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EXEMPT FROM FILING FEES PURSUANT
 TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF RIVERSIDE

CITY OF PALM SPRINGS, a charter city,
 Plaintiff,

v.

GRIT DEVELOPMENT, LLC, a California
 limited liability company;
 KALURA TRATTORIA, INC. a California
 corporation; and
 DOES 1 through 50,
 Defendants.

Case No. CVPS2408385
 Judge: Hon. Manuel Bustamante, Dept. PS2

**STIPULATION FOR ENTRY OF
 FINAL JUDGMENT IN
 CONDEMNATION AS TO GRIT
 DEVELOPMENT, LLC**

[Assessor Parcel No. 513-144-012]

*[Filed concurrently with:
 [Proposed] Final Judgment in
 Condemnation]*

GRIT DEVELOPMENT, LLC, a California
 limited liability company,
 Cross-Complainant,

v.

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CITY OF PALM SPRING, a charter city; and
ROES 1 through 10

Complaint Filed: December 30, 2024

STIPULATION

Plaintiff CITY OF PALM SPRINGS (the “City”) and Defendant GRIT DEVELOPMENT, LLC, a California limited liability company (“Grit”) (together, the “Parties”), hereby stipulate as follows:

I. THE PROPERTY AND THE PROJECT

1. The City filed an eminent domain action on December 30, 2024, in the above-captioned action to acquire, by eminent domain, a permanent non-exclusive easement interest in certain real property, located on the east side of South Palm Canyon Drive and south of West Tahquitz Canyon Way in the City of Palm Springs, County of Riverside, California, more particularly described as Assessor Parcel Number 513-144-012. The City seeks to acquire the property for a public project and use – the Plaza Theatre Restoration Project (the “Project”). A true and correct copy of the legal definition, legal description, permitted easement uses, and map of the property interests to be acquired for the Project is attached hereto and made a part hereof as **Exhibit A** (the “Property”).

2. On December 9, 2024, the City deposited \$604,000 in the State of California Condemnation Deposits Fund as the deposit of probable compensation for the Property the City seeks to acquire through this action (the “Deposit”). Grit, being paid outside of Court as set forth below, hereby waives any right, title or interest in or to the Deposit.

II. THE PARTIES & CROSS COMPLAINT

3. To acquire the Property, the City named all defendants that it determined may have an interest in the Property. The list below identifies each named defendant; describes each defendant’s interest in the Property, and provides the status of each defendant:

<u>Defendant</u>	<u>Interest</u>	<u>Status</u>
GRIT DEVELOPMENT, LLC, a California limited liability company	Record Owner	Served via personal service on January 16, 2025
KALURA TRATTORIA, INC. a California corporation	Possible leasehold interest	Served via personal service on January 17, 2025

<u>Defendant</u>	<u>Interest</u>	<u>Status</u>
DOES 1 through 50	N/A	N/A

4. No other persons or entities are known to have an interest in the Property or to the proceeds in this action for the Property.

5. On February 18, 2025, Grit filed a Cross-Complaint against the City for Inverse Condemnation of the Property (APN 513-144-012) as well as other properties owned by Grit identified as Assessor Parcel Numbers 513-144-011 (the “**Restaurant Property**”) and 513-144-002. Together, APN’s 513-144-012, 513-144-011 and 513-144-002 which shall collectively be referred to as “**Grit Properties**.” Together, the City’s eminent domain complaint and Grit’s Cross Complaint, including all claims, demands, and causes of action that were brought or that could have been brought related to Case No. CVPS2408385 are collectively referred to as the “**Action**.”

6. As the owner of the Property and Grit Properties, Grit represents and warrants that (a) it has made no assignment of any interest in the Property or Grit Properties, or of any claim arising from or relating to the above-captioned Action; (b) it knows of no person, entity, or party other than those referenced in paragraph 3 above, that has or may claim any right to any portion of the compensation to be awarded for the City’s acquisition of the Property.

III. THE SETTLEMENT

7. The City and Grit now desire to settle any and all claims and disputes related to the City’s acquisition of the Property and the Action on the terms and conditions set forth herein. The Parties, having reached a settlement of this entire Action, hereby stipulate that the City may condemn the Property in exchange for the following:

A. City shall pay to Grit the total sum of Nine Hundred Eighty Six Thousand Five Hundred Dollars (\$986,500) (the “**Settlement Payment**”). The City agrees to make such payment within fifteen (15) days after the Court enters the concurrently-filed [Proposed] Final Judgment in Condemnation. Grit shall provide the City with a complete and accurate W-9 prior to and as a condition precedent to any such payment.

B. City shall design, construct and install an outdoor dining patio within a portion of the public sidewalk in front of the Kalura restaurant (the “**Replacement Patio**”).

1 C. City shall, prior to the construction of the Replacement Patio, obtain a
2 signoff of the final patio design from both Kalura and Grit. The design and improvement
3 of the Replacement Patio shall be performed to the reasonable satisfaction of Grit, including
4 material and color swatches for the barrier to be constructed along Palm Canyon, to ensure
5 that the safety of the Replacement Patio and the design integrity is kept with the surrounding
6 Grit Properties, the Welwood Library and the Project City shall, prior to Construction, grant
7 to Grit (by separate deed) an easement (the "**Patio Easement**") to utilize the public right of
8 way, identified in **Exhibit B**, as a patio and to construct the Replacement Patio thereon.
9 The Patio Easement shall run with the Restaurant Property as defined above, for so long as
10 the Restaurant Property is actually occupied and utilized as an operating food and/or
11 beverage establishment. Neither Grit nor any successor in interest to the Restaurant
12 Property shall be liable to the City for any amount due in the form of rent/fee/charge for use
13 of the Replacement Patio at any time. If the Restaurant Property ceases to actually be
14 occupied and utilized for food and/or beverage purposes for a period of twelve (12) months
15 for Grit to obtain a tenant and an additional six (6) months for Grit to obtain any
16 permits/entitlements that may necessary to operate such food and/or beverage
17 establishment, the Patio Easement shall cease to exist automatically and without any further
18 action of the Parties. Upon such expiration, the City may, in its sole discretion and at City's
19 sole cost and expense, remove the Replacement Patio improvements and restore the affected
20 area for public right of way use without any additional compensation to Grit. If Grit is
21 delayed or hindered in, or prevented from, the performance of any act by Force Majeure set
22 forth in this Subsection III(C), then performance of such act shall be excused for the period
23 of the delay and the period for the performance of any such act shall be extended for a period
24 equivalent to the period of such delay. "Force Majeure" means a material delay caused by
25 reason of strikes, lockouts, labor troubles, wars, military power, terrorist acts, sabotage, acts
26 of God or nature, pandemic, governmental delays or restrictions, litigation or other matters
27 beyond Grit's control.
28

1 D. The Replacement Patio design should satisfy the agreement between Kalura
2 and the City and shall include all of the following:

- 3 • dining area with seating capacity of sixty (60) comparable to the existing patio,
4 • a lighting system, comparable to the existing lighting system,
5 • a misting system, comparable to the existing misting system, including an operable
6 water delivery line for the purpose of serving the misting system,
7 • a music distribution system, comparable to the existing music distribution system,
8 • a network connection cable for the point of sale system, and
9 • permanent umbrellas, or a solid shade cover, for the Replacement Patio area, to
10 provide shade and protection for Kalura customers.

11 E. City agrees to indemnify, defend and hold harmless Grit, its members,
12 managers, employees, officers and agents (collectively, the “**Grit Indemnitees**”) from any
13 and all claims of liability or damages of any kind associated with the Replacement Patio to
14 the extent such liability or damage is caused, or alleged to be caused, by the reduction in
15 sidewalk space that is necessitated by the placement of the Replacement Patio. In addition,
16 City agrees to indemnify, defend and hold harmless Grit Indemnitees from any and all
17 liability or damage associated with traffic, e.g., any accidents caused by drive-by traffic
18 (bicycles, cars, and motorcycles, etc.). However, nothing in this Stipulation shall prevent
19 the City from raising as a defense, the tortious conduct of any third parties, including,
20 without limitation, the Grit Indemnitees.

21 F. Grit agrees to indemnify, defend and hold harmless the City, its members,
22 council members, employees, officers, agents, and assigns (collectively, the “**City**
23 **Indemnitees**”) from any and all claims of liability or damages of any kind from any current
24 tenants of Grit that are leasing the Property or any of the Grit Properties that arise out of the
25 City’s acquisition of the Property; provided, however, that Grit shall not be responsible for
26 the tortious acts of any third party(ies), including, without limitation, the City Indemnitees,
27 including but not limited to, City’s tenants, operators, management companies, licensees,
28 guests and/or invitees.

1 G. As part of the Project, the City will also be improving the courtyard area of
2 the Property acquired, in order to provide for a consistent and aesthetically pleasing
3 courtyard area in front of the Project (the “**Courtyard Improvements**”). Grit hereby grants
4 a license for the City to construct the Courtyard Improvements, and the City and Grit will
5 coordinate with Brandini Toffee and Kalura for the construction of the Courtyard
6 Improvements. City agrees to indemnify, defend and hold harmless the Grit Indemnitees
7 from any and all liability or damages associated with the construction of the Courtyard
8 Improvements, use, occupancy and/or management of the Property by the City, its
9 management company(ies), operators, and/or tenants. Grit agrees to indemnify, defend and
10 hold harmless City Indemnitees from any and all liability or damages associated with Grit’s
11 ownership of the Property. Grit shall have no responsibility or liability for maintenance or
12 repairs of the Project and/or Courtyard Improvements to the extent such Courtyard
13 Improvements are located within the Property.

14 H. The City shall ensure that the design and improvement of both the
15 Replacement Patio and the Courtyard Improvements comply with any and all applicable
16 laws, including, but not limited to, the California Department of Alcoholic Beverage
17 Control (“ABC”) requirements and Americans with Disabilities Act (“ADA”) requirements.
18

19 I. Within five (5) days after receiving the Settlement Amount, Grit shall file a
20 request to dismiss its Cross Complaint against the City with prejudice.

21 J. City shall pay Grit an amount, not to exceed Fifteen Thousand Dollars
22 (\$15,000) for legal fees associated with drafting this Stipulation. City may request, and Grit
23 shall allow the City to review copies of invoices from Grit’s attorney(s), un-redacted for
24 those entries for which Grit seeks reimbursement pursuant to this paragraph.

25 K. Grit has been in discussion with the Palm Springs Plaza Theatre Foundation
26 and the City of Palm Springs regarding a possible lease of space within Grit’s Plaza Las
27 Flores property, though no agreement has been reached as of the date of this Stipulation.
28 Grit agrees that, contingent upon the execution of any such future agreement or lease for

1 square footage within Grit's Plaza Las Flores by the City, its management company(ies),
2 and/or tenants, and only for so long as any said future lease or agreement remains in effect,
3 Grit will provide (by such separate agreement or lease) access for guests/users of the Theatre
4 (including any such guests/users who are also using the Welwood Library property for
5 events which must be simultaneously conducted within the Theatre) to and from the
6 restrooms located in the Plaza Las Flores, as generally identified in **Exhibit C** ("Restroom
7 Access Area").

8 It is confirmed and acknowledged by Grit and the City that there is an existing
9 agreement by and between Grit and the City which provides (in pertinent part) the City with
10 access the bathrooms located within the Grit's property, commonly referred to as Plaza Las
11 Flores, solely for users of the Welwood Library and only for so long as the Welwood Library
12 is used as a library. [Said existing agreement is entitled Redevelopment Participation
13 Agreement (Plaza de Las Flores) dated November 2, 1988, and amendments thereto, by and
14 between The Community Redevelopment Agency and the City of Palm Springs, on the one
15 hand) and Grit's predecessor-in-interest John Wessman dba Wessman Development
16 Company, on the other, the "**RDA Agreement**".] If any future agreement or lease is entered
17 into as set forth in this Paragraph (K), said agreement or lease shall stand separate and apart
18 from the RDA Agreement, and shall not, in any manner or form, alter, revise, extend,
19 broaden, modify or otherwise, have any affect or impact of the terms of the RDA
20 Agreement.

21 8. The above-referenced covenants and obligations of the Parties in Paragraph 7
22 constitute full settlement of this Action and Grit waives the ability to claim any additional payment
23 or consideration from the City related to the Action. The Parties agree that upon execution of this
24 Stipulation, the [Proposed] Final Judgment in Condemnation, in the form and content as submitted
25 herewith and made a part hereof, may be signed forthwith and entered by the Court without need
26 for any further act by the Parties. The Parties further agree that upon payment of the Settlement
27 Amount, the City may seek to file a Final Order of Condemnation without any further input from
28 Grit. Nothing contained in this Stipulation shall be deemed a release or waiver of Grit's rights for

1 any construction-related damage or liability to Grit Properties and/or including APN 513-144-013,
2 also known and referred to by the parties hereto as “Brandini Toffee Building.”

3 **IV. WAIVERS**

4 9. By executing this Stipulation, Grit, on its behalf and on behalf of its owners,
5 principles, agents, executors, administrators, successors and assigns, hereby expressly and
6 unconditionally waives and releases the City, its successors, agents, representatives (including
7 attorneys), and all other affiliated persons and associations, known or unknown, from any claims
8 or damages that could have been sought in this Action. This release and waiver expressly and
9 specifically excludes the covenants and obligations of the Parties in Paragraph 7.

10 10. Grit acknowledges that it is aware of the provisions of California Civil Code section
11 1542, which provides as follows:

12 A general release does not extend to claims which the Creditor does not
13 know or suspect to exist in his or her favor at the time of executing the
14 release which, if known by him or her, must have materially affected his or
15 her settlement with the Debtor.

16 This release and/or waiver expressly and specifically excludes the covenants and obligations of the
17 parties in Paragraph 7.

18 11. Grit acknowledges that it may have sustained damage, loss, costs, or expenses which
19 are presently unknown or unsuspected, and such damage, loss, costs, or expenses which may have
20 been sustained and which may give rise to additional damage, loss, costs or expenses in the Action.
21 Grit hereby acknowledges that this Stipulation has been negotiated and agreed upon and hereby
22 expressly waives any and all rights which it may have under Civil Code section 1542, under any
23 statute or common law or equitable principle of similar effect as to the City’s acquisition of the
24 Property and the Action. This release and waiver expressly and specifically excludes the covenants
25 and obligations of the parties in Paragraph 7.

26 12. By executing this Stipulation, the City, on its behalf and on behalf of its members,
27 councilmembers, employees, officers, agent and assigns, hereby expressly and unconditionally
28 waive and release the Grit Indemnitees from any claims or damages that could have been sought in

1 this Action. This release and waiver expressly and specifically excludes the covenants and
2 obligations of the parties in Paragraph 7.

3 13. The City acknowledges that it may have sustained damage, loss, costs, or expenses
4 which are presently unknown or unsuspected, and such damage, loss, costs, or expenses which may
5 have been sustained and which may give rise to additional damage, loss, costs or expenses in the
6 Action. The City hereby acknowledges that this Stipulation has been negotiated and agreed upon
7 and hereby expressly waives any and all rights which it may have under Civil Code section 1542,
8 under any statute or common law or equitable principle of similar effect as to the City's acquisition
9 of the Property and the Action. This release and/or waiver expressly and specifically excludes the
10 covenants and obligations of the parties in Paragraph 7. The City acknowledges that it is aware of
11 the provisions of California Civil Code section 1542, which provides as follows:

12 A general release does not extend to claims which the Creditor does not
13 know or suspect to exist in his or her favor at the time of executing the
14 release which, if known by him or her, must have materially affected his or
15 her settlement with the Debtor.

16 This release and/or waiver expressly and specifically excludes the covenants and
17 obligations of the parties in Paragraph 7.

18 14. This Stipulation is a settlement of claims of the City and Grit in order to avoid further
19 litigation and is not in any manner to be construed as an admission of the fair market value of the
20 Property or of liability by any Party to this Stipulation.

21 15. Grit agrees that upon payment of the Settlement Payment, the City may submit to
22 the Court a Final Order in Condemnation and Grit waives the right to object to the same, other than
23 to the extent said Final Order conflicts with the terms of this Stipulation.

24 16. Grit and the City waive the right to trial by court or jury, statement of decision, and
25 any and all rights to appeal as to any and all issues related to the City's taking of the Property and
26 the concurrently-filed [Proposed] Final Judgment in Condemnation, including the right to appeal a
27 Final Judgment in Condemnation and a Final Order of Condemnation.
28

1 **V. MISCELLANEOUS**

2 17. A part ~~from the~~ forth in Paragraph 7(J) above, each Party agrees to bear its
3 own attorney fees, litigation expenses, and costs of suit incurred in the Action.


4 18. This Stipulation may be signed in counterpart or duplicate copies and any signed or
5 duplicate copy is equivalent to a signed original for all purposes.

6 19. This Stipulation may be enforced by either Party hereto by a motion under Code of
7 Civil Procedure section 664.6 or by any procedure permitted by law in the Superior Court of
8 Riverside County.

9 20. The Parties to this Stipulation agree that pursuant to Evidence Code section 1123,
10 this Stipulation may be used in any subsequent proceedings to prove the terms of the settlement.
11

12 Dated: April 10, 2025

BUCHALTER

14 
15 By: _____
16 VINCENT WHITTAKER
17 EMILY S. CHAIDEZ
18 Attorneys for Defendant/Cross Complainant
19 GRIT DEVELOPMENT, LLC
20

21 Dated: April 17, 2025

BEST BEST & KRIEGER LLP


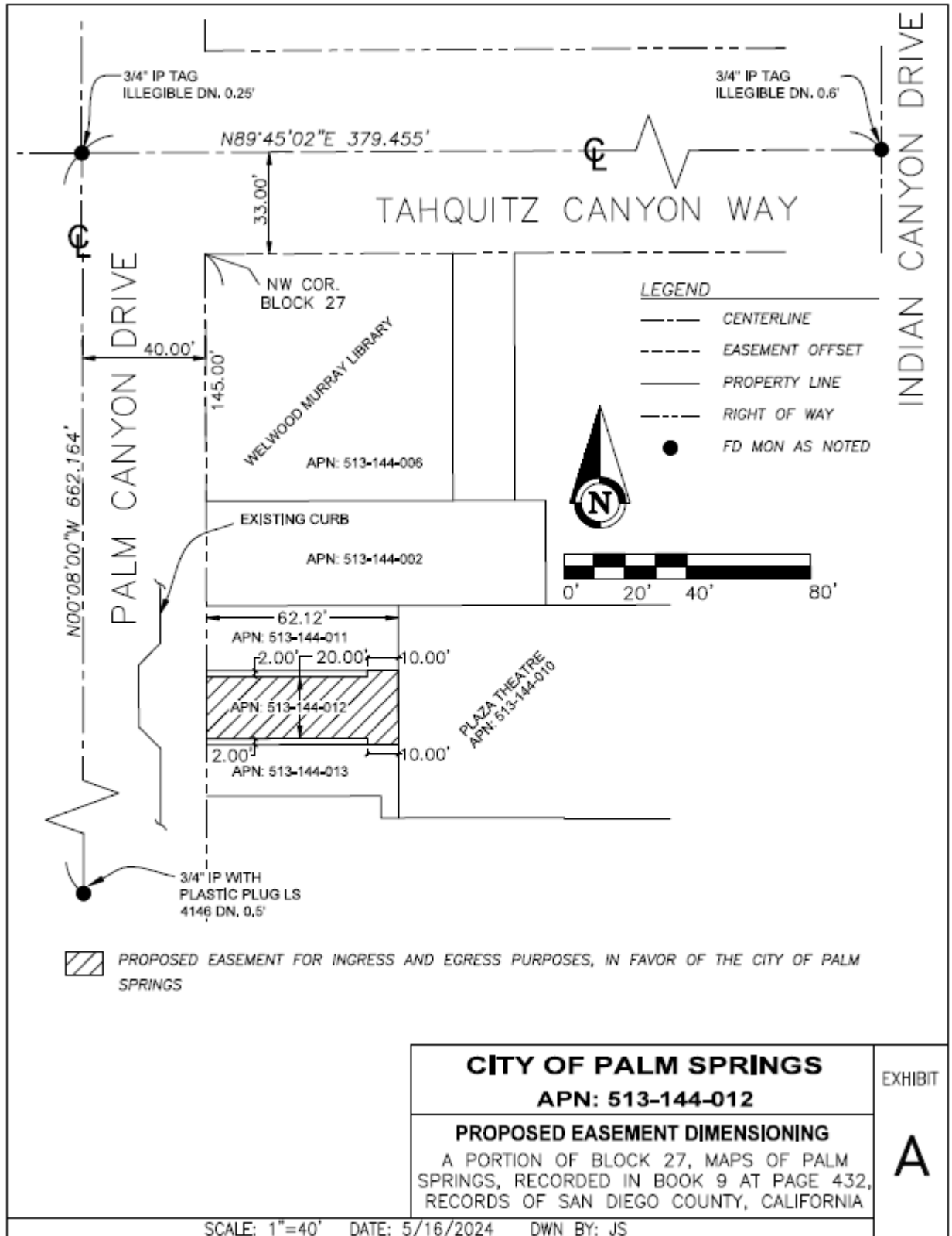
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23 By: _____
24 JEFFREY S. BALLINGER
25 GREGORY G. SNARR
26 Attorneys for Plaintiff
27 CITY OF PALM SPRINGS
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EXHIBIT A
EASEMENT



The following is the definition of legal rights to be acquired by the City of Palm Springs (“City”) for its proposed Plaza Theatre Restoration Project (“Project”):

“Permanent Easement” refers to a non-exclusive permanent easement in favor of the City and to its successors, and assigns, with the right to forever construct, maintain, improve, alter, relocate, inspect, occupy, and use for the purpose of providing safe, code-compliant ingress and egress to and from the adjacent property, currently referred to as the Plaza Theatre and known as Assessor Parcel number 513-144-010 (the **“Benefited Parcel”**). The use of the non-exclusive Permanent Easement shall include the City’s right to use the Permanent Easement area for gathering, staging, holding events, hosting VIP reception areas, conducting special events, and any other related or accessory uses that may be deemed by the City to be necessary or convenient for the operation or use of the Benefited Parcel and other public uses, as determined necessary or convenient by the City, together with all necessary rights incidental thereto, on, over, under, and across the Permanent Easement area in connection with the exercise of any easement rights described herein, so long as such uses do not: (1) unlawfully restrict access for persons with disabilities to the parcel immediately to the North of the Burdened Parcel (Assessor Parcel Number 513-144-011) and the parcel immediately to the South of the Burdened Parcel (Assessor Parcel Number 513-144-013) [collectively referred to as “the Adjacent Parcels”], or (2) unreasonably restrict, prevent, or hamper the operations of the businesses located and operating on the Adjacent Parcels.

The owner, its lessees, assigns and successors of the Burdened Parcel and/or the Adjacent Parcels may not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the Permanent Easement, unless required by law and/or a governmental agency, or plant trees or any other vegetation on any portion of the Permanent Easement except with the prior written consent of the City or its successors and assigns.

The owner, its lessees, assigns and successors of the Burdened Parcel and/or the Adjacent Parcels may not place or permit or cause to be placed any furniture, fixtures or equipment on, in, over, under or across the Permanent Easement area if the placement of such items interferes with the City's purpose and use of the Permanent Easement.

The City has the right to clean, trim, cut or clear away any trees, brush, or other vegetation from time to time as determined in its sole discretion, without payment of additional compensation. The City has the right to remove, clean or clear away and dispose of any items, fixtures or equipment located in the Permanent Easement area as determined in its sole discretion, without payment of additional compensation.

No other easements, licenses, or rights of way may be granted on, under or over the Permanent Easement area without the prior written consent of the City or its successors and assigns.

The owner, its lessees, assigns and successors of the Burdened Parcel and/or the Adjacent Parcels shall not cause, directly, indirectly or negligently, any interference with or harm to the rights

1 conveyed hereunder.

2 The owner, its lessees, assigns and successors of the Burdened Parcel will not allow any
3 change in surface or subsurface conditions including, but not limited to, placing fences, trees, walls,
4 buildings, structures earth fills, excavations, construction of loading surcharge on or over the
5 Permanent Easement area without prior written approval of the City. The City, its lessees, assigns
6 and successors of the Benefitted Parcel will not allow any change in surface or subsurface
7 conditions including, but not limited to, placing fences, trees, walls, buildings, structures earth fills,
8 excavations, construction of loading surcharge on or over the Permanent Easement area that will
9 unreasonably interfere with the rights and/or use of the Adjacent Parcels.

10 The owner, its lessees, assigns and successors of the Burdened Parcel and/or the Adjacent
11 Parcel shall not cause, directly, indirectly or negligently, any interference with or harm to the rights
12 conveyed hereunder.
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EXHIBIT B
PATIO EASEMENT AREA*
(subject to further refinement by the Parties,
pursuant to review contemplated by Section III.7.C)

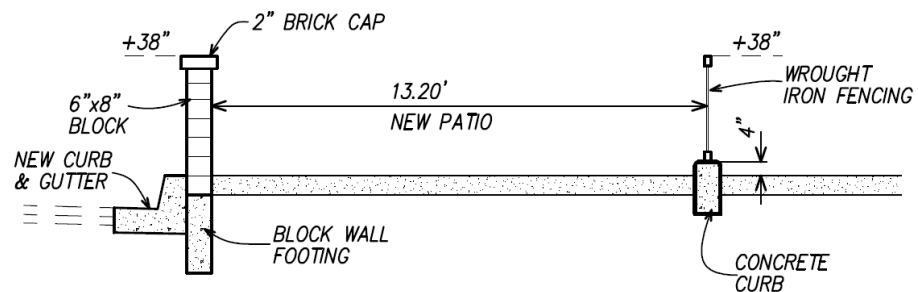
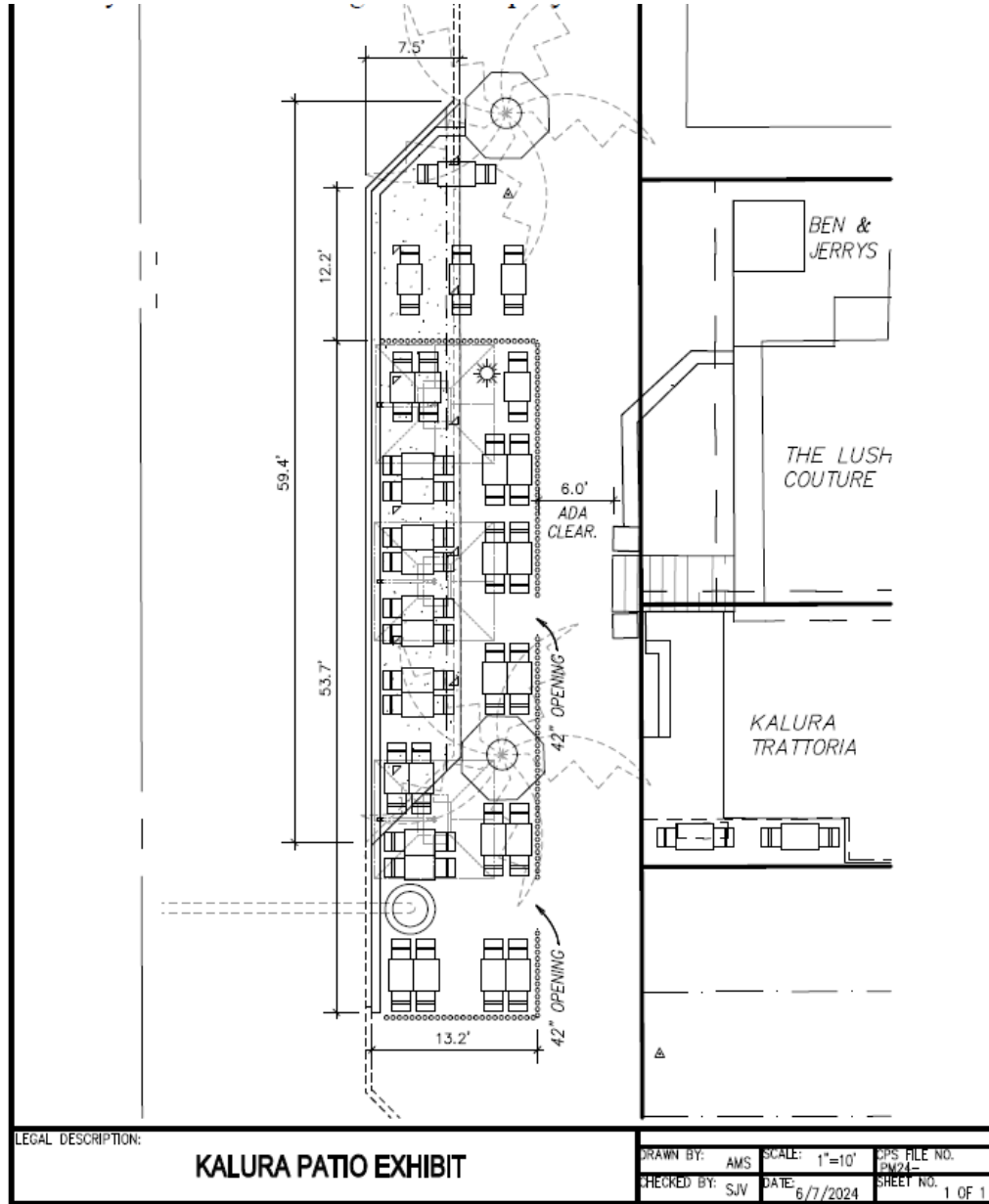


EXHIBIT C
RESTROOM ACCESS AREA

