

**AGREEMENT FOR DISBURSEMENT AND USE OF FUNDS BETWEEN
THE CITY OF PALM DESERT AND FINE QUALITY FOODS, INC. DBA
PAPA DAN’S PIZZA AND PASTA**

This Agreement for Disbursement and Use of Funds (“Agreement”) is entered into this 27 day of February, 2025, by and between the CITY OF PALM DESERT (“City”) and Fine Quality Foods Inc. dba Papa Dan’s Pizza and Pasta, a corporation, (“Recipient”). City and Recipient are sometimes referred to individually as Party and collectively as Parties.

RECITALS

A. City has created the Invest Palm Desert Program (“Program”) which establishes a Program fund and allows businesses to apply for money for capital improvements and emergency assistance from the City’s Program fund. The Program’s goals are to enhance the City’s ability to promote economic development, facilitate the growth of businesses that provide high-quality jobs, ensure a strong economic base to support services to City residents, aid in the diversification of the City’s economy, and promote an improved quality of life within the City.

C. Recipient has owned and operated an Italian restaurant in the City for forty years, however, in 2024 a fire destroyed Recipient’s restaurant. Recipient has secured a new tenant space located at 73011 Country Club Drive F-1, Palm Desert, CA 92270 (“Property”), within the same shopping center as the prior restaurant’s location, and Recipient seeks to re-establish Recipient’s restaurant within the City.

D. Recipient has submitted a request to City for disbursement of Program funds, to be used only for such capital improvements as specified in Exhibit “A”, attached hereto and incorporated herein by reference.

D. City has considered Recipient’s request and desires to approve the disbursement of Two Hundred Thousand Dollars (\$200,000.00) of Program funds (the “Funds”) to Recipient, to be used only for such capital improvements as specified in Exhibit “A”, subject to the terms and conditions set forth herein.

E. The City has determined this Agreement serves a public purpose because the continued operation of the Property will enhance economic development in the City, facilitate the growth of a business that provides high-quality jobs to residents, ensure a strong economic base to support services to City residents, aid in the diversification of the City’s economy, promote an improved quality of life within the City, and provide additional tax revenue to the City that will assist the City in providing services to its residents. The City has further determined that the public benefit derived from this Agreement outweighs any private benefit derived from this Agreement.

AGREEMENT

1. Disbursement and Use of Funds. Subject to the terms and conditions of this Agreement, within 30 days of City's receipt of an invoice from Recipient, City shall disburse the Funds to Recipient in a manner convenient to City. Recipient shall use the Funds only for such capital improvements as specified in Exhibit "A", at Recipient's new Italian restaurant located at the Property (the "Business"), and shall not use the Funds for any other purpose.

2. Conditions Precedent to Disbursement. City's obligation to perform under this Agreement and to disburse the Funds is subject to the following conditions being satisfied and the City's receipt and approval of the following certifications, documents or materials, each of which shall be in a form and substance satisfactory to the City in its sole and absolute discretion:

a. Recipient shall have made a request to City for the Funds via an invoice detailing how Funds will be used and allocated, which vendors are being purchased from, hired, or otherwise utilized in compliance with Section 3, and containing a signed certification from Recipient that invoices have not been submitted, and will not be submitted, for payment or reimbursement of those particular uses from any other source;

b. Recipient shall have provided certification to City that Recipient has incurred expenses to obtain the capital improvements the Funds will be used for, or is otherwise contractually bound to incur such expenses;

c. Recipient shall have provided evidence to City that Recipient is in compliance with Section 4 of this Agreement; and

d. No Default or Event of Default has occurred and remains uncured. "Default" means any event or condition which, with the passage of time or the giving of notice or both, would constitute an Event of Default (as defined below). The occurrence of any of the following shall be deemed to be a default hereunder (each an "Event of Default"):

i. any default or breach of any of the terms, provisions, and obligations of the Recipient pursuant to this Agreement, and such default or breach is not cured by Recipient within fifteen (15) days from receipt of written notice thereof from City;

ii. commencement of any case under the Bankruptcy Code, Title 11 of the United States Code, or commencement of any other bankruptcy arrangement, reorganization, receivership, custodianship, or similar proceeding under any federal, state, or foreign law by or against Recipient and with respect to any such case or proceeding that is involuntary, and such case or proceeding is not dismissed within sixty (60) days of the filing thereof;

iii. Recipient shall fail to make any payment in respect of any of its indebtedness when due (whether at maturity or upon acceleration) or within any applicable grace period, or any other event or condition shall occur which results in acceleration of the maturity of such indebtedness;

iv. A judgment or order for the payment of money shall be rendered against Recipient, which would have a material adverse effect on Recipient, or any of its business or operations and such judgment or order shall continue unsatisfied and unstayed for a period of thirty (30) days;

v. the occurrence of any event (including, without limitation, a change in the financial condition, business, or operations of Recipient for any reason whatsoever) that materially and adversely affects the ability of Recipient to perform any of its obligations under this Agreement;

vi. commencement of any action or proceeding which seeks as one of its remedies the dissolution of Recipient which is not being defended diligently and in good faith by Recipient, but in any event such action or proceeding must be terminated within ninety (90) days following its commencement; or

vii. A material portion of the property of Recipient is attached, levied upon, or otherwise seized by legal process, and such attachment, levy, or seizure is not quashed, stayed, or released within thirty (30) days of the date thereof.

3. Local Contracting Requirement. Recipient shall only contract with businesses located in the City of Palm Desert in the course of Recipient's utilization of the Funds for the purposes allowed by this Agreement. Recipient shall not spend the Funds with any business which is not located in the City of Palm Desert. Failure to comply with this section will, in addition to other applicable legal and equitable consequences, result in Recipient's ineligibility for future City funding.

4. Minimum Investment. Recipient shall invest a minimum of One Million, Two Hundred Thousand Dollars (\$1,200,000.00) into Recipient's Business. Prior to submitting an invoice for disbursement of Funds, Recipient shall submit evidence satisfactory to City in City's sole and absolute discretion that Recipient has complied, or will comply, with this Section. Recipient shall not be eligible to receive Funds and City shall not be obligated to disburse the Funds until City has received such evidence and determined it is satisfied that Recipient has complied or will comply with this Section. Failure to comply with this section will, in addition to other applicable legal and equitable consequences, result in Recipient's ineligibility for future City funding.

5. Five Year Operating Requirement. Recipient covenants and agrees for itself, its successors, assigns, and every successor in interest to Recipient's Business:

a. To commence operations of the Business at the Property in such a manner as to generate sales tax by July 1, 2025.

b. To continuously use and operate the Business for a period of at least five years from the date of the Businesses's opening to the public. The Business shall be open for a full day's regular business hours twelve months per year, and at least five days every week. The Business may be closed on federal holidays.

c. **Damages for Failure to Comply.** If the Business fails to commence operations by the time period set forth in Section 5.a., or in any way or for any period of time ceases continuous operations in City's sole judgment within five years from the date of the Businesses's opening, then City may demand repayment of, and Recipient shall immediately refund to City, One Hundred Thousand Dollars (\$100,000.00) of the Funds (the "Clawback Amount"). The Clawback Amount will be secured by that certain security agreement executed concurrently herewith and in a form attached hereto as Exhibit "B".

d. **Recipient's Covenant to Use Property In Accordance With Agreement.** Recipient covenants and agrees for itself, its successors and assigns and all voluntary and involuntary successors in interest to Recipient's interest in the Business or the Property or any part thereof, that the Property shall, for the Term, be put to no use other than operation of the Business.

6. **Maintenance of Records.** Recipient shall keep, preserve, and maintain, for a period of at least six years commencing on the date of City's initial disbursement of Funds to Recipient, all documents and records of any kind relating to Recipient's use of the Funds.

7. **Right to Inspect and Audit.** The City may inspect and audit all of Recipient's documents and records relating to the Recipient's use of the Funds to ensure compliance with this Agreement and to ensure Recipient uses the Funds for authorized purposes. Recipient shall make such documents and records available to City, at the place and in the manner and form specified by City, within 15 days following City's request for such documents and records. Recipient shall furthermore grant City's employees or agents access to any land, facilities, or improvements relating to Recipient's use of the Funds, within a reasonable amount of time after City issues written notice to Recipient requesting such access.

8. **Prevailing Wage Laws.** Recipient is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Recipient understands and agrees that it is Recipient's obligation to determine if Prevailing Wage Laws apply with regard to the Recipient's use of Funds under this Agreement. Recipient agrees to fully comply with such Prevailing Wage Laws, if applicable. Recipient shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Recipient shall therefore comply with such Labor Code sections to fullest extent required by law. It shall be mandatory upon the Recipient and all of Recipient's contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

9. **Indemnification.** The Recipient shall Indemnify the City, its elected and appointed officials, its officers and employees, attorneys, contractors, and volunteers (together, the "City

Indemnitees”) from and against any and all liabilities, including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys’ fees, court costs and costs of alternative dispute resolution, (“Liabilities”) of any kind or nature relating to the subject matter of this Agreement or the implementation thereof, including without limitation, the obligations to proceed in accordance with applicable law as set forth in sections 8 and 10, and for any damages to property or injuries to persons, including accidental death (and attorney’s fees and costs), which may be caused by acts or omissions of the Recipient under this Agreement, whether such activities or performance thereof be by the Recipient or by anyone directly or indirectly employed or contracted by the Recipient and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Recipient shall not be liable for property damage or bodily injury if and to the extent such property damage or bodily injury is directly and proximately caused by the sole or gross negligence or willful misconduct of the City Indemnitees.

The Recipient shall have the obligation to defend any such action covered by this Section; provided, however, if and to the extent that Recipient determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, after consultation with and reasonable consent from the City, Recipient shall compromise or settle such action in a way that fully protects City from any Liabilities. In this regard, Recipient’s obligation to defend shall include the right to hire (subject to the reasonable written approval by the City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Recipient and/or City. If Recipient defends any such action, as set forth above, it shall Indemnify the City Indemnitees from and against any Liabilities assessed or awarded against any of them by way of judgment, order, decree, settlement, or stipulation.

All rights, duties and obligations of this indemnification shall survive the termination or expiration of this Agreement.

10. Compliance with Law. Recipient shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government (including those of the City). If Recipient’s failure to comply with applicable laws, ordinances, codes, or regulations results in a claim for damage or liability to City, Recipient shall be responsible for defending, indemnifying, and holding the City harmless as provided in this Agreement.

11. Taxes. Recipient acknowledges and agrees that Recipient shall be responsible for any and all taxes that are associated in any way to the receipt or use of the Funds.

12. Authority to Enter Agreement. Recipient and City each respectively represent, covenant, and warrant that they are authorized to enter into and execute this Agreement and to bind each respective Party.

13. Entire Agreement. This Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersedes any prior oral or written statements or agreements between the Parties related to such matters.

14. Agreement Binding on Successors. This Agreement, together with all obligations, terms, covenants, and conditions herein, shall be binding upon the heirs, executors, administrators, personal representatives, successors in interest and assigns of the Recipient. Whenever the term “Recipient” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

16. No Third Party Beneficiaries. All of the covenants contained in this Agreement are for the express benefit of each and all such Parties. This Agreement is not intended to benefit any third parties, and any such third party beneficiaries are expressly disclaimed.

17. Laws of California. This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.

18. Assignment. The rights, obligations, and interests of Recipient shall not be assignable or transferable without the prior written consent of the City. Any attempted assignment without the prior written consent of the City shall be null and void.

19. Severability. If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

20. Recipient’s Covenant Not to Discriminate. Recipient covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, and this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property nor shall Recipient, itself, himself or herself, or any Person claiming under or through it, him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property.

21. Relationship Between City and Recipient. It is hereby acknowledged that the relationship between the City and the Recipient is not that of a partnership or joint venture and

that the City and the Recipient shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Business. The Recipient agrees to indemnify, hold harmless and defend the City, to the same extent as set forth in Section 9 above, from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Recipient with respect to the development, operation, maintenance or management of the Property or the Business.

[signatures on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

Fine Quality
RECIPIENT
By: 
Name: Ira M. Mosley
Title: President

CITY OF PALM DESERT

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
Isra Shah
City Attorney

EXHIBIT A

Approved Use of Funds

(Attachment Behind This Page)

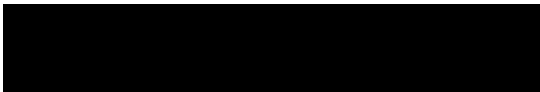


EXHIBIT B

Form of Security Agreement

(Attachment Behind This Page)

