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City of Rialto
290 W. Rialto Avenue
Rialto, CA 92376
Attn: City Clerk

RECORDING FEES EXEMPT DUE TO
GOVERNMENT CODE SECTION 27383

City Clerk
City of Rialto, California

AND WHEN RECORDED MAIL TO:

John C. Condas, Esq.
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18101 Von Karman, Suite 1800
Irvine, California 92612

(Space Above Line For Recorder's Use Only)

PREANNEXATION AND DEVELOPMENT AGREEMENT

BY AND BETWEEN THE

CITY OF RIALTO AND YH CACTUS, LLC

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PREANNEXATION AND DEVELOPMENT AGREEMENT

BY AND BETWEEN THE

CITY OF RIALTO AND CACTUS INVESTMENT, LLC

1. PARTIES AND DATE{ TC "1. PARTIES AND DATE" \F C \L "1" }.

The Parties to this PREANNEXATION AND DEVELOPMENT AGREEMENT (“Agreement”) are the City of Rialto, California, a municipal corporation (“City”) and YH Cactus, LLC, a California Limited Liability Company (“Owner”). The Property to which this Agreement applies consists of approximately 165 acres comprising eight assessor parcels presently in unincorporated southern San Bernardino County, more particularly described in Exhibit “A” attached hereto and incorporated by this reference. This Agreement is made and entered into on _____, 2007.

2. DEFINITIONS{ TC "2. DEFINITIONS" \F C \L "1" }.

2.1. “Agreement” means this Preannexation and Development Agreement.

2.2. “Agreement Term” means the duration of this Agreement, which is 20 years, commencing on the Operative Date.

2.3. “Annexation” means addition of Property to the City, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code sections 56000 et seq.

2.4. “Annexation Date” means the date the Property is annexed into the City.

2.5. “CEQA” means the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) and the state CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.).

2.6. “City” means the City of Rialto, including its officials, officers, employees, commissions, committees and boards.

2.7. “City Council” means the duly elected City Council of the City.

2.8. “City Processing Fees” means the normal and customary application, filing, plan check and permit fees for land use approvals, design review, tree removal permits, building permits, demolition permits, grading permits, and other similar permits and entitlements, and inspection fees, which fees are charged to reimburse the City’s expenses attributable to such applications, processing, permitting, review and inspection and which are published and in force and effect on a citywide basis and charged by the City to applicants on a non-discretionary basis at such time as said approvals, permits, review, inspection or entitlements are granted or conducted by the City.

2.9. “County” means the County of San Bernardino.

2.10. “Development” means the construction and/or installation of structures, improvements and facilities on the Property as set forth in this Agreement including, without limitation, grading, the construction of infrastructure and public facilities related to the Project (whether located within or outside the Property), the construction of buildings and the installation of landscaping.

2.11. “Development Approvals” means all permits and other entitlements for use subject to approval or issuance by the City in connection with the Development of the Project, including, but not limited to:

- (a) amendments to the General Plan;
- (b) approval of the Specific Plan;
- (c) zone changes;
- (d) conditional use permits;
- (e) tentative and final subdivision and parcel maps, and amendments thereto;
- (f) Planned Residential Development Permits;
- (g) grading, building and occupancy permits;
- (h) any approval required of Owner by any other governmental agency in order to complete any required or permitted improvements associated with the Project; and
- (i) Certification of an Environmental Impact Report (“EIR”) and Mitigation Monitoring and Reporting Program (“MMRP”).

2.12. “Development Impact Fees” means monetary exactions, other than a tax or assessment, charged by the City in connection with the approval of a development permit to defray all or a portion of the cost of Master Plan Facilities in accordance with the terms of Government Code Section 66000 et. seq. Development Impact Fees shall not include Traffic Impact Mitigation Development Fees as defined in Section 2.36.

2.13. “EIR” means an environmental impact report prepared for the Project in accordance with the provisions of CEQA.

2.14. “Entitlements” means all Existing Development Approvals and all Subsequent Development Approvals.

2.15. “Entry Date” means _____, 2007, the date the Parties executed this Agreement.

2.16. “Existing Development Approvals” means all Development Approvals approved or issued prior to or on the Entry Date of this Agreement, including but not limited to, a General Plan Amendment, Zone Change, Approval of Specific Plan, Tentative Subdivision Map, and Certification of an EIR.

2.17. “Existing Land Use Rules” means the City General Plan and the City’s rules, regulations and official policies, including, without limitation, the City’s zoning, subdivision, building and other development regulations, including, without limitation, development conditions and standards, permitted uses, public works standards, subdivision regulations, density, growth management, environmental considerations, provision for reservation or dedication of land for public purposes, grading requirements and design, improvement and construction standards, specifications and criteria applicable to the Project, whether adopted by the City Council or by the voters in an initiative, which are in effect on the Entry Date pursuant to Government Code section 65866.

2.18. “Fair Share Fees” means exactions levied upon the Project to mitigate impacts identified in the Existing Development Approvals, whether in the form of an obligation to construct improvements or pay fees to a governmental authority.

2.19. “Fire Station Parcel” means the one acre property owned by the City at the northwest corner of Santa Ana Avenue and Willow Avenue which is to be developed with a fire station in accordance with the Master Plan of Facilities (“Fire Station”).

2.20. “Fire Station” means a facility to be constructed and operated by the City for fire protection services.

2.21. “General Plan” means the City of Rialto General Plan.

2.22. “Government Code” means the California Government Code.

2.23. “LAFCO” means the San Bernardino County Local Agency Formation Commission.

2.24. “Land Use Rules” means the City General Plan and the City’s rules, regulations and official policies, including, without limitation, the City’s zoning, subdivision, building and other development regulations, including, without limitation, development conditions and standards, permitted uses, public works standards, subdivision regulations, density, growth management, environmental considerations, provision for reservation or dedication of land for public purposes, grading requirements and design, improvement and construction standards, specifications and criteria applicable to the Project, whether adopted by the City Council or by voters in an initiative.

2.25. “Master Plan Facilities” means those facilities identified in Sections 3.36 through 3.68 of the Rialto Municipal Code as of the Entry Date and to be financed by the collection of Development Impact Fees and Traffic Impact Mitigation Development Fees, among other funding sources.

2.26. “Owner” means YH Cactus Development, LLC, and its successors in interest to all or any part of the Property.

2.27. “Operative Date” means the date upon which the City Council review and accepts the LAFCO conditions of approval related to the annexation but in any event not later than November 1, 2007.

2.28. “Parties” means the Owner and the City.

2.29. “Project” means the Development of the Property as more particularly described in the Rancho El Rivino Specific Plan.

2.30. “Property” means the real property which is the subject of this Agreement and which is described in Section 3, and more particularly described in Exhibit “A” attached hereto and incorporated by this reference.

2.31. “Public Facilities” means all streets, roadways, intersections, traffic signals, other transportation infrastructure, public buildings, public infrastructure, sewer and water facilities, storm drain facilities, street lights, curbs and gutters, sidewalks, fire stations, police stations and any other public facility.

2.32. “Specific Plan” means the Rancho El Rivino Specific Plan.

2.33. “Subsequent Development Approvals” means all Development Approvals required for the Project after the Entry Date of this Agreement that are in connection with the Development of the Project.

2.34. “Subsequent Land Use Rules” means any Land Use Rule that is effective after the Entry Date of this Agreement.

2.35. “Taxes” means general or special taxes, including but not limited to, property taxes, sales taxes, transient occupancy taxes, utility taxes, or business taxes of general applicability citywide which do not burden the Property disproportionately to other similar types of development within the City and are not imposed as a condition of approval for a development project. Taxes do not include Development Impact Fees, Fair Share Fees or Traffic Impact Mitigation Development Fees.

2.36. “Traffic Impact Mitigation Development Fees” means the fees levied by the City to mitigate the impacts of development upon the regional transportation network in accordance with the provisions of Measure I, initially adopted by the voters of San Bernardino County in 1989 and re-enacted in 2004. On December 19, 2006 the City adopted Resolution No. 5427 establishing a Traffic Impact Mitigation Development Fee which was approved by the San Bernardino County Association of Governments (“SANBAG”).

3. RECITALS{ TC "3. RECITALS" \f C \L "1" }.

3.1. Property{ TC "3.1 Property" \f C \l "2" } The Owner is the fee owner of the Property, which is located within the sphere of influence of the City and is particularly described in Exhibit “A.”

3.2. Legal Authority{ TC "3.2 Legal Authority" \f C \l "2" }. Government Code section 65864 et seq. authorizes the City to enter into development agreements in connection with the development and use of real property in the City. This Agreement is made and entered into pursuant to those provisions of State law.

3.3. Consistency Finding{ TC "3.3 Consistency Finding" \f C \l "2" }. By approving and executing this Agreement, the City finds that the Agreement’s provisions are consistent with

the City's General Plan and the Specific Plan, and the City further finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the City's present and future residents, property owners and taxpayers.

3.4. Consideration{ TC "3.4 Consideration" \f C \l "2" }. The City has determined that entry into this Agreement will further the goals and objectives of the City's land use planning policies, by eliminating uncertainty in planning for the orderly Development of the Property. The City has further determined that entry into this Agreement will provide the maximum effective utilization of the resources of the City, at the least economic cost to its citizens.

In exchange for these benefits to the City and its residents, the Owner wishes to receive the assurances permitted by State law so that the Owner may proceed to develop the Property in accordance with the Existing Land Use Rules.

The assurances provided by the City and the Owner to each other in this Agreement are being provided pursuant to and as contemplated by State law, are bargained and in consideration for the undertakings of the Parties, and are intended to be and have been relied upon by the Parties to their detriment, such that the Owner will be deemed to have a vested interest in the Existing Land Use Rules.

3.5. General Plan Designation of the Property{ TC "3.5 General Plan Designation of the Property" \f C \l "2" }. The Property is currently within the City's sphere of influence. The Property is part of the County's Bloomington Community Planning Area, and as such the portion of the Property west of Cactus Avenue is designated BL/IN Institutional, and the portion of the Property located east of Cactus Avenue is designated RS 20-M Residential Single Family.

Development and use of the Property is contemplated to occur in accordance with the Existing Land Use Rules, once the Property has been annexed into the City.

3.6. Agreement Only Operative Upon Annexation{ TC "3.6 Agreement Only Operative Upon Annexation" \f C \l "2" }. The Parties agree and acknowledge that before any Development of the Property can occur pursuant to this Agreement, and for this Agreement to become operative, that the Property must be annexed into the City pursuant to Government Code section 65865. The Parties also agree and acknowledge, pursuant to Government Code section 65865, that this Agreement shall become null and void unless the Annexation proceedings annexing the Property into the City are completed on or before November 1, 2007.

4. FEES, IMPROVEMENTS, AND FINANCING. { TC "4. FEES AND FINANCING" \f C \l "1" }

4.1. Administrative Fee.{ TC "4.1. Improvements" \f C \l "2" } An Administrative Fee of Fifty Thousand Dollars (\$50,000.00) is payable upon execution of this Agreement. The Administrative Fee due shall be reduced by a \$15,000.00 credit for Owner's deposit previously made for costs related to the preparation of this Agreement.

4.2. City Processing Fees{ TC "4.2. City Processing Fees" \f C \l "2" }. Owner shall pay all City Processing Fees to cover the estimated or actual costs to the City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, which fees are charged to reimburse the City's lawful expenses attributable to such applications, processing, permitting, review and inspection and which are published and in force and effect on a citywide basis at such time as such approvals, permits, reviews, inspections or entitlements are applied for by the Owner, and provided that such fees do

not exceed the fees that are generally charged by the City to other applicants on a non-discriminatory basis for similar approvals, permits, review, inspections or entitlements.

4.3. Development Impact Fees{ TC "4.3. Description of Benefits" \f C \l "2" }. Owner shall pay all Development Impact Fees as set forth herein in Exhibit B attached hereto and incorporated by this reference. These fees are on a per unit basis unless otherwise specified.

Except for the Traffic Impact Mitigation Development Fee, all other Development Impact Fees shall be fixed for a period of seven (7) years after the Operative Date. After the seventh anniversary of the Operative Date, Owner shall pay all Development Impact Fees or any new Development Impact Fees which are applicable to all other development projects citywide in accordance with then existing City rules and regulations. Owner shall have the option to pre-pay all remaining unpaid Development Impact Fees at the rates illustrated in Exhibit B of this Agreement prior to the seventh anniversary of the Operative Date. The Project shall not be subject to any new City Development Impact Fees or City Traffic Impact Mitigation Development Fees which may be adopted for a period of seven (7) years after the Operative Date.

4.4. Traffic Impact Mitigation Development Fees{ TC "4.4. Traffic Impact Mitigation Development Fees" \f C \l "2" }. Owner shall be obligated to pay the then applicable Traffic Impact Mitigation Development Fees established by the City in accordance with SANBAG requirements. The Traffic Impact Mitigation Development Fee shall not be fixed pursuant to the terms of this Agreement and shall be levied upon the Project in accordance with then applicable schedule, rules and procedures adopted by the City and approved by SANBAG. The

Traffic Impact Mitigation Development Fee presently is \$2181 per dwelling unit, as provided in Exhibit B of the Agreement

The Traffic Impact Mitigation Development Fee includes the Owner's Fair Share Fee contribution toward the Riverside/I-10 interchange, which is identified as a Master Plan Facility and Owner shall not be required to pay a Fair Share Fee for this public improvement. Owner shall have the option to pre-pay all or a portion of the Traffic Impact Mitigation Development Fee in accordance with any applicable policies, rules or regulations governing pre-payment issued by the San Bernardino Associated Government ("SANBAG"). Owner shall remain obligated to pay any fees, penalties, or sanctions imposed by SANBAG upon Owner or the City as a result of Owner's pre-payment of all or a portion of the Traffic Impact Mitigation Development Fee. In such a situation, Owner shall have the right to contest any fee, penalty, or sanction imposed by SANBAG upon Owner or the City.

4.5. Fair Share Fees TC "4.5. Fair Share Fees" \f C \l "2" }. Owner shall also pay any and all Fair Share Fees required in conjunction with the Development Approvals. Owner shall pay its fair share contribution for all intersections/interchanges located outside the City limits and for those intersections/interchanges that are located within the City but are not identified as a financed facility in Table 3.3 of the Nexus Study approved by the City on December 19, 2006 by adoption of Resolution No.5427. The Owner's Fair Share Fees for non-financed intersections/interchanges within the City shall be \$93,520.00 (\$128.82 per dwelling unit). Owner shall use all good faith efforts to pay its fair share contribution of fees for the following list of improvements outside the City limits ("Non-Rialto Improvements").

Rubidoux Boulevard (NS) at:

- 30th Street and the SR 60 WB Off-Ramp (EW)

- SR 30 WB On-Ramp (EW)
- SR 60 EB Off-Ramp and 30th Street (EW)

Cedar Avenue (NS) at:

- Market Street (EW)

Market Street (NS) at:

- SR 60 WB Ramps (EW)
- SR 60 EB Ramps (EW)

The Project's fair share contribution for the Non-Rialto Improvements is \$115,683 (\$159.34 per dwelling unit). If jurisdictions outside the City refuse to accept Owner's payments of fees for the Non-Rialto Improvements, then Owner shall contribute these fees to the City. The Owner shall pay or attempt to pay any and all Fair Share Fees owed to the City and other jurisdictions at the time and in the manner the City normally requires such payments to be made.

4.6. Fire Protection Services Development Fee TC "4.6. Fire Protection Services Development Fee" \f C \l "2" }. Owner shall pay \$870,000 into the City Fire Protection Services Development Fund, constituting full payment of the Project's Fire Protection Services Development Fee requirement, upon the earlier to occur of: (i) thirty (30) days after issuance of the rough grading permit for the Project, or (ii) June 30, 2009. As a condition precedent to Owner's deposit of this \$870,000, City shall provide documentation satisfactory to Owner that either City or City's Redevelopment Agency has sufficient funds and has issued a binding commitment to finance and construct the Fire Station. The City shall provide Owner with this documentation at least 30 days before Owner is required to pay the Fire Fees. After this \$870,000 payment is made, the City shall promptly commence the design of the Fire Station and

proceed to develop bid ready plans and specifications and complete any necessary environmental approvals.

4.7. Development Agreement Fee TC "4.7. Development Agreement Fee" \f C \l "2" } In consideration for the approval of this Agreement, which shall provide the Owner with a valuable land use entitlement, Owner will pay a special fee that will be called a Development Agreement Fee ("DAG Fee"), at the time of issuance of occupancy permits, to be used to fund the cost of municipal capital facilities and improvements and municipal public services. Without limiting the discretion of the City, the City expects that the great majority of the DAG Fee will be used exclusively for the benefit of the Rancho El Rivino Specific Plan. The DAG Fee will not be subject to increase beyond the values set forth in this Agreement for any reason and will constitute the sole DAG Fee that the Owner will be required to pay.

Owner shall make a DAG Fee payment to the City in the amount of \$2,600,000 upon the earlier to occur of the following two dates: (i) issuance of the first occupancy permit for the Project; or (ii) the date the City sells CFD bonds as specified in Section 4.10 of the Agreement, for the Project. Owner shall further make a DAG Fee payment to the City in the amount of \$1,030,000 before the issuance of the 100th occupancy permit for the Project, or twenty-four (24) months after the Owner makes the \$2,600,000 DAG Fee payment, whichever occurs first.

Notwithstanding the foregoing provisions, prior to the issuance of the 100th occupancy permit for the Project or twenty four (24) months after Owner makes the \$2,600,000 DAG Fee payment, whichever occurs first, if the Fire Station is not completed and suitable for occupancy, then Owner shall not be obligated to make the final DAG fee payment of \$1,030,000.

Notwithstanding the foregoing, in the event that the City asserts a claim of Force Majeure in

accordance with Section 25.2 of this Agreement, and Owner concurs with this claim, then Owner shall pay the \$1,030,000 DAG Fee when the Fire Station is completed and suitable for occupancy.

4.8. CFD Formation/City Utility Tax. At Owner's option, the Owner may petition the City to establish a CFD that levies a special tax that offsets the negative fiscal impacts, to the extent permitted by the legislation authorizing the CFD, that would be associated with the absence of the Utility Tax ("Services CFD"). If the Utility Tax is extended on a permanent basis with no sunset provision, then no Services CFD will be required. If the Utility Tax is adopted with a sunset provision, then the Services CFD shall be established at the maximum rate, which at present, is estimated at \$191/unit per year. If the City, with concurrence of Owner, devises another financing mechanism to cover the Project's fiscal impact, then no Services CFD will be required. If the Services CFD is created, the amount of the special tax will be reduced on an annual basis by the City to reflect the actual fiscal impact of the Project. The actual fiscal impact of the Project is presently set at an amount of \$191/unit but subject to change depending upon subsequent discretionary annexation actions taken by LAFCO. Owner shall disclose the Services CFD and Utility Tax terms to all prospective purchasers in a disclosure document that shall be submitted to the City for approval not less than sixty (60) days prior to marketing of the Project for sale to the public. The disclosure shall confirm that the Services CFD will be subject to the maximum annual inflator factor as provided by law.

4.9. Improvements. The City and the Owner agree that the following benefits being provided by the Owner will result in substantial general

public benefit. The following is a general description of these benefits: Pursuant to the Specific Plan, construction and widening of Cactus Road and El Rivino Road adjacent to the Property and improvements to Hall Avenue will be constructed by Owner. Additional Public Facilities improvements as specified in the Specific Plan, which shall be constructed by Owner include improvements of the Cactus Avenue - Jurupa Road and Cactus Avenue - Santa Ana Road intersections, storm drain facilities, and construction of sewer and water lines and related facilities.

The Owner is required by this Agreement to construct certain Public Facilities which will be dedicated to the City or other public agencies upon completion. Unless required by applicable law to do so, the Owner shall not be required to perform such work in the same manner and subject to the same requirements as would be applicable to the City or such other public agency should it have undertaken such construction, including, without limitation, the payment of prevailing wages pursuant to Labor Code Section 1770 et. seq. If the method of financing Public Facilities pursuant to this Agreement, or the granting of special benefits to the Owner as conferred by this Agreement, triggers an obligation to pay prevailing wages under applicable law then the Owner shall be required to pay prevailing wages and agrees to indemnify and defend the City from any and all claims related thereto.

4.9.1. Fire Station Improvements TC "4.9.1. Fire and Police Station Improvements" \f C \l "3" }. The City currently owns the Fire Station Parcel. City and Owner desire to construct the Fire Station on this parcel. The Owner shall provide the funding enumerated in this Agreement and the City shall design, construct, and equip the Fire Station. The City intends to enter into an agreement with the Redevelopment Agency of the City of Rialto (the "Agency")

wherein the Agency will finance the difference between the actual cost of constructing the fire station and the Fire Protection Services Development Fee and DAG Fee made by Owner. The City and Agency shall enter into such an agreement prior to the payment required under Section 4.6 of this Agreement.

If the Fire Station is constructed but not operational by the 100th Occupancy Permit or twenty four (24) months after Owner makes the \$2,600,000 DAG Fee payment, whichever is earlier, and the City is unable to operate the facility, then the City and Owner shall negotiate in good faith to provide alternative fire services from the Fire Station. The City and Owner agree to consider any and all reasonable means of providing fire services to the Project, including entering into a tri-party mutual aid agreement between the City, County, and the Owner wherein the County may lease the Fire Station from the City and provide fire and emergency medical services to the Project.

In no event shall Owner be obligated to provide any additional fees, mitigation, land or other benefit to the City or County regarding the Project's fire service impacts. While it is the City's intent to commence fire service operations immediately after construction of the Fire Station, the City shall not be obligated by this Agreement to man and operate the Fire Station and the City reserves the sole and absolute discretion to determine the level of fire services to be provided from the Fire Station in accordance with its legislative and administrative authorities.

4.9.2. Police Services and Sub-Station Improvements{ TC "4.9.2. Police Services and Sub-Station Improvements" \f C \l "3" }. If a separate and distinct portion of the Fire Station is utilized exclusively by the Police Department and added to the Master Plan of Facilities by the City Council, Owner shall be entitled to a credit toward the Law Enforcement

Services Development Fees levied in accordance with the Existing Land Use Rules. The credit shall be for the lesser of (a) the actual cost to construct and equip the exclusive space reserved for the police sub-station or (b) the actual Law Enforcement Services Development Fees due. The City shall refund any such fees previously paid if necessary to comply with this Section of the Agreement.

4.9.3 Other Public Facilities{ TC "4.9.3. Other Public Facilities" \f C \l "3" }. Owner shall construct all public improvements (including Public Facilities) required as a condition of approval or mitigation measure of the EIR/MMRP. All public improvements will qualify for permitted fee credits and applicable reimbursement by agreement in accordance with the Existing Land Use Rules.

4.10. Facilities CFD Financing{ TC "4.10. Facilities CFD Financing" \f C \l "2" }. In order to establish a method to finance Public Facilities and payment of Development Impact Fees, Fair Share Fees, or other lawful mitigation payments as may be required for Development of the Project, the Owner shall have the right to request that the City initiate and to use best efforts to conclude, in accordance with applicable laws regarding public hearing and protest, appropriate proceedings for the formation of assessment, benefit, maintenance or other districts, including without limitation Mello-Roos Community Facilities Districts (collectively, "Facilities CFD") under applicable laws and ordinances, provided that if such financing mechanisms are not effectuated and completed by June 30, 2008, Owner shall have the right but not the obligation to terminate this Agreement. Owner shall not be entitled to receive a refund of any fees paid at the time of termination, including, but not limited to paid Administrative Fees, City Processing Fees,

Development Impact Fees, Fair Share Fees, Traffic Impact Mitigation Development Fees, Fire Protection Services Development Fees, or DAG Fees.

Such Facilities CFD shall be authorized to levy an assessment or a special tax or taxes on the Property to finance, in accordance with the purposes and restrictions to which the funds may be put stated in the legislation establishing such districts to provide funds for public improvements, facilities and Development Impact, Fair Share and other development mitigation fees. Owner shall also have the right to request City to utilize any other financing method then available under ordinances or laws; provided, it is understood that in connection with any such request resulting in any other financing method being adopted, taking into account the requirements of applicable ordinances and laws, such public financing methods may result in the reduction of the cost of Development of the Project and in the enhancement thereof to achieve the intent of the Parties hereunder. City agrees to consider any such financing methods requested by Owner.

City agrees to use its best efforts to take all actions as may be necessary or appropriate in order to effectuate financing methods as provided in this Agreement, and Owner shall cooperate in connection therewith. Furthermore, City agrees not to unreasonably withhold its approvals of the authorization of subordinate bonds for sale to the Owner, where the bonds are held exclusively by Owner for the full term, and where the bonds comply with all normal and customary terms established by the City, including reasonable limitations on transfer of ownership.

4.11. Development Impact Fee Credits{ TC "4.11. Fee Credit for Roadway Improvements" \f C \l "2" }. To the extent that Owner constructs, improves or installs any Public

Facilities that are Master Plan Facilities, Owner shall receive a credit against payment of Development Impact Fees for the Project in accordance with the Existing Land Use Rules. If Owner has paid all or a portion of such Development Impact Fees before construction of any such Master Plan Facilities for the public, then Owner shall receive a refund of Development Impact Fees previously paid.

4.12. Park Fee Credits{ TC "4.12. Park Fee Credits" \f C \l "2" }. All of the Project's park facilities are to be privately owned facilities maintained for the exclusive benefit of the residents of the Project. Owner shall be entitled to a Parkland and Park Facilities Fees credit of 100 percent of actual improvement cost to the 5.3 acre neighborhood park for typical neighborhood park facilities up to a maximum credit of 25 percent of the Parkland and Park Facilities Fees. The Owner shall comply with the Existing Land Use Rules in order to claim the credit.

4.13. Reimbursement Agreements{ TC "4.13. Reimbursement Agreements" \f C \l "2" }. Owner may be entitled to reimbursement for Public Facilities or Master Plan Facilities if the Owner's actual costs incurred (minus the Owner's fair share of such Public Facilities or Master Plan Facilities) exceed the amount of Development Impact Fee credits, if any. The City and Owner shall enter into subsequent reimbursement agreements for the portion (if any) of the cost of any Public Facilities or Master Plan Facilities to the extent that they are in excess of those reasonably necessary to mitigate the impacts of the Project or Development on the Property.

5. DURATION OF AGREEMENT{ TC "5. DURATION OF AGREEMENT" \f C \l "1" }.

5.1. Annexation{ TC "5.1 Annexation" \f C \l "2" }. City and Owner agree that this Agreement is not operative unless and until the Property is annexed into the City, pursuant to Government Code section 65865. Notwithstanding the foregoing, the City agrees to take any actions necessary and within its authority, without waiving its discretionary authority, to effectuate annexation of the Property, which may be required before the Operative Date. Depending upon discretionary annexation actions taken by LAFCO, various provisions of this Agreement may need to be modified, clarified, or memorialized by the parties.

5.2. Agreement Term{ TC "5.2. Agreement Term" \f C \l "2" }. This Agreement shall remain in effect for a 10-year initial term (“Initial Term”), commencing on the Operative Date, with two 5-year extensions if the following build out thresholds are satisfied: The Initial Term shall be extended an additional 5 years upon issuance of the 350th building permit, as long as the 350th building permit is issued before expiration of the Initial Term. This Agreement shall be subject to a second 5-year extension upon the issuance of the 525th building permit if the 525th building permit is issued before expiration of the Initial Term and the first 5-year extension, rendering a 20-year term if both extensions are obtained (“Agreement Term”). This Agreement shall remain in effect for the Agreement Term unless the term is modified by mutual written consent of the Parties. Upon expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

5.3. Periodic Review{ TC "5.3 Periodic Review" \f C \l "2" }. The City will, in accordance with California Government Code Section 65865.1, review the Project and the

Owner's compliance with the terms of this Agreement at least once every 12 months from and after the Operative Date hereof. During each such periodic review, the City and the Owner will have the duty to demonstrate their good faith compliance as may be reasonably necessary, or required. The City's failure to review the Project and the Owner's compliance with the terms of this Agreement, at least annually, will not constitute or be asserted by either Party as a breach by the other Party. If the City fails to review the Project and the Owner's compliance with the terms of this Agreement, the Owner will be deemed to be in compliance with the provisions of this Agreement, and the Agreement will be deemed to be in full force and effect.

5.3.1. Review Procedure{ TC "5.3.1. Review Procedure" \f C \l "3" }. The City shall deliver to the Owner a copy of all public staff reports, documents and related exhibits concerning the City's review of the Owner's performance hereunder prior to any such periodic review. The Owner shall have the opportunity to respond to the City's evaluation of the Owner's performance, either orally or in a written statement, at the Owner's election. Upon completion of a Periodic Review, the City Administrator (or other appropriate City official) shall submit a report to the City Council setting forth the evidence concerning good faith compliance by the Owner with the terms of this Agreement along with the City Administrator's (or other appropriate City official) finding on that issue. Failure of the City Administrator (or other appropriate City official) to provide such a report shall be deemed to constitute the City's determination that the Owner is in good faith compliance with this Agreement. If, as a result of a Periodic Review, the City Council finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms or conditions of this Agreement, the City shall issue a written "Notice of Non-Compliance" to the Owner specifying the grounds

therefore and all facts demonstrating such non-compliance. The Owner's failure to cure the alleged non-compliance within ninety (90) days after receipt of the notice, or, if such non-compliance is not capable of being cured within ninety (90) days, the Owner's failure to initiate action required to cure such non-compliance within ninety (90) days after receipt of the notice, shall constitute a default under this Agreement on the part of the Owner and shall constitute grounds for the termination of this Agreement by the City as provided in this Agreement. The ninety (90) day cure period provided for in this Section may be extended by the City at the request of the Owner.

5.3.2. Termination or Modification for Non-Compliance{ TC "5.3.2. Termination or Modification for Non-Compliance" \f C \l "3" }. Pursuant to California Government Code section 65865.1, if the City Council finds and determines, on the basis of substantial evidence, that the Owner has not complied in good faith with the terms or conditions of this Agreement, the City Council may modify or terminate this Agreement, after the expiration of the applicable cure period, or extension thereof, provided in this Agreement. Any action by the City with respect to the termination or modification of this Agreement shall comply with the notice and public hearing requirements of California Government Code section 65867 in addition to any other notice required by law. Additionally, the City shall give the Owner written notice of its intention to terminate or modify this Agreement and shall grant the Owner a reasonable opportunity to be heard on the matter and to oppose such termination or modification by the City.

6. VESTED RIGHT{ TC "6. VESTED RIGHT" \F C \L "1" }.

6.1. Vesting{ TC "6.1 Vesting" \f C \l "2" }. By entering into this Agreement and relying thereon, the Owner is obtaining the vested right to proceed and develop the Property in accordance with this Agreement and the Existing Land Use Rules, subject to all discretionary and ministerial approvals of the City required in order to develop the Property. By entering into this Agreement and relying thereon, the City is securing certain public benefits which help to alleviate potential problems in the City and enhance the public health, safety and welfare of existing and future City residents. In view of the foregoing, the City agrees to the following:

6.1.1. No Conflicting Enactments{ TC "6.1.1 No Conflicting Enactments" \f C \l "3" }. Without limiting Paragraph 6.1 above, the City shall not apply to the Project any additional conditions or restrictions, whether by specific reference to the Development as part of a general enactment, and whether by action of the Planning Commission, City Council or otherwise as by initiative or referendum, which would:

(a) Limit or reduce the density or intensity of the Development of the Project Site, or otherwise require any reduction in the height, number, size or square footage of lots, structures or buildings in a manner which is inconsistent with or more restrictive on the Owner than the Existing Land Use Rules or this Agreement;

(b) Expand or increase the Owner's obligations with respect to the provision of parking spaces, streets, roadways and/or any other public or private improvements, structures or dedications of land or with respect to payments of monetary exactions in a manner which is inconsistent with or more restrictive on the Owner than the Existing Land Use Rules or this Agreement;

(c) Limit or control the timing or phasing of the construction or Development of the Project Site in a manner which is inconsistent with or more restrictive on the Owner than the Existing Land Use Rules or this Agreement. The parties acknowledge that Owner cannot at this time predict when or the rate at which phases of the Project will be developed. Such decisions depend upon numerous factors that are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of Development resulted in a later adopted initiative restricting the timing of Development to prevail over such Parties' agreement, it is the Parties' intention to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and shall not be subject to any after-enacted initiative measures, ordinances or policies which purport to regulate or limit the rate, timing or sequencing of any Development permits necessary for the Project; and/or

(d) Limit the design, improvement or construction standards or specifications or the location of buildings, structures, grading or other improvements relating to the Development of the Project in a manner which is inconsistent with or more restrictive than the Existing Land Use Rules or this Agreement.

6.1.2. Limitation on the Increase of Development Impact Fees TC "6.1.2. Limitation on the Increase of Development Impact Fees" \f C \l "3" }. As they apply to the Project, all Development Impact Fees shall be fixed as specified in Section 4 of this Agreement. Any new

Development Impact Fees enacted by the City after the Operative Date of this Agreement shall not be applied to the Development of the Project [except as set forth in Section 8.5 of this Agreement].

7. USE AND DEVELOPMENT OF THE PROPERTY{ TC "7. USE AND DEVELOPMENT OF THE PROPERTY" \f C \l "1" }.

7.1. Potential Development of the Property{ TC "7.1 Potential Development of the Property" \f C \l "2" }. The Parties acknowledge and agree that Development of the Property may be processed in accordance with the Existing Land Use Rules.

7.2. Development Standards{ TC "7.2 Development Standards" \f C \l "2" }. All Development and design requirements and standards applicable to the Project shall conform to the Existing Development Approvals, Subsequent Development Approvals, and Existing Land Use Rules.

7.3. Maximum Height and Size{ TC "7.3 Maximum Height and Size" \f C \l "2" }. The maximum height of any buildings constructed within the Project shall conform to the Existing Development Approvals, Subsequent Development Approvals, and Existing Land Use Rules.

7.4. Density and Intensity of Use{ TC "7.4 Density and Intensity of Use" \f C \l "2" }. The maximum number of units permitted within the Project shall conform to the Existing Development Approvals, Subsequent Development Approvals, and Existing Land Use Rules.

7.5. Effect of Agreement on Land Use Regulations{ TC "7.5 Effect of Agreement on Land Use Regulations" \f C \l "2" }. In connection with any approval which the City is permitted to give under this Agreement with respect to the Property, or otherwise under the Existing Land

Use Rules, the City will exercise its discretion or take action in a manner which is as expeditious as possible and which complies and is consistent with the Existing Land Use Rules.

7.6. Amendments to Existing Development Approvals TC "7.6 Amendments to Existing Development Approvals" \f C \l "2" }. Pursuant to Government Code section 65868, the Parties acknowledge that refinement and further Development of the Project may require amendment to Existing Development Approvals and may demonstrate that changes are appropriate and mutually desirable. In the event the Owner finds that a change to or amendment of the Existing Development Approvals is necessary and/or appropriate, the Owner shall apply for a Subsequent Development Approval to effectuate such a change and the City shall use reasonable good faith and diligent efforts, within the time limits imposed by applicable law, to expeditiously process all necessary studies and approvals that may be necessary for any such Subsequent Development Approval, together with any necessary related mitigation measures and requirements, any tentative and final subdivision maps, public improvement plans, conditional use permits, planned residential development permits, site and design reviews and other related Project Development approvals. In connection therewith, the City shall comply with all legally required notice and other requirements. Unless otherwise required by law, any amendment of any Existing Development Approval shall be deemed “minor” and not require an amendment or addendum to this Agreement, provided such amendment does not:

- (a) Alter the permitted uses of the Property; or
- (b) Substantially increase the density or intensity of use of the Project as a whole; or
- (c) Substantially increase the maximum height and size of permitted buildings.

7.7. Tentative Subdivision Map and other Entitlement Extensions{ TC "7.7 Tentative Subdivision Map Extensions" \f C \l "2" }. In accordance with Government Code sections 65863.9 and 66452.6, all tentative subdivision maps or tentative parcel maps, whether vesting or not, or any other permit which may be approved by the City in connection with Development of the Property, shall be granted an extension of time for the greater of the term of this Agreement, in which case no such extension application to extend the expiration date of any tentative map need be filed, or such time approved in accordance with State law or the Existing Land Use Rules. The parties also agree that phased final subdivision maps may be processed and recorded.

7.8. Utility Service{ TC "7.8 Sewer Service" \f C \l "2" }. City acknowledges and agrees that City has and will have sufficient capacity for sewer collection, sewer treatment and sanitation service to accommodate the Project, as each final map for the Project is recorded. To the extent that the City renders the services or provides the utilities referenced in this Section, the City agrees to timely grant or issue hookups or service to all Development in the Project upon request for such hookups and services.

8. RULES, REGULATIONS AND OFFICIAL POLICIES{ TC "8. RULES, REGULATIONS AND OFFICIAL POLICIES" \f C \l "1" }.

8.1. New Rules{ TC "8.1 New Rules" \f C \l "2" }. Although the Existing Land Use Rules will govern uses of the Property and any potential Development of the Property, this Agreement will not prevent the City from applying the following new rules, regulations and policies:

8.1.1. Procedural Regulations{ TC "8.1.1 Procedural Regulations" \f C \l "3" }.

Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

8.1.2. Regulations Governing Construction Standards{ TC "8.1.2 Regulations

Governing Construction Standards" \f C \l "3" }. Regulations governing construction standards and specifications including, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code and Fire Code, provided that such construction standards and specifications are applied by the City consistently and proportionately in accordance with applicable law.

8.1.3. Nonconflicting Regulations{ TC "8.1.3 Nonconflicting Regulations" \f C \l

"3" }. Regulations which are not in conflict with the Existing Land Use Rules.

8.1.4. Certain Conflicting Regulations{ TC "8.1.4 Certain Conflicting

Regulations" \f C \l "3" }. Regulations which are in conflict with the Existing Land Use Rules if such regulations have been consented to in writing by the Owner.

8.1.5. Regulations Needed to Protect the Health and Safety{ TC "8.1.5

Regulations Needed to Protect the Health and Safety" \f C \l "3" }. Regulations which are in conflict with the Existing Land Use Rules if such regulations are necessary to protect the health and safety of citizens of the City. To the extent possible, such regulations shall be applied and construed so as to provide the Owner with the rights and assurances under this Agreement.

8.2. Subsequent Actions and Approvals{ TC "8.2 Subsequent Actions and Approvals"

\f C \l "2" }. The Owner and the City expressly intend to cooperate and diligently work to process all applications, plans, maps, agreements, documents, and other instruments or entitlements necessary or appropriate for the completion of the Development of the Project

pursuant to the Existing Development Approvals and Existing Land Use Rules, including without limitation approvals necessary for general or Specific Plan amendments, rezoning, subdivision, design review approvals, site plan approvals, improvement agreements and other agreements, use permits, grading permits, dirt stockpile permits, encroachment permits, building permits, lot line adjustments, certificates of occupancy, sewer and water connection permits, zoning approvals, boundary adjustments, subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps), certification of environmental impact reports, preliminary and final Existing Development Approvals, landscaping plans, certificates of compliance, resubdivisions, and modifications to the Existing Development Approvals. Without limiting the generality of the foregoing, the Owner may apply for multiple planned development permits and subdivision maps in connection with the Development of the Project.

8.3. Expeditious Processing TC "8.3 Expeditious Processing" \f C \l "2" }. The City agrees not to unreasonably withhold, condition or delay any Subsequent Development Approval, including but not limited to the approval of vesting tentative maps. Upon the filing of a complete application and payment of appropriate processing fees by the Owner, the City shall promptly commence and diligently schedule and convene all required public hearings in an expeditious manner consistent with the law and process all Subsequent Development Approvals in an expeditious manner consistent with applicable law.

8.4. Incorporating Vested Project Approvals TC "8.4 Incorporating Vested Project Approvals" \f C \l "2" }. Upon approval of any Subsequent Development Approval, and as they may be amended from time to time, Owner shall have a “vested right” as that term is defined

under California law, in and to such Subsequent Development Approvals by virtue of this Agreement.

8.5. Police Power and Taxing Power{ TC "8.5 Police Power and Taxing Power" \f C \l "2" }. The City will not impose, or enact any additional conditions, exactions, dedications, fees or regulations through the exercise of either the police power or the taxing power with respect specifically to the Development of the Property except as provided in the Existing Land Use Rules or in this Agreement. The Project shall be subject to the application of any new Taxes as that term is defined in Section 2.35 of this Agreement.

8.6. Supersedure by Subsequent Laws{ TC "8.6 Supersedure by Subsequent Laws" \f C \l "2" }. If any federal or state law, made or enacted after the Entry Date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new law. Immediately after enactment or promulgation of any such new law, City and Owner shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. Owner and City shall have the right to challenge the new law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. At Owner's sole option, the term of this Agreement may be extended for the duration of the period during which such new law precludes compliance with the provisions of this Agreement.

9. COOPERATION AND COVENANT OF FURTHER ASSURANCES{ TC "9.

**COOPERATION AND COVENANT OF FURTHER ASSURANCES" \f C
\l "1" }.**

9.1. Third Party Actions{ TC "9.1 Third Party Actions" \f C \l "2" }. The Owner and the City will cooperate in defending any action instituted by any third party challenging the validity of any provision of this Agreement or any action taken or decision made hereunder. Owner agrees to assume the lead role in defense of any such action or proceeding so as to minimize litigation expenses incurred by the City. In addition, any action instituted by any third party challenging this Agreement or any other permit or approval required from the City or any other governmental entity, for the Development of the Project, will constitute a permitted delay under Section 10. Notwithstanding the foregoing, the filing, of any third party action against the City and/or the Owner with respect to this Agreement or any provision hereof, will not be a reason to delay or stop the Development of the Property (including, without limitation, the processing of any application of the Owner with respect to the Property, the issuance of and building permit or the issuance of any certificate of occupancy) unless the third party obtains a court order preventing such activity. The City agrees that it will not stipulate to the issuance of any such court order.

9.2. Further Assurances{ TC "9.2 Further Assurances" \f C \l "2" }. Each Party covenants on behalf of itself and its successors and assigns to take all actions and do all things, and to execute with acknowledgments or affidavits if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this

Agreement. Each Party will take all necessary measures to see that the provisions of this Agreement are carried out in full.

9.3. Covenant of Good Faith and Fair Dealing{ TC "9.3 Covenant of Good Faith and Fair Dealing" \f C \l "2" }. Except as may be required by law, neither Party will do anything which will have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement and each Party will refrain from doing anything which would render performance under this Agreement impossible or impractical. In addition, each Party will do everything which this Agreement describes that such Party will do.

9.4. Other Governmental Permits and Fees{ TC "9.4 Other Governmental Permits and Fees" \f C \l "2" }. The City shall cooperate with the Owner's efforts to obtain such other permits and approvals as may be required by other governmental or quasi-governmental agencies, including, without limitation, Annexation, annexation by water districts and/or approval by other districts or special districts providing flood control, water supply, sewer and fire protection, having jurisdiction over the Project in connection with the Development of, or provision of services to, the Project, and shall, from time to time, at the request of the Owner, attempt with due diligence and in good faith to enter into binding agreements with any such entity to assure the availability of such permits and approvals or services, provided such agreements are reasonable. The City shall use its best efforts to work with other governmental and quasi-governmental agencies so as to limit to the maximum extent possible the imposition of additional fees, dedication or exactions by or through such agencies.

10. PERMITTED DELAYS{ TC "10. PERMITTED DELAYS" \F C \L "1" }.

Any period of delay caused by casualties; acts of God; civil commotion; war; insurrection; riots; strikes; walk outs; picketing or other labor disputes; unavoidable shortages of materials or supplies; damages to work in progress by reason of fire, flood, earthquake or other casualty; litigation which prohibits or delays performance of the Agreement; non-City moratoria; judicial decisions; or any other cause which is not within the reasonable control of the Parties shall extend the duration of the Agreement. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained, and the Agreement Term shall be extended by the period of any such delay. Notwithstanding Section 13.1.3 of this Agreement, any claim for delay must be presented within thirty (30) days of knowledge of the cause of such delay or any entitlement to time extension will be deemed waived. Total annual permitted delays will be determined and set forth in the periodic review described in Section 5.3.

11. ESTOPPEL CERTIFICATES{ TC "11. ESTOPPEL CERTIFICATES" \F C \L "1" }.

Either Party may at any time, and from time to time, deliver written notice to the other Party, requesting that the other Party certify in writing to the knowledge of the certifying Party that: (a) this Agreement is in full force and effect and is a binding obligation of the certifying Party; (b) this Agreement has not been amended or modified, except as expressly identified; and (c) no default in the performance of the requesting Party's obligations pursuant to Agreement exists, except as expressly identified. A Party receiving a request hereunder shall execute and return the requested certificate within 30 days after receipt of the request.

12. RECORDATION BY CITY CLERK{ TC "12. RECORDATION BY CITY CLERK" \F C \L "1" }.

Pursuant to Government Code section 65868.5, within 10 days of the Entry Date, the City Clerk shall record a copy of this Agreement in the Official Records of the County Recorder.

13. TERMINATION{ TC "13. TERMINATION" \F C \L "1" }.

This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) the Annexation proceedings annexing the Property into the City are not completed prior to November 1, 2007

(b) Expiration of the Agreement Term as set forth in Section 5, and as may be extended pursuant to this Agreement;

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement;

(c) Completion of the Project in accordance with the terms and conditions of this Agreement, including issuance of all required occupancy permits and acceptance by the City and/or applicable public agency of all required dedications;

(d) Default by either of the Parties pursuant to Section 13.1 of this Agreement; and/or

(e) Cancellation by mutual agreement of the Parties pursuant to Section 14 of this Agreement.

13.1. Termination by Default{ TC "13.1 Termination by Default" \f C \l "2" }.

Termination of this Agreement by one Party due to the default of the other Party will not affect any right or duty emanating from any then existing City entitlement or approvals with respect to

the Property, but the rights and obligations of the Parties will otherwise cease as of the date of such termination. If the City terminates this Agreement because of a default of the Owner, then the City will retain any and all benefits including, without limitation, money or land received by the City hereunder. If the Owner terminates this Agreement because of a default by the City, then the Owner will be entitled to a return or a refund of all unused benefits and fees paid, given or dedicated to the City pursuant to this Agreement.

13.1.1. Events of Default{ TC "13.1.1 Events of Default" \f C \l "3" }. Subject to any written extension of time by mutual consent of the Parties, and subject to the provisions of Section 10 regarding permitted delays, the uncured failure of either Party to perform any material term or provision of this Agreement shall constitute a default. On notice to a Party of its failure of performance, such Party will have ninety (90) days to cure such failure of performance; provided, however that if the nature of the failure of performance is such that it cannot be cured within such period, then the diligent prosecution to completion of the cure will be deemed to be cure within such period. Any notice of default given hereunder will specify in detail the nature of the alleged default and the manner in which such default may be satisfactorily cured in accordance with this Agreement. During the time period herein specified for the cure of a failure of performance, the Party charged with such failure of performance will not be considered to be in default for purposes of termination of this Agreement or for purposes of institution of legal proceedings with respect thereto and, if the Owner is the Party that has failed to perform, then the City will not be excused from its performance under this Agreement during that period.

13.1.2. Remedies{ TC "13.1.2 Remedies" \f C \l "3" }. Upon the occurrence of a default under this Agreement and the expiration of any applicable cure period, the non-defaulting

Party will have such rights and remedies against the defaulting Party as it may have at law or in equity including, without limitation, the right to terminate this Agreement.

13.1.3. No Waiver{ TC "13.1.3 No Waiver" \f C \l "3" }. The failure by a Party to insist on the strict performance of any of the provisions of this Agreement by the other Party will not constitute a waiver of such Party's right to demand strict performance by such other Party in the future. All waivers must be in writing to be effective or binding on the waiving Party and no waiver will be implied from any omission by a Party to take action. No express written waiver of any default will affect any other default or cover any other period of time except that specified in such express waiver.

14. CANCELLATION BY MUTUAL CONSENT{ TC "14. AMENDMENT OR CANCELLATION BY MUTUAL CONSENT" \f C \l "1" }.

Pursuant to California Government Code Section 65868, this Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City and the Owner or their successors in interest. Public notice of the Parties' intention to amend or cancel any portion of this Agreement shall be given in the manner provided by California Government Code Section 65867.

15. ADMINISTRATION OF AGREEMENT AND RESOLUTION OF DISPUTES{ TC "15. ADMINISTRATION OF AGREEMENT AND RESOLUTION OF DISPUTES" \f C \l "1" }.

The Owner shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project or the interpretation and administration of this Agreement. In the event the Owner and

the City cannot agree whether a default on the part of the Owner under this Agreement exists or whether or not any such default has been cured, then the City or the Owner may commence legal action pursuant to Section 22 of this Agreement.

16. NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY{ TC "16. NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY" \F C \L "1" }.

The City and the Owner hereby renounce the existence of any form of joint venture or partnership between them and expressly agree that nothing contained herein or in any document executed in connection herewith will be construed as making the City and the Owner joint venturers or partners. It is understood that the contractual relationship between the City and the Owner is such that the Owner is an independent contractor and not an agent of the City. Furthermore, this Agreement is not intended or construed to create any third party beneficiary rights in any person who is not a party to this Agreement.

17. COVENANTS RUNNING WITH THE LAND{ TC "17. COVENANTS RUNNING WITH THE LAND" \F C \L "1" }.

All of the terms, provisions, covenants and obligations contained in this Agreement will be binding upon the Parties and their respective successors and assigns, and all other persons or entities acquiring all or any part of the Property, and will inure to the benefit of such Parties and their respective successors and assigns. All the provisions of this Agreement will be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law including, without limitation, California Civil Code Section 1468. Each covenant to or refrain from doing some act on the Property is expressly for the benefit of the Property and is a burden upon the Property, runs with the Property and is binding upon each Party and each successive

owner during its ownership of the Property or any part thereof, and will benefit each Party and its property hereunder, and each Party succeeding to an interest in the Property.

**18. TERMS AND CONSTRUCTION{ TC "18. TERMS AND CONSTRUCTION"
FC\L "1" }.**

18.1. Severability{ TC "18.1 Severability" \f C \l "2" }. If any term, provision, covenant or condition of this Agreement is determined to be invalid, void or unenforceable by judgment or court order, then the remainder of this Agreement will remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or grossly inequitable under all the circumstances or would frustrate the stated purposes of this Agreement.

18.2. Entire Agreement{ TC "18.2 Entire Agreement" \f C \l "2" }. This Agreement contains all the representations and constitutes the entire agreement between the City and the Owner. Any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.

18.3. Section Headings{ TC "18.3 Section Headings" \f C \l "2" }. The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

18.4. Construction Number and Gender{ TC "18.4 Construction Number and Gender"
\f C \l "2" }. This Agreement will be construed as a whole according to its common meaning and not strictly for or against either Party in order to achieve the objectives and purposes of the Parties hereunder. Whenever required by the context of this Agreement, the singular will include

the plural and vice versa, and the masculine gender will include the feminine and neuter genders. In addition, “will” and “shall” are the mandatory and “may” is the permissive.

18.5. Choice of Law; Construction; Jurisdiction; Venue TC "18.5 Choice of Law; Construction; Jurisdiction; Venue" \f C \l "2" }. The Parties agree that this Agreement shall be interpreted under the laws of the State of California and that the applicable law for any question or controversy arising out of or in any way related to this Agreement shall be the law of the State of California. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No presumptions or rules of interpretation based upon the identity of the Party preparing or drafting this Agreement, or any part thereof, shall be applicable or invoked. The Parties agree that any legal proceeding commenced with respect to any question or controversy arising out of or in any way related to this Agreement shall be filed and prosecuted in the Superior Court of California for the County of San Bernardino, California.

18.6. Incorporation of Recitals and Exhibits TC "18.6 Incorporation of Recitals and Exhibits" \f C \l "2" }. All recitals set forth herein, and all Exhibits referenced herein and/or attached hereto, are incorporated into and are effective parts of this Agreement.

19. CONSENT OF OTHER PARTIES TC "19. CONSENT OF OTHER PARTIES" \f C \l "1" }.

The Owner may, at its discretion, elect to have other holders of legal, equitable or beneficial interests in the Property or parts thereof, acknowledge and consent to the execution and recordation of this Agreement by executing an appropriate instrument therefor. It is

understood by the Parties that the execution of such document by other holders of legal, equitable or beneficial interests in the Project is not a condition precedent to this Agreement.

20. ASSIGNMENT{ TC "20. ASSIGNMENT" \F C\L "1" }.

The Owner shall have the right to sell, lease, assign, hypothecate or otherwise transfer (a “Transfer”) all or any portion of the Property (the “Transferred Property”), and to assign part or all of its rights, title and interest in and to this Agreement, to any person, partnership, joint venture, form or corporation (a “Transferee”) at any time and from time to time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties, and obligations arising under or from this Agreement and be made in compliance with the following terms and conditions precedent:

(a) The Owner’s rights and obligations under this Agreement may be transferred only in conjunction with the Transfer of the portion of the Transferred Property to which the rights and obligations apply;

(b) The Owner shall give written notice to the City after the closing or other completion of a Transfer, and shall concurrently deliver to the City a fully executed Assignment and Assumption Agreement between the Owner and the Transferee pursuant to which the Owner shall assign and delegate to the Transferee, and the Transferee shall accept, assume and agree to perform all of the rights and obligations of the Owner under this Agreement that are allocable to the Transferred Property (the “Assignment and Assumption Agreement”); and

(c) Except as otherwise provided in this Section 20, upon recordation of the deed conveying title to the Transferred Property to the Transferee and delivery to the City of the fully executed Assignment and Assumption Agreement (the date of delivery to be the “Transfer

Date”), the Transferee shall succeed to all of the Owner’s rights under this Agreement which relate to the Transferred Property (including without limitation the right to Transfer), and to all of the Owner’s obligations which relate to the Transferred Property, and the Owner shall have no further rights or obligations under this Agreement with respect to the applicable Transferred Property, except for any such rights and obligations that accrued prior to the Transfer Date.

20.1. Transfer of Obligations{ TC "20.1 Transfer of Obligations" \f C \l "2" }. If the Owner so elects in its sole discretion, the Owner may enter into a separate agreement with a Transferee (a “Transfer Agreement”) concerning the allocation of rights and obligations between the Owner and its Transferee with respect to the Transferred Property. Without limiting the foregoing, a Transfer Agreement may contain provisions: (i) assigning to the Transferee any obligations that otherwise would not relate to the Transferred Property (provided the Transferee expressly assumes all such obligations); (ii) releasing the Transferee from any obligations that otherwise could relate to the Transferred Property; (iii) reserving to the Owner certain rights that relate to the Transferred Property and otherwise would be assigned in the Assignment and Assumption Agreement; (iv) assigning to the Transferee any of the Owner’s other rights hereunder; and (v) defining and describing the extent to which the Transferee will be deemed to be an “Owner” hereunder. To the extent a Transfer Agreement reserves obligations to the Owner that otherwise would be allocable to the Transferred Property, the Transferee shall have no liability with respect to such reserved obligations and the Owner shall remain liable with respect thereto. To the extent a Transfer Agreement delegates obligations to a Transferee that otherwise would not be allocable to the Transferred Property, the Transferee shall be liable for the performance of such delegated obligations on and after the Transfer Date and the Owner shall

have no further liability with respect thereto. Such Transfer Agreement shall not be binding upon or amend the City's rights or obligations under this Agreement unless the City agrees to such assignment of rights and obligations in writing. The City's agreement to such a Transfer Agreement shall not be unreasonably withheld.

20.2. Non-Assuming Transferees{ TC "20.2 Non-Assuming Transferees" \f C \l "2" }.

The burdens, obligations and duties of the Owner under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor the City's consent shall be required in connection with, any single parcel improved with a completed residential structure and leased for a period of longer than one year, or conveyed to a purchaser, for use rather than re-sale. The Transferee in such a transaction and its successors shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the term. Immediately upon any such lease or conveyance, and without the execution or recordation of any further document, such parcel shall no longer be subject to or burdened by this Agreement.

20.3. Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction{ TC "20.3 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction" \f C \l "2" }. The provisions of this Section 20 shall not apply to the sale or lease for a period longer than one year of any lot that had been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released

and no longer subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

- (a) The lot has been finally subdivided and individually (and not in “bulk”) sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and
- (b) A certificate of occupancy has been issued for a building on the lot.

21. ENCUMBRANCES AND RELEASES ON REAL PROPERTY{ TC "21.

ENCUMBRANCES AND RELEASES ON REAL PROPERTY" \f C \L "1"

1.

21.1. Discretion to Encumber{ TC "21.1 Discretion to Encumber" \f C \l "2" }**1.** The Parties agree that this Agreement will not prevent or limit the Owner in any manner, at the Owner’s sole discretion, from encumbering the Property, or any part of the same including, without limitation, improvement thereon, by any mortgage, deed of trust or other security device securing financing with respect to the Property or the Project. City acknowledges that the lender(s) providing such financing with respect to the Property may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The City further agrees that it will not unreasonably withhold its consent to any such requested modification so long as the modifications do not materially alter this Agreement to the detriment of the City.

21.2. Entitlement to Written Notice of Default{ TC "21.2 Entitlement to Written Notice of Default" \f C \l "2" }**1.** Any lender of the Owner which has requested notice in writing received

by the City, will be entitled to receive written notification from the City of any uncured default by the Owner in the performance of the obligations of the Owner under this Agreement.

21.3. Property Subject to Pro Rata Claims{ TC "21.3 Property Subject to Pro Rata Claims" \f C \l "2" }. Any mortgagee or beneficiary which comes into possession of the Property or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, will take the Property or part thereof, subject to any pro rata claims for payments or charges by the Owner against the Property or part thereof secured by such mortgage or deed of trust, which accrued prior to the time that such mortgagee or beneficiary comes into possession of the Property or part thereof.

22. INSTITUTION OF LEGAL ACTION{ TC "22. INSTITUTION OF LEGAL ACTION" \f C \l "1" }.

In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any uncured default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof or obtain any remedies consistent with the purpose of this Agreement. In the event of any such legal action involving or arising out of this Agreement, the prevailing Party will be entitled to recover from the losing Party, reasonable litigation expenses, attorneys' fees and costs incurred. The Parties acknowledge that if a breach of this Agreement by the City occurs, irreparable harm is likely to occur to the Owner and damages may be an inadequate remedy. Therefore, to the extent permitted by law, the Parties agree that specific enforcement of this Agreement by the Owner is an appropriate and available remedy, in addition to any and all other remedies which may be available to the Owner under law or at equity.

23. THIRD PARTY LITIGATION{ TC "23. INSURANCE" \F C \L "1" }.

City shall promptly notify Owner of any claim, action or proceeding filed and served against City to challenge, set aside, void, annul, limit or restrict the approval and continued implementation and enforcement of this Agreement, including but not limited to challenges of the environmental review of the Project and this Agreement conducted pursuant to CEQA. Owner and City agree to confer and cooperate with respect to such third party litigation. Owner shall defend, indemnify and hold harmless City, its agents, officers and employees from any such claim, action or proceeding, and shall indemnify City for all costs of defense and/or judgment obtained in any such action or proceeding; provided, however, if Owner elects, in its sole discretion, not to defend the action (preferring to either allow judgment to be entered or to enter into a settlement with plaintiff(s) which declares this Agreement to be void, annulled, or which limits or restricts this Agreement), Owner shall so notify City in writing and City shall then have the option, in its sole discretion, of defending the action at City's cost. In the event this Agreement, as a result of a third party challenge, is voided or annulled, or is limited or restricted in such a manner that the intent and purposes of this Agreement cannot be implemented as mutually desired by the parties hereto, this Agreement shall terminate and be of no further force or effect as of the date such judgment or settlement so voids, annuls, limits, or restricts the intent and purpose of this Agreement.

24. INSURANCE{ TC "24. INSURANCE" \F C \L "1" }.

Prior to commencement and until completion of construction by Owner on the Property, Owner shall at its sole cost and expense keep or cause to be kept in force commercial general liability ("CGL") insurance against liability for bodily injury or death and for property damage

(all as defined by the policy or policies) arising from the use, occupancy, disuse or condition of the Property, providing limits of at least Five Million Dollars (\$5,000,000) bodily injury and property damage per occurrence limit, Five Million Dollars (\$5,000,000) general aggregate limit, and Five Million Dollars (\$5,000,000) products-completed operations aggregate limit.

Prior to commencement and until completion of construction by Owner on the Property, Owner shall procure and shall maintain in force, or caused to be maintained in force, builder's risk insurance written on a "special causes of loss" form, on a replacement cost basis, including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees.

Owner shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor or subcontractor with whom Owner has contracted for the performance of any work for which Owner is responsible hereunder carries workers' compensation insurance as required by law.

All insurance required by express provisions hereof shall be carried only by insurance companies licensed to do business in California, rated "A" or better in the most recent edition of Best Rating Guide or in The Key Rating Guide and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent commercially reasonably obtainable, to the effect that (i) under the builder's risk policy, any loss shall be payable notwithstanding any act of negligence of City or

Owner that might otherwise result in the forfeiture of the insurance, (ii) under the worker's compensation policy, the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled except after thirty (30) days' written notice (ten (10) days in the event of cancellation for non-payment of premium) by the insurer to City or City's designated representative. Owner shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on the commercial general liability insurance and on the builder's risk insurance (as its interest may appear) policies required to be procured by the terms of this Agreement. In the event the City's Risk Manager determines reasonably that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates a materially increased or decreased risk of loss to the City, Owner agrees that the minimum limits of the CGL and builder's risk insurance policies required by this Section may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that such increased limits are available at commercially reasonable premiums. Owner shall have the right to appeal such determination of increased limits to the City Council within thirty (30) days of receipt of notice from the City's Risk Manager.

Owner shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits: (a) For insurance required above, within thirty (30 days) after the Effective Date; (b) For any

renewal or replacement of a policy already in existence, within ten (10) days after the binding of such renewal or replacement policy. If Owner fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

24.1 Indemnification TC "24.1. Indemnification" \f C \l "2" }. Owner shall indemnify the City, its officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Owner, its agents, employees, contractors, subcontractors, or invitees, hereunder, upon the Property.

(a) Owner will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Owner will promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of the Owner hereunder, and Owner agrees to save and hold the City, its officers, agents, and employees harmless therefrom. Notwithstanding the foregoing, Owner shall have the right to contest any such claims or liabilities, in its sole discretion.

(c) In the event the City, its officers, agents, or employees is made a party to the action or proceeding filed or prosecuted against for such damages or other claims arising out of or in connection with operation or activities of Owner hereunder, Owner agrees to pay the City, its

officers, agents, or employees any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to legal costs and attorneys' fees.

The foregoing indemnity shall not include claims or liabilities arising from the negligence or willful misconduct of the City, its officers, agents, or employees.»

City shall not be liable for any damage to property of Owner or of others located on the Property, nor for the loss of or damage to any property of Owner or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature; provided, however, the provisions of this Section shall not apply (a) to any portion of the Property to which City has accepted dedication or for which City or an assessment district or some other public agency has accepted maintenance responsibilities or (b) any claims or liabilities arising from the negligence or willful misconduct of the City, its officers, agents or employees.»

The obligations for indemnity under this Section shall begin upon the Effective Date and shall terminate upon termination of this Agreement, provided that indemnification shall apply to all claims or liabilities arising during that period even if asserted at any time thereafter.»

24.2. Waiver of Subrogation{ TC "24.2. Waiver of Subrogation" \f C \l "2" } Owner agrees that it shall not make any claim against, or seek to recover from City or its agents,

servants, or employees, for any loss or damage to Owner or to any person or property (a) to the extent covered and paid by the CGL or the builder's risk insurance and (b) to the extent permitted by the CGL and the builder's risk policies, except as specifically provided hereunder, and Owner shall (if required by the policy) give notice to the insurance carrier of the foregoing waiver of subrogation, and shall obtain from such builder's risk carrier a waiver of right of recovery against City, its agents and employees.

25. MISCELLANEOUS{ TC "25. MISCELLANEOUS" \F C \L "1" }.

25.1. Notices{ TC "25.1. Notices" \f C \l "2" }. Any notice shall be in writing and given by delivering the same in person or by sending the same by registered, or certified mail, return receipt requested, with postage prepaid, by overnight delivery, or by facsimile to the respective mailing addresses, as follows:

If to City:	City of Rialto 150 South Palm Avenue Rialto, CA 92376 Facsimile: (909) 875-5467
With a copy to:	Miles Law Group, P.C. 9911 Irvine Center Drive, Suite 150 Irvine, CA 92618 Attn: Stephen M. Miles, Esq. Facsimile: 949/788-1991
If to Owner:	YH Cactus, LLC c/o Young Homes 10370 Trademark Street Rancho Cucamonga, CA 91730 Attn.: Reggie King Facsimile: 909/291-7630
With a copy to:	Nossaman, Guthner, Knox & Elliott 18101 Von Karman, Suite 1800 Irvine, CA 92612 Attn.: John C. Condas, Esq.

Facsimile: 949/833-7878

Either City or Owner may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

25.2. Force Majeure{ TC "25.2. Force Majeure" \f C \l "2" }. In addition to the provisions of Section 10 of this Agreement, in the event of changed conditions, changes in local, State or federal laws or regulations, floods, delays due to strikes, inability to obtain materials, civil commotion, fire, acts of God, or other circumstances which substantially interfere with carrying out the Project or with the ability of either the City or the Owner to perform its obligations under this Agreement, and which are not due to actions on the part of the Owner or the City and are beyond the reasonable control of the Owner and the City, the Owner and the City agree to bargain in good faith to modify this Agreement as may be necessary to achieve the goals and preserve the original intent of this Agreement. Both parties shall have the right to contest any force majeure claim, as specified in this Section 25.2, made by the other party.

25.3. Waiver{ TC "25.3. Waiver" \f C \l "2" }. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

25.4. Attorneys' Fees{ TC "25.4. Attorneys' Fees" \f C \l "2" }. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief or other legal action pursuant to Section 22, the prevailing party in such action

or proceeding shall be entitled to recover its court and/or arbitration costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to telephone calls, photocopies, expert witness, travel, and reasonable attorneys' fees and costs to be fixed by the court or the arbitrators. Such recovery shall include, but not be limited to, court costs, arbitration costs, out-of-pocket expenses and attorneys' fees and costs on appeal, if any. The court or the arbitrators shall determine who is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. If either party is reasonably required to incur such out-of-pocket expenses and attorneys' fees as a result of any claim arising out of or concerning this Agreement or any right or obligation derived hereunder, then the prevailing party shall be entitled to recover such reasonable out-of-pocket expenses and attorneys' fees whether or not an action is filed.

25.5. Project as Private Undertaking{ TC "25.5. Project as Private Undertaking" \f C \l "2" }. It is specifically understood and agreed by and between the Parties hereto that the Development of the Project is a private undertaking, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. The only relationship between the City and the Owner is that of a governmental entity regulating the development of private property and the owner of such property.

25.6. No Third Party Beneficiaries{ TC "25.6. No Third Party Beneficiaries" \f C \l "2" }. This Agreement is made and entered into solely for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provisions of this Agreement.

25.7. Time{ TC "25.7. Time" \f C \l "2" }. Time is of the essence of this Agreement and of each and every term and condition hereof.

25.8. Counterparts{ TC "25.8. Counterparts" \f C \l "2" }. For convenience, this Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

25.9. Authority to Execute{ TC "25.9. Authority to Execute" \f C \l "2" }. By executing this Agreement, each of the undersigned covenants, warrants, and represents that he or she has the right, power and authority to execute this Agreement on behalf of the corporation, partnership, company public agency or other entity for whom he is she is signing. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Agreement, to enter into this Agreement.

IN WITNESS WHEREOF, City and Owner have executed this Agreement as of the date first hereinabove written.

“CITY”

CITY OF RIALTO,
a political subdivision of
the State of California

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

“OWNER”

YH CACTUS, LLC
a California Limited Liability Company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the unincorporated area of the County of San Bernardino, State of California, described as follows:

TENTATIVE TRACT NO. 18156, BEING A SUBDIVISION OF THE FOLLOWING:

PARCEL 1:

ALL THAT PORTION OF JURUPA RANCHO, AS PER PLAT RECORDED IN BOOK 9 OF MAPS, PAGE 33, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF CACTUS AVENUE, 55 FEET SOUTHERLY OF THE SOUTH LINE OF TRACT NO. 3670, AS PER PLAT RECORDED IN BOOK 48 OF MAPS, PAGES 30 AND 31, RECORDS OF SAID COUNTY; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID CACTUS AVENUE, TO THE NORTHERLY LINE OF EL RIVINO ROAD; THENCE WESTERLY ALONG THE NORTH LINE OF SAID EL RIVINO ROAD, TO ITS INTERCEPTION WITH THE WEST LINE OF THE LAND CONVEYED BY LAWSON SCOTT AND HENRY SCOTT TO RIVINO LAND COMPANY, A CORPORATION, BY DEED DATED MAY 7, 1905, RECORDED IN BOOK 359, PAGE 235 OF DEEDS, RECORDS OF SAID COUNTY; THENCE NORTH 0 DEG. 00' 45" WEST, TO A POINT 495 FEET SOUTHERLY OF THE SOUTHWEST CORNER OF SAID TRACT NO. 3670; THENCE NORTH 89 DEG. 51' 15" EAST, 460 FEET; THENCE NORTH 27 DEG. 26' 57" EAST, 943.86 FEET, MORE OR LESS, TO THE POINT OF INTERCEPTION WITH THE SOUTHERLY LINE OF SAID TRACT NO. 3670; THENCE NORTH 69 DEG, 01' EAST, ALONG THE SAID SOUTHERLY LINE OF TRACT NO. 3670, TO A POINT OF INTERCEPTION WITH A LINE PARALLEL WITH THE NORTHERLY LINE OF SAID EL RIVINO ROAD AND PROJECTED WESTERLY FROM THE POINT OF BEGINNING; THENCE EASTERLY TO THE POINT OF BEGINNING. EXCEPTING THEREFROM 1/2 OF ALL OIL, GAS, MINERAL AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED IN THE DEED FROM VLADIMIR TUDOR AND CECILIA TUDOR, HUSBAND AND WIFE, RECORDED FEBRUARY 4, 1949 IN BOOK 2356, PAGE 426, OFFICIAL RECORDS. NOTE 1: A PORTION OF PROPERTY HEREIN DESCRIBED, IS ALSO SHOWN ON THE MAP OF PROPERTY BELONGING TO THE ESTATE OF A.C. ARMSTRONG, RECORDED IN BOOK 12 OF MAPS, PAGE 32, AND MAP OF RIVING HEIGHTS, BLOCK 5, RECORDED IN BOOK 16 OF MAPS, PAGES 93 AND 94, RECORDS OF SAID COUNTY. NOTE 2: BY RESOLUTION OF THE BOARD OF SUPERVISORS, PORTIONS OF POPPY AVENUE AND RIVINO HEIGHTS BOULEVARD, CLOSED, AS SHOWN ON MAP OF RIVINO HEIGHTS, BLOCK 5, RECORDED IN BOOK 16 OF MAPS, PAGE 93, AND RIVINO HEIGHTS, BLOCK 4, RECORDED IN BOOK 16 OF MAPS, PAGE 95, RECORDS OF SAID COUNTY.

PARCEL 2:

BLOCK NOS. F, G AND H, OF TRACT 3670, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 48 OF MAPS, PAGES 30 AND 31, RECORDS OF SAID COUNTY. EXCEPT THEREFROM 1/4 OF ALL OIL AND MINERAL

RIGHTS IN AND UNDER SAID LAND AS RESERVED BY PHILIP M. GATCH, ET UX, BY DEED RECORDED FEBRUARY 6, 1951 IN BOOK 2713, PAGE 479, OFFICIAL RECORDS. ALSO EXCEPTING THEREFROM 1/4 OF ALL OIL AND MINERAL RIGHTS IN AND UNDER SAID LAND, AS RESERVED BY IRENE W. SCHNORE, BY DEED RECORDED FEBRUARY 6, 1951, IN BOOK 2713, PAGE 476, OFFICIAL RECORDS.

PARCEL 3:

BLOCK "E", TOGETHER WITH THE NORTHERLY 20.00 FEET OF BLOCK AND THE NORTHERLY 20.00 FEET OF BLOCK "A" LYING EASTERLY OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SPRUCE AVENUE, AS SHOWN ON TRACT NO. 3670, GREEN ACRES MEMORIAL PARK, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 48 OF MAPS, PAGE 30, RECORDS OF THE COUNTY OF SAN BERNARDINO, TOGETHER WITH THAT PORTION OF GOVERNMENT LOT 7 OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS DESCRIBED IN INSTRUMENT NO. 94-397720, OFFICIAL RECORDS OF SAID COUNTY, AS DEPICTED ON PLAT ATTACHED TO LLA NO. W119-116 (LOT LINE ADJUSTMENT), RECORDED 12/12/03, INSTRUMENT NO. 2003-0942840, OFFICIAL RECORD, WHICH CONFINES SAID GOVERNMENT LOT 7 OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS DESCRIBED IN INSTRUMENT NO. 94-397720, OFFICIAL RECORDS, TO THAT PORTION THEREOF LYING EASTERLY OF THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SPRUCE AVENUE AS SHOWN ON SAID TRACT NO. 3670. EXCEPT THEREFROM 1/4 OF ALL OIL AND MINERAL RIGHTS IN AND UNDER SAID LAND AS RESERVED BY PHILIP M. GATCH, ET UX, BY DEED RECORDED FEBRUARY 6, 1951 IN BOOK 2713, PAGE 479, OFFICIAL RECORDS. ALSO EXCEPTING THEREFROM 1/4 OF ALL OIL AND MINERAL RIGHTS IN AND UNDER SAID LAND, AS RESERVED BY IRENE W. SCHNORE, BY DEED RECORDED FEBRUARY 6, 1951, IN BOOK 2713, PAGE 476, OFFICIAL RECORDS.

APN: 0259-181-20-0-000 and 0259-181-26-0-000 and 0259-181-27-0-000 and 0259-181-28-0000 and 0259-181-34-0-000

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of San Bernardino, State of California, described as follows:

TENTATIVE TRACT NO. 18155, BEING A SUBDIVISION OF THE FOLLOWING:

ALL THAT PORTION, LYING EAST OF THE CENTER LINE OF CACTUS AVENUE OF PROPERTY DESCRIBED AS FOLLOWS:

THAT PORTION OF JURUPA RANCHO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGE 33 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE JURUPA RANCHO, SUBDIVISION, AS PER MAP RECORDED IN BOOK 9, PAGE 33 OF MAPS, RECORDS OF SAID COUNTY;

THENCE SOUTH 89° 49' WEST ALONG THE SOUTH LINE OF SAID SECTION 34, 1949.45 FEET TO THE SOUTHWEST CORNER OF THE LAND CONVEYED BY LAWSON SCOTT AND HENRY SCOTT TO RIVINO LAND COMPANY, A CORPORATION, BY DEED DATED MAY 7, 1905, AND RECORDED IN BOOK 359, PAGE 235 OF DEEDS;

THENCE NORTH 10° WEST ALONG THE WEST LINE OF THE PROPERTY CONVEYED TO THE RIVINO LAND COMPANY, 1943.15 FEET TO THE SOUTHWESTERLY CORNER OF THE LAND CONVEYED BY RIVINO LAND COMPANY, A CORPORATION, TO 3. E. REID, BY DEED DATED MARCH 7, 1911 AND RECORDED IN BOOK 474, PAGE 257 OF DEEDS;

THENCE NORTH 69° EAST ALONG THE SOUTHERLY LINE OF THE LAND SO CONVEYED TO J. E. REID, 2341.1 FEET TO THE CENTER LINE OF CACTUS AVENUE, SHOWN ON THE MAP OF LANDS OF THE SEMI-TROPIC LAND AND WATER COMPANY, PRODUCED SOUTHERLY;

THENCE NORTH 787.3 FEET ALONG THE CENTER LINE OF CACTUS AVENUE, PRODUCED SOUTHERLY TO THE NORTH LINE OF THE JURUPA RANCHO;

THENCE NORTH 69° 4' EAST ALONG THE NORTH LINE OF THE JURUPA RANCHO, 1163 FEET TO AN IRON PIPE MARKING NORTHWEST CORNER OF A TRACT OF LAND SHOWN ON THE PROPERTY OF FRANCIS CUTTLE RECORDED IN BOOK 16, PAGE 23 OF MAPS;

THENCE SOUTH 6° EAST ALONG THE WEST LINE OF SAID PROPERTY OF FRANCIS CUTTLE, 1493.30 FEET TO AN IRON PIPE;

THENCE CONTINUING ALONG SAID COURSE TO A POINT WHICH IS 1337 FEET NORTH OF THE CENTER LINE OF COUNTY LINE AVENUE, WHICH CENTER LINE IS THE SOUTH LINE OF SECTION 35, TOWNSHIP 1 SOUTH RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE JURUPA RANCHO SUBDIVISION;

THENCE WEST PARALLEL TO THE SOUTH LINE OF SAID SECTION 35, AT A POINT WHICH IS 30 FEET WESTERLY FROM THE CENTER LINE OF CACTUS AVENUE, SHOWN ON THE MAP OF LANDS OF THE SEMI-TROPIC LAND AND WATER COMPANY PRODUCED SOUTHERLY;

THENCE SOUTH 16' WEST PARALLEL TO THE CENTER LINE OF CACTUS AVENUE PRODUCED SOUTHERLY 1337 FEET TO THE SOUTH LINE OF SAID SECTION 35;

THENCE SOUTH 89° 49' WEST ALONG THE SOUTHERLY LINE OF SAID SECTION 35, TO THE POINT OF BEGINNING.

EXCEPT FROM THE ABOVE DESCRIBED PARCEL THAT PORTION DEEDED TO THE COUNTY OF SAN BERNARDINO, A BODY CORPORATE AND POLITIC, FOR ROAD PURPOSES, RECORDED JUNE 4, 1937 IN BOOK 1213, PAGE 167 OFFICIAL RECORDS.

ALSO EXCEPT BEGINNING AT A POINT IN THE CENTERLINE OF CACTUS AVENUE NORTH 0° 17' 00" WEST A DISTANCE OF 1,336.91 FEET FROM THE CENTERLINE INTERSECTION OF SAID CACTUS AVENUE AND EL RIVINO ROAD;

THENCE CONTINUING NORTH 0° 17' 00" WEST A DISTANCE OF 1,175.12 FEET;

THENCE NORTH 89° 43' 00" EAST A DISTANCE OF 236.48 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 410.00 FEET, CENTER ANGLE OF 50° 17' 00";

THENCE SOUTHEASTERLY ALONG SAID CURVE A DISTANCE OF 359.83 FEET;

THENCE SOUTH 40° 00' 00" EAST A DISTANCE OF 773.28 FEET;

THENCE NORTH 89° 42' 30" EAST A DISTANCE OF 33.00 FEET TO THE CENTERLINE OF HALL AVENUE;

THENCE SOUTH 0° 17' 30" EAST ALONG THE SAID CENTERLINE OF HALL AVENUE A DISTANCE OF 434.55 FEET;

THENCE SOUTH 89° 50' 12" WEST A DISTANCE OF 1,079.03 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPT ALL SUB-SURFACE MINERALS, AND OTHER NATURAL MINERALS UNDER SAID PROPERTY WITH THE RIGHT TO MINE, EXTRACT AND EXCAVATE ALL OF SAID MINERALS OR ANY PART THEREOF, WITHOUT THE RIGHT OF SURFACE ENTRY THEREOF, AS SET OUT IN AGREEMENT TO THE AMERICAN CEMENT CORPORATION, A DELAWARE CORPORATION, BY DOCUMENT RECORDED MARCH 22, 1966 IN BOOK 6593, PAGE 38 OF OFFICIAL RECORDS.

APN: 0260-021-09-0-000 and 0260-021-15-0-000

EXHIBIT "B"

DEVELOPMENT IMPACT FEES

Exhibit
Development Impact Fees
City of Rialto

RMC Code	Impact Fee Category		El Rivino Specific Plan SFD/Unit
Levied & Collected by the City of Rialto (1)			
3.36	Street Medians	\$	66
3.40	General Facilities	\$	1,599
3.40	Library	\$	146
3.44	Park Facilities	\$	1,228
	Park Land	\$	1,492
3.48	Wastewater Collection	\$	1,368
3.52	Wastewater Treatment	\$	2,474
3.56	Law Enforcement	\$	669
3.68	Storm Drain	\$	2,608
			=====
	Sub-Total	\$	11,650
Mandated by Others but Collected by City of Rialto (2)			
3.36	Traffic Impact Mitigation Fee	\$	2,181
			=====
	Sub-Total	\$	2,181
Total All Rialto Impact Fees		\$	13,831