## AGREEMENTS

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PARKING OPERATION AGREEMENT

THIS PARKING OPERATION AGREEMENT (herein "Parking Agreement") is entered into as of February 24, 1978, by and between the CITY OF SANTA ROSA (herein "City"), a municipal corporation organized under a charter adopted pursuant to the California Constitution, and ERNEST W. HAHN, INC. (herein "Operator"), a California corporation.

Recitals

A. In furtherance of the objectives of the Community Redevelopment Law, the Redevelopment Agency of the City of Santa Rosa (the "Agency") has undertaken a program for the clearance and reconstruction of slum and blighted areas in the City, and in this connection is engaged in carrying out a redevelopment plan (herein "Redevelopment Plan") for a redevelopment project adopted and amended by ordinances of the City Council of the City known as the Santa Rosa Center Project (Calif. R-45) (herein "Project") in an area (herein "Project Area") located in the City.

B. Operator as a Redeveloper has executed, and Agency, on December 1, 1975, has approved and authorized execution of, a Contract for Sale of Land for Private Redevelopment (herein the "Disposition Agreement") providing for the sale and development of a portion of the Project Area for a shopping center in order to effectuate the Redevelopment Plan for the Project.

C. City and Operator desire to enter into this Parking Agreement in order to: (1) implement the Disposition Agreement; (2) effectuate the Redevelopment Plan for the Project; and (3) provide for the operation and maintenance of parking facilities to achieve the Shopping Center development and to benefit the Project Area and the residents, citizens and businesses in the City.
D. In approving and authorizing this Parking Agreement, the City Council of City is acting also as the governing body of City's Parking District, and City hereunder shall mean and refer also to the City Parking District.

Agreements

NOW, THEREFORE, City and Operator mutually agree as follows:

ARTICLE I

DEFINITIONS

A. [Sec. 100] Defined Terms.
As used herein, the following words have the meanings set forth.

1. [Sec. 101] "Assessments"
"Assessments" means ad valorem assessments levied by the Parking District against the property of the Shopping Center.

2. [Sec. 102] "City Parking"
"City Parking" means the City-owned and operated parking lots and garages at the following locations in the City:

(1) The southeast corner of 5th and B Streets (approximately 68 spaces);
(2) The southeast corner of Ross and B Streets (approximately 137 spaces); and
(3) The north side of 7th Street between Mendocino Avenue and B Street (approximately 218 spaces).

The location of the City Parking is shown on the map attached hereto as Attachment No. 1 and made a part hereof.

3. [Sec. 103] "Freeway Parking"
"Freeway Parking" means the rights, if any, acquired by the City or Agency in the State-owned lands.
under U.S. Highway 101 for parking purposes. The location of the Freeway Parking is shown on Attachment No. 1 hereof.

4. [Sec. 104] "Operator Parking"

"Operator Parking" means the on-grade parking and on-grade parking within structure parking of approximately 1,100 spaces and the structure parking above grade of approximately 1,800 spaces located in the Shopping Center, which parking shall be required by the REA to be operated and maintained by the Operator and its successors and assigns pursuant to the REA. The location of the Operator Parking is shown on Attachment No. 1 hereof.

5. [Sec. 105] "Parking District"

"Parking District" means the parking district for downtown Santa Rosa formed by the City.

6. [Sec. 106] "Parking Revenues"

"Parking Revenues" means revenues to the Parking District or City from street and parking lot meters, parking charges, ad valorem assessments or any other source.

7. [Sec. 107] "Parties to the REA"

"Parties to the REA" means the Operator, the major department stores and their successors and assigns. The City and Agency are not parties to the REA.

8. [Sec. 108] "REA"

"REA" means the Construction, Operation and Reciprocal Easement Agreement to be entered into between the Operator and major department stores, as approved by the Agency pursuant to the Disposition Agreement, to be recorded in the Recorder's Office for Sonoma County and governing the construction, operation and maintenance of the Shopping Center.

9. [Sec. 109] "Shopping Center"

"Shopping Center" means all the lands and facilities of the shopping center to be developed pursuant to the REA as approved by the Agency and including, but not
limited to, major department stores; tire, battery and auto accessory stores; a mall and mall tenants; on-grade and structure parking; common areas for access and service; landscaped areas; and all related facilities and improvements. The Shopping Center is located in that portion of the Project Area generally bounded by Seventh Street on the north, First Street on the south, "B" Street on the east, and Morgan Street on the west.

10. [Sec. 110] "Tax Revenues"
"Tax Revenues" means ad valorem taxes allocated to the Agency from the Project Area under Sections 33670-33675 of the Community Redevelopment Law.

ARTICLE II
OPERATOR PARKING

A. [Sec. 200] Covenant to Operate.
Operator covenants and agrees that Operator Parking shall be operated and maintained for short-term shopper parking and be generally available to all members of the public for such purposes on the same terms and conditions. No charges for such parking shall be imposed without the prior approval of the City. The Operator, pursuant to the approved REA, may impose controls to assure the availability and use of the Operator Parking for such short-term parking. The Operator may, at any time and from time to time, set aside and designate not more than 15 percent of the spaces for longer-term parking for employees of the Shopping Center and the stores therein. The Operator may, after obtaining the approval of the major department stores and the City, set up a system for parking validation provided said system is consistent with this Agreement and City policies.

B. [Sec. 201] Costs of Operation.
The Operator shall bear all costs and expenses of the operation and maintenance of the Operator Parking under
Section 200, including costs of patrol, security and regulation. If the Operator so requests, the City may agree that the City Police will patrol the Operator Parking and will enforce the parking regulations at the Operator's expense.


The REA shall contain provisions satisfactory to the Agency and City binding the Parties to the REA and their successors and assigns to the provisions of this Parking Agreement.

D. [Sec. 203] Covenants Dependent.

The operation covenants and agreements of Operator under Section 200 are mutually dependent and conditioned upon the faithful performance by the City of the covenants and agreements of the City under Sections 300 and the release of all assessments or charges levied upon the Shopping Center by the Parking District.

ARTICLE III
CITY PARKING

A. [Sec. 300] Covenant to Operate.

City covenants and agrees that the City Parking shall be operated and maintained for short-term shopper parking and be generally available to all members of the public for such purposes on the same terms and conditions whether or not the shopper is a customer of the Shopping Center. Charges for such parking will not be imposed so long as this Agreement is in effect without the Operator's consent. The City may impose reasonable controls to assure the availability and use of City Parking for short-term shopper parking. Notwithstanding the above, the City may at any time and from time to time, set aside and designate not more than 15 percent of the spaces in the City Parking for longer-term parking, and, in such event, the City may at its sole option and discretion impose such charges and conditions for longer-term parking as it deems necessary or desirable.
In addition, the City and the Operator shall monitor the use of the City Parking so that such parking may be operated with maximum efficiency and turnover, and the City and the Operator shall mutually consider from time to time the extent to which the City can allocate spaces for longer-term parking.

B. [Sec. 301] Costs of Operation.

The Parking District shall bear all costs and expenses of the operation and maintenance of the City Parking under Section 300, including costs of patrol, security and regulation.

ARTICLE IV
FREeway PARKing

A. [Sec. 400] Availability.

When existing agreements for the use of certain State-owned lands under U.S. Highway 101 expire, the City shall use its best efforts to acquire the use of said lands on reasonable terms from the State for general parking purposes. In the event said lands subsequently become available for general parking purposes to the City, the City and the Operator may enter into a mutually acceptable agreement for the use of the Freeway Parking by employees of the Shopping Center and for short-term shopper parking. The City may charge the Operator or parkers for the use of the Freeway Parking and impose such other terms and conditions on such use as the City may deem necessary or desirable, consistent with State requirements.

ARTICLE V
PARKING ASSESSMENTS AGAINST SHOPPING CENTER

A. [Sec. 500] Parking District Assessments and Charges.

The Shopping Center is presently located within the boundaries of the Parking District. The City recognizes that by means of the Operator Parking the Shopping Center is
providing its own parking requirements. So long as this Agreement remains in effect, the City agrees that the Shopping Center shall not be burdened by the cost of assessments or other charges, if any, levied by the Parking District.

B. [Sec. 501] City Actions.
The City shall institute proceedings authorized by law to take evidence and consider whether the Operator shall be relieved from the obligation to pay assessments or other charges levied by the Parking District with respect to the Shopping Center.

ARTICLE VI
MISCELLANEOUS PROVISIONS

A. [Sec. 600] REA Provisions.
The REA provisions governing the operation and maintenance of the Operator Parking shall be consistent with the provisions of this Parking Agreement. The REA shall be subject to the approval of the Agency pursuant to the Disposition Agreement, and to the approval of the City as to its parking provisions. To the extent that the REA is not consistent with the terms of this Parking Agreement but is approved by the City, this Parking Agreement shall be modified by the City and Operator to conform to the parking provisions of the REA as approved by the City.

B. [Sec. 601] Parking Control Regulations.
The covenants and agreements of the Operator under Section 200 and of the City under Section 300 hereof shall be subject to any parking charges or parking regulations imposed on the use or number of the parking spaces covered by this Parking Agreement pursuant to any parking management or transportation control plan mandated by federal or state law or regulation.
C. [Sec. 602] Successors and Assigns of Parties.

This Parking Agreement shall inure to and be binding upon the respective successors and assigns of the City, Operator and Parties to the REA. It shall also be enforceable by the Agency in the implementation of the Redevelopment Plan for the Project Area.

D. [Sec. 603] Severability.

If any section, subsection, sentence, clause or phrase of this Parking Agreement, or the application thereof, to any party hereto, or any other person or circumstance is for any reason held invalid, it shall, except as to those clauses which may be affected which are expressly made mutually dependent, be deemed severable and the validity of the remainder of this Parking Agreement or the application of such provision to the other party, or to any person or circumstance, shall not be affected thereby.

ARTICLE VII

EFFECTIVE DATE AND DURATION OF AGREEMENT

A. [Sec. 700] Effective Date of Agreement.

The obligations and agreements of the Operator under this Agreement shall become effective when the Operator Parking becomes available for shopper parking. The obligations and agreements of the City under this Agreement shall become effective when two or more major department stores in the Shopping Center are open to the general public for business.

B. [Sec. 701] Duration of Agreement.

Unless sooner terminated as provided herein, this Parking Agreement shall remain in effect for the period of time the Shopping Center is in existence and operation and the REA is in effect.

C. [Sec. 702] Termination.

(1) The following events or circumstances shall constitute cause for termination of this Parking Agreement:
(a) The termination of the REA in its entirety and not as to any Party thereto, in which event any party hereto may terminate this Agreement in its entirety;

(b) In the event of a default by Operator in the performance of its obligations under Section 200, City shall have the right to serve a written notice of default on the Parties to the REA specifying the particulars of Operator's default. If, during the 30-day period from the date of such notice of default, the condition of default is not cured by any of the Parties to the REA (or if such default is of a nature to require longer than 30 days to cure, action is not commenced to cure such default within such 30 days and is thereafter diligently and continuously prosecuted to completion), City shall have the right to serve a second written notice of default on the Parties to the REA and if, during the 30-day period from the date of such second written notice of default, the condition of default is not cured by any of the Parties to the REA (or if such default is of a nature to require longer than 30 days to cure, action is not commenced to cure such default within such 30 days and is thereafter diligently and continuously prosecuted to completion), City may terminate this Agreement in its entirety;

(c) Default by the City in the performance of its obligations under Section 300, not cured by the City or Agency within 60 days of receipt by the City of written notice of such default from the Operator (or if such default is of a nature to require longer than 60 days to cure, action is not commenced to cure such default within such 60 days and is thereafter diligently and continuously prosecuted to completion), in which event the Operator, with concurrence of the Parties to the REA, may terminate this Agreement in its entirety;
(d) Reduction in the size of the Shopping Center, by redesign, damage, destruction and reconstruction, or otherwise, to less than 650,000 square feet of gross leasable area, in which event the City may terminate this Agreement with respect only to its obligations under Section 300;

(e) Reduction in the number of spaces of Operator Parking to less than 2900 spaces, in which event the City may terminate this Agreement with respect only to its obligations under Section 300.

(2) In the event of termination of this Parking Agreement in its entirety or in part, as provided above, neither party shall have any further remedies against the other except an action to recover sums owed hereunder if the default causing termination was a failure to pay money according to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF SANTA ROSA, a municipal corporation

ATTEST:

City Clerk

By

Mayor

"CITY"

ERNEST W. HAHN, INC., a California corporation

ATTEST:

Secretary

By

"OPERATOR"
EASEMENT AGREEMENT

PARKING - STATE BUILDING - FIFTH AND BEAVER GARAGE
SANTA ROSA, CALIFORNIA

GRANTOR: CITY OF SANTA ROSA, a Municipal Corporation (herein "City")
GRANTEE: STATE OF CALIFORNIA, acting by and through its State Public Works Board (herein "State")

THIS EASEMENT AGREEMENT entered into this 26th day of August, 1980, in the County of Sonoma, State of California, by and between the CITY OF SANTA ROSA, a Municipal Corporation (hereinafter referred to as "City"), and the STATE OF CALIFORNIA, acting by and through the State Public Works Board (hereinafter referred to as "State").

WITNESSETH:

WHEREAS, the State has entered into an agreement for the acquisition of title to certain real property situated in the City of Santa Rosa, State of California, and more particularly described in Exhibit "A" attached hereto, for the purpose of constructing thereon a State Office Building, said real property being hereafter sometimes referred to as the "State building property"; and

WHEREAS, the State requires for the use and benefit of its State building property certain motor vehicle parking spaces; and

WHEREAS, City is in the process of constructing a multi-level public parking structure (Parking Garage No. 3), commonly known as the "Fifth and Beaver Street Garage" situated in close proximity to the State building property, said "Fifth and Beaver Garage" property being more particularly described in the easement description set forth in Exhibit "B" attached hereto; and

WHEREAS, by the execution of this easement agreement, the City intends to convey to the State and the State intends to acquire the use and enjoyment of certain motor vehicle parking spaces situated in said "Fifth and Beaver Garage" for the benefit of the State building property.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Grant of Easement; Effective Date. City does hereby grant to State an easement for ten (10) motor vehicle parking spaces situated upon the fourth floor of the Fifth and Beaver Garage, together with ingress and egress thereto, which easement is more particularly described in Exhibit "B" attached hereto. The use of the easement by the State shall commence upon the filing of a Notice of Completion for the State Office Building. Use of said parking spaces by City prior to the completion of the State Office Building is part of the consideration for this easement agreement, and such use shall be at no expense to the State.

9-21-11
2. **Consideration; Escrow.** As consideration for the easement granted by this agreement, the State shall pay to the City the sum of SEVENTY THOUSAND DOLLARS ($70,000.00). Payment shall be made into an escrow to be established at the First American Title Company, Santa Rosa, California. Escrow instructions not inconsistent with this agreement shall be executed by each of the parties. Said escrow instructions shall provide for the payment of said consideration to the City at such time as this agreement has been recorded and a Standard California Land Title Policy has been issued showing title to the easement vested in the State free and clear of any encumbrances. All title insurance charges and escrow fees shall be paid by the State. Payment of the consideration is subject to the condition subsequently set forth in Paragraph 7 of this agreement.

3. **Maintenance and Operation.**
   
   a. **Maintenance.** The City shall be solely responsible for the maintenance and repair of said easement parking spaces, the ingress and egress thereto, and all appurtenances, so that the premises will be in good repair and in a neat, clean and sanitary condition at all times.

   b. **Operation and Regulation.** The City shall be responsible for the operation of such parking spaces, and ingress and egress thereto, and shall adopt and enforce reasonable regulations and place signs or other designations so as to indicate that said spaces are subject to the provisions of this easement agreement for the benefit of the State building property; provided, however, that the State shall be solely responsible for designating and identifying those motor vehicles which are entitled to the access and use of said parking spaces. The method of identifying those motor vehicles entitled to the use of the parking spaces must be approved by the City.

   c. **Sharing of Cost of Maintenance, Operation and Repair.** Commencing with the filing of the Notice of Completion for the State Office Building, the City and State shall share the actual costs incurred by the City in the maintenance, operation and repair of the ten (10) parking spaces in the same ratio as the ten (10) parking spaces covered by this easement bears to the total number of parking spaces in said Fifth and Beaver Garage (approximately 700). In the event that said Fifth and Beaver Garage is expanded and additional parking spaces added, the proportionate share of the cost to be borne by the State shall be reduced accordingly.
d. Annual Billing; Accounting. Once each year, not later than sixty (60) days from and after the close of its fiscal year, the City shall submit to the State a billing for its share of the actual costs and expenses incurred by the City in the maintenance, operation and repair of said parking spaces during the past fiscal year. Such billing shall be in sufficient detail to show the nature and amount of the actual expenses incurred by the City, and where costs and expenses have been incurred by the City, which are applicable not only to the City’s Fifth and Beaver Garage, but also other parking facilities owned by the City, the manner in which such costs and expenses have been prorated to the Fifth and Beaver Garage shall be set forth in said billing. Documentation of such expenses incurred by the City shall be available to the State upon receipt of a written request. The books and records of the City shall be available for inspection by the State, or its duly authorized representative, at all reasonable times and places.

4. Easement Appurtenant to State Building Property. It is the intention of the parties that this easement agreement shall be binding not only upon the State and the City but also upon their successors and assigns. The benefits and burdens of this parking easement shall be appurtenant to and shall run with the State building property, more particularly described in Exhibit “A” attached hereto. Nothing herein shall be construed, however, as limiting the right of the State to designate those vehicles entitled to use said parking spaces.

5. Insurance; Loss or Destruction of Fifth and Beaver Garage. Each of the parties shall carry their own public liability insurance (including any self insurance) covering the subject matter of this easement agreement. The City, as part of its operating costs, shall at all times maintain fire insurance with extended coverage on the Fifth and Beaver Garage parking structure in amounts not less than 90% of its replacement value, which insurance need not include earthquake coverage and shall name the State as an additional insured. In the event of any loss or damage to all or a portion of the Fifth and Beaver Garage parking structure which would prevent the effective use and enjoyment of the ten (10) parking spaces covered by this easement agreement, the City shall have one hundred twenty (120) days in which to elect to repair to replace said parking structure. In the event the City elects to repair or replace said parking structure, any insurance proceeds shall be available to the City for such repair or replacement. In the event the City elects not to repair or replace said parking structure, the proceeds of such insurance shall be divided between
ate and the City in the same ratio as the costs of maintenance and operation
shared as set forth in Section 3(c) of this easement agreement, and upon such
agreement this easement agreement shall be of no further force and effect.

6. Non-Discrimination. This easement agreement is subject to the
non-discrimination provisions set forth in Section 32435 of the California Health
and Safety Code.

7. Condition Subsequent: Failure to Construct State Office Building. This
agreement is entered into with the understanding that the State will proceed with
the construction of a State Office Building on the property described in Exhibit "A".
If, for any reason, the construction of said State Office Building is not commenced
within one (1) year from the date of this agreement, or should the State at any time
decide not to construct the State Office Building, the City, upon written demand
from the State, shall promptly return to the State the consideration paid pursuant
to Section 2 of this agreement, without interest, and the easement granted herein
shall be of no further force and effect.

DATED this 26th day of August, 1980.

CITY OF SANTA ROSA, a Municipal Corporation

BY: 

MAYOR

ATTEST: 

ASSISTANT CITY CLERK

Authorized by City Council Resolution
No. 14661, adopted on the 26th
day of August, 1980.

STATE OF CALIFORNIA, State Public Works
Board

ADMINISTRATIVE SECRETARY

APPROVED BY DEPARTMENT OF GENERAL SERVICES

CHIEF LAND AGENCY
On August 26, 1980 before me, a Notary Public, personally appeared Jerry Wilhelm, known to me to be the Mayor of the City of Santa Rosa, a Municipal Corporation, and known to me to be the person who executed the within instrument on behalf of said Municipal Corporation, and acknowledged to me that such corporation executed the same.

[Signature]
Kathleen L. Albright
Notary Public

Official Seal

My Commission Expires May 28, 1982
EXHIBIT "A"

STATE OFFICE BUILDING SITE

The real property which is the site of the proposed State Office building and the dominant tenement of the parking easement contained herein is described as follows:

All that certain real property situated in the City of Santa Rosa, County of Sonoma, State of California, and more particularly described as follows:

SANTA ROSA CENTER PROJECT

PARCEL N

Being a portion of the lands of the Santa Rosa Center Project Area (Project No. Calif. R-45) as shown on the "Record of Survey" filed in Book 84 of Maps on Pages 45 and 46, Official Records of Sonoma County and being more particularly described as follows:

Commencing at the centerline intersection of D and Second Streets as shown on said Record of Survey; thence North 60° 10' 00" East, along the centerline of Second Street, a distance of 45.00 feet; thence leaving said centerline South 29° 50' 00" East a distance of 30.00 feet to a point on the southerly right-of-way line of Second Street and being the true point of beginning of the herein described parcel; thence along said southerly right of way North 60° 10' 00" East a distance of 105.30 feet to the northwest corner of the lands of The Bay Company of California as described by deed recorded in Book 2012 on Page 499, Official Records of Sonoma County; thence leaving said southerly right-of-way line South 29° 50' 00" West and along the westerly boundary line of the said lands of The Bay Company of California a distance of 336.00 feet; thence leaving said westerly boundary line South 60° 10' 00" West a distance of 105.30 feet to a point on the easterly right of way of D Street; thence along said easterly right of way North 29° 50' 00" West a distance of 321.00 feet; thence on a curve to the right having a radius of 15.00 feet through a central angle of 90° 00' 00" and having a length of 21.56 feet to the point of beginning of the herein described parcel and containing 40,371 square feet more or less.

A.P. No. 9-076-37
EXHIBIT "B"

DESCRIPTION OF EASEMENT AND SERVIENT TENEMENT

1. Description of Parking Easement. The easement herein conveyed consists of ten (10) motor vehicle parking spaces situated upon the fourth floor of the City's Parking Garage No. 3, commonly known as the Fifth and Beaver Garage, together with ingress and egress thereto. The location of said ten (10) motor vehicle parking spaces is more particularly shown on a plot plan which must be approved and signed by the City and the State and a copy of which shall be maintained as a part of the public records of the City and the State.

2. Description of Servient Tenement. The real property, which is the site of the Fifth and Beaver Garage and the servient tenement of this parking easement, is situated in the City of Santa Rosa, County of Sonoma, State of California, and more particularly described as follows:

All that property in the City of Santa Rosa, County of Sonoma, State of California described as follows:

Lots 63, 64, 65, 66 and 67 as shown on the Map of Greens Addition to Santa Rosa recorded in Book 1 of Maps, page 2.

Also that portion of Lot 62 of Greens Addition as conveyed to the City of Santa Rosa by document recorded in Book 1239, page 327, Official Records of Sonoma County.

The herein described property is also shown on Record of Survey map filed on the 23rd of October 1979 in Book 951 of Maps at page 37.

A.P. No. 9-073-16
CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the deed dated August 26, 1980, from City of Santa Rosa, a Municipal Corporation, to the State of California, is hereby accepted by the undersigned officer on behalf of the State Public Works Board pursuant to authority conferred by resolution of said Board duly adopted and the grants convey to the recorder thereof by its duly authorized officer.

State of California
State Public Works Board

[Signature]
Administrative Secretary

Dated: AUG 31 1981

APPROVED:
DEPARTMENT OF GENERAL SERVICES

[Signature]
Director by Chief Land Agent
EASEMENT AGREEMENT

GRANTOR: CITY OF SANTA ROSA, a Municipal Corporation (herein "City")
GRANTEE: STATE OF CALIFORNIA, acting by and through its State Public Works Board (herein "State")

THIS EASEMENT AGREEMENT entered into this 26th day of August 1980, in the County of Sonoma, State of California, by and between the CITY OF SANTA ROSA, a Municipal Corporation, (hereinafter referred to as "City") and the STATE OF CALIFORNIA, acting by and through the State Public Works Board (hereinafter referred to as "State").

WITNESSETH:

WHEREAS, the State has entered into an agreement for the acquisition of title to certain real property situated in the City of Santa Rosa, State of California, more particularly described in Exhibit "A" attached hereto, for the purpose of constructing thereon a State Office Building, said real property being hereinafter sometimes referred to as the "State building property"; and

WHEREAS, the State requires for the use and benefit of its State building property certain motor vehicle parking spaces; and

WHEREAS, the City is the owner and operator of a public parking structure, commonly known as the "Plaza Garage", situated immediately across "D" Street from the State building property, said Plaza Garage property being more particularly described in the easement description set forth in Exhibit "B" attached hereto; and

WHEREAS, by the execution of this easement agreement, the City intends to convey to the State and the State intends to acquire the use and enjoyment of certain motor vehicle parking spaces situated in said Plaza Garage for the benefit of the State building property.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Grant of Easement; Effective Date. City does hereby grant to State an easement for forty (40) motor vehicle parking spaces situated in the Plaza Garage, together with ingress and egress thereto, which easement is more particularly described in Exhibit "B" attached hereto. The use of the easement by the State shall commence upon the filing of a Notice of Completion for the State Office Building. Use of said parking spaces by City prior to completion of the State Office Building is part of the consideration for this easement agreement, and such use shall be at no expense to the State.
2. Consideration; Escrow. As consideration for the easement granted by this agreement, the State shall pay to the City, the sum of THREE HUNDRED EIGHTY THOUSAND DOLLARS ($380,000.00). Payment shall be made into an escrow to be established at the First American Title Company, Santa Rosa, California. Escrow instructions not inconsistent with this agreement shall be executed by each of the parties. Said escrow instructions shall provide for the payment of said consideration to City at such time as this agreement has been recorded and a Standard California Land Title Policy has been issued showing title to the easement vested in the State free and clear of any encumbrances. All title insurance charges and escrow fees shall be paid by the State. Payment of the consideration is subject to the condition subsequently set forth in Paragraph 7 of this agreement.


a. Maintenance. The City shall be solely responsible for the maintenance and repair of said easement parking spaces, the ingress and egress thereto, and all appurtenances so that the premises will be in good repair and in a neat, clean and sanitary condition at all times.

b. Operation and Regulation. The City shall be responsible for the operation of such parking spaces and ingress and egress thereto, and shall adopt and enforce reasonable regulations and place signs or other designations so as to indicate that said spaces are subject to the provisions of this easement agreement for the benefit of the State building property; provided, however, that the State shall be solely responsible for designating and identifying those motor vehicles which are entitled to the access and use of said parking spaces. The method of identifying those motor vehicles entitled to use of the parking spaces must be approved by the City.

c. Sharing of Cost of Maintenance, Operation and Repair. Commencing with the filing of the Notice of Completion for the State Office Building, the City and State shall share the actual costs incurred by the City in the maintenance, operation and repair of the forty (40) parking spaces in the same ratio as the forty (40) parking spaces covered by this easement bears to the total number of parking spaces in said Plaza Garage (presently 444). In the event that said Plaza Garage is expanded and additional parking spaces added, the proportionate share of the cost to be borne by the State shall be reduced accordingly.
d. Annual Billing: Accounting. Once each year, not later than sixty (60) days from and after the close of its fiscal year, the City shall submit to the State a billing for its share of the actual costs and expenses incurred by the City in the maintenance, operation and repair of said parking spaces during the past fiscal year. Such billing shall be in sufficient detail to show the nature and the amount of the actual expenses incurred by the City, and where costs and expenses have been incurred by the City, which are applicable not only to the City's Plaza Garage, but also other parking facilities owned by the City, the manner in which such costs and expenses have been prorated to the Plaza Garage shall be set forth in said billing. Documentation of such expenses incurred by the City shall be made available to the State upon receipt of a written request. The books and records of the City shall be available for inspection by the State, or its duly authorized representative, at all reasonable times and places.

4. Easement Appurtenant to State Building Property. It is the intention of the parties that this easement agreement shall be binding not only upon the State and the City but also upon their successors and assigns. The benefits and burdens of this parking easement shall be appurtenant to and shall run with the State building property, more particularly described in Exhibit "A" attached hereto. Nothing herein shall be construed, however, as limiting the right of the State to designate those vehicles entitled to use said parking spaces.

5. Insurance: Loss or Destruction of Plaza Garage. Each of the parties shall carry their own public liability insurance (including any self insurance) covering the subject matter of this easement agreement. The City, as part of its operating costs, shall at all times maintain fire insurance with extended coverage on the Plaza Garage parking structure in amounts not less than 90% of its replacement value, which insurance need not include earthquake coverage, and shall name the State as an additional insured. In the event of any loss or damage to all or a portion of the Plaza Garage parking structure which would prevent the effective use and enjoyment of the forty (40) parking spaces covered by this easement agreement, the City shall have one hundred twenty (120) days in which to elect to repair or replace said parking structure. In the event the City elects to repair or replace said parking structure, any insurance proceeds shall be available to the City for such repair or replacement. In the event the City elects not to repair or replace said parking structure, the proceeds of such insurance shall be divided
between the State and the City in the same ratio as the costs of maintenance and operation are shared as set forth in Section 3(c) of this easement agreement, and upon such payment this easement agreement shall be of no further force and effect.

6. Non-Discrimination. This easement agreement is subject to the non-discrimination provisions set forth in Section 33435 of the California Health and Safety Code.

7. Condition Subsequent; Failure to Construct State Building. This agreement is entered into with the understanding that the State will proceed with its construction of a State Office Building on the property described in Exhibit "A". If, for any reason, the construction of said State Office Building is not commenced within one (1) year from the date of this agreement, or should the State at any time decide not to construct the State Office Building, the City, upon written demand from the State, shall promptly return to the State the consideration paid pursuant to Section 2 of this agreement, without interest, and the easement granted herein shall be of no further force and effect.

DATED this 26th day of August, 1980.

CITY OF SANTA ROSA, a Municipal Corporation

BY: [Signature]
MAYOR

ATTEST:
[Signature] CITY CLERK

Authorized by City Council Resolution No. 14651, adopted on the 26th day of August, 1980.

STATE OF CALIFORNIA, State Public Works Board

[Signature]
ADMINISTRATIVE SECRETARY

APPROVED BY DEPARTMENT OF GENERAL SERVICES

[Signature]
CHIEF LAND AGENT
STATE OF CALIFORNIA
COUNTY OF SONOMA

On August 26, 1980, before me, a Notary Public, personally appeared Jerry Wilhelm, known to me to be the Mayor of the CITY OF SANTA ROSA, a Municipal Corporation, and known to me to be the person who executed the within instrument on behalf of said Municipal Corporation, and acknowledged to me that such corporation executed the same.

[Signature]
Notary Public
EXHIBIT "A"

STATE OFFICE BUILDING SITE

The real property which is the site of the proposed State office building and the dominant tenement of the parking easement contained herein is described as follows:

All that certain real property situated in the City of Santa Rosa, County of Sonoma, State of California, and more particularly described as follows:

SANTA ROSA CENTER PROJECT

PARCEL M

Being a portion of the lands of the Santa Rosa Center Project Area (Project No. Calif. R-45) as shown on the "Record of Survey" filed in Book 84 of Maps on Pages 45 and 46, Official Records of Sonoma County and being more particularly described as follows:

Commencing at the centerline intersection of D and Second Streets as shown on said Record of Survey; thence North 60° 10' 00" East, along the centerline of Second Street, a distance of 45.00 feet; thence leaving said centerline South 29° 50' 00" East a distance of 30.00 feet to a point on the southerly right-of-way line of Second Street and being the true point of beginning of the herein described parcel; thence along said southerly right of way North 60° 10' 00" East a distance of 105.30 feet to the northwest corner of the lands of The Bay Company of California as described by deed recorded in Book 2014 on Page 499, Official Records of Sonoma County; thence leaving said southerly right-of-way line South 29° 50' 00" East and along the westerly boundary line of the said lands of The Bay Company of California a distance of 336.00 feet; thence leaving said westerly boundary line South 60° 10' 00" West a distance of 105.30 feet to a point on the easterly right of way of D Street; thence along said easterly right of way North 29° 50' 00" West a distance of 321.00 feet; thence on a curve to the right having a radius of 15.00 feet through a central angle of 90° 00' 00" and having a length of 23.56 feet to the point of beginning of the herein described parcel and containing 40,371 square feet more or less.

A.P. No.
EXHIBIT "D"

DESCRIPTION OF EASEMENT AND SERVIENT TENEMENT

1. Description of Parking Easement. The easement herein conveyed consists of forty (40) motor vehicle parking spaces situated upon the fourth floor of the Parking Garage No. 9, commonly known as the Plaza Garage, together with ingress and egress thereto. The location of said forty (40) motor vehicle parking spaces is more particularly shown on a plot plan which must be approved and signed by the City and the State and a copy of which shall be maintained as a part of the public records of the City and the State.

2. Description of Servient Tenement. The real property which is the site of the Plaza Garage and the servient tenement of this parking easement is situated in the City of Santa Rosa, County of Sonoma, State of California, and more particularly described as follows:

PORTION OF PARCEL I
AND 17 FOOT STRIP OF PARCEL H-L

Being a portion of Parcel I and a portion of Parcel H-L, said parcels being shown on the Official Map of the Santa Rosa Center Project, dated December 21, 1966, and filed in Book 116 of Maps at Page 6, Official Records of Sonoma County, more particularly described as follows:

Beginning at the most northerly corner of Parcel I as shown on said Official Map of the Santa Rosa Center Project, said point also being the intersection of the southerly boundary of the Second Street Mall and the westerly right of way of D Street; thence South 29° 50' East along said southerly right of way line of D Street a distance of 176.98 feet; thence South 60° 10' West a distance of 299.90 feet; thence North 29° 49' 47" West a distance of 177.00 feet to said southerly boundary of the Second Street Mall; thence North 60° 10' 13" East a distance of 299.89 feet to the point of beginning and containing 1.219 acres more or less (53,079.04 square feet).
CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the deed dated August 26, 1980, from City of Santa Rosa, a Municipal Corporation, to the State of California, is hereby accepted by the undersigned officer on behalf of the State Public Works Board pursuant to authority conferred by resolution of said Board duly adopted and the grantee consents to the recordation thereof by its duly authorized officer.

State of California
State Public Works Board

[Signature]
Administrative Secretary

Dated AUG 31 1981

APPROVED:
DEPARTMENT OF GENERAL SERVICES

[Signature]
Director by Chief Land Agent
LEASE AGREEMENT FOR PARKING
SPACES IN GARAGE 3,
THE FIFTH STREET GARAGE

This Agreement dated September 26, 1994 is between the CITY OF SANTA ROSA ("CITY", the lessor) AND FUTRELL-SIEVERT PARTNERSHIP ("FSP", the lessee), a California general partnership.

RECEITALS

A. FSP intends to construct a new building on a site at 431 Beaver Street, Santa Rosa, California. A legal description of the site is attached to this Agreement as Exhibit A.

B. The CITY has granted use permit and final design review approvals for construction of the new building. Among the conditions of use permit approval is a requirement that FSP enter into a long-term lease agreement with the CITY under which FSP shall obtain the use of parking spaces in Garage 3, the Fifth Street Garage (Garage 3) which is adjacent to the new building.

AGREEMENT

1. LEASE OF PARKING SPACES/RENT.

Subject to paragraph 2 below, FSP shall lease from the CITY thirty-four (34) spaces in parking Garage 3. The lease price shall be paid monthly, in advance, no later than the first day of each month, and shall be at the then prevailing price established by the CITY,
and revised by the CITY from time to time, for monthly unreserved parking permits for spaces located in the Garage.

2. **TERM.**

   This Agreement shall take effect on the date the Certificate of Occupancy is approved by the CITY for the property located at 431 Beaver Street, Santa Rosa. The Agreement shall terminate upon the end of the useful life of 431 Beaver Street, or thirty years following the issuance of the Certificate of Occupancy of 431 Beaver Street, whichever occurs first. For the first five (5) months of the Agreement, FSP shall lease that number of spaces in parking Garage 3 equal to the number of residential units that are occupied at 431 Beaver Street. Beginning the sixth month of the Agreement, FSP shall lease thirty-four (34) spaces in parking Garage 3.

3. **TERMINATION BY LESSOR.**

   CITY may terminate this lease in its entirety at any time prior to the end of its term in order to condemn or demolish the City of Santa Rosa Parking Garage No. 3 (wherein FSP’s parking spaces are situated), or to convert the Garage to some other use, or to discontinue its use as a Garage which is open and available to the public for the parking of their automobiles. In the event CITY exercises this right of early termination, it shall give FSP not less than 30 days prior written notice of the date when such termination shall become effective. On the effective date of the termination, FSP shall vacate the leased premises and CITY and FSP shall be relieved from any liability or obligation for the portion of the lease term then remaining.

4. **LOCATION OF LEASED PARKING SPACES.**

   The thirty-four (34) leased parking spaces shall be individually signed by the CITY "Reserved." The spaces shall be located on the third floor of the Garage, as close to the northeast stairwell of the Garage as possible. The spaces shall be grouped together.

5. **USE OF LEASED PARKING SPACES.**

   (a) FSP shall make the leased spaces available for vehicle
parking use by the residential tenants of FSP who occupy residential dwelling units in the new building. In using the leased spaces FSP and its residential tenants shall be bound by all the ordinances, rules and regulations established by the CITY, now or in the future, governing use of the Garage.

(b) FSP, its employees, agents, invitees and sublessees shall not use the leased premises or the parking structure, for any purpose or use other than for the parking of automobiles. FSP, its employees, agents, invitees, and sublessees shall do no act within the parking structure which violates any ordinance of the City of Santa Rosa, or law of the State of California, or the United States.

6. **COMPLIANCE WITH LESSOR'S RULES FOR USE OF LEASED SPACES.**

FSP, its employees, agents, invitees, and sublessees shall at all times strictly comply with all rules, directions, and signs posted or installed by CITY within the parking structure which relate to the use of the Garage and the parking of automobiles therein.

7. **ALTERATION OF PREMISES/WASTE.**

FSP, its employees, agents, invitees, and sublessees shall not make any alterations, additions, or improvements in, to, or about the premises or the parking structure in which the premises are situated.

FSP, its employees, agents, invitees, and sublessees shall not commit any waste upon the leased premises or the parking structure or create or cause any nuisance therein, including, but not limited to, littering.

8. **DESTRUCTION OF LEASED PREMISES.**

If the leased premises are totally or partially destroyed by fire or other casualty so as to make said parking spaces unavailable for the use and enjoyment of the FSP, then this lease shall terminate, provided, however, that if the reconstruction or rehabilitation of the leased premises by CITY has started within one year of such destruction so as to make said
leased parking spaces again available for the use and enjoyment of the FSP then, and in that event, said leased parking spaces shall again be subject to the terms and provisions of this lease. The term of this Lease Agreement shall not be extended by such interruption.

9. **LIABILITY FOR DAMAGES AND INJURIES/NOTICE.**

(a) CITY shall not be responsible or liable to FSP, or those utilizing the parking spaces leased hereunder, for the loss of or any damage to any automobile parked in the premises under this lease, or for the loss or damage to the contents of any such automobile, or for personal injuries or death caused by reason of fire, explosion, theft, collision, acts of God, or arising from any cause originating from any act or omission of FSP, its employees, agents, invitees, or sublessees or the act or omission of any person not a party to this lease. No bailment is created by this Lease Agreement.

(b) FSP shall be liable to CITY for any willful or negligent act of FSP, or FSP’s employees, agents, invitees, or sublessees which results in any damage to the parking structure or which results in injuries to CITY’s employees or agents.

(c) In the event of any accident occurring within the parking structure involving FSP or FSP’s employees, agents, invitees, or sublessees, FSP shall give oral notice thereof, as soon as possible, to CITY or CITY’s employee who is in charge of the parking structure and FSP shall thereafter give immediate written notice thereof to FSP with the fullest information obtainable.

10. **INTEREST ON RENT.**

Rent not paid when due shall bear interest from the due date until paid at the
maximum rate a business is permitted by law to charge for past due payments.

11. **HOLDING OVER.**

In the event the FSP remains in possession of the premises after the expiration of the lease term this lease shall be automatically extended on a month-to-month basis, subject to thirty (30) days' written notice of termination being given by either party and otherwise on the terms and conditions herein specified.

12. **SURRENDER OF POSSESSION.**

Upon termination or expiration of this lease, the FSP will peacefully surrender to the CITY the leased premises in as good order and condition as when received, except for reasonable use and wear thereon and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which the FSP has no control or for which CITY is responsible pursuant to this lease.

13. **WAIVER.**

The waiver by CITY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by FSP, or any term, covenant or condition of this lease, other than the failure of FSP to pay the particular rental so accepted, regardless of CITY's knowledge of such preceding breach at the time of acceptance of such rent, provided the breach is a continuing one.

14. **TIME OF ESSENCE.**

Time is of the essence of each provision of this lease.

15. **DEFAULT.**

The following shall constitute a default by FSP: The failure of FSP to pay rent when due or the violation of any provision of this lease, if the failure or violation continues for
twenty (20) days from the date notice of such failure or violation has been given to FSP. Upon default by FSP under this provision, the lease term, at FSP’s option, and upon notice being given to FSP of the exercise of the option, may be terminated as of the 30th day following FSP’s default and on such day the CITY may change its key card numbering system, or such other system as CITY may then have in effect, so as to exclude from parking on the third floor of said Garage all persons previously parking there under the provisions of this Lease Agreement. The foregoing remedy shall be in addition to all other remedies that may also be available to CITY in law or equity, but not limited to, actions for unlawful detainer, or for past due rent, or actions to recover the value of any damages to the said Garage caused by FSP or its agents, employees, invitees, or sublessees.

16. **NO JOINT VENTURE.**

The relationship between CITY and FSP is that of a Lessee/Lessor and not that of a joint venture. FSP is not agent of the CITY for any purposes in connection with this Agreement.

17. **ENTIRE AGREEMENT/MODIFICATION.**

This Agreement constitutes the entire agreement by the parties. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by the parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties.

18. **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 shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

19. **ASSIGNMENT.**

The rights and obligations under this Agreement are based upon the special skills and abilities of the parties and there shall not be any assignment of such rights or obligations.
by either party without the written consent of the other, which consent shall not be unreasonably held.

20. **BINDING ON SUCCESSORS.**

The terms and provisions of this lease shall extend to and be binding upon the successors and assigns of the parties hereto. This Agreement shall be recorded on or after the day the Certificate of Occupancy is issued by the CITY for the property located at 431 Beaver Street, Santa Rosa. This Agreement is binding on the successors and assigns of FSP. The obligations set forth in this Agreement are appurtenant to, is an equitable servitude upon, and runs with the following property:

Real property situated in Santa Rosa, California described as Lots 1 of Parcel Map 543, Map Book 533, Page 7 through 10, Official Records of the Recorder of the County of Sonoma, California.

Should the property located at 431 Beaver Street, Santa Rosa be subdivided, resulting in non-residential use(s), CITY shall rerecord this Agreement on that property which remains a residential use.

21. **POSSESSORY INTEREST TAX.**

FSP recognizes and understands that this lease may create possessory interest subject to property taxation, and that FSP may be responsible for the payment of property taxes levied on such interest. (California Revenue and Taxation Code Section 107.6.)

22. **REMEDIES.**

In addition to any other remedy provided by law or granted under this Agreement, the CITY may elect in a court of appropriate jurisdiction such injunctive orders as are reasonably necessary to secure performance by FSP, its successors and assigns of their commitments under this Contract. In any such action, the CITY shall, in addition to injunctive relief be entitled to the full scope of the remedies afforded by law, including such damages as are provable and allowed for breach of this Contract.
23. CONDEMNATION.

In the event all or part of the leased premises is taken or acquired for public use by condemnation or a threat thereof, this lease shall terminate. FSP shall assert no claim for loss of bonus value of this lease or any other claim except for a claim of good will.

24. NOTICES.

Any notices called for by this Agreement shall be personally served or served by first-class mail on the parties at the following addresses:

The City of Santa Rosa
Department of Transit and Parking
Attn: Mr. Robert Dunlavey, Director
P. O. Box 1678
Santa Rosa, California 95402-1806

Futrell-Sievert Partnership
Attn: Mr. Hugh Futrell
631 A First Street
Santa Rosa, California 95404

Dated: Nov. 7, 1994

THE CITY OF SANTA ROSA
By: [Signature]
Its: Mayor

Dated: 7/21/1994

FUTRELL-SIEVERT PARTNERSHIP
By: [Signature]
Its: General Partner
State of CALIFORNIA
County of SONOMA

On 11-7-94 before me, GAYLE PETERSEN, A NOTARY PUBLIC, personally appeared Hugh Futrell, NAME(S) OF SIGNER(S)

☑ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

Optional Section

TITLE OR TYPE OF DOCUMENT: Lease Agreement for Parking - Garage
NUMBER OF PAGES: 8
DATE OF DOCUMENT: 11-7-94
SIGNER(S) OTHER THAN NAMED ABOVE: William H. Knight

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358
State of CALIFORNIA
County of SONOMA
On 11-7-94 before me, GAYLE PETERSEN, A NOTARY PUBLIC
personally appeared William H. Knight

☐ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

GAYLE PETERSEN
NOTARY PUBLIC - CALIFORNIA
COMM. # 1001019
SONOMA COUNTY

SIGNATURE OF NOTARY

Optional Section

CITY OF SANTA ROSA
Mayor

This certificate must be attached to the document described at right:

TITLE OR TYPE OF DOCUMENT: Lease Agreement - Parking Garage
NUMBER OF PAGES: 8
DATE OF DOCUMENT: 11-7-94
SIGNER(S) OTHER THAN NAMED ABOVE: Hugh Futrell
RESOLUTION NO. 21982

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING A LEASE AGREEMENT WITH FUTRELL-SEIVERT PARTNERSHIP FOR PARKING SPACES AT CITY GARAGE NO. 3 (FIFTH STREET)

WHEREAS, the Futrell-Seivert Partnership intends to construct a new building on a site at 431 Beaver Street; and

WHEREAS, one of the conditions of the use permit is to enter into a long-term parking agreement for thirty-four parking spaces with the City; and

WHEREAS, the City has determined that there are adequate permit parking spaces at City Garage No. 3, to accommodate this requirement; and

WHEREAS, the building to be constructed is within the boundaries of the Parking District.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa approves the Lease Agreement attached hereto and authorizes and directs the Mayor to execute said document.

BE IT FURTHER RESOLVED that the Council delegates to the Director of Transit and Parking the authority to execute any Consent to Assignment or documents necessary for Futrell-Seivert Partnership to obtain financing or sell or lease the building.

IN COUNCIL DULLY PASSED this First day of November, 1994.

AYES: (5) Mayor Knight; Councilmembers Pedgrid, Berto, Casey, Wright
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

APPROVED:  
Mayor

ATTEST:  
Assistant City Clerk

APPROVED AS TO FORM:

City Attorney
AGREEMENT

BETWEEN THE

CITY OF SANTA ROSA,
a charter city

AND

BLUE FOX PARTNERS,
a California general partnership

FOR

DOWNTOWN SANTA ROSA THEATER COMPLEX
85 SANTA ROSA AVENUE
SANTA ROSA, CALIFORNIA
AGREEMENT

THIS AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into in the City of Santa Rosa, California on this 17th day of August, 1999, by and between the City of Santa Rosa, a charter city (hereinafter referred to as the “City”) and Blue Fox Partners, a California general partnership (hereinafter referred to as “Blue Fox”).

RECIDALS

A. Blue Fox desires to develop and holds a legal interest in certain real property consisting of approximately 30,000 square feet of land, located 85 Santa Rosa Avenue in downtown Santa Rosa, which property is more particularly described in Exhibit “A” attached hereto and incorporated herein (hereinafter referred to as the “Property”).

B. The City Council adopted Vision 2020: The Santa Rosa General Plan, which General Plan is applicable to the Property (hereinafter referred to as the “General Plan”).

C. Blue Fox has applied for, and the City has approved, various land use approvals in connection with the development of a multiplex theater complex on the Property (hereinafter referred to as the “Project”), including a Conditional Use Permit, Resolution No. 9121 (hereinafter referred to as the “Conditional Use Permit”) (hereinafter collectively referred to, together with any approvals or permits now or hereafter issued with respect to the Project, as the “Project Approvals”). The details of the Project are set forth in the Conditional Use Permit and the plans on file in the City’s Department of Community Development.

D. Development of the Project on the Property by Blue Fox is not subject to any future discretionary approvals.

E. The Downtown Theater Market Analysis, Santa Rosa, California, dated February 1997, prepared for the City by Keyser-Marsten Associates, Inc. finds that development of the Property for theater use would provide significant public benefits and that provision of free parking to theater patrons would be a significant factor in the success of a new theater complex.

F. Blue Fox has requested that the City provide free parking to Project patrons in City’s Garage No. 12, also known as the First Street Parking Garage, situated between Santa Rosa Avenue and “B” Street on the real property more particularly described in Exhibit “B” attached hereto and incorporated herein (hereinafter referred to as the “Garage”).

G. The City desires to assist the development by providing free parking to Project patrons, but on the condition that Blue Fox reimburse the City for the additional cost of operating the Garage during evening hours.

H. The City desires the timely, efficient, orderly and proper development of the Project.

I. The City Council has found that, among other things, this Agreement is consistent with its General Plan.
J. The City and Blue Fox have reached agreement and desire to express herein an agreement that will facilitate development of the Project subject to conditions set forth herein.

K. Pursuant to the California Environmental Quality Act ("CEQA") the City prepared a Mitigated Negative Declaration and found that the Mitigated Negative Declaration was adequate for the Project.

L. On August 17, 1999, the City Council of the City adopted Resolution No. 24107 approving this Agreement (hereinafter referred to as the "Effective Date").

AGREEMENT

1. Description of the Property. The Property which is the subject of this Agreement is described in Exhibit "A" attached hereto and incorporated herein by this reference.

2. Interest of Blue Fox. Blue Fox has a legal or equitable interest in the Property in that it owns the Property in fee simple.

3. Relationship of the City and Blue Fox. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Blue Fox and that Blue Fox is not an agent of the City. The City and Blue Fox hereby disclaim the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Blue Fox joint venturers or partners.

4. Effective Date and Term.

4.1. Effective Date. The Effective Date is August 17, 1999.

4.2. Term. The term of this Agreement shall commence on the Effective Date and extend for twenty (20) years from March 1, 2000 (hereinafter referred to as the "Start Date"), thereafter, unless said term is otherwise terminated or modified by circumstances set forth in this Agreement.

4.3. Continued Effect. The expiration or termination of this Agreement shall not affect any right emanating from entitlements for the Project approved by the City prior to, concurrently with or subsequent to the Effective Date all of which shall continue in full force and effect. Any use or construction properly established during the term of this Agreement shall continue to be a lawful use or building after the expiration of the term hereof.

5. Use of Property.

5.1. Permitted Uses. The permitted uses of the Property and conditions of development applicable to the Property shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals. In particular, the Property may be developed and used for the Project as approved in Conditional Use Permit.
5.2. Parking for Project Patrons:

5.2.1. City Obligation to Provide Parking. During the term of this Agreement, as long as the Project use continues, the City shall provide up to three (3) hours of free parking in the Garage to each patron of the Project and shall keep the Garage open each day until 1:00 a.m. for this purpose. Blue Fox shall install and maintain a means of validating Project patrons' parking tickets in a manner mutually acceptable to Blue Fox and the City. Additionally, the City shall allow patrons of the Project to park free of charge after 5:00 p.m. on weekdays and all day on Saturdays, Sundays and City-observed holidays at the eastern parking lot located at the City Hall, 100 Santa Rosa Avenue, Santa Rosa (hereinafter referred to as the "City Hall Parking Lot"), to the extent public parking is available.

5.2.2. Public Use of the Garage and the City Hall Parking Lot. Blue Fox acknowledges that the Garage and the City Hall Parking Lot are public facilities owned by the City and operated for the public benefit. As such, public parking is on a first-come, first-serve basis.

5.2.3. Operation of the Garage and the City Hall Parking Lot. Subject to the provisions of Paragraph 5.2.2, the City covenants and agrees that it will maintain and operate, in a normal and customary manner, the Garage and City Hall Parking Lot for public parking purposes during the term of this Agreement. If the Garage is damaged or destroyed the City will use reasonable efforts to repair or replace the Garage without delay. The City further covenants and agrees that it will not lease or restrict the availability of the parking spaces at either the Garage or the City Hall Parking Lot in any way beyond leases or restricted availabilities in place as of the Effective Date.

5.2.4. Blue Fox's Payment to the City for Parking. Blue Fox shall pay to the City Downtown Parking District the sum of FIFTY THOUSAND DOLLARS ($50,000.00) per year, in advance, for each year in which the City provides parking pursuant to Paragraphs 5.2.1, 5.2.2 and 5.2.3, above. The first payment shall be payable on the Start Date. Subsequent annual payments shall be due on each anniversary date of the Start Date. Beginning on the sixth (6th) anniversary of the Start Date, and each year on the anniversary of the Start Date thereafter for the final fifteen (15) years of this Agreement, the $50,000 payment shall be adjusted as follows:

The base for computing the adjustment is the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is in effect for the month of the fifth (5th) anniversary of the Start Date ("Beginning Index"). The Index published most immediately preceding the adjustment date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has increased over the Beginning Index, the payment for the following year shall be set by multiplying $50,000 by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.

5.3. General Plan. The City's General Plan states, in Core Area Land Use Policy LUD-1d: "Control the development of new theaters through the Conditional Use Permit process. If a theater is proposed outside of the Core Area, consideration shall be given to the economic effect of the proposed theater on Core Area theaters." This policy was adopted to further the City's General Plan Goal LUD1: "Maintain the downtown area as the major regional office, financial, civic and cultural center in the North Bay." The City covenants and agrees that it will continue to control the development of new theaters through the conditional use permit process. If a multiplex theater complex is proposed
anywhere within the City, prior to granting approvals for such multiple theater complex, the City shall require: (i) a study of the economic effect of the proposed multiplex theater complex on Core Area theaters, including the Project, and consideration shall be given to any adverse economic effect of the proposed multiplex theater complex on Core Area theaters, including the Project, and any adverse effect of the proposed multiplex theater complex on Goal LUD1, (ii) consideration by the City Council of whether the proposed multiplex theater complex would result in economic blight on the downtown area of Santa Rosa if the proposed multiplex theater caused the existing downtown multiplex theaters to cease business and (iii) a public hearing, with notice to Blue Fox, to consider the economic study and the issue of economic blight on the downtown area. For purposes of this Agreement, rehabilitation or reconstruction of any theater complex existing as of the Effective Date shall not constitute a proposed multiplex theater complex.

6. Amendment or Cancellation.

6.1. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto.

6.2. Insubstantial Amendments. Notwithstanding the provisions of Paragraph 6.1, above, any amendments to this Agreement which do not relate to: (i) the term of the Agreement as provided in Paragraph 4.2, above; or (ii) the permitted uses of the Property as provided in Paragraph 5.2, above, shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto. Any amendments described in this Paragraph 6.2 may be made by written agreement made by Blue Fox and the City Manager.

6.3. Cancellation by Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the City and Blue Fox or their successors in interest.

7. Default.

7.1. Other Remedies Available. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity which are not otherwise provided for in this Agreement, expressly including the remedy of specific performance of this Agreement.

7.2. Notice and Cure. Upon the occurrence of an event of default by either party, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, the nondefaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that if the default cannot reasonably be cured within such thirty (30) day period, the nondefaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute a waiver of any default.

7.3. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other
governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing by City for the period of the enforced delay, or longer as may be mutually agreed upon.

7.4. **Cumulative Rights.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation subject to the notice and cure provisions of Paragraph 7.2, above.

8. **Estoppel Certificate.** Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. The City Manager of the City shall be authorized to execute any certificate requested by Blue Fox.

9. **Mortgagee Protection; Certain Rights of Cure.**

9.1. **Mortgagee Protection.** This Agreement, at Blue Fox’s option, shall be subordinate to any mortgage, deed of trust, or any other hypothecation for security now or hereafter placed upon all or any portion of the Property and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof (hereinafter referred to as a “Mortgage”). Notwithstanding such subordination, Blue Fox’s rights under this Agreement shall not be disturbed if Blue Fox is not in default and so long as Blue Fox shall observe and perform all the provisions of this Agreement, unless this Agreement is otherwise terminated pursuant to its terms. If any mortgagee or trustee shall elect to have this Agreement prior to the lien of its Mortgage, and shall give notice thereof to the City, this Agreement shall be deemed prior to such Mortgage, whether this Agreement is dated prior or subsequent to the date of said Mortgage or the date of recording thereof. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon, effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee (hereinafter referred to as a “Mortgagee”) who acquires title to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure, or otherwise.

9.2. **Notice of Default to Mortgagee and Extension of Right to Cure.** If the City receives notice from a Mortgagee requesting a copy of any notice of default given Blue Fox hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to Blue Fox, any notice given to Blue Fox with respect to any claim by the City that Blue Fox has committed an event of default. Each Mortgagee shall have the right during the same period available to Blue Fox to cure or remedy, or to commence to cure or remedy, the
event of default claimed set forth in the City's notice and City shall accept performance by Mortgagee in the same manner as if performance had been tendered by Blue Fox. The City, through its City Manager, may extend the thirty (30) day cure period provided in paragraph 7.2, above, for not more than an additional sixty (60) days upon request of Blue Fox or a Mortgagee.

9.3. Amendments. If requested by a Mortgagee, the City agrees that this Agreement shall not be amended or mutually terminated without notice to and consent of the Mortgagee.

10. Severability. The unenforceability, invalidity or illegality of any provisions, covenant, condition or term of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

11. Transfers and Assignments.

11.1. Right to Assign. Blue Fox's rights hereunder may be transferred, sold or assigned in conjunction with the transfer, sale or assignment of all or a portion of the Property subject hereto at any time during the term of this Agreement, provided that no transfer, sale or assignment of Blue Fox's rights hereunder shall occur without the prior written notice to City and approval by the City, which approval shall not be unreasonably withheld or delayed. The City shall consider the matter within thirty (30) days after Blue Fox's notice. Notwithstanding the foregoing, the City's approval shall not be required for any transfer, sale or assignment to an entity in which Blue Fox or its partners own at least twenty-five percent (25%) of the ownership interest.

11.2. Release Upon Transfer. Upon the transfer, sale or assignment of Blue Fox's rights and interests hereunder pursuant to Paragraph 12.1, above, Blue Fox shall be released from the obligations under this Agreement, with respect to the Property transferred, sold or assigned, arising subsequent to the date of City approval of such transfer, sale or assignment (if required); provided, however, that if any such transferee, purchaser or assignee expressly assumes the obligations of Blue Fox under this Agreement, Blue Fox shall be released with respect to all such assumed obligations. In any event, the transferee, purchaser or assignee shall be subject to all the provisions hereof and shall provide all documents, certifications and other reasonably necessary information to the City prior to City approval.

12. Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property and/or Garage hereunder, or with respect to any owned property: (i) is for the benefit of such properties and is a burden upon such properties, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.
13. Cooperation. In the event of any litigation instituted by a third party or governmental entity or official challenging the validity of any portion of this Agreement and/or the Project Approvals, the City and Blue Fox agree to cooperate in defending such action and neither party shall require payment by the other party of such party's legal costs and expenses (including attorneys' and experts' fees and overhead costs) incurred by such party in defending such action.

14. Notices. All notices or other communications shall be in writing and served personally, by facsimile together with an original mailed the same day, or by First Class mail, postage prepaid, to the parties at the addresses and/or facsimile telephone numbers shown below, or as indicated by written notice of a change of address or facsimile number. All notices personally delivered shall be deemed given as of the date shown on the receipted copy, all notices delivered by facsimile shall be deemed given as of the date of transmission and all notices mailed shall be deemed given five days after mailing.

<table>
<thead>
<tr>
<th>CITY</th>
<th>BLUE FOX</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Santa Rosa</td>
<td>Blue Fox Partners</td>
</tr>
<tr>
<td>100 Santa Rosa Avenue</td>
<td>414 Aviation Boulevard</td>
</tr>
<tr>
<td>Santa Rosa, CA 95402</td>
<td>Santa Rosa, CA 95403-1069</td>
</tr>
<tr>
<td>Attn: City Manager</td>
<td>Attn: Larry L. Wasem</td>
</tr>
<tr>
<td>Fax: 707-543-3030</td>
<td>Fax: 707-578-3140</td>
</tr>
</tbody>
</table>

15. Agreement is Entire Understanding. This Agreement constitutes the entire understanding and agreement of the parties concerning.

16. Time of Essence. Time is of the essence in carrying out the provisions of this Agreement.

17. Incorporation of Recitals and Exhibits. The recitals to this Agreement are incorporated herein and are a part hereof. All the exhibits attached to this Agreement and all exhibits to the exhibits attached to this Agreement are incorporated herein as though set forth in full and shall be considered as a material part of the agreement of the parties hereto.

18. Counterparts. This Agreement may be executed simultaneously or in counterparts. In the latter event, each counterpart shall be deemed an original, but both counterparts together shall constitute the same agreement.

19. Recordation. The City shall record a copy of this Agreement within ten (10) days following the execution by all parties. Upon termination of this Agreement, Blue Fox shall execute and deliver to the City a quitclaim deed to the Garage (the "Garage Quitclaim") and the City shall execute and deliver to Blue Fox a quitclaim deed to the Property (the "Property Quitclaim"). The Garage Quitclaim shall be prepared by the City and may be recorded in the Official Records of Sonoma County at the City's election and cost and the Property Quitclaim shall be prepared by Blue Fox and may be recorded in the Official Records of Sonoma County at the Blue Fox's election and cost.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

"CITY"

CITY OF SANTA ROSA,
a charter city

By: Janet Condron
Mayor

ATTEST:
By: Andrew Auguste
Assistant City Clerk

APPROVED AS TO FORM:
By: René Auguste Chouteau,
City Attorney

"BLUE FOX"

BLUE FOX PARTNERS,
a California general partnership

By: BLUE FOX INVESTORS,
a California limited partnership,
General Partner

By: Larry L. Wasek,
General Partner

By: NORTHERN LIGHTS LTD., LLC,
a California limited liability company,
General Partner

By: Daniel P. Tocchini,
Managing Member

By: Amy A. Tocchini,
Managing Member

On Aug 23, 1999, before me, Sheree Y. Meehan, Notary Public, personally appeared LARRY L. WASEM, DANIEL F. TOCCHINI and AMY A. TOCCHINI, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Notary's Signature

[Signature]
STATE OF CALIFORNIA  

COUNTRY OF SONOMA  

On August 24, 1999, before me Audrey Horner, personally appeared Janet Conroy, CITY OF SANTA ROSA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Audrey Horner
Assistant/Deputy City Clerk

(This area for official City Seal.)
DESCRIPTION OF PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SANTA ROSA, COUNTY OF SONOMA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 59, BLOCK 9, AS SHOWN ON MAP OF "SANTA ROSA, SONOMA COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER, IN BOOK 1 OF MAPS, PAGE 1, SONOMA COUNTY RECORDS; THENCE ALONG THE SOUTH LINE OF SAID LOT 59, SOUTH 60° 30' 42" WEST, 16.62 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUING ALONG THE SOUTH LINE OF LOT 59 AND LOTS 49 AND 48, SOUTH 60° 30' 42" WEST, 152.33 FEET;

THENCE LEAVING SAID SOUTH LINE, NORTH 29° 33' 43" WEST, 190.24 FEET TO A POINT 40.00 FEET FROM THE CENTERLINE OF SECOND STREET;

THENCE PARALLEL TO SAID CENTERLINE, NORTH 60° 30' 19" EAST, 129.09 FEET TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 20 FEET, FROM A TANGENT WHICH BEARS SOUTH 41° 01' 54" EAST, THROUGH A CENTRAL ANGLE OF 108° 39' 07", AN ARC DISTANCE OF 37.93 FEET TO A POINT 40.00 FEET FROM THE ORIGINAL CENTERLINE OF SANTA ROSA AVENUE;

THENCE PARALLEL TO SAID CENTERLINE, SOUTH 29° 38' 06" EAST, 99.30 FEET TO THE BEGINNING OF A TANGENT CURVE;

THENCE NO LONGER PARALLEL TO SAID CENTERLINE, ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 459.00 FEET, THROUGH A CENTRAL ANGLE OF 9° 44' 26", AN ARC DISTANCE OF 78.03 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

SAID PARCEL IS A PORTION OF THE LANDS AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN THE OFFICE OF THE COUNTY RECORDER ON AUGUST 7, 1984, IN BOOK 360 OF MAPS, PAGE 21, SONOMA COUNTY RECORDS.

ASSSESSOR'S PARCEL NO. 010-066-015
DESCRIPTION OF GARAGE PROPERTY

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SANTA ROSA, COUNTY OF SONOMA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHERLY CORNER COMMON TO LOTS 46 AND 47, BLOCK 9, AS SHOWN ON MAP OF "SANTA ROSA, SONOMA COUNTY, CALIFORNIA," FILED IN BOOK 1 OF MAPS AT PAGE 1, SONOMA COUNTY RECORDS;

THENCE ALONG THE SOUTHERLY LINE OF LOTS 47 AND 48, BLOCK 9, NORTH 60°30'42" EAST 71.03 FEET;

THENCE LEAVING SAID LOT LINE NORTH 29°33'43" WEST 190.24 FEET;

THENCE NORTH 60°30'19" EAST 129.09 FEET TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE ON A 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT FROM A TANGENT WHICH BEARS SOUTH 41°01'54" EAST THROUGH A CENTRAL ANGLE OF 108°39'07" AN ARC DISTANCE OF 37.93 FEET TO A POINT 40.00 FEET FROM THE ORIGINAL CENTERLINE OF SANTA ROSA AVENUE;

THENCE PARALLEL TO SAID CENTERLINE NORTH 29°38'06" WEST 23.29 FEET TO THE SOUTH LINE OF SECOND STREET;

THENCE ALONG THE SOUTH LINE OF SECOND STREET SOUTH 60°30'19" WEST 454.68 FEET;

THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS 10.00 FEET THROUGH A CENTRAL ANGLE OF 90°03'59" AN ARC DISTANCE OF 15.72 FEET TO A POINT LYING 35.00 FEET FROM THE CENTERLINE OF "B" STREET;

THENCE PARALLEL TO THE CENTERLINE OF "B" STREET SOUTH 29°33'40" EAST 13.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS 20.00 FEET FROM A TANGENT BEARING SOUTH 89°32'45" EAST THROUGH A CENTRAL ANGLE OF 108°24'43" AN ARC DISTANCE OF 37.84 FEET;

THENCE NORTH 60°30'19" EAST 75.40 FEET;

THENCE SOUTH 29°33'43" EAST 156.86 FEET;

THENCE SOUTH 74°47'39" WEST 85.68 FEET;

THENCE SOUTH 82°34'47" WEST 23.75 FEET;

THENCE SOUTH 29°33'40" EAST 3.95 FEET TO THE BEGINNING OF A TANGENT CURVE;

THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS 25.00 FEET THROUGH A CENTRAL ANGLE OF 84°02'59" AN ARC DISTANCE OF 36.67 FEET TO A POINT OF REVERSE CURVATURE;

THENCE ON A CURVE TO THE RIGHT WITH A RADIUS 836.00 FEET THROUGH A CENTRAL ANGLE OF 3°54'06" AN ARC DISTANCE OF 56.93 FEET;

THENCE NORTH 70°17'26" EAST 158.25 FEET;

THENCE NORTH 60°30'43" EAST 0.28 FEET TO THE POINT OF BEGINNING.
EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO FIRST & SANTA ROSA, A GENERAL PARTNERSHIP, IN THAT CERTAIN QUITCLAIM DEED RECORDED ON SEPTEMBER 29, 1988, UNDER DOCUMENT NO. 88-082409, SONOMA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF THE PARCEL OF LAND CONVEYED BY DEED FROM TRANSAMERICA TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION, TO FIRST & SANTA ROSA, A GENERAL PARTNERSHIP, DATED MAY 7, 1984 AND RECORDED MAY 11, 1984, UNDER DOCUMENT NO. 84-031731, SONOMA COUNTY RECORDS;

THENCE SOUTH 70°02'44" WEST, 75.26 FEET;

THENCE NORTH 89°46'00" WEST, 35.49 FEET TO THE SOUTHERN LINE OF SAID PARCEL;

THENCE ALONG LAST SAID LINE, NORTH 82°34'47" EAST, 23.75 FEET; AND

NORTH 74°47'39" EAST, 85.68 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 010-066-016
RESOLUTION NO. 25438

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING AMENDMENT NUMBER ONE OF THE PARKING AGREEMENT WITH BLUE FOX PARTNERS FOR THE DOWNTOWN MULTIPLEX THEATER COMPLEX

WHEREAS, the City entered into a parking agreement with Blue Fox Partners for the downtown multiplex theater complex on August 17, 1999; and

WHEREAS, the parking agreement provided three hours of free parking to patrons of the theater; and

WHEREAS, due to congestion exiting the garage during the evening hours Blue Fox Partners has requested free parking in the First Street Garage after 7:00 p.m. and all day on Saturdays and Sundays; and

WHEREAS, Blue Fox Partners has agreed to allow the City to sell an additional 39 monthly parking permits in the Garage to make up for lost revenue at the garage.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa approves the proposed Amendment Number One of the parking agreement with Blue Fox Partners for the downtown multiplex theater complex.

IN COUNCIL DULY PASSED this 15th day of October, 2002.

AYES: (4) Mayor Martini; Councilmember Wright, Bender, Condron,

NOES: (3) Councilmember Evans, Rabinowitch, Vas Dupre

ABSENT: (0)

ABSTAIN: (0)

APPROVED:

Mayor

ATTEST:

Assistant City Clerk

APPROVED AS TO FORM:

City Attorney

BlueFoxAgreementModifications
VIA HAND DELIVERY

October 8, 2002

Ms. Caroline L. Fowler
Assistant City Attorney
Office of the City Attorney
City of Santa Rosa
100 Santa Rosa Avenue
Santa Rosa, CA 95402

RE: Agreement dated August 17, 1999 (the “Agreement”) by and between the City of Santa Rosa, a charter city (the “City”) and Blue Fox Partners, a California general partnership (“Blue Fox”), recorded August 30, 1999, under Document No. 1999 109993 in the Official Records of Sonoma County, California

Dear Caroline:

Blue Fox is in receipt of your letter dated September 30, 2002.

Enclosed herein, please find one (1) execution original of the proposed First Amendment to Agreement which has been executed by Blue Fox.

Let me know if you have any questions or comments. My many thanks for all your help.

Sincerely,

Larry L. Wasem

LLW:js
Enclosure
FIRST AMENDMENT TO

AGREEMENT

BETWEEN THE

CITY OF SANTA ROSA,
a charter city

AND

BLUE FOX PARTNERS,
a California general partnership

FOR

ROXY THEATER
85 SANTA ROSA AVENUE
SANTA ROSA, CALIFORNIA
FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT (hereinafter referred to as the “Amendment”) is made and entered in the City of Santa Rosa, California on this _____ day of October, 2002, by and between the City of Santa Rosa, a charter city (hereinafter referred to as the “City”) and Blue Fox Partners, a California general partnership (hereinafter referred to as “Blue Fox”) and amends that certain Agreement by and between the City and Blue Fox dated as of August 17, 1999, and recorded August 30, 1999, under Document No. 1999 109993 in the Official Records of Sonoma County, California. All terms used in this Amendment with their first letter capitalized shall have the same mean ascribed to such terms in the Agreement, unless clearly defined to the contrary herein.

RECITALS

A. Pursuant to the terms of the Agreement and the Project Approvals, Blue Fox developed the Project on the property located 85 Santa Rosa Avenue in downtown Santa Rosa, which property is more particularly described in Exhibit “A” attached to the Agreement and incorporated herein (hereinafter referred to as the “Property”).

B. Pursuant to Paragraph 5.2.3 of the Agreement, the City covenanted and agreed that it would not lease or restrict the availability of the parking spaces at either Garage No. 12, also known as the First Street Parking Garage, situated between Santa Rosa Avenue and “B” Street on the real property more particularly described in Exhibit “B” attached to the Agreement and incorporated herein (hereinafter referred to as the “Garage”) or the eastern parking lot located at the City Hall, 100 Santa Rosa Avenue, Santa Rosa (hereinafter referred to as the “City Hall Parking Lot”) in any way beyond leases or restricted availabilities in place as of the Effective Date of the Agreement. The parties desire to amend this restriction.

C. Pursuant to Paragraph 5.2.1 of the Agreement, Blue Fox agreed to install and maintain a means of validating Project patrons’ parking tickets in a manner mutually acceptable to Blue Fox and the City.

D. To reduce the amount of time it takes to exit the Garage, Blue Box and the City propose implementing free parking in the Garage after 7:00 p.m., Monday through Friday and free all day on Saturday and Parking District observed holidays.

E. On October _____, 2002, the City Council of the City adopted Resolution No. __________ approving this Agreement (hereinafter referred to as the “Effective Date of this Amendment”).

AGREEMENT

1. Incorporation of Recitals. The Recitals to this Amendment are incorporated herein by this reference and constitute a material part hereof. The parties hereby represent and warrant that the Recitals are true and accurate in all material respects.

2. City Obligation to Provide Parking. Paragraph 5.2.1 of the Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:
“5.2.1 City Obligation to Provide Parking. During the term of this Agreement, as long as the Project use continues, the City shall provide up to three (3) hours of free parking in the Garage to each patron of the Project and shall keep the Garage open each day until 1:00 a.m. for this purpose. Blue Fox agrees that the City will be instituting a new validation system. The validation equipment shall be compatible with the City’s cashiering equipment used in the Garage. The City shall provide Blue Fox with three validation machines at no cost. Blue Fox shall be responsible for maintaining the validation equipment in good working order at all times. Additionally, the City shall allow patrons of the Project to park free of charge after 5:00 p.m. on weekdays and all day on Saturdays, Sundays and City-observed holidays at the eastern parking lot located at the City Hall, 100 Santa Rosa Avenue, Santa Rosa (hereinafter referred to as the “City Hall Parking Lot”), to the extent public parking is available. The City agrees not to collect parking fees or require validation of patrons ingressing or egressing the Garage between the hours of 7:00 p.m. and 1:00 a.m. on weekdays and all day on Saturdays, Sundays and Parking District observed holidays.”

3. Operation of the Garage and the City Hall Parking Lot. Paragraph 5.2.3 of the Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

“5.2.3. Operation of the Garage and the City Hall Parking Lot. Subject to the provisions of Paragraph 5.2.2, the City covenants and agrees that it will maintain and operate, in a normal and customary manner, the Garage and City Hall Parking Lot for public parking purposes during the term of this Agreement. If the Garage is damaged or destroyed, the City will use reasonable efforts to repair or replace the Garage without delay. The City further covenants and agrees that it will not lease or restrict the availability of the parking spaces at either the Garage or the City Hall Parking Lot in any way beyond leases or restricted availabilities in place as of the Effective Date plus an additional thirty-nine (39) monthly permits. Permit spaces located on the ground floor of the Garage will be relocated to other floors of the Garage to the extent possible as determined by the City. Handicap parking spaces located on the ground floor of the Garage will be relocated to other floors to the extent possible as determined by the City.”

4. Recordation. The City shall record a copy of this Amendment within ten (10) days following the execution by all parties.

5. Agreement in Full Force and Effect. Except as amended by this Amendment, the Agreement shall remain in full force and effect.

[INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date of this Amendment.

"CITY"

CITY OF SANTA ROSA,
a charter city,

By: [Signature]
Mayor

ATTEST:

By: [Signature]
Assistant City Clerk

APPROVED AS TO FORM:

By: [Signature]
City Attorney

"BLUE FOX"

BLUE FOX PARTNERS,
a California general partnership

By: BLUE FOX INVESTORS,
a California limited partnership,
General Partner

By: [Signature]
Larry L. Wasem,
General Partner

By: NORTHERN LIGHTS LTD., LLC,
a California limited liability company,
General Partner

By: [Signature]
Daniel F. Tocchini,
Managing Member

By: [Signature]
Amy A. Tocchini,
Managing Member

On October 8, 2002, before me, [Signature], Notary Public, personally appeared LARRY L. WASEM, DANIEL F. TOCCHINI and AMY A. TOCCHINI, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Notary's Signature [Signature]
CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
SUBJECT: STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (CALTRANS), AIRSPACE LEASE
STAFF PRESENTER: CHERYL WOODWARD, DEPUTY DIRECTOR - PARKING DEPT OF ECONOMIC DEVELOPMENT AND HOUSING

AGENDA ACTION: MOTION(S)

ISSUE(S)

Shall the Council of the City of Santa Rosa, by motion, approve the State of California, Department of Transportation (Caltrans), Airspace Lease and authorize the Mayor to execute the agreement on behalf of the City?

BACKGROUND

On February 11, 1981, with Caltrans’ consent, the City of Santa Rosa entered into a sublease agreement with Railroad Plaza, Ltd., a California limited partnership, under which the City would operate and maintain 148 parking spaces on the Caltrans’ premises (located between Third and Fifth Streets, under Highway 101) for public parking. A one-time lump sum payment of $250,267.00 was paid as rent from proceeds of the sale of Assessment District Bonds under the Railroad Square Municipal Assessment District to cover the entire term of occupancy, through July 31, 2029. The rent amount was established based on the estimated cost to construct 91 of the 148 parking spaces.

On December 1, 2005, Caltrans served the City with a thirty (30) day written Notice of Lease Suspension to allow Caltrans to use the property as a construction staging area while constructing transportation improvements (i.e. the freeway widening project). As part of this project, Caltrans demolished the two (2) buildings constructed on the premises by Railroad Plaza, Ltd. The construction contractors completed their work and vacated the site in Spring, 2009; however, Caltrans has not yet returned control of the property to the City.

Caltrans has expressed a desire to execute a lease agreement with the City that would replace the existing sublease. The City has advised Caltrans of its desire to convert the areas of the premises where the demolished buildings once stood to provide more public parking spaces. The City and Caltrans have negotiated and reached agreement on terms of a new lease agreement that will allow the City to operate and maintain the entire premises for public parking.
ANALYSIS

1. The City has a right to continue to operate 148 parking spaces on the Caltrans lots within the terms of the existing sublease agreement. The City advised Caltrans of its interest to fully utilize the premises for public parking, including that portion of the property previously occupied by the now demolished buildings. Caltrans’ interest has been to execute a lease agreement with the City that would replace the existing sublease. Representatives from Caltrans were receptive to negotiating with the City to increase the number of parking spaces on the premises provided the City would execute a new lease agreement that will replace the existing sublease.

2. Key provisions of the lease include:

   - **Term** - 23 years 7 months, commencing September 1, 2010 and terminating on March 31, 2034. The term of the lease is the same as was provided in the sublease agreement. The expiration date has been extended to reflect the period of time that the sublease was suspended by Caltrans for the freeway widening project (approximately 4 years).

   - **Rent** - $1,000 per month (first year), increasing by 3% annually thereafter. The monthly rent will compensate Caltrans for the additional parking spaces (approximately 20 automobile spaces and 30 motorcycle/scooter spaces) that will be developed on the square footage previously occupied by the buildings that were demolished. The minimum monthly rent due under the lease would increase by $100 per month for each automobile space that is developed in excess of 168.

   - **Extension** - Option to extend term for one (1) ten (10) year period. A fair market lease rate, commencing on the start of the extension period, will be determined through negotiation by the parties.

   - **Specified Use** - Use of the property is restricted to daily public parking; overnight parking and/or camping is not allowed.

3. The Parking District will develop, maintain, and operate two (2) surface parking lots on the premises that will provide approximately 165 parking stalls, 30 motorcycle and/or scooter spaces, and bicycle parking. Development of the improvements is conditioned on a City Minor Conditional Use Permit and Design Review (approved February 4, 2010); Caltrans’ Encroachment Permit (in process); and City Building Permit (in process).

4. Increases in Railroad Square parking user fees (meter rate and parking permits) are proposed to fund construction of the site improvements and the on-going
operations and maintenance costs of the lots. A public hearing to consider the proposed rate increases is scheduled as a separate item at this same Council meeting.

5. The terms of the lease have been reviewed with the Railroad Square Association Board and approval of the new lease is recommended.

6. The City Attorney’s Office has reviewed the airspace lease and recommends approval.

RECOMMENDATION

It is recommended by the Department of Economic Development and Housing and the City Attorney’s Office that the Council, by motion, approve the State of California, Department of Transportation (Caltrans), Airspace Lease and authorize the Mayor to execute the agreement on behalf of the City.

Author: Cheryl Woodward

Attachments:
- State of California, Department of Transportation, Airspace Lease
(Lease Area No. SON-101-01 & 02)
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
AIRSPACE LEASE

THIS LEASE, dated __________ is by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "Landlord," and the City of Santa Rosa, hereinafter called "Tenant."

WHEREAS, on August 1, 1979, the State of California leased the Premises to Railroad Plaza, Ltd., for a term of 50 years, expiring July 31, 2029;

WHEREAS, the Premises at the time of the 1979 Lease was to be developed by Railroad Plaza, Ltd. into 2 large commercial buildings and 148 parking spaces;

WHEREAS, on February 11, 1981, with Landlord’s consent, Railroad Plaza, Ltd. entered into a Sublease Agreement with the City of Santa Rosa with a term expiring July 31, 2029, wherein the City of Santa Rosa would maintain all 148 parking spaces available on the Premises as public parking for the Railroad Square Municipal Assessment District;

WHEREAS, Railroad Plaza, Ltd. did construct 2 large commercial buildings (referenced on the attached site plan as “Bldg. A” and “Bldg. B” and subdivided internally into multiple retail establishments, attached as “Exhibit B”) and 148 parking spaces on the Premises (also shown on Exhibit B) and the City of Santa Rosa did maintain and operate the parking spaces as a public parking lot;

WHEREAS, Landlord thereafter acquired the leasehold from Railroad Plaza, Ltd., and thereby, also acquiring the City of Santa Rosa parking Sublease;

WHEREAS, the rent for use of the 148 parking spaces was paid by the City of Santa Rosa in a single lump sum to cover the entire term of their occupancy through July 31, 2029;

WHEREAS, Landlord constructed transportation improvements within the Premises and as part of these improvements Landlord demolished the 2 buildings constructed by Railroad Plaza, Ltd.;

WHEREAS, the City of Santa Rosa desires to continue leasing the original area of the Premises containing the original 148 parking spaces, and the City of Santa Rosa now proposes to also convert the areas of the Premises wherein the now demolished buildings once stood into more public parking;

WHEREAS, the City of Santa Rosa plans to reconfigure the access and vehicle flow within the now larger freeway lease area such that the new parking lot will contain 168 striped parking spaces.
NOW, THEREFORE,

1. Landlord and the City of Santa Rosa agree to terminate the terms of their prior Landlord-Tenant relationship as created via operation of law once Landlord acquired the leasehold from Railroad Plaza, Ltd., and thereby, also acquiring the City of Santa Rosa parking Sublease.

2. Landlord and the City of Santa Rosa agree to enter into this new Lease Agreement wherein the City of Santa Rosa will lease the Premises, now absent the original buildings, and use the entire Premises for public parking.

3. Landlord and the City of Santa Rosa agree that the term of this Lease Agreement shall reflect the same length term as was provided for in the 1981 Sublease Agreement, expiring July 31, 2029, provided that the term will be extended for that period of time during which the City of Santa Rosa was unable to use any spaces due to construction and staging by Landlord (approximately 4 years).

4. Landlord and the City of Santa Rosa agree that Tenant has already paid rent in a single lump sum for use of the area within the Premises containing the original 148 parking spaces for the entire term of this Lease expiring July 31, 2029, extended as described above.

5. Landlord and the City of Santa Rosa agree that the net additional parking areas within the Premises created by the demolition of the 2 buildings shall be priced at fair market value and the rent term administered per Article 4 herein.

6. Landlord and the City of Santa Rosa agree that upon full execution of the lease, City shall have right to possess premises as described in Article 2 for construction purposes consistent with provisions of the lease, provided necessary permits have been obtained from Caltrans Permits office.

7. Landlord and the City of Santa Rosa agree that the newly configured parking areas within the Premises, as designed by the City of Santa Rosa, will contain 168 legal striped parking spaces; however, if during construction or at any time thereafter, the City of Santa Rosa increases the capacity of the parking lot within the Premises beyond 168 spaces, the minimum monthly rent in Article 4 shall be increased by $100 per additional space per month.

For and in consideration of the rental and of the covenants and agreements set forth to be kept and performed by the Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises herein described for the term, at the rental and subject to and upon all of the terms, covenants and agreements set forth.
ARTICLE 1. SUMMARY OF LEASE PROVISIONS

Landlord: State of California, Department of Transportation

Tenant: City of Santa Rosa

Premises: SON-101-01, SON-101-02

Lease Term: 23 years 7 months (Article 3)

Minimum Monthly Rent [first year]: $1,000.00 Monthly: (Article 4)

Adjustment to Rent: Annual 3% (Article 4)

Reevaluation: Only during any extension term, prior to start of option period via market evaluation with new rent to begin the first month of the option period. (Article 4)

Security Deposit: $0.00 (Article 19)

Use: Daily Public Parking (no overnight) (Article 5)

Commercial General Liability Insurance: $5,000,000. (Article 10)

Insurance provider: SIR of $500,000

Excess coverage: California Joint Powers Risk Management Authority.

Address for Notices:

To Landlord:

Via US Mail: Department of Transportation
Right of Way Airspace MS 11
P.O. Box 23440
Oakland, CA 94623-0440

In Person: Department of Transportation
Right of Way Airspace MS 11
111 Grand Avenue
Oakland, CA 94612-3771

To Tenant: City of Santa Rosa
Attention: Director of Economic Development and Housing
90 Santa Rosa Avenue
Santa Rosa, CA 95404

References in this Article 1 to the other Articles are for convenience and designate other Articles where references to the particular item contained in the Summary of Lease Provisions appear. Each reference in this Lease to the Summary of Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms provided under the Summary of Lease Provisions. In the event of any conflict between the Summary of Lease Provisions and the balance of the Lease, the latter shall control.
ARTICLE 2. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, that certain Premises known as Airspace Lease Area No. SON-101-01 and SON-101-02, situated in the City of Santa Rosa, County of Sonoma, said land or interest therein being shown on the map or plat marked "Exhibit A," attached hereto and by this reference made a part hereof, consisting of 148 original surface parking spaces plus an additional approximately 25,000 net square feet after the demolition of the buildings and construction of additional freeway support columns, which new larger Premises per Tenant’s parking lot design will accommodate 168 total legal striped parking spaces.

EXCEPTING THEREFROM all those portions of the above-described property occupied by the supports and foundations of the existing structure, and subject to maintenance of safe distances from same.

ALSO EXCEPTING THEREFROM all that portion of said property above a horizontal plane 5 feet below the underside of the superstructure of the existing structure, which plane extends to a line 10 feet, measured horizontally, beyond the outermost protrusion of the superstructure of said existing structure, as existing at the time this Lease is executed by both parties.

This Lease is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record (2) all matters discoverable by physical inspection of the Premises and (3) all matters known to Tenant or of which Tenant has notice.

ARTICLE 3. TERM; EXTENSION

The term of this Lease shall be for 23 Years 7 Months, beginning on September 1, 2010 ("Commencement of Term") and terminating on __March 31, 2034__.

Provided Tenant is not in default beyond any applicable cure period at the time of Tenant’s Extension Notice (defined below) or on the first day of the Extension Term, Tenant shall have the option to extend the term of this Lease for one (1) ten (10) year period (the “Extension Term”), upon the same terms and conditions as contained in this Lease. The monthly rent for the Extension Term shall be determined in accordance with Section 4.4 below. To exercise an extension option, Tenant shall give Landlord written notice at least one hundred eighty (180) days prior to the then-current Expiration Date (“Tenant’s Extension Notice”). Tenant’s Extension Notice shall be effective to extend the Term of the Lease without further documentation except as expressly herein provided.

At any time after Tenant has exercised its option to extend this Lease and the monthly rent for an Extension Term has been finally determined, Landlord and Tenant, upon request of either, will sign and acknowledge a written memorandum evidencing Tenant’s exercise of the option and stating the date to which such Extension Term will extend and the rental rates that will be applicable during the Extension Term.
ARTICLE 4. RENT

4.1 Minimum Monthly Rent

Tenant shall pay to Landlord as minimum monthly rent, without deduction, setoff, prior notice, or demand, the sum of $1,000.00 per month, in advance on the first day of each month, commencing on the Commencement of the Term, as described above. Rent for the second year and beyond shall be determined via sections 4.2 and 4.4 below.

The total Rent per month represents a fair market valuation of the Premises and applied to the new parking areas within the Premises created by the demolition of the 2 buildings as determined by the building footprint site plans attached as “Exhibit C.” If during construction or at any time thereafter, the City of Santa Rosa increases the capacity of the parking lot within the Premises beyond 168 spaces, the minimum monthly rent shall be increased by $100 per additional space per month.

Minimum monthly rent for the first month or portion of it shall be paid on the Commencement of the Term. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the minimum monthly rent per day. The Minimum Monthly Rent for any Extension Term shall be determined in accordance with the provisions of Section 4.4 below.

All rent checks shall have printed on their face the following tenancy reference number 04-SON-101-02-06 and shall be paid to Landlord at the following address:

Via Mail:
Department of Transportation
Attn: Cashier
P.O. Box 168019
Sacramento, CA 95816

Via Hand Delivery:
Department of Transportation OR Department of Transportation
Attn: Cashier OR Right of Way Airspace Development
1820 Alhambra Blvd., 2nd Floor 111 Grand Avenue, MS 11
Sacramento, CA 95816 Oakland, CA 95612

4.2 Adjustment to Rent

The Rent shall be adjusted annually by an amount equal to three percent (3%) of the then current monthly Rent.

4.3 [Section 4.3 has been intentionally deleted]

4.4 Reevaluation of Minimum Monthly Rent

Upon the exercise by Tenant to extend the term of this Lease beyond the original term set forth herein, it is the intent of Landlord and Tenant to determine a fair market lease rate during
the Extension Term and apply that fair market lease rate to the entire Premises area to determine the new reevaluated minimum monthly rent. Promptly upon receipt of Tenant’s Extension Notice as set forth in Article 3 above, a fair market lease rate may be determined in the manner set forth below and shall be established as the monthly rent commencing on the start of the Extension Term or as soon thereafter upon the running of the notice period as provided for below.

Any monthly rent established by this section shall include an appropriate annual escalator, which amount shall be negotiated per the same provisions governing the rent reevaluation.

The term "fair market lease rate" means the highest lease rate estimated in terms of money which the leased premises, excluding improvements constructed by Tenant thereon, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, leasing with full knowledge of the purpose and uses to which the leased premises is being put and the restrictions on use contained in Section 5.1 of this lease.

The parties intend to establish the fair market lease rate through negotiation. If Landlord and Tenant have not mutually agreed upon the fair market lease rate for the leased premises within ninety (90) days from the date of the Tenant’s Extension Notice, then Landlord shall unilaterally set the fair market lease rate based on data collected from a rent survey of reasonably comparable Caltrans and non-Caltrans owned properties and shall use the highest per square foot rate paid by a tenant for a comparable property with a comparable use within approximately a two mile radius of the subject freeway lease area. Landlord shall also set the escalator based on the San Francisco Bay Area CPI index. Once the new fair market lease rate and escalator are set as the new reevaluated monthly rent, Landlord shall provide written notice to Tenant of such amount.

If Landlord unilaterally sets the fair market lease rate, Tenant shall have the option to accept the new rate or within thirty (30) days of being notified in writing of the new rate, Tenant may object to the new rate and elect to terminate this Lease effective upon the natural expiration of the Extension Term with no penalty. Such termination notice must be provided by Tenant to Landlord in writing. Tenant’s election to terminate the Lease shall place the Tenant in the same theoretical position as if the entire maximum term of this Lease had run its course and the lease term has expired. Tenant shall have no further rights other than those expressed within this Lease agreement relevant to termination. In the case that tenant does not provide notice of intent to terminate, and Tenant fails to pay the new fair market lease rate, Landlord shall treat Tenant’s failure to pay the new lease rate as a material breach. [twenty percent increase penalty intentionally deleted].

4.5 Landlord's Compensation upon Transfer of Tenant's Leasehold

(a) Article 17 generally prohibits any assignments, transfers, subleases, and encumbrances. In the event that Landlord does specifically approve a voluntary assignment, transfer, sublease or other encumbrance of any of Tenant's rights in the leased premises, subject to Article 17, Tenant shall pay to Landlord compensation in connection with the transaction in accordance with the following schedule:

(i) Tenant shall pay to Landlord an amount equal to fifty percent (50%) of the “added value” in connection with any assignment, transfer, or sublease which is otherwise required to be submitted to Landlord for approval under the terms of this Lease.
(ii) [Intentionally deleted].

(b) “Added value” as used in this Section 4.5, means any consideration received by Tenant, whether lump sum or in installments [e.g. rent payments], resulting from the assignment or transfer or sublease of any portion of Tenant's interest in the leased premises above and beyond any amounts being paid to Landlord by Tenant for the use of the Premises. The leased premises shall be considered to have a zero value. Therefore, any compensation received by Tenant from the assignment or transfer of any portion of Tenant's interest in the leased premises shall be considered an “added value.” In the case that no “added value” is received by Tenant, then no compensation shall be required to Landlord except for the fees agreed to in Section 17.8.

(c) Payment by Tenant of the amount of compensation required under this Section 4.5 is a condition to Landlord's giving its consent to any assignment, transfer, sublease or encumbrance which is subject to Landlord's approval under Article 17, and Landlord may withhold its consent to any such assignment, transfer, sublease or encumbrance until this compensation has been paid. In addition, before Landlord gives its consent to any such transaction, Tenant shall deliver to the assignee, transferee, or subtenant a written summary of all sums due and owing to Landlord under this section and shall deliver to Landlord a written acknowledgement by the assignee, transferee, or subtenant that said person affirms that the sums are due and owing to Landlord and that said person accepts responsibility for ensuring that such sums are paid directly to Landlord.

(d) Payment by Tenant of the amount of compensation required under this Section 4.5 presumes that Tenant will be profiting by either subleasing the premises with Landlord’s permission for a higher per square foot rental rate than the rate paid by Tenant to Landlord, or that Tenant will be assigning the lease to a third party with Landlord’s permission and that the Tenant will be receiving an “added value” payment from the assignee in return for obtaining the leased premises. If the assignee becomes Landlord’s successor tenant by merely assuming the lease agreement with no bonus to the Tenant, then there shall be no compensation required under this section.

4.6 Reevaluation on Change in Use

Landlord expressly reserves the right to establish a new minimum monthly rent as a condition to Landlord's approval of any use of the leased premises not specifically permitted by Section 5.1 and as a condition to any amendment to or changes in the uses permitted by that section.

4.7 Reevaluation on Transfer

Although Article 17 generally prohibits any assignments, transfers, subleases, and encumbrances, Landlord expressly reserves the right to establish a new minimum monthly rent in the manner provided in Section 4.4 as a condition to Landlord's specific approval of any transfer, or assignment of this Lease or any subletting of all or any portion of the leased premises. Notwithstanding the foregoing, Landlord shall not have the right to require a reevaluation under this section with respect to any transfer made pursuant to the exercise of any foreclosure remedies by a Lender, nor shall any prior reevaluation made pursuant to this section, including any accompanying extension of future reevaluation dates under Section 4.4 be of any effect whatsoever with respect to such Lender or the purchaser of this Lease pursuant to the exercise of any such foreclosure remedies.

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ARTICLE 5. USE

5.1 Specified Use

City of Santa Rosa public parking lot for daily parking.

If at any time during the term of this lease Tenant converts use to any use other than as specified above, this shall be considered a default as defined in Section 16.1 and Landlord shall be afforded its option of remedies per Section 16.2.

5.2 Condition of Premises

Tenant and Landlord hereby agree that upon completion of Landlord’s use of the Premises for construction and construction staging, Landlord shall clear the Premises of all equipment and debris prior to Tenant’s taking possession of same. Tenant hereby agrees to construct necessary improvements to allow for Tenant’s use of the Premises hereunder during the initial term of this Lease. Subject to the foregoing, Tenant hereby accepts the Premises in its AS-IS condition, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Tenant’s business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises except as provided in this Lease.

Except as may be otherwise expressly provided in this Lease, the taking of possession of the Premises by Tenant shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and Tenant agrees to accept the Premises in its then existing condition “as is”, and that the Landlord shall not be obligated to make any improvements or modifications thereto except to the extent that may otherwise be expressly provided in this Lease.

Tenant represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises existing prior to the execution of this Lease (including investigation of the surface, subsurface and groundwater for contamination and hazardous materials) and is satisfied that the Premises will safely support the type of improvements, if any, to be constructed and maintained by Tenant upon the Premises, that the Premises is otherwise fully fit physically and lawfully for the uses required and permitted by this Lease and that Tenant accepts all risks associated therewith.

Tenant acknowledges that (1) Landlord has informed Tenant prior to the commencement of the term of this Lease that the Landlord does not know nor has reasonable cause to believe that any release of any hazardous material has come to be located on or beneath the Premises; (2) prior to the commencement of the term of this Lease, the Landlord has made available to Tenant, for review and inspection, records in the possession or control of the Landlord which might reflect the potential existence of hazardous materials on or beneath the Premises; (3) Landlord has provided Tenant access to the Premises for a reasonable time and upon reasonable terms and conditions for purposes of providing to Tenant the opportunity to investigate, sample and
analyze the soil and groundwater on the Premises for the presence of hazardous materials; (4) by signing this Lease Tenant represents to Landlord that, except as otherwise may be stated on Exhibit “D” attached hereto and by this reference incorporated herein, Tenant does not know nor has reasonable cause to believe that any release of hazardous material has come to be located on or beneath the Premises and (5) with respect to any hazardous material which Tenant knows or has reasonable cause to believe has come or will come to be located on or beneath the Premises, Tenant has listed the hazardous material on attached Exhibit “D” and agrees promptly to commence and complete the removal of or other appropriate remedial action regarding the hazardous material at no cost or expense to Landlord and in full compliance with all applicable laws, regulations, permits, approvals and authorizations. The phrase “hazardous material,” as used herein, has the same meaning as that phrase has in Section 5.6 of this Lease.

Tenant agrees that, except as otherwise expressly provided in this Lease, Tenant is solely responsible without any cost or expense to the Landlord to take all actions necessary, off as well as on the Premises to improve and continuously use the Premises as required by this Lease and in compliance with all applicable laws and regulations.

5.3 Compliance with Law

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, or with the requirements of the State Fire Marshal or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste upon the Premises.

5.4 Petroleum Products

Tenant shall not install facilities for, nor operate on the Premises, a gasoline or petroleum supply station. Tenant shall not permit on the Premises any vehicles used or designed for the transportation or storage of gasoline or petroleum products. Tenant shall also not permit on the Premises any bulk storage of gasoline or petroleum products.

5.5 Explosives and Flammable Materials

The Premises shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials, explosives or other materials or other purposes deemed by Landlord to be a potential fire or other hazard to the transportation facility. The operation and maintenance of the Premises shall be subject to the reasonable regulations of Landlord, which shall be communicated in writing to Tenant, so as to protect against fire or other hazard impairing the use, safety and appearance of the transportation facility. The
occupancy and use of the Premises shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the surface of the traveled way of the transportation facility.

5.6 Hazardous Materials

Tenant shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. section 1251, et seq.), Resource Conservation and Recovery Act (42 U.S.C. section 6901, et seq.), Safe Drinking Water Act (42 U.S.C. section 300f, et seq.), Toxic Substances Control Act (15 U.S.C. section 2601, et seq.), Clean Air Act (42 U.S.C. section 7401, et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601, et seq.), Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code section 25249.5, et seq.), other applicable provisions of the California Health and Safety Code (section 25100, et seq., and section 39000, et seq.), California Water Code (section 13000, et seq.), and other comparable state laws, regulations and local ordinances relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any “hazardous substances” under any such laws, ordinances or regulations (collectively “Hazardous Materials Laws”). As used in the provisions of this Lease, “hazardous materials” include any “hazardous substance” as that term is defined in section 25316 of the California Health and Safety Code and any other material or substance listed or regulated by any Hazardous Materials Law or posing a hazard to health or the environment. Except as otherwise expressly permitted in this Lease, Tenant shall not use, create, store or allow any hazardous materials on the premises. Fuel and other substances stored in a motor vehicle for the exclusive use in such vehicle is excepted.

In no case shall Tenant cause or allow the deposit or disposal of any hazardous materials on the Premises. Landlord, or its agents or contractors, shall at all times have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. To the extent that this inspection may include taking samples of substances and materials present for testing, and/or the testing of soils or underground tanks on the Premises, Landlord shall provide not less than ten (10) days prior written notice to Tenant and shall use its best efforts not to disrupt or interfere with Tenant’s use and enjoyment of the Premises.

In the event Tenant breaches any of the provisions of this Section, this Lease may be terminated immediately by Landlord and be of no further force or effect. It is the intent of the parties hereto that Tenant shall be responsible for and bear the entire cost of removal and disposal of hazardous materials introduced to the Premises during Tenant’s period of use and possession as Tenant of the Premises. Tenant shall also be responsible for any clean-up and decontamination on or off the Premises necessitated by the introduction of such hazardous materials on the Premises. Tenant shall not be responsible for or bear the cost of removal or disposal of hazardous materials introduced to the Premises by any party other than Tenant during any period prior to commencement of Tenant’s period of use and possession of the Premises as Tenant.
Tenant shall further hold Landlord, and its officers and employees, harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous materials on the Premises during Tenant's period of use and possession of the Premises.

5.7 Signs

Tenant shall not construct, erect, maintain or permit any sign, banner or flag upon the Premises without the prior written approval of Landlord, which may be obtained through Landlord’s encroachment permit process. Landlord hereby agrees that it will not withhold consent to any reasonable request by Tenant to locate public parking signage on the Premises. Tenant shall not place, construct or maintain upon the Premises any advertising media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs or other similar visual or audio media. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Landlord may remove any unapproved sign, banner or flag existing on the Premises, following three (3) days written notice to Tenant requesting removal of same, and Tenant shall be liable to and shall reimburse Landlord for the cost of such removal.

5.8 Landlord's Rules and Regulations

Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate for the protection of the transportation facility and the safety of the traveling public, a copy of which shall be provided to Tenant in writing prior to the execution of this Lease. Landlord reserves the right from time to time to make reasonable modifications to said rules and regulations. The additions and modifications to those rules and regulations shall be binding upon Tenant within thirty (30) days following delivery of a copy of them to Tenant.

5.9 Wrecked Vehicles

Tenant shall not park or store wrecked or inoperable vehicles of any kind on the Premises.

5.10 Vending

No vending of any kind or character shall be conducted, permitted or allowed upon the Premises.

5.11 Water Pollution Control

Tenant shall conform fully to the requirements of the Caltrans statewide NPDES Storm Water Permit, Order No. 99-06-DWQ, NPDES No. CAS000003, adopted by the State Water Resources Control Board on July 15, 1999. This permit regulates storm water and non-storm water discharges associated with activities within Caltrans right of way. Tenant shall develop, implement and maintain a Facility Pollution Prevention Plan (FPPP), describing the pollution
prevention practices associated with activities on facilities located within Caltrans right of way. Tenant shall comply with the statewide Permit by incorporating storm water management into its operational activities. The FPPP will accomplish compliance by implementing Best Management Practices (BMPs) described in the Caltrans Statewide Storm Water Management Plan (SWMP). Copies of the Permit and the Department of Transportation SWMP may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 98518, Telephone: 916-445-3520. Copies of the Permit and the SWMP are also available for review upon request.

Tenant shall not allow the unauthorized discharge of storm water runoff to private or public water drainage systems.

Tenant must comply with State and Federal storm water pollution control standards, including those of the State Water Resources Control Board, and the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under jurisdiction of the above agencies.

In order to minimize the discharge of pollutants, spilled, leaked fluids, and any other wastewater into the storm water drainage system, Tenant shall not allow vehicle or equipment washing, fueling, maintenance and repair on the Premises.

In order to minimize the discharge of pollutants to storm water resulting from contact with hazardous material, Tenant shall not allow the storage or stockpile of hazardous material on the Premises.

Landlord, or its agents or contractors, shall at all time have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. To the extent such inspection may include taking samples of substances and materials present for testing, and/or the testing of storm sewer systems or watercourses on the Premises, Landlord shall provide not less than ten (10) days prior written notice to Tenant and shall use its best efforts not to disrupt or interfere with Tenant’s use and enjoyment of the Premises.

ARTICLE 6. COMMENCEMENT AND COMPLETION OF INITIAL CONSTRUCTION

6.1 Commencement of Construction

Tenant shall commence construction of the improvements described in Tenant's final construction plans and detailed specifications within 365 calendar days of the date of taking possession of the Premises. For the purposes of this Article, construction shall be deemed to have commenced upon the issuance by Landlord of an encroachment permit under Section 7.1. In the event construction is not commenced within the time set forth herein, this Lease may be terminated by Landlord and thereafter be of no further force and effect.

6.2 Completion of Construction and Occupancy of Improvements

Construction of the improvements shall be completed consistent with the approved construction plans within 365 calendar days after the commencement of construction. Tenant shall not occupy or use any of the improvements until Tenant has received final building approval and a Certificate of Occupancy from the appropriate local agency and Landlord has
issued to Tenant an executed Encroachment Permit Completion Notice. In the event Tenant violates any of the provisions of this section, unless such delay or violation is due to any delay or failure to respond by Landlord, including but not limited to any delay in review for or issuance of an Encroachment Permit or executed Encroachment Permit Completion Notice, this Lease may be terminated by Landlord and be of no further force and effect.

ARTICLE 7. REQUIREMENTS FOR CONSTRUCTION OR ALTERATION OF IMPROVEMENTS

7.1 Encroachment Permit

Tenant, prior to construction or alteration of any improvements on or of the leased premises, shall obtain an executed Encroachment Permit from Landlord.

Issuance by Landlord of an Encroachment Permit shall be contingent upon Tenant's providing the following:

(a) Final construction plans and detailed specifications. All such plans and specifications submitted by Tenant to Landlord shall be subject to the review and approval of Landlord, the State Fire Marshal, and if on an interstate freeway the Federal Highway Administration.

(b) [subsection b intentionally deleted—public entities need not post a bond, but will provide copies of bonds posted by any contractor doing work on the Premises.]

(c) Liability insurance as provided in Section 10.2.

(d) A copy of a building permit issued by the appropriate local jurisdiction.

(e) A copy of Tenant's contract with the general contractor actually performing construction.

(f) Note and Deed of Trust, if any.

(g) Loan escrow instructions, if any.

(h) Final landscaping and irrigation plans and detailed specifications including a maintenance plan for litter removal, watering, fertilization and replacement of landscaping.

(i) Evidence of compliance with the applicable provisions of all federal, state and local environmental statutes, laws, regulations and ordinances.

Tenant agrees to diligently apply for and meet all requirements for issuance of Encroachment Permit and Landlord agrees to not unreasonably withhold issuance of said Encroachment Permit. Tenant is obligated to deliver to Landlord the documents described in subdivisions (a) through (i) of this section regardless of whether an Encroachment Permit may have been issued inadvertently before these documents have been provided to Landlord.

7.2 Soil Testing

At Tenant's option, and sole cost and expense, Tenant may secure soil compaction tests and other tests as necessary for construction of Tenant's improvements and for the support of the improvements on the underlying land or structures thereon. Tenant shall notify Landlord of the location of all test borings, which shall not interfere in any manner with the operation of the facility by Landlord. The Premises has been and shall continue to be used as a public parking lot. Tenant hereby agrees that Landlord is making no representation regarding existing soil compaction or structural capability of the land to support the intended use. Tenant shall save
Landlord harmless of and from any loss or damage caused by inadequate soil compaction or other structural capacity for Tenant's proposed improvements.

7.3 Standard of Construction

Tenant agrees that any improvements or construction upon the premises shall: (a) be consistent with all fire safety requirements, (b) be subject to the approval of Landlord, and (c) in every respect comply with the laws, ordinances and regulations, federal, state, municipal or otherwise, that may govern construction of the same. Tenant shall not construct or place on the leased premises any improvements which impair Landlord's ability to maintain, operate, use, repair or improve any part of the transportation facility situated on the leased premises or on adjoining real property. Tenant shall save Landlord harmless of and from any loss or damage caused by reason of the construction of said improvements.

7.4 "As-Built" Plans

Within ninety (90) days after completion of construction of improvements or alterations, Tenant shall furnish Landlord, at Tenant's expense, one set of "As-Built" plans, according to a scale and size designated by Landlord, showing said improvements as constructed in detail, including the location of underground and aboveground utility lines.

7.5 Termination if Required Construction Proves Economically Infeasible

Articles 6 and 7 of this lease agreement require Tenant to submit plans for any construction activities conducted on the premises and to obtain an Encroachment Permit prior to beginning any construction related activities on the premises. If Landlord’s Permits office reviews Tenant’s plans, and thereafter requires Tenant to construct certain improvements or to employ certain construction methods as a condition of the Encroachment Permit, Tenant shall have the option to terminate this lease agreement if the required improvements or construction methods prove economically infeasible to Tenant.

ARTICLE 8. OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND PERSONAL PROPERTY

8.1 Ownership of Improvements

All improvements constructed and placed on the Premises pursuant to Article 7 shall, at the expiration or termination of this Lease, vest in Landlord, excepting any parking meters and related equipment as well as public parking signage installed by Tenant, which shall remain the property of Tenant. Except as provided in the foregoing sentence or otherwise in this Lease, Tenant shall not remove any of these improvements from the Premises nor waste, destroy or modify them in any way. Tenant shall deliver these improvements to Landlord in good condition and repair, reasonable wear and tear excepted, without compensation to Tenant, any subtenant or third party, free and clear of all claims to or against them by Tenant, any subtenant or third party, and Tenant shall defend and hold Landlord harmless from all liability arising from such claims or from the exercise by Landlord of its rights under this section. Landlord and
Tenant covenant for themselves and all persons claiming under or through them that the improvements are real property.

8.2 Removal of Personal Property and Ownership at Termination

Any signs or other appurtenances, including specifically parking meters of any kind and related parking meter equipment, placed on the Premises by Tenant under this Lease are the personal property of Tenant. At the expiration or earlier termination of this Lease, Tenant shall remove all personal property placed on the Premises and shall restore the Premises to its previous condition, except surfacing, wheel rails and column guards, at Tenant's sole expense. Any personal property not removed by Tenant after thirty (30) days from Landlord's sending written notice to Tenant may be removed by Landlord. Tenant shall be liable to Landlord for all costs incurred by Landlord in effecting the removal of personal property and restoring the Premises. Landlord may, in its sole discretion, declare all personal property not removed by Tenant to be abandoned by Tenant and this property shall, without compensation to Tenant, become Landlord's property, free and clear of all claims to or against it by Tenant or any other person.

8.3 Removal of Improvements at Termination

Upon the expiration or earlier termination of this Lease, Landlord may, upon written notice, require Tenant to remove, at the sole cost and expense of Tenant, and not later than ninety (90) days after the expiration or earlier termination of this Lease, all structures, buildings and improvements of any kind whatsoever placed or maintained on the premises, whether below, on or above the ground by Tenant or others, including, but not limited to, foundations, structures, buildings, utility lines, switchboards, transformer vaults and all other service facilities constructed or installed upon the premises; and Tenant shall, upon the expiration or earlier termination of this Lease, immediately restore, and quit and peacefully surrender possession of the premises to Landlord in at least as good and usable condition, acceptable to Landlord, as the same was in at the time of first occupation thereof by Tenant or others, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills or humps. Should Tenant fail to so remove said structures, buildings and improvements and restore the premises, Landlord may sell, remove or demolish the same, and in the event of said sale, removal or demolition, Tenant shall reimburse Landlord for any cost or expense thereof in excess of any consideration received by Landlord as a result of such sale, removal or demolition.

ARTICLE 9. MAINTENANCE AND REPAIRS

9.1 Tenant's Obligations

Tenant, at its own cost and expense, shall maintain the leased premises, improvements and landscaping thereon, including fences, and guardrails heretofore, or hereafter erected, in first class order, repair and condition and in compliance with all requirements of law. Tenant shall also, at its own cost and expense, install or provide for the installation of all required lighting on the leased premises and shall maintain the lighting in first class order, repair and condition.
Landlord and Tenant recognize that because of the length of the term of this Lease it may
be necessary for Tenant to perform certain substantial maintenance, repair, rehabilitation or
reconstruction (hereinafter collectively referred to as "repair" or "repairs") of the improvements
in order to ensure that the premises are kept in first-class order, repair and condition.

"First-class order, repair and condition", as used herein, shall mean the maintenance, repair, renovation or replacement of buildings, equipment, furniture, fixtures, landscaping and appurtenances necessary to keep the premises in efficient and attractive condition, given the nature and age of the improvements at any time during the term of this Lease. Landlord and Tenant do not intend by the immediately preceding sentence that a property item is not first-class merely because of ordinary and reasonable wear and tear that does not materially and substantially reduce the attractiveness and utility of the item given the nature and age of the improvements at any time during the term of this Lease.

Tenant hereby expressly waives the right to make repairs at the expense of Landlord and the benefit of the provisions of Sections 1941 and 1942 of the California Civil Code or any successor thereto.

Tenant shall take all steps necessary to protect effectively the fences, guardrails, and the piers and columns, if any, of the structure from damage incident to Tenant's use of said premises and improvements, all without expense to Landlord. Tenant shall, at its own cost and expense, repair in accordance with Landlord's standards any damage to any property owned by Landlord, including, but not limited to, all fences, guardrails, piers and columns, caused by Tenant, subtenants, invitees or other third parties. At Tenant's request, Landlord will repair the damage to its property and Tenant agrees to reimburse Landlord promptly after demand for the amount Landlord has reasonably expended to complete the repair work.

Tenant shall designate in writing to Landlord a representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

9.2 Landlord's Rights

In the event Tenant fails to perform Tenant's obligations under this Article, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If within thirty (30) days after Landlord sends written notice to repair, Tenant fails to do the work and diligently proceed in good faith to prosecute it to completion, Landlord shall have the right, but not the obligation, to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand plus interest as provided in Section 19.11 from the date of completion of such work to date of payment. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work, except that Landlord shall be liable for any damage or injury to any third party during the performance of any such work, if the damage or injury is solely due to Landlord’s negligence.

ARTICLE 10. INSURANCE – DAMAGE -REPAIRS

10.1 Exemption of Landlord from Liability
This Lease is made upon the express condition that Landlord is to be free from all liability and claims for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes resulting from the operation or use of the Premises by Tenant, its agents, customers or business invitees, excepting only that resulting from the sole, active negligence of Landlord, its employees, agents or officers. Tenant hereby covenants and agrees to indemnify and save harmless Landlord from all liability, loss, cost and obligation on account of any such injuries or losses.

10.2 Commercial General Liability Insurance

Tenant shall at its own cost and expense procure and keep in force during the term of this Lease comprehensive bodily injury liability and property damage liability insurance adequate to protect Landlord, its officers, agents and employees, against any liability to the public resulting from injury or death of any person or damage to property in connection with the area, operation or condition of the Premises, including any and all liability of Landlord for damage to vehicles parked on the Premises. Such insurance shall be in an amount of not less than $5,000,000 per occurrence for bodily injury and property damage. The limits of such insurance shall not limit the liability of Tenant. All insurance required hereunder shall be with companies to be approved by Landlord. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. Said policies shall name the State as an additional insured and shall insure against the contingent liabilities, if any, of Landlord and the officers, agents, and employees of Landlord and shall obligate the insurance carriers to notify Landlord, in writing, not less than thirty (30) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the State of California, its officers, agents, or employees. Tenant shall furnish to Landlord a Certificate of Insurance acceptable to Landlord within not more than ten (10) days after execution thereof. Landlord shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required. Landlord shall notify Tenant in writing of changes in the insurance requirements; and if Tenant does not deposit copies of acceptable insurance policies with Landlord incorporating such changes within sixty (60) days of receipt of such notice, this Lease may be terminated, at Landlord's option, without further notice to Tenant, and be of no further force and effect.

10.3 Fire and Extended Coverage Insurance

[This Section intentionally deleted—No structures on Premises]

10.4 Business Automobile Liability Insurance
Tenant shall obtain and keep in effect at all times during the term of this Lease business automobile liability insurance in an amount not less than $1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed $10,000 each occurrence.

10.5 Garage Keeper's Legal Liability Insurance

[This Section intentionally deleted—Use is not an auto repair/service business]

10.5 Workers' Compensation Insurance

Tenant shall obtain and keep in effect at all times during the term of this lease workers' compensation insurance, including employers' liability, in an amount not less than $1,000,000 for each accident, covering all employees employed in or about the Premises to provide statutory benefits as required by the laws of the State of California. Said policy shall be endorsed to provide that the insurer waives all rights of subrogation against Landlord.

10.6 Failure to Procure and Maintain Insurance

If Tenant fails to procure or maintain the insurance required by this Article in full force and effect, this Lease may be terminated immediately by Landlord and be of no further force or effect. In addition, if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the Premises and the improvements erected thereon and shall prevent members of the public from gaining access to the Premises during any period in which such insurance policies are not in full force and effect.

10.7 Waiver of Subrogation

Tenant hereby waives any and all rights of recovery against Landlord, or against the officers, employees, agents and representatives of Landlord, for loss of or damage to Tenant or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damages. Tenant shall give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in the Lease.

10.8 Duty to Repair or Restore

If during the term of this Lease any building or improvement on, in or appurtenant to the land at the commencement of the term or thereafter erected thereon shall be destroyed or damaged in whole or in part by fire or other cause, or shall be declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within ten (10) days of the occurrence of such event, give to Landlord immediate notice thereof, and Tenant shall within sixty (60) days commence, and diligently pursue to completion, the repair, replacement or reconstruction of the same, at least to the extent of the value and as
nearly as possible to the character of the buildings and improvements existing immediately prior to the occurrence of such event; and Landlord shall in no event be called upon to repair, replace or rebuild any such buildings or improvements. All buildings and improvements shall be repaired, replaced or reconstructed in accordance with the standards and requirements contained in Article 7. Tenant shall continue to pay rent hereunder during the period said improvements shall be damaged or destroyed.

10.9 Relief for Substantial Loss of Area and Damage During Final Years of Term

Tenant is relieved of the obligation to, but may, repair, restore, or reconstruct improvements damaged or destroyed during the final five (5) years of the term if (a) more than thirty-five percent (35%) of the improvements constructed on the premises are damaged or destroyed; (b) the damage or destruction is uninsured and is not required to be insured under any provision of this Lease; and (c) Tenant complies with all the following conditions:

(1) Gives Landlord notice of damage or destruction promptly but not later than ten (10) days after the event, detailing facts that qualify the casualty under this provision.

(2) Is not in default under any provision or condition of this Lease.

(3) Within ten (10) days after giving the above notice, effectively transfers to Landlord all right, title and interest in the security deposit.

(4) Continues to make all payments when due as required by the provisions of this Lease, applying the security deposit to payments latest in time under the Lease, provided that Landlord may, by notice given at any time after Tenant's notice of the damage or destruction, elect to terminate the Lease at a date stated in Landlord's notice and to forgive all rent for the period following that date.

(5) Pays in full, or has paid in full, any outstanding indebtedness incurred by Tenant and secured by an encumbrance or encumbrances on the leasehold.

(6) Delivers possession of the premises to Landlord and quitclaims all right, title and interest in the land and improvements promptly upon ceasing to do business on the premises.

(7) Causes to be discharged all liens and encumbrances resulting from any act or omission of Tenant.

(8) Removes or deposits the cost of removing all fixtures and improvements if Landlord so elects under the provisions of Article 8.

Tenant shall also be relieved of the obligations to repair, restore or reconstruct improvements because of an insured loss if Tenant complies with all the above provisions and also assigns all net proceeds from the insurance settlement to Landlord. "Net proceeds" shall mean the full amount of the insurance settlement less any amount paid to beneficiaries under deeds of trusts approved by Landlord pursuant to Section 19.9. Landlord and Tenant hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and waive the provisions of any other statutes which relate to the termination of a lease when the leased property is destroyed. Landlord and Tenant agree that such an event shall be governed by the terms of this Lease.

ARTICLE 11. PAYMENT OF TAXES

Tenant agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all taxes, assessments, impositions, levies and charges of every
kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time or from time to time during the term of this Lease, by or according to any law or governmental, legal, political, or other authority whatsoever, directly or indirectly, be taxed, levied, charged, assessed or imposed upon or against, or which shall be or may be or become a lien upon the Premises or any buildings, improvements or structures at any time located thereon, or any estate, right, title or interest of Tenant in and to the Premises, buildings, improvements or structures. Specifically, and without placing any limitation on Tenant's obligations under the immediately preceding sentence, Tenant shall pay when due, before delinquency, any and all possessory interest taxes, parking taxes, workers’ compensation, taxes payable to the California Franchise Tax Board, personal property taxes on fixtures, equipment and facilities owned by Tenant, whether or not the same have become so fixed to the land as to comprise a part of the real estate.

Tenant understands that any possessory interest of Tenant created in the Premises by this Lease may be subject to property taxation and that Tenant may be liable for payment of any such tax levied on such interest. Any obligation of Tenant under this Article, including possessory interest tax that the city or county may impose upon Tenant's interest herein, shall not reduce any rent due Landlord hereunder and any such obligation shall become the liability of and be paid by Tenant. In the event Tenant defaults in the payment of any of the obligations set forth in this Article, this Lease may be terminated immediately by Landlord and be of no further force or effect.

ARTICLE 12. RIGHT OF ENTRY

12.1 Inspection, Maintenance, Construction and Operation of Freeway Structures

Landlord, through its agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the premises and any building or improvements situated thereon at any and all reasonable times during the term of this Lease for the purpose of inspecting the same without interference or hindrance by Tenant, its agents or representatives.

Landlord further reserves the right of entry for the purpose of inspecting the premises, or the doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that Landlord reserves the further right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures, in which event the term of this Lease shall be extended for a period equal to the emergency occupancy by Landlord, and during said period Tenant shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. Landlord further reserves the right of entry by any authorized officer, engineer, employee, contractor or agent of the Landlord for the purpose of performing any maintenance activities upon the property which Tenant has failed to perform. All agreements which Tenant enters into for the sublease or use of all or any part of the leased premises shall contain a provision, approved by Landlord, which describes Landlord's right of entry as set forth in this Article.

12.2 Future Transportation Projects
(a) **Landlord's Right to Possession of Premises.**
Tenant understands and acknowledges that Landlord may, during the Term of this Lease, construct an "Approved and Funded Transportation Project", which may require the temporary or permanent use of all or a portion of the premises. An "Approved and Funded Transportation Project" is defined as a proposed transportation facility to be constructed by Landlord where the funds necessary to construct the facility are available to Landlord (regardless of the source of the funds) and where the transportation facility can reasonably be expected to be constructed within a reasonable period of time following termination of this Lease as provided in this Section 12.2.

In the event Landlord determines that the premises or any portion thereof will be affected by an "Approved and Funded Transportation Project", Landlord shall immediately notify Tenant of its intent to take possession of all or a portion of the premises and shall provide Tenant with at least ninety (90) days written notice within which to vacate the required area. Landlord's notice to Tenant shall indicate the area of the premises to be taken. If possession is to be a temporary use of all or part of the premises, Landlord shall additionally state in such notice to Tenant Landlord's reasonable estimate of the period of time of such temporary use by Landlord. Upon the date Landlord is entitled to possession of the premises, or portion thereof, Tenant shall peaceably surrender possession of the premises, or portion thereof, and comply with the restriction as stated in the notice. The failure of Tenant to vacate the required area of the premises shall constitute a material default and breach of this Lease entitling Landlord to exercise its rights and remedies.

(b) **Reduction of Monthly Rent if Lease Remains Effective**
For the period during which Landlord has taken possession of the premises under this section, and if this Lease remains effective, Tenant shall be entitled to receive a reduction in Monthly Rent for the term of Landlord's use of the area of the premises used by Landlord. The rent will be reduced by the same percentage as the useable square footage reduction as required by State’s project. If Landlord’s possession of the premises occurs within the initial term of this lease, then the initial term shall be extended without any additional rental obligation, for a period of time equal to Landlord’s time of possession.

(c) **Tenant's Sole Rights; Tenant's Waiver.**
Landlord's taking of possession of the premises under this Section 12.2 does not constitute a taking or damaging entitling Tenant to compensation under any Condemnation provisions. The reduction in Monthly Rent or extension of the initial term as provided herein shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use part or all of the area of the premises as a result of an "Approved and Funded Transportation Project", and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the Premises, any improvements constructed on the premises or improvements thereon, and damages to any other property, project or operations including any claim for loss of business goodwill or resulting from Tenant's inability to use or possess all or any portion of the premises as a result of an "Approved and Funded Transportation Project". In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Act (United States Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises by an "Approved and Funded Transportation Project". Landlord agrees to instruct its authorized representatives to minimize the effect of any required construction on Tenant's use of the premises, both in the construction phase and in the permanent effect on the premises in
connection with an "Approved and Funded Transportation Project". Landlord shall, at the end of the construction phase, return the paved surface of the premises (or that portion remaining following construction of the “Approved and Funded Transportation Project”) to an equivalent condition as it was in when Landlord took possession. Landlord has no duty to repair or re-install any parking lot specific improvements onto the Premises. Tenant shall not be liable for any injury to person or damage to property (other than any of Tenant’s property not timely removed from the premises) caused by or resulting from the construction of the “Approved and Funded Transportation Project.”

12.3 Maintenance Work and Retrofitting of Freeway Structures

Tenant understands and agrees that Landlord may be required to perform maintenance or retrofit work on all or a part of the freeway structures which are situated on and above the premises. Landlord shall have the right to impose such restrictions on Tenant's right to enter, occupy, and use the premises and to maintain the existing improvements or construct improvements thereon as Landlord deems are necessary to enable it to complete construction of all freeway structural retrofit work without interference from Tenant.

In the event Landlord determines that it needs to obtain possession of all or a portion of the premises, or needs to place restrictions on Tenant's use of the premises, Landlord shall, at least ninety (90) days prior to the effective date of the commencement of such possession or restrictions notify Tenant in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Tenant shall peaceably surrender possession of the premises and comply with the restrictions as stated therein. The minimum monthly rent stated in Section 4.1, as adjusted and reevaluated in accordance with Section 4.2 or 4.3 and 4.4, shall be reduced by an amount equal to the proportion which the area of the portion of the premises which Tenant is restricted from using or which has been surrendered to Landlord bears to the total area of the leased premises (which shall be based on the proportion of the total number of parking spaces compared to the number of spaces remaining following Landlord’s possession of a portion of the spaces). Landlord further agrees that in the event of any temporary possession during the initial term of this lease, then the term shall be extended for a period equal to the time of Landlord’s possession. This reduction in rent and term extension shall be Tenant's sole remedy against Landlord for Tenant's inability to possess or use the entire area of the premises, and Tenant expressly agrees to hold Landlord harmless from any and all liability for, and expressly waives any right it may have to recover against Landlord, damages to the premises, any improvements constructed on the premises, and waives its right to use or possess any portion of the premises or improvements thereon, and damages to any other property, project or operation caused by Landlord's possession, imposition of restrictions or Tenant's inability to use or possess all or any portion of the premises. In addition, Tenant expressly recognizes that it is not entitled to receive benefits under the federal or state Uniform Relocation Assistance Acts (United States Code, title 42, Section 4601, et seq.; California Government Code, Section 7260, et seq.) as a result of Landlord's use or possession of any portion of the premises.

Tenant shall conduct its operations on the premises in such a manner so as not to interfere with Landlord's or its contractor's performance of any structural retrofit work done on or above the premises. In the event that Tenant determines that Tenant cannot safely conduct any operations on the premises during Landlord’s retrofit, then Tenant shall have the right to
vacate the entire premises and to receive a commensurate reduction in any rents during such
period. Tenant acknowledges that the performance of the structural retrofit work may cause
damage to paving or other improvements constructed by Tenant on the premises. Tenant
expressly agrees to hold Landlord harmless from all such damage to its improvements, except
that at the conclusion of the retrofit work, Landlord shall restore the premises to their preexisting
condition at no cost to Tenant.

ARTICLE 13. CONDEMNATION BY PUBLIC ENTITIES OTHER THAN LANDLORD

13.1 Definitions
   (a) "Condemnation" means (1) the exercise of the power of eminent domain, whether
       by legal proceedings or otherwise, by a public entity having that power, that is, a condemnor,
       and (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or
       while legal proceedings in condemnation are pending.
       (b) "Award" means all compensation, sums, or anything of value awarded, paid or
           received upon a total or partial condemnation of the leased premises.
       (c) "Substantial taking" means a taking of a portion of the leased premises by
           condemnation which, assuming a reasonable amount of reconstruction on the remainder,
           substantially impairs Tenant's ability to use the remainder for the purposes permitted under this
           Lease.

13.2 Termination of Lease as to Part Condemned

   In the event the whole or any part of the premises is taken by condemnation by a public
   entity, other than Landlord, in the lawful exercise of its power of eminent domain, this Lease
   shall cease as to the whole or the part condemned upon the date possession of the whole or that
   part is taken by the public entity.

13.3 Partial Taking

   If a part of the leased premises is taken by condemnation but there is no substantial
taking of the premises, Tenant shall continue to be bound by the terms, covenants, and
conditions of this Lease. However, if the fair rental value of the remainder will be less than the
rent required by this Lease, the minimum monthly rent and adjusted minimum monthly rent shall
be reduced to an amount equal to the fair rental value as of the date possession of the part is
taken by the public entity.

   If the part taken by condemnation constitutes a substantial taking of the leased premises, Tenant
may elect to:
   (a) Terminate this Lease and be absolved of obligations hereunder which have not
       accrued at the date possession is taken by the public entity; or
   (b) Continue to occupy the remainder of the premises and remain bound by the terms,
       covenants and conditions of this Lease. If Tenant elects to continue to occupy the remainder,
       and if the fair rental value of the remainder will be less than the rent required by this Lease, the
       minimum monthly rent and adjusted minimum monthly rent shall be reduced to the fair rental
       value as of the date possession of the part is taken by the public entity. Any such adjustments
       shall be based on the proportionate adjustment in the number of parking spaces remaining
available for use by Tenant.

Tenant shall give notice in writing of its election to terminate this Lease hereunder within thirty (30) days of the date possession of the part is taken by the public entity. If Tenant fails to give Landlord its written notice of termination within the time specified, this Lease shall remain in full force and effect except that the minimum monthly rental shall be reduced as provided in this section.

If it continues to occupy the remainder, Tenant, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the leased premises as nearly as possible to its value, condition and character immediately prior to such taking; provided, however, that in the case of a taking for temporary use, Tenant shall not be required to effect restoration until such taking is terminated. Tenant shall submit to Landlord its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by the public entity.

13.4 Adjustment of Rent

Should a portion of the premises be condemned and the rent be reduced as provided above, the reduced rent shall continue to be subject to adjustment and reevaluation in accordance with Article 4.

13.5 Compensation

Landlord shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the premises by exercise of eminent domain except as hereinafter provided. Tenant shall be entitled to that portion of said compensation which represents the present worth as of the date possession is taken by the public entity of the remaining use under the Lease of all improvements constructed by Tenant on the leased premises located within the part taken by the public entity, including the cost of any improvements made by Tenant. Tenant may also assert a claim for loss of business goodwill under the provisions of Section 1263.510 of the California Code of Civil Procedure. Tenant shall assert no claim for loss of bonus value. For the purposes of this Article, "condemnation bonus value" means that value attributable to the fact that the rental rate Tenant is obligated to pay under this Lease is less than the fair market lease rate of the premises as defined in Article 4 above.

If all or a portion of the leased premises is condemned at a time when Tenant possesses an interest in real property located outside the leased premises (hereinafter called "outside property"), Tenant may claim entitlement to an award of damages accruing to the outside property by reason of the severance therefrom of the condemned portion of the leased premises as provided in the Eminent Domain Law (California Code of Civil Procedure Sections 1230.010 through 1273.050).

ARTICLE 14. UTILITIES

Tenant shall pay when due, and shall hold Landlord harmless from any liability for, all charges for water, gas, heat, light, power, telephone, sewage, air conditioning and ventilating,
scavenger, janitorial and landscaping services and all other materials and utilities supplied to the Premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease unless due to the fault of Landlord, its agents, employees or officers.

ARTICLE 15. LIENS

15.1 Exemption of Landlord from Liability

Tenant shall at all times indemnify and save Landlord harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment or facilities within the premises, and from the cost of defending against such claims, including attorney fees.

15.2 Tenant's Obligations

In the event a lien is imposed upon the premises as a result of such construction, repair, alteration or installation, Tenant shall either:

(a) Record a valid Release of Lien, or
(b) Deposit sufficient cash with Landlord to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to a lienholder claim, or
(c) Procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the premises from the claim of the lien and from any action brought to foreclose the lien.

Should Tenant fail to accomplish one of the three optional actions within 15 days after the filing of such a lien, the Lease shall be in default and shall be subject to immediate termination.

ARTICLE 16. DEFAULT

16.1 Default

The occurrence of any of the following shall constitute a material breach and default of this Lease by Tenant.

(a) Any failure by Tenant to pay rent or any other monetary sums required to be paid hereunder, where such failure continues for ten (10) days after written notice thereof has been given by Landlord to Tenant.
(b) The abandonment or vacation of the Premises by Tenant. Failure to occupy and operate the Premises for thirty (30) consecutive days following the mailing of written notice from Landlord to Tenant calling attention to the abandonment shall be deemed an abandonment or vacation.
(c) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged
bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets, where such seizure is not discharged within thirty (30) days.

(d) The failure by Tenant to comply with any provision of any law, statute, zoning restriction, ordinance or governmental rule, regulation or requirement as set forth in Section 5.3 of this Lease following thirty (30) days notice to Tenant of any such violation.

(e) The failure by Tenant to comply with the requirements regarding hazardous materials as set forth in Section 5.6 of this Lease following thirty (30) days notice to Tenant of any such violation.

(f) The failure by Tenant to pay any tax, assessment, imposition, levy or charge of any kind as set forth in Article 11 of this Lease.

(g) The failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot be reasonably cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

(h) Any attempt by Tenant to assign this lease or execute a sublease without Landlord’s express written consent in accordance with the terms of this lease.

16.2 Landlord's Remedies

In the event of any material default or breach by Tenant, Landlord may at any time thereafter, without limiting Landlord in the exercise of any right of remedy at law or in equity which Landlord may have by reason of such default or breach, terminate Tenant's right to possession by any lawful means effective upon ten (10) days written notice to Tenant, in which case this Lease shall immediately terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the following:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus

(e) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable State law. Upon any such re-entry Landlord
shall have the right to make any reasonable repairs, alterations or modifications to the premises, which Landlord in its sole discretion deems reasonable and necessary. As used in subparagraphs (a) and (b), above, the "worth at the time of award" is computed by including interest on the principal sum at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the date of default. As used in subparagraph (c), above, the "worth at the time of award" is computed by discounting such amount at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco at the time of award. The term "rent" as used in this Article shall be deemed to be and to mean rent to be paid pursuant to Article 4 and all other monetary sums required to be paid by Tenant pursuant to the terms of this Lease.

16.3 Late Charges

Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, a late charge equal to $100.00 shall be added to the payment, and the total sum shall become immediately due and payable to Landlord. Landlord shall apply any moneys received from Tenant first to any accrued delinquency charges and then to any other payments due under the Lease. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

ARTICLE 17. ASSIGNMENTS, TRANSFERS, SUBLEASES AND ENCUMBRANCES

17.1 Prohibition on Assignments, Transfers and Subleases

Tenant shall not assign, transfer or sublease all or any part of its interest in this Lease or in the Premises, and Landlord reserves the right to deny its consent to any assignment, transfer or sublease of all or any part of this Lease or the Premises.

17.2 Voluntary Assignments and Subleases

Tenant shall not assign or transfer all or any part of its interest in this Lease or in the Premises, or sublet all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises without first obtaining Landlord's written consent. Tenant hereby agrees that any attempt to change the use of the premises is subject to Landlord's sole and absolute discretion.

Landlord shall have the sole and exclusive right to consent or withhold its consent to any assignment, transfer, or sublease.

Tenant's failure to obtain Landlord's required written approval of any assignment, transfer or sublease shall render such assignment, transfer or sublease void. Occupancy of the
Premises by a prospective transferee, subtenant or assignee before approval of the transfer, sublease or assignment by Landlord shall constitute a breach of this Lease. Landlord's consent to any assignment, transfer or sublease shall not constitute a waiver of any of the terms, covenants or conditions of this Lease. Such terms, covenants and conditions shall apply to each and every assignment, sublease and transfer of rights under this Lease and shall be severally binding upon each and every party thereto. Any document to transfer, sublet, or assign the Premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease.

17.3 Change in Partnership

If Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, or the dissolution of the partnership, shall be deemed a voluntary assignment subject to the provisions of Section 17.2.

17.4 Change in Tenants

If Tenant consists of more than one person, a purported assignment, voluntary, involuntary or by operation of law, from one to another shall be deemed a voluntary assignment subject to the provisions of Section 17.2.

17.5 Change in Corporation

If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of 51% of the value of the assets of Tenant, shall be deemed a voluntary assignment subject to the provisions of Section 17.2. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 51% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors.

17.6 Assignment of Rent from Subtenants

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease, and Landlord, as assignee and attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent.

17.7 Information to be Supplied to Landlord

Tenant shall supply Landlord with all information Landlord determines to be necessary on all persons or firms to which Tenant proposes to sublet, transfer or assign any of its interest in the Premises, or which might establish rights to enter, control, or otherwise encumber the
Premises by reason of any agreement made by Tenant. In addition, with respect to any proposed sublease, transfer or assignment, Tenant shall provide Landlord with:
(a) a copy of all documents relating thereto,
(b) a statement of all terms and conditions of said transaction, including the consideration therefor, and
(c) a copy of the financial statement of the prospective subtenant, transferee or assignee.

17.8 Processing Fees for Assignments, Transfers and Subleases

(a) A fee of one thousand five hundred dollars ($1,500) shall be paid to Landlord for processing each consent to assignment, transfer, or sublease to Landlord as required by this Lease. This processing fee shall be deemed earned by Landlord when paid and shall not be refundable.
(b) If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged.
(c) The amounts specified above for processing fees shall be automatically adjusted at the end of the first year of this Lease and every year thereafter in accordance with an annual fee schedule adopted by Landlord. Landlord shall make said fee schedule available to Tenant upon receiving a request therefor.

17.9 Encumbrances

Tenant shall not encumber the Premises in any manner whatsoever.

ARTICLE 18. NONDISCRIMINATION

Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person, on the ground of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in the use of said facilities, (2) in connection with the construction of any improvements on said land and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors, (3) such discrimination shall not be practiced against the public in its access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed or operated on, over, or under the premises, and (4) Tenant shall use the land in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21 (49 C.F.R., Part 21) and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate this Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

ARTICLE 19. SECURITY DEPOSIT
Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the sum of $0.00 as a Security Deposit. Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of rent and any of the monetary sums due herewith, Landlord may use, apply or retain all or any part of this Security Deposit for the payment of any other amount which Landlord may spend by reason of Tenant's default or use it to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said Deposit is so used or applied, Tenant shall within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at the expiration of the Lease term and after Tenant has vacated the premises.

ARTICLE 20. ADDITIONAL PROVISIONS

20.1 Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under the Lease and performing its covenants and conditions, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term.

20.2 Captions, Attachments, Defined Terms

The captions of the Articles of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addenda and schedules initiated by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Landlord" and "Tenant," as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. If the Tenants are husband and wife, the obligations shall extend individually to their sole and separate property as well as to their community property.

20.3 Entire Agreement

This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the premises and this agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and
representatives relative to the leasing of the premises are merged in or revoked by this agreement.

20.4 Severability

If any terms or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

20.5 Costs of Suit

If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the premises, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant shall save and hold Landlord harmless from any judgment rendered against Landlord or the premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

20.6 Time, Joint and Several Liability

Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the premises to Tenant. All the terms, covenants and conditions contained in this Lease to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

20.7 Binding Effect; Choice of Law

The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof; and all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

20.8 Waiver
No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

20.9 Surrender of Premises

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

20.10 Holding Over

If Tenant remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable at the time specified in this Lease and such month-to-month tenancy shall be subject to every other term, covenant, condition and agreement contained herein, except that the monthly rental rate set forth in Article 4 shall be increased by ten percent (10%) effective the first month of the holdover period. Landlord further reserves the right to review the rental rates of all holdover tenants periodically for the purpose of making reasonable adjustments to the monthly rental payments.

20.11 Interest on Past Due Obligations

Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at a rate one percent (1%) above the discount rate of the Federal Reserve Bank of San Francisco from the due date. Payment of such interest together with the amount due shall excuse or cure any default by Tenant under this Lease.

20.12 Recording

Neither Landlord nor Tenant shall record this Lease.

20.13 Notices

All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Landlord or Tenant respectively at the addresses set forth in Article 1.

20.14 No Reservation
Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease; it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

20.15 Corporate Authority

If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

20.16 Force Majeure

If either Landlord or Tenant shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this clause shall excuse Tenant from prompt payment of any rent, taxes, insurance or any other charge required of Tenant, except as may be expressly provided in this Lease.

In Witness Whereof Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD: STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Dated: ________________       By: ____________________________________
LINDA M. EMADZADEH, District Office Chief
R/W Airspace, Excess Lands and LPA

TENANT:  CITY OF SANTA ROSA

Dated: ________________       By: ____________________________________
SUSAN GORIN, Mayor
APPROVED AS TO FORM:

_____________________________________
City Attorney’s Office
LEGEND

- EXISTING BENT (36.6 square feet)
- NEW COLUMN (15.9 square feet)

SQ. FT. SQUARE FEET

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WASHINGTON STREET

EXHIBIT "C"

1 of 2
EXHIBIT "D"

There is no "Exhibit D"