

ATTACHMENT 2

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Hesperia
9700 Seventh Ave.
Hesperia, CA 92345
Attn: City Clerk

APN:

SPACE ABOVE FOR RECORDER'S USE ONLY
Exempt from recording fees pursuant to Govt Code
27383

COVENANT AGREEMENT FOR REIMBURSEMENT OF SEWER CONNECTION OPERATING COSTS

THIS REIMBURSEMENT AGREEMENT (“**Agreement**”) is entered into effective the ____ day of _____, 2019 (“**Effective Date**”), by and between the **CITY OF HESPERIA**, a California municipal corporation (“**City**”), and **RICH DEVELOPMENT ENTERPRISES, LLC**, a California Limited Liability Company (“**Developer**”). City and Developer may be referred to, individually or collectively, as “**Party**” or “**Parties**.”

RECITALS

- A.** Developer is, or will be, the owner of that certain real property commonly known as 18667 Bear Valley Road in the City of Hesperia, and further identified as Assessor's Parcel No. 039901124 (“**Property**”). The Property is more particularly described in Exhibit “A” hereto.
- B.** Developer desires to begin construction of a commercial shopping center (“**Project**”) on the Property, but the Property is not, at the time of the execution of this Agreement, served by any sewer system.
- C.** The Parties desire to construct a connection (“**Sewer Connection**”) with a sewer system owned by San Bernardino County Service Area 64 (“**CSA**”) to service the Property and the Project.
- D.** The City has entered into, or will enter into, an Agreement for Sewer Service with CSA (“**CSA Agreement**”) that would permit the construction of the Sewer Connection, and provides for CSA to collect meter data and bill the City for sewer services to the Project on a bimonthly basis (“**Sewer Invoices**”). A copy of the CSA Agreement is attached hereto as Exhibit “B.”
- E.** The City and Developer have executed a list of conditions for the approval of a Conditional Use Permit, CUP 18-00002 (“**List of Conditions**”), that requires Developer to, among other things, construct, or contract for the construction of, the Sewer Connection. A copy of the List of Conditions is attached hereto as Exhibit “C.”
- F.** As a condition to, and as a material consideration for the City executing the CSA Agreement, Developer has agreed to reimburse the City for the Sewer Invoices incurred pursuant to the CSA Agreement.

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

TERMS

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are incorporated herein as if set forth in full.

2. Developer Responsibility for Sewer Invoices. Developer shall reimburse City for the payment of the Sewer Invoices and for City's costs related to paying the Sewer Invoices contemplated in the CSA Agreement, to include an administrative fee as set forth in Section 2.1 of this Agreement, below.

2.1 Sewer Invoice Administrative Fees. In addition to reimbursing City for the payment of the Sewer Invoices, Developer shall pay to City an administrative fee equal to 10% of the amount of any Sewer Invoice for which Developer is responsible for reimbursing City.

2.2 Billing. Within thirty (30) days of the payment of any Sewer Invoice, the City shall bill the Developer, or any subsequent owner of the Property/Project, for the full amount of the Sewer Invoice plus the Administrative Fee set forth in Section 2.1 of this Agreement. Developer shall then reimburse the City in the stated amount within thirty (30) days of receiving such an invoice from the City.

3. City's Obligations. City shall timely pay all invoices it receives pursuant to the CSA Agreement and shall bear responsibility for the timely billing of Developer within thirty (30) days of City's payment of any Sewer Invoice.

3.1 Accounting. City shall maintain an accounting of the Sewer Invoices paid by the City and the reimbursement payments made by Developer. Upon written request, City shall provide to Developer a summary of the Sewer Invoices paid by the City and reimbursement payments made by the Developer. Failure of City to provide any accounting shall not excuse Developer's duty to perform any act under this Agreement. Developer may question or challenge any use of funds set forth in the accounting and may appeal same to the City Council.

4. Additional Taxes, Fees, and Charges. Developer shall pay all normal and customary fees and charges applicable to all permits necessary for the Sewer Connection, and any taxes, fees, and charges hereafter imposed by City in connection with the Sewer Connection which are standard and uniformly-applied to similar projects in the City, provided such fees and charges shall not duplicate the fees charged to the City by CSA under the CSA Agreement.

5. City Release; Termination. This Agreement may be terminated only in a writing executed by City and any and all owners of the Property and recorded in the Official Records of San Bernardino County.

6. Indemnity. Developer agrees to protect, defend, indemnify, and hold City free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by City including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the City) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident

to, in connection with or arising directly or indirectly out of, this Agreement, (collectively “Claims”) excluding any Claims arising from (i) the City’s default or failure to comply with the terms of the CSA Agreement, (ii) the negligence, gross negligence or willful misconduct of the City, its employees, agents or contractors, (iii) City’s failure to maintain or repair the connections, and (iv) City’s failure to timely bill Developer for its billings under Section 2.2.

7. Remedies; Attorney’s Fees. In the event of a breach by either Party, the non-defaulting Party may, in addition to any other remedies, seek to recover its attorneys’ fees in enforcing this Agreement. This provision will not be interpreted to curtail any of City’s remedies at law or equity against Developer for any violation of its codes, nor shall it be interpreted as a waiver of any defense or affirmative action of Developer.

8. Conflicts of Interest.

8.1 No Financial Relationship. Developer acknowledges the requirements of Government Code Sections 1090 *et seq.* (“**1090 Laws**”) and warrants that it has not entered into any financial or transactional relationships or arrangements that would violate the 1090 Laws, nor shall Developer solicit, participate in, or facilitate a violation of the 1090 Laws.

8.2 Developer’ Representations and Warranties. Developer represents and warrants that for the 12-month period preceding the Effective Date of this Agreement it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code sections 87100 *et seq.*).

9. Relationship between the Parties. The Parties agree that this Agreement does not operate to create the relationship of partnership, joint venture, or agency between City and Developer. Nothing herein shall be deemed to make Developer an agent of City.

10. Authority to Enter Agreement. Developer warrants that it has the legal capacity to enter into the Agreement. Each Party warrants that the individuals who have signed the Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

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

To City: City of Hesperia
9700 Seventh Ave.
Hesperia, CA 92345
Attention: Nils Bentsen, City Manager
Email: nbentsen@cityofhesperia.us

With a Copy to: Aleshire & Wynder, LLP
3880 Lemon Street, Suite 520
Riverside, CA 92501
Attention: Eric Dunn, Esq.

Email: edunn@awattorneys.com

To Developer:

Rich Development Enterprises, LLC
600 N. Tustin Ave., #150
Santa Ana, CA 92705
Attention: Bart Hollander

Depending upon the method of transmittal, notice shall be deemed received as follows: by overnight delivery, one business day after depositing with FedEx or UPS; by messenger, as of the date delivered; by U.S. Mail first class postage prepaid, as of seventy-two (72) hours after deposit in the U.S. Mail; and by email, upon the sender's receipt of an email from the recipient acknowledging receipt (provided a hard copy is subsequently also physically mailed by overnight delivery).

12. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

13. Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Unless otherwise specified, any term referencing time, days, or period for performance shall be deemed calendar days and not business days, provided, however, that any deadline that falls on a weekend or holiday shall be extended to the next City business day. All references to Developer include all employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, appointed boards and commissions, officers, employees, agents, and volunteers. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

14. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

16. Binding Effect. Each and all of the covenants and conditions contained in this Agreement shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation. It is the intention of the Parties that the covenants contained herein shall run with the land. Upon execution, this Agreement will be recorded in the Official Records of San Bernardino County.

17. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

18. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

19. Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

20. Time is of the Essence. Time is of the essence with respect to this Agreement.

21. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

22. Entire Agreement. This Agreement contains the entire agreement between City and Developer and supersedes any prior oral or written statements or agreements between City and Developer with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

DEVELOPER RICH DEVELOPMENT
ENTERPRISES
a California limited liability company

CITY:

CITY OF HESPERIA,
a municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Nils Bentsen, City Manager
_____, 2019

ATTEST:

Melinda Sayre, City Clerk

APPROVED AS TO FORM:

Aleshire & Wynder, LLP

Eric Dunn, City Attorney

DEVELOPER' SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS OR OTHER ORGANIZATIONAL OR FORMATIONAL DOCUMENTS OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER' BUSINESS ENTITY.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 4 NORTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO UNITED STATES GOVERNMENT SURVEY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF SAN BERNARDINO, A BODY CORPORATE AND POLITIC OF THE STATE OF CALIFORNIA, BY DEED RECORDED JULY 1, 1964, IN BOOK 6181, PAGE 178, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/4 INTEREST IN AND TO ALL OIL, GAS AND MINERALS LYING AND BEING MORE THAN 200 FEET BELOW THE RESPECTIVE PRESENT SURFACE ELEVATIONS OF THE PROPERTY HEREIN CONVEYED WHICH SAID RESERVED RIGHT SHALL NOT, HOWEVER, INCLUDE ANY RIGHT OF ENTRY UPON ANY PART OF THE SURFACE OF THE HEREIN DESCRIBED PROPERTY FOR THE PURPOSE OF EXPLORATION, DEVELOPMENT, DRILLING, STORAGE OR OTHER ACTIVITY ANCILLARY TO THE REMOVAL OF SUCH OIL, GAS OR MINERALS, AS RESERVED BY LACY MANUFACTURING COMPANY IN DEED RECORDED JUNE 11, 1954 IN BOOK 3400, PAGE 405, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/4 INTEREST IN AND TO ALL OIL, GAS AND MINERALS LYING AND BEING MORE THAN 200 FEET BELOW THE RESPECTIVE PRESENT SURFACE ELEVATIONS OF THE PROPERTY HEREIN CONVEYED WHICH SAID RESERVED RIGHT SHALL NOT, HOWEVER, INCLUDE ANY RIGHT OF ENTRY UPON ANY PART OF THE SURFACE OF THE HEREIN DESCRIBED PROPERTY FOR THE PURPOSE OF EXPLORATION, DEVELOPMENT, DRILLING, STORAGE OR OTHER ACTIVITY ANCILLARY TO THE REMOVAL OF SUCH OIL, GAS OR MINERALS AS RESERVED BY SECURITY-FIRST NATIONAL BANK OF LOS ANGELES AND C. W. STEVENSON, IN DEED RECORDED JUNE 11, 1954, IN BOOK 3400, PAGE 405, OFFICIAL RECORDS.

AND ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN AND TO ALL OIL, GAS, AND MINERALS, LYING AND BEING MORE THAN 200 FEET BELOW THE RESPECTIVE PRESENT SURFACE ELEVATIONS OF THE ABOVE DESCRIBED PROPERTY, PROVIDED, HOWEVER, THAT SUCH EXCEPTED OWNERSHIP OF SUCH 1/2 INTEREST IN AND TO SUCH OIL, GAS, AND MINERALS DOES NOT INCLUDE, AND SHALL NOT BE CONSTRUED TO INCLUDE, ANY RIGHT OF ENTRY UPON ANY

PART OF THE SURFACE OF THE HEREIN DESCRIBED PROPERTY FOR THE PURPOSE OF THE EXPLORATION, DEVELOPMENT, DRILLING, STORAGE, OR OTHER ACTIVITY ANCILLARY TO THE REMOVAL OF SUCH OIL, GAS OR MINERALS, AS EXCEPTED IN THAT CERTAIN DEED FROM THE APPLETON LAND, WATER AND POWER COMPANY, TO N. K. MENDELSON, ET AL., RECORDED JUNE 11, 1954, IN BOOK 3400, PAGE 409, OFFICIAL RECORDS.

APN: 0399-011-24-0000

EXHIBIT B

CSA Agreement

[On Following Pages]

EXHIBIT C

List of Conditions for CUP 18-00002

[On Following Pages]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2019 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)
☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

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(NAME OF PERSON(S) OR ENTITY(IES))

