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WHEREAS, On December 27, 2011, the City Council approved Resolution 6067, 6068, and 6069 which approved an update to the City’s Development Impact Nexus Fee Study and phased increases of Development Impact Fees (DIF) over a four-year period, beginning on July 1, 2012 through July 1, 2015; and

WHEREAS, on September 10, 2013, the City Council adopted Ordinance No. 1532, which replaced Chapters 3.34, 3.36, 3.40, 3.44, 3.48, 3.52, 3.56, 3.60, 3.64, 3.68, and 3.72 of the Rialto Municipal Code (RMC) and added a new Chapter (3.33) related to the imposition of DIF on new development projects; and

WHEREAS, Ordinance 1532 added Section 3.33.070(C) of the RMC, which requires non-residential projects to pay the DIF on “the date of issuance of the first building permit..., but before the building permit is issued unless otherwise modified by a Construction In-Lieu Agreement, Development Agreement or a Fee Deferral Agreement”; and

WHEREAS, Beyond Food Mart, Inc. (“Applicant”) has one development project (“Precise Plan of Design 2018-0036”) that has been approved by the City, submitted respective building plans for the City’s review and approval; and

WHEREAS, the Applicant has formally requested to defer the payment of Regional Traffic DIF, Storm Drain Facilities DIF, and the Traffic Fair Share Fee until prior to issuance of a Certificate of Occupancy instead of prior to the issuance of a building permit, and for the City to reconsider its calculation of local traffic fair share fees.

NOW, THEREFORE, the City of Rialto does hereby find, determine, and resolve as follows:

Section 1. The City Council hereby specifically finds that all of the facts set forth in the

1 Recitals of this Resolution are true and correct.

2 **Section 2.** The City hereby authorizes the deferral of payment of the Regional Traffic DIF,
3 Storm Drain Facilities DIF, and the Traffic Fair Share Fee until prior to the issuance of a Certificate of
4 Occupancy, in accordance with the terms and conditions contained with the Agreement for Deferral of
5 Payment of Development Impact Fees and Traffic Fair Share Fees attached hereto as Exhibit A (the
6 “Agreement”). The City Manager is hereby authorized to execute the Agreement.

7 **Section 3.** The City Manager shall evaluate the local traffic fair share fees previously
8 approved by the Transportation Commission applicable to Precise Plan of Design 2018-0036, and upon
9 a determination by the City Attorney that any or all are inapplicable pursuant to Chapter 3.33 of the
10 RMC, the City Manager shall waive or reduce the local traffic fair share fees accordingly.

11 **Section 4.** This Resolution shall become effective upon the date of its adoption.

12
13 **PASSED APPROVED AND ADOPTED** this 28th day of September, 2021.

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16 _____
DEBORAH ROBERTSON, MAYOR

17 ATTEST:

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19
20 _____
BARBARA McGEE, City Clerk

21
22 **APPROVED AS TO FORM:**

23
24
25 _____
ERIC S. VAIL, 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 of
6 Rialto held on the ____ day of _____, 2021.

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 _____, 2021.

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

PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

City of Rialto

AND WHEN RECORDED MAIL TO:

City of Rialto
Attn: City Clerk
150 S. Palm Ave.
Rialto CA 92376

Space above this line for recorder's use only

EXEMPT FROM RECORDER FEES PURSUANT TO GOV. CODE § 27383

**AGREEMENT FOR DEFERRAL
OF PAYMENT OF
DEVELOPMENT IMPACT FEES
AND
TRAFFIC FAIR SHARE FEES**

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4 **AGREEMENT FOR DEFERRAL OF PAYMENT OF**
5 **DEVELOPMENT IMPACT FEES AND TRAFFIC FAIR SHARE FEES**

6 This Agreement for Deferral of Payment of Development Impact Fees and Traffic Fair
7 Share Fees ("Agreement"), dated September 28, 2021, is entered into by and between the CITY
8 OF RIALTO, a municipal corporation organized and existing under the laws of the State of
9 California ("City") and Beyond Food Mart, Inc. ("Developer") on the following terms and
10 conditions:

11 **RECITALS**

12 A. Developer is presently developing a vehicle fuel station consisting of a 5,240 square
13 foot canopy with sixteen (16) fuel dispensers, a 7,250 square foot convenience market, and three
14 (3) diesel dispensers ("Project"), on 2.06 acres of land (APN: 0258-131-36) located at the southeast
15 corner of Riverside Avenue and Santa Ana Avenue ("Property"), located within the City of Rialto,
16 California. The Developer will need to obtain permits and approvals for the Project. A standard
17 condition on the issuance of these permits is the payment of City imposed Development Impact
18 Fees and Traffic Fair Share Fees.

19 B. The City has established a regular program of the payment of specified
20 Development Impact Fees to offset impacts on public services from new development within the
21 City. Development Impact Fees are typically payable to the City at the time the project applicant
22 submits an application to the City for a building permit.

23 C. Per the recommendation of the Transportation Commission at its meeting on April
24 3, 2019, and per Condition of Approval No. 96 of Precise Plan of Design No. 2018-0036, the City
25 has established a requirement for the payment of Traffic Fair Share Fees to facilitate roadway
26 improvements necessary to mitigate Project traffic impacts in and around the Project location.

27 D. In certain instances, the City acknowledges that it may be to the public's benefit to
28 defer the payment of Development Impact Fees and Traffic Fair Share Fees until a specified time
29 after the issuance of the building permit, provided adequate security for the future payment of the
30 fees is provided. Generally, where the project involves a significant capital investment by the
31 developer and will provide needed public improvements that benefit other properties or where the
32 project will provide a needed service, convenience, or accommodations to residents or visitors, the
33 City Council may find that the project qualifies to have the payment of Development Impact Fees
34 and Traffic Fair Share Fees deferred.

35 E. Developer has requested that the Project be considered eligible for deferral of
36 Development Impact Fees and Traffic Fair Share Fees. The City Council has determined, based
37 on the nature and location of the Project and the convenience it will provide to residents of the
38 City, deferral under the terms and conditions of this Agreement is in the best interest of the City.
39 Developer acknowledges and agrees that absent this Agreement it would be required to pay all
40 Development Impact Fees and Traffic Fair Share Fees (as defined below) at the time the Developer
41 submits applications to the City for a building permit.

42 F. Developer and City acknowledge that the California Prevailing Wage law normally
43 applies to projects where public funds are used for construction or for the payment of fees that are

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3 mandatory conditions of construction. In this case, City is not paying, waiving, reducing, or
4 forgiving fees but is instead deferring payment of them to a later date. Developer is absolutely
5 bound to pay the Development Impact Fees and Traffic Fair Share Fees, but will be allowed to pay
6 them prior to issuance of a certificate of occupancy, rather than prior to issuance of a building
7 permit for the project. Developer and City acknowledge that they have each and separately
8 investigated California Prevailing Wage Law and have each and separately determined that the
9 City's deferral of payment of Development Impact Fees and Traffic Fair Share Fees is not a
10 contribution of public funds, as defined by California Labor Code Section 1720 *et seq.*, and
11 administrative decisions issued by the Department of Industrial Relations interpreting that Section.
12 Notwithstanding the analysis and determination of the parties, Developer acknowledges that if the
13 Department of Industrial Relations determines that the deferral of payment of Development Impact
14 fees and Traffic Fair Share Fees for the Project is a contribution of public funds and that the project
15 is not otherwise exempt from the payment of prevailing wages under Labor Code Section 1720 *et*
16 *seq.*, then the construction and construction-related activities for the Project would be subject to
17 the California Prevailing Wage Law and Developer would be required to pay the general prevailing
18 wage rates of per diem wages and overtime and holiday wages as determined by the Director of
19 the Department of Industrial Relations under Section 1720 *et seq.*, of the California Labor Code
20 for all covered work performed on the Project that the Director determines is subject to payment
21 of prevailing wage rates.

22 **DEFINED TERMS**

23 "Action" shall mean any suit (whether legal, equitable, or declaratory in nature),
24 proceeding or hearing (where administrative or judicial), arbitration or mediation (whether
25 voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process,
26 and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument.

27 "City" shall mean the City of Rialto, a general law, municipal corporation formed and
28 existing under the laws of the State of California and any successor-in-interest to the rights,
obligations, and powers of the City.

"Developer" shall mean Beyond Food Mart, Inc. The term "Developer" shall also include
all assignees, to the extent permitted under this Agreement, of the rights and obligations of
Developer under this Agreement, and any successor-in-interest to Developer having a legal and/or
equitable interest in the Property.

"Development Impact Fees" shall mean those development impact fees that are contained
within the City's Development Impact Fee Nexus Study adopted by the City by Resolution No.
5427 on December 28, 2006 and Resolution No. 6068 on December 27, 2011, which are imposed
and levied by the City to recover the cost of planned public facilities and to mitigate impacts of
the Project on the City. Development Impact Fees other than those required for Regional Traffic
and Storm Drain Facilities are not subject to deferral under this Agreement and are not included
within the definition of Development Impact Fees under this Agreement. Development Impact
Fees subject to deferral under this Agreement are listed below:

Fee	Amount
Regional Traffic Fees	\$104,409.44

Storm Drain Facilities	\$77,328.88
Total:	\$181,738.32

“Effective Date” shall mean the date the Agreement has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer.

“Litigation Expenses” shall mean all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action, including, but not related to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys’ fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other cost or expense reasonably and necessarily incurred by the prevailing party in good faith and directly related to the Action. Where attorneys’ fees are to be paid by Developer to the City’s law firm on behalf of, or in defense of, City, the rate to be paid shall be the full litigation rate charged by the City’s law firm to the City in accord with the City’s contract with that law firm, and actually and necessarily incurred in good faith.

“Project” shall mean the proposed development of a vehicle fuel station consisting of a 5,240 square foot canopy with sixteen (16) fuel dispensers, a 7,250 square foot convenience market, and three (3) diesel dispensers.

“Property” shall mean those certain parcels of real property commonly known as 2.06 acres of land located at the southeast corner of Riverside Avenue and Santa Ana Avenue, located within the City of Rialto, California, also described as Assessor’s Parcel Number 0258-131-36 located in the City of Rialto, County of San Bernardino, State of California, as more particularly described in the legal description attached hereto and incorporated herein by reference as Exhibit “A”.

“Traffic Fair Share Fees” shall mean the fair-share amount established by the City of Rialto Transportation Commission on April 3, 2019 and required by Condition of Approval No. 96 of Precise Plan of Design No. 2018-0036. Traffic Fair Share Fees subject to deferral under this Agreement are listed below:

Fee	Amount
Traffic Fair Share Fees	\$1,428,026.50
Total:	\$1,428,026.50

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Deferral and Payment.

1.1 City’s Deferral. The City agrees that Developer may defer payment of the Development Impact Fees and Traffic Fair Share Fees imposed on the Project by City until

Developer applies for a Certificate of Occupancy, provided Developer remains in compliance with the terms, conditions, and covenants of this Agreement. The parties acknowledge that City normally requires the payment of all Development Impact Fees and Traffic Fair Share Fees at the time the project applicant submits an application to the City for a building permit. In this case, by virtue of this Agreement, the City will issue permits and approvals for the Project, provided all other requirements for the issuance of such permits have been met, even though the Developer will not have paid the Development Impact Fees and/or Traffic Fair Share Fees. City shall have no obligation to issue a Certificate of Occupancy or Temporary Certificate of Occupancy for any portion of the Project until Developer has paid the Development Impact Fees and Traffic Fair Share Fees for the Project in full.

1.2 Obligation to pay and Security. Developer has the absolute obligation to pay the entire outstanding balance of the Development Impact Fees and Traffic Fair Share Fees. Notwithstanding the provisions of this Agreement granting Developer permission to defer payment of the Development Impact Fees and Traffic Fair Share Fees, such deferred payment shall not be deemed to waive all or any portion of Developer's obligation to pay the entire outstanding balance of the Development Impact Fees and Traffic Fair Share Fees. Failure to fully pay the Development Impact Fees and Traffic Fair Share Fees as required shall be deemed a Default of this Agreement.

1.3 Lien on Property. This Agreement shall be recorded against the Property in the Office of the San Bernardino Recorder and shall constitute a lien for the payment of the Development Impact Fees and Traffic Fair Share Fees binding upon, and running with, the Property. If Owner sells all or any portion of the Property, Property shall not be released of any obligations under this Agreement relating to the Property or the portion of the Property which is being acquired. This Agreement shall be binding upon, and the benefits of this Agreement shall inure, to the Parties and all successors in interest to the Parties. The burden of this Agreement shall be released from title to the Property upon full payment of the Development Impact Fees and Traffic Fair Share Fees identified herein. Within a reasonable time following payment of the Development Impact Fees and Traffic Fair Share Fees, the City shall execute a lien release releasing the burden of this Agreement from the title to the Property.

1.4 Prevailing Wage Law. California Prevailing Wage law applies to projects where public funds are used to pay for construction or for the payment of fees that are mandatory conditions of construction. Pursuant to Section 1.1 [City's Deferral], City will defer payment of Development Impact Fees and Traffic Fair Share Fees, but will not itself pay any fees otherwise required to be paid by Developer. As agreed in Recital E, the parties understand that the City's deferral of payment of Development Impact Fees and Traffic Fair Share Fees will not subject the Project to payment of prevailing wages under California Prevailing Wage Law.

1.4.1 Deferral is not Payment of Public Funds. Developer is absolutely bound to pay all required Development Impact Fees and Traffic Fair Share Fees, but will be allowed to pay them upon application for Certificate of Occupancy as provided herein. The parties, having each researched California Prevailing Wage Law, agree that this deferral is not a payment of public funds pursuant to California Labor Code Section 1720 *et seq.* The deferral is instead a market transaction providing the Developer additional time to pay the required Development Impact Fees and Traffic Fair Share Fees.

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3 **1.4.2 Developer's Agreement to Comply With Prevailing Wage Law.**

4 Notwithstanding this understanding, Developer acknowledges that if the Department of Industrial
5 Relations determines that the deferral of Development Impact Fees and/or Traffic Fair Share Fees
6 constitutes the payment of public funds for the Project and that the project is not otherwise exempt
7 from the payment of prevailing wages under Labor Code Section 1720 *et seq.*, then the
8 construction and construction-related activities for the Project would be subject to the Prevailing
9 Wage Law and Developer would be required to pay the general prevailing wage rates of per diem
10 wages and overtime and holiday wages determined by the Director of the Department of Industrial
11 Relations under Section 1720 *et seq.*, of the California Labor Code for all work performed on the
12 Project determined by the Director to be subject to payment of prevailing wages under Section
13 1720 *et seq.* Developer reserves the right to contest any such determination or ruling.

14 **2. General Indemnity.**

15 **2.1 General Indemnity.** Except as to the sole negligence, active negligence or willful
16 misconduct of the City, Developer expressly agrees to, and shall, indemnify, defend, release, and
17 hold the City, and its respective officials, officers, employees, agents, and contractors harmless
18 from and against any Action, liability, loss, damage, entry, judgment, order, and lien, which arises
19 out of, or are in any way related to, any act or omission of Developer, or its officers, directors,
20 employees, agents, or contractors, connected with the performance under this Agreement, the
21 construction, use, or operation of the Project, notwithstanding that the City may have benefited
22 therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions,
23 willful misconduct or negligent conduct, whether active or passive, on the part of Developer's
24 officers, directors, employees, agents and contractors. The City shall not be responsible for any
25 acts, errors or omissions of any person or entity except the City and its officers, agents, servants,
26 employees or contractors. The Parties expressly agree that the obligations of Developer under this
27 Section shall survive the expiration or early termination of the Agreement.

28 **2.2 Prevailing Wage Indemnification and Waiver of Actions.** Developer, for itself
and its contractors, hereby expressly agrees that City has satisfied its obligations under the
Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any
other obligations imposed upon the City under Labor Code Sections 1726 and/or 1781 that are
owed to or may be actionable by Developer and its contractors. Furthermore, Developer, for itself
and its contractors hereby expressly waives any right of action against the City created under Labor
Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to
the Project and/or any Public Improvement. Developer hereby agrees and covenants to require this
express waiver in all construction contracts undertaken for the development of the Project.
Further, Developer expressly agrees to, and shall, indemnify, defend, release, and hold the City,
and its respective officials, officers, employees, agents, and contractors harmless from and against
any Action, liability, loss, damage, entry, judgment, order, and lien, which arises out of, or are in
any way related to or imposed upon the City under Labor Code Sections 1720 *et seq.* that the
Project and/or any Public Improvement is subject to the Prevailing Wage Laws and that payment
of Prevailing Wages are owed to or may be actionable by Developer and its contractors and/or
sub-contractors. The Parties expressly agree that the obligations of Developer under this Section
shall survive the expiration or early termination of the Agreement. The City shall cooperate with
Developer in any claim raised against either that is within the scope of this indemnification. The
Developer shall, at its expense, hire counsel to defend the City and Developer.

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2 **3. Default And Remedies.**

3 **3.1 Default.** Either party's failure or unreasonable delay to perform any term or
4 provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the
5 injured party shall give written "Notice of Default" to the defaulting party, specifying the Default.
6 Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party
7 fails to cure the Default within thirty (30) days after receipt of a notice specifying the Default, or,
8 if the Default is of a nature that cannot be cured within thirty (30) days, the defaulting party fails
9 to commence to cure the Default within said thirty (30) days and thereafter diligently prosecute
10 such cure to completion, then the defaulting party shall be liable to the injured party for any and
11 all damages caused by such Default, unless otherwise provided for by this Agreement.

12 **3.2 No Waiver.** Failure to insist on any one occasion upon strict compliance with any
13 of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant
14 or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one
15 time or more times be deemed a waiver or relinquishment of such other right or power at any other
16 time or times. The waiver of any terms, covenants or conditions hereof shall be null and void
17 unless in writing and approved in accordance with terms hereof. The City's issuance of a
18 Certificate of Occupancy for any portion of the Project prior to the payment of Development
19 Impact Fees and Traffic Fair Share Fees shall not constitute a waiver of Developer's obligation to
20 pay the Development Impact Fees and Traffic Fair Share Fees as set forth herein.

21 **3.3 Legal Actions.** In addition to any other rights and remedies any party may institute
22 a legal action to require the cure of any default and to recover damages for any default, or to obtain
23 any other remedy consistent with the purpose of this Agreement. The following provisions shall
24 apply to any such legal action:

25 **3.3.1 Jurisdiction and Venue.** Legal actions must be instituted and maintained in
26 the Superior Court of the County of San Bernardino, State of California, or if appropriate, in the
27 United States District Court for the Central District of California, Eastern Division. Participant
28 specifically waives any rights provided to it pursuant to California Code of Civil Procedure §394
and any federal statute or rule of similar effect.

3.3.2 Applicable Law. The laws of the State of California shall govern the
interpretation and enforcement of this Agreement.

3.3.3 Attorney's Fees. In the event either party commences an Action against the
other party which arises out of a Default of, breach of, failure to perform, or that is otherwise
related to, this Agreement, then the Prevailing Party (as defined here) in the Action shall be entitled
to recover its Litigation Expenses from the other party in addition to whatever relief to which the
prevailing party may be entitled. For the purpose of this section, "Prevailing Party" shall have the
meaning ascribed in §1032(a) (4) of the California Code of Civil Procedure.

3.4 Rights and Remedies are Cumulative. The rights and remedies of the Parties are
cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude
the exercise by it of any other rights or remedies for the same Default or any other Default by
another Party.

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2 **4. General Provisions.**

3 **4.1 No Third Party Beneficiaries.** This Agreement is for the sole and exclusive
4 benefit of the City, and Developer. No other parties or entities are intended to be, or shall be
5 considered, a beneficiary of the performance of any of the parties' obligations under this
6 Agreement.

7 **4.2 Recitals and Definitions.** The Recitals and Definitions set forth at the beginning
8 of this Agreement are a substantive and integral part of this Agreement and are incorporated by
9 reference in the Operative Provisions of this Agreement.

10 **4.3 Titles and Captions.** Titles and captions are for convenience of reference only and
11 do not define, describe or limit the scope or the intent of this Agreement or any of its terms.
12 Reference to section numbers are to sections in this Agreement unless expressly stated otherwise.

13 **4.4 Interpretation.** The City and Developer acknowledge that this Agreement is the
14 product of mutual arms-length negotiation and drafting and each represents and warrants to the
15 other that it has been represented by legal counsel in the negotiation and drafting of this
16 Agreement. Accordingly, the rule of construction which provides the ambiguities in a document
17 shall be construed against the drafter of that document shall have no application to the
18 interpretation and enforcement of this Agreement. In any action or proceeding to interpret or
19 enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict
20 with any specific provision of this Agreement to determine and give effect to the intention of the
21 parties hereto.

22 **4.5 Severability.** Each provision, term, condition, covenant, and/or restriction, in
23 whole and in part, in this Agreement shall be considered severable. In the event any provision,
24 term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared
25 invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed
26 from this Agreement and shall not affect any other provision, term, condition, covenant, and/or
27 restriction, of this Agreement and the remainder of the Agreement shall continue in full force and
28 effect.

4.6 Amendments to Agreement. Any amendments to this Agreement must be in
writing and signed by the appropriate authorities of the City and Developer.

4.7 Administration. Following approval of this Agreement by the City Council, the
City shall exercise its rights, perform its obligations, and otherwise administer this Agreement
through the City Manager. The City Manager shall have the authority to issue interpretations and
to make minor amendments to this Agreement on behalf of the City, provided that any such
interpretations and minor amendments shall be effective only if agreed to by Developer in writing
and providing such actions do not materially increase the obligations of the City, make a
commitment of additional funds to be paid by, or costs to be incurred by, the City, or result in a
discretionary extension of time in excess of thirty (30) days. Any such interpretations and/or minor
amendments approved by Developer in writing shall be considered an addendum to this
Agreement. All other changes, modifications, and amendments shall require the prior approval of
the City Council and Developer.

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2 **4.8 Notices, Demands and Communications Between the Parties.** Formal notices,
3 demands and communications between the parties shall be given in writing and personally served
4 or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the
5 principal offices of the parties, as designated in this Section, or telefaxed to the facsimile number
6 listed below followed by dispatch as above described. Such written notices, demands, and
7 communications may be sent in the same manner to such other addresses as either party may from
8 time to time designate by mail as provided in this Section. Any such notice shall be deemed to
9 have been received (i) upon the date personal service is effected, if given by personal service, (ii)
10 upon the expiration of one (1) business day, if telefaxed, or (iii) upon the expiration of three (3)
11 business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

12 If notice is to be made to the City:

13 City of Rialto
14 Attn: City Manager
15 150 S. Palm Ave.
16 Rialto CA 92376.

17 If notice is to be made to Developer:

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19 **4.9 Computation of Time.** The time in which any act is to be done under this
20 Agreement is computed by excluding the first day (such as the day escrow opens) and including
21 the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also
22 excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700
23 and § 6701. If any act is to be done by a particular time during a day, that time shall be Pacific
24 Standard Zone time.

25 **4.10 Authority.** The individuals executing this Agreement on behalf of Developer and
26 the instruments referenced on behalf of Developer represent and warrant that they have the legal
27 power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

28 **4.11 Counterpart Originals.** This Agreement may be executed in duplicate originals,
each of which is deemed to be an original.

4.12 Effective date of Agreement. This Agreement shall not become effective until the
date it has been formally approved by the City Council and executed by the appropriate authorities
of the City and Developer.

4.13 Waiver of Actions. Developer, for itself and its contractors, hereby expressly
agrees that City has satisfied its obligations under the Prevailing Wage Laws to identify projects
as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City
under Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Developer
and its contractors. Furthermore, Developer, for itself and its contractors hereby expressly waives

any right of action against the City created under Labor Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or this Agreement.

4.14 Assignment. Developer shall, upon delivering prior written notice to the City, have the right to sell, assign or otherwise transfer its interests in the Property, together with its rights and obligations under this Agreement, to another person or entity ("Subsequent Owner") at any time. Any transfer or assignment must be pursuant to a sale, assignment or other transfer of an interest in the property (or a portion thereof) and shall be subject to the following criteria and conditions: (i) the Developer shall notify the City, at least twenty (20) days prior to the transfer, of the name of the Subsequent Owner, together with the corresponding rights and obligations, if any, being transferred to such Subsequent Owner; and (ii) the agreement between the Developer and Subsequent Owner pertaining to such transfer shall provide, and Developer shall give City notice of such provision, which obligations of Developer under this Agreement the Subsequent Owner shall be liable to perform and acknowledging those obligations Developer retains, if any. Upon transfer of title to the property, the Developer will be released from this Agreement, including all of its terms, responsibilities, duties, and obligations, and the Subsequent Owner will become the Developer for all purposes under this Agreement.

IN WITNESS WHEREOFF, the parties hereto have executed this Agreement on the 9th day of September 2021.

CITY:
CITY OF RIALTO

By: _____
Deborah Robertson, Mayor

ATTEST:

By: _____
Barbara McGee
City Clerk

APPROVED AS TO FORM

By: _____
Eric S. Vail
City Attorney

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EXHIBIT "A"
Legal Description of Property