

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

City of Sonora
City Hall
94 N. Washington Street
Sonora, CA 95370
Attn: City Clerk

No recording fee per Gov. Code §§ 6103, 27383

Description of Property:

Portion of APN 056-570-059-000, as described in **Exhibit A** attached and incorporated hereto (collectively referred to as the "Property"). The Property is composed of the following parcels:

An area of approximately 13,418 square feet, referred to herein as "Parcel 1";
and

An area of approximately 5,868 square feet, referred to herein as "Parcel 2".

**COVENANT AND AGREEMENT REGARDING PROPERTY TRANSFER,
IMPROVEMENTS, AND USE RESTRICTIONS**

This COVENANT AND AGREEMENT REGARDING PROPERTY TRANSFER, IMPROVEMENTS, AND USE RESTRICTIONS ("Agreement") is made by and between the CITY OF SONORA, a California municipal corporation ("City"), and the Crossroads Enterprises, LP, a California limited partnership ("Applicant"), with reference to the following recitals. City and Applicant may be referred to herein individually as "Party" or collectively as the "Parties."

RECITALS

A. The Property is generally located at the intersection of Old Wards Ferry Road and Sanguinetti Road, as further shown in **Exhibit A**.

B. Applicant is the landowner and operator of the commercial shopping complex adjacent to the Property.

C. City is the fee owner of the Property through which the Sierra Railroad maintains a right-of-way for railroad purposes.

D. A portion of the Property is excess right-of-way which is within the right-of-way of Old Wards Ferry Road. This intersection was realigned at the time of development of the Lowe's and Walmart shopping center.

E. The City received a request from Applicant to formally abandon the Property and transfer the Property to Applicant, in order to allow additional space in the commercial shopping center for further development and to transfer maintenance obligations of the Property to Applicant.

F. The City Council finds that the City will benefit from the land transfer described herein, in that such areas being transferred to Applicant will advance economic development, community benefits and services, and further relieve the City from ongoing maintenance and costs associated with the Property.

G. The Parties intend that the obligations, covenants, and conditions set forth in this Agreement shall constitute covenants running with the land and shall bind the Property and the owners of the Property and their respective successors and assigns.

H. All proceedings necessary to formally abandon the Property as City right-of-way and transfer the Property have occurred and the abandonment of the Property shall be duly recorded by City prior to the conveyance of the Property by City to Applicant pursuant to this Agreement, and City desires to transfer its interest in the Property to Applicant, as set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. TRANSFER OF PROPERTY. City hereby agrees to convey its interest in the Property to Applicant by Quitclaim Deed, in a form approved by City. Conveyance of the Property shall include all of City's rights, title, and interest to the Property.

2. PARCEL 1 REQUIREMENTS.

- (a) *Use of Parcel 1.* Developer shall have the right to use and develop Parcel 1 for any lawful use in accordance with City's General Plan, zoning ordinance, development standards, and the Sonora Municipal Code. Any remaining area of Parcel 1 not used for development of an additional commercial/retail location shall be used for landscaping. In the event such remainder area is used or developed for landscaping, then the conceptual plans shall be reasonably approved by the Community Development Director. The City acknowledges that certain public easements located on Parcel 1 will need to be relocated within Parcel 1 by Applicant in connection with Applicant's planned development of Parcel 1. The City shall not unreasonably withhold consent to the relocation of said easements.
- (b) *Maintenance of Parcel 1.* Applicant shall at all times maintain Parcel 1, including all landscaped areas, in accordance with applicable laws and ordinances, and in a neat, clean, safe, and well-maintained condition consistent with good landscaping and property management practices. Applicant shall be responsible for regular irrigation, mowing, trimming, weeding, removal of debris, and upkeep of ground cover, plants, shrubs, and trees. Applicant shall promptly repair and restore any landscaped area or other facilities that become damaged or deteriorated, or cause the same to be repaired or restored. In the event that Applicant fails to maintain Parcel 1 as required herein after reasonable notice, City may perform or cause such maintenance to be performed, and Applicant shall be responsible for costs incurred upon receipt of an invoice from City.

3. PARCEL 2 REQUIREMENTS.

- (a) *Use of Parcel 2.* Parcel 2 shall be restricted to landscaping uses to enhance the surrounding area, as well as for the installation and use of lawful signage serving Applicant's property. Applicant covenants, for itself and its successors-in-interest and assigns that Parcel 2 shall be used solely for such purposes in perpetuity. This covenant may be modified or released only by a written instrument executed by the City recorded in the official records of Tuolumne County, and no other person or entity shall have the authority to modify or release this covenant. Nothing contained herein shall be construed to allow development of Parcel 2 without being subject to the City's General Plan, zoning ordinance, development standards, and the Sonora Municipal Code.
- (b) *Landscaping Improvements to Parcel 2.* The Parties acknowledge that Parcel 2 is located at a major intersection in the southwest corner of City limits, and

that the City desires to enhance the visual appearance and overall quality of the intersection. Applicant shall complete landscaping improvements to Parcel 2 in accordance with conceptual plans approved by the Community Development Director. The landscaping improvements shall be completed prior to or concurrent with development of Parcel 1. The landscaping improvements shall substantially enhance the existing appearance of Parcel 2 and shall be of a scope, quality, and level of finish generally comparable to the landscaping improvements located along the intersection frontage of Greenley Road and Sanguinetti Road. Prior to commencing the landscaping improvements, Applicant shall submit conceptual plans to the Community Development Director for review and approval. The Community Development Director's approval shall be based upon substantial compliance with the following requirements and guidelines and shall not be unreasonably withheld or delayed:

Landscaping shall have a naturalistic, drought-tolerant character that is compatible with the City's foothill setting and the historic character of the surrounding area.

The design is encouraged to incorporate retaining walls, natural or decorative rock outcroppings, and California native or climate-adapted drought-tolerant plant species, including species providing seasonal blooms and color.

Planting compositions may draw from the character of native oak woodland, chaparral, rocky slopes, creek corridors, orchards, and utilitarian gardens, as appropriate to the site.

Plant materials should generally include California native and climate-adapted species exhibiting muted greens, gray-greens, seasonal wildflower color, and natural variation in height, form, and texture.

Mature native trees, particularly oak trees and other characteristic foothill trees, shall be integrated to the maximum extent reasonably practicable.

Hardscape elements shall have a simple, durable, and somewhat rustic character. Materials shall be selected to weather naturally and

complement the historic masonry, brick, wood storefronts, retaining walls, and surrounding natural geology.

- (c) *Maintenance of Parcel 2.* Applicant shall at all times maintain Parcel 2, including all landscaped areas, in accordance with applicable laws and ordinances, and in a neat, clean, safe, and well-maintained condition consistent with good landscaping and property management practices. Applicant shall be responsible for regular irrigation, mowing, trimming, weeding, removal of debris, and upkeep of ground cover, plants, shrubs, and trees. Applicant shall promptly repair and restore any landscaped area or other facilities that become damaged or deteriorated, or cause the same to be repaired or restored. In the event that Applicant fails to maintain Parcel 2 as required herein after reasonable notice, City may perform or cause such maintenance to be performed, and Applicant shall be responsible for costs incurred upon receipt of an invoice from City.
 - (d) *Beautification Improvement on Parcel 2.* Notwithstanding that Parcel 2 is privately-owned, Applicant hereby grants to the City, and the City accepts, a nonexclusive right and easement over and upon Parcel 2 for the purposes of installing, inspecting, maintaining, operating, repairing, replacing, and removing, at City's sole cost and expense, a fountain, statue, monument, public art installation, landscaping feature, or other artistic or beautification improvement selected by City (defined as the "Beautification Improvement"). The location, design, size, and configuration of the Beautification Improvement shall be reasonably coordinated with the landscaping, signage, and other improvements on Parcel 2. City shall be responsible for all costs associated with installation, maintenance, and operation of the Beautification Improvement, with the exception of any utility costs directly attributable to the operation of the Beautification Improvement (for example, electricity costs for lighting). In the event damage is caused to the Beautification Improvement by Applicant or its successors, assigns, agents, or contractors, Applicant shall be responsible for repairing the damage. City may elect, in its sole discretion, not to install a Beautification Improvement or, after installation, to remove, replace, or alter a Beautification Improvement.
4. ESCROW; CLOSING COSTS. Upon formal approval by the City Council of this Agreement, the Parties shall open an escrow to facilitate the transaction described herein. Applicant shall be responsible for all escrow and closing costs associated with this transaction (including but not limited to, escrow costs, recording fees, and transfer taxes (if any), as may be applicable).

5. COVENANT RUNNING WITH THE LAND. The provisions and covenants contained in this Agreement are intended to be perpetual and binding on all successors and assigns acquiring any portion of the Property. All terms, covenants, and conditions contained herein (including but not limited to, the provisions of Section 2 and Section 3 above) shall be binding on all parties having or acquiring any legal title or interest in the parcels described herein or any part thereof.
6. AUTHORITY. Each person or entity executing this Agreement certifies that they are authorized to sign this Agreement and bind the Parties to the terms and conditions contained herein.
7. GOVERNING LAW; VENUE. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Venue for all legal proceedings shall be in the Superior Court for Tuolumne County.
8. ENTIRE AGREEMENT. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written, electronic or oral, between the Parties hereto with respect to the subject matter of this Agreement.
9. COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
10. ATTORNEY'S FEES AND COSTS. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[Signatures on following page]

By execution with the signatures below, the Parties agree to be bound to the terms and conditions contained in this Agreement. The effective date shall be the date of recording in the official records of Tuolumne County.

CITY OF SONORA:

By: _____
Chris Gorsky, City Administrator

Dated: _____

[*California all-purpose acknowledgment to be attached*]

APPLICANT:

Crossroads Enterprises, LP,
a California limited partnership

By: _____
Scot Patterson, General Partner

Dated: _____

[*California all-purpose acknowledgment to be attached*]

EXHIBIT A

Legal Description of Property