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WHEREAS, in 2018, Sirwin Enterprises LLC, (“Developer”) submitted various planning and development applications (PPD 2018-0041 and EAR 2018-0096) to the City for the development of a retail center (consisting of 4,500 square foot convenience store and quick service restaurant as Phase 1 and 3,000 square foot drive through restaurant and 8,500 square foot multi-tenant as Phase 2) on 2.98 acres of land located on the southwest corner of Ayala Drive and Casmalia Avenue (the “Project”);

WHEREAS, on July 12, 2018, the Transportation Commission approved the Traffic Study prepared for the Project and set certain conditions of approval; on November 14, 2018, the Development Review Committee approved Precise Plan of Design (PPD 2018-0041) subject to certain Conditions of Approval and Environmental Assessment Review 2018-0096 (“Land Use Entitlements”); and

WHEREAS, following the action of the Development Review Committee, the City filed a Notice of Determination for a Mitigated Negative Declaration (EAR-2018-0096) with the Clerk of the Board; and

WHEREAS, the Conditions of Approval for the Project require Developer to construct certain off-site improvements (“Off-Site Improvements”) including the (i) widening and reconstruction of the existing roadways along the Project’s frontages on the north and south side of the centerline of Casmalia Avenue, (ii) constructing a raised center median along Casmalia Avenue, and (iii) modifying the traffic signal at Ayala Drive and Casmalia Avenue; and

WHEREAS, the Off-Site Improvements are listed in the City’s adopted Regional Traffic Nexus Fee Study and or the RSP Traffic Fee and are therefore eligible for reimbursements or fee credits in accordance with the provisions of Rialto Municipal Code Section 3.33.100 (entitled “Fee Credits”); and

1 **WHEREAS**, Section 3.33.110 of the Rialto Municipal Code (entitled “Construction and
2 Credit Agreements”) permits the City Administrator to negotiate and enter into Construction and Fee
3 Credit Agreements with Developers, subject to the approval of the City Council; and

4 **WHEREAS**, Section 3.33.100 of the Rialto Municipal Code also provides that a Developer is
5 not entitled to reimbursement for any excess in the costs to construct the public facility over the
6 amount of the developer's obligation to pay the development impact fee for the type of public facility
7 constructed, unless a separate reimbursement agreement is approved by the City Council; and.

8 **WHEREAS**, the City and Developer expect that the cost of constructing the Off-Site
9 Improvements will exceed Developer’s obligation to pay the Regional Traffic Fee and the RSP Traffic
10 Fee; and

11 **WHEREAS**, Developer and the City have negotiated the terms of a Construction Fee Credit
12 and Reimbursement Agreement related to the construction of the Off-Site Improvements, a copy of
13 which is attached hereto as Exhibit A and incorporated herein by reference; and

14 **WHEREAS**, the construction of the Off-Site Improvements were reviewed and considered as
15 part of the environmental review for the Project (EAR-2018-0096); and

16 **WHEREAS**, PPD 2018-0041 Condition Number 116 requires construction of a raised median
17 on Casmalia Avenue along the project frontage; and

18 **WHEREAS**, on December 19, 2018, the Economic Development Committee reviewed raised
19 medians on Casmalia Avenue for another development known Operon (on Casmalia between Cedar
20 Avenue and Linden Avenue) and directed staff to submit to the City Council for consideration
21 amending Renaissance Specific Plan to eliminate the raised median on Casmalia Avenue; and

22 **WHEREAS**, approval of the Construction Fee Credit and Reimbursement Agreement is an
23 administrative or fiscal action by the legislative body that will not result in any additional direct or
24 indirect physical change in the environment than what was already analyzed (Section 15378(b) of the
25 CEQA Guidelines), consequently no further environmental review is warranted.

26 **NOW, THEREFORE**, the City Council of the City of Rialto hereby resolves as follows:

27 **Section 1.** The foregoing recitals are determined to be true and correct;
28

1 **Section 2.** The City Council hereby finds and determines, based on substantial evidence in
2 the record that Developer is entitled to receive credits and reimbursements from the City for the costs
3 to construct the Off-Site Improvements.

4 **Section 3.** The City Council hereby finds and determines, based upon substantial evidence
5 in the record, the analysis and environmental review completed as a part of EAR-2018-0096, and the
6 approved Mitigated Negative Declaration and Notice of Determination, that there will be no additional
7 significant or adverse impact on the environment resulting from entering into the Construction Fee
8 Credit and Reimbursement Agreement.

9 **Section 4.** The City Council hereby approves the Construction Fee Credit and
10 Reimbursement Agreement by and between FFF Rialto LLC substantively in form and content to that
11 attached hereto in Exhibit A along with any non-substantive changes as may be mutually agreed upon
12 by the City Administrator (or his duly authorized representative), City Attorney and Sirwin Enterprises
13 LLC. The final Construction Fee Credit and Reimbursement Agreement, when duly executed and
14 attested, shall be filed in the office of the City Clerk.

15 **Section 5.** The City Council hereby waives PPD 2018-0041 Condition Number 116
16 requiring construction of a raised median on Casmalia Avenue along the project frontage.

17 **Section 6.** The City Administrator (or his duly authorized representative) is authorized to
18 implement the Construction Fee Credit and Reimbursement Agreement, take all further actions, and
19 execute all documents referenced therein and/or necessary and appropriate to carry out the Project,
20 including causing the issuance of warrants.

21 **Section 7.** The City Clerk shall certify to the adoption of this Resolution.
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PASSED, APPROVED AND ADOPTED this ____th day of ____, 2019.

Deborah Robertson, Mayor

ATTEST:

BARBARA McGEE, City Clerk

APPROVED AS TO FORM:

FRED GALANTE, ESQ., City Attorney

1 **STATE OF CALIFORNIA**)
2 **COUNTY OF SAN BERNARDINO**) ss
3 **CITY OF RIALTO**)

4 I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing
5 Resolution No.____ was duly passed and adopted at a regular meeting of the City Council of the City
6 of Rialto held on the ____ day of _____, 2019.

7 Upon motion of Council Member _____, seconded by Council Member
8 _____, the foregoing Resolution No. _____ was duly passed and adopted.

9 Vote on the motion:

10 AYES:

11 NOES:

12 ABSENT:

13
14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
15 Rialto this ____ day of _____, 2019.

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18 **BARBARA MCGEE, CITY CLERK**
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EXHIBIT “A”

CONSTRUCTION FEE CREDIT AND REIMBURSEMENT AGREEMENT