

DATE SUBMITTED 05/31//2015
 SUBMITTED BY Planning Dir.
 DATE ACTION REQUIRED 06/03/2015

Agenda Item No E-1
 CITY COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()

**SUCCESSOR AGENCY
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: REVISIONS TO OWNER PARTICIPATION AGREEMENT WITH KOTORI RESTAURANT.

1. APPROVE THE REVISIONS TO THE OPA WITH KOTORI TO TRANSFER THE BUSINESS LOAN TO SANCHEZ BROS. INC. FOR THE AMOUNT OF \$25,816.16

DEPARTMENT INVOLVED:

BACKGROUND/SUMMARY:

The former Redevelopment Agency of the City of Imperial provided a loan in the amount of \$50,000.00 to Kotori Japanese Foods, Inc. Funds were used to purchase restaurant equipment. Payments on the loan began in January 2012 and interest was accruing at a rate of 5% for a period of 5 years. The company has since been bought out by two brothers: Oscar and Edgar Sanchez who have been operating the company prior to the recent acquisition. Payments were not being made during the past 10 months when ownership of the company was going through transition. Staff has been working with the new owners to bring the account current but the loan documents need to be updated to ensure that the responsible individuals are actually on the loan document. The remaining balance on the loan is \$25,816.16 and will be repaid at the same interest rate within the remaining 2 years.

FISCAL IMPACT:

STAFF RECOMMENDATION: Staff recommends approval of the revisions to the loan documents..

MANAGER'S RECOMMENDATION:

MANAGER'S INITIALS MDB

MOTION:

SECONDED:
 AYES:
 NAYES:
 ABSENT:

APPROVED () REJECTED ()
 DISAPPROVED () DEFERRED ()
 REFERRED TO:

INSTALLMENT NOTE - INTEREST INCLUDED

Imperial, California

Amount Borrowed: \$25,816.16

May 27, 2015

For value received, Cesar Octavio Sanchez Trujillo and Edgar Ismael Sanchez Trujillo owner/operator of Sanchez Bros Inc./Kotori Japanese Food Inc. herein referred to as the "Undersigned" or "Maker," promises to pay to the REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL, or order, its successors and assigns, herein referred to as "Holder" at 420 S. Imperial Avenue, Imperial, California, the principal sum of Twenty Five Thousand Eight Hundred Sixteen Dollars and Sixteen Cents (\$25,816.16), together with simple interest at five (5%) percent. Interest shall accrue beginning on the date of execution of this Note (computed on the basis of a 360-day year) on the unpaid balance of that principal sum until paid in full. The undersigned further promises to pay that principal sum and interest in lawful money of the United States of America, in monthly installments of One Thousand One Hundred Thirty Two Dollars and Fifty Nine Cents (\$1,132.59) due on or before the first (1st) day of every month starting June 1, 2015 until paid in full.

1. Acceleration. In the event of Maker's insolvency, or the insolvency of any guarantor or indorser of this note, or the appointment of an assignee for the benefit of creditors or of a receiver, trustee, or custodian for Maker or for any guarantor or indorser of this note, or in the event that a petition under any provision of the Bankruptcy Act is filed either by or against Maker or any guarantor or indorser of this note, or in the event that Maker or any guarantor or indorser of this note should be unable to meet their obligations pursuant to this Note or Loan Agreement, this note shall, at the option of the Holder, become immediately due without demand for payment and without notice to the undersigned or to any guarantor or

indorser of this note.

2. **Attorneys' Fees.** The undersigned shall pay all reasonable attorneys' fees and related costs and expenses incurred by Holder in enforcing any right or remedy under this note.

3. **Completion or modification of note.** Each of the undersigned authorizes Holder to accept additional comakers, to release comakers, to change or extend dates of payment, and to grant indulgences all without notice or affecting the obligations of any of the undersigned.

4. **Waiver.** Each of the undersigned waives: (a) presentment, demand, protest, notice of protest, notice of dishonor, and nonpayment; (b) the right, if any, to the benefit of, or to direct the application of, any security hypothecated to Holder until all indebtedness of the undersigned to Holder, however arising, shall have been paid; (c) the right to require Holder to proceed against the undersigned, or any requirement that the Holder first proceed against the collateral, or to pursue any other remedy in Holder's power. Holder may proceed against any of the undersigned directly and independently of any other, for any reason. Any extension, forbearance, change of rate of interest, or acceptance, release, or substitution of security, or any impairment or suspension of Holder's remedies or right against any of the undersigned shall not in any way affect the liability of any of the undersigned.

5. **Transfer.** The Holder may assign or sell this note, or the rights to the security interest in the collateral, to any other person, firm, or corporation, and upon delivery of any part thereof to the transferee of such note, who shall thereupon become vested with all the powers and rights given to the Holder in respect thereto.

MAKER:

By:

Signature

Printed Name

By:

Signature

Printed Name

AGREEMENT

**Grantee: Cesar Octavio Sanchez Trujillo and
Edgar Ismael Sanchez Trujillo
496 W State Street
El Centro, CA, 92251**

**City of Imperial RDA
420 S. Imperial Ave
Imperial, CA 92251**

THIS AGREEMENT between Cesar Octavio Sanchez Trujillo and Edgar Ismael Sanchez Trujillo owner/operator of Sanchez Bros, Inc./Kotori Japanese Food, Inc. ("Grantee") and the Redevelopment Agency of the City of Imperial ("Grantor") is made and executed on the following terms and conditions. Grantee has applied to Grantor for a grant and other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement. All such grants and financial accommodations are referred to in this Agreement individually as the "Grant." Grantee understands and agrees that: (a) in awarding such Grant, Grantor is relying upon Grantee's representations, warranties, and agreements, as set forth in this Agreement; (b) making the Grant at all times shall be subject to Grantor's sole judgment and discretion; and (c) the Grant shall remain subject to the following terms and conditions of this Agreement.

RECITALS. The purpose of this Grant is to further the objectives of the California Community Redevelopment Law. In order to accomplish said objective, the Grantor may, among other things, enter into public/private agreements to remove blight, improve community appearance, prevent continuing declines in property values, rehabilitate and restore existing commercial revenue generating properties, construct new projects, and revitalize economically depressed areas through new investment.

Specifically, the Redevelopment Plan for the Project Area was approved by Ordinance No. 659 on June 19, 2002. This Agreement is subject to the provisions of said plan which is incorporated herein by this reference and made a part of this Agreement.

REPRESENTATIONS AND WARRANTIES. Grantee represents and warrants to Grantor as of the date of this Agreement and as of the date of each disbursement of Grant proceeds:

Authorization. The execution, delivery, and performance of this Agreement, Promissory Note, Personal Guaranty, and UCC Financing Statement (Form UCC-1), ("Related Documents") by Grantee, to the extent to be executed, delivered or performed by Grantee, have been duly authorized by all necessary action by Grantee; do not require the consent or approval of any other person, regulatory authority or governmental body; and do not conflict with, result in a violation of, or constitute a default under (a) any provision of its governing bylaws, if any, or any agreement or other instrument binding upon Grantee or (b) any law, governmental regulation, court decree, or order applicable to Grantee.

Financial Information. Each financial statement of Grantee supplied to Grantor truly and completely disclosed Grantee's financial condition as of the date of the statement, and there has been no material adverse change in Grantee's financial condition subsequent to the date of the most recent financial statement supplied to Grantor. Grantee has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement and any instrument or agreement required hereunder to

be given by Grantee, when delivered, will constitute, legal, valid and binding obligations of Grantee enforceable against Grantee in accordance with their respective terms.

Use of Proceeds. Grantor is awarding Grantee a loan in an amount not to exceed, Twenty Five Thousand Eight Hundred Sixteen Dollars and Sixteen Cents (\$25,816.16) for the sole purpose of purchase of equipment as described in the UCC Financing Statement (Form UCC-1). To secure payment, the equipment used as collateral is described in (Form UCC-1) as:

Grantee shall maintain, for the life of the loan, documents which will substantiate the manner in which loan proceeds were expended. Grantee shall make such records available to the City upon City's request.

Schedule for Performance, Grantee shall have purchased and caused to install all equipment described by this agreement and related documents on or before December 4, 2011. Grantee shall also have obtained all necessary permits and be open for business on or before December 4, 2011. The schedule for performance may be revised where conditions or events beyond the control of the Grantee occur. Any revision of the schedule for performance must be approved in writing by the Redevelopment Agency Director.

Grantee Obligations. The Grantee does not have any material contingent obligations or any material contractual agreements which could materially affect the ability of the Grantee to carry out its obligations hereunder.

Pending or threatened Litigation. There is no action or proceeding pending or threatened which could affect the validity and/or enforceability of the terms of this Agreement or that would materially and adversely affect the ability of the Grantee to carry out its obligations hereunder.

NEGATIVE COVENANTS. Grantee covenants and agrees with Grantor that while this Agreement is in effect, Grantee shall not, without the prior written consent of Grantor:

Transfer and Liens. Fail to continue to own all of Grantee's assets, except for routine transfers, use or depletion in the ordinary course of Grantee's business. Grantee agrees not to create or grant to any person, except Grantor, any lien, security interest, encumbrance, cloud on title, mortgage, pledge or similar interest in any of Grantee's property, even in the ordinary course of Grantee's business. Grantee agrees to not sell, convey, grant, lease, give, contribute, assign, or otherwise transfer any of Grantee's assets, except for sales of inventory or leases of goods in the ordinary course of Grantee's business. No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Continuity of Operations. (a) Engage in any business activities substantially different than those in which Grantee is presently engaged, (b) cease operations within the City of Imperial, liquidate, merge, transfer, acquire or consolidate with any other entity, change ownership, dissolve or transfer or sell Collateral out of the ordinary course of business, or (c) pay any dividends on Grantee's stock (other than dividends payable in its stock and may be statutorily required for Subchapter S corporation) or purchase or retire any of Grantee's outstanding shares or alter or amend Grantee's capital structure.

Grants, Acquisitions and Guaranties. (a) Grant, invest in or advance money or assets, (b) purchase, create or acquire any interest in any other enterprise or entity, or

(c) incur any obligation as surety or guarantor other than in the ordinary course of business.

CESSATION OF ADVANCES. If Grantor has made any commitment to make any Grant to Grantee whether under this Agreement or under any other agreement, Grantor shall have no obligation to make Grant Advances or to disburse Grant proceeds if: (a) Grantee or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Grantee or any Guarantor has with Grantor; (b) Grantee becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (c) there occurs a material adverse change in Grantee's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Grant; or (d) any Guarantor seeks, claims or otherwise attempt to limit, modify or revoke such Guarantor's guaranty of the Grant or any other Grant with Grantor.

EVENTS OF DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Defaults. Failure of Grantee to comply with or to perform when due any other term, obligation, covenant or condition contained in this Agreement.

False Statement. Any warranty, representation, or statement made or furnished to Grantor by or on behalf of Grantee or any Grantor under this Agreement or the Related Documents if false or misleading in any material respect, either now or at the time made or furnished.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any Security Agreement to create a valid and perfected Security Interest) at any time and for any reason.

Insolvency. The dissolution or termination of Grantee's existence as a going business, insolvency, appointment of a receiver for any part of Grantee's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantee.

Creditor or Forfeiture proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantee, any creditor of any Grantor against any collateral securing the indebtedness, or by any governmental agency. This includes a garnishment, attachment, or levy on or of Grantee's deposit accounts with Grantor.

Change in Ownership. The qualifications and identity of the Developer are of particular concern to the City and the Agency. It is because of those qualifications and identity that the Agency has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Assignment. Grantee shall not, prior to July 31, 2017, assign all or any part of this Agreement or any rights hereunder, without the prior written approval of Grantor. The Grantor shall not unreasonably withhold its approval of an assignment provided that: (1) the assignee shall expressly assume the obligations of the Grantee pursuant to this Agreement in writing in a form satisfactory to the Grantor; (2) the original Grantor shall remain fully responsible and liable for the performance of all the obligations of the Grantor pursuant to this Agreement not sooner than the **second anniversary** of

completion of the project; (3) the assignee demonstrates to the satisfaction of Grantee that it is fully capable of performing the duties and discharging the obligations of this Agreement.

SECURITY INTEREST. Grantee shall grant City a signed Agreement, Personal Guaranty, and the UCC Financial Statement (Form UCC-1) which covers the equipment used as collateral on the property located at 105 North Imperial Avenue, Imperial, California 92251.

CONDITION OF PROJECT SITE. To the extent this Agreement contemplates conveyance of real property from Grantor to Grantee, said conveyance is in an "As-Is" physical and environmental condition, with no warranty, express or implied, nor is there any warranty of merchantability relating to the condition of the property and it shall be the sole responsibility of the Grantee, at its sole expense to investigate and determine the physical and environmental conditions.

COMPLIANCE WITH LAWS. Grantee's performance of its obligations under this Agreement shall comply with all applicable laws, statutes, regulations and ordinances, including, but not limited to prevailing wage requirements.

COST OF CONSTRUCTION AND SITE DEVELOPMENT. Except as specifically set forth herein, all costs and expenses associated with the project shall be borne exclusively by Grantee.

INDEMNITY. Grantee agrees to indemnify, defend and hold harmless Grantor, the City of Imperial, their respective officers, employees, agents and contractors with counsel reasonably acceptable to the Grantor and City, from and against any and all claims, loss, liability, damage costs and expenses, including reasonable attorneys' fees arising from this Agreement, excepting only those claims arising from the sole negligence or willful misconduct of the Grantor or City.

INSURANCE. Grantee shall take out and maintain a comprehensive liability insurance policy in the amount of not less than \$1,000,000.00 through a company duly admitted to write such insurance in the State of California. Such policy shall be in a form and contain such provisions approved by Grantor and shall name Grantor and the City of Imperial as additional insured.

DESTRUCTION AND RESTORATION. Grantee covenants and agrees that in the event of damage or destruction of the project or project site improvements, prior to January 1, 2017 Grantor shall rebuild and restore, repair or replace the improvements, buildings and fixtures to the condition of such improvements immediately prior to the damage or destruction. Grantee shall take out and maintain a replacement cost "all-risk" insurance policy in an amount sufficient to rebuild and restore, repair or replace the project improvements, including upgrades and modifications required by changes in laws or building codes until July 31, 2017. Such policy shall be written by a company duly admitted to issue such policy in the State of California and shall be in a form and contain such provisions approved by Grantor.

NON-DISCRIMINATION. Grantor will not discriminate nor allow any discrimination by any contractor or subcontractor on the basis of sex, age, handicap, color, religion, creed, national origin, marital status, sexual orientation or any other protected class under federal law or the laws of the State of California.

EFFECT OF ANY EVENT OF DEFAULT. If any Event of Default shall occur, all commitments and obligations of Grantee under this Agreement any related Documents or any other agreement immediately will become due and payable, all without notice of any kind to Grantee, except that in the case of Event of Default of the type described in the "insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Grantor shall have all the rights

and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Grantor's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Grantor to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantee or of any Grantor shall not affect Grantor's right to declare a default and to exercise its rights and remedies.

The injured party shall give not less than 30 days notice of default. Any delay in giving such notice shall not operate as a waiver of any default or deprive a party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.

APPLICABLE LAW AND VENUE. This Agreement shall be construed and governed by the laws of the State of California. Any legal action instituted under this Agreement shall be filed in the Superior Court of the State of California, County of Imperial.

ATTORNEY FEES. In any legal action commenced in connection with this Agreement, the prevailing party in such legal action shall be entitled, in addition to such other relief as may be granted, to recover reasonable attorneys' fees and court costs.

WRITTEN NOTICES. Any written notices required by this Agreement shall be addressed as follows and sent by first class mail, postage prepaid:

To the Agency: Ms. Marlene D. Best, Executive Director
Imperial Redevelopment Agency
420 South Imperial Avenue
Imperial, CA 92251

To the Developer: Cesar Octavio Sanchez Trujillo and Edgar Ismael Sanchez Trujillo
496 W State Street
El Centro, CA 92243

WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR AGREEMENT. Grantee warrants that it has not paid or given, or caused to be paid or given, and will not pay or give any party any monetary consideration for obtaining this Agreement or any benefits or rights outlined therein.

NON-LIABILITY OF AGENCY OFFICIALS, EMPLOYEES OR AGENTS. No member of the Grantor governing body, officer, employee or agent shall be personally liable to Grantor or any successor in interest, in the event of a default or breach by Grantor.

INSPECTION OF BOOKS AND RECORDS. Grantor shall have the right at all times during normal business hours to inspect the books and records of the Grantee pertaining to performance under this Agreement.

AGREEMENT TO RUN WITH THE LAND; SUCCESSORS AND ASSIGNS. The terms of this Agreement shall extend to and shall be binding upon and inure to the benefit of the heirs, executors, administrators successors and assigns of each party hereto. This Agreement shall be recorded in the office of the recorder of Imperial County, California and the terms, covenants, conditions and restrictions shall run with the land.

INVALIDITY OF TERMS. Each term of this Agreement is severable and should any term be determined to be invalid or unenforceable by a court of competent jurisdiction, such

determination shall not affect any of the remaining provisions of this Agreement.

ENTIRE AGREEMENT; COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be deemed an original. This Agreement integrates all of the terms and no prior oral or written agreements shall have any force or effect. Any amendment or waiver must be in writing and signed by the party to be charged.

GRANTEE ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS NEGATIVE PLEDGE AGREEMENT, AND GRANTEE AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF May 27, 2015.

GRANTEE:

By _____
Signature

Printed Name

Date

By _____
Signature

Printed Name

Date

GRANTOR:

REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL

By _____
Marlene D. Best, Executive Director

ATTEST:

By _____
City Clerk