

## CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 10

**Date:** June 9, 2010

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Edward N. Domingue, Director of Engineering Services  
Jo Ann Case, Economic Development & Real Property Manager

**SUBJECT:** Sale of City-Owned Vacated Street Property Located on Second Avenue and Quince Street and Contiguous to the Mi Guadalajara Restaurant

### RECOMMENDATION:

It is requested that Council adopt Resolution No. 2010-58 authorizing the Real Property Manager to negotiate and enter into an agreement to sell the City's vacated street property with the reservation of utility easements to remain in place. The property (APN 233-022-18) is located contiguous to the Mi Guadalajara Restaurant at 525 West Second Avenue in the City of Escondido.

### FISCAL ANALYSIS:

The sales price is \$13,150 to be paid in two installments of \$6,575 each. The first non-refundable payment is due July 1, 2010, and the second payment is due July 1, 2011. The first payment will be held in a separate account until the second payment is received; at which time, escrow will be opened to complete the transaction.

### PREVIOUS ACTION:

A street vacation was executed by Resolution 2001-77 on March 28, 2001. A portion of the street was given to each adjacent property owner, which included both the City of Escondido and Antonio and Alicia Ruvalcaba. A reservation of utility easements over a portion of the vacated street was stipulated.

### BACKGROUND:

In the year 2000 Mi Guadalajara Restaurant owners were given incentives through the Business Enhancement Zone process to build their restaurant, which was the first major project in the designated Mercado area of the City. One of the incentives was to vacate and reconfigure a portion on Second Avenue so the restaurant could have direct driveway access from the street.

Site plans were approved by the City and built by the Ruvalcabas, which included the driveway, three parking spaces, and landscape that affect the City's portion of the vacated street. No easements for

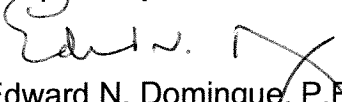
these improvements were taken at that time. Also, the three parking spaces were not at issue because they had more parking than required by code.

In 2008, they obtained building permits to enclose a patio area which generated the need for the additional parking spaces. Because they had bought a vacant lot on Quince Street that shared the westerly restaurant property line, they proposed to construct the additional required parking there. That plan was never executed, so it became necessary for them to rely on the three spaces located on City property. They had agreed not to use the enclosed area or the parking spaces until there was a resolution to the situation. A lease was offered to them for use of the spaces, and there was also a request that they obtain an easement or encroachment permit for the driveway, so it would hold the City harmless of liability. They were also given an option to purchase the property.

The Ruvalcabras commissioned an appraisal to determine the property value. Appraisers Anderson & Brabant, Inc. found it challenging to appraise the remnant property because it had little utility other than for its current use and for landscape. The City has no use for the property and is responsible for landscape maintenance; therefore, it is in the best interest of the City and the Ruvalcabras to have them purchase and maintain it. The appraised value was \$26,300 for 3,000 square feet. The Ruvalcabras felt that the portion they use is a fraction of the 3,000 square feet because a great deal of it is landscaped.

The City countered the Ruvalcabras initial offer of \$7,800 with \$13,150, half the appraised value, based on the same reasoning as the Ruvalcabras had stated about the property's real utility. They were advised that this offer was subject to City Council approval. They accepted the offer with the request that it could be paid in two installments, with no interest, due to a drop off in their business because of the downturn in the economy. Staff felt this was a reasonable resolution that would bring closure to a long unresolved issue. Therefore, Real Property is recommending approval of these terms and purchase price.

Respectfully submitted,

  
Edward N. Domingue, P.E.  
Director of Engineering Services



Jo Ann Case  
Economic Development &  
Real Property Manager

RESOLUTION NO. 2010-58

10.

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR AND CITY  
CLERK TO EXECUTE, ON BEHALF OF THE  
CITY, A PURCHASE AND SALE  
AGREEMENT FOR THE PURCHASE OF  
CITY-OWNED EXCESS VACATED STREET  
PROPERTY IN THE CITY OF ESCONDIDO

(Mi Guadalajara/Ruvalcaba)

WHEREAS, certain City-owned real property located adjacent to 525 West Second Avenue (a portion of APN 233-022-18) (the "Property") was vacated in March 2001; and

WHEREAS, the Mi Guadalajara restaurant ("Restaurant") currently uses the Property for parking and driveway access; and

WHEREAS, it is in the City's best interest to sell the Property to the Restaurant owners in order to transfer property maintenance responsibilities and ownership liability for an agreed upon sales price of \$13,150 and to enter into a Purchase and Sale Agreement ("Agreement") with the Restaurant owners, Antonio and Alicia Ruvalcaba, to purchase the property; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the Agreement with the Ruvalcabas.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. The Mayor and City Clerk are authorized to execute, on behalf of the City, the Agreement with Antonio and Alicia Ruvalcaba, in substantially the form attached to this resolution as Exhibit "A," and incorporated by this reference, and subject to final approval as to form by the City Attorney.

**PROJECT:** Mi Guadalajara Parking Lot and  
Landscaped Area  
**A.P.N.:** Portion of 233-022-18  
**ADDRESS:** Located contiguous to:  
Mi Guadalajara Restaurant  
545 W. Grand Avenue  
Escondido, CA 92025  
**OWNER:** City of Escondido

**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the CITY OF ESCONDIDO, a municipal corporation (hereinafter called "SELLER"), and Antonio and Alicia Ruvalcaba (hereinafter collectively called "BUYER"), for the acquisition, by BUYER, of certain real property as hereinafter set forth.

**RECITALS**

A. SELLER owns that certain real property ("Property") in the City of Escondido ("City"), County of San Diego, consisting of landscape, hardscape, a driveway to BUYER's "Mi Guadalajara" restaurant ("Restaurant") and three (3) vehicle parking spaces which service the Restaurant. The Property is legally described in Exhibit "A," attached hereto and incorporated by this reference.

B. BUYER currently uses the Property to service the Restaurant. The parties enter into this Agreement in order to transfer Property maintenance responsibilities and ownership liability for injury or any loss whatsoever that occurs on the Property.

C. SELLER desires to sell the Property to BUYER, and BUYER desires to purchase the Property from SELLER, on the terms and conditions set forth below.

**NOW THEREFORE**, it is mutually agreed by and between the parties as follows:

1. AGREEMENT TO SELL AND PURCHASE.

SELLER agrees to sell the Property to BUYER and BUYER agrees to purchase the Property from SELLER, upon the terms and for the consideration set forth in this Agreement.

2. PURCHASE PRICE.

SELLER agrees to sell and BUYER agrees to buy the Property for the purchase price of THIRTEEN THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$13,150) ("Purchase Price").

3. PAYMENT OF PURCHASE PRICE.

The Purchase Price shall be payable by BUYER to SELLER as follows:

One-half of the Purchase Price (\$6,575) shall be paid by BUYER to SELLER in cash, in one (1) nonrefundable installment ("First Payment"), on or before July 1, 2010. The remaining half of the Purchase Price (\$6,575) ("Second Payment") shall be paid by BUYER to SELLER in cash on or before July 1, 2011. Upon receipt by SELLER of the second half of the Purchase Price on or before July 1, 2011, SELLER shall open a thirty (30) day escrow with an escrow company of SELLER'S choice.

4. FIRST PAYMENT NONREFUNDABLE.

In the event BUYER decides not to purchase the Property, for whatever reason, in the time period between July 1, 2010 and July 1, 2011, BUYER agrees and understands that the First Payment shall be nonrefundable. BUYER hereby forfeits any future right to recoup the First Payment upon SELLER'S receipt of said First Payment.

5. INDEMNIFICATION OF SELLER.

BUYER and SELLER agree and understand that BUYER will use portions of SELLER'S Property for the purpose of maintaining a driveway and parking spaces to service BUYER'S adjacent Restaurant prior to BUYER'S purchase of the Property. As a result of said use of SELLER'S Property, BUYER shall indemnify and hold harmless SELLER for any and all loss that occurs on the Property.

This Agreement is made upon the express condition that the CITY OF ESCONDIDO, its officers, agents and employees are to be free from all liability and claim for damage by reason of any injury to any person or persons, including BUYER, or property of any kind whatsoever and to whomsoever belonging, including BUYER, from any cause or causes whatsoever while in, upon or in any way connected with the Property or the sidewalks or public ways adjacent thereto

during the term of this Agreement or any extension hereof, and BUYER hereby covenants and agrees to indemnify and save harmless the CITY OF ESCONDIDO, its officers, agents and employees from all liability, loss, costs, expense and obligations on account of or arising out of any such injuries or losses however occurring.

Initial of BUYER: \_\_\_\_\_

6. CONVEYANCE OF TITLE. SELLER agrees to convey by Grant Deed to BUYER marketable fee title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, covenants, conditions, restrictions, and taxes, EXCEPT:

Public and quasi-public utility, alley and street easements and rights-of-way record.

7. COST OF SUIT. In the event of any litigation, arbitration, any quasi-judicial, or administrative proceeding between the parties herein to: (i) enforce any provision of this Agreement; (ii) enforce any remedy available under default within this Agreement; or (iii) seek a declaration of the rights of either party on each party's respective interests in the Property, the prevailing party shall be entitled to recover from the other such attorney's fees and costs as may be reasonably incurred.
8. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties, and neither party relies upon any warranty or representation not contained in this Agreement.
9. AUTHORITY. Those persons executing this Agreement warrant and represent that they have obtained all necessary approvals to enter into this Agreement and are authorized to execute this Agreement and bind their respective entities to the terms herein.

*(Signatures on next page)*

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year set forth below.

Dated: \_\_\_\_\_

BUYER

MAILING ADDRESS OF BUYER:

Antonio & Alicia Ruvalcaba  
13577 Paseo Cardinal  
San Diego, CA 92119

\_\_\_\_\_  
Antonio Ruvalcaba

\_\_\_\_\_  
Alicia Ruvalcaba

Dated: \_\_\_\_\_

CITY OF ESCONDIDO  
a municipal corporation

MAILING ADDRESS OF SELLER:

City of Escondido  
201 North Broadway  
Escondido, CA 92025

BY:

\_\_\_\_\_  
Lori Holt Pfeiler, Mayor

\_\_\_\_\_  
Marsh Whalen, City Clerk



EXHIBIT 'A'  
SHEET 1 OF 2  
DESCRIPTION FOR SURPLUS PROPERTY  
PORTION OF APN 233-022-18

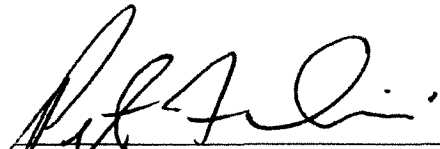
THAT PORTION OF LOT 2 IN BLOCK 75, TOGETHER WITH A PORTION OF VACATED WEST SECOND AVENUE, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 10, 1886, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 2; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID LOT 2, NORTH 30°42'54" WEST, A DISTANCE OF 17.38 FEET TO A POINT ON THE SOUTHERLY SIDELINE OF SECOND AVE AS SHOWN ON PARCEL MAP NO. 11860, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON DEC. 18, 1981, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT 682.00 FOOT RADIUS CURVE CONCAVE NORTHERLY, A RADIAL BEARING TO SAID POINT BEARS SOUTH 00° 32'16" WEST; THENCE EASTERLY ALONG ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 06'24", A DISTANCE OF 132.20 FEET TO ITS INTERSECTION WITH THE CENTERLINE OF VACATED WEST SECOND AVE; THENCE LEAVING SAID SOUTHERLY SIDELINE OF SECOND AVE, ALONG THE CENTERLINE OF THAT PORTION OF VACATED SECOND AVE, SOUTH 59° 13'05" WEST, A DISTANCE OF 118.94 FEET; THENCE NORTH 30°42'54" WEST, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

DESCRIBED PORTIONS CONTAIN AN AREA OF 3131 SQ. FEET, MORE OR LESS.

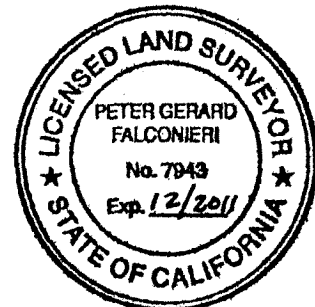
SHEET 2 OF THIS DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

PREPARED BY ME OR UNDER MY DIRECTION.

  
PETER G. FALCONIERI

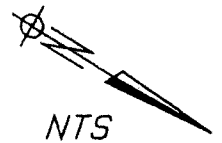
LS 7943

5/2/2010  
DATE:

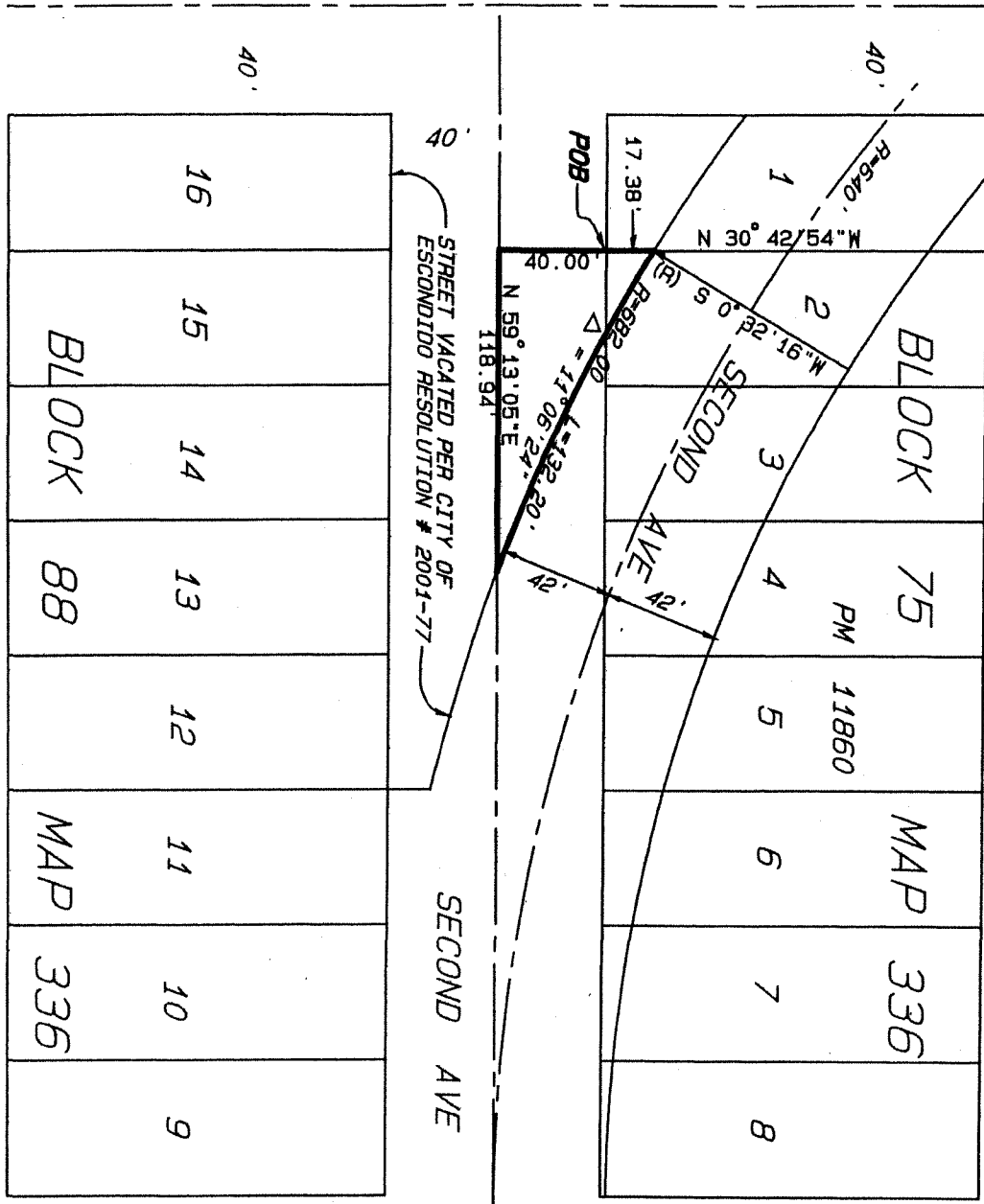



Resolution No. 2010-58 EXHIBIT 'A'  
 EXHIBIT A SHEET 2 OF 2  
 Page 6 of 6

QUINCE ST.



☐ AREA OF SURPLUS PROPERTY = 3,131 SQ. FEET,  
 MORE OR LESS.



Prepared by:  P. Falconieri LS7943 City of Escondido 201 N. Broadway Escondido, CA 92025	<b>ENGINEERING SERVICES</b> 201 North Broadway, CA 92025 (760) 839-4651 <b>SURPLUS PROPERTY</b> PORTION OF 233-022-18	 Date: 5-02-2010 SHEET: 2 OF 2
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