

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

between

**THE CITY OF RIALTO
a municipal corporation**

and

**RV Spa, Inc.
(a California Limited Liability Company_____)**

[Dated as of July 24, 2018 for reference purposes only]

1. PARTIES AND EFFECTIVE DATE.

1.1 Parties. This Exclusive Right to Negotiate Agreement ("Agreement") is made this 24th day of July 2018, by and between the City of Rialto, a municipal corporation, ("City"), and RV Spa, Inc. and/or its approved assignee, ("Developer"). For purposes of this Agreement, City's principal address is 150 South Palm Avenue, Rialto, California, 92376. Developer's principal address is 2106 W. Foothill Blvd, Upland, CA 91786. City and Developer are sometimes referred to individually as "Party" and collectively as "Parties" throughout this Agreement.

1.2 Effective Date. This Agreement shall become effective on the date when it has been approved by City's governing board and executed by the authorized representatives of City and Developer ("Effective Date"). The term of this Agreement shall commence on the Effective Date and shall continue thereafter until terminated pursuant to Section 3.5 below.

2. RECITALS.

2.1 The City is a municipal corporation exercising powers and organized and existing under the California Constitution.

2.2 City has control of approximately 13 acres of land located on the south west corner of Casmalia Street and Alder Avenue, just north of the 210 Freeway ("Site"). Whenever reference is made to "Site", it shall be interpreted to mean some or all of the area illustrated in Exhibit A.

2.3 The City proposes to utilize approximately 6 acres of the Site for RV dealership development ("RV Dealer Site").

2.4 After a proposal presented at the Economic Development Committee June 27, 2018, the Committee recommended to City Council selection of the Developer for exclusive negotiations to develop the RV Dealer Site.

2.5 Subject to the terms of this Agreement, City and Developer desire to enter into a period of exclusive negotiations concerning the acquisition of the RV Dealer Site from the City by Developer for development in accordance with RV Dealership plans. City and Developer agree that the object of their negotiations is the preparation of a Disposition and Development Agreement or similar agreement (hereinafter “DDA”) which would provide for, among other things, the development of the RV Dealer Site into an RV Dealership use (the “Project”).

2.6 Developer represents and warrants to City that the Developer has expertise to acquire and develop the Project as generally described in this Agreement.

3. TERMS.

3.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date, and shall continue thereafter until terminated pursuant to Section 3.5 below.

3.2 Good Faith Negotiations; Fulfillment of Disposition and Development Agreement Obligations. For the term of this Agreement, City and Developer agree to negotiate diligently and in good faith the terms of a DDA for Developer’s acquisition and development of the RV Dealer Site. During the term of this Agreement, City may not negotiate with any other person or entity for acquisition and development of the RV Dealer Site, except as hereinafter set forth. The term “negotiate” as used in this Section 3.2 shall preclude City from accepting proposals to acquire and develop the RV Dealer Site from the City by any persons or entities other than Developer.

City shall not be precluded by anything in this Agreement from furnishing to other persons or entities unrelated to Developer information related to the RV Dealer Site, however during the term of this Agreement shall not do anything to circumvent the successful marketing of the Project to prospective investors or lenders. City will refer to Developer all inquiries, and confirm Developer’s exclusive right to negotiate during the Term. City may also furnish any information concerning the Project or the RV Dealer Site, with the exception of confidential personal or financial information of the Developer pursuant to Section 3.4.3, which it is required by law to furnish or which it would otherwise normally furnish to persons requesting information

from the City concerning its activities, goals or matters of a similar nature.

3.3 Negotiation of a DDA; Obligations during the Negotiating Period. During the term of this Agreement, the Parties shall cooperate and work in good faith towards the goal of negotiating a mutually acceptable DDA concerning the disposition and development of the RV Dealer Site. The exact terms and conditions of the DDA, if any, shall be determined during the course of these negotiations. Nothing herein shall be deemed a representation by either City or Developer that a mutually acceptable DDA will be produced. Nothing herein shall be deemed a guarantee or representation that the City Council will approve any proposed DDA. Developer acknowledges that City's approval of the DDA is subject to the appropriate public hearing, notices and factual findings required by law, including compliance with the California Environmental Quality Act ("CEQA") and other relevant legal provisions.

By its execution of this Agreement, the City is not committing itself to or agreeing to undertake (a) any acquisition and disposition of land to the Developer; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by the City, the City, or any City or department thereof. This Agreement does not constitute a disposition of property or exercise of control over property by the City and does not require a public hearing. Execution of this Agreement by the City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the City as to any DDA and all proceedings and decisions in connection therewith.

3.4 Scope of Negotiations/Schedule of Performance. City and Developer acknowledge that the basic scope of negotiations and schedule of performance that shall control the negotiation of the DDA is described in **Exhibit B** attached hereto.

3.4.1 Parties to DDA. City and Developer acknowledge and agree that the qualifications and identity of Developer are of particular concern to City, and it is because of such qualifications and identity that the City is negotiating a DDA with the Developer. For the purposes of this Agreement, the Developer shall be RV Spa, Inc., or any affiliate who uses substantially the same personnel ("Developer Affiliate"). No voluntary or involuntary successor-in-interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. The Developer may not assign or transfer all or any part of this Agreement without the prior written approval of City, which may be given or withheld in City's sole and absolute discretion, however if to a Developer Affiliate no approval is required.

3.4.2 Environmental Review, Analysis, and Documentation. Any environmental review, analysis or documentation necessary to adequately assess the environmental effects of the proposed Project in accordance with CEQA, including the preparation of proposed mitigation measures for any such effects, shall be prepared at the direction of the City by persons or entities selected solely by the City, and City shall pay for all third party costs associated therewith using funds deposited by Developer. Before said funds shall be utilized the Developer shall be informed of budgeted costs, and may either approve and deposit said costs, or cancel this Agreement.

3.4.3 Developer Financial Disclosures. The Developer acknowledges that it may be requested to make certain confidential financial disclosures to the City, its staff or legal counsel, as part of the financial due diligence investigations of the City relating to the potential disposition of the RV Dealer Site to the Developer. The parties recognize that such financial disclosures may contain sensitive information relating to other business transactions of the Developer, that the disclosure of such information to third parties could impose commercially unreasonable and/or anti-competitive burdens on the Developer and, correspondingly, diminish the value or fiscal benefit that may accrue to the City upon the disposition of the RV Dealer Site to the Developer, if terms for such disposition are mutually agreed upon. Accordingly, the City agrees to maintain the confidentiality of any business records described in Government Code Section 6254.15, as may be provided by the Developer to the City or its consultants, to the maximum extent permitted by law. The City shall not provide a copy of any business record protected from disclosure under Government Code Section 6254.15 to a third party, unless the

Developer first consents to such disclosure in writing or, unless a court of competent jurisdiction compels disclosure.

3.4.4 Project Financing and Commitment. City does not intend to provide construction or development financing for the Project. Developer shall arrange for its own construction and development financing. During negotiations, Developer shall prepare such studies, reports, and analysis as shall be necessary to permit Developer to determine the feasibility of acquisition and development of the RV Dealer Site. As part of the DDA negotiations, and prior to the termination of this Agreement, Developer shall demonstrate to City that Developer can have appropriate and adequate financing in place prior to the RV Dealer Site conveyance.

Developer shall disclose to City, in writing, the proposed financing of the Project by Developer including, but not limited to, the terms and conditions of any construction or permanent financing. Developer shall also submit to City all financing documents if and when requested, including but not limited to, land acquisition financing documents, applicable to the Project.

3.4.5 Entitlements. Prior to the disposition of the RV Dealer Site to the Developer under the terms of a DDA, the Developer shall prepare and process all necessary development applications, including but not limited to a Conditional Development Permit(s), Precise Plan(s) of Design, an Initial Study or other environmental analysis to comply with CEQA, and any boundary surveys, soils tests and other studies necessary to receive approvals, entitlements, and permits to construct the Project in accordance with City development standards and requirements at Developer's sole expense. The Developer shall submit the development applications to the City of Rialto Planning Division by November 1, 2018.

3.4.6 Other Documents Related to RV Dealer Site. Notwithstanding any provision herein to the contrary, copies of any and all studies, reports, analyses or RV Dealer Site appraisals obtained by any Party hereunder shall promptly be submitted by the Party at whose direction they were prepared to the other Party and may thereafter be used by such Party for any purpose as if it were the RV Dealer Site of such other Party, on condition that such use does not violate any agreement with the applicable consultant or contractor.

3.5 Termination. This Agreement shall terminate upon the earliest to occur of the following:

(i) On January 23, 2019 unless mutually extended by either party prior to January 23, 2019; or

(ii) At such time as a DDA, acceptable in form and content to both the City and Developer is approved by the City Council of the City of Rialto; or

(iii) At any time, upon written notice to the other party by the party electing to terminate, upon the terminating party's good faith determination that further negotiations would be unproductive; or

(iv) At any time, upon written notice to the other party by the party electing to terminate, upon the terminating party's good faith determination that the other party has failed to negotiate in good faith in accordance with the terms of this Agreement or has otherwise materially breached any term of this Agreement; or

(v) The City terminates this Agreement pursuant to Section 3.6(b) because the City's eligible Third Party Costs exceed Ten Thousand Dollars (\$10,000) and Developer has not deposited additional funds.

3.6 Good Faith Deposit. Concurrently with the execution of this Agreement, Developer shall submit to City a good faith deposit in the amount of Ten Thousand Dollars (\$10,000) ("Good Faith Deposit") to insure that Developer will proceed diligently and in good faith to fulfill its obligations under this Agreement and as consideration for City to enter into this Agreement and forego negotiations with parties unrelated to Developer for the term hereof. The Good Faith Deposit shall be deposited in general City accounts and any interest earned shall not be added to the Good Faith Deposit, but may be retained and expended by City.

(a) The Good Faith Deposit shall be credited and applied by the City to various third party costs or expenses incurred during the negotiation of the DDA, including but not limited to legal costs incurred in drafting or reviewing the DDA and/or professional

financial advisory or real estate services incurred in the review of the terms of the DDA (collectively, "Third Party Costs"). Any portion of the Good Faith Deposit not expended by City on eligible Third Party Costs shall be returned to the Developer upon execution of the DDA or within thirty (30) days after termination of this Agreement.

(b) Developer acknowledges that the Good Faith Deposit paid herewith may be inadequate to reimburse the City for its Third Party Costs incurred in connection with the negotiation of the DDA. In the event the Third Party Costs exceed Ten Thousand Dollars (\$10,000), the City may cease negotiations with Developer and terminate this Agreement pursuant to Section 3.5(v). To cure, if Third Party Costs exceed Good Faith Deposit, City and Developer can mutually agree that Developer will fund additional deposit up to maximum of \$25,000 to cover excess Third Party Costs.

(c) The Developer's obligation to pay the Good Faith Deposit shall not be contingent on the hiring by City of any specific employees or consultants. The City reserves absolute discretion regarding the selection, hiring, assignment, supervision, and evaluation of all employees, contractors, or consultants that may be necessary to assist the City in connection with the Project. The City shall have the sole discretion to establish the amount of compensation paid to the employees and the amount of fees paid to the consultants or the consultants' firms that are hired by the City in connection with the Project.

(d) Notwithstanding the preceding conditions, in the event that the Developer does not breach this Agreement and has diligently performed all of his duties and obligation as required by this Agreement, but the City and Developer do not finalize their negotiations and enter into a DDA due to the City's failure to negotiate in good faith with Developer, then the Developer shall be entitled to a refund of the entire amount of its Good Faith Deposit within 30 days after the termination of this Agreement.

3.7 Limitation on Remedies for Breach and Release of Claims. City and Developer both acknowledge that they would not have entered into this Agreement if they were to be liable to the other for an unknown amount of monetary damages or other remedies.

Accordingly, each Party acknowledges and agrees that its exclusive right and remedy upon the breach of this Agreement by the other Party is to terminate this Agreement, without cost, expense, or liability to either Party.

Each Party acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with the debtor.”

Civil Code Section 1542 notwithstanding, it is City’s and Developer’s intention to be bound by the limitation on damages and remedies set forth in this Section 3.7, and each Party hereby releases any and all claims against the other for monetary damages or other legal or equitable relief related to such breach, whether or not such released claims were known or unknown to the Parties as of their entry into this Agreement. City and Developer each hereby waive, but only as to the claims released under this Section 3.7, the benefits of Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect.

3.8 Solicitation and Conflicts of Interest. Developer represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer or a licensed real estate broker, to solicit or secure this Agreement. Further, Developer warrants it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Developer or a licensed real estate broker, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the making of this Agreement. For any breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct or indirect interest in this Agreement or obtain any present or anticipated material benefit arising therefrom.

3.9 Disclosures and Cooperation. City and Developer shall generally cooperate

with each other and supply such documents and information as may be reasonably requested by the other to facilitate the conduct of the negotiations. Without limiting the generality of the foregoing, City particularly reserves the right to obtain further information, data, and commitments to ascertain the ability and capacity of Developer to acquire the RV Dealer Site and develop the Project. Unless precluded by law, City shall keep confidential all proprietary information provided by Developer to City.

City shall prepare such public notices and schedule such public hearings, in accordance with applicable law, as may be necessary for the City's governing board and the City Council's consideration of any DDA that may be agreed upon between City staff and Developer. Developer expressly acknowledges and agrees that City will not be bound by any statement, promise or representation made by City staff during the course of negotiations of a DDA and that the City shall be legally bound only upon the approval of the DDA by City's governing board and the City Council of the City, in accordance with applicable law.

3.10 Attorneys' Fees. In the event that either Party brings any legal action to interpret or enforce any provision of this Agreement, the prevailing Party in that action shall be entitled to receive, in addition to all other relief available to it, its costs of litigation and reasonable attorneys' fees, including costs and fees incurred on appeal and in enforcing any judgment which may be rendered on the underlying action.

3.11 Governing Law; Jurisdiction and Venue. This Agreement shall be interpreted and enforced in accordance with the law of the State of California in effect at the time it is executed, without regard to conflicts of law provisions. Any action brought concerning this Agreement shall be brought in the appropriate court for the County of San Bernardino, California. Each Party hereby irrevocably consents to the jurisdiction of said court. Developer hereby expressly waives all provisions of law providing for a change of venue due to the fact that City or the City may be a Party to such action, including, without limitation, the provisions of California Code of Civil Procedure Section 394. Developer further waives and releases any right it may have to have any action concerning this Agreement transferred to Federal District Court due to any diversity of citizenship which may exist between City and Developer or due to the fact that a federal question or right is alleged or involved in such action.

3.12 No Third Party Beneficiaries. City and Developer expressly acknowledge and agree that they do not intend, by their execution of this Agreement, to benefit any persons or entities not signatory to this Agreement, including, without limitation, any brokers representing the Parties to this transaction. No person or entity not a signatory to this Agreement shall have any rights or causes of action against either City or Developer arising out of or due to City's and Developer's entry into this Agreement.

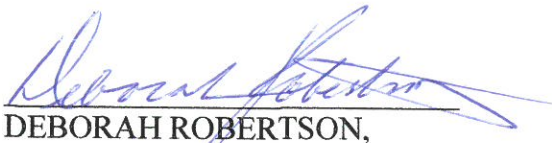
3.13 Counterpart Originals. This Agreement may be executed in two (2) counterpart originals which, when taken together, shall constitute but the same instrument.

[Signatures on following pages]

SIGNATURE PAGE TO
EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

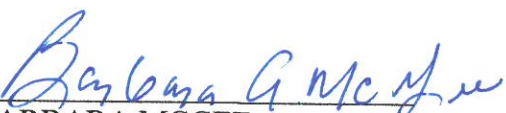
CITY:

THE CITY OF RIALTO

By: 
DEBORAH ROBERTSON,
Mayor

Dated: 8/8/18

ATTEST:


BARBARA MCGEE,
City Clerk

APPROVED AS TO LEGAL FORM:

ALESHIRE & WYNDER, LLP

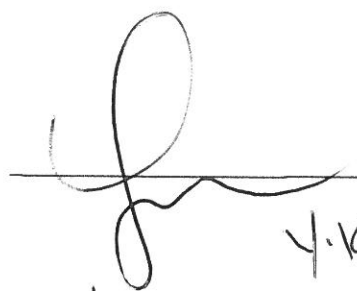

FRED GALANTE, ESQ.
City Attorney

SIGNATURE PAGE TO
EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

DEVELOPER:

RV SPA, Inc.

By: _____


Y. Khalil
CEO

Dated: _____

7/18/18

EXHIBIT A TO EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

Site - RV Dealer Site on 6 acres at eastern end

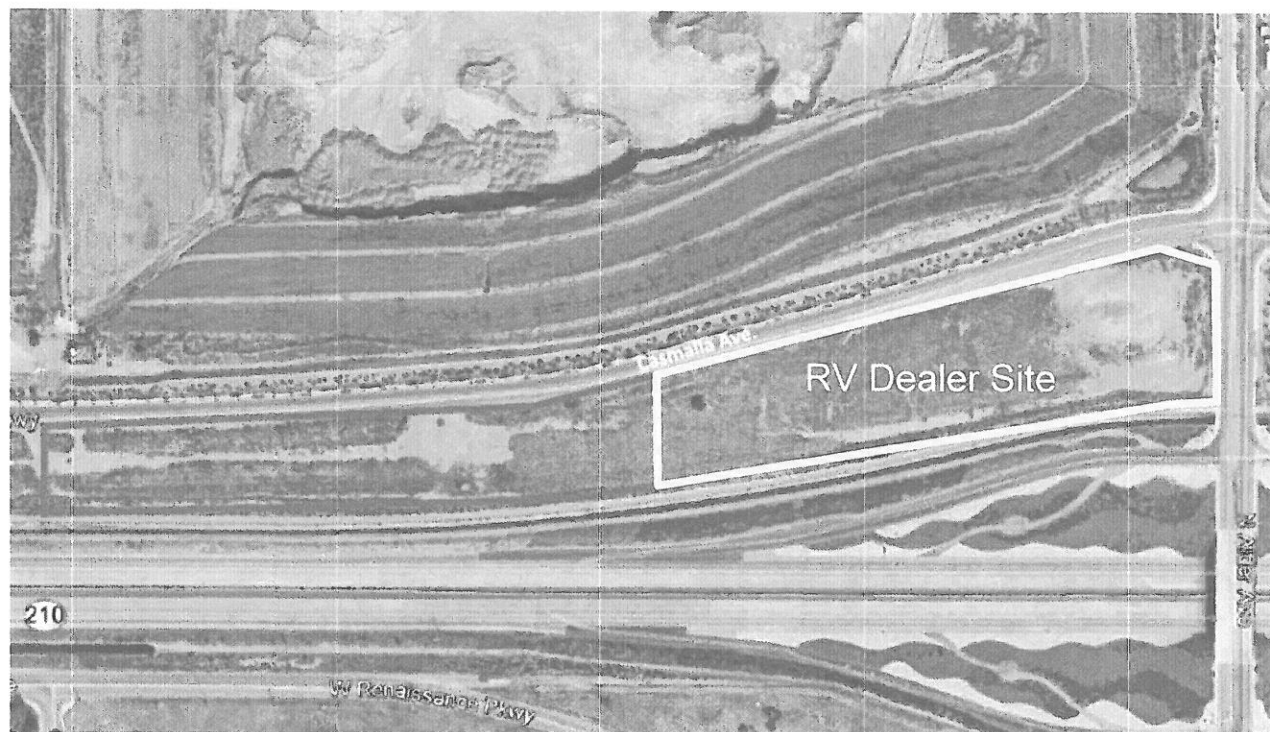


EXHIBIT B SCOPE OF NEGOTIATIONS/SCHEDULE OF PERFORMANCE

The goal of the negotiations is to prepare a Disposition and Development Agreement (“DDA”) acceptable to both parties that will then be submitted to the City Council for consideration at a public hearing (if required by law). The proposed DDA contemplates the acquisition of the Site by the City from the County of San Bernardino and the conveyance of the RV Dealer Site to the Developer at fair market value pursuant to a third party appraisal or broker opinion of value to be paid for by Developer, subject to various conditions precedent and the subsequent redevelopment of the RV Dealer Site into a high quality RV dealership development.

The City and Developer shall strive to structure any public assistance to avoid the applicability of prevailing wages for the private improvements.

The Project Goals

The City encourages development of the RV Dealer Site into a high quality RV dealership Project that will maximize tax revenues to the City, create job opportunities, and provide goods

and services currently lacking in the community.

The proposed Project should consist of RV dealership uses consistent with RV product sales and service land use including but not limited to the following:

1. Showroom uses allowed by zoning, planning and the Gateway Specific Plan, complementary to RV sales as a primary use and ancillary service uses.
2. Maintenance and service building and equipment that may include hydraulic lifts, paint shop, auto wash and similar uses associated with RV sales and service uses.
3. Parking lot for RV storage and display associated with RV sales and service uses.
4. Freeway signage allowed by zoning code associated with RV sales and service uses.

RV Dealer Site development may be phased and include RV showroom/sales area, service center and/or RV storage center. The Project shall be of highest quality of design and must meet or exceed all current City development and design standards.

The Project will require some level of environmental compliance under CEQA. The Parties desire that the environmental review obligations will be a condition of the DDA.

Responsibilities/Schedule of Performance

The Developer shall complete the following tasks during the Exclusive Negotiation Period:

1. Submit a site plan and building elevations to City for the Project. The Developer shall revise and resubmit the site plan and building elevations as required satisfying the Project Goals as noted above.
2. Identify the critical infrastructure currently available to the RV Dealer Site and any improvements needed to support the Project. Provide preliminary cost estimates for the public improvements related to the Project.
3. Provide the City with other cost/benefit information to enable its consultants to prepare a fiscal benefit analysis for presentation to the City Council. This analysis typically includes the number of construction jobs created, the number of permanent jobs created, the cost to maintain the public improvements upon dedication, the value of the completed development, and the various tax revenues associated with development operations.
4. Provide a tentative schedule for acquisition and development of the Project.

5. If it is determined to be a necessary condition precedent to the City's consideration of the DDA, the Developer shall submit an application for environmental review by the City and pay all normal and customary fees related thereto.