



Legislation Details (With Text)

File #: 15-132 **Version:** 1 **Name:** TAB 6
Type: Resolution **Status:** Agenda Ready
File created: 3/2/2015 **In control:** City Council
On agenda: 3/10/2015 **Final action:**
Title: Request City Council to (1) Adopt Resolution No. 6707 Approving Construction and Credit Agreement by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC and (2) Adopt Budget Resolution No. 6708 Appropriating Funding for the Construction and Credit Agreement related to the Medline Project.
(ACTION)

Sponsors:

Indexes:

Code sections:

Attachments: [Exhibit A - Medline Construction and Credit Agreement REV 3.pdf](#)
[Exhibit B - Construction Credit Worksheets \(3.2.15\)](#)
[Exhibit C - City Resolution Approving a Construction and Credit Agreement with LHR](#)
[Exhibit D - Budget Resolution](#)

Date	Ver.	Action By	Action	Result
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For City Council Meeting of March 10, 2015

TO: Honorable Mayor and City Council

APPROVAL: Michael Story, City Administrator

FROM: Robb Steel, Assistant City Administrator/ Development Services Director

Request City Council to (1) Adopt **Resolution No. 6707** Approving Construction and Credit Agreement by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC and (2) Adopt Budget **Resolution No. 6708** Appropriating Funding for the Construction and Credit Agreement related to the Medline Project.
(ACTION)

BACKGROUND:

Pursuant to the Second Amended and Restated Contract of Sale for Areas B, C, and D dated September 25, 2102, (the "Contract of Sale"), by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC (LHR), LHR has the option to purchase and develop approximately 436 acres of land that previous contained Rialto Airport Municipal Airport (the "Airport Property").

LHR entered into a Purchase and Sale Agreement with Medline Industries, Inc. (Medline PSA) for a 55.2 acre development parcel that is part of the Airport Property. On January 27, 2015, the City Council approved Resolution No. 6689, which approved an Addendum to the Renaissance Specific Plan (RSP) for the consolidation of thirteen (13) parcels of land and the construction of a 1,070,320 square foot distribution center (the "Medline Project").

On January 27, 2015, the City's Design Review Committee (the "DRC") reviewed the Precise Plan of Design for the Medline Project (PPD 2365) and established Conditions of Approval (COA) for the development of the Medline Project. The COA's require Medline/LHR to construct certain off-site public improvements including the construction of Locust Avenue along the Project's frontage and the construction of a master planned sewer line and storm drain in Locust Avenue (the "Public Improvements").

Pursuant to the Medline PSA, LHR will construct most of the off-site public improvements identified within the COA and deliver Medline a finished development parcel. Most of the public improvements required by the COA are master planned facilities and/or are listed within the City's Development Fee Nexus Studies. Section 3.33.010 of the Rialto Municipal Code, permits the City Administrator to negotiate and enter into Construction and Fee Credit Agreement, subject to the approval of the City Council. LHR requests approval of a Construction and Credit Agreement with the City related to the construction of the Public Improvements in Locust Avenue (**Exhibit A**).

ANALYSIS/DISCUSSION:

Under the terms of the Construction and Credit Agreement the City will reimburse or credit the LHR/Medline for the cost of constructing the following improvements:

1. Construct Locust Avenue (half-width + travel lane) along the Project's frontage (approximately 2,000 lineal feet from Miro Way northerly to the DCT Project).
2. Construct master planned storm drain from Miro Way northerly to the existing storm drain facilities constructed by the DCT Project (approximately 1,750 lf).
3. Construct master planned sewer line within Locust Avenue along Project frontage (approximately 1,000 lf).

The estimated cost of these Public Improvements is summarized below and further described in **Exhibit B**

ESTIMATED FEE CREDITS (MEDLINE PROJECT)

	Impact Fee Assessed	Estimated Cost	Eligible for Reimbursement	Net Fee Collected
<u>Locust Improvements</u>				
250 - Traffic Fund	\$ 1,209,462	\$ 489,405	\$ 489,405 ¹	\$ 720,056
<u>Storm Drain Improvements</u>				
230 - Drainage Fund	\$ 1,653,150	\$ 599,902	\$ 599,902	\$ 1,053,248
<u>Sewer Improvements</u>				
660- WW Collection	\$ 85,040	\$ 114,171	\$ 85,040 ²	\$ -

Notes:

1 - Estimated Cost without landscaping

2 - Maximum Credit / Not to Exceed Fees Paid

LHR/Medline will pay various Development Impact Fees related to the Medline Project. The LHR/Medline will pay development impact fees in excess of the fee credits requested, with the exception of the Wastewater Collection DIF. The fee credit for the Wastewater Collection DIF will be limited to the amount of the DIF Fee paid (\$85,040). Pursuant to Section 3.33.100 of the Rialto Municipal Code, the developer shall not be entitled to a fee credit or reimbursement for any construction costs exceeding the developer's obligation for development impact fees for the type of public facility constructed.

Additionally, the Construction and Credit Agreement provides for a credit against the RSP Specific Plan/Environmental Impact Report (RSP/EIR) Fee obligation. In consideration for LHR's previous expenditures related to the processing and approval of the RSP/EIR, the City shall grant a credit of \$166,577 to offset the RSP Fee Obligation (the "RSP/EIR Fee Credit"). There shall be no reconciliation or accounting related to the application of the RSP/EIR Fee Credit based on the previously adopted fee program for the RSP/EIR Fee.

ENVIRONMENTAL IMPACT:

The Public Improvements are master planned facilities that have been analyzed as part of the Program EIR for the Renaissance Specific Plan and California Environmental Quality Act (CEQA) review for Medline Project. On November 8, 2010 the City certified the EIR for the Renaissance Specific Plan and on November 10, 2010 filed the Notice of Determination for the EIR.

On January 27, 2015 the City Council approved and certified the Addendum to the EIR for the Renaissance Specific Plan, which was prepared for the Medline Project. A Notice of Determination for the Medline Project was filed on January 28, 2015.

Approval of the Construction and Credit Agreement is an administrative or fiscal action by the legislative body and will not result in any additional a direct or indirect physical change in the environment than what was already analyzed (Section 15378(b) of the CEQA Guidelines).

GENERAL PLAN CONSISTENCY:

The City of Rialto has identified several goals and objectives within the City's General Plan through which the City looks to improve the community.

Goal 3-1: Strengthen and diversify the economic base and employment opportunities and maintain a positive business environment.

Goal 3-6: Require that all developed areas within Rialto are adequately served with essential public services and infrastructure.

Goal 3-7: Upgrade public infrastructure as an inducement to promote private investment.

LEGAL REVIEW:

The City Attorney reviewed and approved the staff report, the Construction and Credit Agreement and the Resolutions.

FINANCIAL IMPACT:

Development impact fees are paid at issuance of building permits. Medline will receive credits at building permit issuance for the estimated eligible improvement costs, paying the net amount. Upon Project completion, the final costs will be verified and reconciliation reimbursements to Medline or payments made to the City.

	Development Fee Assessed	Estimated Cost	Eligible for Reimbursement	Net Fee Collected
<i>250 - Traffic Fund</i>	\$ 1,209,462	\$ 489,405	\$ 489,405	\$ 720,056.58
<i>230 - Drainage Fund</i>	\$ 1,653,150	\$ 599,902	\$ 599,902	\$ 1,053,248
<i>660- WW Collection</i>	\$ 85,040	\$ 114,171	\$ 85,040	\$ -
	=====	=====	=====	=====
	\$ 2,947,652	\$ 1,203,478	\$ 1,174,347	\$ 1,773,304.93

The City will reimburse or provide credits to Medline in the amounts stated above.

Revenues will be recognized and expenditures will be charged to the appropriate Development Impact Fee accounts. With the exception of the Wastewater Collection Fee, the City expects to collect DIF fees exceeding the DIF credits granted.

RECOMMENDATION:

1. Adopt Resolution No. 6707 Approving a Construction and Credit Agreement by and between the City of Rialto and Lewis-Hillwood Rialto Company.
2. Approve a Budget Resolution No. 6708 appropriation the following expenditures related to the Construction and Credit Agreement as follows:
 - a. Storm Drainage Development Impact Fee Fund Account No. 230-500-4720-3001, in the amount of \$599,902.
 - b. Regional Traffic Development Impact Fee Fund Account No. 250-500-4313-3001, in the amount of \$489,405; and
 - c. Wastewater Collection Development Impact Fee Fund Account No. 660-500-7150-3001, in the amount of \$85,040.

CONSTRUCTION AND CREDIT AGREEMENT DEVELOPMENT IMPACT FEE PROGRAM

Medline Distribution Center

This CONSTRUCTION AND CREDIT AGREEMENT ("Agreement") is entered into this 10th day of March 2015, 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

WHEREAS, 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. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in the BCD Agreement;

WHEREAS, Developer has exercised its option to purchase from the City approximately 55.2 acres of unimproved real property bounded by Miro Way to the south, Locust Avenue to the east, Laurel Avenue to the west, and the DCT project 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");

WHEREAS, Developer and Medline Industries, Inc., an Illinois corporation ("Medline") have consummated the transfer of the Development Parcel to Medline;

WHEREAS, Medline has requested from City certain entitlements and/or permits for the construction of certain improvements on the Development Parcel, including a 1,070,320 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") 2365 and the Declaration of Construction Covenants (the "Project");

WHEREAS, as a condition to City's approval of the Project, City has required Medline to construct master planned improvements consisting of a portion of Locust Avenue, a public street within the City (the "Locust Improvements"), construct storm drain improvements in Laurel Avenue (including the recently vacated portion) and Locust Avenue, both public streets within the City (the "Storm Drain Improvements"), construct sewer improvements in a portion of Locust Avenue, a public street within the City (the "Sewer Improvements"), which collectively may be referred to herein as the "Public Improvements" or "Improvements" as described in **Exhibit "B"** (such plans and specifications, with any changes approved by City and Developer, are collectively referred to herein as the "Plans and Specifications");

WHEREAS, Chapter 3.33 of the Rialto Municipal Code establishes development impact fees and fair share fees (“DIF Fees”) 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. The imposition of DIF Fees 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;

WHEREAS, Medline will pay as a condition of approval prior to the issuance of building permits, all DIF Fees as identified in **Exhibit “C”**;

WHEREAS, Pursuant to Section 3.33.100 of the Rialto Municipal Code, Medline may be eligible to receive and the City may grant credit towards the DIF Fees for construction of eligible master planned public improvements or facilities in accordance with City policies and procedures. Provided however, the amount of the fee credit or reimbursement shall not exceed the amount of the DIF Fees assessed for which the fee credit or reimbursement is granted, unless the City Council also approves a Reimbursement Agreement.

WHEREAS, City and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely construction and completion of the Public Improvements, (2) to ensure that construction of the Public Improvements is undertaken in accordance with the Plans and Specifications, and (3) to provide a means by which the Developer’s costs for construction of the Public Improvements is offset by Medline’s obligation to pay the applicable DIF Fees, including the Regional Traffic Development Impact Fee (“Regional Traffic Fee”), the Sewage Collection Facilities Development Impact Fee. (the “Wastewater Fee”), the Storm Drain Facilities Development Impact Fee (“Storm Drain Fee”), and the Renaissance Specific Plan/EIR Fee (“RSP Fee”) for the Project.

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

TERMS

1.0 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.

2.0 Construction of Improvements. Developer shall construct or have constructed, at its own cost and expense, the 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 Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the Improvements until all Plans and Specifications for the Improvements have been submitted to and approved by the City Administrator, Public Works Director, City Engineer, or their designee, any of which may act individually on behalf of the City (“Approved by the City, or City Approval”). City Approval shall not relieve Developer

from ensuring that all Improvements conform with 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 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 construction of the Improvements is undertaken as if such Improvements were constructed under the direction and authority of City. Thus, without limitation, Developer shall comply, with the requirements in **Exhibit "D"** with respect to the construction of the Improvements:

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

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

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

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

2.5 Alterations to Improvements. All work shall be done and the 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 City of such proposed alterations. City shall have ten (10) business days after receipt of such written notice to 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 Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

2.6 Standard of Performance. Developer and its contractors shall perform all work required, constructing the 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.

3.0 Maintenance of Improvements. City shall not be responsible or liable for the maintenance or care of the Improvements until such Improvements are accepted by City. City shall exercise no control over the Improvements until accepted. Developer shall have no obligation to make the Improvements available for public use at any time before the Improvements are accepted by City. Any use by any person of the 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 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 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 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.

4.0 Fees and Charges. Developer shall, at its sole cost and expense, pay all fees, charges, and taxes arising out of the construction of the Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by City.

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

6.0 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 Improvements, Developer shall provide to City such evidence or proof as City shall reasonably require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the 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 City a title insurance policy or other security reasonably acceptable to City guaranteeing that no

such claims of liens will be recorded or become a lien upon any portion of the Development Parcel.

7.0 Acceptance of Improvements; As-Built or Record Drawings. If the Improvements are completed by Developer in accordance with the Plans and Specifications, City shall be authorized to accept the Improvements. City may, in its reasonable discretion, accept fully completed portions of the Improvements prior to such time as all of the Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Improvements. Upon the total or partial acceptance of the Improvements by City, Developer shall file with the Recorder's Office of the County of San Bernardino a notice of completion for the accepted Improvements in accordance with California Civil Code section 3093 ("Notice of Completion"), at which time the accepted Improvements shall become the sole and exclusive property of City without any payment therefor. Notwithstanding the foregoing, City may not accept any Improvements (or the applicable portion thereof) unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City for all such Improvements (or the applicable portion thereof). The drawings shall be certified and shall reflect the condition of the Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the 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 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 and its surety. As to any Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City acceptance of the repaired, replaced, or reconstructed 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 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.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the 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.

10.0 Default; Notice; Remedies.

10.1 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"). Developer shall substantially commence the work required to remedy the default or

violation within five (5) business days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Improvements and all other administrative costs expenses as provided for in Section 9.0 of this Agreement.

10.2 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 10.1 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 Improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City.

10.3 Other Remedies. No action by City pursuant to this Section 10.0 *et seq.* of this Agreement 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.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the 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 Improvements, as determined by City after Developer has awarded a contract for construction of the 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 11.0 *et seq.* of this Agreement shall in no way limit or modify Developer's indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 10.0 *et seq.* of this Agreement, and to secure the Warranty of the 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 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.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the 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 Improvements.

11.3 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, 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, 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 Improvements, or the Plans and Specifications shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in **Exhibit "E"** 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 "E"** and incorporated herein by this reference.

12.0 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.

13.0 Insurance.

13.1 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.

13.1.1 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.

13.1.2 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.

13.1.3 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.

13.1.4 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.

13.2 Deductibles. Any deductibles or self-insured retentions in excess of \$50,000 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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 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.

13.7 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.

14.0 Fees Credit and Reimbursement.

14.1 Regional Traffic Fee Obligation. City and Developer acknowledge that as of the date of this Agreement, the total amount of Regional Traffic Fees owed by Medline to the City is One Million Two Hundred Nine Thousand Four Hundred Sixty One Dollars and Sixty Cents (**\$1,209,461.60**) (the "Regional Traffic Fee Obligation").

14.1.1 Credit Offset against Regional Traffic Fee Obligation. In consideration for Developer's obligation under this Agreement to construct the Locust Improvements, the City shall grant a credit to offset the Regional Traffic Fee Obligation (the "Regional Traffic Fee Credit") at the earlier of (1) completion of the Locust Improvements or (2) when adequate security is posted for the Locust Improvements. At the time of this Agreement, the estimated cost to construct the Locust Improvements is **\$489,405**, as set forth on **Exhibit "F"** (the "Estimated Regional Traffic Fee Credit"). The Actual Regional Traffic Fee Credit shall be calculated as provided in Section 14.5 of this Agreement.

14.1.2 Application of Estimated Regional Traffic Fee Credit against Regional Traffic Fee Obligation. Prior to the issuance of a building permit for the Project, Medline shall pay to City the amount of **\$720,056.58** representing the Regional Fee Traffic Obligation less the Estimated Regional Traffic Fee Credit.

14.2 Wastewater Fee Obligation. City and Developer acknowledge that as of the date of this Agreement, the total amount of Wastewater Fee owed by Medline to the City is Eighty Five Thousand Forty Dollars and Forty Six Cents (**\$85,040.46**) (the "Wastewater Fee Obligation").

14.2.1 Credit Offset against Wastewater Fee Obligation. In consideration for Developer's obligation under this Agreement to construct the Sewer Improvements, a credit shall be applied by City to offset the Wastewater Fee Obligation (the "Wastewater Credit") at the earlier of (1) completion of the Sewer Improvements or (2) when adequate security is posted for the Sewer Improvements. At the time of this Agreement, the estimated cost to construct the Sewer Improvements is **\$114,171**, as set forth on **Exhibit "F"** (the "Estimated Wastewater Credit"). As the Estimated Wastewater Credit exceeds the Wastewater Fee Obligation, Developer intends to enter into a reimbursement agreement with the City when the actual costs

of the Sewer Improvements are known. The Actual Wastewater Credit shall be calculated as provided in Section 14.5 of this Agreement.

14.2.2 Application of Estimated Wastewater Credit against Wastewater Fee Obligation. Prior to the issuance of a building permit for the Project, Medline shall pay to City the amount of **\$0.00** representing the Wastewater Fee Obligation less the Estimated Wastewater Credit, not less than zero.

14.3 Credit Offset against Storm Drain Fee Obligation. City and Developer acknowledge that as of the date of this Agreement, the total amount of Storm Drain Fee owed by Medline to the City is One Million Six Hundred Fifty Three Thousand One Hundred Fifty Dollars and Eleven Cents (**\$1,653,150.11**) (the “Storm Drain Fee Obligation”).

14.3.1 Credit Offset against Storm Drain Fee Obligation. In consideration for Developer's obligation under this Agreement to construct the Storm Drain Improvements, the City shall grant a credit to offset the Storm Drain Fee Obligation (the “Storm Drain Credit”) at the earlier of (1) completion of the Storm Drain Improvements or (2) when adequate security is posted for the Storm Drain Improvements. At the time of this Agreement, the estimated cost to construct the Storm Drain Improvements is **\$599,902**, as set forth on **Exhibit “F”** (the “Estimated Storm Drain Credit”). The Actual Storm Drain Credit shall be calculated as provided in Section 14.5 of this Agreement.

14.3.2 Application of Estimated Storm Drain Credit against Storm Drain Fee Obligation. Prior to the issuance of a building permit for the Project, Medline shall pay to City the amount of **\$1,503,248** representing the Storm Drain Fee Obligation less the Estimated Storm Drain Credit.

14.4 RSP Fee Obligation. City and Developer acknowledge that as of the date of this Agreement, the total amount of the RSP EIR Fee owed by Medline to the City is (**\$166,577**) (the “RSP Fee Obligation”).

14.4.1 Credit Offset against RSP Fee Obligation. In consideration for Developer's previous expenditures, the City shall grant a credit of \$166,577 to offset the RSP Fee Obligation (the “RSP EIR Fee Credit”) at the time such fee is due to be paid by Medline. There shall be no reconciliation or accounting related to the application of the RSP Fee Credit based on the previously adopted fee program for the RSP Fee.

14.5 Reconciliation; Final Offset against Outstanding Fee Obligations. Upon completion of the Public Improvements by Developer, Developer shall submit to the City Engineer such information as the City Engineer may require to calculate and verify the total eligible and actual costs incurred by Developer to construct the Public Improvements (“Verified Construction Costs”). The Actual Regional Traffic Fee Credit, the Actual Wastewater Fee Credit and the Actual Storm Drain Fee Credit shall be equal to the Verified Construction Costs for each of the improvements and shall be used for the purposes of the final reconciliation.

If the Actual Regional Traffic Fee Credit is less than the Estimated Regional Traffic Fee Credit, Developer shall pay the balance to City to fully satisfy Developer’s Regional Traffic Fee Obligation within 30 days. If the Actual Regional Traffic Fee Credit exceeds the

Estimated Regional Traffic Fee Credit, City shall refund the balance to Developer within 30 days.

If the Actual Wastewater Fee Credit is less than the Estimated Wastewater Fee Credit, Developer shall pay the balance to City to fully satisfy Developer's Wastewater Fee Obligation within 30 days. If the Actual Wastewater Fee Credit exceeds the Wastewater Estimated Credit, City shall refund the balance to Developer within 30 days.

If the Actual Storm Drain Fee Credit is less than the Estimated Storm Drain Fee Credit, Developer shall pay the balance to City to fully satisfy Developer's Storm Drain Fee Obligation within 30 days. If the Actual Storm Drain Fee Credit exceeds the Storm Drain Estimated Credit, City shall refund the balance to Developer within 30 days, subject to the provisions of Section 14.6 below.

14.6 Fee Credit Limits. Notwithstanding anything to the contrary in this Section 14, the following limits apply with respect to credit and reimbursement of DIF Fees.

14.6.1. DIF Fee Categories. Developer acknowledges that DIF Fees are imposed in various separate categories to fund specific public facilities. Credit against DIF Fees 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 the Storm Drain Fee for the street improvement.

14.6.2 Maximum Credit. The amount of the Actual Regional Traffic Fee Credit, the Actual Wastewater Fee Credit and the Actual Storm Drain Fee Credit shall not exceed the amount of the DIF Fees paid for each respective DIF Fee category.

14.6.3 Soft Costs. The City Engineer shall, in his/her sole 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 including indirect costs of construction, including professional engineering and design services, construction management, soils testing, administrative costs, permits, plan check fees and inspections. In order 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 Improvement(s) 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 City may, in its sole discretion, reduce or disallow reimbursement for any costs the City finds excessive or unreasonable.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Development Parcel ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to City such reasonable proof as it may require that Assignee is the purchaser of such portions of the Development Parcel, provided that City hereby agrees that a copy of the deed or conveyance

document shall be sufficient proof. The City hereby approves Medline Industries, Inc. as a prospective Assignee under this section. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement in the form attached hereto as **Exhibit "G"**.

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. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City: City of Rialto
 150 S. Palm Avenue
 Rialto, CA 92376
 Attn: City Administrator
 Fax No. (909)

To Developer: Lewis-Hillwood Rialto Company, LLC
 1156 N. Mountain Ave
 Upland, CA 91786
 Attn: Bryan Goodman
 Phone No.: 909-946-7537

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

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. It being agreed the Parties or their agents have participated in the preparation of this Agreement, 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. 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 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 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.

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 OPERATING CORP.,
a California corporation
its sole member

By: _____
Printed Name: _____
Title: _____

Date: _____

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

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

By: _____
Printed Name: _____
Title: _____

Date: _____

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

EXHIBIT "A"

LEGAL DESCRIPTION OF THE DEVELOPMENT PARCEL

Real property in the City of Rialto, County of San Bernardino, State of California, described as follows:

BEING A PORTION OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, TOGETHER WITH PORTIONS OF PARCEL NOS. 1 AND 2 OF PARCEL MAP NO. 3883, AS PER MAP RECORDED IN BOOK 34, PAGE 86 OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO GOVERNMENT SURVEY, AS SHOWN ON RECORD OF SURVEY 08-088, FILED IN BOOK 140, PAGES 35 THROUGH 51 OF RECORD OF SURVEYS OF SAID COUNTY, DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, SAID POINT BEING MARKED BY A 2 INCH IRON PIPE "RCE 9101" AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT IS ALSO THE POINT OF BEGINNING; THENCE SOUTH $00^{\circ}00'21"$ EAST ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 1323.99 FEET, TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, SAID POINT BEING MARKED BY A 2 INCH IRON PIPE "RCE 9101" AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT IS ALSO THE CENTERLINE INTERSECTION OF LOCUST AVENUE AND MIRO WAY;

THENCE SOUTH $89^{\circ}58'38"$ WEST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 1328.09 FEET, TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, SAID POINT BEING MARKED BY A NAIL AND TAG AS SHOWN ON SAID RECORD OF SURVEY;

THENCE NORTH $00^{\circ}04'15"$ EAST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 1324.31 FEET, TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, SAID POINT BEING MARKED BY A 1 INCH IRON PIPE "RCE 28946" AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT IS ALSO THE CENTERLINE INTERSECTION OF LAUREL AVENUE AND WALNUT AVENUE;

THENCE NORTH $00^{\circ}04'30"$ EAST ALONG THE WEST LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 662.22 FEET, TO THE NORTHWEST CORNER OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID POINT BEING MARKED BY A 1 INCH IRON PIPE "RCE 28946" AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT IS ALSO LYING ON THE CENTERLINE OF LAUREL AVENUE;

THENCE SOUTH 89°59'56" EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 1325.38 FEET, TO THE NORTHEAST CORNER OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID POINT BEING MARKED BY A 1 INCH IRON PIPE "RCE 28946" AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT IS ALSO LYING ON THE CENTERLINE OF LOCUST AVENUE;

THEN SOUTH 00°00'19" EAST ALONG THE EAST LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 661.99 FEET, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM AND RESERVING THE RIGHT FOR PUBLIC STREET AND UTILITY PURPOSES FOR THE CITY OF RIALTO THE EAST FORTY TWO FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID LINE BEING PARALLEL TO THE CENTERLINE OF LOCUST AVENUE A DISTANCE OF FORTY TWO FEET WESTERLY THEREOF.

ALSO EXCEPTING THEREFROM AND RESERVING THE RIGHT FOR PUBLIC STREET AND UTILITY PURPOSES FOR THE CITY OF RIALTO THE WEST THIRTY TWO FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID LINE BEING PARALLEL TO THE CENTERLINE OF LAUREL AVENUE A DISTANCE OF THIRTY TWO FEET EASTERLY THEREOF.

ALSO EXCEPTING THEREFROM AND RESERVING THE RIGHT FOR PUBLIC STREET AND UTILITY PURPOSES FOR THE CITY OF RIALTO THE EAST FORTY TWO FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, SAID LINE BEING PARALLEL TO THE CENTERLINE OF LOCUST AVENUE A DISTANCE OF FORTY TWO FEET WESTERLY THEREOF.

ALSO EXCEPTING THE WEST THIRTY FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, SAID LINE BEING PARALLEL TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION AS SHOWN ON SAID RECORD OF SURVEY A DISTANCE OF THIRTY FEET EASTERLY THEREOF.

ALSO EXCEPTING THEREFROM THE PORTION OF MIRO WAY DESCRIBED AS PARCEL B DEDICATED TO THE CITY OF RIALTO IN RESOLUTION NO. 6587 RECORDED AUGUST 4, 2014 AS INSTRUMENT NO. 2014-0280325 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

APN: 0240-231-23-0-000 and 0240-231-20 and 0240-231-21 and 0240-231-22 and 0240-231-09 and 0240-221-09 and 0240-221-10 and 0240-221-13 and 0240-221-14 and 0240-221-22 and 0240-221-23 and 0240-221-12 and 0240-231-02

EXHIBIT “B”

PUBLIC IMPROVEMENTS

“Public Improvements” or “Improvements” shall consist of the following improvements:

1. Construction of approximately 2,000 lineal feet of master planned public roadway improvements (street half width plus one travel lane) for portion of Locust Avenue lying north of Miro Way and south of the DCT Project, (the “Locust Improvements”).
2. Construction of master planned storm drain improvements within in Locust Avenue right of way, approximately 1,750 lineal feet from Miro Way to existing storm drain facilities constructed by the DCT (the “Storm Drain Improvements”).
3. Construction of approximately 1,000 lineal feet of master planned sanitary sewer collection lines and improvements lying within Locust Avenue right of way (the “Sewer Improvements”).

EXHIBIT “C”

<u>DIF Fund Account</u>	<u>RMC Section</u>	<u>Development Impact Fee</u>	<u>Fee Assessed</u>	
220-400-8348-7679	3.33.230	Open Space	\$	128,438.40
230-400-4720-7662	3.33.270	Storm Drain Facilities	\$	1,653,150.11 ¹
250-400-4314-7679	3.33.180	Street Median	\$	21,406.40
250-400-4312-7679	3.33.160	Regional Traffic Impact Fee:	\$	1,209,461.60 ²
270-400-2147-7679	3.33.190	General Municipal Facilities	\$	66,791.18
660-400-7150-7703	3.33.240	Sewage Collection Facilities	\$	85,040.46 ³
660-400-7856-7705	3.33.250	Sewage Treatment Facilities	\$	258,504.27 ⁴
218-400-6282-7679	3.33.210	Law Enforcement Facilities	\$	42,231.73
217-400-5176-7679	3.33.220	Fire Facilities Impact Fee:	\$	62,791.92
DIF TOTAL			\$	3,527,816.08
FAIR SHARE FEES				
301-241-0401-0000		Renaissance - Traffic Mitigation	\$	150,454.88
301-241-0401-0001		Renaissance - Specific Plan - EIR Fee	\$	166,577.04
FAIR SHARE FEE TOTAL			\$	317,031.92
TOTAL ALL DEVELOPMENT IMPACT AND FAIR SHARE FEES			\$	3,844,848.00

Notes

¹ Storm Drain fee is assessed on the higher of two calculations.

² Transportation Fee is assessed based upon high-cube industrial rate. Subject to SANBAG increases.

³ Sewage Collection Fee may be credited or waived if master planned facilities serving others are constructed.

⁴ Wastewater Connection (Treatment) based upon Warehouse and 20000 sf office.

⁵ Fees are adjusted annually July 1 each year. Fee will be assessed and paid prior to issuance of building permits.

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 2.7 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. Owner 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. Owner 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. Owner must implement an appeals procedure for responding to disputes in compliance with California Public Contract Code Section 20101(d). If Owner 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 Owner (and approved by City) shall be permitted to bid on any portion of the construction work for the Public Improvements.
- C. Owner 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 Owner at Owner's place of business or other site mutually acceptable to Owner 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. Owner 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 Owner, 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 Owner 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. Owner must file a Notice of Completion within 30 days of City's approval of the Public Improvements (determining substantial completion).
- G. Owner must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Owner shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice filed against Owner or City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Owner are subject to inspection by or on behalf of the City Engineer. Construction shall be scheduled to allow for periodic inspection by the City Engineer or his designee. The Owner'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 either the City Administrator, Public Works Director, or City Engineer or their designee.

EXHIBIT “E”
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 CLDFI Linden 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 Credit and Construction 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 _____, 2014.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

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 CLDFI Linden 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 his or 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 _____, 2014.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

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 “F”

ESTIMATED CONSTRUCTION COSTS AND FEE CREDITS



OFF-SITE IMPROVEMENT COST ESTIMATE		
PROJECT - Medline		DATE: 3/2/2015
SUMMARY OF COSTS		
NO.	DESCRIPTION	Fee Credit Amount
1	Locust Avenue - Street Improvements	\$ 489,405
4	Storm Drain Improvements	\$ 599,902
5	Sewer Improvements (Construction Cost \$114,171)	\$ 85,040
8	RSP Fee	\$ 166,577
9	Total Estimate of Fee Credits	\$ 1,340,924
10	<i>amounts subject to change based on final costs and reconciliation</i>	
11		

Locust Avenue - Street Improvements				
NO.	DESCRIPTION	QUANTITY	UNIT COST	TOTAL
1	DEMOLITION - EXISTING A.C. PAVEMENT	200 SF	\$1.00 /SF	\$200
2	DEMOLITION - GRUB EXISTING TREES/VEGETATION	1 LS	\$1,000.00 /LS	\$1,000
3	ADJUST EXISTING MANHOLE TO GRADE	1 EA	\$1,200.00 /EA	\$1,200
4	SAWCUT PAVEMENT	160 LF	\$5.00 /LF	\$800
5	ROADWAY GRADING	110432 SF	\$0.60 /SF	\$66,259
6	GRIND, OVERLAY AND JOIN EXISTING A.C. PAVEMENT	800 SF	\$1.30 /SF	\$1,040
7	CONSTRUCT 5" A.C. PAVEMENT	79968 SF	\$2.00 /SF	\$159,936
8	CONSTRUCT 6" AGG. BASE	79968 SF	\$1.50 /SF	\$119,952
9	CONSTRUCT 8" CURB & GUTTER	1774 LF	\$18.50 /LF	\$32,819
10	CONSTRUCT 5' WIDE CONCRETE SIDEWALK	9000 SF	\$4.50 /SF	
11	CONSTRUCT PARKWAY LANDSCAPING & IRRIGATION	0 SF	\$4.50 /SF	\$0
12	CONSTRUCT CONCRETE COMMERCIAL DRIVEWAY	1 EA	\$5,000.00 /EA	\$5,000
13	INSTALL SIGNAGE	2 EA	\$300.00 /EA	\$600
14	INSTALL STREET STRIPING / CURB PAINTING	7800 LF	\$4.00 /LF	\$31,200
15	INSTALL STREET TREE	0 EA	\$350.00 /EA	\$0
16	INSTALL STREET LIGHT	7 EA	\$4,000.00 /EA	
17	INSTALL STREET LIGHT CONDUIT	1964 LF	\$15.00 /LF	
18	INSTALL STREET LIGHT PULL BOX	8 EA	\$500.00 /EA	
19	INSTALL STREET LIGHT PEDESTAL - ELECT. CONNECTION	1 EA	\$5,000.00 /EA	
20	INSTALL LOCAL DEPRESSION	1	\$1,500.00 /EA	\$1,500
33				
34	CONSTRUCTION STAKING			\$5,000
35	SOILS & MATERIALS TESTING			\$3,000
36	TRAFFIC CONTROL			\$500
37				
38	SUBTOTAL			\$430,006
39	10%CONTINGENCY			\$43,001
40				
41	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K			\$16,398
42				
43				
44	TOTAL			\$489,405

Storm Drain Improvements					
NO.	DESCRIPTION	QUANTITY		UNIT COST	TOTAL
22	STORM DRAIN IMPROVEMENTS - LOCUST AVENUE FRONTAGE				
23	INSTALL 24" STORM DRAIN	248	LF	\$96.00 /LF	\$0
24	INSTALL 30" STORM DRAIN	152	LF	\$120.00 /LF	\$0
25	INSTALL 36" STORM DRAIN	48	LF	\$144.00 /LF	\$0
26	INSTALL 48" STORM DRAIN	624	LF	\$192.00 /LF	\$119,808
27	INSTALL 54" STORM DRAIN	504	LF	\$216.00 /LF	\$108,864
28	INSTALL 60" STORM DRAIN	784	LF	\$240.00 /LF	\$188,160
29	INSTALL STORM DRAIN MANHOLE	5	EA	\$5,000.00 /EA	\$25,000
30	INSTALL STORM DRAIN TRANSITION STRUCTURE	3	EA	\$4,500.00 /EA	\$13,500
31	INSTALL CMP DROP INLET STRUCTURE	3	EA	\$4,000.00 /EA	\$12,000
32	BRICK AND MORTAR "PLUG" END OF PIPE	1	EA	\$1,000.00 /EA	\$1,000
33	REMOVE EXISTING STORM DRAIN FACILITIES	1	LS	\$50,000.00 /LS	\$50,000
34	DEMO EXISTING MANHOLE AND DRY WELL	1	EA	\$1,200.00 /EA	\$1,200
35					
36	CONSTRUCTION STAKING				\$4,500
37	SOILS & MATERIALS TESTING				\$2,500
38	TRAFFIC CONTROL				\$1,000
39	SUBTOTAL				\$527,532
40	10%CONTINGENCY				\$52,753
41	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K				\$19,617
42	TOTAL				\$599,902

Sanitary Sewer					
NO.	DESCRIPTION	QUANTITY		UNIT COST	TOTAL
1	SANITARY SEWER IMPROVEMENTS - LOCUST AVENUE FRONTAGE				
2	INSTALL 8" SEWER MAIN	352	LF	\$60.00 /LF	\$21,120
3	INSTALL 8" SEWER MAIN - DEEPER INSTALL	600	LF	\$90.00 /LF	\$54,000
4	INSTALL SEWER MANHOLE	2	EA	\$4,500.00 /EA	\$9,000
5	ADJUST EXISTING MANHOLE TO GRADE	2	EA	\$1,000.00 /EA	\$2,000
6	CONNECT TO EXISTING PUBLIC SEWER	4	EA	\$2,000.00 /EA	\$8,000
7					
8					
9	CONSTRUCTION STAKING				\$2,500
10	SOILS & MATERIALS TESTING				\$1,200
11	TRAFFIC CONTROL				\$1,000
12	SUBTOTAL				\$98,820
13	10%CONTINGENCY				\$9,882
14	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K				\$5,469
15	TOTAL				\$114,171

EXHIBIT "G"

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is made as of the _____ day of March, 2015 by: (i) Lewis-Hillwood Rialto Company, LLC, a Delaware limited liability company ("Assignor"), and (ii) Medline Industries Inc., an Illinois corporation ("Assignee").

RECITALS

A. Concurrently with the execution and delivery hereof, pursuant to a certain Agreement of Purchase and Sale dated December 15, 2014 (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 "Development Parcel").

B. It is the desire of Assignor to hereby sell, assign, transfer, convey, set-over and deliver to Assignee Assignor's right, title and interest to sections 14.1 through 14.3.2, inclusive, of that certain Credit and Construction Agreement between Assignor, as Developer, and the City of Rialto, a California municipal corporation, dated as of _____, 2015 (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 only to sections 14.1 through 14.3.2, inclusive, 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:

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 OPERATING CORP.,
a California corporation
its sole member

By: _____
Printed Name: _____
Title: _____

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

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

By: _____
Printed Name: _____
Title: _____

MEDLINE INDUSTRIES, INC.,
an Illinois corporation

By: _____
Printed Name: _____
Title: _____

EXHIBIT B

CONSTRUCTION COST ESTIMATES

OFF-SITE IMPROVEMENT COST ESTIMATE

ROADWAY IMPROVEMENTS - LOCUST AVENUE

<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Cost</u>	<u>Total</u>
Demolition - Existing AC Pavement	200	SF	\$ 1.00	\$ 200.00
Demolition - Clear and Grub	1	LS	\$ 1,000.00	\$ 1,000.00
Adjust Existing Manhole to Grade	1	EA	\$ 1,200.00	\$ 1,200.00
Sawcut Existing Pavement	160	LF	\$ 5.00	\$ 800.00
Roadway Grading	110432	SF	\$ 0.60	\$ 66,259.20
Grind/Overlay/Joint Existing AC Pavement	800	SF	\$ 1.30	\$ 1,040.00
Construct 5" AC Pavement	79968	SF	\$ 2.00	\$ 159,936.00
Construct 6" Aggregate Base	79968	SF	\$ 1.50	\$ 119,952.00
Construct 8" Curbs and Gutter	1774	LF	\$ 18.50	\$ 32,819.00
Construct Commerical Driveway	1	EA	\$ 5,000.00	\$ 5,000.00
Install Signage	2	EA	\$ 300.00	\$ 600.00
Install Street Striping/Curb Painting	7800	LF	\$ 4.00	\$ 31,200.00
Install Local Depression	1	EA	\$ 1,500.00	\$ 1,500.00
				\$ 421,506.20

Construction Staking	\$ 5,000.00
Soils and Material Testing	\$ 3,000.00
Traffic Control	\$ 500.00
Construction Soft Costs	\$ 8,500.00

SUBTOTAL \$ 430,006.20

10% Construction Contingency \$ 43,000.62
\$ 473,006.82

OFF-SITE PERMITS / INSPECTIONS (\$5,208+ 3% OF Value >100K) \$ 16,398.20

ROADWAY IMPROVEMENTS TOTAL COST \$ 489,405.02

EXHIBIT B

CONSTRUCTION COST ESTIMATES

OFF-SITE IMPROVEMENT COST ESTIMATE

STORM DRAIN IMPROVEMENTS				
<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Cost</u>	<u>Total</u>
Install 48" Storm Drain	624	LF	\$ 192.00	\$ 119,808.00
Install 54" Storm Drain	504	LF	\$ 216.00	\$ 108,864.00
Install 60" Storm Drain	784	LF	\$ 240.00	\$ 188,160.00
Install Storm Drain Manholes	5	EA	\$ 5,000.00	\$ 25,000.00
Install Storm Drain Transition Structure	3	EA	\$ 4,500.00	\$ 13,500.00
Install CMP Drop Inlet Structure	3	EA	\$ 4,000.00	\$ 12,000.00
Brick and Mortar "PLUG" End of Pipe	1	EA	\$ 1,000.00	\$ 1,000.00
Remove Existing Storm Drain Facilities	1	EA	\$ 50,000.00	\$ 50,000.00
Demo Existing Manhole and Dry Well	1	EA	\$ 1,200.00	\$ 1,200.00
				\$ 519,532.00
Construction Staking			\$ 4,500.00	
Soils and Material Testing			\$ 2,500.00	
Traffic Control			\$ 1,000.00	
Construction Related Costs				\$ 8,000.00
			SUBTOTAL	\$ 527,532.00
10% Contingency				\$ 52,753.20
				\$ 580,285.20
OFF-SITE PERMITS / INSPECTIONS (\$5,208+ 3% OF Value >100K)				\$ 19,616.56
			STORM DRAIN IMPROVEMENTS TOTAL	\$ 599,901.76

EXHIBIT B

CONSTRUCTION COST ESTIMATES

OFF-SITE IMPROVEMENT COST ESTIMATE

SANITARY SEWER IMPROVEMENTS

<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Cost</u>	<u>Total</u>
Install 8" Sewer Main	352	LF	\$ 60.00	\$ 21,120.00
Install 8" Sewer Line (Deeper)	600	LF	\$ 90.00	\$ 54,000.00
Install Sewer Manholes	2	EA	\$ 4,500.00	\$ 9,000.00
Adjust Existing Manhole to Grade	2	EA	\$ 1,000.00	\$ 2,000.00
Connect to Existing Sewer	4	EA	\$ 2,000.00	\$ 8,000.00
				\$ 94,120.00
Construction Staking			\$ 2,500.00	
Soils and Material Testing			\$ 1,200.00	
Traffic Control			\$ 1,000.00	
Construction Related Costs				\$ 4,700.00
			SUBTOTAL	\$ 98,820.00
10% Contingency				\$ 9,882.00
				\$ 108,702.00
OFF-SITE PERMITS / INSPECTIONS (\$5,208+ 3% OF Value >100K)				\$ 5,469.06
			SANITARY SEWER TOTAL COST	\$ 114,171.06

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WHEREAS, pursuant to the Second Amended and Restated Contract of Sale for Areas B, C, and D dated September 25, 2102, (the “Contract of Sale”), by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC (“LHR”), LHR has the right to purchase and develop approximately 438 acres of land that previous contained Rialto Airport Municipal Airport (the “Airport Property”) in accordance with the terms of the Contract of Sale; and

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1 **WHEREAS**, the Public Improvements are master planned facilities and/or are listed within the
2 City's Development Fee Nexus Studies; and

3 **WHEREAS**, Section 3.33.010 of the Rialto Municipal Code, permits the City Administrator
4 to negotiate and enter into Construction and Fee Credit Agreement, subject to the approval of the City
5 Council; and

6 **WHEREAS**, LHR and the City have negotiated the terms and wish to enter into a
7 Construction and Credit Agreement related to the construction of the Public Improvements in Locust
8 Avenue a copy of which is attached hereto as Exhibit A and is incorporated herein by reference; and

9 **WHEREAS**, the construction of the off-site public improvements for which LHR will receive
10 fee credits or reimbursements were reviewed and considered by the environmental review for the
11 Medline Project and since there will not be any additional impacts to the environment other than those
12 that have previously been studied and analyzed, no further environmental review is warranted.

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

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

15 **Section 2.** The City Council hereby finds and determines, based on substantial evidence in
16 the record that LHR is entitled to receive credit or reimbursements from the City for the costs to
17 construct the Public Improvements for which a development impact fee is imposed

18 **Section 3.** The City Council hereby finds and determines, based on substantial evidence in
19 the record, that based upon the analysis and environmental review completed as a part of the
20 Addendum to the previously certified Environmental Impact Report for the Renaissance Specific Plan
21 prepared and approved with respect to the Project, that there will be no significant adverse impact on
22 the environment resulting from entering into the Construction and Credit Agreement.

23 **Section 4.** The City Council hereby approves the Construction and Credit Agreement by
24 and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC, substantive in form and
25 content to that attached hereto in Exhibit A along with any non-substantive changes as may be
26 mutually agreed upon by the City Administrator (or his duly authorized representative), City Attorney
27 and Developer. Copies of the final form of the Construction and Credit Agreement, when duly
28 executed and attested, shall be placed on file in the office of the City Clerk.

Section 5. The City Administrator (or his duly authorized representative) is authorized to implement the Construction and Credit Agreement, take all further actions, and execute all documents referenced therein and/or necessary and appropriate to carry out the Project, including causing the issuance of warrants.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th day of March, 2015.

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 _____, 2015.

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:

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14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
15 Rialto this ____ day of _____, 2015

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18 **BARBARA MCGEE, CITY CLERK**
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EXHIBIT "A"

CONSTRUCTION AND CREDIT AGREEMENT

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, AMENDING ITS 2015 - 2016 FISCAL BUDGET.

WHEREAS, the budget for fiscal year 2015 -2016 of the City of Rialto has been adopted by this Council in its original form, and said budget will need to be amended at times to fulfill the goals of the City; and

WHEREAS, the City departments may not exceed their appropriations by character of expense, with character of expense being defined as personnel services, services and supplies, capital outlay, debt service and transfers, without the consent of the City Administrator; and

WHEREAS, the City Administrator may transfer appropriations, between departments and within their respective funds, as long as those appropriations do not exceed their fund total unless approved by Council.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO DOES
HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:**

Section 1: 1. Appropriate the following expenditures related to the Construction and

Credit as follows:

- a. Storm Drainage Development Impact Fee Fund Account No. 230-500-4720-3001-150808, in the amount of \$599,902;
- b. Regional Traffic Development Impact Fee Fund Account No. 250-500-4313-3001-150808, in the amount of \$489,405; and
- c. Wastewater Collection Development Impact Fee Fund Account No. 660-500-7150-3001-150808, in the amount of \$85,040.

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PASSED APPROVED AND ADOPTED this ____ day of _____, 2015.

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 _____, 2015.

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 _____, 2015.

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17 _____
18 BARBARA McGEE, CITY CLERK
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