

RECORDING REQUESTED BY:

CITY OF RIALTO

WHEN RECORDED, RETURN TO:

DEVELOPMENT SERVICES DEPT.
CITY OF RIALTO
150 S. PALM AVENUE
RIALTO, CA 92376
ATTENTION: ROBB STEEL

No fee for recording per Gov. Code § 27383

(Space above this line for Recorder's use only)

APN 0130-241-34 and 53

AGREEMENT AFFECTING REAL PROPERTY AND CREATING A LIEN TO SECURE PAYMENT OF DEFERRED DEVELOPMENT IMPACT FEES

This Development Impact Fee Deferral Agreement ("Agreement") is made by and between the **City of Rialto**, a general law municipal corporation ("City"), and **Jack S Grill and Billiards INC** ("Developer") hereafter called "Party" or "Parties", entered into as of **April 23, 2019** ("Effective Date") and based upon the recitals herein.

RECITALS

A. Developer is the owner of that certain real property described herein and situated in the City of Rialto, County of San Bernardino, generally known as **148 S. Riverside**, and described more fully in Exhibit "A" attached hereto ("Affected Property").

B. Developer proposes to construct certain building improvements thereon ("Project") and has made application(s) to the City for building and other permits in furtherance of such improvement.

C. Pursuant to City Ordinance No. 1532, codified as Chapter 3.33 of the Rialto Municipal Code ("RMC"), the terms and conditions of which are incorporated herein by reference, the City is authorized to collect various development impact fees as a condition of issuance of building permits and other entitlements of development on all new development, or significant expansion or changes in use or intensity, in order to ensure the provision of adequate public facilities such that new development will not create a burden on the City's interrelated public facilities and services networks.

D. Pursuant to RMC § 3.33.070(H), as a condition of issuance of a building permit, the City Administrator may negotiate a fee deferral agreement with a developer of a development project, subject to City Council approval, to defer one or more development impact fees otherwise required to be paid prior to the issuance of a building permit for construction of any portion of a development project.

E. The City has imposed such fees upon the Affected Property, specifically Regional Traffic, Street Medians, General Municipal Facilities, Law Enforcement, Fire Protection, Open Space, and Sewage Treatment ("Fees"). The amount of the Fees will be subject to increases on July 1st of each year

pursuant to RMC § 3.33.040 or revisions as duly approved by the City in accordance with Government Code Section 66001(a). Accordingly, the development impact fees assessed on the Project shall be the development impact fees in effect as of the date the Developer actually pays the development impact fees to the City. The City estimates the development impact fees deferred under this Agreement as follows (see calculations attached hereto as Exhibit B):

RMC Section:	Development Impact Fee	Amount of Fee
3.33.160	Regional Traffic Fee	\$14,503.60
3.33.180	Street Median Development Fee	\$ 269.25
3.33.190	General Facilities	\$ 427.43
3.33.210	Law Enforcement	\$ 304.41
3.33.220	Fire Facilities	\$ 496.24
3.33.230	Open Space Development Fee	\$ 251.30
3.33.250	Sewage Treatment	\$16,761.24

The total amount of development impact fees deferred under this Agreement are currently estimated to be **\$33,013.47**, which amount shall be subject to increase pursuant to RMC § 3.33.040 or other revisions as duly approved by the City, and provided in writing by City to Developer when payment is due under this Agreement ("Total Fees").

F. The Developer requests a deferral of the payment of those development impact fees imposed upon the Project from the time of issuance of a building permit until the earliest to occur of the following: (1) when a final inspection is requested; (2) when a certificate of occupancy is requested; or (3) when escrow closes, if applicable, per Section 4 below. The deferral of one or more development impact fees imposed is necessary or desirable to achieve a goal important to the development of the Project.

G. The City has determined that this Project will benefit and enhance the economic strength of the community, and generally contribute to the economic and commercial well-being of the City and its residents. Accordingly, the City desires to allow the development impact fee deferral subject to the execution of a fee deferral agreement authorized by RMC § 3.33.070(H).

H. Developer is familiar with the provisions of City Ordinance No. 1532 and those regulations and resolutions which have been adopted pursuant thereto, and agrees that as a condition of the issuance of the building permit(s) for the Affected Property, all development impact fees imposed by the City of Rialto will be paid prior to and as a condition of occupancy of the property.

NOW, THEREFORE, Developer and City agree as follows:

1. **Lien Created.** The Developer hereby grants to City a lien against the Affected Property described in Exhibit "A." The parties intend that said lien guarantee the payment in full, plus accrued interest, processing fees, and the cost of collection per Section 5 below , if applicable, of the Total Fees deferred pursuant to this Agreement.

2. **Payment of Fees.** Developer shall pay the Total Fees in effect as of the date the Developer actually pays the fees to the City. The Total Fees (as referenced in Recital E above) are due and payable upon the earliest to occur of the following: (1) when a final inspection is requested for the parcel; (2) when a certificate of occupancy is requested for the parcel; or (3) when escrow closes on the sale of the

parcel. Any unpaid Total Fees balance is immediately due and payable upon the sale of the entire Affected Property.

3. Deferral Period. Subject to Section 2, above, the maximum deferral period for payment of the Total Fees is 12 months from the date of issuance of the Project's first building permit ("Deferral Period"). Any portion of the Total Fees that remain unpaid at the expiration of the Deferral Period is immediately due and payable.

4. Escrow. To the extent Developer intends to sell a parcel, the following shall apply:

(a) Developer shall notify the City in writing of the opening of each escrow for the sale of each parcel. If an escrow account is opened for the sale of a parcel in the Project, Developer shall provide in those escrow instructions that the portion of the Total Fees attributable to the parcel shall be paid to the City from the sale proceeds in escrow before sale proceeds are disbursed to the seller.

(b) Developer agrees to provide, within five business days following the mutual execution of this Agreement, proof of payment demand in favor of the City to an escrow company for the Total Fees deferred, as referenced in this Agreement. The Developer further agrees that failure to provide said payment demand within said time frame shall constitute a material breach of this Agreement and shall cause the Total Fees deferred under this Agreement to become due and immediately payable at the time of issuance of the first building permit for any parcel within the Affected Property.

5. Interest and Fees. No interest or processing fee shall apply if the Total Fees are paid in full when they become due per the terms of this Agreement. However, should the Total Fees not be paid when due and payable, or should the Developer be in breach of any provision of this Agreement: (a) interest at the rate of five percent (5%) per annum shall accrue on all unpaid portion of the Total Fees from the date of issuance of the first initial building permit until the Total Fees and all accrued interest is paid; and (b) an additional processing fee of One Thousand Dollars (\$1,000.00) shall be added to the unpaid amount to cover the initial administrative costs incurred in processing the Fee deferral application. If assessed, interest shall be at the above annual rate of interest, which the City earns on its investment of pooled funds.

6. Subordination. The lien created hereunder shall not be subordinated unless approved by the City Administrator.

7. Release of Lien. Upon full payment of the Total Fees and accrued interest to City and complete satisfaction of all terms and conditions of this Agreement by the Developer, the City shall promptly release the lien created hereunder by executing a lien release in substantial form as shown in Exhibit "B." If the City receives payment for the portion of the Total Fees attributable to a dwelling or structure, and the dwelling or structure is located on a parcel separate from others in the Project, the City will record a release of the lien as to the parcel where the dwelling or structure is located.

8. Default. If Developer fails to pay any amount owing under this Agreement, the City has the right to exercise all rights and remedies and to maintain any action in law or equity to enforce the terms and covenants of this Agreement. The City may pursue collection through all available legal and administrative means including, but shall not be limited to, judicial or non-judicial foreclosure of the recorded lien against the Affected Property and/or civil judgment against the Developer for breach of this Agreement and/or the security provided hereunder. As part of the obligation secured hereby and in

addition to the amount of the deferred fees stated above, there shall be included cost and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

9. **Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This section does not limit the effect of Section 11, below.

10. **Assignment.** This Agreement shall not be assigned or otherwise transferred to a person or entity not a party to this Agreement without the express prior written consent of the City. Any person or entity seeking assignment or transfer of this Agreement shall meet all of the terms and conditions under this Agreement, Chapter 3.33 of the City Municipal Code, and Ordinance No. 1532. Assignment shall not be effective until the proposed assignee/transferee executes an assignment and assumption agreement, in a form acceptable to the City Attorney, assuming all duties and obligations of the Developer under this Agreement. Any assignment or transfer not in strict compliance with this provision shall: (a) be null and void; (b) constitute a material breach of this Agreement; and (c) cause the Total Fees to become due and immediately payable at the time of the attempted assignment or transfer.

11. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

12. **Applicable law; Venue.** This Agreement is governed by and construed in accordance with the substantive laws of the State of California. The venue for any legal action pertaining to this Agreement shall be San Bernardino County, California.

13. **Waiver.** In the event that either City or Developer shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

14. **Severability.** If any provision of this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement will not be affected and remains valid and fully enforceable.

15. **Indemnity.** Developer agrees to defend, indemnify, and hold harmless the City, its officials, employees and agents for any and all actions, proceedings, damages, claims, costs and attorneys' fees arising out of, or related to, this Agreement.

16. **Notices.** All correspondence regarding this Agreement must be direct to the following persons at the following addresses:

City: City of Rialto
150 S. Palm Ave.
Rialto, CA 92376
Attn: City Administrator

Developer: Jack's Grill and Billiards Inc.
P.O. Box 1128
Rialto, CA 92377
Attn. Stacey and Jacqueline Augustine

17. **Modification and Amendment.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

18. **Entire Agreement.** This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded. This Agreement may not be modified except by written mutual agreement signed by the parties.

19. **Authority to Execute.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

20. **Recording.** This Agreement shall be recorded in the Grantor-Grantee index in the name of the City of Rialto as grantee and in the name of Developer as grantor.

ALL SIGNATURES MUST BE NOTARIZED

CITY OF RIALTO

ATTEST:

BY: _____
Sean Grayson, Interim City Administrator DATE

Barbara McGee, City Clerk DATE

DEVELOPER

BY: _____
DATE

Name:

Its:

BY: _____
DATE

Name:

Its:

**– PLEASE NOTE THAT DEVELOPER'S AND CITY SIGNATURE(S) MUST BE NOTARIZED –
A CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT IS REQUIRED.**

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Rialto, County of San Bernardino, State of California, described as follows:

PARCEL 1: (APN: 0130-241-53)

LOT A AS SHOWN ON CERTIFICATE OF COMPLIANCE NO. 171, AS EVIDENCE BY DOCUMENT RECORDED OCTOBER 19, 2006 AS INSTRUMENT NO. 06-714920 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 16.60 FEET OF LOT 18, BLOCK 11 PER MAP OF THE TOWN OF RIALTO, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 4, PAGE(S) 10 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2: (APN 0130-241-34)

LOT 17, BLOCK 11 OF THE TOWN OF RIALTO, CITY OF RIALTO, AS PER PLAT RECORDED IN BOOK 4 OF MAPS, PAGE 10, IN THE OFFICE OF THE RECORDER OF SAID COUNTY.

EXHIBIT D

DEVELOPMENT IMPACT FEES CALCULATIONS

DEVELOPMENT IMPACT FEE CALCULATIONS - PRELIMINARY (SUBJECT TO CHANGE)

Retail Fees Sheet

Date Prepared Building Permit #
4/3/2019 BLD18-1389

PPD# **Applicant Name:**
2018-0032 Jack S Grill and Billiards INC

Fiscal Year Fees
2018-19

Site Address: 148 S. Riverside

Improved Area

Building

Lot Size
0.11 ac

Sq. Footage
3,880 bsf

Frontage If
0

APN: 0130-241-34/35

FY 2018-19 Fee Estimate*

Impact Fee Category	Impact Fee Category	Agency	Unit	Fee/Unit	Total Fee	Credit	Net Fee	Notes
Park Facilities		City of Rialto	EXEMPT	\$ -	\$ -	\$ -	\$ -	
Fire Facilities		City of Rialto	3.880 tsf	\$ 276.46	\$ 1,072.66	\$ (576.42)	\$ 496.24	1
General Facilities		City of Rialto	3.880 tsf	\$ 238.12	\$ 923.91	\$ (496.48)	\$ 427.43	1
Library Facilities		City of Rialto	EXEMPT	\$ -	\$ -	\$ -	\$ -	
Law Enforcement		City of Rialto	3.880 tsf	\$ 169.59	\$ 658.01	\$ (353.60)	\$ 304.41	1
Open Space		City of Rialto	3.880 tsf	\$ 140.00	\$ 543.20	\$ (291.90)	\$ 251.30	1
Storm Drain		City of Rialto	0.000 acres	\$ 34,794.63	\$ -	\$ -	\$ -	2
			0.000 tsf	\$ 1,997.89	\$ -	\$ -	\$ -	
Street Medians		City of Rialto	3.880 tsf	\$ 150.00	\$ 582.00	\$ (312.75)	\$ 269.25	1
Transportation Facilities Fee		City of Rialto	3.880 bsf	\$ 8.08	\$ 31,350.40	\$ (16,846.80)	\$ 14,503.60	1
Water Facilities Fees		City of Rialto						
Domestic Meter		RWS	0 1 1/2"	\$ 10,346.55	\$ -	\$ -	\$ -	3
Irrigation Meter		RWS	0 1 1/2"	\$ 10,346.55	\$ -	\$ -	\$ -	
Fire Service Development Fees (4", 6", 8", 10")		RWS	0 6"	\$ 134.20	\$ -	\$ -	\$ -	
Wastewater Collection		City of Rialto	0 lff	\$ 8.34	\$ -	\$ -	\$ -	2
Wastewater Treatment Commercial/Beauty Parlor		City of Rialto	3.880 tsf	\$ 769.46	\$ -	\$ (2,686.76)	\$ (2,686.76)	1
Wastewater Treatment Restaurant		City of Rialto	68 Seats	\$ 286.00	\$ 19,448.00	\$ -	\$ 19,448.00	
Total Impact Fees			per sf	\$ 14.07	\$ 54,578.18	\$ (21,564.71)	\$ 33,013.47	\$ 33,013.47
Other Traffic Fair Share					\$ -	\$ -	\$ -	
Other Traffic Fair Share Fees					\$ -	\$ -	\$ -	

Totals DIF Fees / Credits / Net Fees Due

\$ 54,578.18 \$ (21,564.71) \$ 33,013.47 *

Notes

1 Existing. Development creates no new impacts.

2 Fee estimate. Need actual meter sizes.

3 Wastewater Treatment Fee based on seats and food service type.

4 Additional traffic fee may apply based on traffic study, if required by the Public Works Department.

*Fees are subject to annual CPI increases effective in 1-1-19 for Regional Traffic Fee and 7-1-19 other fees.
This preliminary estimate of Development Impact Fees is deemed to be reliable for budgeting purposes only.
The estimate is not guaranteed and does not include the fees that may be assessed by other agencies.
The fee is due at the time of building permit issuance.

EXHIBIT C
LIEN RELEASE FORM

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Rialto
City Clerk
150 S. Palm Ave.
Rialto, CA 92376

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

RELEASE OF LIEN UPON REAL PROPERTY

WHEREAS, on _____,
("Grantor") and the City of Rialto, a California General Law Municipal Corporation ("Grantee"),
entered into an Agreement Affecting Real Property And Creating A Lien To Secure Payment Of
Deferred Development Impact Fees (the "Agreement"), which Agreement was recorded as
Document No. _____ in the Official Records of San Bernardino County on
_____; and,

WHEREAS, Grantor has satisfied the conditions for a release of lien encumbering certain
parcels under said Agreement.

NOW THEREFORE, the Grantee hereby releases all of its right, title, and interest to the
lien in the real property described in Exhibit "A" attached hereto.

CITY OF RIALTO, A Municipal Corporation:

Date

, City Administrator

ATTEST:

ORIGINAL APPROVED AS TO FORM:

Barbara A. McGee, City Clerk

Date

Fred Galante, City Attorney

Date

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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, _____,

*Date**Here Insert Name and Title of the Officer*

personally appeared _____

Name(s) of Signer(s)

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 _____

*Signature of Notary Public**Place Notary Seal Above***OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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personally appeared _____

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Signer Is Representing: _____