RECORDING REQUESTED BY:

City of Rialto

MAIL TAX STATEMENTS TO AND WHEN RECORDED MAIL TO:

Lewis-Hillwood Rialto Company, LLC c/o Lewis Management Corp. Attn: Erren O'Leary 1156 N. Mountain Ave. Upland, CA 91786-3633

> This document is exempt from payment of a recording fee pursuant to Government Code Section 27383

EASEMENT

This EASEMENT (this "<u>Agreement</u>") is entered into as of ______, 20____ by and between AYRES HOTEL-RIALTO, L.P., a California limited partnership ("<u>Grantor</u>") and CITY OF RIALTO, a California general law city ("<u>Grantee</u>").

RECITALS

A. Grantor is the owner of that certain real property described in <u>Exhibit "A"</u> attached hereto (the "<u>Burdened Property</u>").

B. Grantee is the owner of that certain real property described in <u>Exhibit "B"</u> attached hereto (the "<u>Benefited Property</u>"), immediately adjacent to the Burdened Property.

C. DBA III, LLC, a California limited liability company ("<u>DBA</u>"), as buyer, and LEWIS-HILLWOOD RIALTO COMPANY, LLC, a Delaware limited liability company ("<u>LHR</u>"), as seller, entered into that certain Purchase and Sale Agreement dated December 19, 2017, as amended (the "<u>Purchase Agreement</u>"), and DBA subsequently assigned its interest in the Purchase Agreement to Grantor.

D. Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, certain easements and rights in a portion of the Burdened Property as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. <u>Grant of Easement</u>. Grantor hereby grants to Grantee, for the use and enjoyment by Grantee and by Grantee's respective lessees, sublessees, employees, invitees, guests, successors and assigns, a non-exclusive easement (the "<u>Easement</u>") upon, over and across that

portion of the Burdened Property depicted and described in <u>Exhibit "C"</u> attached hereto (the "<u>Easement Area</u>"), subject to any covenants, conditions, restrictions, reservations, easements, and rights of way, if any, for pedestrian and vehicular ingress, egress and access purposes between Linden Avenue and the Benefited Property.

2. <u>Character of Easement</u>. The Easement shall be appurtenant to each of the Benefited Property and the Burdened Property and shall be binding upon and run with the Benefited Property and the Burdened Property regardless of a transfer of ownership of the Benefited Property and the Burdened Property.

3. <u>Duration of Easement</u>. The Easement shall be effective as of the date of recordation of this Agreement in the Official Records of San Bernardino County, California (the "<u>Official Records</u>"), and shall, along with this Agreement, run with the land until such time as the owner of the Benefited Property and the owner of the Burdened Property record a written termination of the Easement and this Agreement in the Official Records.

4. <u>Construction of Driveways</u>. Certain driveway improvements shall be constructed in the Easement Area to serve both the Benefited Property and the Burdened Property (the "<u>Driveway Improvements</u>") pursuant to the terms of the Purchase Agreement.

5. <u>Easement Area Maintenance</u>. Grantor shall maintain the Driveway Improvements in reasonably good and safe condition and cause necessary repairs and alterations to be made thereto. All such repairs and replacements shall be in compliance with all applicable laws, ordinances, rules and regulations. Such construction, repair, replacement or maintenance of the Driveway Improvements shall not unreasonably impede the use of the Burdened Property. Grantor and Grantee shall each bear one-half of the costs for the maintenance, repair and replacement of the Driveway Improvements, and shall use commercially reasonable efforts to coordinate and cooperate with each other with respect to the timing of such maintenance, repair and replacement. Grantor, from time to time, shall submit an invoice to Grantee detailing the costs for maintenance, repair and replacement of the Driveway Improvements, and shall provide, upon request, such supporting documentation as Grantor may reasonably request. Grantee shall reimburse Grantor for one-half of such costs no later than sixty (60) days following Grantee's receipt of such invoice and reasonably requested supporting material.

6. <u>Access to Easement Area</u>. Grantor shall provide Grantee and Grantee's respective lessees, sublessees, employees, invitees, and guests with unlimited and unburdened access to the Benefited Property via the Easement Area. The Easement Area shall not be used for commercial truck access to the Benefitted Property.

7. <u>No Relocation</u>. Grantor shall not have the right to relocate the Easement Area.

8. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement between Grantor and Grantee relating to the Easement. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Grantor and Grantee and recorded in the Official Records. Furthermore, by signing this

Agreement, Grantor represents and warrants to Grantee that Grantor is duly authorized to enter into this Agreement.

9. <u>Binding Effect</u>. This Agreement shall be binding on the Grantor and the Grantee and their respective successors and assigns, and on all parties having or acquiring any right, title, interest or estate in the Benefited Property or the Burdened Property, respectively, or any portions thereof.

10. <u>No Partnership, Joint Venture or Principal-Agent Relationship</u>. Neither anything in this Agreement nor any acts of Grantor or Grantee shall be deemed by Grantor, Grantee or by any third party to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties hereto.

11. <u>Severability</u>. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

12. <u>Insurance</u>. From and after the date hereof, Grantee, at its sole cost, shall obtain and keep in force at all times a policy or policies (which may be a combination of primary coverage and umbrella policies) of commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the aggregate, covering liabilities for personal injury, death and property damage arising out of activities on or about the Easement Area and/or the Driveway Improvements, which policy shall: (i) include Grantor as an additional insured pursuant to a valid endorsement; (ii) be underwritten by an insurance company having a Best's rating of A-/VII or better; (iii) include contractual liability coverage with respect to Grantee's indemnification obligations hereunder; (iv) not be cancelable or subject to amendment without at least ten (10) days' advance written notice to Grantor; and (v) be primary and noncontributing with any other insurance available to Grantor.

13. <u>Indemnity</u>. Grantee hereby agrees that it shall protect, indemnify, defend and hold harmless the Grantor, and Grantor's officers, agents, attorneys, affiliates, employees, contractors, consultants and representatives, from and against any and all actual or potential claims, proceedings, lawsuits, liabilities, damages, injuries, deaths, losses, fines, penalties, judgments, liens (including mechanic's and materialman's liens), awards, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, that arise out of, or relate in any way to, the use of Easement Area and/or the Driveway Improvements by Grantee and Grantee's respective lessees, sublessees, employees, agents, contractors, invitees, or guests. The provisions of this Section shall survive the termination of this Agreement.

14. <u>Governing Law</u>. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

15. <u>Default Shall Not Permit Termination of Agreement</u>. No default under this Agreement shall entitle any party to cancel or otherwise rescind this Agreement, provided,

however, that this limitation shall not affect any other rights or remedies that the parties may have by reason of any default under this Agreement, including without limitation, the taking of any remedial action as may be necessary to enforce compliance with this Agreement.

16. <u>Right to Enjoin</u>. In the event of any violation or threatened violation of any of the provisions of this Agreement by any party, each other party directly affected by such violation or threatened violation shall have the right to (a) apply to a court of competent jurisdiction for a restraining order or an injunction against such violation or threatened violation, which restraining orders or injunctions shall be obtainable upon proof of violation or threatened violation and without the necessity of proof of inadequacy of legal remedies or irreparable harm, or (b) pursue an action for specific performance.

17. <u>Attorneys' Fees</u>. If any legal action or proceeding arising out of or relating to this Agreement is brought by any party to this Agreement against any other party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

18. <u>Further Assurances</u>. Grantor and Grantee agree from time to time to execute and deliver such further documents and instruments, and to take such further actions, as shall be reasonably necessary or appropriate to carry out the intent and purposes of this Agreement.

19. <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which is deemed an original and all of which, when taken together constitute one and the same instrument.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year hereinabove written.

"Grantor"

AYRES HOTEL-RIALTO, L.P., a California limited partnership

By: DBA III, LLC, a California limited liability company, its general partner

By: _____

Name: Donald B. Ayres, III Title: Manager

ACKNOWLEDGMENT

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

State of California) County of _____)

On _____, before me, ______(insert name of notary)

Notary Public, personally appeared

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

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

WITNESS my hand and official seal.

Signature_____

(Seal)

[Signatures Continued on Following Page]

"Grantee"

CITY OF RIALTO, a California general law city

Date:_____

By:_____

City Administrator

ATTEST:

By:____

Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By:___

Fred Galante, City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF BURDENED PROPERTY

THAT PORTION OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE SURVEYOR GENERAL, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE EASTERLY LINE OF SAID NORTHEAST 1/4 OF SECTION 33, ALSO BEING THE CENTERLINE OF LINDEN AVENUE, SAID POINT BEING DISTANT THEREON SOUTH 00° 17' 49" EAST 531.05 FEET MEASURED ALONG SAID EASTERLY LINE FROM THE NORTHEAST CORNER OF SAID NORTHEAST 1/4 OF SECTION 33;

THENCE SOUTH 89° 41' 09" WEST 43.67 FEET TO A POINT ON THE WESTERLY LINE OF LINDEN AVENUE AS DEDICATED PER DOCUMENT RECORDED JULY 28, 2016 AS DOCUMENT NO. 2016-0303163 OF OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING THE **POINT OF BEGINNING**;

THENCE SOUTH 89° 41' 09" WEST 78.55 FEET;

THENCE NORTH 00° 18' 51" WEST 30.63 FEET;

THENCE SOUTH 89° 41' 09" WEST 365.03 FEET;

THENCE NORTH 00° 01' 30" EAST 98.11 FEET;

THENCE NORTH 17° 31' 20" WEST 25.76 FEET;

THENCE NORTH 00° 19' 57" WEST 142.85 FEET TO A POINT IN THE SOUTHERLY LINE OF RENAISSANCE PARKWAY, SAID SOUTHERLY LINE BEING PARALLEL AND CONCENTRIC WITH AND DISTANT SOUTHERLY 54.00 FEET MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF RENAISSANCE PARKWAY AS SHOWN ON RECORD OF SURVEY 08-088, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED BOOK 140, PAGES 35 THROUGH 51, INCLUSIVE, OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 1750.63 FEET, A RADIAL LINE TO THE BEGINNING OF SAID NON-TANGENT CURVE BEARS NORTH 05° 09' 02" WEST;

THENCE EASTERLY ALONG SAID NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 04° 50' 58", AN ARC LENGTH OF 148.17 FEET;

THENCE CONTINUING EASTERLY ALONG SAID PARALLEL LINE, NORTH 89° 41' 56" EAST 280.54 FEET;

THENCE SOUTH 45° 08' 39" EAST 28.21 FEET TO A LINE PARALLEL WITH AND DISTANT WESTERLY 46.00 FEET MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE OF SAID NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 33;

THENCE SOUTHERLY ALONG LAST MENTIONED PARALLEL LINE AND SAID WESTERLY LINE OF LINDEN AVENUE, SOUTH 00° 17' 49" EAST 180.24 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 1500.00 FEET; THENCE SOUTHERLY ALONG SAID WESTERLY LINE AND SAID TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 01° 39' 34", AN ARC LENGTH OF 43.44 FEET;

THENCE CONTINUING SOUTHERLY ALONG SAID WESTERLY LINE, SOUTH 01° 57' 22" EAST 58.71 FEET TO THE **POINT OF BEGINNING**.

EXHIBIT "B"

LEGAL DESCRIPTION OF BENEFITED PROPERTY

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO GOVERNMENT TOWNSHIP PLAT, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF SECTION 33, ALSO BEING THE CENTERLINE OF LINDEN AVENUE, SAID POINT BEING DISTANT THEREON SOUTH 00° 17' 49" EAST 531.05 FEET MEASURED ALONG SAID EASTERLY LINE FROM THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER OF SECTION 33;

THENCE SOUTH 89° 41' 09" WEST 43.67 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89° 41' 09" WEST 78.55 FEET;

THENCE NORTH 00° 18' 51" WEST 30.63 FEET;

THENCE SOUTH 89° 41' 09" WEST 365.03 FEET;

THENCE NORTH 00° 01' 30" EAST 98.11 FEET;

THENCE NORTH 17° 31' 20" WEST 25.76 FEET;

THENCE NORTH 00° 19' 57" WEST 142.85 FEET TO A POINT IN THE SOUTHERLY LINE OF RENAISSANCE PARKWAY, SAID SOUTHERLY LINE BEING PARALLEL AND CONCENTRIC WITH AND DISTANT SOUTHERLY 54.00 FEET MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF RENAISSANCE PARKWAY AS SHOWN ON RECORD OF SURVEY 08-088, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED BOOK 140, PAGES 35 THROUGH 51, INCLUSIVE, OF RECORDS OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 1750.63 FEET, A RADIAL LINE TO THE BEGINNING OF SAID NON-TANGENT CURVE BEARS NORTH 05° 09' 02" WEST;

THENCE WESTERLY ALONG SAID NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 11° 42' 49", AN ARC LENGTH OF 357.90 FEET;

THENCE SOUTH 73° 08' 09" WEST 654.05 FEET TO THE BEGINNING OF TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 1858.63 FEET;

THENCE WESTERLY ALONG SAID TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 16° 34' 05", AN ARC LENGTH OF 537.46 FEET;

THENCE SOUTH 89° 42' 14" WEST 573.55 FEET;

THENCE SOUTH 51° 01' 06" WEST 32.03 FEET TO A LINE PARALLEL WITH DISTANT EASTERLY 42.00 FEET MEASURED AT RIGHT ANGLES FROM THE WESTERLY LINE OF SAID NORTHEAST QUARTER;

THENCE SOUTHERLY ALONG SAID PARALLEL LINE, SOUTH 00° 20' 18" EAST 388.95 FEET

TO THE SOUTHERLY LINE OF PARCEL 2 OF PARCEL MAP NO. 11101, IN SAID CITY, COUNTY AND STATE, AS PER MAP FILED IN BOOK 136, PAGE 34 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE EASTERLY ALONG SAID SOUTHERLY LINE AND ITS EASTERLY PROLONGATION NORTH 89° 40' 42" EAST 1279.32 FEET;

THENCE NORTH 00° 19' 03" WEST 47.64 FEET TO THE SOUTHERLY LINE OF THE NORTH 263.79 FEET OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER;

THENCE EASTERLY ALONG LAST MENTIONED SOUTHERLY LINE, NORTH 89° 41' 09" EAST 1281.34 FEET TO THE WESTERLY LINE OF LINDEN AVENUE AS DEDICATED PER GRANT OF RIGHT OF WAY RECORDED JULY 28, 2016 AS DOCUMENT NO. 2016-0303163 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTHERLY ALONG SAID WESTERLY LINE OF LINDEN AVENUE, NORTH 00° 17' 49" WEST 246.07 FEET TO THE BEGINNING OF TANGENT CURVE, CONCAVE WESTERLY AND HAVING A RADIUS OF 1489.00 FEET;

THENCE CONTINUING NORTHERLY ALONG SAID WESTERLY LINE OF LINDEN AVENUE AND SAID TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 01° 39' 33", AN ARC LENGTH OF 43.12 FEET;

THENCE CONTINUING NORTHERLY ALONG SAID WESTERLY LINE OF LINDEN AVENUE, NORTH 01° 57' 22" WEST 105.24 FEET TO THE **POINT OF BEGINNING**.

EXHIBIT "C"

LEGAL DESCRIPTION AND DEPICTION OF EASEMENT AREA

THAT PORTION OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE SURVEYOR GENERAL, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE EASTERLY LINE OF SAID NORTHEAST 1/4 OF SECTION 33, ALSO BEING THE CENTERLINE OF LINDEN AVENUE, SAID POINT BEING DISTANT THEREON SOUTH 00° 17' 49" EAST 531.05 FEET MEASURED ALONG SAID EASTERLY LINE FROM THE NORTHEAST CORNER OF SAID NORTHEAST 1/4 OF SECTION 33;

THENCE SOUTH 89° 41' 09" WEST 43.67 FEET TO A POINT ON THE WESTERLY LINE OF LINDEN AVENUE AS DEDICATED PER DOCUMENT RECORDED JULY 28, 2016 AS DOCUMENT NO. 2016-0303163 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTHERLY ALONG SAID WESTERLY LINE, NORTH 01° 57' 22" WEST 12.17 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING NORTHERLY ALONG SAID WESTERLY LINE, NORTH 01° 57' 22" WEST 31.25 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 25.00 FEET, A RADIAL LINE TO THE BEGINNING OF SAID NON-TANGENT CURVE BEARS SOUTH 35° 10' 05" EAST 25.00 FEET;

THENCE WESTERLY ALONG SAID NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 27° 42' 21", AN ARC LENGTH OF 12.09 FEET;

THENCE SOUTH 82° 32' 16" WEST 15.24 FEET;

THENCE SOUTH 76° 45' 41" WEST 50.05 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 10.00 FEET;

THENCE WESTERLY ALONG SAID TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 12° 53' 20", AN ARC LENGTH OF 2.25 FEET;

THENCE SOUTH 00° 18' 51" EAST 25.77 FEET;

THENCE NORTH 89° 41' 09" EAST 1.23 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 40.00 FEET;

THENCE EASTERLY ALONG SAID TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 12° 42' 08", AN ARC LENGTH OF 8.87 FEET;

THENCE NORTH 76° 59' 01" EAST 56.87 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING RADIUS OF 20.00 FEET;

THENCE EASTERLY ALONG SAID TANGENT CURVE, THROUGH A CENTRAL OF 37° 13' 52", AN ARC LENGTH OF 13.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING: 2,082 SQUARE FEET OR 0.048 ACRES, MORE OR LESS.

