

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

City of Rialto
City Clerk's Office
150 S. Palm Avenue
Rialto, CA 92376

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT ("AGREEMENT") is entered into as of the 9th day of August, 2022, by and between Syed Raza Zaidi and Sumera Sabir, Trustees of the Syed Raza Zaidi and Sumera Sabir 2014 Trust dated February 8, 2014, ("GRANTOR"), and the CITY OF RIALTO, a California municipal corporation and general law city, ("CITY"). GRANTOR and CITY may also be referenced as Party or Parties.

RECITALS

A. GRANTOR is the legal owner of real property, including all improvements located thereon, in the City of Rialto, County of San Bernardino, State of California, and more particularly known as commonly known as 858 S Riverside Avenue, Rialto, 92376 (APN: 013123112) ("PROPERTY");

B. CITY is constructing sidewalk improvements at the northwest corner of W Randall Avenue and S Riverside Avenue ("PROJECT"). The PROJECT consists of:

- The relocation of the PROPERTY fence and gate and the construction of retaining curb.

C. To construct the PROJECT, the City will need a temporary construction easement ("TCE") in and over portions of the PROPERTY as more particularly depicted in Exhibit "A".

TERMS

NOW, THEREFORE, in consideration of the promises set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and GRANTOR agree as follows:

1. Incorporation of Recitals.

Each of the Recitals set forth above is incorporated herein by this reference.

2. Grant of Temporary Construction and Access Easement.

GRANTOR hereby grants to CITY the TCE for the purposes of constructing the PROJECT. The TCE shall include, without limitation, the right and privilege of City and its employees, agents, representatives, contractors, subcontractors, and workmen (collectively "AUTHORIZED PERSONNEL") to: (i) use, control, and occupy the TCE in order to perform all activities as may be necessary for construction of the PROJECT; (ii) use and temporarily place and operate tools, equipment, machinery, and materials on and within the TCE area; (iii) remove improvements, and trim, cut, or clear away any trees, brush, or other vegetation or flora within the TCE area. Hereinafter, items (i)-(iii) shall be collectively referred to as the "Work."

The TCE term shall be for a period not to exceed three (3) months. Actual physical use of and occupation of the TCE area for Project construction purposes, and all uses appurtenant thereto, shall commence following written notice provided to the property owner(s) by the City or Authorized Personnel. At the expiration of the TCE term, the City shall restore such property to a condition as near as practicable to the condition that existed immediately prior to City's operations. The City, however, shall not be required to restore vegetation to the pre-existing condition. The City will at all times during the TCE term allow the property owner(s) to have and maintain reasonable access to and from the larger parcel. Upon completion of the Work, City will cause all of the equipment, materials, tools, trash, and debris to be removed from the TCE area.

In no event shall the term of the TCE extend beyond July 31, 2023.

3. CITY Performed Work.

All work done under this AGREEMENT shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner.

4. Indemnification.

CITY shall indemnify, defend and hold harmless GRANTOR, from and against all claims, causes of action, damages, liabilities, injuries, actions, costs and expenses ("CLAIMS"), caused by the gross negligence or willful misconduct of the CITY in the exercise of CITY's rights under this AGREEMENT, or work performed in connection with the PROJECT, excepting only such CLAIMS as may be the result of intentional acts or negligence of the GRANTOR.

5. No Leases.

GRANTOR warrants there are no oral or written leases on all or any portion of the TCE area. In the event the CITY later determines that there is an oral or written lease on all or a portion of the TCE area, GRANTOR shall hold CITY harmless and reimburse CITY for any and all of its losses and expenses occasioned by reason of any lease of the TCE area.

6. Release of Claims.

Except as otherwise provided in Clause 4 herein, GRANTOR hereby waives and releases all rights, claims, costs, expenses, demands, damages or causes of action the GRANTOR

has or may have in the future against CITY as a result of or arising out of CITY'S construction of the PROJECT, and acquisition of the TCE area. GRANTOR acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

GRANTOR hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section.

7. Integrity of Property.

Except as otherwise provided herein or by express written permission granted by CITY, GRANTOR shall not, after the date of execution of this AGREEMENT and the receipt of consideration, alienate, lien, encumber or otherwise transfer the PROPERTY or any portion thereof or allow the same to occur, cause or allow any physical changes on the PROPERTY, or enter into a lease or contract with respect to the PROPERTY or any portion thereof which would survive the receipt of consideration and impair CITY'S use of the TCE. At its sole expense, GRANTOR shall maintain the PROPERTY in a condition so as not to interfere with CITY'S TCE.

8. Modification, Waiver.

No modification, waiver, amendment or discharge of this AGREEMENT shall be valid unless the same is in writing and signed by both Parties.

9. Severability.

If any term, provision, covenant or condition of this AGREEMENT is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this AGREEMENT shall be severable and shall not be affected thereby, and each of the remaining terms, provisions, covenants or conditions of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.

10. Specific Performance and Other Remedies.

The Parties understand that the interests and rights being conveyed by this AGREEMENT are unique and for that reason, among others, the Parties will be irreparably damaged in the event that this AGREEMENT is not specifically enforced. Accordingly, in the event of any controversy concerning the obligations under this AGREEMENT, such obligation shall be enforceable by a decree of specific performance or by injunction. Such remedies and all other rights and remedies set forth herein shall be cumulative and not exclusive, and shall be in addition to any and all other remedies which the Parties may have hereunder at law or in equity.

11. Successors and Assigns.

This AGREEMENT shall run with the land. All terms of this AGREEMENT shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

12. Waiver.

The waiver by one Party of the performance of any term, provision, covenant or condition shall not invalidate this AGREEMENT, nor shall it be considered as a waiver by such Party of the same condition in the future or a waiver of any other term, provision, covenant or condition. Delay by any Party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such Party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

13. Notices.

All notices, requests, demands, and other communications under this AGREEMENT shall be in writing and shall be deemed to have been duly given on the date of delivery if served personally on the Party to whom notice is to be given, or if mailed, five (5) days after mailing by first class mail, registered or certified mail, postage prepaid, and properly addressed as follows. Any Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

CITY: City of Rialto
 City Clerk's Office
 150 S. Palm Avenue
 Rialto, CA 92376

GRANTOR: Syed Saidi & Sumera Sabir
 858 S Riverside Avenue
 Rialto, CA 92376

14. Condition Precedent: Approval of CITY and GRANTOR.

GRANTOR understands that this AGREEMENT is subject to the approval of City Council of the CITY or authorized designee and that this AGREEMENT shall have no force or effect unless and until such approval has been obtained.

15. Authority to Sign.

GRANTOR and the signatories for GRANTOR represent and warrant that GRANTOR'S signatories to this AGREEMENT are authorized to enter into this AGREEMENT and that no other authorizations are required to implement this AGREEMENT on behalf of GRANTOR.

16. Counterparts Signature.

This AGREEMENT may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one AGREEMENT.

17. Entire Agreement.

This AGREEMENT constitutes the entire AGREEMENT between the Parties relating to the subject of this AGREEMENT and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof. The performance of this AGREEMENT constitutes the entire consideration for the conveyance of the TCE and shall relieve CITY of all further obligations or claims on this account or on account of the location, grade or operation of the PROJECT as designed.

18. Recording.

This AGREEMENT shall be recorded in the Official Records of San Bernardino County, State of California. The Parties shall execute all other documents necessary to memorialize or implement the terms and provisions of this AGREEMENT or to memorialize the termination of this AGREEMENT and the TCE.

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

SIGNATURES ON NEXT PAGE

CITY:

CITY OF RIALTO

GRANTORS:

Syed Raza Zaidi and Sumera Sabir 2014
Trust dated February 8, 2014

By: _____
Marcus Fuller, City Manager

By: _____
Syed Raza Zaidi, Trustee

Date: _____

Date: _____

By: _____
Sumera Sabir, Trustee

Date: _____

ATTEST:

By: _____
Barbara McGee, City Clerk

APPROVED AS TO FORM:

By: _____
Eric Vail, City Attorney

NOTARY ACKNOWLEDGEMENT

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 _____, 2022, before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and
that by his/her/their signature on the instrument the person, or the entity upon behalf of which the
person 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: _____ (Seal)

NOTARY ACKNOWLEDGEMENT

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 _____, 2022, before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and
that by his/her/their signature on the instrument the person, or the entity upon behalf of which the
person 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: _____ (Seal)

EXHIBIT A

TEMPORARY CONSTRUCTION EASEMENT

A depiction of the temporary construction easement area is provided below and identified by the areas in red.

