

RESOLUTION NO. 4056

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE CITY MANAGER TO ENTER INTO LEASE AGREEMENTS
FOR PROPERTIES ON FRONT STREET FOR PUBLIC USE WITH MODESTO
GUTIERREZ**

WHEREAS, the City Council was desirous of maintaining the properties on Front Street clean and free of debris, weeds and other unsightly conditions; and

WHEREAS, the City Council directed Staff to enter into lease agreements with property owners; and

WHEREAS, the Staff has negotiated agreements to lease two properties located on Front Street for \$1.00 a year with Modesto Gutierrez; and

WHEREAS, staff recommends that the City Council approve the lease agreements with the Modesto Gutierrez.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the Council authorizes the City Manager to execute two lease agreements attached as "Exhibit A" with Modesto Gutierrez for \$1.00 a year.

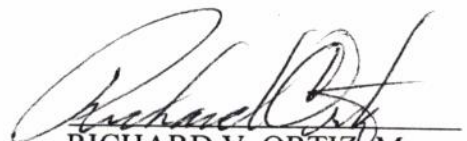
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 18th day of July 2007 by the following vote:

AYES, and in favor thereof, Councilmembers: Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke, Mayor Richard Ortiz

NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: Martha Camacho


RICHARD V. ORTIZ, Mayor

ATTEST:

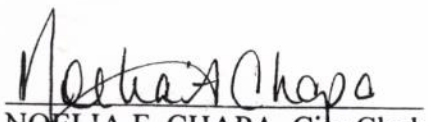

NOELIA F. CHAPA, City Clerk

EXHIBIT A

LEASE

by and between

Modesto Gutierrez

and

CITY OF SOLEDAD



LEASE

THIS LEASE (hereinafter this "**Lease**" or this "**Agreement**") is entered into effective as of July 18, 2007 ("**Effective Date**") by and between Modesto Gutierrez, and Miguel Gutierrez ("**Landlord**") and the City of Soledad, a municipal corporation (hereinafter referred to as "**City**" or "**Tenant**"). Landlord and Tenant are hereinafter collectively referred to as the "**Parties.**"

RECITALS

WHEREAS, Landlord is the owner of that certain real property consisting of two vacant parcels known as Monterey County Assessor's Parcel No.s 022-211-015 and 022-211-017 and located in the City of Soledad, California and more particularly described in Exhibit A attached hereto (the "**Property**");

WHEREAS, Tenant desires to lease the Property in order to use the Property for public purposes; and

WHEREAS, the Parties desire to enter into this Lease upon the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

SECTION 1. Description of Property. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Property on the terms and conditions set forth herein.

SECTION 2. Term. The term of this Lease shall be ten years (10) years commencing on July 18, 2007 ("**Commencement Date**") and ending on July 18, 2017, 2017, unless extended or sooner terminated as provided herein.

SECTION 3. Option to Extend Term. Tenant is granted the option to extend the term of this Lease for three (3) additional one-year periods. Provided Tenant is not in default of any material provision hereof, Tenant may exercise the foregoing option by providing written notice to Landlord of Tenant's intent no later than 30 days prior to the expiration of the term of the Lease as it may have been extended pursuant hereto. The term of the Lease as it may be extended pursuant to Tenant's exercise of one or more of the foregoing options is hereinafter referred to as the "**Term.**"

SECTION 4. Rent. Tenant shall pay to Landlord rent in the amount of One Dollar (\$1.00) per year, payable on the Commencement Date and on each anniversary thereof during the Term.

SECTION 5. Use.

5.1 Tenant Use of Property. Tenant is authorized to use the Property for public events, provided that Tenant shall provide Landlord with reasonable notice of said public events. Tenant shall use the Property in a safe, clean, and sanitary manner. During the term of this Lease, Tenant shall comply with all applicable federal, state and local statutes, codes, ordinances and regulations.

5.2 Landlord Use of Property. Landlord shall have the right to sell advertising space on the Property. Landlord hereby agrees that any advertising signs erected on the Property shall comply with City rules and regulations.

SECTION 6. Repair and Maintenance Obligations. Tenant shall have sole responsibility to keep the Property in good order, repair and condition at all times during the Term at Tenant's sole expense. Tenant shall, at Tenant's sole expense, promptly and adequately repair all damage to the Property occurring during the Term.

SECTION 7. Assignment, Subletting. Tenant may not assign its rights under this Lease or sublet all or any portion of the Property with out the prior written consent of Landlord.

SECTION 8. Hazardous Materials; Environmental Indemnification.

8.1 Tenant's Covenants. Tenant covenants that it shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of on the Property. As used herein, "**Hazardous Material**" means any substance, material, chemical or waste which is or becomes regulated by any federal, state or local governmental authority and includes without limitation (i) petroleum, natural gas and synthetic fuel products and byproducts, (ii) asbestos and any material containing asbestos, (iii) polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs, and (iv) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance," "hazardous material," "hazardous waste," "toxic waste," "pollutant," "toxic pollutant," or "toxic substance" or similarly identified as hazardous to human health or the environment in or pursuant to any of the following as they now exist or are hereafter amended, together with any regulations promulgated thereunder: (a) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), (b) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. Section 9601, et seq.), (c) the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.), (d) the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, et seq.), (e) the Clean Water Act (33 U.S.C. Section 1251, et seq.), (f) the Water Pollution Control Act, (33 U.S.C. Section 1317 et seq.), (g) the Clean Air Act (42 U.S.C. Section 7401, et seq.), (h) any "Superfund" or "Superlien" law, and (i) any other applicable federal, state or local law now in effect or enacted hereafter. Collectively, the foregoing statutes, together with any other federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common law doctrine, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances or

Hazardous Materials from industrial or commercial activities; or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal are referred to herein as “**Environmental Laws.**”

8.2 Landlord’s Representations. Landlord represents and warrants to Tenant that: (i) the Property is free and has always been free of Hazardous Materials and is not and has never been in violation of any Environmental Law; (ii) there are no buried or partially buried storage tanks located on the Property; (iii) Landlord has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have ever been in violation of any Environmental Law or informing Landlord that the Property is subject to investigation or inquiry regarding Hazardous Materials on the Property or the potential violation of any Environmental Law; (iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Property; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Property, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Property has never been used as a dump or landfill; (vii) Landlord has disclosed to Tenant all information, records, and studies in Landlord’s possession or reasonably available to Landlord relating to the Property concerning Hazardous Materials.

8.3 Environmental Indemnity. Each Party shall indemnify, defend and hold harmless the other Party (together with such indemnified Party’s elected and appointed officials, officers, employees, consultants, contractors and agents) against all actions, claims, damages, losses, liabilities and expenses (including without limitation, reasonable attorneys’ fees and costs) arising out of or in connection with the breach of their respective representations, warranties and covenants contained in Section 8.1 and 8.2. These indemnities shall survive the expiration or termination of the Lease.

SECTION 9. Duty to Maintain Insurance. Throughout the Term, Tenant shall maintain with respect to the Property and Tenant’s operations thereon: (i) comprehensive general liability insurance for bodily injury (including death), (ii) property damage insurance, and (iii) comprehensive automobile liability insurance for both owned and non-owned automobiles, providing coverage for both bodily injury (including death) and property damage. Each of the foregoing policies of insurance shall provide coverage limits of not less than one million dollars (\$1,000,000) per injury, occurrence, or accident, and shall name Landlord as an additional insured.

SECTION 10. Indemnification. Tenant shall indemnify, hold harmless and defend Landlord, its officers, employees, agents, consultants and contractors, from and against any and all actions, claims, damages, losses, liabilities and expenses (including, without limitation, reasonable attorneys’ fees and costs) arising out of or in connection with use of the Property by Tenant, its agents, employees, contractors, invitees, licensees or permittees, including without limitation, the construction, maintenance, or operation of the improvements Tenant constructs thereon, but excluding liability due to Landlord’s use of the Property, and the negligence or willful misconduct of Landlord, for which Landlord shall indemnify Tenant. In the event of

concurrent negligence of Tenant and Landlord, each shall provide indemnification for their respective proportional share of fault.

SECTION 11. Default. In the event Tenant shall be in default in the performance of any obligation on its part to be performed under the terms of this Lease, which default continues for thirty (30) days following notice and demand for correction thereof to Tenant, Landlord may terminate the Lease.

SECTION 12. Taxes and Assessments. Throughout the Term, Landlord shall be responsible for payment of all real property taxes and general and special assessments levied against the Property.

SECTION 13. Termination. Notwithstanding anything to the contrary contained herein, this Lease may be terminated at any time by Tenant or Landlord upon thirty (30) days prior written notice.

SECTION 14. General Conditions; Miscellaneous Provisions.

14.1 Notices.

Except as otherwise specified herein, all notices to be sent pursuant to this Lease shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

TENANT:

City of Soledad
248 Main Street
Soledad, CA 93960
Attn: Izzy Rodriguez
Telephone: (831) 223-5062

Facsimile: (831) 678-3963

With a copy to:

Soledad City Attorney
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Ste. 1500
Oakland, CA 94607
Telephone: (510) 808-2000

LANDLORD:

Modesto Gutierrez
Miguel Gutierrez
300 Front Street
Soledad, CA 93960

SECTION 14.2 Nonliability of Agency and City Officials.

No member, official or employee of the Agency shall personally be liable to Landlord, or any assignee or successor of Landlord, in the event of any default or breach by the Agency or for any amount which may become due to Landlord or its successors or on any obligation under the terms of this Lease.

SECTION 14.3 Parties Not Co-Venturers; No Third-Party Beneficiaries.

No provision of this Agreement nor any act of Landlord or Tenant shall be deemed or construed to establish the Parties as partners, co-venturers, or principal and agent with one another. Nothing herein shall be construed to be for the benefit of third parties.

SECTION 14.4 Attorneys' Fees; Dispute Resolution. If either Party fails to perform any of its obligations under this Lease, or if any dispute arises between the Parties concerning the meaning, interpretation, or enforcement of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and expenses.

SECTION 14.5 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

SECTION 14.6 Counterparts; Entire Agreement; Captions.

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall be deemed to be one instrument. This Agreement, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations or agreements between the Parties with respect thereto. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

SECTION 14.7 Amendments, Waivers.

This Agreement may be amended only by a written instrument executed by the Parties. No waiver of any provision of this Agreement shall constitute or be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless it is executed in writing by the Party making the waiver.

SECTION 14.8 Governing Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Monterey County, California.

SECTION 14.9 Due Authorization.

Each Party hereby represents and warrants to the other that: (i) all actions necessary on the part of such Party to authorize the execution of this Agreement and the performance of the actions contemplated hereby have been undertaken; (ii) the person(s) executing this Agreement on behalf of such Party have been duly authorized to do so; and (iii) upon execution, this Agreement shall be valid and enforceable against such Party.

SECTION 14.10 Further Assurances.

The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as may be reasonably necessary to carry out the intent of this Agreement, including without limitation the execution and recordation of a memorandum of this Lease upon the request of either Party.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first written above.

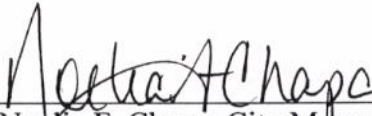
LANDLORD

By: *Miguel Estrella*

By: *modest Estrella*

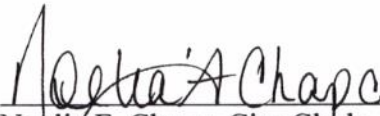
TENANT

CITY OF SOLEDAD



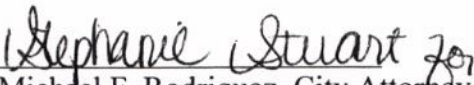
Noelia F. Chapa, City Manager

ATTEST:



Noelia F. Chapa, City Clerk

APPROVED AS TO FORM:



Michael F. Rodriguez, City Attorney

Exhibit A

PROPERTY

(Attach legal description of Property.)

APN: 022-211-01500

APN: 022-211-01700



October 8, 2007

Modesto Gutierrez
300 Front Street
Soledad, CA 93960

RE: LEASE AGREEMENT

Dear Mr. Gutierrez:

Modesto

Enclosed is an original Lease Agreement approved by our City Council on July 18, 2007. I apologize for the lateness of the document. Please review it and if acceptable please sign, keep a copy for yourself and send the original back to my attention. Also enclosed is a certified copy of Resolution No. 4056 *for your files*.

If you have any questions or if I can be of any help, please let me know. You can reach me at 831/223-5012.

Sincerely,

A handwritten signature in cursive script that reads "Lupe".

LUPE A. MARTINEZ
Deputy City Clerk

Enclosures

