

COUNCIL ACTION FORM

SUBJECT: AGREEMENT FOR FUTURE ACCESS EASEMENT AT 436 S. DUFF AVENUE (PANDA EXPRESS)

BACKGROUND:

A Minor Site Development Plan for the commercial property improvements at 436 S. Duff Avenue (Panda Express) was approved on July 1, 2016, subject to approval of a future access easement allowing for future cross access to the property to the north. It was determined by staff that, due to the limits on access to South Duff Avenue and the traffic concerns at the intersection of South 5th Street and South Duff Avenue, the opportunity for future cross access was desired for the property if and when an easement could be secured with the property to the north. At this time the owner of the adjacent property at 426 S. Duff Avenue does not desire to make such a connection. However, **the attached future easement agreement allows for future ingress and egress on the subject property at 436 S. Duff whenever such a north-south connection to the property to the north could be secured.** (See Attachment A, approved Minor Site Development Plan)

The proposed easement area measures 24 feet wide (the required width of the two way drive aisle) and aligns with the proposed parking lot and drive through aisles of the proposed site improvements for Panda Express.

Staff has reviewed the future easement agreement and is satisfied that it meets the requirements for a future cross access easement across the subject property. The terms of the agreement require that the easement be recorded on 436 S. Duff and triggered only if, and when, the City secures an easement in the future from 426 S. Duff. The City has no other responsibilities or obligations as part of the agreement.

A copy of the future easement agreement is attached to this Council Action Form. If the City Council approves the agreement, staff will finalize the signatures and recording of the agreement document against the subject property.

ALTERNATIVES:

1. The City Council can approve the attached future access agreement resolution between the owner of property at 436 S. Duff Avenue and the City, subject to signature and recording of the agreement against the subject property.
2. The City Council can disapprove the attached future easement agreement resolution between the owner of property at 436 S. Duff Avenue and the City.

MANAGER'S RECOMMENDED ACTION:

This agreement will preserve the City's future right to facilitate a future off-street connection between two businesses along this busy traffic corridor.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative # 1 as described above.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER

Prepared by: Kiran K. Sudha, Panda Restaurant Group, Inc. 1683 Walnut Grove Ave., Rosemead, CA 91770 (626-372-8549)
Return recorded document to: City Clerk, City of Ames, 515 Clark Avenue, Ames, Iowa 50010

AGREEMENT TO GRANT ACCESS EASEMENT

This AGREEMENT TO GRANT ACCESS EASEMENT (this "**Agreement**"), dated as of _____, 2016 (the "**Effective Date**"), by and between CFT NV DEVELOPMENTS, LLC, a Nevada limited liability company (hereinafter, the "**CFT**"), having an address at 1683 Walnut Grove Ave Rosemead, CA 91770 and City of Ames, Iowa (hereinafter, the "**CITY**"), having an address at 515 Clark Avenue, Ames, Iowa. CFT and CITY are each sometimes referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, CFT is the owner of certain property located at 436 S Duff Ave, Ames, Iowa, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Parcel A**");

WHEREAS, based on the present uses and configuration of development, the City desires to preserve the opportunity to obtain an easement for ingress and egress across a portion of the property located north of Parcel A as more particularly described in **Exhibit B** attached hereto and incorporated herein by this reference ("**Parcel B**");

WHEREAS, the Parties desire to enter into this Agreement to insure that the City would be granted a permanent easement for ingress and egress for vehicular and pedestrian traffic over a portion of Parcel A in the event CITY is granted such rights across a portion of Parcel B;

NOW, THEREFORE, for good and valuable consideration and the mutual covenants, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Obligation to Grant Ingress and Egress Easement. In the event City receives an easement across Parcel B for ingress and egress, CFT will grant to City a perpetual

non-exclusive easement for pedestrian and vehicular ingress and egress on Parcel A in the vicinity of the area shown on **Exhibit C**, attached hereto and incorporated herein by this reference (the “**Easement Area**”). The grant of such Easement shall only be conditioned upon receipt by the CITY of a similar easement or rights across Parcel B. In the event CITY obtains ingress and egress rights across Parcel B, CFT, its employees, representatives, licensees, customers and invitees, shall also benefit from the easement on Parcel B.

2. Timing of Obligation. Upon the City becoming aware that it is going to obtain ingress and egress rights across Parcel B, the City shall promptly notify CFT of that fact. CFT shall then work diligently and expediently to complete its grant to the City of the Easement described in the preceding paragraph.

3. Covenant Running with the Land. The rights, duties and obligations created in this Agreement shall be construed as covenants running with the land and shall be binding upon the Parties, their successors and assigns.

4. Attorneys' Fees. In the event of any dispute between the Parties regarding the enforcement or effect of this Agreement, including one subject to arbitration, the non-prevailing Party in any such dispute shall pay the prevailing Party's reasonable attorneys' fees and costs incurred. In the event of arbitration, the fees of the arbitrator and the cost of the arbitration shall be paid by the non-prevailing Party. In the event that neither party wholly prevails, the court or arbitrator, as applicable, may apportion the costs or fees as the court or arbitrator deems appropriate.

5. Amendment. This Agreement may not be modified, amended or terminated except in a writing signed by each party hereto.

6. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Agreement delivered by [facsimile/e-mail] shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

7. Authority. Both parties represent and warrant that they have the authority to execute this Agreement and each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates

the binding and enforceable obligation of, the party on whose behalf the representative is signing.

8. Further Cooperation. Each of the signatures to this Agreement agree to execute such other documents and to perform such other acts, including but not limited to surveying as necessary to assure accurate locations on the burdened parcels and preparation of an Easement document for recordation of the easement's specific location, as may be reasonably necessary or desirable to further the expressed and intent purpose of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

<p>CITY OF AMES, IOWA</p> <p>By _____ Ann H. Campbell, Mayor</p> <p>Attest _____ Diane R. Voss, City Clerk</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this _____ day of _____, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the _____ day of _____, 2016, and that Ann H. Campbell and Diane R Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p> <p>_____ Notary Public in and for the State of Iowa</p>	<p>CFT NV DEVELOPMENTS, LLC,</p> <p>By _____ _____ (Print Name and Title)</p> <p>STATE OF _____, COUNTY OF _____, ss:</p> <p>This instrument was acknowledged before me on _____, 2016, by _____, as _____ of CFT NV Developments, LLC.</p> <p>_____ Notary Public in and for the State of _____</p>
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EXHIBIT A

LEGAL DESCRIPTION OF PARCEL A

Lot 2, Chavis Addition to Ames, Iowa; subject, however, to access rights conveyed to Iowa Department of Transportation by deed filed in the office of the Recorded of Story County, Iowa, on August 1, 1994, as Instrument No, 94-08744.

EXHIBIT B

LEGAL DESCRIPTION OF PARCEL B

LOT 1 IN THE CHAVIS ADDITION TO AMES, STORY COUNTY, IOWA

