



STAFF REPORT

DATE: JULY 5, 2011
TO: CHAIRPERSON AND AGENCY BOARD
FROM: ROD FOSTER, EXECUTIVE DIRECTOR
PREPARED BY: ARTHUR MORGAN, REDEVELOPMENT MANAGER
SUBJECT: APPROVAL OF TEMPORARY PARKING LICENSE AGREEMENT WITH VERN SCHAFER III

RECOMMENDED ACTION

It is recommended that the Agency Board approve the Temporary Parking License Agreement with Vern Schafer III for use of Agency owned property at the northeast corner of Meridian Street and Valley Boulevard.

GOAL STATEMENT

The proposed action will support the Agency's goal to increase revenues.

BACKGROUND

Earlier this year, Vern Schafer had approached the Agency regarding the temporary use for parking purposes of an approximate five (5) acre parcel owned by the Redevelopment Agency located at the northeast corner of Meridian Street and Valley Boulevard. Mr. Schafer is planning a series of concerts for which off-street parking will be needed. Agency counsel has drafted the attached Temporary Parking License Agreement (Exhibit A) for the Agency Board's consideration.

ISSUES/ANALYSIS

The Temporary Parking License Agreement (the "License Agreement") allows for off-street parking for the concert attendees on the Agency owned parcel. The parcel could park approximately 400 to 450 cars. The term of the License Agreement is for six (6) months with a one-time six (6) month extension upon the approval of the Agency Executive Director. However, the License Agreement could be terminated, upon notice, for a desired commercial development. In exchange, Vern Schafer will make an advance fee payment of \$1,500 per event for the first six (6) months; and if extended, the advance fee payment will increase to \$2,000 per event for the second six (6) month period. According to Mr. Schafer, events could occur as frequently as 4 to 8 times per month. Pursuant to the License Agreement, Mr. Schafer will obtain all applicable City approvals as well as provide event security, temporary lighting, clean-up and maintenance of the lot, and all necessary automobile and liability insurances as required

by the City. The License Agreement can be cancelled by the Agency at any time with a fourteen day notice.

Automobile parking is a permitted use under Colton Municipal Code, Section 18.24.030. Staff has determined that the temporary use of the parcel is exempt under CEQA Section 15332, Class 32, "Infill Development" for use of a property of less than 5 acres.

FISCAL IMPACTS

Entering into the Temporary Parking License Agreement will provide temporary revenue to the Agency, estimated at an average of \$6,000 per month for the first 6 months and \$8,000 per month for the following 6 months.

ALTERNATIVES

1. Not approve the Temporary Parking License Agreement.
2. Provide alternative direction to staff.

ATTACHMENTS

- 1) Exhibit A, Temporary Parking License Agreement

REDEVELOPMENT AGENCY FOR THE CITY OF COLTON

TEMPORARY PARKING LICENSE AGREEMENT

This TEMPORARY PARKING LICENSE AGREEMENT (this “**License Agreement**”) is dated as of July 5, 2011, and is entered into by and between VERN SCHAFER, III, an individual (“**Licensee**”), and the REDEVELOPMENT AGENCY FOR THE CITY OF COLTON, a public body, corporate and politic (“**Agency**”), with respect to the facts set forth in the following Recitals.

RECITALS

A. This License Agreement affects that certain real property owned by the Agency and defined in this License Agreement as the “**Property**.”

B. Agency and Licensee desire to enter into this License Agreement to allow Licensee to park certain vehicles on the Property driven by attendees at regularly scheduled entertainment events legally conducted on the property owned by Licensee and located across Valley Boulevard from the Property (defined in this License Agreement as the “**Event Property**”).

IN CONSIDERATION OF THE PROMISES OF THE PARTIES SET FORTH IN THIS LICENSE AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, LICENSEE AND AGENCY HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS. In addition to the definitions of certain words or phrases set forth in the Recitals or elsewhere in this License Agreement, the following words or phrases shall have the meanings set forth below:

1.1 Approval. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under applicable Law for the conduct of the Permitted Uses on the Property.

1.2 Automobile Liability Insurance. Insurance covering all owned, hired and non-owned vehicles used by Licensee regarding the Permitted Uses, with minimum limits of One Million Dollars (\$1,000,000) per accident. Any aggregate limit shall be at least twice the amount of the per accident limit. Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies.

1.3 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if Licensee improperly fails to provide a defense for Agency, then Agency’s Legal Costs) and any judgment.

1.4 County. The County of San Bernardino, California.

1.5 Default. A Monetary Default or Non-Monetary Default.

1.6 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the highest rate of interest, if any, that Law allows under the circumstances.

1.7 Environmental Claim. Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.8 Environmental Laws. All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined in Section 1.16), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, about or affecting the Property), occupational or environmental conditions on, under, about or affecting the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.]; the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.]; together with any amendments of or regulations promulgated under any such laws.

1.9 Event. A live entertainment event, such as a musical performance, play, opera or similar performance.

1.10 Event of Default. The occurrence of any one or more of the following:

1.10.1 **Monetary Default.** A Monetary Default that continues for seven (7) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount;

1.10.2 **Non-Monetary Default.** Any Non-Monetary Default that is not cured within thirty (30) days after Notice to the Party alleged to be in Default describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) calendar days after the effective date of such Notice, if the Party alleged to be in Default does not do all of the following: (a) within thirty (30) calendar days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party alleged to be in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) calendar day period; and (c) diligently prosecute such cure to completion, within a reasonable time under the circumstances.

1.11 **Event Property.** That certain real property specifically described in Attachment No. 2 attached to this Agreement.

1.12 **Executive Director.** The Executive Director of Agency or his or her designee or successor in function.

1.13 **Expiration Date.** Defined in Section 9.3.

1.14 **Federal.** The federal government of the United States of America.

1.15 **Government.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

1.16 **Hazardous Substances.** Any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as a "hazardous substance" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq., or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous

Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substance designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) any substance defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to said Law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material.

1.17 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the Permitted Uses or any other activities conducted at on, under or from the Property, whether or not caused by a Party.

1.18 Indemnify. Where this License Agreement states that Licensee shall “indemnify” Agency from, against, or for a particular Claim, that License shall indemnify Agency and defend and hold Agency harmless from and against such Claim (alleged or otherwise).

1.19 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable to the Permitted Uses or the Property, in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting the Property, or relating to any taxes, or otherwise relating to this License Agreement or any Party’s rights, obligations or remedies under this License Agreement, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.20 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

1.21 Liability Insurance. Commercial general liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence. Such insurance may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.22 License Fee. Defined in Section 3.2.

1.23 Monetary Default. Any failure by either Party to pay or deposit, when and as this License Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this License Agreement, whether to or with a Party or a Third Person.

1.24 Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of its obligations under this License Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this License Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this License Agreement by a Party.

1.25 Notice. Any consent, demand, designation, election, notice, or request relating to this License Agreement, including any Notice of a Default. All Notices must be in writing.

1.26 Parties. Collectively, Agency and Licensee.

1.27 Party. Individually, either Agency or Licensee, as applicable.

1.28 Permitted Uses. Vehicular and pedestrian ingress to and egress from the Property by Permitted Users for the purpose of parking Permitted Vehicles relating to attendance at regularly scheduled entertainment events legally conducted at the Event Property.

1.29 Permitted Users. Licensee, Licensee's employees and agents, and attendees at regularly scheduled entertainment events legally conducted at the Event Property.

1.30 Permitted Vehicle. Any "Passenger Vehicle," as defined in Vehicle Code Section 465, or a "Motorcycle," as defined in Vehicle Code Section 400, but exclusive of "House Cars," as defined in Vehicle Code Section 362, "Recreational Vehicles," as defined in Health and Safety Code Section 18010, trailers, campers and the like.

1.31 Person. Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.32 Property. That certain real property specifically described in Attachment No. 1 attached to this Agreement.

1.33 State. The State of California.

1.34 Third Person. Any Person that is not a Party, an affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.35 Waiver of Subrogation. A provision in, or endorsement to, any insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Agreement for any loss such policy covers.

1.36 Worker's Compensation Insurance. Worker's compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of Licensee.

2. EFFECTIVE DATE. This License Agreement shall take effect ("**Effective Date**") on the first date on which all of the following events have occurred: (1) this License Agreement is approved by Agency and signed by the Executive Director; and (2) this License Agreement is signed by the authorized representative(s) of Licensee.

3. LICENSE TO ENTER PROPERTY.

3.1 License. Subject to the terms, conditions and agreements of this License Agreement, as of the Effective Date, Agency licenses, permits and authorizes Licensee to enter the Property, on a non-exclusive basis, to allow Permitted Users to enter the Property solely for the Permitted Uses. Notwithstanding any provision of this License Agreement to the contrary, Permitted Vehicles shall not be allowed to park on the Property for a continuous period of time exceeding twenty-four (24) hours.

3.2 License Fee. Licensee shall pay to Agency the amount of One Thousand Five Hundred Dollars (\$1,500.00) per Event ("**License Fee**"), without setoff, deduction, offset, credit, claim or demand, in advance at least twenty-four (24) hours prior to the date of each Event, through and including the Termination Date, as part of the consideration to Agency for allowing Licensee and other Permitted Users to use the Property for the Permitted Uses pursuant to this License Agreement. If the Expiration Date is extended to June 30, 2012, pursuant to Section 9.3, the License Fee shall automatically, without Notice to Licensee, increase to Two Thousand Dollars per Event for each Event conducted on or after January 1, 2012.

3.3 Suspension. The Executive Director shall have the right to order the suspension of this License by delivery of Notice to Licensee ("**Notice of Suspension**"), if the Executive Director reasonably determines that Licensee has failed to substantially comply with Licensee's material obligations under this License Agreement. The Notice of Suspension shall: (i) set forth the specific reason for suspension; (ii) permit Licensee not less than five (5) business days to cure the circumstances leading to the suspension, prior to the effective date of the suspension; and (iii) indicate measures that Licensee must implement in order to lift the suspension. Nothing in this Section 3.3 shall be deemed to limit the right of Agency to terminate this License Agreement in accordance with Agency's rights under any other provision of this License Agreement.

3.4 AS-IS CONDITION. LICENSEE ACCEPTS THE PROPERTY IN THE PROPERTY'S AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION AS OF THE EFFECTIVE DATE, WITHOUT WARRANTY. NEITHER AGENCY NOR ANY AGENT OF AGENCY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE PHYSICAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE OR USE, INCLUDING ANY REPRESENTATION OR WARRANTY REGARDING THE APPLICABILITY OR NON-APPLICABILITY OF ANY LAWS, THE

SOIL OR SUBSOIL, SURFACE OR SUBSURFACE CONDITIONS, TOPOGRAPHY, POSSIBLE HAZARDOUS SUBSTANCES CONTAMINATION, FILL, DRAINAGE, ACCESS TO PUBLIC ROADS, AVAILABILITY OF UTILITIES, EXISTENCE OF UNDERGROUND STORAGE TANKS, APPLICABILITY OF OR COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR ANY OTHER MATTER OF ANY NATURE WHATSOEVER. AGENCY IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS BY THEFT OF LICENSEE'S PROPERTY LOCATED IN OR ON THE PROPERTY.

3.5 Agency Ownership of the Property. Licensee acknowledges and agrees that Agency is the sole and exclusive owner of the Property and that this License Agreement does not and is not intended to give Licensee or any other Person any interest or estate in the Property. The Parties agree that, if any provision or provisions of this License Agreement is or are construed or interpreted to create any interest or estate in the Property in favor of Licensee or any other Person, other than Agency, this License Agreement shall immediately and automatically become void and of no further force or effect.

3.6 Agency Reservation of Rights in the Property. The agents or employees of Agency may enter the Property, at any time, to inspect the Property, determine Licensee's compliance or non-compliance with this License Agreement or for any purpose that does not unreasonably interfere with the conduct of the Permitted Uses by Licensee pursuant to this License Agreement. Nothing in this License Agreement shall prevent Agency from using or licensing the use of the Property for use, on a first come first served basis, with the Permitted Uses of the Property provided under this License Agreement.

4. CONDITIONS OF USE.

4.1 Compliance with Laws. Licensee covenants and agrees that in entering the Property, Licensee will comply with all applicable Laws, including Environmental Laws.

4.2 No Gambling or Pornography. No Event shall include or be related to, directly or indirectly, any form of gambling (whether or not legal in the State of California) or the sale or display of any written or pictorial matter or performance with prurient sexual appeal or any objects, instruments or actions that are primarily concerned with lewd or prurient sexual activity, as reasonably determined by Agency.

4.3 Approvals. Licensee, at Licensee's sole expense, will timely obtain and comply with any Approvals required for legally conducting the Permitted Uses on the Property.

4.4 Minimize Interference. Licensee covenants and agrees that in using the Property for the Permitted Uses, Licensee will exercise reasonable efforts not to unreasonably interfere with the access of adjacent landowners or adjacent tenants to their property or the operations of adjacent landowners or tenants upon their property.

4.5 Taxes. Licensee shall pay any possessory interest or ad valorem taxes imposed on Licensee's interests or activities under this License Agreement prior to delinquency.

4.6 Security and Traffic Control. At all times that Licensee is conducting Permitted Uses on the Property, Licensee shall provide security services and traffic control services relating

to the Permitted Uses on the Property through either Licensee employees or contracted service providers, all at the sole cost and expense of Licensee and in a manner reasonably acceptable to Agency.

4.7 Property Maintenance. The entirety of the Property (inclusive of improvements, if any) shall be maintained by Licensee in good condition and repair and in a neat, clean and orderly condition, ordinary wear and tear and casualty excepted, including maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, all at the sole cost and expense of Licensee. Licensee's obligation to maintain the Property described in this Section 4.7 is referred to in this License Agreement as the "**Maintenance Standard.**" If, at any time following the Effective Date and prior to the expiration or termination of this License Agreement, there is an occurrence of an adverse condition on any area of the Property in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then Agency may give Notice to Licensee of the Maintenance Deficiency. If Licensee fails to cure the Maintenance Deficiency within seven (7) calendar days following Licensee's receipt of Notice of the Maintenance Deficiency, Agency may enter the Property and perform all acts necessary to cure the Maintenance Deficiency or take any other action at law or in equity that may then be available to Agency to accomplish the abatement of the Maintenance Deficiency. Any amount expended by Agency for the abatement of a Maintenance Deficiency pursuant to this Section 4.7, including Legal Costs, shall be reimbursed to Agency by Licensee, within thirty (30) calendar days after Notice of such amount to Licensee. Any amount expended by Agency for the abatement of a Maintenance Deficiency pursuant to this Section 4.7 that is not reimbursed to Agency by Licensee within thirty (30) calendar days after Notice of such amount to Licensee, shall accrue interest at the lesser of the rate of eight percent (8%) per year or the highest rate of interest, if any, allowed by Law, until paid in full.

4.8 Personal Property. Any and all property, items and materials brought onto the Property by Licensee pursuant to this License Agreement, including any and all equipment and materials, shall, as between Licensee and Agency, be and remain the personal property of Licensee.

4.9 Hazardous Substance Discharge. Licensee shall not cause or permit any Hazardous Substance Discharge, including leaks or discharges from vehicles (including Permitted Vehicles), equipment or operations of or by Licensee on the Property. If Licensee discovers a Hazardous Substance Discharge, Licensee shall notify Agency of such Hazardous Substance Discharge as soon as possible, but in all cases within three (3) calendar days following the date of discovery by or notice to Licensee of such Hazardous Substance Discharge.

4.10 Restoration of Property. On or before the Expiration Date or a Termination Date occurring pursuant to Section 9.1, or within ten (10) calendar days following a Termination Date occurring pursuant to Section 9.2, Licensee, at Licensee's sole cost and expense, shall remove all equipment, improvements, Permitted Vehicles, debris or other items brought or allowed onto the Property by Licensee or any Permitted Users.

5. **COSTS.** As between Licensee and the Agency, all costs incurred in connection with the Permitted Uses shall be the sole responsibility of and be paid by Licensee, with no right of reimbursement from Agency under any circumstances.

6. **PROTECTION OF PROPERTY AGAINST LIENS.** NOTICE IS HEREBY GIVEN THAT AGENCY SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO LICENSEE UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE PROPERTY. NOTHING IN THIS LICENSE AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE AGENCY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY ACTIVITY RELATING TO THE PROPERTY, NOR AS GIVING LICENSEE ANY RIGHT, POWER OR AGENCY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE PROPERTY. LICENSEE SHALL INDEMNIFY AGENCY AGAINST ANY ACTIVITY UNDERTAKEN BY LICENSEE REGARDING THE PROPERTY OR ANYONE CLAIMING THROUGH LICENSEE, AND AGAINST ALL LIENS.

7. **NO LIENS AGAINST PUBLIC PROPERTY.** LICENSEE ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS OWNED BY AGENCY, WHICH IS A PUBLIC ENTITY, AND THAT THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF LABOR, MATERIAL OR SERVICES ON OR TO THE PROPERTY. LICENSEE FURTHER AGREES TO INFORM EACH OF THE PROVIDERS OF LABOR, MATERIAL OR SERVICES ON OR TO THE PROPERTY OF SUCH FACT AND THAT AGENCY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF LABOR, MATERIAL OR SERVICES. AGENCY SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PROPERTY ANY NOTICES THAT AGENCY MAY DEEM NECESSARY OR DESIRABLE FOR THE PROTECTION OF AGENCY OR THE PROPERTY FROM MECHANIC'S LIENS OR OTHER CLAIMS.

8. **INSURANCE.**

8.1 Licensee. Licensee shall maintain, to protect Agency against all insurable Claims resulting from the actions of Licensee in connection with this License Agreement, the Permitted Uses or the Property, at the sole cost and expense of Licensee: (a) Liability Insurance; (b) Automobile Liability Insurance; and (c) Worker's Compensation Insurance.

8.2 Nature of Insurance. All insurance policies this License Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance

Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Licensee may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Permitted Uses and the Property, which amount(s) shall equal or exceed the amount(s) required by this License Agreement; and (ii) such policy otherwise complies with the insurance requirements in this License Agreement.

8.3 Policy Requirements and Endorsements. All insurance policies required by this License Agreement shall contain (by endorsement or otherwise) the following provisions:

8.3.1 **Additional Insured.** Liability Insurance policies shall name Agency as “additional insured.”

8.3.2 **Primary Coverage.** Any insurance or self-insurance maintained by Agency shall be excess of all insurance required under this License Agreement and shall not contribute with any insurance required under this License Agreement.

8.4 Deliveries to Agency. Licensee shall deliver to Agency written evidence of all insurance policies required by this License Agreement prior to the commencement of any Permitted Uses on the Property. No later than ten (10) days before any insurance required by this License Agreement expires, is cancelled or its liability limits are reduced or exhausted, Licensee shall deliver to Agency written evidence of Licensee’s maintenance of all insurance coverage this License Agreement requires. Each insurance policy required by this License Agreement shall state or be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days advance written notice of such action has been given to Agency by certified mail, return receipt requested; provided; however, that only ten (10) days advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance or endorsements to such policies applicable to Agency pursuant to this License Agreement or otherwise required under this License Agreement.

8.5 Waiver of Certain Claims. Licensee shall cause each insurance carrier providing any Worker’s Compensation Insurance coverage to Licensee in satisfaction of the requirements of this License Agreement to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to Agency, if not already in the policy. To the extent that Licensee obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any Claims for damage to any Person or property, to the extent such Claims are paid by such insurance policies obtained pursuant to and in satisfaction of the provisions of this License Agreement.

8.6 No Representation. No Party makes any representation that the limits, scope, or forms of insurance coverage this License Agreement requires are adequate or sufficient.

8.7 No Claims Made Coverage. None of the insurance coverage required under this License Agreement may be written on a claims-made basis.

8.8 Fully Paid and Non-Assessable. All insurance obtained and maintained by Licensee in satisfaction of the requirements of this License Agreement shall be fully paid for and non-assessable.

8.9 Agency Option to Obtain Coverage. At any time that Licensee fails to any insurance coverage required by this License Agreement, Agency may, in Agency's sole and absolute discretion, purchase any such required insurance coverage. Agency shall be entitled to immediate payment from Licensee of any premiums and associated reasonable costs paid by Agency to obtain or maintain such insurance coverage. Any amount becoming due and payable to Agency under this Section 8.9 that is not paid within fifteen (15) calendar days after written demand from Agency for payment of such amount, with an explanation of the amount(s) demanded, will bear Default Interest from the date of the demand until paid in full, including payment of any and all accrued Default Interest. Any election by Agency to purchase or not to purchase insurance otherwise required by the terms of this License Agreement to be carried by Licensee shall not relieve Licensee or any other Person of its obligation to obtain or maintain or cause any other Person to obtain or maintain any insurance coverage required by this License Agreement.

8.10 Separation of Insured. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Licensee and Agency. Insurance policies obtained in satisfaction of or in accordance with the requirements of this License Agreement may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons.

8.11 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions under insurance policies required by this License Agreement shall be declared to and approved by Agency. In the event of an insured loss, the named insured under the applicable insurance policy shall pay all such deductibles or self-insured retentions regarding Agency. Each Liability Insurance or Automobile Liability Insurance policy issued in satisfaction of the requirements of this License Agreement shall provide that, to the extent the named insured under the policy fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Agency may pay the unpaid portion of such self-insured retention, in Agency's sole and absolute discretion.

8.12 No Separate Insurance. Licensee shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this License Agreement, unless Agency is made an additional insured under such insurance, as required by this License Agreement for the insurance required to be carried under this License Agreement.

8.13 Insurance Independent of Indemnification. The insurance requirements of this License Agreement are independent of Licensee's indemnification and other obligations under this License Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify Licensee's indemnification or other obligations or to limit Licensee's liability under this License Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude Agency from taking such other actions as are available to Agency under any other provision of this License Agreement or otherwise at law or in equity.

9. TERMINATION. This License Agreement shall terminate upon the earliest to occur of the following (“**Termination Date**”):

9.1 Licensee Notice. The end of the calendar month immediately following fourteen (14) calendar days after the effective date of Notice from Licensee to Agency terminating this License Agreement; provided, however, Licensee shall have no right to terminate this License Agreement during any time period in which Licensee is in Default under this License Agreement;

9.2 Agency Notice. The end of the calendar month immediately following fourteen (14) calendar days after the effective date of Notice from Agency to Licensee terminating this License Agreement or seven (7) calendar days following Agency delivery of Notice of termination of this License Agreement to Licensee pursuant to Section 19. Agency termination of this License Agreement shall not limit or eliminate any rights or remedies available to Agency at law or in equity arising from a Default or Event of Default by Licensee under this License Agreement;

9.3 Expiration Date. 5:00 PM Pacific Time on December 31, 2011 (“**Expiration Date**”); provided, however, that the Executive Director may extend the “Expiration Date” to June 30, 2012, in the Executive Director’s sole and absolute discretion, by Notice to Licensee.

10. AGENCY INSPECTIONS. Agency shall have the right to inspect the Property and the Permitted Uses to ensure compliance with this License Agreement, at all times beginning on the Effective Date and continuing through and including the Termination Date.

11. LICENSEE INDEMNITY OF AGENCY. Licensee shall Indemnify Agency against any and all Claims arising from: (a) any wrongful intentional act or negligence of Licensee or other Permitted Users; (b) any agreements that Licensee (or anyone claiming by or through Licensee) makes with a Third Person regarding the Permitted Uses or the Property; (c) any worker’s compensation claim or determination relating to any employee of Licensee; (d) any Environmental Claim attributable to any action or failure to act by Licensee or other Permitted Users; or (e) any failure of Licensee to perform the Permitted Uses substantially in accordance with Approvals or failure to obtain any Approval required by any Government regarding performance of the Permitted Uses.

11.1 Independent of Insurance Obligations. Licensee’s indemnification obligations under this License Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Licensee’s insurance or other obligations under this License Agreement. Licensee’s obligation to Indemnify Agency under this License Agreement is independent of Licensee’s insurance and other obligations under this License Agreement. Licensee’s compliance with Licensee’s insurance obligations and other obligations under this License Agreement shall not in any way restrict, limit, or modify Licensee’s indemnification obligations under this License Agreement and are independent of Licensee’s indemnification and other obligations under this License Agreement.

11.2 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of Licensee under this License Agreement shall survive the expiration or earlier

termination of this License Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this License Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

11.3 Indemnification Procedures. Wherever this Agreement requires Licensee to Indemnify Agency:

11.3.1 **Prompt Notice.** Agency shall promptly notify Licensee of any Claim of which Agency receives notice.

11.3.2 **Selection of Counsel.** Licensee shall select counsel reasonably acceptable to Agency. Counsel to Licensee's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or Agency reasonably determines that such counsel is not competent to provide such representation. Even though Licensee shall defend the Claim, Agency may, at Agency's option and expense (except in a situation where Licensee is defending Agency under a reservation of rights, in which situation Licensee shall pay for such separate counsel), engage separate counsel to advise Agency regarding the Claim and Agency's defense. Agency's separate counsel may attend all proceedings and meetings. Licensee's counsel shall actively consult with Agency's separate counsel.

11.3.3 **Cooperation.** Agency shall reasonably cooperate with Licensee's defense of Agency.

11.3.4 **Settlement.** Licensee may only settle a Claim regarding which Licensee is indemnifying Agency with the consent of Agency. Any settlement shall procure a complete release of Agency from the subject Claim, shall not require Agency to make any payment to the claimant and shall provide that neither Agency, nor Licensee on behalf of Agency, admits any liability.

12. CUMULATIVE REMEDIES. Except as otherwise expressly stated in this License Agreement, the rights and remedies of the Parties set forth in this License Agreement are cumulative and the exercise by a Party of one or more of such rights or remedies available to such Party shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies available to such Party for the same Default or the same rights or remedies for any other Default by the other Party.

13. AGENCY REMEDIES AND DAMAGES. Agency shall have all rights and remedies available at law or in equity regarding any and all Defaults by Licensee under this License Agreement. During the continuance of an Event of Default by Licensee under this License Agreement, Agency may terminate this License Agreement immediately by delivering Notice of Termination to Licensee, without limiting or eliminating any other rights or remedies available to Agency regarding such Event of Default or any other Default by Licensee under this License Agreement.

14. LICENSEE REMEDIES AND DAMAGES.

14.1 LICENSEE REMEDIES. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS LICENSE AGREEMENT BY AGENCY, SUBJECT TO ALL APPLICABLE NOTICE AND CURE PERIODS, LICENSEE'S REMEDIES SHALL BE LIMITED TO TERMINATING THIS LICENSE AGREEMENT AND RECOVERING ACTUAL DAMAGES SUFFERED BY LICENSEE BETWEEN THE EFFECTIVE DATE AND THE DATE OF THE EVENT OF DEFAULT AS A RESULT OF SUCH AGENCY EVENT OF DEFAULT, SUBJECT TO THE LIMITATION OF SECTION 14.2.

14.2 LIMIT ON LICENSEE DAMAGES. NOTWITHSTANDING ANY PROVISION OF THIS LICENSE AGREEMENT TO THE CONTRARY, THE TOTAL AMOUNT OF DAMAGES AND OTHER AMOUNTS RECOVERABLE BY LICENSEE PURSUANT TO SECTION 14.1 SHALL NOT EXCEED FIVE THOUSAND DOLLARS (\$5,000.00).

14.3 LICENSEE WAIVER AND RELEASE. AGENCY AND LICENSEE EACH ACKNOWLEDGE AND AGREE THAT AGENCY WOULD NOT HAVE ENTERED INTO THIS LICENSE AGREEMENT, IF AGENCY WERE TO BE LIABLE TO LICENSEE FOR ANY MONETARY DAMAGES, MONETARY RECOVERY OR ANY REMEDY IN THE EVENT OF A DEFAULT OF THIS LICENSE AGREEMENT BY AGENCY, OTHER THAN TERMINATION OF THIS LICENSE AGREEMENT AND PAYMENT OF THE AMOUNTS SPECIFIED IN THIS SECTION 14. ACCORDINGLY, AGENCY AND LICENSEE AGREE THAT LICENSEE'S SOLE AND EXCLUSIVE RIGHT AND REMEDY REGARDING A DEFAULT OR AN EVENT OF DEFAULT UNDER THIS LICENSE AGREEMENT BY AGENCY IS TO TERMINATE THIS AGREEMENT AND RECEIVE THE AMOUNTS EXPRESSLY PROVIDED IN THIS SECTION 14. LICENSEE WAIVES ANY RIGHT TO PURSUE ANY REMEDY OTHER THAN TERMINATION OF THIS LICENSE AGREEMENT AND RECOVERY OF THE AMOUNTS SPECIFIED IN THIS SECTION 14 FROM AGENCY, AS A RESULT OF ANY DEFAULT OR EVENT OF DEFAULT UNDER THIS LICENSE AGREEMENT BY AGENCY.


14.4 LICENSEE 1542 ACKNOWLEDGMENT. LICENSEE ACKNOWLEDGES THAT LICENSEE IS AWARE OF THE MEANING AND LEGAL EFFECT OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES:

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 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

14.5 LICENSEE 1542 WAIVER. CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, THE INTENTION OF LICENSEE IS TO BE BOUND BY THE LIMITATION ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 14, AND LICENSEE HEREBY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST

AGENCY FOR MONETARY DAMAGES, MONETARY RECOVERY OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY DEFAULT, EVENT OF DEFAULT OR BREACH OF THIS LICENSE AGREEMENT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 14, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO LICENSEE AS OF THE EFFECTIVE DATE. LICENSEE SPECIFICALLY WAIVES THE BENEFITS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT REGARDING THE LIMITATIONS ON DAMAGES OR REMEDIES AND WAIVERS AND RELEASES OF ANY SUCH DAMAGES OR REMEDIES CONTAINED IN THIS SECTION 14.

Initials of Authorized
Agency Representative(s)



Initials of Authorized
Developer Representative(s)

15. NOTICES.

15.1 Delivery. Any and all Notices submitted by any Party to the other Party pursuant to or as required by this License Agreement shall be proper, if in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one business day) courier (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in Section 15.2. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 15. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight carrier or two (2) calendar days after the Notice is placed in the United States mail in accordance with this Section 15.1. Any attorney representing a Party may give any Notice on behalf of such Party.

15.2 Addresses. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Agency: Redevelopment Agency for the City of Colton
650 N. La Cadena Drive
Colton, CA 92324
Attn: Executive Director

To Licensee: Vern Schafer, III

Attn: _____

16. NO LICENSEE TRANSFER. Licensee shall not transfer, convey, sell, hypothecate, encumber or otherwise create any rights in any other Person related to Licensee's rights or obligations under this License Agreement, without the prior written consent of the Executive Director, which consent may be given, withheld or conditioned in the Executive Director's sole and absolute discretion.

17. INCORPORATION OF RECITALS. The Recitals of fact set forth preceding this License Agreement are true and correct and are incorporated into this License Agreement in their entirety by this reference.

18. RELATIONSHIP OF PARTIES. The Parties each intend and agree that Agency and Licensee are independent contracting entities and do not intend by this License Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

19. WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR LICENSE AGREEMENT. Licensee represents and warrants to Agency that: (a) Licensee has not employed or retained any Person to solicit or secure this License Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Licensee or any of Licensee's agents, employees or representatives to any elected or appointed official or employee of Agency in an attempt to secure this License Agreement or favorable terms or conditions for this License Agreement. Breach of the representations or warranties of this Section 19 shall entitle Agency to terminate this License Agreement upon seven (7) days Notice to Licensee. Upon any such termination of this License Agreement, Licensee shall immediately refund any payments made to or on behalf of Licensee by Agency pursuant to this License Agreement or otherwise related to the Permitted Uses or the Property prior to the date of any such termination.

20. NO DISCRIMINATION OR SEGREGATION. Licensee covenants by and for itself and all Persons claiming under or through Licensee that this License Agreement is made and accepted upon and subject to the following conditions:

20.1 Standards. That there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property nor shall Licensee or any Person claiming under or through Licensee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property.

20.2 Interpretation. Notwithstanding Section 20.1, with respect to familial status, Section 20.1 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 20.1 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code,

relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to Section 20.1.

21. INSPECTION OF BOOKS AND RECORDS. Agency shall have the right at all reasonable times, at Agency's cost and expense, to inspect the books and records of Licensee pertaining to the Property or the Permitted Uses. Agency shall not disclose proprietary information of Licensee to Third Persons, unless required by law or otherwise resulting from or related to the pursuit of any remedies by or the assertion of any rights of Agency under this License Agreement.

22. CALCULATION OF TIME PERIODS. Unless otherwise specified, all references to time periods in this License Agreement measured in days shall be to consecutive calendar days, all references to time periods in this License Agreement measured in months shall be to consecutive calendar months and all references to time periods in this License Agreement measured in years shall be to consecutive calendar years.

23. PRINCIPLES OF INTERPRETATION. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this License Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this License Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this License Agreement may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this License Agreement. The words “include” and “including” in this License Agreement shall be construed to be followed by the words: “without limitation.” Each collective noun in this License Agreement shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to any document, including this License Agreement, refers to such document, as modified from time to time (excepting any modification that violates this License Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this License Agreement includes the word “and.” Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

24. GOVERNING LAW. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this License Agreement, without application of conflicts or choice of laws principles or statutes. The Parties acknowledge and agree that this License Agreement is entered into, is to be fully performed in and relates to real property located in the County of San Bernardino, State of California.

25. NO THIRD-PARTY BENEFICIARIES. Nothing in this License Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this License Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this License Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

26. BINDING EFFECT. This License Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

27. TIME OF THE ESSENCE. As to the performance of any obligation under this License Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

28. WAIVERS AND AMENDMENTS. All waivers of the provisions of this License Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this License Agreement must be in writing and signed by the authorized representative(s) of both Agency and Licensee. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this License Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under

this License Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

29. EXECUTIVE DIRECTOR IMPLEMENTATION. Agency shall implement this License Agreement through its Executive Director. The Executive Director is hereby authorized by Agency to enter into agreements referenced in this License Agreement or reasonably required to implement this License Agreement on behalf of Agency, issue approvals, interpretations or waivers and enter into certain amendments to this License Agreement on behalf of Agency, to the extent that any such action(s) does/do not materially or substantially adversely affect the Property or increase the monetary obligations of Agency by more than Ten Thousand Dollars (\$10,000) in the aggregate. All other actions shall require the consideration and approval of Agency governing body, unless expressly provided otherwise by action of Agency governing body. Nothing in this Section 29 shall restrict the submission to Agency governing body of any matter within the Executive Director's authority under this Section 29, in the Executive Director's sole and absolute discretion, to obtain Agency governing body's express and specific authorization on such matter. The specific intent of this Section 29 is to authorize certain actions on behalf of Agency by the Executive Director, but not to require that such actions be taken by the Executive Director, without consideration by Agency governing body.

30. SURVIVAL OF LICENSE AGREEMENT. All of the provisions of this License Agreement shall be applicable to any dispute between the Parties arising from this License Agreement, whether prior to or following expiration or termination of this License Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this License Agreement relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this License Agreement.

31. COUNTERPARTS AND INTEGRATION. This License Agreement may be signed in multiple counterpart originals, each of which is deemed to be an original. This License Agreement includes nineteen (19) pages and one (1) exhibit (each exhibit is incorporated into this License Agreement by reference) that constitute the entire understanding between the Parties regarding the Permitted Uses on the Property.

32. FACSIMILE OR ELECTRONIC SIGNATURES. Signatures delivered by facsimile or electronic means shall be binding as originals upon the Party so signing and delivering.


[Signatures on the following page]

**SIGNATURE PAGE
TO
TEMPORARY PARKING LICENSE AGREEMENT**

IN WITNESS WHEREOF, Licensee and Agency sign and enter into this License Agreement by and through the signatures of their respective authorized representatives, as follow:

LICENSEE

VERN SCHAFER, III,
an individual

By: 
Name: Vern Schafer III
Title: Owner

AGENCY

REDEVELOPMENT AGENCY FOR THE
CITY OF COLTON, a public body, corporate
and politic

By: _____
Rod Foster
Executive Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Best Best & Krieger LLP

Agency General Counsel

**ATTACHMENT NO. 1
TO
TEMPORARY PARKING LICENSE AGREEMENT**

PROPERTY LEGAL DESCRIPTION

PARCEL 1 OF PARCEL MAP NO. 6233, IN THE CITY OF COLTON, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 57 OF PARCEL MAPS, PAGES 34 AND 35, RECORDS OF SAID COUNTY.

TOGETHER WITH THAT PORTION OF COLTON AVENUE, VACATED BY RESOLUTION NO. R-21-88 CITY OF COLTON, RECORDED MARCH 29, 1989, INSTRUMENT NO. 89-110987, OFFICIAL RECORDS, ADJOINING SAID LAND ON THE SOUTH, WHICH WOULD NORMALLY PASS BY OPERATION OF LAW.

EXCEPT THEREFROM ALL THAT PORTION THEREOF CONVEYED TO THE CITY OF COLTON, A MUNICIPAL CORPORATION, BY GRANT DEED RECORDED NOVEMBER 3, 1997, INSTRUMENT NO. 97-403983, OFFICIAL RECORDS.

APN: 0162-281-56-0000

**ATTACHMENT NO. 2
TO
TEMPORARY PARKING LICENSE AGREEMENT**

EVENT PROPERTY LEGAL DESCRIPTION

That portion of Lot 215, Town of Rialto and Adjoining Subdivisions, as per plat recorded in Book 4, Page 11 of Maps, records of said County described as follows: BEGINNING at the intersection of the South line of Colton Avenue, 60 feet wide, with the West line of Meridian, 60 feet in width; thence South 89°31'45" West, along said South line of Colton Avenue, 201.32 feet; thence south 0°38'50" West 308.80 feet to the beginning of a non-tangent curve, concave to the Northeast and having a radius of 4945.00feet; thence Southeasterly along said curve from a tangent bearing South 78°18'22" East, through a central angle of 2°03'41" a distance of 177.91 feet to the beginning of a tangent curve, concave to the Northwest and having a radius of 20.00 feet; thence Northeasterly along said curve, through a central angle of 98°59'17" a distance of 34.55 feet; thence North 0°38'50" East, 22.18 feet to the beginning of a non-tangent curve, concave to the North and having radius of 4900.00 feet; thence Easterly along said curve from a tangent bearing South 80°33'28" East through a central angle of 0°02'08", a distance of 3.04 feet to the West line of Meridian Avenue, 60 feet in width; thence North along said West line 302.19 feet to the point of beginning.

TOGETHER with the South ½ of that portion of Valley Boulevard (Colton Avenue) adjoining said land on the North vacated by resolution of the San Bernardino Supervisors, a certified copy of which was recorded August 31, 1965 in Book 6464, Page 459, Official Records.

EXCEPT that portion conveyed to the City of Colton by deed recorded February 4, 1965 in Book 6324, Page 806, of Official Records for widening Meridian Avenue.

APN: 0162-301-02, 04