific Plan subject to the BCD Agreement and the Area A Agreement. Developer'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 Developer, only notice to, and not consent from, the City shall be required) that may owe amounts to the City in the future as Storm Drain Fees, Wastewater Fees, Water Fees, and/or the RSP Traffic Fees , which transfer shall be effective and honored by the City upon receipt of a notice from Developer to the City (an "**Offset Transfer Notice**") setting forth the Deferral Amount transferred and the transferee of such offset right. Notwithstanding the foregoing or anything else in this Agreement to the contrary, the City shall be obligated to pay the entire Deferral Amount by no later than the date which is one (1) year after the date on which the reimbursement was initially due (the "**Outside Reimbursement Date**"), it being understood that in no event shall the City have the right to defer the payment of any reimbursement amounts beyond the Outside Reimbursement Date.

5.4 Conditions Precedent to Final Credit or Reimbursement. The City's obligation to provide fee credits or reimbursements 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:

5.4.1 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.

5.4.2 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.

5.4.3 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.

5.4.4 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.

5.4.5 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.

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 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. 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 solely and exclusively by the negligence or willful misconduct of City, 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 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 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 waives 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

To Developer: Lewis-Hillwood Rialto Company, LLC
1156 N. Mountain Avenue
Upland, CA 91786
Attn: John M. Goodman
Telephone: (909) 985-0971

With a copy to: General Counsel
Lewis Management Corp.
1156 N. Mountain Avenue
Upland, CA 91786
Telephone: (909) 985-0971

With a copy to: Hillwood Development Company
911 Via Piemonte, Suite 175
Ontario, CA 91764
Attn: John Magness
Telephone: (909) 382-2154

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, 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:

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

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

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

By:_____

Name:_____

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

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

By:_____

Name:_____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Development Parcel A

EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

Development Parcel A-1

EXHIBIT A-2

LEGAL DESCRIPTION OF PROPERTY

Development Parcel A-2

EXHIBIT B

PLANS AND SPECIFICATIONS

[ATTACHED BEHIND THIS PAGE]

EXHIBIT C

DEVELOPMENT IMPACT FEES

Summary of Fee Credits for Bldg 6, Reimbursement of Prior Fees Paid, and Estimated Reimbursement Amounts

		Fund 230 Drainage	Fund 250 Traffic	Fund 660 Sewer	Fund 670 Water	Fund 301 RSP Traffic
Estimated Credit Amount	**A**	**$ 5,998,000**	**$ 5,723,000**	**$ 1,267,000**	**$ 1,334,000**	**$ 228,000**
Street Improvements						
Renaissance Parkway Street Improvements			$ 2,879,000			
Renaissance Parkway Median Improvements						
Linden Avenue Street Improvements			$ 1,329,000			
Traffic Signals			$ 172,000			$ 228,000
Other Improvements			$ 1,343,000			
Storm Drain Improvements						
Line A/Line B Improvements		$ 3,689,000				
Thompson Pipe Purchase		$ 1,534,000				
Cactus Basin Improvements		$ 775,000				
Water System Improvements					$ 1,334,000	
Sewer System Improvements				$ 1,267,000		
Estimated Future Fees Due/Credits	**B**	**$ 1,896,311**	**$ 4,514,426**	**$ 102,194**	**$ -**	**$ 98,726**
Building 5		$ -	$ -	$ -	$ -	$ -
Building 6		$ 1,896,311	$ 2,394,000	$ 102,194	$ -	$ 98,726
Retail		$ -	$ 2,120,426	$ -	$ -	$ -
Potential Reimbursement Amount	**C**	**$ 4,101,689**	**$ 1,208,574**	**$ 1,164,806**	**$ 1,334,000**	**$ 129,274**
Prior Fees Actually Paid	**D**	**$ 3,432,642**	**$ 3,064,179**	**$ 137,994**	**$ 629,384**	**$ 350,700**
Building 5		$ 1,608,125	$ 1,721,574	$ 62,135	$ -	$ 89,479
Building 6		$ -	$ -	$ -	$ -	$ -
Retail		$ 1,824,517	$ 1,342,605	$ 75,859	$ 629,384	$ 261,221
Computation of Bldg 6 Credits, Reimbursements from Prior Fees Paid, and Estimated Reimbursement Amounts						
Total Credits to LHR at Bldg 6 BP Issuance	B	$ 1,896,311	$ 4,514,426	$ 102,194	$ -	$ 98,726
Reimburse LHR Prior Payments	D	$ 3,432,642	$ 2,259,969	$ 137,994	$ 629,384	$ 129,274
Total Credits & Reimbursements to LHR	B+D	$ 5,328,953	$ 6,774,395	$ 240,188	$ 629,384	$ 228,000
Estimated Credit Amount	A	$ 5,998,000	$ 5,723,000	$ 1,267,000	$ 1,334,000	$ 228,000
Estimated Reimbursement Amount	C-D if >0	$ 669,047	$ (1,051,395)	$ 1,026,812	$ 704,616	$ -
Estimated Fee Obligation	B+D=E	$ 5,328,953	$ 7,578,605	$ 240,188	$ 629,384	$ 449,426
Estimated City Retained Fees	E-A	$ -	$ 1,855,605			$ 221,426

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

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

EXHIBIT E

ESTIMATED CONSTRUCTION COSTS

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 **LEWIS-HILLWOOD RIALTO COMPANY, LLC , a Delaware limited liability company** (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 Credit and Reimbursement 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 **LEWIS-HILLWOOD RIALTO COMPANY, LLC , a Delaware limited liability company** (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:_____