

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

CITY OF LAKE ELSINORE, a municipal corporation

and

RICARDO F. SOLANO AND MIRIAM MARTINEZ SOLANO

TABLE OF CONTENTS

100.	DEFINITIONS.....	2
200.	DISPOSITION OF THE CITY PROPERTY	5
201.	Purchase and Sale; Easement	5
201.1	Purchase Price.....	5
201.2	Developer Deposit and Escrow Costs.....	5
201.3	Easement.....	6
202.	Representations and Warranties.....	6
202.1	City’s Representations	6
202.2	Developer’s Representations	7
203.	Termination of Lease; Indemnification.....	7
204.	Condition of the City Property	8
204.1	Condition of City Property.....	8
204.2	Delivery of Natural Hazard Zone Disclosure Report	8
204.3	Due Diligence Period.....	8
204.4	Right to Inspections.	9
204.5	No Further Warranties as to City Property; Release of City	10
205.	Escrow.....	11
205.1	Open Escrow.....	11
205.2	Escrow Instructions.....	11
205.3	Costs of Escrow	11
205.4	Conditions of Closing	12
205.5	Termination of Escrow	13
205.6	Closing of Escrow.....	14
205.7	Closing Procedure.....	14
300.	IMPROVEMENT OF THE MERGED PROPERTY	14
301.	Merger	14
302.	Entitlements.....	15
303.	Improvement	15
304.	Schedule of Performance	15
305.	Cost of Improvement.....	15
306.	Compliance With Laws.....	15
307.	Release of Construction Covenants	15
308.	Indemnification	15
400.	DEFAULTS AND REMEDIES	16
401.	Default.....	16
402.	Institution of Legal Actions	16
403.	Termination by Developer Prior to Conveyance	16
404.	Termination by City Prior to Conveyance	17
405.	Specific Performance	17
406.	Acceptance of Service of Process	17
407.	Rights and Remedies Are Cumulative	18

408.	Consequential Damages	18
409.	Inaction Not a Waiver of Default.....	18
410.	Applicable Law	18
411.	Attorneys' Fees	18
500.	TRANSFERS AND ASSIGNMENTS OF INTEREST IN MERGED PROPERTY OR AGREEMENT	18
501.	General Prohibition Against Developer's Transfers and Assignments.....	18
502.	Permitted Transfers by Developer	19
503.	City Consideration of Requested Transfer	19
504.	Assignment by City	20
505.	Successors and Assigns	20
600.	GENERAL PROVISIONS	20
601.	Notices, Demands and Communications Between the Parties.....	20
602.	Enforced Delay; Extension of Times of Performance	21
603.	Relationship Between City and Developer	21
604.	No Third Party Rights	22
605.	City Approvals and Actions	22
606.	Integration; Attachments	22
607.	Real Estate Brokerage Commission.....	22
608.	Titles and Captions.....	22
609.	Interpretation	23
610.	No Waiver	23
611.	Modifications	23
612.	Severability	23
613.	Computation of Time	23
614.	Legal Advice	23
615.	Time of Essence	24
616.	Cooperation	24
617.	Conflicts of Interest.....	24
618.	Non-Liability of Officials and Employees of City.....	24
619.	Representation by Counsel.....	24

ATTACHMENTS

Attachment No. 1	Map
Attachment No. 2	City Property Legal Description
Attachment No. 3	Grant Deed
Attachment No. 4	Schedule of Performance
Attachment No. 5	Memorandum of Agreement
Attachment No. 6	Release of Construction Covenants
Attachment No. 7	Easement

DISPOSITION AND DEVELOPMENT AGREEMENT

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (this “Agreement”), dated for identification purposes only as of March 12, 2019 is entered by and between the **CITY OF LAKE ELSINORE**, a municipal corporation (the “City”), and **RICARDO F. SOLANO and MIRIAM MARTINEZ SOLANO** (“Developer”).

RECITALS

The following recitals are a substantive part of this Agreement. All capitalized terms set forth in the recitals shall have the meanings ascribed to such terms in Section 100 hereof.

A. City is the present owner of that certain commercial real property comprised of approximately 0.07 acres (3,061 square feet) located at the northwest corner of Main Street and Graham Avenue, in the City of Lake Elsinore, California, generally described as Assessor’s Parcel No. 374-174-010 (the “City Property”) as depicted on the Map (Attachment No. 1) and more particularly described in Attachment No. 2-A.

B. The City Property is adjacent to certain real property owned by Developer comprised of approximately 0.166 acres generally described as Assessor’s Parcel Nos. 374-174-009 and 374-174-008 (the “Developer Property”) as depicted on the Map (Attachment No. 1) and more particularly described in Attachment No. 2-B.

C. The Developer Property is zoned Commercial Mixed Use (CMU) and is developed as a restaurant commonly known as Guadalajara Mexican Grill & Cantina (the “Restaurant”).

D. Developer currently leases the City Property pursuant to that certain Lease Agreement dated as of July 11, 1995 as amended by that certain First Amendment dated as of August 30, 2018 (collectively, the “Lease”) and utilizes the City Property as an outdoor patio area for the Restaurant. Developer wishes to purchase the City Property and merge the City Property with the Developer Property into a single parcel in order to improve, expand and integrate the City Property with the Developer Property for continued use and operation of the Restaurant.

E. The purpose of this Agreement is to create an economic opportunity pursuant to Government Code Section 52201 *et seq.* (the “Act”) by conveying the City Property to the Developer in order to allow the City Property and the Developer Property to be merged and improved to promote the economic feasibility and expansion of the Restaurant.

F. City desires to sell and Developer desires to purchase the City Property, merge the City Property and the Developer Property into one legal parcel (hereinafter, the “Merged Property”) and develop and improve the Merged Property in accordance with City subdivision and land use regulations and entitlements.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, CITY AND DEVELOPER AGREE AS FOLLOWS:

100. DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

“Agreement” means this Disposition and Development Agreement between City and Developer.

“CEQA” means the California Environmental Quality Act (Pub. Res. Code §§ 21000, *et seq.*), and the State of California Guidelines for the California Environmental Quality Act (14 Cal. Code Regs. §§15000 *et seq.*).

“City” means the City of Lake Elsinore, a California municipal corporation.

“City Manager” means the City Manager of City or his designee.

“City Property” is defined in Recital A.

“City’s Conditions Precedent to Closing” is defined in Section 204.4(a) hereof.

“Closing” is defined in Section 205.6 hereof.

“Closing Date” is defined in Section 205.6 hereof.

“Conveyance” is defined in Section 201 hereof.

“Default” means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided therein following notice and opportunity to cure, as set forth in Section 401 hereof.

“Developer” means Ricardo F. Solano and Miriam Martinez Solano, and any permitted assignees.

“Developer Deposit” means the deposit as set forth in Section 201.2 hereof.

“Developer’s Conditions Precedent to Closing” is defined in Section 205.4(b) hereof.

“Developer Property” is defined in Recital B.

“Easement” means that certain Easement and Use Agreement substantially in the form attached to this Agreement as Attachment No. 7 to be recorded in the official land records of the Riverside County Recorder’s Office against the Merged Property in favor of the City in accordance with Section 201.3 hereof.

“Effective Date” means the date upon which this Agreement shall have been fully executed by Developer and City.

“Entitlements” means an application for the lot merger to combine the City Property and the Developer Property into a single legal parcel referred to herein as the Merged Property, an application for Minor Design Review and/or any and all other land use entitlements and the conditions of approval related thereto, and any amendments, supplements, and modifications thereto, for the Improvement of the Merged Property, including, as applicable, compliance with all requirements of the California Environmental Quality Act (CEQA) and the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).

“Environmental Laws” means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the Health and Safety Code and the Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

“Escrow” is defined in Section 205 hereof.

“Escrow Agent” means the escrow agent of the Escrow Company for the Conveyance.

“Escrow Costs” is defined in Section 205.3 hereof.

“Escrow/Title Company” means First American Title Insurance Company (the “Escrow/Title Company”) located at 43620 Ridge Park Drive, Suite 200, Temecula, CA 92590.

“Governmental Requirements” means all laws, statutes, codes, ordinances, rules, resolutions, policies and regulations (including, without limitation, those relating to land use, subdivision, zoning, building, Environmental Laws, and labor laws) of the United States, the State of California, the County of Riverside, the City and of any other governmental agency exercising jurisdiction over City, Developer or the Merged Property.

“Grant Deed” means the grant deed by which City will convey the City Property substantially in the form attached to this Agreement as Attachment No. 3.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste”, “acutely hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material”, “hazardous substance”, or “hazardous waste” under

Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* (42 U.S.C. Section 6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*, (xii) methyl-tert butyl ether, or (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to human health or the environment.

“Improvement” means construction, expansion and/or improvement of the Merged Property and the Restaurant, including the installation of public or private improvements and the installation of landscaping pursuant to the Entitlements.

“Lease” means that existing Lease by and between City and Developer defined in Recital D.

“Merged Property” means the single legal parcel resulting from the merger of the City Property and the Developer Property in accordance with applicable requirements of the Subdivision Map Act (Government Code Section 66410, *et seq.*), and the City’s subdivision ordinance (Lake Elsinore Municipal Code Title 16). Prior to the recordation of the lot merger, the term “Merged Property” shall mean the land constituting the City Property and the Developer Property.

“Notice” shall mean a notice in the form prescribed by Section 601 hereof.

“Outside Closing Date” means May 31, 2019, or such later date as may be agreed to in a writing signed by the City and Developer.

“Party” and “Parties” means individually City or Developer and collectively City and Developer.

“Purchase Price” means Forty Five Thousand Dollars (\$45,000).

“Release of Construction Covenants” means that document substantially in the form attached to this Agreement as Attachment No. 6 to be recorded in the official land records of the Riverside County Recorder’s Office upon completion of the Improvement of the Merged Property pursuant to Section 307.

“Restaurant” means the Guadalajara Mexican Grill & Cantina located on the Developer Property.

“Schedule of Performance” means that certain Schedule of Performance which is attached hereto as Attachment No. 4, setting forth the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the City Manager.

“Title Policy” is defined in Section 204.3(b) hereof.

“Transfer” is defined in Section 501 hereof.

200. DISPOSITION OF THE CITY PROPERTY

201. Purchase and Sale; Easement

Subject to all of the terms and conditions set forth in this Agreement, City agrees to sell to Developer and Developer agrees to purchase from City (the “Conveyance”) all of City’s right, title and interest in and to the City Property subject only to the Easement as defined in Section 201.3 herein. City has determined that the Purchase Price is the fair market value of the City Property and that the consideration for the Conveyance shall be Developer’s payment of the Purchase Price, plus recordation of the Easement and Developer’s satisfaction of the City’s Conditions Precedent to Closing set forth in Section 205.4 herein.

Developer’s acquisition of the City Property and improvement of the Merged Property pursuant to the Entitlements, recordation of the Easement and the fulfillment generally of this Agreement, are in the best interests of the City and the welfare of its residents, and in accordance with the public purposes and provisions of Government Code Section 52201 *et seq.* and other applicable Governmental Requirements.

201.1 Purchase Price

The total Purchase Price, payable in cash, certified or cashier's check payable to the Escrow Agent, or by electronic transfer of federal funds through Escrow, shall be the sum of:

FORTY-FIVE THOUSAND DOLLARS (\$45,000)

\$4,500	Initial Deposit at opening of Escrow
<u>\$40,500</u>	<u>Additional Deposit Prior to Closing</u>
\$45,000	Purchase Price

201.2 Developer Deposit and Escrow Costs

Upon the opening of Escrow, Developer shall deposit Four Thousand Five Hundred Dollars (\$4,500) (the “Developer Deposit”). The Developer Deposit shall be applied to the Purchase Price upon Closing. Within 24 hours prior to the Closing, Developer shall deposit the balance of the Purchase Price in the amount of Forty Thousand Five Hundred Dollars (\$40,500) and any unfunded Escrow Costs as itemized in the Estimated Settlement Statement prepared by the Escrow Agent. Upon Closing, the Purchase Price shall be delivered to the City

and the Escrow Costs shall be disbursed by the Escrow Agent in accordance with the Final Settlement Statement.

In the event that the Closing does not occur and Escrow is terminated due to a Default of Developer, then the Developer Deposit shall be disbursed to the City and the Developer shall be responsible for the payment of all Escrow Costs. In the event the reason for the Closing not occurring and Escrow terminating is the Default of City, then the Developer Deposit shall be refunded to the Developer and the City shall be responsible for the payment of all Escrow Costs. Notwithstanding the foregoing, if the Closing fails to occur without a Default by either Party, the Developer Deposit will be refunded to the Developer and the Parties shall be equally responsible for payment of the Escrow Costs.

201.3 Easement

The City historically decorates the corner portion of the City Property including the existing planter and sidewalk area located nearest the intersection of Main Street and Graham Avenue consisting of approximately 81 square feet (the "Easement Area") as part of the Downtown Lake Elsinore Decorating and City Special Events and other special events. As material consideration for the Conveyance and to promote community pride and civic participation by permitting the continuation of the City's use of the Easement Area after the Conveyance and merger of the City Property and the Developer Property, the Developer shall grant to the City an easement substantially in the form of the Easement and Use Agreement attached hereto as Attachment No. 7.

202. Representations and Warranties

202.1 City's Representations

City represents and warrants to Developer as follows:

(a) Authority. City is a municipal corporation, existing pursuant to the general laws of the State of California. The execution, performance and delivery of this Agreement by City have been fully authorized by all requisite actions on the part of City.

(b) Title. City holds fee title to the City Property free and clear of all liens, encumbrances and other matters other than those set forth in the Title Policy and the City Property is not subject to any outstanding contract of sale, right of first refusal or purchase option, in favor of any person or entity, except Developer.

(c) No Conflict. To the best of City's knowledge, City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) Litigation. To the best of City's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the City Property or any portion thereof.

(e) Governmental Compliance. To the best of City's knowledge, City has not received any notice from any governmental authority alleging that the City Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by City following the Effective Date of this Agreement, City shall, within ten (10) days of receipt of such notice, notify Developer.

Until the Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written notice of such fact or condition to Developer.

202.2 Developer's Representations

Developer represents and warrants to City as follows:

(a) Authority. Developer has full right, power and lawful authority to undertake all obligations as provided herein, including but not limited to, and the execution, performance and delivery of this Agreement.

(b) No Conflict. To the best of Developer's knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) No Developer Bankruptcy. Developer is not the subject of a bankruptcy proceeding.

(d) Litigation. To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Developer Property or the City Property or any portion thereof.

(e) Governmental Compliance. To the best of Developer's knowledge, Developer, as Lessee in possession of the City Property and property owner in fee of the Developer Property, has not received any notice from any governmental agency or authority alleging that the City Property and/or the Developer Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Developer following the Effective Date of this Agreement, Developer shall, within ten (10) days of receipt of such notice, notify City.

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written notice of such fact or condition to City.

203. Termination of Lease; Indemnification.

The Parties intend that the Lease shall terminate upon Closing and, except as provided herein, neither Party shall have any continuing rights or responsibilities thereunder. In recognition of Developer's occupancy of the City Property as the Lessee under the Lease, Developer shall indemnify, defend and hold the City harmless from and against all liabilities,

suits, actions, claims, demands, penalties, damages, costs or expenses (including, without limitation, reasonable attorneys' fees) of any kind or nature and for any damages, including damages to property or injuries to person, including accidental death arising from, related in any respect to, or as a result of the Developer's use of the City Property or the presence of hazardous materials on the City Property which presence first occurred after the commencement of the Lease and provided that none of the same were directly and proximately caused by City or any of its agents, employees or contractors.

204. Condition of the City Property

204.1 Condition of City Property

City acquired fee title to the City Property on July 1, 1995 and Developer has occupied the City Property continuously since the July 11, 1995 commencement of the Lease. Developer represents and acknowledges that, during Developer's possession, the City Property has not been used to generate, manufacture, process, refine, treat, transfer, store or dispose of any Hazardous Materials in violation of any Environmental Law. The City expressly and specifically disclaims the making of any representations or warranties, express or implied, regarding the City Property or matters affecting the City Property, including (without limitation) the physical and environmental condition of the City Property. The City shall, to the greatest extent legally allowable, assigns to the Developer all rights, claims, actions and/or causes of action it may have against prior owners of the City Property and tenants and/or anyone who has occupied the City Property in connection with the environmental condition of the City Property.

Developer acknowledges and agrees that the City Property is to be conveyed to, and accepted by, Developer, in its present condition, "AS IS." After the Closing, the Developer shall be solely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual contamination of the City Property.

204.2 Delivery of Natural Hazard Zone Disclosure Report

Unless a written waiver in a form acceptable to the Escrow/Title Company is delivered by Developer to Escrow Agent within five (5) days of the opening of Escrow, Escrow/Title Company shall, within ten (10) days following the opening of Escrow and at Developer's expense, deliver to Developer a Natural Hazard Zone Disclosure Report, including environmental hazards ("NHZ Report").

204.3 Due Diligence Period

(a) Physical Condition

Developer shall have thirty (30) days after the opening of Escrow (the "Due Diligence Period") to conduct or review such surveys, investigations, studies and inspections and make or review such geologic, environmental and soils tests and other studies of the City Property which Developer deems necessary and appropriate in its sole and absolute discretion, including any "Phase 1" and/or "Phase 2" investigations of the City Property and such soils, geological, toxic waste, hazardous substance, and/or any other kind of soil or water

contamination tests and analyses. Developer shall promptly provide to City a copy of all reports and test results.

(b) Review of Title; Title Policy

Within five (5) days of the opening of Escrow and at City's expense, Escrow/Title Company shall deliver to Developer a preliminary title report for the City Property ("Title Report") together with copies of any exceptions referred to in Schedule B of the Title Report.

Developer shall have fifteen (15) days from Developer's receipt of the Title Report to review the exceptions, legal descriptions and other matters contained in the Title Report and to give Notice to City and the Escrow Agent of Developer's approval or disapproval of the Title Report; provided, however, in no event shall the following be subject to disapproval by Developer: (i) liens for real property taxes shown as exceptions in the Title Report provided that the taxes are not delinquent; (ii) the standard exclusions to coverage under Escrow/Title Company's Standard Coverage Owner's Policy of Title Insurance ("Title Policy").

If Developer notifies City of Developer's disapproval of any items, City shall have the right, but not the obligation, to remove any disapproved items or provide assurances reasonably satisfactory to Developer that such items will be removed or remedied on or before the Closing. City shall exercise such right by Notice to Developer within ten (10) days of receipt of Notice from Developer of Developer's disapproval. If City cannot or does not elect to remove any disapproved items, Developer shall either (i) give City Notice that Developer intends to proceed with the Conveyance subject to the disapproved items, or (ii) give City Notice that Developer elects to terminate in accordance with Section 204.3(c).

Developer shall have the right to procure an ALTA Extended Coverage Owner's Policy of Title Insurance ("ALTA Policy") and Developer shall pay for the cost of such ALTA Policy, the cost of any survey that the Escrow/Title Company requires for issuance of an ALTA Policy and for the cost of any other increase in the amount or scope of title insurance if Developer elects to increase the amount or scope of title insurance coverage or to obtain endorsements to the Title Policy or ALTA Policy.

(c) Expiration of Due Diligence Period

If the Developer reasonably determines within the Due Diligence Period that the condition of the City Property is not satisfactory for any reason, including exceptions to title disapproved by Developer that the City cannot or does not elect to remove, Developer may elect to terminate the Escrow and this Agreement by promptly notifying the City and Escrow/Title Company in writing of Developer's decision to terminate, whereupon any sums deposited by Developer into Escrow shall be disbursed by the Escrow Agent in accordance with the provisions of Section 201.2.

204.4 Right to Inspections.

City hereby grants to Developer and any of Developer's consultants the right to perform such surveys, investigations, studies and inspections, including soils and geological

investigation and tests for toxic or hazardous substances and other contamination, as Developer deems necessary and appropriate. Developer may perform such tests either before or after the opening of Escrow during the Due Diligence Period and as part of an environmental site assessment or in accordance with the Comprehensive, Environmental Response, Compensation and Liability Act (42 USC 9061 *et seq.*). With respect to such investigation, Developer shall be responsible for all costs and expenses associated with the inspection and such other cost as may be related thereto. Prior to Developer or its agents or contractors performing such investigations, Developer shall (i) provide satisfactory evidence to City that Developer, or its agents or contractors, have obtained commercial general liability insurance, with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate; workers compensation insurance in statutory limits and employers liability insurance with limits not less than \$1,000,000.00 each incident; and umbrella excess liability insurance excess of the underlying commercial general liability and employers liability insurance with limits not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, and (ii) restore the City Property to the condition it was in prior to Developer's investigation. Developer will defend, indemnify and hold City free and harmless from and against any and all claims, damages and liabilities relating to or arising out of Developer's exercise of its rights under this Section. Developer will assure that all costs associated with its conduct of the investigations are fully satisfied and that the City Property is not subjected to any liens with respect thereto.

204.5 No Further Warranties as to City Property; Release of City

As of the expiration of the Due Diligence Period and upon the Closing, the physical and environmental condition, possession or title of the City Property is and shall be delivered from City to Developer in an "as-is" condition, with no warranty expressed or implied by City.

Pursuant to Section 204.3, Developer has or shall have inspected and conducted tests, inspections, investigations and studies of the City Property as Developer, in Developer's discretion, deems necessary. Developer acknowledges and agrees that, except as otherwise specifically provided herein, City has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) value; (ii) the income to be derived from the City Property; (iii) the nature, quality or condition of the City Property, including, without limitation, the water, soil and geology; (iv) the compliance of or by the City Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (v) compliance with any Environmental Laws; (vi) the presence or absence of hazardous materials at, on, under, or adjacent to the City Property; (vii) deficiency of any undershoring; (viii) deficiency of any drainage; (ix) the fact that all or a portion of the City Property may be located on or near an earthquake fault line or a flood zone; or (x) with respect to any other matter.

Developer further acknowledges and agrees that, except for City's express representations and warranties contained in Section 202.1, (i) Developer is relying solely on its own investigation of the City Property and review of such information and documentation, and not on any information provided or to be provided by City, and (ii) City is not liable or bound in

any manner by any oral or written statements, representations or information pertaining to the City Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Developer further acknowledges and agrees that to the maximum extent permitted by law, except for City's express representations and warranties contained in Section 202.1, the conveyance of the City Property as provided for herein is made on an "AS IS" condition and basis with all faults, and that City has no obligations to make repairs, replacements or improvements. Developer represents, warrants and covenants to City that, except for City's express representations and warranties specified in in Section 202.1, Developer is relying solely upon Developer's own knowledge and investigation of the City Property.

With respect to the waivers and releases set forth in this Section 204.5, Developer expressly waives any of its rights granted under California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

_____/_____
Developer's Initials

Nothing contained in this Section 204.5 is intended to modify the indemnities contained in this Agreement.

205. Escrow

205.1 Open Escrow.

Within five (5) days of the Effective Date, City and Developer shall open escrow ("Escrow") with First American Title Insurance Company (the "Escrow/Title Company") located at 43620 Ridge Park Drive, Suite 200, Temecula, CA 92590, Attention: Debbie Fritz.

205.2 Escrow Instructions

This Agreement shall constitute joint primary escrow instructions to the Escrow/Title Company; provided, however, that the Parties shall execute such additional instructions as requested by the Escrow/Title Company not inconsistent with the provisions hereof. In the event of any inconsistency between such escrow instructions and this Agreement, this Agreement shall control the rights and obligations of the Parties.

205.3 Costs of Escrow

Developer shall pay or satisfy, as applicable all (a) the cost of recording the Grant Deed and all other documents recorded at the Closing (b) all documentary transfer taxes imposed in connection with the recording of the Grant Deed; (c) the cost of the NHZ Report, unless waived by Developer, (d) all escrow fees; (e) any other customary fees and charges and expenditures authorized by Developer (collectively, the "Escrow Costs").

205.4 Conditions of Closing

The Conveyance under this Agreement shall be subject to the satisfaction of the conditions precedent set forth in this Section 205.4 (unless waived in writing by the Party to whom the benefit of such condition runs) on or before the Closing Date or such earlier date as is specified in this Agreement, each of which conditions shall be a covenant of the Party required to perform such condition.

(a) City's Conditions. City's obligation to close Escrow is conditioned upon the satisfaction or written waiver by City of each and every one of the conditions precedent (i) through (vi), inclusive, described below (the "City's Conditions Precedent to Closing"), which are solely for the benefit of City, and which shall be satisfied or waived by the time periods provided for herein:

(i) No Default. Developer is not in default of any of its material obligations under the terms of this Agreement.

(ii) Execution of Documents. Developer shall have executed and delivered into Escrow all Closing documents, including, without limitation, this Agreement, the Easement, the Memorandum of Agreement, the Change of Ownership Statement and such documents and instruments as Escrow/Title Company may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Developer under this Agreement and to issue the Title Policy or ALTA Policy.

(iii) Deposit of Funds. Developer shall have deposited into Escrow the Purchase Price, Escrow Costs and all amounts necessary to pay any required costs of the ALTA Policy if such extended coverage is requested by Developer in accordance with Section 204.3(b).

(iv) No Litigation. No litigation shall be pending or threatened by any third parties who seeks to enjoin the transactions contemplated herein or to obtain damages in connection with this Agreement.

(v) Representations and Warranties. Each of the representations and warranties by Developer contained in Section 202.2 shall be determined to have been true and correct in all material respects as of the date made and shall continue to be true and correct in all material respects as of the Closing.

(vi) Entitlements. Developer shall have obtained all Entitlements necessary for the Improvement of the Merged Property consistent with the Commercial Mixed Use (CMU) Zoning designation.

(b) Developer's Conditions. Developer's obligation to close Escrow is conditioned upon the satisfaction or written waiver by Developer of each and every one of the conditions precedent (i) through (vi), inclusive, described below (the "Developer's Conditions Precedent to Closing"), which are solely for the benefit of Developer, and which shall be satisfied or waived by the time periods provided for herein:

(i) No Default. City is not in default of any of its obligations under the terms of this Agreement.

(ii) Execution of Documents. City shall have executed and delivered into Escrow all Closing documents, including, without limitation, this Agreement, the Certificate of Acceptance attached to the Easement, the Memorandum of Agreement, the Grant Deed and such documents and instruments as Escrow/Title Company may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by City under this Agreement.

(iii) Review and Approval of Title. Developer shall have reviewed and approved the condition of title, as provided in Section 204.3(b).

(iv) Title Policy. The Title Company shall, upon payment of any applicable premium or fee, be irrevocably committed to issue the Title Policy or ALTA Policy upon the Closing, in accordance with Section 204.3(b).

(v) No Litigation. No litigation shall be pending or threatened by any third parties who seeks to enjoin the transactions contemplated herein or to obtain damages in connection with this Agreement.

(vi) Representations and Warranties. Each of the representations and warranties by City contained in Section 202.1 shall be determined to have been true and correct in all material respects as of the date made and shall continue to be true and correct in all material respects as of the Closing.

205.5 Termination of Escrow

If the Escrow is not in a condition to close by the Outside Closing Date, as the same may be extended pursuant to this Agreement, then either Party which has fully performed under this Agreement may, in writing, demand the return of money, documents or property and terminate the Escrow and this Agreement. If either Party makes a written demand for the return of its money, documents or property, this Agreement shall not terminate until ten (10) business days after the Escrow Agent shall have delivered copies of such demand to the other Party at the respective addresses set forth in Section 601 hereof. If any objections are raised by written Notice within such ten (10) day period, the Escrow Agent is authorized to hold all money, documents or property until instructed by a court of competent jurisdiction or by mutual written instructions of the Parties. If no such objections are timely made, the Escrow Agent shall immediately return the demanded money and/or documents, and the escrow cancellation charges shall be paid in accordance with Section 201.2. Termination of the Escrow shall be without prejudice as to whatever legal rights, if any, either Party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible consistent with the terms of this Agreement. Nothing in this Section shall be construed to impair or affect the rights of Developer to specific performance.

205.6 Closing of Escrow

The Conveyance shall close (the “Closing”) within five (5) days of the Parties’ satisfaction or written waiver of both Developer’s Conditions Precedent to Closing and the City’s Conditions Precedent to Closing, but in no event later than the Outside Closing Date. The Closing shall occur at the offices of the Escrow/Title Company. The Closing shall mean the time and day that the Grant Deed is filed for recording with the Riverside County Recorder. The “Closing Date” shall mean the day on which the Closing occurs.

205.7 Closing Procedure

The Escrow Agent shall Close the Escrow as follows:

- (a) record the Grant Deed with instruction to the Riverside County Recorder to deliver the Grant Deed to Developer and a conforming copy thereof to City;
- (b) record the Easement (Attachment No. 7) with instruction to the Riverside County Recorder to deliver the Easement to the City and a conforming copy thereof to the Developer;
- (c) record the Memorandum of Agreement (Attachment No. 5) with instruction to the Riverside County Recorder to deliver the Memorandum to City and a conforming copy to Developer;
- (d) deliver the Title Policy or ALTA Policy issued by the Title Company to Developer;
- (e) deliver to City funds in an amount equal to the Purchase Price;
- (f) file any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- (g) deliver the FIRPTA Certificate, if any, to Developer; and
- (h) forward to Developer and City a separate accounting of all funds received and disbursed for each Party and copies of all executed, recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

300. IMPROVEMENT OF THE MERGED PROPERTY

301. Merger

Within the time set forth in the Schedule of Performance, Developer shall submit an application for a lot merger combining the City Property and the Developer Property into one legal parcel in accordance with applicable requirements of the Subdivision Map Act, Government Code Section 66410, *et seq.*, and the City’s Subdivision Ordinance set forth in Title 16 of the City’s Municipal Code. Such merger shall ensure that the Merged Property is

comprised of a legal, insurable parcel sufficient to allow improvement, expansion and operation of the Restaurant on the Merged Property.

302. Entitlements

The execution of this Agreement does not constitute the granting of or a commitment to obtain any required Entitlements required by City for the Improvement of the Merged Property. Within the time set forth in the Schedule of Performance, Developer shall, at its own expense, submit an application for and shall secure or cause to be secured all Entitlements necessary to improve and expand the Restaurant on the Merged Property consistent with the Commercial Mixed Use (CMU) zoning designation.

303. Improvement

Developer shall improve the Merged Property and operate the Restaurant in substantial accordance with the Entitlements.

304. Schedule of Performance

Developer shall satisfy all conditions of this Agreement within the times established therefor in the Schedule of Performance (Attachment No. 4).

305. Cost of Improvement

All of the cost of planning, designing, and improving the Merged Property in conformance with the Entitlements shall be borne by Developer.

306. Compliance With Laws

Developer shall carry out the Improvement of the Merged Property and operation of the Restaurant in conformity with all Governmental Requirements.

307. Release of Construction Covenants

Within ten (10) days of final inspection and issuance of a certificate of occupancy for the improvements to the Restaurant, City shall furnish Developer with the Release of Construction Covenants. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Merged Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement.

308. Indemnification

Developer shall save, protect, pay for, defend, indemnify and hold harmless the City and its respective officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses (including foreseeable and unforeseeable consequential damages), costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) including,

without limitation, personal injury, accidental death and property damage (the foregoing are hereinafter collectively referred to as “Liabilities”) which may now or in the future be incurred or suffered by the City or the City or their officers, employees, representatives or agents by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of (a) Developer's purchase, development, or ownership of all or any part of the City Property, (b) any negligent act or omission on the part of Developer, or its agents, employees, representatives, agents, contractors or invitees, (c) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the City Property of any Hazardous Materials or Hazardous Materials contamination after the Conveyance, (d) the environmental condition of the City Property, except for conditions (including the presence of any Hazardous Materials or Hazardous Materials contamination) resulting directly from activities approved by the City and conducted on the City Property in accordance with such approval(s), and (e) any Liabilities incurred after Developer's acquisition of the City Property under any Governmental Requirements relating to Hazardous Materials.

400. DEFAULTS AND REMEDIES

401. Default

A Party claiming a Default shall give written Notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such Party within thirty (30) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay.

If the Default is not cured or commenced to be cured and thereafter diligently pursued to completion by the defaulting party within thirty (30) calendar days after service of the Notice of Default, such failure shall constitute an “Event of Default” under this Agreement and the defaulting party will be liable to the other party for any damages caused by the Default and other relief as is afforded by applicable law.

402. Institution of Legal Actions

In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either Party may institute an action at law or equity to cure, correct or remedy any Event of Default, to recover damages as provided herein for any Event of Default, or to obtain any other remedy consistent with the purpose of this Agreement. All legal actions must be instituted in the Superior Court of the County of Riverside, State of California, in an appropriate superior court in Riverside County, or in the United States District Court for District of California in which Riverside County is located.

403. Termination by Developer Prior to Conveyance

In the event that Developer is not in Default and prior to the Closing:

(a) City does not (or demonstrably cannot) deliver title to any portion of the City Property pursuant to the Grant Deed in the manner and condition on or before the Outside Closing Date, or

(b) City is in Default, or

(c) one or more of Developer's Condition Precedent to Closing is not satisfied on or before the Outside Closing Date;

then this Agreement may, at Developer's option, be terminated by Notice to City. From the date of the Notice of termination of this Agreement by Developer to City and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties. Upon such termination by Developer, all documents deposited by any Party into Escrow shall be returned to that Party and all funds deposited into Escrow shall be disbursed in accordance with Section 201.2.

404. Termination by City Prior to Conveyance

In the event that City is not in Default and prior to the Closing and either:

(a) Developer is in Default, or

(b) one or more of City's Condition Precedent to Closing is not satisfied on or before the Outside Closing Date;

then this Agreement may, at City's option, be terminated by Notice to Developer. From the date of the Notice of termination of this Agreement by City to Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties. Upon such termination by City, all documents deposited by any Party into Escrow shall be returned to that Party and all funds deposited into Escrow shall be disbursed in accordance with Section 201.2.

405. Specific Performance

If either Developer or City defaults under any provision of this Agreement after the Conveyance and prior to the recordation of a Release of Construction Covenants, the non-defaulting party will serve written notice of the Default on the defaulting party. If the default is not commenced to be cured and thereafter diligently pursued to completion by the defaulting party within thirty (30) calendar days of service of the notice of default, such Default shall constitute an Event of Default hereunder and the non-defaulting party at its option may, in addition to any other remedies to which it may be entitled, institute an action for specific performance of the terms of this Agreement.

The rights established in this Section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity.

406. Acceptance of Service of Process

In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk or in such other

manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made in such manner as may be provided by law.

407. Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

408. Consequential Damages

Without limiting the generality of the foregoing, Developer shall not in any event be entitled to, and Developer hereby waives, any right to seek consequential damages of any kind or nature from City arising out of or in connection with this Agreement.

409. Inaction Not a Waiver of Default

Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

410. Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement and the Parties shall comply with all Governmental Requirements.

411. Attorneys' Fees

If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to all other damages, all costs and expenses of such action, proceeding or arbitration, including but not limited to actual attorneys' fees (including the allocated costs of in-house counsel), witness fees' and court costs. The phrase "prevailing party" as used in this Section shall mean the party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise. The terms of this Section shall survive the Closing and shall not be merged with the Grant Deed.

500. TRANSFERS AND ASSIGNMENTS OF INTEREST IN MERGED PROPERTY OR AGREEMENT

501. General Prohibition Against Developer's Transfers and Assignments

The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement

with Developer. For the period commencing upon the Effective Date and until the recordation of the Release of Construction Covenants, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or other transfer of the whole or any part of the Merged Property (collectively, a “Transfer”) without prior written approval of City, except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Merged Property without the approval of City in accordance with this Section 501 shall entitle City to terminate this Agreement, as set forth in Section 404 hereof; and/or pursue Specific Performance or any other remedy authorized herein or now or hereafter existing at law or equity.

502. Permitted Transfers by Developer

Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Merged Property, or any part thereof, shall not be required in connection with any of the following:

(a) Any transfers to an entity or entities in which Developer or members of their immediate families, or trusts for their benefit, retain (i) a minimum of fifty one percent (51 %) of the ownership or other beneficial interests; and (ii) day to day management and control of the transferee entity or entities;

(b) The conveyance or dedication of any portion of the Merged Property to the City or other appropriate governmental City, or the granting of easements or permits to facilitate the Improvement; and

(c) Any approved financing, any foreclosure or deed in lieu transaction, or any transfer by the holder of any deed of trust or mortgage granted in connection with such financing following any such foreclosure or deed in lieu transaction.

In the event of an assignment by Developer under subparagraphs (a) and (b), inclusive, above not requiring City’s prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give Notice to City of such assignment and satisfactory evidence that the assignee has assumed the obligations of this Agreement.

503. City Consideration of Requested Transfer

City reserves sole and absolute discretion to approve or disapprove a request for Transfer made pursuant to this Section, upon Developer’s delivery of written Notice to City requesting such approval. Such Notice shall be accompanied by sufficient evidence regarding the proposed assignee’s or purchaser’s development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section and as reasonably determined by City. An assignment and assumption agreement in form satisfactory to City’s legal counsel shall also be required for all proposed assignments. Within thirty (30) business days after the receipt of Developer’s written notice requesting City approval of an assignment or Transfer pursuant to this Section, City shall either approve or disapprove

such proposed assignment or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to City such further information as may be reasonably requested. Developer agrees to promptly pay all of City's out-of-pocket costs, including attorneys' fees, incurred in connection with review and processing of any request for Transfer and/or consummation of such Transfer and preparation of any documentation and/or agreements in connection therewith.

504. Assignment by City

City may assign or transfer any of its interests hereunder to any public or private entity controlled by the City at any time without the consent of Developer.

505. Successors and Assigns

All of the terms, covenants and conditions of this Agreement shall be binding upon Developer, City and their permitted successors and assigns. Whenever the term "Developer" or "City" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties

Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one Party to another (collectively, "Notices") must be in writing and may be personally delivered, or mailed via the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, to the address of the other Party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent as follows:

If to City:

City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: Grant Yates, City Manager
Telephone: (951) 674-3124
Facsimile: (951) 674-2392
E-Mail: gyates@lake-elsinore.org

With a copy which shall not constitute notice to:

Leibold McClendon & Mann PC
9841 Irvine Center Drive, Suite 230
Irvine, CA 92618
Attention: Barbara Leibold
Telephone: (949) 585-6300 ext. 101
Facsimile: (949) 585-6305
E-Mail: barbara@ceqa.com

If to Developer:

Ricardo F. Solano and Miriam Martinez Solano
105 N. Main Street
Lake Elsinore, CA 92530
Telephone: 951-660-1105
Facsimile:
E-Mail: risol@msn.com

602. Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine; restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other Party; acts or failures to act of the City or any other public or governmental City or entity (other than the acts or failures to act of City which shall not excuse performance by City); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the date commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvement shall not by itself constitute grounds of enforced delay pursuant to this Section.

603. Relationship Between City and Developer

It is hereby acknowledged by Developer that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, City shall have no rights, powers, duties or obligations with respect to the improvement, operation, maintenance or management of the Merged Property or the Restaurant. Developer agrees to indemnify, hold harmless and defend

City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the improvement, operation, maintenance or management of the Merged Property or the Restaurant.

604. No Third Party Rights

The Parties intend that no rights or remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

605. City Approvals and Actions

Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager is authorized to act on behalf of City unless specifically provided otherwise herein. The City Manager is further authorized to execute documents contained in the Attachments hereto or such modified similar documents that are in substantially the form of the Attachments and approved by the City Attorney. Notwithstanding the foregoing authorization, the City Manager may elect not to exercise her authority under this Agreement and refer such matters to the City's City Council for consideration. To the extent that the Attachments conflict or are otherwise inconsistent with this Agreement, the terms of this Agreement shall control.

606. Integration; Attachments

This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement. Except for the Lease which shall continue in effect until the Closing, all prior or contemporaneous negotiations or agreements, oral or written, between the Parties or their predecessors in interest with respect to all or any part of the subject are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material. This Agreement includes pages 1 through 24 and Attachment Nos. 1 through 7 which are attached hereto and incorporated herein by reference and together which constitute the entire understanding and agreement of the Parties.

607. Real Estate Brokerage Commission

City and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

608. Titles and Captions

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

609. Interpretation

As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both Parties.

610. No Waiver

A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

611. Modifications

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

612. Severability

If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

613. Computation of Time

The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

614. Legal Advice

Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matter set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

615. Time of Essence

Time is expressly made of the essence with respect to the performance by City and Developer of each and every obligation and condition of this Agreement.

616. Cooperation

Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

617. Conflicts of Interest

No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

618. Non-Liability of Officials and Employees of City

No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement. Developer hereby waives and releases any claim it may have against the individual members, officials or employees of City with respect to any Default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

619. Representation by Counsel

Developer acknowledges that this Agreement has been prepared by Leibold McClendon & Mann, P. C., as City Attorney to the City. Developer acknowledges that they have been informed that they are entitled to, and have been advised to seek, separate legal representation, and, accordingly, Developer represents that they either (i) have engaged such counsel in connection with this Agreement, or (ii) have voluntarily decided to enter into this Agreement without such representation.

IN WITNESS WHEREOF, City and Developer have executed this Disposition and Development Agreement as on the date set forth below.

“CITY”

CITY OF LAKE ELSINORE,
a municipal corporation

Dated: _____

By: _____
Its: Grant Yates, City Manager

ATTEST:

By: _____
Mark Mahan,
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold,
City Attorney

“DEVELOPER”

Dated: _____

Ricardo F. Solano

Dated: _____

Miriam Martinez Solano

ATTACHMENT NO. 1

MAP



ATTACHMENT NO. 2-A

**CITY PROPERTY
LEGAL DESCRIPTION**

Real property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

PORTION LOTS 1 & 3 BLK 20 MB 006/302 SD TOWN OF ELSINORE

(A.P.N.: 374-174-010)

ATTACHMENT NO. 2-B

**DEVELOPER PROPERTY
LEGAL DESCRIPTION**

Real property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

THE NORTHERLY RECTANGULAR 30 FEET OF THE SOUTHERLY RECTANGULAR 84 FEET OF LOTS 1 AND 3 IN BLOCK 20 OF THE TOWN OF ELSINORE, IN THE CITY OF LAKE ELSINORE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 302 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

(A.P.N.:374-174-008)

THE NORTHERLY 29.00 FEET OF THE SOUTHERLY 54.00 FEET OF LOTS 1 AND 3 IN BLOCK 20 OF THE TOWN OF ELSINORE, IN THE CITY OF LAKE ELSINORE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6 PAGE(S) 302, OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA;

EXCEPT THE EAST 8.00 FEET OF SAID LOT 1 AND THE WEST 12.00 FEET OF SAID LOT 3, RESERVED FOR STREET AND ALLEY PURPOSES.

(A.P.N.:374-174-009)

ATTACHMENT NO. 3

GRANT DEED

[See Attached]

WHEN RECORDED MAIL AND
MAIL TAX STATEMENTS TO:

Ricardo F. Solano and
Miriam Martinez Solano
105 N. Main Street
Lake Elsinore, CA 92530

DOCUMENTARY TRANSFER TAX \$ _____

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **CITY OF LAKE ELSINORE**, a California municipal corporation hereby GRANT(S) to **RICARDO F. SOLANO AND MIRIAM MARTINEZ SOLANO** the real property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

PORTION LOTS 1 & 3 BLK 20 MB 006/302 SD TOWN OF ELSINORE

(A.P.N.: 374-174-010)

CITY OF LAKE ELSINORE,
a California municipal corporation

Dated: _____

By: Steve Manos, Mayor

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 _____)

On _____, before me, _____ a
Notary Public, personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)

ATTACHMENT NO. 4

SCHEDULE OF PERFORMANCE

<u>BENCHMARK</u>	<u>DATE</u>
City Council Consideration of DDA	March 12, 2019
Open Escrow	Within 5 days of execution of DDA
Submission by Developer of application to City for Entitlements - Lot Merger, Minor Design Review	April 15, 2019
City consideration and review of Entitlements	May 15, 2019
Close of Escrow - Outside Closing Date	May 31, 2019
Developer Obtain Building Permits	Within 90 days of Closing, but no later than August 30, 2019
Start of Improvement	Within 120 days of Closing, but no later than September 30, 2019
Completion of Improvement (Certificate of Occupancy/ Final Inspection Approval)	Within 3 months after start of Improvement but no later than December 31, 2019
Issuance by City of Release of Construction Covenants	Within 10 days of issuance of Certificate of Occupancy

ATTACHMENT NO. 5
MEMORANDUM OF AGREEMENT

[See Attached]

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Lake Elsinore)
130 S. Main Street)
Lake Elsinore, California 92530)
Attention: City Clerk)
)
Reference: Solano DDA)

This document is exempt from a recording fee pursuant to Government Code Section 27383.

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this “Memorandum”), dated for purposes of identification only as of _____, 2019, is entered by and between the **CITY OF LAKE ELSINORE**, a California municipal corporation (the “City”) and **RICARDO F. SOLANO AND MIRIAM MARTINEZ SOLANO**, (the “Developer”).

Section 1. Disposition and Development Agreement. City and Developer have executed a Disposition and Development Agreement dated for identification purposes as of March 12, 2019 (the “Agreement”), which provides for the acquisition by Developer from City of certain real property located in the City of Lake Elsinore, County of Riverside, State of California, more particularly described in Exhibit A which is attached hereto and incorporated herein by this reference (the “City Property”). The Agreement further provides for the merger of the City Property with adjacent properties owned by the Developer (collectively, the “Merged Property”) and the improvement and expansion of the restaurant located thereon consistent with the City’s Commercial Mixed Use (CMU) zoning regulations and the Entitlements obtained by Developer. Copies of the Agreement are available for public inspection and copying as a public record in the office of the City Clerk located at 130 S. Main Street, Lake Elsinore, California. All of the terms, conditions, provisions and covenants set forth in the Agreement are incorporated in this Memorandum by reference as though fully set forth herein at length, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement.

Section 2. Purpose of Memorandum. This Memorandum is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants set forth in the Agreement. The inclusion of the following provisions shall not limit the incorporation of the Agreement, but is merely for convenience. In the event of any inconsistency between the terms, conditions, provisions and covenants set forth in the Agreement and this Memorandum, the terms, conditions, provisions and covenants set forth in the Agreement shall prevail.

Section 3. Transfers And Assignments Of Interest In Merged Property or Agreement

301. General Prohibition Against Developer's Transfers and Assignments

The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. For the period commencing upon the Effective Date and until the recordation of the Release of Construction Covenants, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or other transfer of the whole or any part of the Merged Property (collectively, a "Transfer") without prior written approval of City, except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Merged Property without the approval of City in accordance with this Section 501 shall entitle City to terminate this Agreement, as set forth in Section 404 hereof; and/or pursue Specific Performance or any other remedy authorized herein or now or hereafter existing at law or equity.

302. Permitted Transfers by Developer

Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Merged Property, or any part thereof, shall not be required in connection with any of the following:

(d) Any transfers to an entity or entities in which Developer or members of their immediate families, or trusts for their benefit, retain (i) a minimum of fifty one percent (51 %) of the ownership or other beneficial interests; and (ii) day to day management and control of the transferee entity or entities;

(e) The conveyance or dedication of any portion of the Merged Property to the City or other appropriate governmental City, or the granting of easements or permits to facilitate the Development; and

(f) Any approved financing, any foreclosure or deed in lieu transaction, or any transfer by the holder of any deed of trust or mortgage granted in connection with such financing following any such foreclosure or deed in lieu transaction.

In the event of an assignment by Developer under subparagraphs (a) and (b), inclusive, above not requiring City's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give Notice to City of such assignment and satisfactory evidence that the assignee has assumed the obligations of this Agreement.

303. City Consideration of Requested Transfer

City reserves sole and absolute discretion to approve or disapprove a request for Transfer made pursuant to this Section, upon Developer's delivery of written Notice to City

requesting such approval. Such Notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section and as reasonably determined by City. An assignment and assumption agreement in form satisfactory to City's legal counsel shall also be required for all proposed assignments. Within thirty (30) business days after the receipt of Developer's written notice requesting City approval of an assignment or Transfer pursuant to this Section, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to City such further information as may be reasonably requested. Developer agrees to promptly pay all of City's out-of-pocket costs, including attorneys' fees, incurred in connection with review and processing of any request for Transfer and/or consummation of such Transfer and preparation of any documentation and/or agreements in connection therewith.

304. Assignment by City

City may assign or transfer any of its interests hereunder to any public or private entity controlled by the City at any time without the consent of Developer.

305. Successors and Assigns

All of the terms, covenants and conditions of this Agreement shall be binding upon Developer, City and their permitted successors and assigns. Whenever the term "Developer" or "City" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

Section 4. Improvement of Merged Property. Developer shall obtain all necessary Entitlements and complete the improvement and expansion of the Restaurant on the Merged Property in conformity therewith and in accordance with all applicable Governmental Requirements. Upon completion of the Improvement as evidenced by final inspection and issuance by City of a certificate of occupancy, City shall furnish Developer with a Release of Construction Covenants in such form as to permit it to be recorded in the Recorder's Office of Riverside County.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF, CITY AND DEVELOPER HAVE EXECUTED THIS
MEMORANDUM AS OF THE DATE SET FORTH ABOVE.**

“CITY”

CITY OF LAKE ELSINORE,
a municipal corporation

Dated: _____

By: _____
Its: Grant Yates, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold,
City Attorney

“DEVELOPER”

Dated: _____

Ricardo F. Solano

Dated: _____

Miriam Martinez Solano

EXHIBIT A

LEGAL DESCRIPTION OF CITY PROPERTY

Real property in the City of Lake Elsinore, County of Riverside, State of California,
described as follows:

PORTION LOTS 1 & 3 BLK 20 MB 006/302 SD TOWN OF ELSINORE

(A.P.N.: 374-174-010)

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 _____)

On _____, before me, _____
a Notary Public, personally appeared _____ who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)

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 _____)

On _____, before me, _____
a Notary Public, personally appeared _____ who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)

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 _____)

On _____, before me, _____ a
Notary Public, personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)

ATTACHMENT NO. 6
RELEASE OF CONSTRUCTION COVENANTS

[See Attached]

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Lake Elsinore)
130 S. Main Street)
Lake Elsinore, California 92530)
Attention: City Clerk)
)
Reference: Solano DDA)
)

(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

THIS RELEASE OF CONSTRUCTION COVENANTS ("Release") is hereby made as of this ___ day of _____, 20__, by the **CITY OF LAKE ELSINORE**, a California municipal corporation (the "City") in favor of **RICARDO F. SOLANO AND MIRIAM MARTINEZ SOLANO**, ("Developer").

RECITALS

A. The City and the Developer entered into that certain Disposition and Development Agreement dated for identification purposes only as of March 12, 2019 (the "Agreement").

B. The Agreement provides for the disposition of certain City Property to Developer, the merger of the City Property with adjacent properties owned by Developer (collectively, the "Merged Property") and the improvement and expansion of the restaurant located thereon consistent with the City's Commercial Mixed Use (CMU) zoning regulations and the Entitlements obtained by Developer. The City Property is described on Exhibit "A" attached hereto and made a part hereof by this reference. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement.

C. As required in the Agreement, the City shall furnish the Developer with a Release of Construction Covenants upon completion of the Improvement which Certificate shall be in such form as to permit it to be recorded in the Riverside County Recorder's Office.

D. The City has conclusively determined that the Improvement on the Merged Property as required by the Agreement has been satisfactorily completed.

NOW, THEREFORE, City hereby certifies as follows:

1. As provided in the Agreement, the City does hereby certify that the Improvement on the Merged Property has been fully and satisfactorily performed and completed in accordance with the Agreement.

2. After the recordation of this Release, any person or entity then owning or thereafter purchasing, or otherwise acquiring any interest in the Merged Property or any part thereof will not (because of such ownership, purchase, or acquisition) incur any obligation or liability under the Disposition and Development Agreement.

3. This Release is not a notice of completion as referred to in Section 3093 of the California Civil Code.

IN WITNESS WHEREOF, the City has executed this Release as of the date set forth above.

“CITY”

CITY OF LAKE ELSINORE,
a municipal corporation

Dated: _____

By: _____
Its: Grant Yates, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold,
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF CITY PROPERTY

Real property in the City of Lake Elsinore, County of Riverside, State of California,
described as follows:

PORTION LOTS 1 & 3 BLK 20 MB 006/302 SD TOWN OF ELSINORE

(A.P.N.: 374-174-010)

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 _____)

On _____, before me, _____ a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)

ATTACHMENT NO. 7

EASEMENT

[See Attached]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Clerk

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This document is exempt from recording fees
pursuant to Government Code Section 27383

GRANT OF EASEMENT AND USE AGREEMENT

This Grant of Easement Agreement ("Easement Agreement") is made as of _____, 2019, by and between Ricardo F. Solano and Miriam Martinez Solano ("Owners") and the City of Lake Elsinore, a California public body, corporate and politic (the "City"). Owners and City are sometimes referred to herein as the "Parties".

RECITALS

A. The Owners own the Guadalajara Restaurant located on certain real property commonly known as 105 N. Main Street in the City of Lake Elsinore consisting of approximately 0.236 acres (the "Owners' Property") and more specifically described the Legal Description attached hereto as Exhibit "A".

B. The City historically decorates a corner portion of the Owners' Property, including the existing planter and sidewalk area located nearest the intersection of Main Street and Graham Avenue, consisting of approximately 81 square feet and depicted on the map attached hereto as Exhibit "B" (the "Easement Area") as part of the Downtown Lake Elsinore Decorating and Winterfest Celebration and other special events ("City Special Events").

C. The purpose of this Easement Agreement is to provide the terms and conditions pursuant to which the City may enter upon the Easement Area for purposes of preparing, installing and removing decorations as part of City Special Events.

NOW, THEREFORE, incorporating the foregoing recitals herein, and in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

1. Grant of Easement. Owners, for themselves and their successors and assigns, hereby grant to the City an easement over the Easement Area for the purpose of decorating the Easement Area as part of City Special Events.

2. Effective Date. This Easement Agreement shall be effective on the date of recordation in the official records of the County of Riverside (the "Effective Date").

3. The Servient and Dominant Tenements. For purposes of the easement granted in this Easement Agreement, the servient tenement is the Owner's Property and the dominant tenement is Main Street, a City owned and maintained street, which partially abuts the Owner's Property. The easement shall be an appurtenant easement and shall therefore run with the land to the benefit of the City.

4. Uses Prohibited. Each Party and its respective licensees, invitees, employees and guests shall use the Easement Area in a reasonable manner and accordance with its intended uses, and shall not obstruct or otherwise use the Easement Area in a manner that would materially or substantially interfere with the intended uses thereof by the other Party, its respective tenants, licensees, invitees, employees or guests. No Party shall do or permit anything to be done in or on the Easement Area which will in any way unreasonably obstruct or interfere with the rights of the occupants of the Owners' Property or the occupants of the Easement Area or use or allow the easement to be used for any unlawful or objectionable purpose.

5. Schedule for Use of Easement Area. The Easement Area shall be used as part of the City Special Events upon not less than ten (10) days' prior written notice by City to Owner.

6. No Closure of Easement Area. No fence or other barrier or improvement which would unreasonably prevent or obstruct the passage of pedestrians for the purposes of ingress and egress shall be erected or permitted within or across the Easement Area without the prior written consent of the City.

7. Damage. If the Owners, their patrons or invitees damage the Easement Area, Owners shall promptly repair and restore the Easement Area to its condition before the damage occurred.

8. No Joint Venture. No provision of this Easement Agreement shall be deemed to constitute the Parties as partners or joint venturers of one another, or in any way to obligate either Party for the performance of any obligation of the other Party not expressly assumed in this Agreement.

9. Binding Effect. All of the terms, covenants and conditions herein shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, including, without limitation, all subsequent owners of the property benefited or burdened hereby or any portion thereof or interest therein and all persons claiming under them. Any person accepting a deed or other instrument conveying, granting or assigning any property affected or benefited by this Easement Agreement or any portion thereof or interest therein shall take title subject to this Easement Agreement and such person shall be deemed to have assumed all of the applicable obligations imposed on the parties with regard to such property regardless of whether this Agreement is mentioned in such deed or other instrument. It is the intent of the Parties that the Easements granted and all the terms set forth herein shall be "covenants running with the land" and, as such, shall run with and be binding upon, the Parties, and their respective successors and assigns.

10. Default; Remedies. In the event of any default by a Party under this Easement Agreement that is not cured within three (3) days of written notice to the

defaulting Party, the Party claiming a default shall have all other rights and remedies provided by law or in equity, and collect all damages directly and indirectly caused by the default and shall have the right to enforce specific performance of this Easement Agreement.

11. Attorney's Fees. If any legal action is brought to interpret or enforce the terms of this Easement Agreement, the prevailing Party shall be entitled to recover against the Party not prevailing all reasonable costs, including attorney's fees, incurred in the action.

12. Entire Agreement. This Easement Agreement contains the entire agreement between the Parties relating to the rights granted and the obligations hereunder assumed. Any oral representations or modification concerning this Easement Agreement shall be of no force and effect.

13. Counterparts. This Easement Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute this Easement Agreement.

14. Severability. The invalidity or illegality of any provision shall not affect the remainder of this Easement Agreement and all remaining provisions shall, notwithstanding any such invalidity or illegality, continue in full force and effect.

15. Exhibits. Any and all Exhibits referred to in this Easement Agreement are incorporated in this Easement Agreement by this reference.

16. Amendments. This Easement Agreement may be amended or modified only by a written instrument executed by the Parties.

17. Waiver. The waiver by either Party of any term, covenant, or condition contained in this Easement Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition.

18. Successors and Assigns. This Easement Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their successors and assigns.

19. Recordation. This Easement Agreement shall be recorded in the office of the recorder of the County of Riverside.

20. Notices. Formal notices, demands and communications among the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, return receipt requested, or express delivery service with a delivery receipt, to the principal offices of the Parties as follows:

Owners: Ricardo F. Solano and Miriam Martinez Solano
105 N. Main Street
Lake Elsinore, CA 92530
Telephone: 951-660-1105
Facsimile:
E-Mail: risol@msn.com

City: City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: Grant Yates, City Manager
Telephone: (951) 674-3124
Facsimile: (951) 674-2392
E-Mail: gyates@lake-elsinore.org

21. Venue and Applicable Law. This Easement Agreement shall be governed and interpreted in accordance with the laws of the State of California, and the Parties shall submit to the jurisdiction of and venue in the courts of the State of California in Riverside County in any legal proceeding relating hereto.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement effective as of the Effective Date set forth above.

“CITY”

CITY OF LAKE ELSINORE,
a California public body, corporate and
politic

By: _____
Its: Grant Yates, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

“OWNERS”

Ricardo F. Solano

Miriam Martinez Solano

EXHIBIT A

LEGAL DESCRIPTION OF OWNERS' PROPERTY

Real property in the City of Lake Elsinore, County of Riverside, State of California,
described as follows:

PORTION LOTS 1 & 3 BLK 20 MB 006/302 SD TOWN OF ELSINORE

(A.P.N.: 374-174-010)

EXHIBIT B

MAP OF EASEMENT AREA

[To Be Inserted]

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 _____)

On _____, before me, _____
a Notary Public, personally appeared _____ who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)

<p>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.</p>

STATE OF CALIFORNIA)
) §
County of _____)

On _____, before me, _____
a Notary Public, personally appeared _____ who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)

CERTIFICATE OF ACCEPTANCE

Government Code, Section 27281

THIS IS TO CERTIFY that the interest in real property conveyed by Grant of Easement and Use Agreement dated _____, 2019 from Ricardo F. Solano and Miriam Martinez Solano to the City of Lake Elsinore, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City Council of the City of Lake Elsinore ("City Council") pursuant to authority conferred by Resolution No. 99-17 of the City Council adopted on March 23, 1999 and the City of Lake Elsinore consents to recordation thereof by its duly authorized officer.

CITY OF LAKE ELSINORE,
a municipal corporation

By: _____
Grant Yates, City Manager

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 _____)

On _____, before me, _____ a
Notary Public, personally appeared _____ who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(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 of Notary

(Affix seal here)