

RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:

Napa County Clerk of the Board
1195 Third Street, Suite 310
Napa, California 94559

City of Napa
P.O. Box 660
Napa, CA 94559
Attn: City Clerk

(Fees waived pursuant to Govt Code
§27383)

APNs: 003-272-013, 003-272-014

Napa County Agreement No. 7191

**OPERATIONS AND USE AGREEMENT
for the FIFTH STREET PARKING GARAGE**

City of Napa
Agreement No. 9831

This Operations and Use Agreement for the Fifth Street Parking Garage ("Agreement") is made and entered into as of 3-17-, 2009 by and between the County of Napa, a political subdivision of the State of California ("County"), the City of Napa, a California charter city ("City"), Channel Properties Inc., a California corporation ("Riverfront"), Napa Mill, LLC, a California limited liability company ("Mill") and Andrea Schrader, an individual ("Schrader"). Riverfront, Mill and Schrader are referred to collectively in this Agreement as "Participants."

RECITALS

A. On October 7, 2003, the City and County entered into a Memorandum of Understanding ("MOU") identified as Napa County Agreement No. 6148, and City of Napa Agreement No. 8428. The MOU (see the Eighth Recital and Paragraph 7) anticipated, among other provisions, that the parties would enter into separate agreements regarding the sharing of responsibilities related to development of a future parking facility ("Garage"). The MOU anticipated that the Garage would be located on a portion of the County-owned property located at 1195 Third Street in the City of Napa (APN 003-272-013 and APN 003-272-014) ("Original Site"), unless an alternative mutually acceptable site was identified.

B. On December 7, 2004, the City and County entered into a Parking Garage Cooperative Agreement ("Original Agreement") identified as Napa County Agreement No. 6372, and City of Napa Agreement No. 8688, attached as Exhibit H hereto. Among other provisions regarding the sharing of responsibilities related to development of the future parking facility, the Original Agreement identified an alternative mutually acceptable site for the development of the Garage, to be located on the County-owned block bordered by Coombs, Third, Fourth, and Randolph Streets (APN 003-213-008, 009, and 010). That site was formerly used by the Sullivan Shelter and is referred to herein as the "Sullivan Site."

C. On January 24, 2006, the City and County entered into a First Amendment to the Original Agreement ("First Amendment"), attached as Exhibit H-1 hereto, by which the City and County *modified specified timing requirements of Original Agreement Paragraph 8 to provide,* generally, for the deposit of required construction funds into a specified construction account by March 31, 2006, bidding for construction in the Spring of 2006, and contract award for the Garage by the Summer of 2006.

D. On May 23, 2006, at a joint meeting of the City Council ("Council") and the County Board of Supervisors ("Board"), the Council and the Board directed the respective City and County staff members to pursue design and construction of the Garage at the Original Site, as a design-build project, potentially using supplementary funding from private owners of adjacent properties, and to modify the terms of the Original Agreement, as modified by the First Amendment, accordingly. A map and legal description of the Original Site are attached hereto as Exhibits A and B, respectively.

E. On February 27, 2007, the City and County entered into a Second Amendment to the Original Agreement, as modified by the First Amendment ("Second Amendment"), attached hereto as Exhibit H-2, by which the parties modified the Original Agreement to reflect the following: the Garage location at the Original Site; an increase in Garage spaces from approximately 440 spaces to approximately 470 spaces; an increase in the cost of building the Garage to approximately \$15,200,000; and the need for the City to dedicate a portion of its Fifth Street right of way to the County. The Second Amendment also provided a revised timeline for development and construction funding, a revised diagram for the Garage, revised definitions of the uses of spaces in the Garage, and revised provisions relating to the participation of the Participants in the costs of constructing and operating the Garage. The Original Agreement, as modified by the First Amendment and the Second Amendment, is collectively referred to in this Agreement as the "Cooperative Agreement."

F. On January 9, 2007, the Board approved an agreement with each of the Participants ("Participant Agreements"). Each Participant Agreement provides to the respective Participant designated parking spaces in the Garage that Participant may make available to tenants, employees, and visitors to their properties located in the vicinity of the Garage in consideration for each Participant making a proportionate financial contribution to both capital and operating costs of the Garage. The Participant Agreements also contemplate that each of the Participants will be a party to this Agreement.

G. On January 9, 2007, the Board authorized the County's Director of Public Works to request design-build proposals from five pre-qualified design-build entities for the design and construction of the Garage in accordance with Public Contract Code Section 20133. The design of the successful bidder increased the number of parking spaces to 485.

H. The Cooperative Agreement and the Participant Agreements anticipate that the City, County and Participants will enter into a separate agreement to specify, among other things, the number of parking spaces to be allocated to uses by the County, the Participants and the City; and to specify the responsibilities for daily management, operation, and maintenance of the

Garage. The parties intend this Agreement to implement these provisions of the Cooperative Agreement and the Participation Agreements.

I. This Agreement additionally establishes the equitable operational and maintenance rules for the Garage which are intended to ensure that each party will bear its proportionate burden of expenses for operation and maintenance of the Garage.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

I. DEFINITIONS.

The following capitalized terms used in this Agreement shall have the meanings set forth in this Section 1.

(a) "Administrative and Overhead Costs" means all County staff time related to the operation of the Garage, including, but not limited to, the auditing and accounting of funds related to the Garage, and legal services provided in connection with the Garage.

(b) "ADA Parking Space" means a space in the Garage that is designed to be accessible to persons with disabilities.

(c) "Annual Budget" means the annual Fiscal Year budget for the operation and maintenance of the Garage as set forth in Section 5.2 of this Agreement.

(d) "Artwork" means any work of art installed in the Garage, including but not limited to murals and artistic signage created by artist Gordon Huether.

(e) "Auditor" is defined in Section 5.5(f) of this Agreement.

(f) "City" means the City of Napa, a California charter city.

(g) "City Manager" means the duly appointed City Manager of the City or that person's designee.

(h) "City Use Parking Space" means a space reserved for use by the City for such purposes as the City shall determine (as described in Sections 3.3(b) and 7 of this Agreement), including but not limited to public parking or leased, licensed or permit parking.

(i) "Cooperative Agreement" has the meaning set forth in Recital E above.

(j) "County" means the County of Napa, a political subdivision of the State of California.

(k) "County Executive Officer" means the duly appointed Executive Officer of the County or that person's designee.

(l) "County Exclusive Parking Space" means a space reserved for use by the County for such purposes as the County shall determine (as described in Sections 3.3(d) and 7 of this Agreement), including but not limited to public, leased, licensed or permit parking. County purposes may include County vehicle parking, County employee parking, County visitor parking, or parking for any other persons associated with services provided by County.

(m) "County Holiday" means any day in a calendar year that is observed as a County Holiday. Each County Holiday is identified in Exhibit E. The deletion or addition of any County Holiday may be made by the County Board of Supervisors after written notice is provided by the County to the City and the Participants.

(n) "Designation" means the amount of cash reserves designated for capital improvements and expenditures for the Garage, as described in Section 5.6 below.

- (o) "Effective Date" means the date as of which the parties have executed this Agreement as set forth in the first sentence of this Agreement.
- (p) "Fiscal Year" means a 12 month period commencing on July 1 and concluding on the following June 30th.
- (q) "Garage" means the 485-space parking garage that has been constructed on the Original Site.
- (r) "Joint Use Parking Space" means a parking space available during Work Hours for use by County for County purposes, or use by any member of the public, on a first-come first-served basis. During Non-Work Hours, Joint Use Parking Spaces shall be for Public Use.
- (s) "Mill" means Napa Mill, LLC, a California limited liability corporation.
- (t) "Motorcycle Parking Space" means a parking space designed for and available for use by motorcycles.
- (u) "MOU" has the meaning set forth in Recital A above.
- (v) "Net Requirement" means the total amount required each fiscal year to keep the Garage operational, as described in Section 5.5 of this Agreement.
- (w) "Net Requirement Share" means the proportional share each party is required to contribute for operating and maintaining the Garage as described in Section 5.5 of this Agreement.
- (x) "Non-Work Hours" means any hour that is not a Work Hour.
- (y) "Original Site" means the site at 1195 Third Street (APN 003-272-013 and APN 003-272-014) as shown on the map attached as Exhibit A and described in Exhibit B.
- (z) "Parking Ordinance" means Chapter 10.12 (County Parking Lots) of the Napa County Code as such may be amended from time to time by the Napa County Board of Supervisors; provided, however, County shall provide the City and each Participant with at least 30 days notice prior to the introduction of an ordinance amending the Parking Ordinance.
- (aa) "Participants" means Riverfront, Mill and Schrader collectively or any one of them, or any successor to Riverfront, Mill or Schrader as permitted under this Agreement.
- (bb) "Participant Use Parking Space" means a space reserved for use by a Participant, or persons authorized by the Participant, for such purposes as the Participant shall determine (as described in Sections 3.3(a) and 7 of this Agreement), including but not limited to public parking or leased, licensed or permit parking.
- (cc) "Participation Agreement[s]" means collectively the Participation Agreements between the County and Riverfront, Mill and Schrader or any one of those agreements. Each of the Participation Agreements is dated January 9, 2007 and is attached hereto as Exhibits I, I-1 and I-2.
- (dd) "Public Use Parking Space" means a parking space that shall be open for use by any member of the public.
- (ee) "Regular Parking Space" means any parking space that is not an ADA Parking Space or Motorcycle Parking Space.
- (ff) "Riverfront" means Napa Riverfront, LLC, a California limited liability corporation.
- (gg) "Shared Maintenance and Operating Garage Costs" means the costs associated with operating and maintaining the Garage.
- (hh) "Shared Maintenance and Operating Garage Revenues" means the revenues relating to the operation and maintenance of the Garage, as described in Section 5.4 of this Agreement.

- (ii) "Shared Participant Use Parking Space" means any parking space that is designated by the Participants for shared use among the Participants.
- (jj) "Schrader" means Andrea Schrader, an individual.
- (kk) "Term" means the term of this Agreement as determined pursuant to Section 2.4 and Section 2.5 of this Agreement.
- (ll) "Transfer" is defined in Section 7.1 of this Agreement.
- (mm) "Work Hours" means the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday; provided, however, Work Hours shall not include any County Holiday.

2. GENERAL PROVISIONS

2.1 Exhibits. The following exhibits are attached to and incorporated in this Agreement by this reference.

"Exhibit A"	Map of Original Site
"Exhibit B"	Legal Description of Original Site
"Exhibit C"	Floor Plans Showing Allocation of Spaces in Garage
"Exhibit D"	Chart Showing Allocation of Spaces in Garage
"Exhibit E"	County Holidays
"Exhibit F"	Garage Maintenance and Operation Standards
"Exhibit G"	First Year Budget for Maintenance Expenses
"Exhibit H"	Cooperative Agreement
"Exhibit H-1"	First Amendment to Cooperative Agreement
"Exhibit H-2"	Second Amendment to Cooperative Agreement
"Exhibit I"	Participant Agreement between County and Riverfront
"Exhibit I-1"	Participant Agreement between County and Mill
"Exhibit I-2"	Participant Agreement between County and Schrader

2.2 Overall Purpose. The purpose of this Agreement is to provide for the parties' use of the Garage, for the operation and maintenance of the Garage, and for the parties' contributions to the costs of operating and maintaining the Garage.

2.3 Relationship to Other Agreements.

(a) To the extent there is any conflict between the provisions of this Agreement and the provisions of the Cooperative Agreement, the provisions of this Agreement shall prevail. Except as to any such conflict, this Agreement is not intended to amend the Cooperative Agreement, and the Cooperative Agreement shall remain in full force and effect.

(b) To the extent there is any conflict between the provisions of this Agreement and the provisions of any of the Participant Agreements, the provisions of this Agreement shall prevail. Except as to any such conflict, this Agreement is not intended to amend any of the Participant Agreements and the Participant Agreements shall remain in full force and effect.

(c) The County and City agree that the Cooperative Agreement and this Agreement are intended to fully satisfy subsections (a), (b), and (d) of section 7 of the MOU.

2.4 Term.

(a) Unless terminated earlier pursuant to the provisions of this Agreement, the Term, with respect to the Participants, shall be fifty-five (55) years from the Effective Date, provided, however, that the Term for a Participant may be extended pursuant to Section 2.5.

(b) Unless terminated earlier pursuant to the provisions of this Agreement, the Term, with respect to the County and City, shall be the longer of (i) fifty-five (55) years from the Effective Date or (ii) the functional life of the Garage structure. For the purpose of this Agreement, the "functional life" of the Garage shall mean that the County continues to operate all or a portion of the Garage for parking purposes, and the Garage has not been demolished pursuant to Section 6 of this Agreement.

2.5 Extension of Term for Participants. At least one hundred twenty (120) days prior to the end of the Term established by subsection (b) of Section 2.4, the County may give the City and each Participant written notice that it plans to discontinue use of the Original Site as a Garage. If the County fails to give such notice, then each Participant, City and the County shall negotiate in good faith an extension of the Term as it applies to the City and the Participants under the same terms and conditions as are set forth in this Agreement.

3. USE OF PARKING STRUCTURE

3.1 Number of Spaces. The Garage has 485 automobile parking spaces located as follows:

First level	106 Regular Parking Spaces 4 ADA Parking Spaces
Second level	121 Regular Parking Spaces 2 ADA Parking Spaces
Third level	121 Regular Parking Spaces 2 ADA Parking Spaces
Fourth level	127 Regular Parking Spaces 2 ADA Parking Space
TOTAL:	485 Parking Spaces

In addition, there are 10 Motorcycle Parking Spaces on the second level of the Garage.

3.2 Allocation of Spaces.

(a) First level. On the first level of the Garage, the spaces shall be allocated as follows:

City Use Parking Spaces:	85 Regular Parking Spaces
Joint Use Parking Spaces:	21 Regular Parking Spaces
Joint Use Parking Spaces:	4 ADA Parking Spaces

(b) Second level. On the second level of the Garage, the spaces shall be allocated as follows:

Joint Use Parking Spaces:	121 Regular Parking Spaces
Joint Use Parking Spaces:	2 ADA Parking Spaces
Joint Use Parking Spaces:	10 Motorcycle Parking Spaces

(c) Third level. On the third level of the Garage, the spaces shall be allocated as follows:

Participant Use Parking Spaces:	Riverfront	46 Regular Parking Spaces
Participant Use Parking Spaces:	Mill	46 Regular Parking Spaces
Participant Use Parking Spaces:	Schrader	28 Regular Parking Spaces
Shared Participant Use Parking Spaces:		2 ADA Parking Spaces
Shared Participant Use Parking Spaces:		1 Regular Parking Space

(d) Fourth level. On the fourth level of the Garage, the spaces shall be allocated as follows:

County Exclusive Parking Spaces:	85 Regular Parking Spaces
Joint Use Parking Spaces:	42 Regular Parking Spaces
Joint Use Parking Spaces:	2 ADA Parking Spaces

3.3 Operational Rules for Spaces.

(a) Joint Use Parking Spaces. Spaces designated as Joint Use Parking Spaces shall be available during Work Hours for use by County for County purposes, or use by any member of the public, on a first-come first-served basis. During Non-Work Hours, spaces designated as Joint Use Parking Spaces shall be available as Public Use Parking Spaces.

(b) City Use Parking Spaces. Spaces designated as City Use Parking Spaces shall be used for such purposes as the City shall determine, including but not limited to public parking or leased, licensed or permit parking, subject to the standards and restrictions contained in Sections 3.4, 3.5 and 3.6 below.

(c) Participant Use Parking Spaces. Spaces designated as Participant Use Parking Spaces shall be reserved for the exclusive use of the Participants or person(s) authorized

by the Participants to utilize said spaces subject to the standards and restrictions contained in Sections 3.4, 3.5, and 3.6.

(d) **County Exclusive Parking Spaces.** Spaces designated as County Exclusive Parking Spaces shall be reserved for the exclusive use of the County, subject to the standards and restrictions contained in Sections 3.4, 3.5, and 3.6.

(e) **Changes in Operational Rules.** The parties share a mutual goal of operating the Garage in a manner that: (1) maximizes the use of all parking spaces in the Garage during the hours of operation and (2) provides for longer-term (e.g., all day) parking opportunities and incentives in the upper levels of the Garage, and shorter-term (e.g., limited hours) parking opportunities in the lower levels closer to the entry of the Garage. At the written request of any party that documents a reasonable good faith belief that these mutual goals are not being achieved, all parties shall negotiate in a good faith effort to adjust the operational rules or the location of allocated spaces. Any such adjustment to the operational rules or location of allocated spaces shall be documented in accordance with Section 4.8 below.

3.4 Cooperation and Coordination in Operation of Parking.

(a) **Participant Cooperation for Participant Use Parking Spaces.** The Participants shall each determine how to operate the Participant Use Parking Spaces, subject to approval of the County which approval shall not be unreasonably withheld. The Participants have determined where each of their spaces will be located on the third level. If the Participants cannot agree on a particular operational issue that affects all Participants, the County Executive Officer shall make the determination as to that issue. The County Executive Officer's decision shall be final and binding on all parties.

(b) **City Use Parking Spaces.** For spaces that are City Use Parking Spaces, the City shall determine, in accordance with the County's Parking Ordinance and subject to the approval of the County, which approval shall not be unreasonably withheld, the operational rules and regulations applicable to such spaces, including use of leases, licenses and permits, charges for parking, time limits on parking and other similar issues. The intent of this section is to ensure that County is able to enforce the general operational rules and regulations of the Garage in accordance with the Parking Ordinance. This section is not intended to confer any rights of approval to the County for any matters relating to charges, rates or payments that City may impose on its lessees, licensees and permittees. City shall include a clause in any lease, license or permit for the use of the Garage that obligates any such lessee, licensee, or permittee to comply with the provisions of this Agreement.

(c) **Joint Use Parking Spaces.** For Joint Use Parking Spaces, the City and County shall jointly determine the operational rules and regulations applicable to those spaces. To the extent feasible, such rules shall be the same as the rules applicable to Public Use Parking Spaces during Work Hours with such modifications as are reasonably necessary to accommodate likely County uses of the Joint Use Parking Spaces.

(d) **County Exclusive Parking Spaces.** For spaces that are County Exclusive Parking Spaces, the County shall determine in accordance with the County's Parking Ordinance, the operational rules and regulations applicable to such spaces including use of leases, licenses and permits, charges for parking, time limits on parking and other similar issues. County shall ensure any lessees, licensees and permittees comply with the provisions of this Agreement.

(e) **Because changes to the Parking Ordinance automatically become a part of this Agreement,** County shall provide the City and each Participant with at least 30 days notice prior to the introduction of an ordinance amending the Parking Ordinance.

3.5 **Changes in Allocation of Spaces.** The City and County may agree to change the allocation of the City Use Parking Spaces, Joint Use Parking Spaces and County Exclusive Parking Spaces in the Garage on the first, second and fourth level of the Garage. Such changes *may be negotiated and agreed upon by the County Executive Officer and the City Manager, and* shall not require the approval of the Participants except as follows: the City and County shall not change any of the spaces on the second level of the Garage to County Exclusive Parking Spaces unless County has first offered the Participants the opportunity to obtain Participant Use Parking Spaces on the second level equal to the number of second level spaces the County had planned to convert to County Exclusive Parking Spaces. If the Participants take the opportunity to obtain spaces on the second level, then the County shall be entitled to an equal number of spaces on the third level for the County's use as County Exclusive Parking Spaces.

3.6 **General Use Prohibitions.** City, Participants and County agree that in connection with and to the extent of their respective use and operation of the Garage, each will not:

- (a) Create, cause, maintain or permit any nuisance in or about the Garage;
- (b) Commit or suffer to be committed any waste in or about the Garage or the Original Site;
- (c) Knowingly allow the Garage to be used for any unlawful purpose;
- (d) Permit undue accumulations of garbage, trash, rubbish or any other refuse in the Garage;
- (e) Cause or permit obnoxious odors to emanate from or be discharged in or from the Garage;
- (f) Create, cause, maintain or permit any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness (excluding the occasional noise from an errant car alarm);
- (g) Create, reuse, maintain, or permit creation of any dust, dirt, or fly ash in excessive quantities; or

(h) Create, cause, maintain or permit any motor vehicle servicing, including but not limited to the washing of cars, or repair shop that provides any such servicing.

4. OPERATION OF GARAGE

4.1 County Responsibility. The County shall be responsible for the management and operation of the Garage except as provided otherwise below. County's costs for such operation and management shall be shared as described in Section 5 below.

4.2 Valet Parking. The City or Participants may use the Garage for valet parking. In such case, the County shall not be responsible for paying the costs of or operating the valet service. However, if the City or Participant chooses to provide valet parking, that party shall first obtain County approval, which approval shall not be unreasonably withheld, of a valet operational plan designed to minimize any interference by the valet operation with other operations in the Garage.

4.3 Hours. The County shall operate the Garage in accordance with the County's Parking Ordinance and shall keep it open and available for parking from 5 a.m. to 11 p.m. seven days a week. These hours are subject to change so that hours of operation of the Garage conform to and are substantially consistent with the hours of operation of other parking garages operated by the City, parking lots operated by the County or parking garages that may in the future be operated by the County. The County shall cooperate with Participants to make the Garage accessible at times the Garage is otherwise closed to accommodate customers of businesses on the nearby properties owned by the Participants. The County shall also cooperate with the City to extend the hours of the Garage on an occasional basis to accommodate parking for special events or as needed to accommodate parking demand. Notwithstanding anything to the contrary in this Agreement, the City or the Participant requesting extended hours shall bear any additional operational costs of making the Garage accessible when the Garage would otherwise be closed.

4.4 Security. The County shall provide security for the Garage. The level of security service shall be substantially consistent with the level of service that the City provides in other parking structures in downtown Napa. The City or a Participant may provide additional security during hours in which the County is not providing security. Such additional security shall be coordinated with the security the County provides and, if more than one party is providing additional security, with the other additional security being provided by the City or another Participant. Notwithstanding anything to the contrary in this Agreement, the City or the Participant, as the case may be, shall bear the costs of any additional security it provides pursuant to this Section 4.4. The County may employ a contractor to provide security.

4.5 Signage and Enforcement. The County shall be responsible for enforcement of the parking restrictions and limitations on parking provided for in Section 3 of this Agreement or promulgated by a party or parties as permitted by Section 3 of this Agreement. The County shall also install and maintain all signage necessary for enforcement of the parking restrictions and limitations.

4.6 Charges for Parking.

(a) General Operational/Public Use Charges. Any charges for parking in City Use Parking Spaces and Joint Use Parking Spaces shall be established as a part of the operational rules and regulations for those spaces, which shall be determined by the City and County pursuant to Section 3.4 above. Any charges for parking in County Exclusive Parking Spaces shall be determined by the County. Any charges for parking for the Participant Use Parking Spaces and Shared Participant Use Parking Spaces shall be determined by the Participants. All parking charges shall be levied equitably to the extent possible to ensure all users are being charged similar rates; provided, however, that this provision shall not be construed to limit the ability of any of the parties to provide free parking even though other parties are imposing parking charges.

(b) Charges for Leases, Licenses, and Permits. This Agreement contemplates that the City, County and Participants may each enter into agreements with third parties for the license, permit or lease of parking spaces allocated the City, County or a Participant. Any charges imposed by a party as part of a lease, license or permit is not subject to approval by any other party to this Agreement; provided, however, that such charges must comply with the equitable requirement established by subsection (a).

4.7 Maintenance of Garage. The County shall be responsible for maintaining the Garage in good condition and repair consistent with customary maintenance practices. The County's maintenance responsibilities shall include but are not limited to those listed in Exhibit F. All maintenance shall be performed in such a manner as will minimize noise to adjoining properties, particularly during the hours from 9:00 p.m. to 9:00 a.m. Any maintenance or improvement work performed on the Garage shall be performed within a reasonable time frame, completed in a good, workmanlike manner and in such a manner as to return the Garage to no less than the same condition that it was in prior to the commencement of such maintenance or improvement work. The County shall replace various Garage equipment and building components on a regular basis as necessary to assure the continued operation of the Garage. Notwithstanding the foregoing, no party to this Agreement shall be responsible for the repair or replacement of any Artwork in the Garage; provided, however, the County may routinely clean the Artwork. The Designation shall be used for replacement of Garage components in accordance with Section 5.6 below. County shall not be responsible for any physical improvements to the Garage that may be required as a result of agreements between the City and third parties (i.e., licensees, permittees, lessees) or between any of the Participants and third parties (i.e., licensees, permittees, lessees).

4.8 Annual Meeting of Parties. The authorized representatives of the parties shall meet at least once a year to discuss operation of the Garage and potential changes in the operation. The annual meeting shall address allocation of spaces among the parties, operational rules, hours of operation, parking charges, availability of spaces for lease or license, any expected changes to the annual Designation, any foreseeable major replacements, repairs, or improvements to the Garage, adequacy of insurance coverage, and any other matter concerning the operation of the Garage. Any amendment to this Agreement relating to the allocation of location of available spaces among the parties, the operational rules, quality of maintenance,

hours of operation, the process of establishing parking charges, and availability of spaces for lease, license or permit shall be subject to the written agreement of the County Executive Officer and the City Manager. Any other modifications to the Agreement, including changes to the insurance provisions or insurance coverage, shall be documented in accordance with Section 9.3 below. The annual meeting shall also serve as the forum for County's consultation with the other parties regarding the annual budget as required under Section 5.2 below and shall be scheduled accordingly. The authorized representative of each party, for purposes of this Section, is as set forth below. Any authorized representative may delegate authority to an authorized designee by providing written notice to each other party pursuant to Section 9 below.

City of Napa:

City Manager
P.O. Box 660
Napa, California 94559-0660

County of Napa:

County Executive Officer
1195 Third Street, Suite 310
Napa, California 94559

Private Participants:

Andrea Schrader
P.O. Box 388
Napa, California 94559

Napa Mill, LLC
Harry Price
500 Main Street
Napa, California 94559

Channel Properties Inc.
Massimo Desimoni
100 W. Cutting Blvd.
Richmond, California 94804

5. PARKING GARAGE COSTS

5.1 Allocations of Costs of Garage. The City, Participants and County shall all participate in the costs of operating and maintaining the Garage in the manner specified in this Section.

5.2 Annual Budget. The Annual Budget for Fiscal Year 2008/09 is shown in Exhibit G (and it intentionally does not include any amount for Shared Maintenance and Operating Garage Revenues). Beginning in 2009, before April 2nd of each year, the County shall prepare and provide to the City and Participants a proposed Annual Budget for the upcoming fiscal year,

which budget shall be in a format similar to the budget attached as Exhibit G. The Annual Budget shall set forth the County's good faith estimate of the expected Shared Maintenance and Operating Garage Costs and Shared Maintenance and Operating Garage Revenues for the Garage and the Net Requirement that the City and Participants will be required to pay pursuant to Section 5.5. The County shall consult with the City and Participants in preparing the Annual Budget and the City and Participants shall cooperate with the County in preparation of the Annual Budget. The Annual Budget shall include projected Administrative and Overhead Costs. For Fiscal Year 2008/2009, the Administrative and Overhead Costs shall be 3% of the Shared Maintenance and Operating Garage Costs. In subsequent fiscal years, the Annual Budget shall include actual Administrative and Overhead Costs incurred by the County in the previous fiscal year. City and Participants shall provide County with any comments or concerns regarding the proposed Annual Budget by May 1 of each year. The Annual Budget shall be approved by all parties administratively by June 1 each year, which approval shall not be unreasonably withheld. Each party shall provide such administrative approval by signing the Annual Budget. The authorized representatives that may provide such approval are those persons identified in Section 4.8. If any party fails to comment on or approve the Annual Budget within the timelines set forth above, the Annual Budget shall be deemed approved by that party. If there is an unresolved dispute as to the proposed Annual Budget as of June 2, County shall adopt its proposed Annual Budget and adjustments, if any, will be made following resolution of the dispute.

5.3 Shared Maintenance and Operating Garage Costs.

(a) The Shared Maintenance and Operating Garage Costs shall include all commercially reasonable expenses and costs which County shall pay or become obligated to pay because of or in connection with the ownership, operation, repair and/or maintenance of the Garage, including, without limitation:

- (i) all maintenance and janitorial costs;
- (ii) costs for all materials, supplies and equipment;
- (iii) costs of water, electricity, refuse collection, parking lot sweeping, landscaping, and other utilities and services relating to the Garage;
- (iv) all costs of alterations or improvements to the Garage made to achieve compliance with any federal, state and local law including, without limitation, the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) ("ADA"), or to reduce operating costs or improve the operating efficiency of the Garage;
- (v) costs for repairs, replacements and general maintenance of the Garage, but excluding repair or replacement of Artwork and any repairs or replacements paid for out of insurance proceeds or by other parties;
- (vi) costs for maintaining machinery or equipment (including the photovoltaic system for the generation of electricity);
- (vii) security (pursuant to Section 4.4 above) and other expenses incurred in connection with enforcing rules and regulations for the Garage;
- (viii) Administrative and Overhead Costs;
- (ix) any insurance premiums that are specifically allocable to insuring the Garage;

(x) costs of third party claims arising out of the operation of the Garage (including the County's defense and indemnity costs) to the extent not covered by insurance or typically borne by the County's self-insurance program;

(xi) transfer costs (pursuant to Section 7 below);

(xii) the Designation pursuant to Section 5.6 of this Agreement; and

(xiii) nonrecurring costs to remedy defects in the original construction of the Garage, which costs are not covered by warranty.

(b) Shared Maintenance and Operating Garage Costs shall not include and County shall not be obligated to pay or reimburse any party for:

(i) amounts expended from the Designation;

(ii) depreciation or amortization;

(iii) nonrecurring costs incurred to remedy defects in the original construction of the Garage (if such costs are covered by warranty);

(iv) repairs or other work needed due to fire, windstorms, or other casualty or cause to the extent County has received insurance proceeds for such repairs or other work; and

(v) costs of special services rendered to the City, Participants or other private users of the Garage for which a special charge is made including charges for off-hours accessibility pursuant to Section 4.3 above or additional security pursuant to Section 4.4 above.

5.4 Shared Maintenance and Operating Garage Revenues.

(a) The Shared Maintenance and Operating Garage Revenues shall include:

(i) each party's Net Requirement Share, including late fees;

(ii) any revenues collected from fines, penalties or other amounts as a result of parking enforcement in the Garage;

(iii) any revenues collected from charges for Joint Use Parking Spaces (this does not include charges imposed as a result of permits, leases or licenses);

(iv) all transfer fees as described in Section 7.1; and

(v) any other revenues collected from use or existence of the Garage outside of the original intent of this Agreement.

(b) The Shared Maintenance and Operating Garage Revenue shall not include:

(i) amounts received by the Participants in connection with any permits, leases or license for use of the spaces designated as Participant Use Parking Spaces;

(ii) amounts received by the City for permits, leases or licenses to park in the Garage;

(iii) amounts received by the County for permits, leases or licenses to park in the Garage;

(iv) payments to the County by the Participants or City for special services described in Section 4.3 or Section 4.4 above;

(v) all interest earnings on the Designation.

5.5 Payment to County of the Net Requirement.

(a) The Net Requirement is the total amount required each fiscal year to keep the Garage operational. The Net Requirement Share is the amount each party is required to pay each fiscal year, as set forth below, and is dependent on the Annual Budget. Accordingly, although each party's percentage does not change, the Net Requirement Share will change from year to year since it is dependent on the Annual Budget. The Net Requirement Share may periodically need to be adjusted as set forth in Sections 5.5 (c), (d) and (e) below.

(b) On or before the fifteenth day of July, October, January, and April of each Fiscal Year, each of the Participants and the City shall pay to the County an amount equal to one-quarter (1/4) of each party's Net Requirement Share for that Fiscal Year to operate and maintain the Garage for that fiscal year. The Net Requirement for each party represents a percentage of the total Shared Maintenance and Operating Costs for the Garage. The Net Requirement and Net Requirement Shares for Fiscal Year 2008-09 are set forth in Exhibit G. The first payment shall be prorated based on the Effective Date. The County shall bear the costs for its own Net Requirement Share. Payments are deemed late if not received within 30 days of the dates listed above and a late fee of 5% will be added to payments that are between 30 and 60 days late. A 10% late fee will be added to payments more than 60 days late.

(c) Each party's Net Requirement Share shall initially be based on the following percentages of the Net Requirement:

Riverfront:	9.75%
Mill:	9.75%
Schrader:	5.94%
City:	37.28%
County:	37.28%

The Net Requirement Shares set forth in this subsection are based on each party's share of the 485 spaces in the Garage without including the Motorcycle Parking Spaces and ADA Parking Spaces. The City and County Net Requirement Shares are based on the City and County each paying one half (1/2) of the costs for the 185 regular spaces designated as the Joint Use Parking Spaces, the City paying 100% of the costs for the 85 spaces designated as City Use Parking Spaces, and the County paying 100% of the costs for the 85 spaces designated as County Exclusive Parking Spaces. If the allocation of spaces among the parties is changed, the Net Requirement Shares of the parties shall be adjusted accordingly.

(d) Within one hundred and twenty (120) days following the end of each fiscal year, the County shall determine the amount actually expended in the previous fiscal year for Shared Maintenance and Operating Garage Costs and the actual amount received in Shared Maintenance and Operating Garage Revenues relating to that fiscal year. The County shall provide in writing to the other parties detailed calculations showing the County's determination. If there is an overage, the County shall credit to the City and Participants the amount of each party's overpayment of actual Net Requirement Share, to the next payment due to the County. If there is a deficit, the City and Participants shall pay to the County an amount equal to each

party's underpayment of actual Net Requirement Share. Such payment shall be made within thirty (30) days following receipt of notice from the County as to the amount of a party's underpayment.

(e) Notwithstanding the other provisions of this Section 5.5, as soon as the County obtains information that the actual Net Requirement is likely to materially exceed the anticipated Net Requirement as set forth in the approved Annual Budget, the County shall inform the other parties of the increase and the reasons for the increase, and will promptly meet and confer with the other parties concerning the increased costs. After meeting and conferring with the parties, the County may, by written notice to the parties, increase the Net Requirement for the remainder of the fiscal year and increase the resulting quarterly payments pursuant to this Section 5.5.

(f) In the event the City or a Participant disputes the amount of the Net Requirement as determined by the County, then the City or Participant shall have the right, at the City's or Participant's cost, and after reasonable notice to County, to inspect, at County's office during normal business hours, County's books, records, and supporting documents concerning the Shared Maintenance and Operating Garage Costs and Shared Maintenance and Operating Garage Revenues. Such inspection shall be commenced and completed within three (3) years following the end of the fiscal year for which the inspection is being carried out. If after such inspection and/or request for documentation, the City or Participant still disputes the amount of the Shared Maintenance and Operating Garage Costs, the City or Participant has the right to select an independent certified public accountant (the "Auditor") to complete an audit of County's books and records to determine the actual and proper amount of the Shared Maintenance and Operating Garage Costs incurred and the Shared Maintenance and Operating Garage Revenues received and amounts payable by City and Participants for the fiscal year which is the subject of the audit. The Auditor selected must be approved by the County provided however that the County's consent shall not be unreasonably withheld. The County and any other parties that did not request the audit shall be provided an opportunity to comment on, clarify, rebut or dispute any of the findings of the audit, and the Auditor shall evaluate the County's (and any other party's) comments prior to finalizing the audit report. Such audit report, and the determinations contained therein, by the Auditor shall be final and binding upon all parties. If such audit reveals that County has over-charged City and Participants, or City or a Participant has underpaid County, the owing party or parties shall reimburse to the non-owing party the owed amount within thirty (30) days of submission of the audit to all parties. The cost of the audit shall be paid by the party requesting the audit, unless the audit reveals that the County has overstated or understated the aggregate costs by more than 3%, in which case the cost of the audit shall be paid by the County. In either case if the audit identifies a cost savings or additional revenues the cost of the audit shall be reduced by said amount(s) and the resulting balance paid in accordance with the requirements of this section.

(g) The County shall establish and maintain a separate fund that shall be used for all Garage revenues and costs described in this Agreement.

5.6 Capital Expense Reserve Designation. The Net Requirement shall include an amount for cash reserves designated for major capital improvements and expenditures (the

"Designation"). The Designation shall be Thirty Thousand Dollars (\$30,000) per Fiscal Year. The County shall use the accumulated Designation funds for major capital improvements of the Garage as set forth in each approved Annual Budget. Major capital improvements and expenditures for the purposes of this section shall consist of any substantial improvements, repairs or replacements that enhance, extend the useful life of, or add to the value of the Garage. The County Auditor-Controller shall establish and maintain a separate account for the Designation and any interest earnings will be allocated to the Designation account balance using the County Treasurer-Tax Collector's interest allocation methodology, which methodology may be adjusted as deemed necessary. At least every five (5) years, the parties shall meet to consider changes in the amount of the Designation in light of major capital improvements, repairs, replacements, and other capital expenditures necessary to maintain the Garage in good condition. This meeting may, but is not required, to be held in conjunction with the annual budget meeting.

6. DAMAGE, DESTRUCTION, CONDEMNATION, INSURANCE AND INDEMNITY

6.1 Damage or Destruction of Garage.

(a) If the Garage is damaged or destroyed by a casualty or similar event that results in a reduction of parking available to the City and/or Participants, and less than fifty-five (55) years have elapsed from the Effective Date, then the County shall make good faith and diligent efforts to repair or replace the Garage on the Original Site, provided the County has sufficient funds for the repair or replacement from insurance proceeds or from a third party source of funds. The County shall notify the City and Participants if there are insufficient funds from insurance proceeds for the repair or replacement of the Garage. Within sixty (60) days after this notice, or longer if otherwise agreed to by the parties, the City and the Participants shall have the right (but not the obligation) to seek and provide funding for the needed repair or replacement. If funding is not available from the City or Participants, and the County does not have sufficient funds for the repair or replacement from insurance proceeds or from a third party source of funds, then County shall not be obligated to repair or replace the Garage. If the County does not elect to repair or replace the Garage, this Agreement shall terminate as to Participants and the City, and the County shall reimburse the City and each Participant to the extent they did not realize the benefits of their contributions for construction of the Garage ("Reimbursement"). The calculation of each Reimbursement shall be as follows: The percentage of each party's percentage contribution as set forth in Section 6.1(d) below shall be multiplied by the "Remaining Garage Funds." The Remaining Garage Funds equals: insurance funds received by the County, plus remaining balance of the Designation, plus the remaining balance of any funds that are Shared Maintenance and Operating Garage Revenues, less demolition costs. County represents that it participates in a self-insurance program as further described in Section 6.2 below.

(b) If the Garage is damaged or destroyed by a casualty or similar event and fifty-five (55) or more years have elapsed since the Effective Date, the County shall not be obligated to replace the Garage.

(c) Within one hundred twenty (120) days following the damage or destruction of the Garage described in subsection (a) of this section, the County shall notify City

and Participants as to whether it will replace the Garage, or whether it lacks sufficient funds for the repair or replacement thereof. If the County does not so elect to repair or replace the Garage, then it shall demolish the Garage within a reasonable amount of time after the damage or destruction, so that the remaining Original Site is in a condition substantially similar to that which existed prior to the construction of the Garage. Costs incurred pursuant to this subsection shall be deemed to be a legitimate expenditure of the Designation. If there are insufficient funds in the Designation and from insurance proceeds to cover costs of demolition, then the City and County shall meet to discuss finding other sources of funding to cover the costs of demolition. After demolition of the Garage, the County shall grant a right-of-way to the City for that real property that is the subject of Resolution R2007-141 (as graphically depicted on Exhibit A as the 10,045-square-foot portion of Fifth Street vacated by the City Council to enable the Garage to be constructed).

(d) The parties acknowledge the practical effect of a deductible amount in the County's insurance coverage. Therefore, if insurance proceeds are used for the repair or replacement of the Garage, the deductible amount of the County's insurance policy shall also be shared by each party in accordance with the percentage contributions as set forth below. The County will notify the parties in writing regarding its deductible prior to the execution of this Agreement, and annually as a part of the preparation and review of the budget pursuant to Section 5.2.

For the purposes of the foregoing calculation, the percentage of contribution to the construction of the Garage of the City, County, and each of the Participants consistent with the financial contribution by each party is as follows:

City:	31.23%
County:	43.33%
Riverfront:	9.75%
Mill:	9.75%
Schrader:	5.94%

(e) If the Garage is damaged by a casualty or similar event which results in parking spaces being unavailable to a party for a temporary period, the County, City, and Participants shall meet and confer (using the procedures of Section 4.8 above) on a reallocation of available spaces in the Garage. The reallocation of available spaces shall be proportional to the allocation of spaces identified in Sections 3.1 and 3.2 above. The Net Requirement Shares will be appropriately adjusted if the temporary unavailability lasts for more than 90 days.

6.2 Insurance.

(a) County has, and shall maintain throughout the term of this Agreement, "All Risk" property coverage and casualty and excess liability policies to cover any first-party and third-party claims for damages by or against the County resulting from the operation of the Garage. Within the County's "All Risk" policy the County maintains first-party property insurance coverage in the amount of Six Hundred Million Dollars (\$600,000,000) and that coverage includes earthquake and flood liability to cover any such potential damage to the

Garage. The casualty and excess liability coverage limits are Twenty-five Million Dollars (\$25,000,000). The City and the Participants shall be named as additional insured for such policies. County shall maintain the above mentioned insurance for the duration of this Agreement. The County shall at least annually provide to the City and participants proof of the insurance required by this subsection.

(b) If a Participant directly, or by hiring a vendor or contractor, performs a service in connection with the operations of the Garage including but not limited to valet services, the Participant shall, or shall require its vendor or contractor to, obtain liability insurance with a minimum of One Million Dollars (\$1,000,000) of liability coverage for the performance of such services to cover such vendors or contractors. Such coverage shall be subject to the reasonable approval of County's Risk Manager and verified by a certificate of coverage. The other Participants, County and City shall be named as additional insureds for any such insurance coverage.

6.3 Hold Harmless/Defense/Indemnification.

(a) To the full extent permitted by law, each Participant shall hold harmless, defend at its own expense, and indemnify County, City and the other Participants and their respective officers, agents, employees and volunteers from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damages to property, arising from all acts or omissions of the Participant or its officers, agents employees, volunteers contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of the other parties or their respective officers, agents, employees or volunteers.

(b) To the full extent permitted by law, County shall hold harmless, defend at its own expense, and indemnify the City, and each Participant and their respective officers, agents, employees and volunteers from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of County or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of the other parties or their respective officers, agents, employees, or volunteers.

(c) To the full extent permitted by law, City shall hold harmless, defend at its own expense, and indemnify County, and each Participant and their respective officers, agents, employees, or volunteers from any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees for personal injury (including death) or damage to property, arising from all acts or omissions of City or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of the other parties or their respective officers, agents, employees, or volunteers.

(d) Each party shall notify the other parties immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall

cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require a party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

7. TRANSFERS

7.1 Definition of Transfer. “Transfer” means any total or partial sale, sublicense, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement, of the rights hereunder or any interest therein, or any contract or agreement to do any of the same.

7.2 Transfer by a Participant. Subject to the terms and conditions of this section, a Participant shall have the right to Transfer its rights under this Agreement. Any Transfer not permitted by this section shall be null and void. If a Participant desires to effect a Transfer, the Participant shall provide County and City with thirty (30) days prior notice of any such Transfer, and such Transfer shall be subject to County and City consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if each of the following conditions are satisfied, a Participant’s Transfer shall not be subject to County and City consent: (i) the transferee enters into an assignment and assumption agreement with the Participant pursuant to which the transferee agrees to undertake the obligations of Participant under this Agreement; (ii) the Participant and the transferee execute and provide to the County documentation reasonably satisfactory to the County of Participant’s assignment of the rights and delegation of duties under this Agreement to the transferee; (iii) there is no uncured event of Participant default (as defined in Section 8.1) by the transferring Participant under this Agreement; and (iv) City has confirmed to the County that the Transfer does not cause the transferring Participant to be out of compliance with the City’s parking requirements as set forth in applicable use permits or other City approval regarding the Participant’s obligation to provide parking for a property or use in the City.

A Participant shall also be entitled to make a Transfer without the consent of the County if the Transfer is to an “Affiliate.” However, a Transfer to an Affiliate shall not be made unless the City has confirmed in writing to the County that the Transfer does not cause the transferring Participant to be out of compliance with the City’s parking requirements as set forth in applicable use permits or other City approval regarding the Participant’s obligation to provide parking for a property or use in the City. An “Affiliate” means any entity which is wholly owned by the Participant or by a parent of the Participant, or any entity in which Participant or a parent of Participant has an equity interest and is a general or managing partner/member, and shall include any new or existing entity so long as such entity is owned, controlled or managed by (or under common control with) the Participant. No Transfer to an Affiliate by Participant shall result in Participant being released from any obligations of Participant to County under this Agreement.

7.3 Transfer by the City. The City may transfer its rights and obligations under this Agreement with the prior written consent of County, which shall not be unreasonably withheld.

Such transferee shall agree in writing to perform all obligations of the City pursuant to the terms of this Agreement.

7.4 Prohibited Encumbrances.

(a) Neither the City nor a Participant shall have the right to place or create any mortgage or deed of trust upon the Garage, the Original Site or the rights under this Agreement, or place or suffer to be placed upon the Garage, Original Site or the rights under this Agreement any lien, levy or attachment or other encumbrance. Notwithstanding the foregoing, in connection with obtaining financing related to a Participant's real property, Participant may assign its rights under this Agreement to a lender as additional security for the financing of such real property. However, any such financing and assignment for security purposes shall require the lender or purchaser at a foreclosure sale to be subject to all terms of this Agreement as of the date of foreclosure (i.e., all obligations and restrictions related to Participant's use of the Garage). Such assignment or subsequent foreclosure sale shall not be a Transfer for purposes of Sections 7.1-7.3.

(b) Any mortgage, lien, levy or attachment or other encumbrances prohibited by this Section shall be deemed to be a violation of this Agreement on the date of execution or filing of record of such encumbrance, regardless of whether or when foreclosure occurs or the encumbrance is otherwise enforced, unless the City or Participant shall within sixty (60) days of such date of execution or filing of record, remove any such mortgage, lien, levy or attachment or other encumbrances.

(c) If Participant provides to County the name of any lender to whom Participant has assigned its rights under this Agreement as additional security, County shall give notice to such lender of any default (as defined in Section 8.1) or failure by Participant under this Agreement and such lender shall have the right to cure such default or failure within ninety (90) days following receipt of such notice of Participant's default.

7.5 Transfer by the County. The County may transfer its rights and obligations under this Agreement with the prior written consent of the City, which shall not be unreasonably withheld. A transferee of County's rights and obligations under this Agreement shall agree in writing to perform all obligations of the County pursuant to the terms of this Agreement, including without limitation, the obligation to maintain insurance on the Garage at such levels as are reasonable and customary for such property and improvements.

7.6 Transfer Fee. A transfer fee of not less than \$500 shall be paid to the County for any transfer that requires modifications to billing and agreements to cover such costs related to the transfer of parking spaces. If the actual processing costs are in excess of \$500, the fee paid to the County shall be equal to those actual costs. No transfer fee shall be charged for allocations of parking spaces that do not require a change in the billing procedures by the County or modifications to agreements.

8. DEFAULTS

8.1 Default.

(a) The following shall constitute a “default” by a Participant or the City under this Agreement: a failure by a Participant or the City to observe and perform any material provision of this Agreement to be observed or performed by Participant or the City where such failure continues for sixty (60) days after notice thereof from County; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, Participant or City shall not be deemed to be in default if Participant or City shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually proceed to completion.

(b) The following shall constitute a “default” by County under this Agreement: a failure by County to observe and perform any material provision of this Agreement to be observed or performed by County, where such failure continues for sixty (60) days after notice thereof from a Participant or the City; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, County shall not be deemed to be in default if County shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually proceed to completion.

(c) *If a party’s default is not cured within the time set forth in this section, the non-defaulting party or parties shall have a right to seek any remedy available at law or equity.*

8.2 No Waiver. The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

9. OTHER PROVISIONS

9.1 Notices. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party’s authorized representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The authorized representative of any party may modify their respective contact information identified in this section by providing notice to the other parties. The authorized representative of each party shall be identified on the “Attn” line below:

City of Napa:

Attn: City Manager
P.O. Box 660
Napa, California 94559-0660

Copy: City Attorney
P.O. Box 660
Napa, California 94559-0660

County of Napa:

Attn: Napa County Executive Officer
1195 Third Street, Suite 310
Napa, California 94559

Copy: County Counsel
1195 Third Street, Suite 301
Napa, California 94559

Copy: Napa County Public Works Director
1195 Third Street, Suite 201
Napa, California 94559

Participants:

Attn: Andrea Schrader
P.O. Box 388
Napa, California 94559

Napa Mill, LLC
Attn: Harry Price
500 Main Street
Napa, California 94559

Channel Properties Inc.
Attn: Massimo Desimoni
100 W. Cutting Blvd.
Richmond, California 94804

9.2 Interpretation; Venue.

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of *interpreting or enforcing any provision of this Agreement* shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under

this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

9.3 Modifications. This Agreement may not be modified orally or in any manner other than an agreement in writing signed by all parties; provided, however, that the agreement of the Participants shall not be required for an amendment to this Agreement that does not materially affect Participant rights or obligations under this Agreement.

9.4 Mediation. Any unresolved dispute arising among the parties to this Agreement shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the parties, provided that no party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, any party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the parties. Each party shall bear its own costs, including attorney's fees, incurred in connection with the mediation process. If the mediation does not result in a resolution of the dispute that is acceptable to the parties, any party may pursue its legal remedies.

9.5 Attorney's Fees. If any party brings an action or proceeding for damages arising out of another party's performance under this Agreement, to enforce any right, obligation or provision of this Agreement, to compel or enjoin another party to perform some obligation or promise under this Agreement, or to establish the right or remedy of another party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding.

9.6 Entire Agreement. Except as set forth in Section 2.3 above, this Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the matters described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral.

9.7 Each Party's Role in Drafting this Agreement. Each party to this Agreement has had an opportunity to review this Agreement, confer with legal counsel regarding the meaning of this Agreement, and negotiate revisions to this Agreement. Accordingly, no party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of this Agreement.

9.8 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the party on whose behalf they have signed this Agreement.

9.9 Warranties of Authority. Riverfront and Mill do each hereby covenant and warrant that each is a duly authorized, existing, in good standing and qualified to do business in the State of California; that each has full right, power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreement was duly authorized by proper

action of each and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions contemplated by this Agreement except as have been obtained and are in full force and effect.

9.10 No Joint Venture. It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between or among any of the parties or cause one party to be responsible in any way for the debts or obligations of any other party, except as specifically stated in this Agreement.

9.11 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable law and is intended to be limited to the extent necessary so that such exercise will not render this Agreement invalid, unenforceable or not entitled to be recorded under applicable law. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby.

9.12 Enforced Delay. In addition to specific provisions of this Agreement, performance by any party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; casualties; acts of god; acts of the public enemy; epidemics; government restrictions or priorities; freight embargoes, shortage of labor, materials or tools; unusually inclement or severe weather; lack of transportation; court order; or any other similar causes (other than lack of funds of a party) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause enumerated in this section will be deemed granted if notice by the party claiming such extension is sent to the other parties within a reasonable time after a party becomes aware of the commencement of the cause, and such extension of time is not rejected in writing by at least one of the other parties within thirty (30) days of receipt of the notice.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

CITY OF NAPA

COUNTY OF NAPA

By: Jill Techel
JILL TECHEL
Mayor

By: Mark Luce
MARK LUCE
Chair of the Board

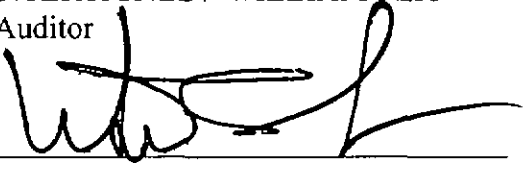
ATTEST:
City Clerk

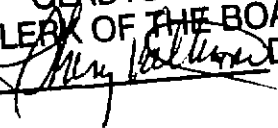
ATTEST: GLADYS I. COIL
Clerk of the Board of Supervisors

By: [Signature] 3.27.9

By: Gladys I. Coil

COUNTERSIGNED: WILLIAM FEIT
City Auditor

By: 

APPROVED 377-09
BOARD OF SUPERVISORS
COUNTY OF NAPA
GLADYS I. COIL
CLERK OF THE BOARD
BY  Deputy

APPROVED AS TO FORM:
MICHAEL W. BARRETT
City Attorney

By: 

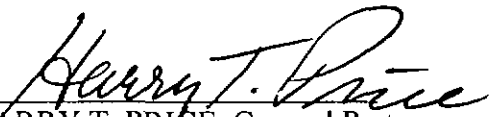
APPROVED AS TO FORM:
ROBERT WESTMEYER
County Counsel

By: 

NAPA MILL, LLC by its managing member,
Napa Mill Development Company, a
California Limited Partnership

By: 

ANDREA SCHRADER

By: 

HARRY T. PRICE, General Partner

CHANNEL PROPERTIES INC.
by Channel Lumber Co. a California
corporation, its Managing Member

By: 

MASSIMO DESIMONI, Chairman

EXHIBIT A

Map of Original Site

SCALE
1" = 60'



LEGEND

SUBJECT PARCEL LINES

CURVES

UNES

NAPA COUNTY DEPARTMENT OF PUBLIC WORKS
1100 DUBOIS STREET • ROOM 201 • NAPA, CALIFORNIA 94550-1002
PHONE 707-253-4131 • FAX 707-253-4837
ROBERT L. PETERSON
Director of Public Works
County Surveyor - County Engineer

DELTA	RADIUS	LENGTH
1	8078.34'	23.00
2	1558.37'	55.00
3	10837.53'	105.00
4	5445.41'	25.00
5	9000.00'	20.00

L1	S 72°58'07" W	24.56
L2	N 57°01'30" E	2.63
L3	N 77°58'30" E	14.79

EXHIBIT "A"
PLAT OF DESCRIPTION
OF A PORTION OF THE LANDS OF COUNTY OF
NAPA AS DESCRIBED IN "EXHIBIT B" ATTACHED
HERE TO

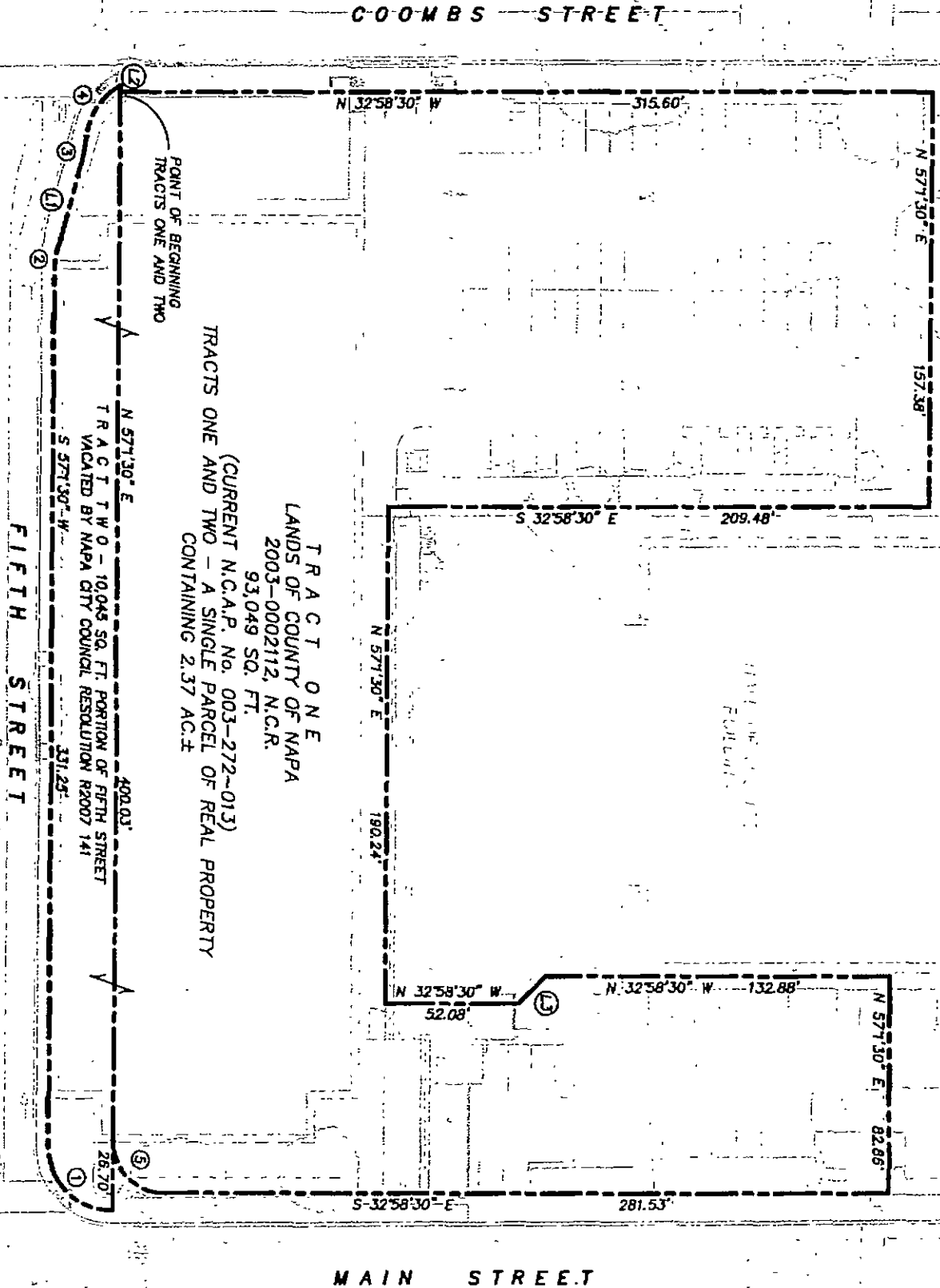


EXHIBIT B

Legal Description of Original Site

Tract One

BEING a portion of that parcel of land leased to the Napa County Public Improvement Corporation by Property Lease filed September 4, 1996 and recorded under Document Number 1996-021298 of Official Records in the Office of the Recorder of Napa County, California. Being also a portion of that parcel of land leased to the Napa County Public Improvement Corporation by Property Lease filed June 23, 1987 and recorded in Book 1523 of Official Records at Page 899 in the Office of the Recorder of Napa County, California.

Also shown on the "Plat of Description" attached hereto and made a part hereof as EXHIBIT "A"; more particularly described as follows:

BEGINNING at the most southerly corner of the above mentioned Property Lease Parcel recorded in Book 1523 of Official Records at Page 899 in the Office of the Recorder of Napa County, California; thence along the southwesterly line of said Lease Parcel and the production thereof, N 32°58'30" W 315.60 feet; thence leaving said southwesterly line N 57°01'30" E 157.38 feet; thence S 32°58'30" E 209.48 feet; thence N 57°01'30" E 190.24 feet; thence N 32°58'30" W 52.08 feet; thence N 77°58'30" W 14.79 feet; thence N 32°58'30" W 132.88 feet; thence N 57°01'30" E 82.86 feet; thence S 32°58'30" E 281.53 feet to the beginning of a tangent curve concave to the West and having a radius of 20.00 feet; thence southerly along said curve 31.42 feet through a central angle of 90°00'00" to a point on the southeasterly line of the Property Lease filed June 23, 1987 and recorded in Book 1523 of Official Records at Page 899; thence along said line S 57°01'30" W 400.03 feet to the **POINT OF BEGINNING**.

Tract Two

BEING a portion of the right of way of Fifth Street as said street is shown on that certain map entitled "Plan of Napa City", filed November 28, 1853, in Book "B" of Deeds at Page 433, Napa County Records,

Also shown on the "Plat of Description" attached hereto and made a part hereof as EXHIBIT "A"; more particularly described as follows:

BEGINNING at most southerly corner of Lot 4 in block 14 as said lot and block are shown on said map on said northwesterly right of way line of Fifth Street; THENCE northeasterly along said northwesterly right of way line North 57°01'30" East 400.03 feet to a point on the northeasterly prolongation of said northwesterly right of way line; THENCE along said northeasterly prolongation North 57°01'30" East 26.70 feet to a point on a curve, concave westerly ("easterly" per Res. R2007 141), having a radius of 25.00 feet, from which the center bears South 56°42'56" West; THENCE leaving said

northeasterly prolongation along said curve through a central angle of $90^{\circ}18'34''$, an arc distance of 39.40 feet; THENCE South $57^{\circ}01'30''$ West 331.25 feet; THENCE along a curve to the right having a radius of 55.00 feet through a central angle of $15^{\circ}56'37''$, an arc distance of 15.30 feet; THENCE South $72^{\circ}58'07''$ West 24.56 feet, THENCE along a curve to the left having a radius of 105.00 feet through a central angle of $08^{\circ}37'53''$, an arc distance of 15.82 feet to the beginning of a reverse curve; THENCE along said reverse curve having a radius of 25.00 feet through a central angle of $54^{\circ}45'41''$, an arc distance of 23.89 feet to the southwesterly prolongation of said northwesterly right of way line; THENCE northeasterly along said southwesterly prolongation North $57^{\circ}01'30''$ East 2.63 feet to the **POINT OF BEGINNING**.

Tracts One and Two above described comprising a single parcel of real property containing 2.37 acres, more or less.

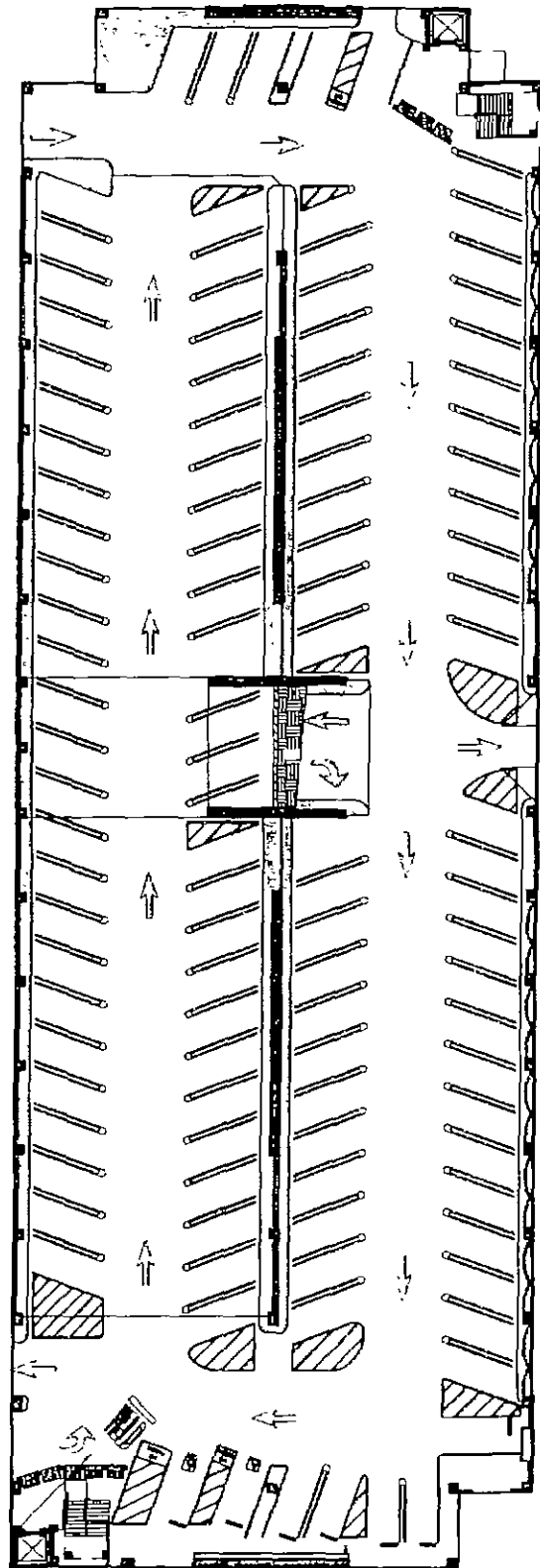
Richard E. Marshall 5/21/09

Richard E. Marshall P.L.S. 8544 Date
 Expiration: December 31, 2010
 County Surveyor
 Napa County, California



EXHIBIT C

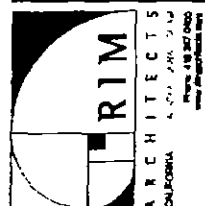
Floor Plans Showing Allocation of Spaces in Garage



FIRST LEVEL PARKING PLAN

1" = 40'-0" 110 STALLS (4 ADA + 106 UNINSTALLS)

NOTE:
FIRST LEVEL - DEDICATED FOR SHORT
TERM PUBLIC PARKING AND CITY USE



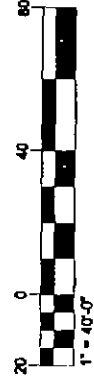
PROJECT
TITLE:

CITY / COUNTY OF NAPA
FIFTH STREET PARKING GARAGE

FIFTH STREET BETWEEN COOMBS AND MAIN STREET, NAPA, CA 94559

OWNER

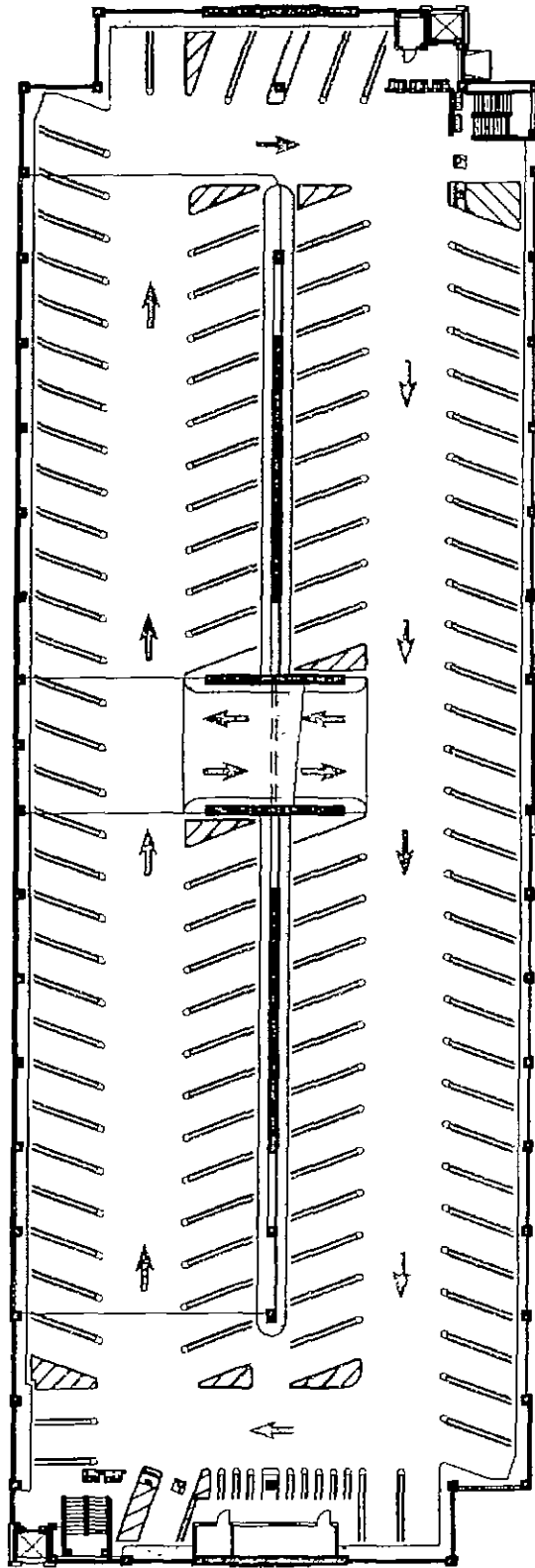
CITY / COUNTY OF NAPA



DATE : 2008.08.22
PROJECT NO : 06.657
DWG NO :

EXHIBIT C

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SECOND LEVEL PARKING PLAN

1" = 40'-0" 133 STALLS (2 ADA + 121 UNISTALLS + 10 MOTORCYCLE)



NOTE:
SECOND LEVEL = LONG TERM PUBLIC
PARKING



PROJECT
TITLE

**CITY / COUNTY OF NAPA
FIFTH STREET PARKING GARAGE**
FIFTH STREET BETWEEN COOMBS AND MAIN STREET, NAPA, CA 94558

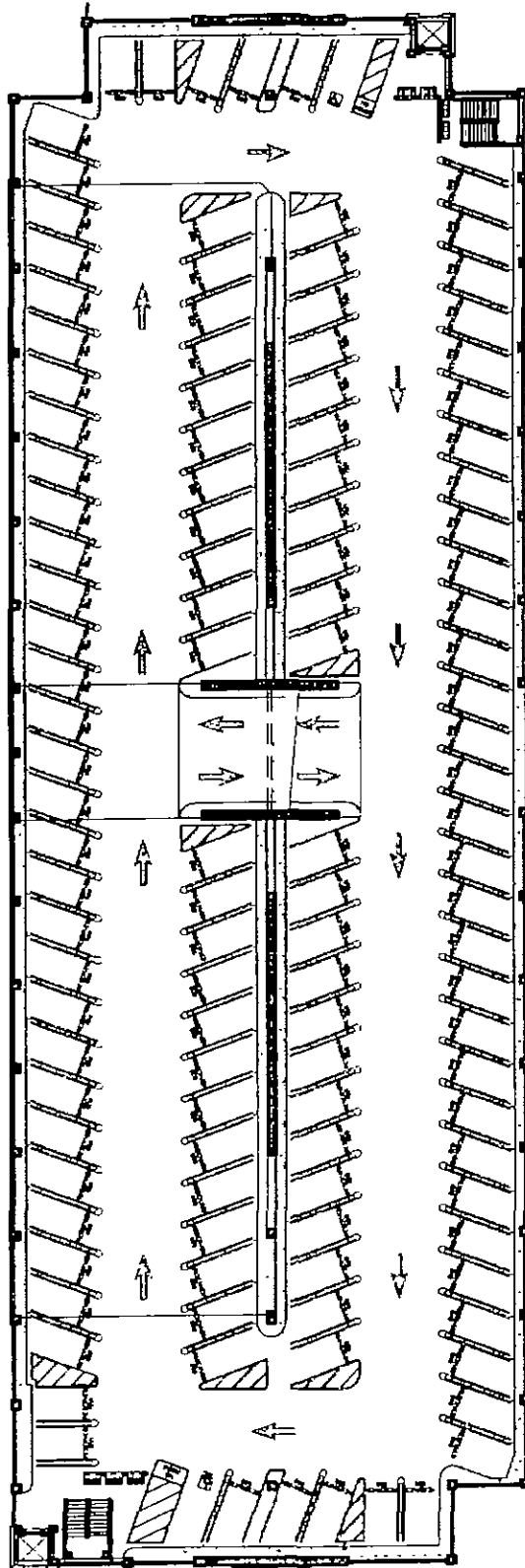
OWNER
CITY / COUNTY OF NAPA



DATE 2008.08.22
PROJECT NO. 06.657
DWG NO.

EXHIBIT C

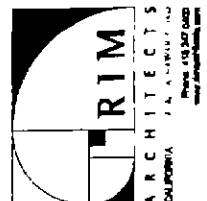
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THIRD LEVEL PARKING PLAN

1" = 40'-0" 123 STALLS (2 ADA + 121 UNISTALLS)

NOTE:
THIRD LEVEL = PRIVATE PARTICIPANT
PARKING



PROJECT
TITLE:

OWNER

**CITY / COUNTY OF NAPA
FIFTH STREET PARKING GARAGE**
FIFTH STREET BETWEEN COOMBS AND MAIN STREET, NAPA, CA 94559

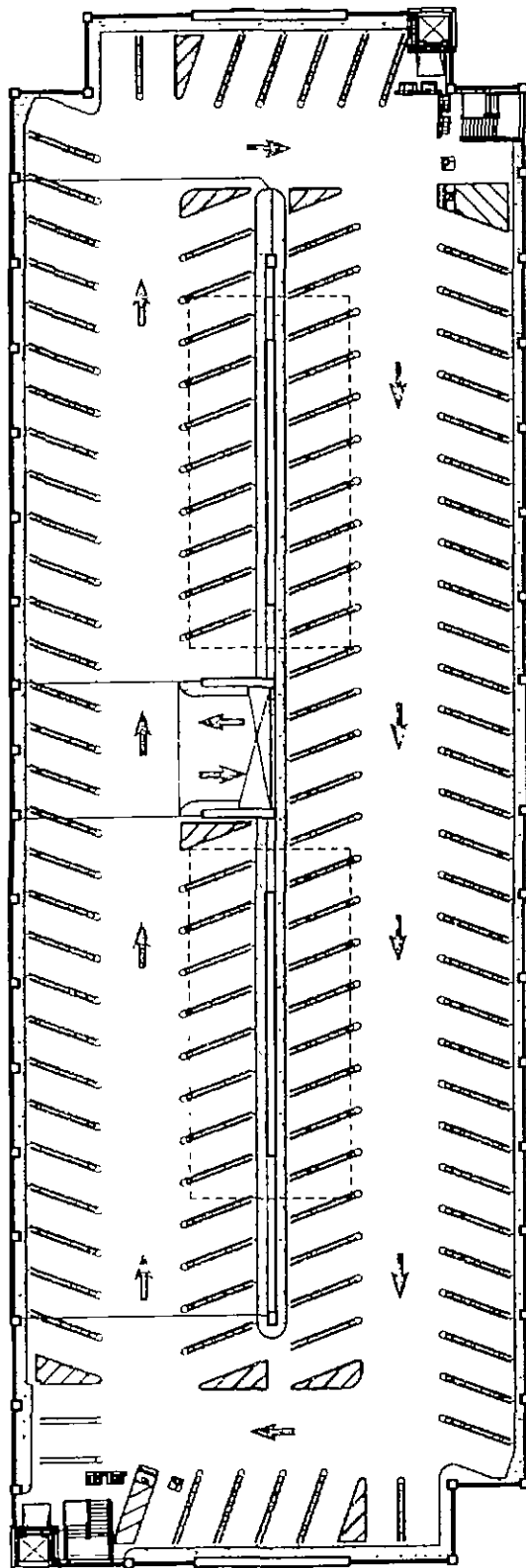
CITY / COUNTY OF NAPA



DATE 2008/06/22
PROJECT NO. 06.657
DWG NO.

EXHIBIT C

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FOURTH LEVEL PARKING PLAN

128 STALLS (2 ADA + 127 UNISTALLS)
1" = 40'-0"

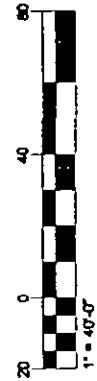
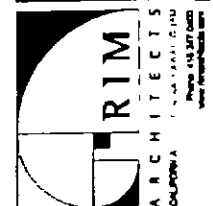


NOTE:
FOURTH LEVEL = COUNTY RESERVED
AND LONG TERM PUBLIC PARKING

PROJECT
TITLE:

CITY / COUNTY OF NAPA
FIFTH STREET PARKING GARAGE
FIFTH STREET BETWEEN COOMBS AND MAIN STREET, NAPA, CA 94559

OWNER
CITY / COUNTY OF NAPA



DATE: 2008.08.22
PROJECT NO.: 08.63.7
DWG. NO.

EXHIBIT C

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EXHIBIT D

Chart Showing Allocation of Spaces in Garage

Level	Number of spaces	Use Allocation	Time Restrictions
1	106 Regular Parking Spaces 4 ADA Parking Spaces	85 Regular Parking Spaces as City Use Parking Spaces 21 Regular Parking Spaces as Joint Use Parking Spaces 4 ADA spaces as Joint Use Parking Spaces	All spaces short-term parking (2- or 3-hour, or other as determined)
2	121 Regular Spaces 2 ADA Parking Spaces 10 Motorcycle Parking Spaces	All spaces Joint Use Parking Spaces	All-day parking, first come, first-served
3	121 Regular Parking Spaces 2 ADA Parking Spaces	All spaces Private Participant Use Parking Spaces - 46 Regular Parking Spaces Riverfront - 46 Regular Parking Spaces Napa Mill - 28 Regular Parking Spaces Schrader - 1 Shared Participant Use Parking Space and 2 ADA Shared Participant Use Parking Spaces	Private Participants will each determine if all spaces will be restricted during Work Hours and Non-Work Hours. Non-restricted spaces will be available as Public Use Parking Spaces.
4	127 Regular Parking Spaces 2 ADA Parking Space	85 Regular Parking Spaces as County Exclusive Parking Spaces 42 Regular Parking Spaces/ Joint Use Parking Spaces 2 ADA Joint Use Parking Spaces	Joint Use Parking Spaces available for all-day parking.
Total	485 spaces 10 Motorcycle Parking Spaces		

(See Section 3 of Agreement for more complete provisions of terms below.)

City Use Parking Spaces. Spaces designated as City Use Parking Spaces will be used by the City for such purposes as the City determines, which may include public parking or leased, licensed or permitted parking.

Joint Use Parking Spaces. Spaces designated as Joint Use Parking Spaces will be available during Work Hours for use by the County for County purposes, or use by any member of the general public, on a first-come, first-served basis. During Non-Work Hours, Joint Use Parking Spaces will be available for use by the public.

Participant Use Parking Spaces. Spaces designated as Participant Use Parking Spaces will be available at all times for use by Participants for the Participants' exclusive use.

County Exclusive Parking Spaces. Spaces designated as County Exclusive Parking Spaces (County Use in table above) will be available at all times for use by the County for such purposes as the County shall determine, which may include, public, leased, licensed or permit parking. County purposes may include County vehicle parking, County employee parking, County visitor parking, or parking for any other persons associated with services provided by County.

EXHIBIT E

County Holidays

January 1 (New Year's Day)
The third Monday in January (King's Birthday)
February 12 (Lincoln's Birthday)
The third Monday in February (Washington's Birthday)
The last Monday in May (Memorial Day)
July 4 (Independence Day)
The first Monday in September (Labor Day)
November 11 (Armistice Day)
The fourth Thursday in November (Thanksgiving Day)
The day following Thanksgiving
December 25 (Christmas Day)

If any of the above holidays fall on a Sunday, the holiday will be observed the following Monday, and if any falls on a Saturday, it will be observed the preceding Friday.

EXHIBIT F

GARAGE MAINTENANCE AND OPERATIONS STANDARDS

1. MAINTENANCE.

Pick up trash and empty trash cans daily.

Clean elevator cabs 7 times per week. Wash walls of cab inside and out and wet mop floors.

Sweep the floors of the Garage every two weeks or as needed.

Conduct safety and maintenance inspections of elevators monthly. (Include in the maintenance agreement with the elevator company.)

Inspect overhead and general lighting systems once per month for proper operation and replace lights as needed, including stairwell, exits, and elevator.

Inspect all electrical enclosures once per month for proper hardware and damage.

Quarterly inspect and maintain fire systems as required by fire department. (Contract with licensed fire sprinkler contractor for inspection and maintenance.)

Remove graffiti within 2 days of notice of appearance.

Pressure wash all hardscape surfaces as necessary to remove gum, dust and dirt (at minimum once per year near high traffic areas including stairwells and areas adjacent to elevators).

Inspect sump pump units twice per year for proper operation.

Inspect striping and directional arrows once per year and repaint as needed.

Check storm drain(s) once per year, in the fall, and remove debris.

As needed perform specialized cleaning of floors to remove oil and grease residues in compliance with state and federal environmental regulations. (Contract with qualified contractor.)

Maintain oil/water separator and photovoltaic system in accordance with the manufacturer's recommendations.

Maintain the grounds landscaping and landscape irrigation system.

Maintain parking garage directional and regulatory signage throughout the Garage structure.

Regularly clean and maintain solar panels.

2. SECURITY.

Weekdays-Monday to Friday

Ticketing shall be conducted in the Garage once in the morning and once in the afternoon.

Drive-thru security (no ticketing) shall be provided every two hours from 5.00 p.m. to 11:00 p.m. on all floors.

Weekends/Holidays

Drive-thru security (no ticketing) shall be provided every three hours from 10.00 a.m. to 11:00 p.m. on all floors.

The parties agree that security and ticketing enforcement may be adjusted from time to time depending on need.

Additional security will be coordinated with Participants' security measures, if any

EXHIBIT G

First Year Budget for Maintenance Expenses

December 1, 2008 - June 30, 2009

<u>Expenditure Category</u>	<u>Budget</u>	
Insurance	\$ 22,000	
Professional Service Contracts		
Security		33,200
Sweeping		10,140
Solar System Cleaning & Maintenance		6,500
Power Washing		10,000
Utilities		
Fire Sprinkler System		4,000
PG&E & Water		6,000
Elevator Inspections (1st year under warranty)		-
Maintenance Repairs		
Elevator Maintenance		8,000
Signing and Striping		5,000
Graffiti Clean up		5,000
Daily Custodial Cleaning		10,000
Miscellaneous Repairs		5,000
Operating Supplies	2,000	
Administrative Costs (3% of above)	3,805	
Contribution to Designation	<u>30,000</u>	
		<u>\$ 160,645</u>
	Riverfront	\$ 15,663
	Mill	15,663
	Schrader	9,542
	City	59,889
	County	59,889
		<u>\$ 160,645</u>

Approved By: _____

Dated: _____

EXHIBIT "H", "H-1" and "H-2"

Cooperative Agreement, First Amendment and Second Amendment

Napa County Agreement No.

6372

City of Napa Agreement No.

8688

**PARKING GARAGE COOPERATIVE AGREEMENT
BETWEEN THE COUNTY OF NAPA
AND THE CITY OF NAPA**

This Parking Garage Cooperative Agreement ("Agreement") is made and entered into as of Dec 7, 2004 by and between the County of Napa, a political subdivision of the State of California ("County") and the City of Napa, a municipal corporation ("City")

WHEREAS, the parties have previously entered into a Memorandum of Understanding (the "original MOU," City Agreement No. 8428; Napa County Agreement No. 6148) on October 7, 2003 with respect to the sharing of housing credits required by the State of California for the approval of local Housing Elements in exchange for revenue-sharing, funding for special projects related to the impacts of housing, joint planning opportunities, and other responsibilities, and

WHEREAS, one of the points of agreement in the original MOU, to wit, Paragraph 7, "Future Parking Facility," requires County to (1) dedicate a parcel of land located at 1195 Third Street in the City of Napa (APN 003-216-009 and APN 003-272-012; the "Original Site") for the development of a parking facility unless an otherwise mutually acceptable site was identified, (2) participate in a cost-sharing agreement for the development of the facility, and (3) adhere to a "good neighbor policy" under which the County committed to not build additional office space downtown without providing additional parking sufficient to accommodate additional parking needs not accommodated in the new garage; and

WHEREAS, the original MOU provides that where appropriate, the parties will enter into a written agreement concerning certain matters set forth in Paragraphs 4 through 7 and other paragraphs in order to constitute a foundation for their future cooperation

WHEREAS, the parties agree that presently the greatest need for the Garage is during weekday (Monday through Friday; 7:00 a.m. to 5:00 p.m.) hours primarily to accommodate current County uses, including 24-hour operations, and that during weeknight (Monday through Friday; 5:00 p.m. to 7:00 a.m.), weekend and holiday hours there is less need, freeing spaces for use by the public patronizing the library, downtown businesses and riverfront festivals; and

WHEREAS, to accommodate County needs and concerns, the City is willing to allow the Garage to be located on an alternative location, provided County satisfies the obligations and requirements of this Agreement providing, without limitation, for County to assume all costs and responsibility for relocating the Sullivan Homeless Shelter and Progress Foundation unit residents from the alternative Garage site, for County to assume all costs and responsibility for demolition of existing buildings on alternative Garage site, for County to assume all costs and responsibility for construction of replacement housing and for County also to designate a location to be agreed by the parties between 50-75 parking spaces to serve the needs of private development that otherwise would have been satisfied at the original Garage location specified in the MOU; and

WHEREAS, the City and County have been working on the financing and development plans for the Parking Garage and wish to set forth in this Agreement the general points of understanding, agreement on cost-sharing, location, timetable for development, ownership, maintenance, and other matters related thereto

NOW, THEREFORE, THE PARTIES AGREES AS FOLLOWS:

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1. Site for Garage. The City and County agree that the site for the Garage shall be located on the County owned block bordered by Coombs, Third, Fourth and Randolph Streets, (APN 003-213-008, 009, 010) ("Site") shown as Exhibit A attached and incorporated herein. The County in a form acceptable to the City shall confirm this Site with a deed restriction by January 31, 2005.

2. Cost Estimate and Size of Garage. The parties anticipate that the Garage project will accommodate approximately 470-500 spaces and cost approximately \$11.3 million. The parties agree that this estimated cost includes design, pre-development, pre-construction, bidding, and construction, but does not include the land costs.

3. Cost-Sharing. The parties agree that the contributions for the provision of land and funds for the Garage shall be as follows:

A. The County shall

- (1) provide land at the Site described in Paragraph 1 of this Agreement,
- (2) contribute a 58% of the estimated \$11.3 million cost of the Garage project,
- (3) pay 100% of any and all costs of demolition of any and all buildings on the Site,
- (4) pay 100% of any and all costs of constructing replacement housing required by California law,
- (5) pay 100% of any and all costs associated with in relocating both the Sullivan Homeless Shelter and the "Progress Foundation" units; and
- (6) reimburse City of Napa Community Redevelopment Agency ("Agency") for 100% of any and all costs incurred by Agency in complying with any requirements imposed on Agency under California law as a result of this Agreement, including without limitation preparation and adoption of any relocation plan. The County shall not be responsible for reimbursing any costs under this subparagraph that exceed \$5,000.00 unless the City or Agency first shall have consulted with the County prior to incurring such costs to determine the most economically feasible means to adequately comply with such legal requirements

B. The City shall contribute 42% of the estimated \$11.3 million cost of the Garage project.

C. If the costs of the Garage project exceed the estimated \$11.3 million, the parties agree that they shall each pay a pro-rata share of such excess according to their respective percentage obligations for the estimated \$11.3 million cost under this Agreement. Expenses not foreseen by the parties will, to the extent possible, be paid as a contingency under the construction contract. No discretionary changes to the construction contract shall be made without prior written agreement by the parties.

D. Parties will have several opportunities throughout the design phase to adjust the design to keep the project within the agreed upon budget, and in that regard shall satisfy, among any other requirements imposed under this Agreement, Paragraph 7 of this Agreement. Nevertheless, if the lowest responsible bid for the Garage project exceeds the architect's final estimate of the project's cost as determined immediately prior to calling for bids, the County shall not accept such bid without prior written approval by City

4. Housing Issues.

A. Replacement Housing. The County agrees to identify an appropriate site in the City of Napa and construct two replacement apartments with a minimum of seven bedrooms affordable to very low income individuals in perpetuity in accordance with California Redevelopment Law. County further agrees to make a good faith effort to have the replacement housing completed and available for

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occupancy by June 30, 2007. If County cannot meet this deadline, County agrees to transfer two of its countable very low income units with at least 7 bedrooms to the City for purposes of reporting to the State under our Housing Element annual progress report and complete the construction of the replacement housing no later than four years after the removal of the units from the affordable housing stock in the City.

B. Homeless Shelter. County shall be solely responsible for the relocation of the Sullivan Homeless Shelter on the site to another site mutually acceptable to the parties.

County shall work simultaneously and diligently on relocation of the homeless shelter on a "dual track", recognizing that it may be impracticable to relocate the homeless shelter to its permanent new location within the time constraints agreed to by the parties. Accordingly, County shall on the one hand diligently take all steps necessary to relocate the homeless shelter to a permanent location on a site owned in South Napa by the Gasser Foundation. County on the other hand shall simultaneously and diligently take all steps necessary to relocate the homeless shelter to an interim location on California Boulevard pursuant to the following schedule:

(1) County shall present interim site plans for renovation of the temporary shelter no later than September 1, 2005.

(2) County and City shall review construction progress of the permanent homeless shelter on the Gasser site and make a decision as to the need for the interim shelter by December 1, 2005.

(3) Unless the construction progress of the permanent shelter substantially demonstrates that it will be open for use no later than June 1, 2006, the interim shelter arrangements will proceed, and County shall commence renovation of interim California Boulevard site no later than January 1, 2006.

(4) County shall vacate the Sullivan Shelter no later than June 1, 2006.

C. Progress Foundation Units. County shall relocate the so-called "Progress Foundation" units by March 1, 2006.

5. Method of Financing. The parties anticipate that the City will be paying its share through cash from Redevelopment reserves or bond funds, and the County will pay its share through County reserves set aside for the project and other financing. Irrespective of the source or availability of funding, both parties shall contribute the dollar amounts specified in this Agreement. The County Auditor/Controller shall establish a County/City Parking Garage Account to account for the receipt and distribution of the funds for the Garage project.

6. Timing of Funding Allocations for Pre-Development Work. The parties agree that the predevelopment costs will be approximately \$1.50 million, and that each party shall place \$500,000.00 in an account for the Garage with the County Auditor-Controller no later than January 31, 2005, and authorize the commencement of the predevelopment design and site studies. Remaining funds for predevelopment shall be placed in the account in equal amounts by both parties when the first \$1 million has been spent down to within 10% of the remaining funds, or at such time as a new or amended contract for pre-development expenditures requires the additional commitment of funds.

7. Timeline and Responsibility for Development. The parties agree that the timing of the design, bidding and construction shall be as shown as Exhibit B to this Agreement. County shall be lead agency responsible for bidding, construction contracts, design and bidding. County shall consult with City on design and cost, and City shall approve the final design and cost estimate prior to the County calling for bids and awarding contracts for construction. County shall conduct no fewer than one meeting at which the public shall be entitled to review and comment in advance in on proposed designs.

8. Timing of Construction Funding. The parties agree that all funds required for construction of the Garage project under this Agreement shall be approved and allocated by the respective elected bodies by January 31, 2006, to allow for bidding in early 2006 and contract award in April of 2006. The parties anticipate that the County will secure some form of financing to finance all or part of their portion

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of the debt and therefore, County agrees to have the process completed and the funds secured and appropriated to the construction account referred to in Paragraph 5 of this Agreement by January 31, 2006 to allow bidding to commence in early 2006. City also agrees to transfer its portion of the construction funding to the account referred to in Paragraph 5 by January 31, 2006. If either party fails or refuses for any reason to timely allocate the project construction funding by January 31, 2006 in accordance with Paragraph 7 of this Agreement, it shall be responsible for reimbursing by March, 2006, the other party for all of the other party's costs of pre-development. Any interest earnings that accrue will be used first for project construction, and if any funds contributed or interest earned remain in the Garage Account at project completion, said funds will be reallocated to the contributing parties in the same proportion as contributed by the parties to this Agreement.

9. Ownership. The parties agree that the Garage will be owned by the County who will operate it in accordance with an Operations and Use Agreement entered into with the City

10. Operations and Use Agreement

A. The parties agree that they shall work cooperatively to enter into a Parking Garage Operations and Use Agreement which shall specify, without limitation, the number of spaces to be used by County vehicles and employees, the number of spaces to be designated for public use, and the number of spaces to be used by a private party or developer who may agree to reserve and pay for certain spaces. The parties shall adopt the Operations and Use Agreement at such time as the final design documents are approved but prior to bidding the project. The Agreement shall be recorded and shall be effective for the life of the Garage. The Operations and Use Agreement shall further designate the County as the agency responsible for the daily management, operation, and maintenance of the facility and the options for doing so, including without limitation contracting with the City or a private firm. The City and County shall annually approve a budget for the maintenance of the facility and contribute equal amounts for the costs minus any contribution required of a private party, fees, charges, or income from the Garage.

B. Irrespective of whether the parties enter into an Operations and Use Agreement, the parties agree that during the weekday (Monday through Friday) hours of 7:00 a.m. to 5:00 p.m., 75% of spaces shall be available for County use (including County employee parking, County visitors, and all other persons associated with County), and all remaining spaces, which shall be no fewer than 25% of the spaces shall be reserved and open for public use as determined by the City. The parties further agree that during weekday evening hours (Monday through Friday, 5:00 p.m. to 7:00 a.m.) and weekend (Saturday and Sunday) and holiday hours, 75% of the spaces shall be designated solely for public or private use, as determined by the City, with a minimum of 25% of the spaces reserved for County use.

11. Additional Parking Space Issues

A. While the parties anticipate that they shall be the only two parties to the Operations and Use Agreement executed pursuant to Paragraph 9, the parties also anticipate that from time to time the parties may not themselves require the use of all spaces in the Garage, and that some number of surplus spaces may therefore exist. Accordingly, the parties agree that said agreement may allow for a private party to lease, license or otherwise use designated surplus spaces in the Garage from the County with approval of the City, provided the private party's use of said surplus spaces shall not reduce or diminish the use or availability of the Garage for County employee parking and public parking under this Agreement. Any funds received from or as a result of such lease, license or use by a private party shall be allocated and used solely for costs of operation and maintenance of the Garage.

B. County Provision of Spaces on Alternative Sites. In addition to spaces in the Garage, County shall designate 50-75 additional parking spaces for use by private development anticipated near the original site specified in the MOU. The location shall be as mutually agreed by the parties and addressed in the Operations and Use Agreement or if the parties are unable to so agree, said additional spaces shall be located in the Garage with a commensurate reduction in County spaces. County may satisfy this additional space requirement by designating the spaces on the Original Site.

12. Parking Enforcement. The County shall provide parking enforcement in the Garage to ensure proper usage of all designated spaces and to patrol for illegal parking. Revenue from citations

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shall be used to offset the costs of enforcement. Costs not offset shall be funded by the joint maintenance account.

13. Lead Agency for Design and Development The parties agree that the County shall be the lead agency for design, development plan processing, environmental review, preparation of bid documents and construction management. The County Public Works Director will be the responsible party for project management, and shall adhere to the timetable in Exhibit B. He/she shall work with a technical team from the City and the County who will have input into the design and development features of the Garage.

14. Processing and Design Review The parties agree that the County will process the garage through its planning and permitting departments at no cost to the City. The County and City agree to jointly sponsor one public meeting as well as make individual contacts with nearby property owners to solicit input from interested parties in the design of the facility. The City Council and Board of Supervisors shall jointly approve the final design.

15. Change Orders The estimated project cost includes a 10% contingency for change orders and other unforeseen costs. Change orders that relate to unforeseen circumstances or other problems and that are necessary for public safety or to complete the garage as intended shall be negotiated and authorized by the County in a timely manner to minimize unsafe conditions and construction delays. These costs shall be paid for from the contingency budget. From time to time, opportunities may arise during construction to improve upon the design by the approval of a discretionary change order. All discretionary change orders exceeding \$30,000 shall be first reviewed and approved by the City before being authorized by the County.

16. Temporary Parking for County Employees It shall be the responsibility of the County to arrange for or direct its employees to park in alternate locations while the project is under construction. The City will assist in identifying alternative sites for said purpose, but shall not be responsible or obligated for any costs of providing such parking.

17. Hold Harmless and Indemnity The hold harmless and indemnity provisions contained in Paragraph 15 of the original MOU shall apply to this Agreement. This paragraph shall not, however, apply to the operation and maintenance of the Garage after its construction has been completed; the parties agree that they will negotiate cooperatively and attempt to agree on equitable indemnity provisions to be incorporated in the Operations and Use Agreement referenced in Section 10 of this Agreement. The parties anticipate such indemnification responsibilities and risk allocation of the parties will, with other factors to be considered by the parties during future negotiations, be based proportionally on the number of parking spaces allocated to each party.

18. Fees and Charges The parties anticipate that County may impose fees and/or charges for the use of the Garage. The parties shall work together cooperatively, and City approval shall be required, before any such fees and charges are imposed. The proceeds of any and all such fees and charges shall be allocated and used solely for the costs of operation and maintenance of the Garage. Any and all revenue received by the City from city's issuance of permits to park in the Garage shall be used to offset the costs of operating and maintaining the Garage.

19. Warranty of Legal Authority Each party warrants and covenants that it has the present legal authority to enter into this MOU and to perform the acts required of it hereunder. If any party is found to lack the authority to perform the acts required of it hereunder or is prevented from performing the acts by a court of competent jurisdiction, this Agreement shall be void.

20. Attorneys' Fees, Applicable Law and Forum In the event either party brings an action or proceeding for damages arising out of the other's performance under this Agreement, to enforce any right, obligation or provision of this Agreement, to compel or enjoin the other party to perform some obligation or promise under this Agreement, or to establish the right or remedy of either party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding, whether or not such action or proceeding is prosecuted to judgment. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Napa.

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21. Time of the Essence Time shall be and is of the Essence with respect to all matters, promises, agreements and obligations contained in this Agreement.

22. Original MOU to Remain in Effect In all respects not expressly amended by this Agreement, the original MOU and all of its terms shall remain in full force and effect, and shall apply to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

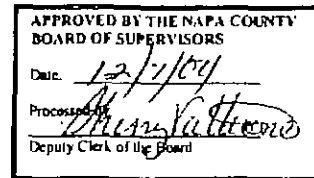
COUNTY OF NAPA

By: 
MARK LUCE
Chair of the Board

ATTEST: PAMELA MILLER
Napa Clerk of the Board of Supervisors

By: 

APPROVED AS TO FORM:
ROBERT WESTMEYER,
Napa County Counsel

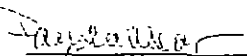


By E-Signature Robert Westmeyer

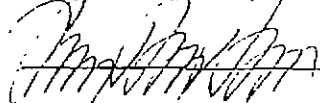
CITY OF NAPA

By: 
ED HENDERSON, Mayor

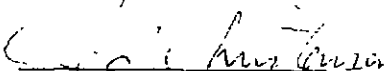
ATTEST: PAMYLA MEANS
Napa City Clerk

By: 

APPROVED AS TO FORM:
THOMAS B. BROWN, City Attorney

By: 

COUNTERSIGNED:
JED CHRISTENSEN, Finance Director

By: 

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EXHIBIT "A"

Parking Garage Parcel

The land referred to herein is situated in the City of Napa, County of Napa, State of California, and is described as follows

Lots 1, 2, 3 and 4 of Block 24, as shown on the map entitled "Plan of Napa City", filed November 28, 1853 and recorded in Book "B" of Deeds at Pages 433, in the Office of the County Recorder of Napa County and also shown on the "Plat of Description" attached hereto and made a part hereof as EXHIBIT "A1".

EXCEPTING THEREFROM the interest in that portion thereof granted to the City of Napa by Easement Deed filed April 8, 1971 and recorded in Book 847 of Official Records at Page 440, further described as follows

A portion of Lots 1, 3 and 4 of Block 24, as shown on the map entitled "Plan of Napa City", recorded November 28, 1853 in Book B of Deeds at Page 433 in the office of the County Recorder of Napa County, described as follows:

COMMENCING at the most southern corner of said block 24, thence northwesterly along the southwesterly boundary of said block to the most western corner thereof; thence northeasterly along the northwestern boundary of said block to the most northern corner thereof; thence southeasterly along the northeasterly boundary of said block to a tangent point of cusp on a 20 foot radius curve concave to the south, the radius point of said curve bears 44 feet southeasterly measured at right angles to said northwestern boundary and 20 feet southwesterly measured at right angles to said northeastern boundary; thence northwesterly, westerly and southwesterly along said curve to a tangent point on a line parallel with and measured 24 feet southeasterly at right angles to said northwestern boundary; thence southwesterly along said parallel line to a tangent point on a 100 foot radius curve concave to the east, the radius point of said curve bears 124 feet southeasterly measured at right angles to said northwestern boundary and 112 feet northeasterly measured at right angles to said southwesterly boundary; thence southwesterly, southerly and southeasterly along said curve to a tangent point on a line parallel with and measured 12 feet northeasterly at right angles to said southwestern boundary; thence southeasterly along said parallel line to the southeastern boundary of said block; thence southwesterly along said southeastern boundary 12 feet to the point of commencement.

Napa County Assessor's Parcel Number 003-213-008, 009 & 010

Containing 1.32 gross acres, more or less
1.08 net acres, more or less

EXHIBIT B

County Garage Estimated Construction Schedule

		<u>Walry Estimate</u>
County In-house Planning Review Process	10/04 - 12/04	
Garage Prelim Design and Site Analysis	1/05 - 2/05	36 days
Public Input Meetings	2/05 - 3/05	
Schematic Design Plans	3/05 - 4/05	65 days
Design Development	5/05 - 6/05	55 days
Construction Documents	7/05 - 10/05	105 days
Complete Plan Check	11/05 - 12/05	56 days
Construction Financing in Place	1/06	
Prepare Bid Package & Bid	1/06 - 2/06	48 days
Contract Award	4/06	
Notice to Proceed	5/06	
Start Construction	7/06	360 days

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First Amendment to
Napa County Agreement No. 6372
City of Napa Agreement No. 8688

This First Amendment is made and entered into as of January 24, 2006 by and between the County of Napa, a political subdivision of the state of California ("County") and the City of Napa, a municipal corporation ("City").

Whereas, on December 7, 2004, the parties entered into an agreement (County Agreement No. 6372/City Agreement No. 8688), hereafter "Parking Garage Cooperative Agreement," relating to the construction of a parking garage facility, and

Whereas, Paragraph 8 of the Parking Garage Cooperative Agreement provides that all funds required for the construction of the "Project," as defined in the Parking Garage Cooperative Agreement, shall be approved and allocated by the respective elected bodies by January 31, 2006; and

Whereas, the parties would like to extend the January 31, 2006 deadline established in Paragraph 8 of the Parking Garage Cooperative Agreement because funding of the Project by January 31, 2006 will be premature and will cause the City to incur unnecessary penalties.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Paragraph 8 of the Parking Garage Cooperative Agreement is hereby amended to read in full as follows.

"8. Timing of Construction Funding. The parties agree that all funds required for construction of the Garage project under this Agreement shall be approved and allocated by the respective elected bodies by March 31, 2006, to allow for bidding in the Spring of 2006 and contract award by the Summer of 2006. If the County decides to secure some form of financing to finance all or part of their portion of the debt and therefore, County agrees to have the process completed and the funds secured and appropriated to the construction account referred to in Paragraph 5 of this Agreement by March 31, 2006 to allow bidding to commence by the Spring of 2006. City also agrees to transfer its portion of the construction funding to the account referred to in Paragraph 5 by March 31, 2006. If either party fails or refuses for any reason to timely allocate the project construction funding by March 31, 2006 in accordance with Paragraph 7 of this Agreement, it shall be responsible for reimbursing by June 1, 2006, the other party for all of the other party's costs of pre-development. Any interest earnings that accrue will be used first for project construction, and if any funds contributed or interest earned remain in the Garage Account at project completion, said funds will be reallocated to the contributing parties in the same proportion as contributed by the parties to this Agreement.

All other terms of the Parking Garage Cooperative Agreement remain in full force and effect.

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napa parking garage\parking garage-
agreement extending deadline.doc

IN WITNESS WHEREOF, this First Amendment was executed by the parties as of the date first above written.

COUNTY OF NAPA

By: Bill Dodd
BILL DODD,
Chair of the Board

ATTEST: PAMELA MILLER
Napa Clerk of the Board of Supervisors

By: Pamela Miller

APPROVED AS TO FORM:
ROBERT WESTMEYER,
Napa County Counsel

By: E-signature by Krishan Chooza

CITY OF NAPA

By: Jill Techel
JILL TECHEL, Mayor

ATTEST:
Napa City Clerk

By: Patt DeHorne

APPROVED AS TO FORM:
MICHAEL W. BARRETT, City Attorney

By: Michael W. Barrett

COUNTERSIGNED:
JED CHRISTENSEN, Finance Director

By: Jed Christensen

APPROVED 1/24/06
BOARD OF SUPERVISORS
COUNTY OF NAPA

PAMELA A. MILLER
CLERK OF THE BOARD

By: Shirley Vattione Deputy

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napa parking garage\parking garage-
agreement extending deadline.doc

Napa County Agreement No. 6372
City of Napa Agreement No. 8688

PARKING GARAGE COOPERATIVE AGREEMENT SECOND AMENDMENT

This Second Amendment is made and entered into as of February 28, 2007 by and between the County of Napa, a political subdivision of the State of California ("County") and the City of Napa, a municipal corporation ("City")

RECITALS:

- A. On October 7, 2003, the parties entered into a Memorandum of Understanding ("MOU") identified as Napa County Agreement No. 6148, and City of Napa Agreement No. 8428. The MOU (Eighth Recital and Paragraph 7) anticipated, among other provisions, that the parties would enter into separate agreements regarding the sharing of responsibilities related to development of a future parking facility ("Garage"). The MOU anticipated that the Garage would be located on a portion of the County owned property at 1195 Third Street in the City of Napa (APN 003-272-013 and APN 003-272-014) (hereinafter the "Original Site"), unless an alternative mutually acceptable site was identified.
- B. On December 7, 2004, the parties entered into a Parking Garage Cooperative Agreement ("Agreement") identified as Napa County Agreement No. 6372, and City of Napa Agreement No. 8688. Among other provisions regarding the sharing of responsibilities related to development of the Garage, the Agreement identified an alternative mutually acceptable site for the development of the Garage, to be located on the County owned block bordered by Coombs, Third, Fourth, and Randolph Streets (APN 003-213-008, 009, and 010). That site was formerly used by the Sullivan Shelter, and is referred to herein as the "Sullivan Site". After careful consideration of the Sullivan Site as an alternative site for the Garage, the parties mutually agreed on the Original Site as the location for the Garage.
- C. On January 24, 2006, the parties entered into a First Amendment to the Agreement ("First Amendment"), by which the parties modified specified timing requirements of Agreement Paragraph 8 to provide, generally, for the deposit of required construction funds into a specified construction account by March 31, 2006, bidding for construction in the Spring of 2006, and contract award for the parking facility by the Summer of 2006. The Agreement, as amended by the First Amendment, is referred to herein as the "Cooperative Agreement."
- D. On May 23, 2006, at a joint meeting of the City Council ("Council") and the County Board of Supervisors ("Board"), the Council and the Board directed the respective City and County staff members to pursue design and construction of the Garage at the Original Site, as a design-build project, potentially using funding from private owners of adjacent properties, and to modify the terms of the Agreement accordingly.
- E. On January 9, 2007, the Board approved three (3) Private Participation Agreements, one with each of three neighboring property owners, which would provide each of them with designated parking spaces that they can make available to tenants, employees, and visitors to their properties in return for proportionate financial contributions to both capital and operating costs of the parking facility.
- F. On January 9, 2007, the Board authorized the County's Director of Public Works to request design-build proposals from pre-qualified top five ranked design-build entities for the design and construction of the Garage in accordance with Public Contract Code Section 20133.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Amendment to Agreement. In all respects not expressly amended by this Second Amendment, the Agreement and all of its terms shall remain in full force and effect.

2. Implementation of the MOU. For the purpose of interpreting MOU Subparagraph 26(a), each party's compliance with the respective obligations under this Second Amendment shall be considered sufficient progress on the obligations related to providing a future parking facility (under MOU Subparagraphs 7(a), 7(b), and 7(d)). This Second Amendment shall serve as the "equitable cost-sharing agreement" required by MOU Subparagraph 7(b), and the requirements of this Second Amendment shall supersede and replace the requirements of Subparagraph 7(b). The ongoing maintenance requirements of MOU Subparagraph 7(d), as well as the deed restriction requirements of MOU Subparagraph 7(a) shall be clarified and implemented by the parties through a separate Operations and Use Agreement to be recorded against the Original Site.

3. Agreement Paragraph 1 is amended by deleting the previous text in full, and replacing it with the following:

"1. Site for Garage. The City and County agree that the site for the Garage shall be located at the Original Site, a graphic depiction and legal description of which is attached hereto as Exhibit A and incorporated herein by reference. The County shall, in a form acceptable to the City, document the terms of the operation and use of the Garage on the Original Site pursuant to an Operations and Use Agreement described in Agreement Paragraph 10, to be recorded as a deed restriction against the Original Site property prior to commencing operation of the Garage.

4. Agreement Paragraph 2 is amended by deleting the previous text in full, and replacing it with the following:

"2. Cost Estimate and Size of Garage. The parties anticipate that the Garage project will accommodate approximately 470 parking spaces and cost approximately \$15,200,000. The parties agree that "Garage Costs" (on which the cost estimate is based, and for which "cost-sharing" between the parties shall be defined in this Agreement) shall include design, pre-development, pre-construction, design-build bidding and construction, but specifically exclude costs of land or costs associated with the design or demolition efforts at the Sullivan Site.

5. Agreement Paragraph 3 is amended by deleting the previous text in full, and replacing it with the following:

"3. Cost-Sharing. Each party shall contribute land for the Garage project, and shall contribute funds toward Garage Costs as follows:

A. Land contributions:

(1) The County shall provide the land for the Garage at the Original Site pursuant to Agreement Paragraph 1.

(2) The City shall provide that portion of the land for the Garage identified on Exhibit "B," (Fifth Street Right-of-way) attached hereto and incorporated herein by reference. The City shall abandon, vacate, quitclaim or otherwise convey the

Parking Garage Cooperative Agreement - Second Amendment

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City's interest in the right-of-way, for the benefit of the County (as adjacent property owner) as more particularly described in Exhibit "B," attached hereto and incorporated herein by reference, subject to sufficient funding for the Garage project (pursuant to Agreement Subparagraph 3(d)).

B. The County shall:

(1) contribute \$6,550,000 of the estimated \$15,200,000 cost of the Garage project;

(2) obtain contributions from private participant owners of property adjacent to the Original Site, in an amount up to approximately \$3,900,000 in return for the private participants' right to use a portion of the Garage proportionate to the contribution,

(3) pay 100% of any and all costs of demolition of any and all buildings on the Sullivan Site,

(4) pay 100% of any and all costs of constructing replacement housing from the Sullivan Site, as required by California law;

(5) pay 100% of any and all costs associated with relocating both the Sullivan Homeless Shelter and the "Progress Foundation" units from the Sullivan Site; and

(6) reimburse City of Napa Community Redevelopment Agency ("Agency") for 100% of any and all costs incurred by Agency in complying with any requirements imposed on Agency under California law as a result of this Agreement, including without limitation preparation and adoption of any relocation plan. The County shall not be responsible for reimbursing any costs under this subparagraph that exceed \$5,000.00 unless the City or Agency first shall have consulted with the County prior to incurring such costs to determine the most economically feasible means to adequately comply with such legal requirements.

C. The City shall contribute \$4,746,000 of the estimated \$15,200,000 cost of the Garage project. As set forth in Agreement Paragraph 8, the City paid its \$4,746,000 funding obligation to the County on or about March 31, 2006.

D. Monitoring estimated Garage Costs:

(1) The County shall keep the City regularly informed regarding the status of design of the Garage. The City may submit to the County suggested modifications to the design, and the County shall reasonably consider any such suggestions submitted by the City.

(2) After design-build bids are received by the County, and prior to the County's award of a design-build construction contract, the County shall provide the City written notice as to whether the County has sufficient funds available to provide to the City the parking spaces specified in Agreement Paragraph 10. In determining sufficiency of funds available for the Garage project, the County shall include any interest earned on the contributions paid toward the Garage project (including contributions by private participants). If the County's notice indicates sufficient funds are available, this Agreement shall remain in full force and effect. If the County's notice indicates there are insufficient funds available to provide sufficient parking spaces to the City:

(a) County and City shall meet and confer in a good faith effort to negotiate a modification to this Agreement by which either the respective contributions of the County and the City are proportionately increased, or the number of parking spaces available to the County and City are decreased.

(b) If County and City are not able to agree on a modification to the Agreement within thirty (30) days of the County's notice, City may terminate its obligations under this Agreement by providing thirty (30) days written notice to the County, and County shall return the City's \$4,746,000 (including all interest earned thereon) to City within thirty (30) days of City's notice termination, and County shall propose an alternative means to satisfy the requirements of MOU Paragraph 7.

Parking Garage Cooperative Agreement – Second Amendment

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E Expenses not foreseen by the parties will, to the extent possible, be paid as a contingency under the construction contract. No discretionary changes to the construction contract shall be made without prior written agreement by the parties."

- 6 Agreement Paragraph 7 is amended by deleting the previous text in full, and replacing it with the following:

"7. Timeline and Responsibility for Development. The parties agree that the timing of the design and construction shall be as shown on Exhibit "C" attached hereto and incorporated herein by reference. County shall be lead agency responsible for design and construction of the Garage."

7. Agreement Paragraph 8 is amended by deleting the previous text in full, and replacing it with the following:

"8. Timing of Construction Funding. The parties hereby acknowledge that the City paid its \$4,746,000 funding obligation to the County on or about March 31, 2006, and the County deposited its \$6,550,000 funding obligation to the appropriate Garage Account on or about March 31, 2006. Any interest earnings that accrue will be used first for Garage project construction, and if any funds contributed or interest earned remain in the Garage Account at project completion, said funds will be reallocated to the contributing parties in the same proportion as contributed by the parties to this Agreement."

8. Agreement Paragraph 10 is amended by deleting the previous text in full, and replacing it with the following:

"10. Operations and Use Agreement.

A. The parties agree that they shall work cooperatively to enter into a Parking Garage Operations and Use Agreement ("O&U Agreement") which shall specify, without limitation, the number of spaces to be used by County vehicles and employees, the number of spaces to be designated for City Use, the number of spaces open to the general public, and the number of spaces to be used by a private party or developer who may agree to reserve and pay for certain spaces. The County shall not dedicate parking spaces in the Garage for use by a private party without the prior written consent of the City. The parties shall adopt the O&U Agreement prior to commencing operation of the Garage. The O&U Agreement shall be recorded against the Original Site and shall be effective for the life of the Garage. The O&U Agreement shall further designate the County as the agency responsible for the daily management, operation, security, and maintenance of the facility and the options for doing so, including without limitation contracting with the City or a private firm. The City and County shall annually approve a budget for the maintenance of the Garage and contribute equal amounts for the costs minus any contribution required of a private party, fees, charges, or income from the Garage. It is anticipated that private participants will be responsible for approximately twenty-six percent (26%) collectively of such costs, with the remaining costs being shared equally between City and County, approximately thirty-seven percent (37%) each.

B. Unless specifically modified by the terms of an O&U Agreement, the parties agree that the Garage shall include 85 parking spaces for "City Use," 85 parking spaces shall be "County Exclusive Parking Spaces," 170 parking spaces shall be "Joint Use Parking Spaces," and a certain number will be for the use of Private Participants as those terms are defined below:

Parking Garage Cooperative Agreement - Second Amendment

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(1) "County Exclusive Parking Spaces." Each County Exclusive Parking Space shall be reserved for the exclusive use of County for County purposes. County purposes may include County vehicle parking, County employee parking, County visitor parking, or parking for any other persons associated with services provided by County.

(2) "County Holiday." County Holiday shall mean all days in a calendar year which are observed as a County Holiday. The identification of any County Holiday may be modified by the County Board of Supervisors, effective 30 days after written notice is provided by the County Executive Officer to the City Manager.

(3) "Joint Use Parking Spaces." Each Joint Use Parking Space shall be available during Work Hours for use by County for County purposes, or use by any member of the general public, on a first-come first-served basis. During Non-Work Hours, Joint Use Parking Spaces shall be for public use."

(4) "City Use Parking Spaces." Any parking space identified for "City Use" shall be open for use by any member of the general public, provided that the City and County agree to negotiate in good faith the regulation of the use by the general public such spaces through means such as the issuance of parking permits, charging fees for use, or designating spaces for particular users (such as parking for special events). The imposition of any regulated use of City Use Parking Spaces, shall be mutually agreed upon by the City and County, and shall be memorialized with specification in the O&U Agreement.

(5) "Work Hours." Work Hours shall mean the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday; provided, however, Work Hours shall not include any County Holiday.

(6) "Non-Work Hours." Any hour that is not a Work Hour shall be a "Non-Work Hour."

(7) "Private Participant Parking Spaces." Shall mean those spaces licensed to private participants via separate agreements.

C. "Diagram of Parking Structure." A Diagram of Parking Structure, which sets forth the number and location of City Use Parking Spaces (compared to County Exclusive Parking Spaces, Joint Use Parking Spaces, and Private Participant Parking Spaces) is set forth on Exhibit "D," attached hereto and incorporated herein by reference." Notwithstanding the foregoing, the parties anticipated that the exact location of different classifications of spaces may change in the future. The parties therefore agree to include a procedure for changing locations of spaces as necessary in the O&U Agreement.

9. Agreement Paragraph 11 is amended by deleting the previous text in full, and replacing it with the following:

"11. Additional Parking Space Issues.

A. The parties anticipate that private participants may also be parties to the O&U Agreement executed pursuant to Paragraph 9. The parties also anticipate that from time to time the parties may not themselves require the use of all spaces in the Garage, and that some number of surplus spaces may therefore exist. Accordingly, the parties agree that the O&U Agreement may allow for a private party to lease, license or otherwise use designated surplus spaces in the Garage from the County with approval of the City, provided the private party's use of said surplus spaces shall not reduce or diminish the use or availability of the parking spaces identified in Agreement Paragraph 10. Any such use of the Garage by a private party shall be memorialized in a private participation agreement between the County and the private party or parties. Any funds received from or as a result of such lease, license or use by a private party shall be

allocated and used solely for costs of construction, or operation and maintenance, of the Garage.

10. Default. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Second Amendment, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may cure the default and the defaulting party shall pay the demanding party's costs resulting from curing the default.

11. Notices. All notices required or contemplated by this Second Amendment shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party. The Authorized Representative of each party shall be identified on the "Attn" line, below:

City of Napa:

Attn: City Manager
P.O. Box 660
Napa, California 94559-0660

Copy: City Attorney
P.O. Box 660
Napa, California 94559-0660

County of Napa:

Attn: Napa County Executive Officer
1195 Third Street, Suite 310
Napa, California 94559

Copy: County Counsel
1195 Third Street
Napa, California 94559

Copy: Community Partnership Manager
1195 Third Street, Suite B-20
Napa, California 94559

12. Modifications. This Second Amendment may not be modified orally or in any manner other than an agreement in writing signed by both parties.

Parking Garage Cooperative Agreement – Second Amendment

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13. Entire Agreement. This Second Amendment (including the Agreement and all documents incorporated herein by reference), comprises the entire integrated understanding between the parties concerning the matters described herein. This Second Amendment supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Second Amendment are complementary; what is called for in one is binding as if called for in all.
14. Each Party's Role in Drafting this Second Amendment. Each party to this Second Amendment has had an opportunity to review this Second Amendment, confer with legal counsel regarding the meaning of this Second Amendment, and negotiate revisions to this Second Amendment. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of this Second Amendment.
15. Signatures. The individuals executing this Second Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Second Amendment on behalf of the respective legal entities of County and City.

IN WITNESS WHEREOF, this Second Amendment was executed by the parties hereto as of the date first above written.

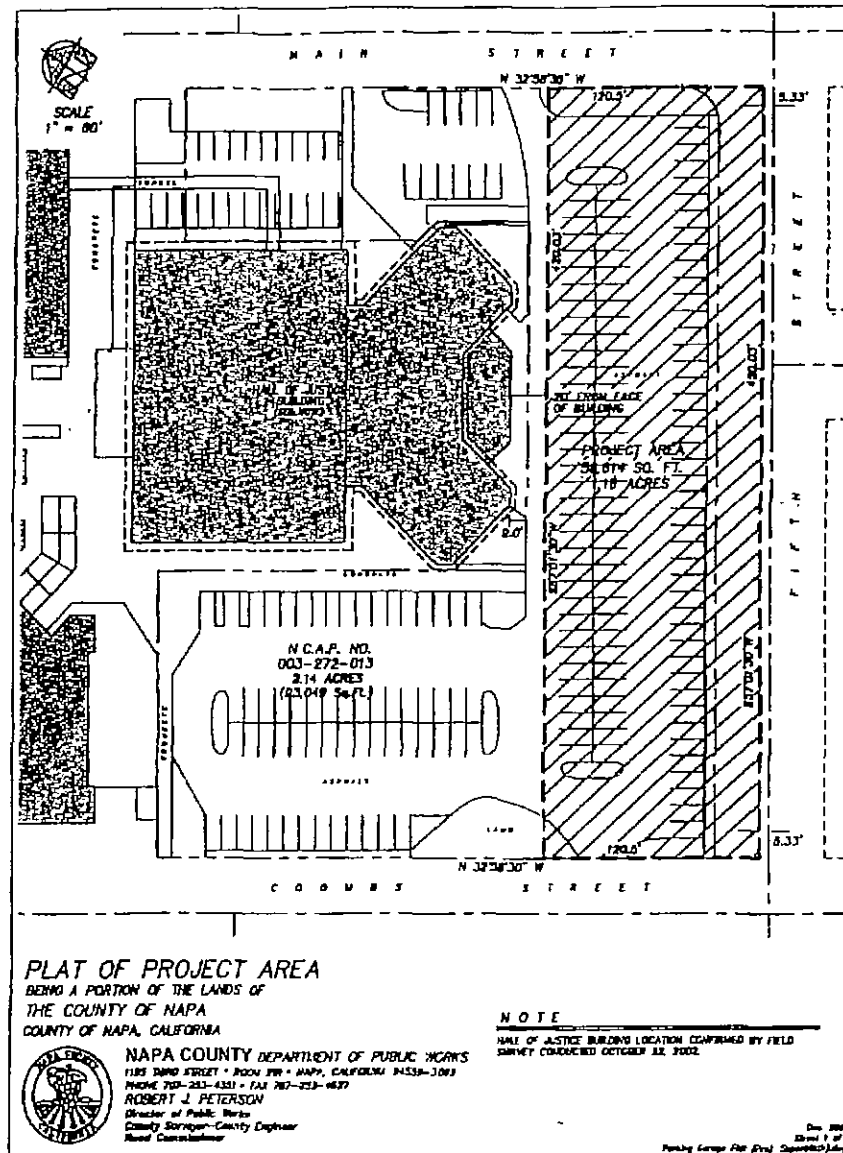
	COUNTY OF NAPA By: <u>Harold Moskowitz</u> HAROLD MOSKOWITE, Chair of the Board
ATTEST: GLADYS COIL Clerk of the Board of Supervisors By: <u>Gladys Coil</u>	
APPROVED AS TO FORM: ROBERT WESTMEYER, County Counsel By: Krishan Chopra, Deputy	
Approved by the Napa County Board of Supervisors Date: <u>2/27/07</u> Processed by: <u>Harold Moskowitz</u> Deputy Clerk of the Board	
	CITY OF NAPA By: <u>Jill Techel</u> JILL TECHEL, Mayor
ATTEST: SARA COX, City Clerk By: <u>Sara D. Cox</u>	
APPROVED AS TO FORM: MICHAEL W. BARRETT, City Attorney By: <u>Michael W. Barrett</u>	
COUNTERSIGNED: SCOTT NIELSEN, City Auditor By: <u>Scott Nielsen</u>	

Parking Garage Cooperative Agreement - Second Amendment

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Exhibit A
Diagram and Legal Description of Original Site



Parking Garage Cooperative Agreement - Second Amendment

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PARKING GARAGE
PROJECT AREA

The project area corridor is defined by a line of demarcation drawn parallel to the southeasterly line of the parcel of land described in the Grant Deed filed January 15, 2003 and recorded as Document No. 2003-0002112 in the office of the Recorder of Napa County, California and 20 feet from the southeasterly face of the Napa County Hall of Justice Building. Said project demarcation line extends to the northeasterly and southwesterly lines of the above mentioned parcel and is offset by a parallel line 120.5 feet to the southeast also bounded by the extended northeasterly and southwesterly lines of the above mentioned parcel

The above project area comprises 50,614 square feet or 1.16 acres.

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**Exhibit B
Fifth Street Right of Way**



**ENGINEERS
SURVEYORS
PLANNERS**

February 8, 2007
BKJF Job No. 20045160-10

**EXHIBIT "B"
PROPERTY DESCRIPTION
STREET VACATION**

All that certain real property situated in the City of Napa, County of Napa, State of California, and described as follows:

BEING a portion of the right of way of Fifth Street as said street is shown on that certain map entitled "Plan of Napa City", filed November 28, 1853, in Book "B" of Deeds at Page 433, Napa County Records, said portion being more particularly described as follows:

BEGINNING at most southerly corner of Lot 4 in Block 14 as said lot and block are shown on said map on said northwesterly right of way line of Fifth Street; **THENCE** northeasterly along said northwesterly right of way line North $57^{\circ}01'30''$ East 400.03 feet to a point on the northeasterly prolongation of said northwesterly right of way line; **THENCE** along said northeasterly prolongation North $57^{\circ}01'30''$ East 26.70 feet to a point on a curve, concave easterly, having a radius of 25.00 feet, from which the center bears South $56^{\circ}42'56''$ West; **THENCE** leaving said northeasterly prolongation along said curve through a central angle of $90^{\circ}11'34''$, an arc distance of 39.40 feet; **THENCE** South $57^{\circ}01'30''$ West 331.25 feet; **THENCE** along a curve to the right having a radius of 55.00 feet through a central angle of $15^{\circ}56'37''$, an arc distance of 15.30 feet; **THENCE** South $72^{\circ}58'07''$ West 24.56 feet; **THENCE** along a curve to the left having a radius of 105.00 feet through a central angle of $08^{\circ}37'53''$, an arc distance of 15.82 feet to the beginning of a reverse curve; **THENCE** along said reverse curve having a radius of 25.00 feet through a central angle of $54^{\circ}45'41''$, an arc distance of 23.89 feet to the southwesterly prolongation of said northwesterly right of way line, **THENCE** northeasterly along said southwesterly prolongation North $57^{\circ}01'30''$ East 2.63 feet to the **POINT OF BEGINNING**.

Containing an area of 10,045 square feet, more or less

A plat showing the above described vacation is attached hereto and made a part hereof as Exhibit "B".

This description was prepared from record data for BKF Engineers.

By: 
Harry T. Williams, P.L.S. No. 6711
License Expires: 06/30/08

Dated: 2/8/07

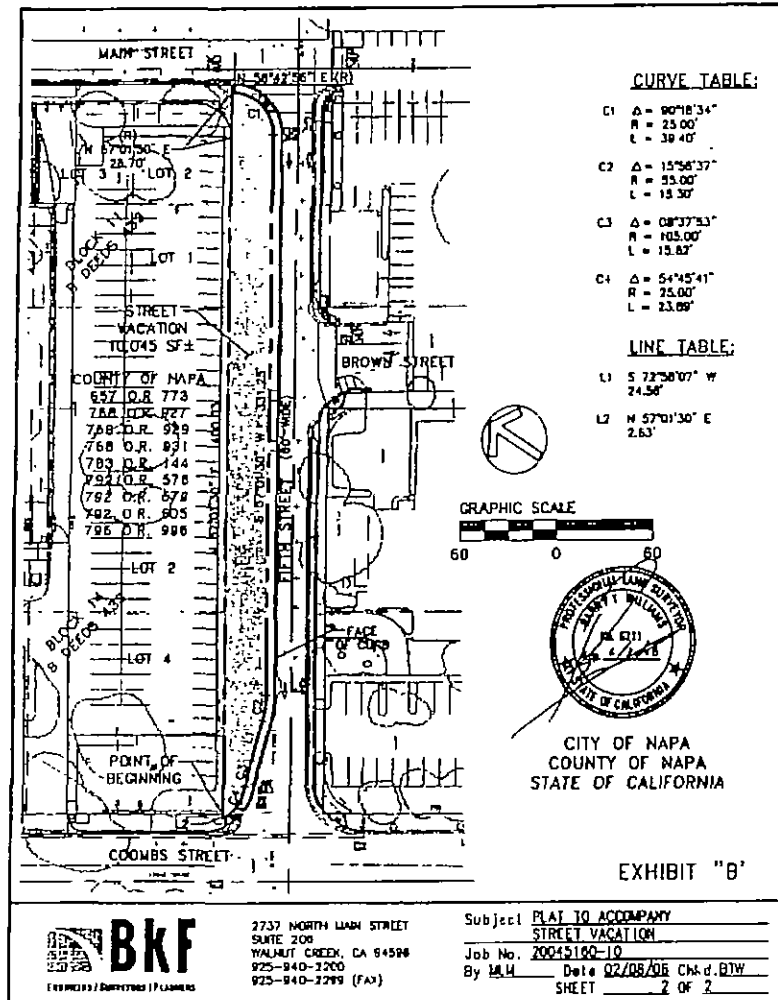
L:\ncmr\2004\20045160\BKF survey & legal descriptions\Napa v.s.a. desc.doc



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Parking Garage Cooperative Agreement - Second Amendment
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Exhibit C
 Timeline and Responsibility for Development
City/County of Napa Downtown Parking Garage
Project Timeline

<u>Item</u>	<u>Targeted Date</u>
Release of Request for Proposals to Design Builders	January 29, 2007
Interim Review with Design Builders	February 23, 2007
Proposals from Design Builders Due	March 16, 2007
Update Board of Supervisors/City Council on Proposals	March 27, 2007
Announcement of Successful Design Builder	March 30, 2007
Board of Supervisors Award Design Build Contract	April 24, 2007
County Board of Supervisors & City Council Approval of Operations and Use Agreement	April/May 2007
County Issuance of Notice to Proceed to Design Builder	May 14, 2007
Design Development Submittal	May 29, 2007
Approval of Design Development	June 5, 2007
Offsite Document Submittal	June 5, 2007
Offsite Document Approval	July 5, 2007
Foundation Document Submittal	June 27, 2007
Foundation Document Approval	July 19, 2007
100% Construction Document Submittal	July 19, 2007
100% Construction Document Approval	August 16, 2007
Start of construction – Site Work	June 30, 2007
Final Acceptance of Construction	Summer/Fall 2008

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Exhibit D
Diagram of Parking Structure and Designated Spaces

ANTICIPATED DIAGRAM OF PARKING STRUCTURE

**SETTING FORTH NUMBER AND LOCATION OF
COUNTY, CITY AND OTHER PARTICIPANT PARKING SPACES
SUBJECT TO CHANGE THROUGH DESIGN-BUILD PROCESS**

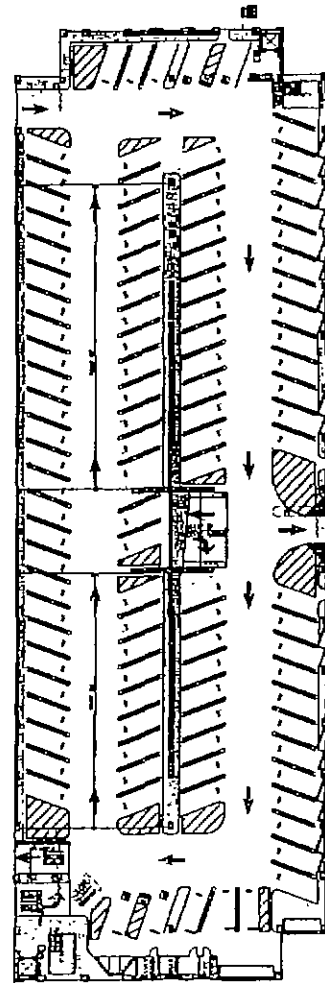
GROUND LEVEL = DEDICATED TO SHORT-TERM PUBLIC PARKING AND CITY
USE

SECOND LEVEL = LONG-TERM PUBLIC AND JOINT USE PARKING

THIRD LEVEL = PRIVATE PARTICIPANT PARKING

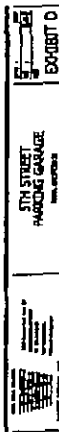
FOURTH LEVEL = COUNTY AND JOINT USE PARKING

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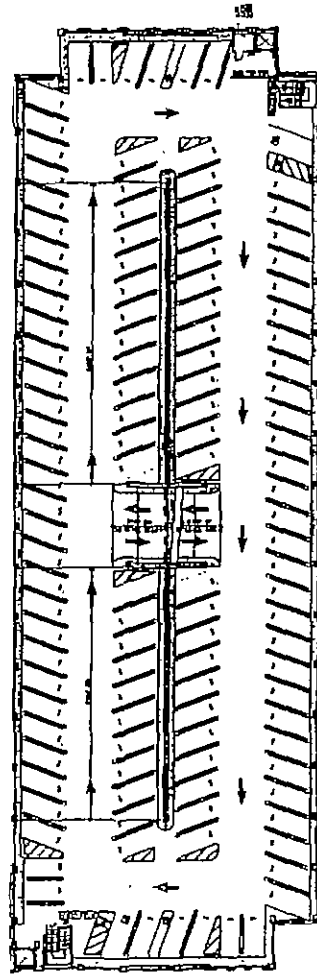


EXISTING & PROPOSED VEHICLES
GROUND LEVEL PARKING PLAN
300 TOTAL (1200 x 1000 FEET AREA)
1" = 10'-0"

NOTE:
GROUND LEVEL - DEDICATED FOR
SHORT TERM PUBLIC PARKING AND CITY USE



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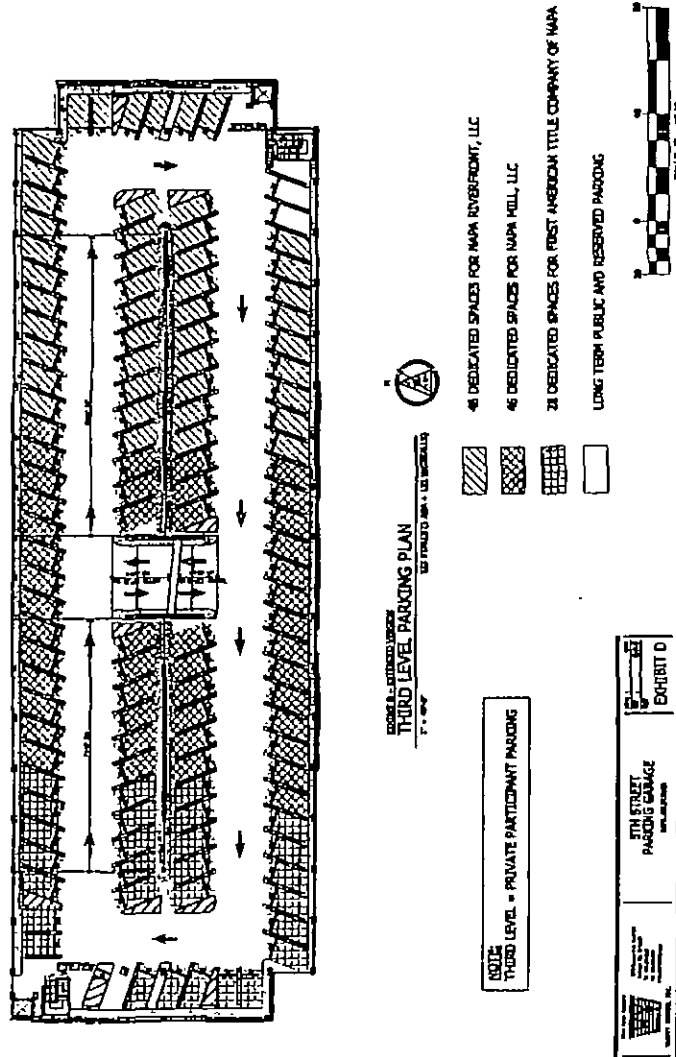
MODEL - APPROVED
SECOND LEVEL PARKING PLAN
1" = 6'-0"



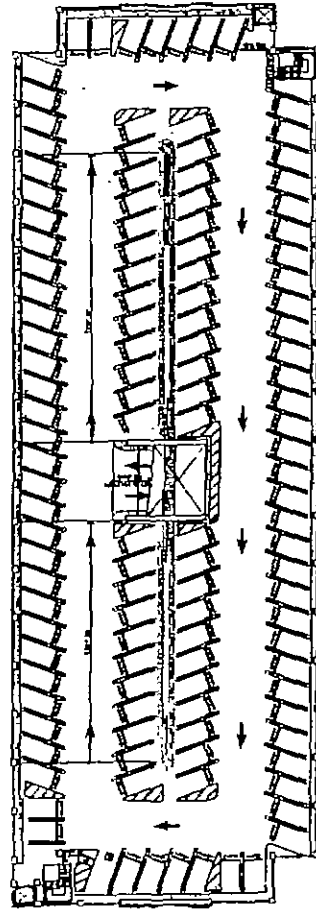
NOTE:
SECOND LEVEL - LONG TERM PUBLIC AND JOINT USE PARKING

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GRAPHIC SCALE: 1" = 40'
 FOURTH LEVEL PARKING PLAN
 1/4" = 10' (SEE 1/4" OF SCALE)

NOTE:
 FOURTH LEVEL - COUNTY AND JOINT USE PARKING

5TH STREET
 PARKING GARAGE
 EXHIBIT D



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EXHIBIT “I”, “I-1” and “I-2”

Participant Agreements

NAPA COUNTY AGREEMENT NO. 6759

PARKING GARAGE PRIVATE PARTICIPATION AGREEMENT

THIS PARKING GARAGE PRIVATE PARTICIPATION AGREEMENT ("Agreement") is made and entered into as of this 9th day of January, 2007, ("Commencement Date") by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and NAPA RIVERFRONT, LLC whose mailing address is 100 W. Cutting Blvd., Richmond, California 94804, hereinafter referred to as "PARTICIPANT."

RECITALS

WHEREAS, COUNTY plans to construct a four level parking structure ("Parking Structure") located at the COUNTY superblock site bordered by Main, Fifth, Coombs and Third Streets in Napa ("Property") a graphic description of which is depicted in Exhibit "A" and a legal description of which is attached hereto as Exhibit "B" both incorporated herein by reference which is anticipated to accommodate approximately four hundred sixty-six (466) spaces and cost approximately Fifteen Million Seventy-Five Thousand Two Hundred Dollars (\$15,075,200) to construct. A diagram of the Parking Structure which sets forth the anticipated number and location of the PARTICIPANT, COUNTY and CITY Parking Spaces and other participant parking spaces, based on tentative plan subject to change through the design build process, is attached hereto and incorporated herein as Exhibit "C"; and

WHEREAS, COUNTY anticipates using the design-build process in order to complete the design and construction of the Parking Structure, with an anticipated contract award date of Spring of 2007, and an anticipated completion of construction in the summer of 2008; and

WHEREAS, COUNTY plans to reserve approximately eighty-five (85) parking spaces on the fourth level of the Parking Structure to be available for the sole use of COUNTY vehicles and have one hundred fifteen (115) non-reserved parking spaces on the second level of the Parking Structure for employees and visitors; and

WHEREAS, COUNTY has entered into Napa County Agreement No. 6372 with the City of Napa ("CITY") by which CITY has agreed to participate in funding a portion of the Parking Structure in return for a certain number of parking as designated in Exhibit "C" referenced above; and

WHEREAS, in order to optimize the utilization of the Property for the Parking Structure, COUNTY anticipates entering into Parking Garage Participation Agreements with up to three owners of property near the Parking Structure, by which the COUNTY may license up to approximately one hundred thirty (130) parking spaces for use by such licensees (including PARTICIPANT and or its agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers, invitees, or visitors). Such spaces are in addition to the COUNTY and CITY parking spaces referred to in the third and fourth recitals above; and

WHEREAS, PARTICIPANT desires to purchase a license for the use of approximately forty-six (46) parking spaces in the Parking Structure based on the terms and conditions set forth in this Agreement.

TERMS

NOW, THEREFORE, The parties agree as follows:

1. Contribution for Licensing Parking Spaces.

(a) PARTICIPANT shall make available approximately One Million Five Hundred Dollars (\$1,500,000) to the COUNTY for licensing certain parking spaces as more particularly described herein within thirty (30) days after execution of this Agreement. The estimated total cost of the Parking Structure is Fifteen Million Seventy-Five Thousand Two Hundred Dollars (\$15,075,200) ("Estimated Total Cost") and is set forth in more detail in Exhibit "D" attached hereto and incorporated by reference herein. The estimated cost per parking space, based on an estimated four hundred sixty-six (466) spaces is Thirty-Two Thousand Three Hundred Fifty Dollars (\$32,350). The actual cost of the Parking Structure shall be the amount of the accepted design build proposal received for the Parking Structure plus the combined estimated Three Million One Hundred Fifteen Thousand Two Hundred Dollars (\$3,115,200) costs for the following items (to be determined exactly and subject to adjustment after construction of the Parking Structure is complete): construction contingency; County architect; County project and construction management; utility fees, inspections, labor compliance and permits; and County Public Works administration ("Actual Cost"). The Actual Cost divided by the total number of parking spaces (466) equals the cost per parking space. The cost per parking space multiplied by the number of Participant Parking Spaces forty-six (46) equals the actual Participant contribution ("Actual Participant Contribution"). The Actual Participant Contribution shall be in the form of a letter of credit or equivalent financial instrument, including but not limited to a certificate of deposit, in a form reasonably suitable to the COUNTY. COUNTY shall have the right to draw upon the funds in the letter of credit in increments of up to Five Hundred Thousand Dollars (\$500,000) as needed for the construction of the Parking Structure; provided however, that COUNTY shall draw upon the funds provided by COUNTY, CITY, and PARTICIPANT only after COUNTY has executed a construction contract and construction of the Parking Structure has commenced. COUNTY shall license approximately forty-six (46) parking spaces ("PARTICIPANT Parking Spaces") to PARTICIPANT in accordance with the terms of this Agreement; provided, however, COUNTY's obligations may be terminated in accordance with Paragraph 14. The location of the PARTICIPANT Parking Spaces has been determined by COUNTY in consultation with the PARTICIPANT. A diagram of the Parking Structure sets forth the number and location of the COUNTY, CITY, and PARTICIPANT Parking Spaces and other participant parking in Exhibit "C" referenced above. In the event that any of the one hundred fifteen (115) non-reserved parking spaces referred to in the third recital above are later converted to reserved spaces by COUNTY, PARTICIPANT Parking Spaces shall be relocated to the second level of the Parking Structure.

(b) COUNTY shall keep PARTICIPANT regularly informed regarding the status of design of the Parking Structure, PARTICIPANT may submit to COUNTY suggested modifications to the design, and COUNTY shall reasonably consider any such suggestions submitted by PARTICIPANT.

(c) After design-build bids are received by COUNTY, COUNTY shall provide PARTICIPANT written notice ("COUNTY Notice") as to the Actual Total Cost of the Parking Structure (as defined above), and the cost per parking space, and whether COUNTY has sufficient funds available to construct a Parking Structure which includes the PARTICIPANT Parking Spaces. If the COUNTY Notice indicates that:

- (i) the cost per parking space is Thirty Three Thousand Dollars (\$33,000) or less, COUNTY and PARTICIPANT shall meet and confer in a good faith effort to negotiate a modification to this Agreement by which either PARTICIPANT's Contribution is decreased, or the number of PARTICIPANT Parking Spaces is increased; or
- (ii) the cost per parking space is greater than Thirty Three Thousand Dollars (\$33,000), then PARTICIPANT may either negotiate a modification to this Agreement with the COUNTY regarding the Actual PARTICIPANT's Contribution and the number of PARTICIPANT's Parking Spaces, or PARTICIPANT may terminate its obligations under this Agreement by providing written notice to COUNTY within thirty (30) days following receipt of the COUNTY Notice (in which event the COUNTY shall not draw upon any of PARTICIPANT's source of funds, and the COUNTY shall execute and deliver to PARTICIPANT and the issuer of the letter of credit such documentation as is reasonably necessary to cancel and terminate the same within 30 days of PARTICIPANT's notice of termination).

Within sixty (60) days following receipt of the COUNTY Notice, except in the event of PARTICIPANT's termination of this Agreement pursuant to Section 1(c)(ii) above, PARTICIPANT and COUNTY shall execute an amendment to this Agreement indicating the PARTICIPANT's total Contribution and the total number of Participant's Parking Spaces based on the terms of this Section 1(c).

2. Term of the Agreement.

The term of this Agreement shall commence on the date of execution of this Agreement and shall be for a term of fifty-five (55) years unless terminated earlier in accordance with Paragraph 14 (Termination for Cause), except that the obligations of the parties under Paragraph 13 (Indemnification) shall continue in full force and effect after said expiration date or early termination date in relation to acts or omissions occurring prior to such dates.

3. Damage or Destruction of Parking Structure.

(a) If the Parking Structure is damaged or destroyed by a casualty or similar event that results in a reduction of Parking Rights, and less than fifty-five (55) years have elapsed from the Commencement Date, then the COUNTY shall make good faith efforts to repair or replace the Parking Structure on the Property, provided the COUNTY has sufficient funds for the repair or replacement from insurance proceeds or from a third party source of funds. COUNTY represents that it participates in a self-insurance program as further described in Paragraph 12 below.

(b) If the Parking Structure is damaged or destroyed by a casualty or similar event and fifty-five (55) or more years have elapsed since the Commencement Date, the COUNTY shall not be obligated to replace the Parking Structure.

(c) Within one hundred twenty (120) days following the damage or destruction of the Parking Structure described in subparagraph (a), the COUNTY shall notify PARTICIPANT as to whether it will replace the Parking Structure on the Property, or whether it lacks sufficient funds for the repair or replacement thereof. If the COUNTY does not elect to repair or replace the Parking Structure on the Property, either party may terminate this Agreement, in which event the COUNTY shall

reimburse PARTICIPANT to the extent that PARTICIPANT did not realize the benefits of its Contribution for the full term of this Agreement. By way of example, if PARTICIPANT contributed One Million Dollars (\$1,000,000), and the Parking Structure was damaged or destroyed twenty-two (22) years into the fifty-five (55) year term and the COUNTY elected not to repair or replace the structure, PARTICIPANT would be entitled to a Six Hundred Thousand Dollars (\$600,000) reimbursement of its Contribution, representing sixty percent (60%) of its original contribution, based on the unavailability of Parking Rights for the remaining thirty-three (33) years, (or sixty percent (60%)) of the initial term of this Agreement.

(d) If the Parking Structure is damaged by a casualty or similar event, during the period in which the Parking Rights are reduced or unavailable, the COUNTY shall reimburse PARTICIPANT on a pro-rata basis based on a calculation of the PARTICIPANT's cost per day for such Parking Rights given the size of the Contribution and term of the Agreement. Such refund shall be the PARTICIPANT's sole remedy for the reduction or lack of availability of the parking provided by the Parking Rights.

(e) After fifty-five (55) years have elapsed since the Commencement Date, COUNTY in its sole discretion may decide to discontinue the use of the Property for a Parking Structure. In such case, COUNTY shall provide PARTICIPANT one hundred twenty (120) days notice prior to the expiration date of the Agreement. If after fifty-five (55) years have elapsed since the Commencement Date, and COUNTY still desires to operate the Parking Structure, COUNTY and PARTICIPANT agree to negotiate in good faith an extension of this Agreement under the same terms and conditions.

4. License for Parking Rights.

(a) "Parking Rights" shall mean PARTICIPANT's exclusive right to use of an estimated forty-six (46) spaces, which shall be more specifically determined pursuant to the calculations based on the Actual Cost of the Parking Structure set forth in Section 1 above and shall be designated as "Reserved Spaces" for PARTICIPANT.

(b) The COUNTY hereby grants to PARTICIPANT (including PARTICIPANT's agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers, invitees, or visitors), a license to use for the term of the Agreement the Parking Rights as defined above and more particularly set forth in the diagram in Exhibit "C" attached hereto. The COUNTY and PARTICIPANT agree to cooperate in good faith in determining a method for designating the Reserved Spaces, and ensuring that PARTICIPANT's rights to such Reserved Spaces are protected and enforced. COUNTY and PARTICIPANT may also mutually agree to a change in the location of Participant Parking Spaces.

5. Operations and Maintenance of Parking Structure.

(a) Operating Costs.

(i) Costs for the operations and maintenance of the Parking Structure ("Operating Costs") are estimated at approximately Two Hundred Thousand Dollars (\$200,000) per year. This amount shall be determined with more specificity in an Operations and Use Agreement to be entered into in the future among COUNTY, CITY, PARTICIPANT and other participants. For purposes of this Agreement, Operating Costs shall include commercially reasonable expenses and costs which COUNTY shall pay or become obligated to pay because of or in connection with the ownership, operation, repair and/or maintenance of the Parking Structure, including, without limitation: (A) all maintenance, janitorial and security costs; (B) costs for all materials, supplies and

equipment; (C) costs of water, electricity, refuse collection, parking lot sweeping, landscaping, and other utilities and services relating to the Parking Structure; (D) all costs of alterations or improvements to the Parking Structure made to achieve compliance with any federal, state and local law including, without limitation, the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) ("ADA"), or to reduce Operating Costs or improve the operating efficiency of the Parking Structure, all of which costs will be amortized over the useful life of such alterations or improvements as COUNTY shall reasonably determine; (E) costs for repairs, replacements, and general maintenance of the Parking Structure, but excluding any repairs or replacements paid for out of insurance proceeds or by other parties; (F) costs of maintaining machinery, equipment and directional signage or other markers; and (G) any insurance premiums that are specifically allocatable to insuring the Parking Structure.

Operating Costs shall not include (A) capital improvements (except as otherwise provided above); (B) costs of special services rendered to other private participants (including PARTICIPANT) for which a special charge is made; (C) attorneys' fees and other expenses incurred in connection with the Parking Structure or enforcing rules and regulations for the Parking Structure; (D) depreciation or amortization, other than as specifically enumerated in the definition of Operating Costs above; (E) nonrecurring costs incurred to remedy defects in the original construction of the Parking Structure; and (F) repairs or other work needed due to fire, windstorms, or other casualty or cause to the extent COUNTY has received insurance proceeds for such repairs or other work.

(ii) PARTICIPANT shall pay to COUNTY, "PARTICIPANT's Parking Percentage Share" of the Operating Costs on a bi-monthly basis commencing on the first day of the first month following the completion of the construction of the Parking Structure. For purposes of this Agreement, "PARTICIPANT's Parking Percentage Share" shall mean the number of spaces licensed to PARTICIPANT for its Parking Rights pursuant to this Agreement divided by the total number of parking spaces in the Parking Structure. If the number of spaces in the Parking Structure or PARTICIPANT's Parking Rights are changed, then PARTICIPANT's Parking Percentage Share shall be adjusted accordingly.

(iii) The COUNTY shall be responsible for "COUNTY's Parking Percentage Share" of the Operating Costs. "COUNTY's Parking Percentage Share" shall mean the number of spaces reserved for the COUNTY's use pursuant to this Agreement divided by the total number of parking spaces in the Parking Structure. If the number of spaces in the Parking Structure or the number of COUNTY's reserved parking spaces are changed, then COUNTY's Parking Percentage Share shall be adjusted accordingly.

(iv) It is understood among the parties that the CITY shall be responsible for a share of the Operating Costs to be determined more specifically in a subsequent Operations and Use Agreement entered into among the COUNTY, CITY, PARTICIPANTS and other participants; provided however, that the extent of CITY's responsibility for a share of the Operating Costs as determined in the Operations and Use Agreement, shall have no effect on the calculation of PARTICIPANT's operating costs pursuant to Paragraph 5(a)(ii), above..

(v) COUNTY shall also establish a reserve fund in the amount of Thirty Thousand Dollars (\$30,000) annually comprised of proportional contributions from COUNTY, CITY, PARTICIPANT and other participants ("Reserve Fund") for the duration of this Agreement for the preventive maintenance, periodic repair, replacement of components, and related improvements of the Parking Structure, which shall be contributed to proportionally by COUNTY, CITY, PARTICIPANT, and other participants. The Parties agree to regularly negotiate and determine

necessary adjustments to the amount of the Reserve Fund every five (5) years or more frequently as needed for the duration of this Agreement. The County Auditor-Controller shall be responsible for establishing and maintaining the Reserve Fund for the duration of this Agreement.

(vi) PARTICIPANT shall have the right to employ vendors and contractors for the operations of the Parking Structure, including but not limited to valet operators.

(vii) Notwithstanding any terms or provisions of this Paragraph 5(a) to the contrary, in the event that the COUNTY charges the public to park in the Parking Structure ("Public Parking Fees"), the proceeds from such Public Parking Fees shall be used to pay the Operating Costs for the Parking Structure. To the extent that a portion of the Operating Costs are paid with the proceeds of Public Parking Fees, the Operating Costs payable by COUNTY, CITY, and PARTICIPANT pursuant to this Paragraph 5(a) shall be offset such that each party shall only be responsible for their parking percentage share of the remaining Operating Costs.

(b) Maintenance.

(i) Following completion of construction of the Parking Structure, the COUNTY shall maintain the Parking Structure in good condition and repair consistent with customary maintenance practices. Any maintenance or improvement work performed on the Parking Structure shall be diligently performed and completed in a good, workmanlike and timely manner, and shall be completed in such a manner as to return the Parking Structure to no less than the same condition that it was in prior to the commencement of such maintenance and repair work. The COUNTY shall coordinate and reasonably cooperate with the PARTICIPANT in performing the repair and maintenance obligations described in this Agreement and shall give the PARTICIPANT reasonable notice prior to commencing any repair or maintenance to the Parking Structure.

(ii) Any work done on the Parking Structure by the COUNTY shall be performed in a manner which causes the least interference reasonably possible, and reasonable steps shall be taken by COUNTY to ensure that the performance of such maintenance and repairs does not adversely affect the PARTICIPANT.

(iii) The parties to this Agreement shall be required to contribute to the cost of any maintenance as part of their respective obligations for Operating Costs, as described in Paragraph 5(a) above.

6. General Use Prohibitions.

PARTICIPANT and COUNTY agree that in connection with and to the extent of the PARTICIPANT's and COUNTY's use and operation of the Parking Structure, PARTICIPANT and COUNTY will not:

- (a) Create, cause, maintain or permit any nuisance in or about the Parking Structure; or
- (b) Commit or suffer to be committed any waste in or about the Parking Structure or the Property; or
- (c) Knowingly allow the Parking Structure to be used for any unlawful purpose; or
- (d) Permit undue accumulations of garbage, trash, rubbish or any other refuse in the Parking Structure; or
- (e) Cause or permit obnoxious odors to emanate from or be discharged in or from the Parking Structure; or
- (f) Create, cause, maintain or permit any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness (excluding the occasional noise from an errant car alarm); or

(g) Create, reuse, maintain, or permit creation of any dust, dirt, or fly ash in excessive quantities; or

(h) Create, cause, maintain or permit any motor vehicle servicing, including but not limited to the washing of cars, or repair shop that provides any such servicing.

7. Security; Enforcement.

The regular hours of operation of the Parking Structure by COUNTY shall be set forth with more specificity in an Operations and Use Agreement to be entered into among COUNTY, CITY, PARTICIPANT and other participants in the future. The COUNTY shall provide security for the Parking Structure for certain hours of operation of the Parking Structure, which shall be substantially consistent with the level of service that COUNTY or CITY provides in other parking structures in Downtown Napa; however, such provision of security may not be for the entire duration of the operational hours of the Parking Structure referenced immediately above.

COUNTY will not provide security at other times even though the Parking Structure is being used for parking for public use. At PARTICIPANT's sole cost, PARTICIPANT may provide additional security during hours in which the COUNTY is not providing security. The PARTICIPANT shall coordinate any additional security it provides with the security the COUNTY provides and with security for other participants in similar parking participant agreements.

The COUNTY and PARTICIPANT agree to cooperate in good faith in determining a method for designating the Reserved Spaces, and ensuring that PARTICIPANT's rights to such Reserved Spaces are protected and enforced.

8. Approvals of Transfers.

"Transfer" means: any total or partial sale, sublicense, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement, of the ownership in the Parking Rights or any interest therein, or any contract or agreement to do any of the same.

Subject to the terms and conditions of this paragraph, PARTICIPANT shall have the right to Transfer its Parking Rights. Any Transfer not permitted by this paragraph shall be null and void. In the event that PARTICIPANT desires to Transfer its Parking Rights, PARTICIPANT shall provide COUNTY and CITY with thirty (30) days notice of any such Transfer, and such Transfer shall be subject to the COUNTY's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if each of the following conditions are satisfied, PARTICIPANT's Transfer of its Parking Rights shall not be subject to COUNTY's consent.

(a) The transferee enters into an assignment and assumption agreement with the PARTICIPANT pursuant to which the transferee agrees to undertake the obligations of PARTICIPANT under this Agreement;

(b) The PARTICIPANT and the transferee execute and provide to the COUNTY documentation reasonably satisfactory to the COUNTY of PARTICIPANT's assignment of the rights and delegation of duties under this Agreement to the transferee;

(c) There is no uncured Event of PARTICIPANT Default under this Agreement; and

(d) Following any Transfer, PARTICIPANT must remain in compliance with the CITY's parking requirements (as set forth in applicable use permits, etc.) regarding the PARTICIPANT's obligation to provide parking for the use of its property

In addition to the foregoing terms and conditions regarding the PARTICIPANT's rights to Transfer its Parking Rights, PARTICIPANT may assign its rights under this Agreement, without

any approval of COUNTY or CITY, to any entity which is wholly owned by PARTICIPANT or by a parent of a PARTICIPANT, or any entity in which PARTICIPANT or a parent of PARTICIPANT has an equity interest and is a general or managing partner/member, and shall include any new or existing entity so long as such entity is owned, controlled or managed by (or under common control with) PARTICIPANT. No assignment by PARTICIPANT shall result in PARTICIPANT being released from any obligations of PARTICIPANT to COUNTY under this Agreement.

9. Prohibited Encumbrances.

PARTICIPANT shall not have the right to place or create any mortgage or deed of trust upon the Parking Rights or the Property, or place or suffer to be placed upon the Parking Rights or Property or any lien, levy or attachment or other encumbrance. Notwithstanding the foregoing, in connection with obtaining financing related to PARTICIPANT's real property, PARTICIPANT may assign its Parking Rights to a lender as additional security for the financing of such real property. However, any such financing and assignment for security purposes shall require the lender to be subject to all terms of this Agreement as of the date of foreclosure (i.e., all obligations and restrictions related to PARTICIPANT's use of the Parking Structure).

Any such mortgage, lien, levy or attachment or other encumbrances prohibited by this paragraph shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless PARTICIPANT shall, within sixty (60) days of such date of execution or filing of record, remove any such mortgage, lien, levy or attachment or other encumbrances.

10. Rights of Lenders.

If PARTICIPANT provides COUNTY with the name of any lender to whom PARTICIPANT has made a Transfer, COUNTY shall give such lender notice of any default or failure by PARTICIPANT under this Agreement and such lender shall have the right to cure such default or failure within ninety (90) days following receipt of such notice of PARTICIPANT's default.

11. Transfer by the COUNTY.

At any time and without the consent of the PARTICIPANT, the COUNTY may Transfer its rights and obligations under this Agreement so long as the transferee owns or has the right to operate the Parking Structure. A transferee of COUNTY's rights and obligations under this Agreement shall agree in writing to perform all obligations of the COUNTY pursuant to the terms of this Agreement, including without limitation, the obligation to maintain insurance on the Parking Structure at such levels as are reasonable and customary for such property and improvements.

12. Insurance.

COUNTY is a participant in a self-insurance program with casualty and excess liability coverage limits up to Twenty-Five Million Dollars (\$25,000,000) to cover any third-party claims for damages against the COUNTY resulting from the operations of the Parking Structure. The COUNTY also maintains first-party property insurance coverage in the amount of Seventy-Five Million Dollars (\$75,000,000) which includes earthquake and flood liability to cover any such potential damage to the Parking Structure. The PARTICIPANT shall be named as an additional insured for such policies. COUNTY shall maintain the above mentioned insurance for the duration of this Agreement.

However, in the event PARTICIPANT hires any vendor or contractor to perform any service in connection with the operations of the Parking Structure including but not limited to valet services, PARTICIPANT shall, or require its vendor or contractor to obtain liability insurance with a minimum of One Million Dollars (\$1,000,000) of liability coverage to cover such vendors or contractors. Such coverage shall be subject to the reasonable approval of COUNTY's Risk Manager and verified by certificates of coverage. PARTICIPANT shall be named as an additional insured for any such vendor or contractor insurance coverage.

13. Hold Harmless/Defense/Indemnification.

(a) To the full extent permitted by law, PARTICIPANT shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of PARTICIPANT or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of COUNTY or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) To the full extent permitted by law, COUNTY shall hold harmless, defend at its own expense, and indemnify PARTICIPANT and the officers, agents, employees and volunteers of PARTICIPANT from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of COUNTY or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of PARTICIPANT or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

14. Termination for Cause.

If either party shall be in Default under this Agreement and fail to cure such Default within thirty (30) days of receipt of written notice from the other party describing the nature of the Default, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving thirty (30) days prior written notice to the defaulting party in the manner set forth in Paragraph 17 (Notices); provided, however, that if the nature of such Default is such that the same is curable but cannot reasonably be cured within such thirty (30) day period, a party shall not be deemed to be in Default if such party shall within such period commence such cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion. COUNTY hereby authorizes the Napa County Executive Officer to make

all decisions and take all actions required under this paragraph to terminate this Agreement on behalf of COUNTY for cause

15. Default.

(a) The following shall constitute a "Default" by PARTICIPANT under this Agreement: a failure by PARTICIPANT to observe and perform any material provision of this Agreement to be observed or performed by PARTICIPANT, where such failure continues for sixty (60) days after notice thereof from COUNTY; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, PARTICIPANT shall not be deemed to be in default if PARTICIPANT shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion.

(b) The following shall constitute a "Default" by COUNTY under this Agreement: a failure by COUNTY to observe and perform any material provision of this Agreement to be observed or performed by COUNTY, where such failure continues for sixty (60) days after notice thereof from PARTICIPANT; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, COUNTY shall not be deemed to be in default if COUNTY shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion.

16. No Waiver.

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

17. Notices.

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five (5) days following the date of deposit, whichever is earlier.

COUNTY
Napa County Executive Officer
1195 Third Street, Suite 310
Napa, California 94559

PARTICIPANT
Napa Riverfront LLC
Attn: Matt Connelly
100 W. Cutting Blvd.
Richmond, California 94804

18. Amendment/Modification.

Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

19. Interpretation; Venue.

(a) **Interpretation.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) **Venue.** This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

20. Compliance with Laws.

Except as to those matters that are the responsibility of the COUNTY, PARTICIPANT shall, at PARTICIPANT's sole cost and expense, comply with and shall cause any of its managers, employees or contractors to comply with all federal, state, county, municipal and other government statutes, laws, rules, orders, regulations and ordinances affecting the Property and the Parking Structure, the use thereof, or construction thereon, to the extent of PARTICIPANT's use and operation of the Parking Structure, excluding those which require the making of any structural or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Agreement, or involve a change of policy on the part of the government body enacting the same. County shall construct the facility to comply with all laws including the ADA and shall keep the property in compliance with the ADA provisions to the expenditure of funds which will be billed proportionately to the CITY, COUNTY and PARTICIPANTS.

21. Access to Records/Retention.

PARTICIPANT, or the duly authorized representatives thereof, shall have access to any books, documents, papers and records of COUNTY which are directly pertinent to the subject matter of this Agreement (including without limitation, records related to Operating Costs) for the purpose of making audit, examination, excerpts and transcriptions.

22. Authority to Contract.

PARTICIPANT and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

24. Attorney's Fees.

In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in

such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

25. Severability.

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

26. Entirety of Contract.

This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

NAPA RIVERFRONT LLC
A California limited liability company

By: Channel Lumber Co. a California corporation,
Its Managing Member

By: Massimo DeSimoni
Massimo DeSimoni, Chairman

"PARTICIPANT"

COUNTY OF NAPA, a political subdivision of
the State of California

By: Harold Moskowitz
HAROLD MOSKOWITE, Chair of the Board of
Supervisors

"COUNTY"

ATTEST:
Clerk of the Board of Supervisors

By: Mary Jan McLaughlin

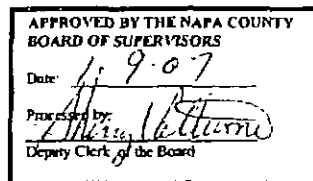
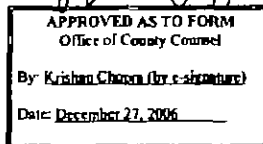
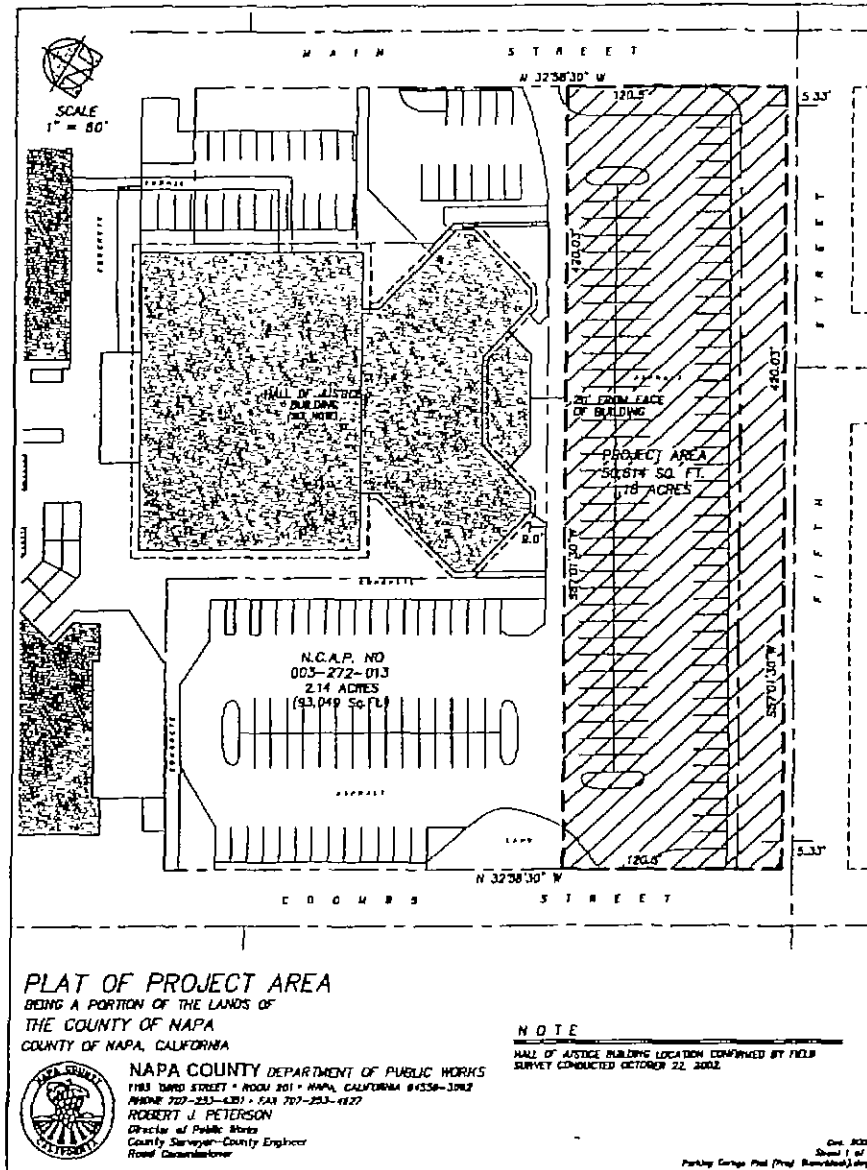


EXHIBIT "A"

GRAPHIC DESCRIPTION OF THE PROPERTY



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EXHIBIT "B"

LEGAL DESCRIPTION OF PROPERTY

The project area corridor is defined by a line of demarcation drawn parallel to the southeasterly line of the parcel of land described in the Grant Deed filed January 15, 2003 and recorded as Document No. 2003-0002112 in the office of the Recorder of Napa County, California and 20 feet from the southeasterly face of the Napa County Hall of Justice Building. Said project demarcation line extends to the northeasterly and southwesterly lines of the above mentioned parcel and is offset by a parallel line 120.5 feet to the southeast also bounded by the extended northeasterly and southwesterly lines of the above mentioned parcel.

The above project area comprises 50,614 square feet or 1.16 acres.

EXHIBIT "C"

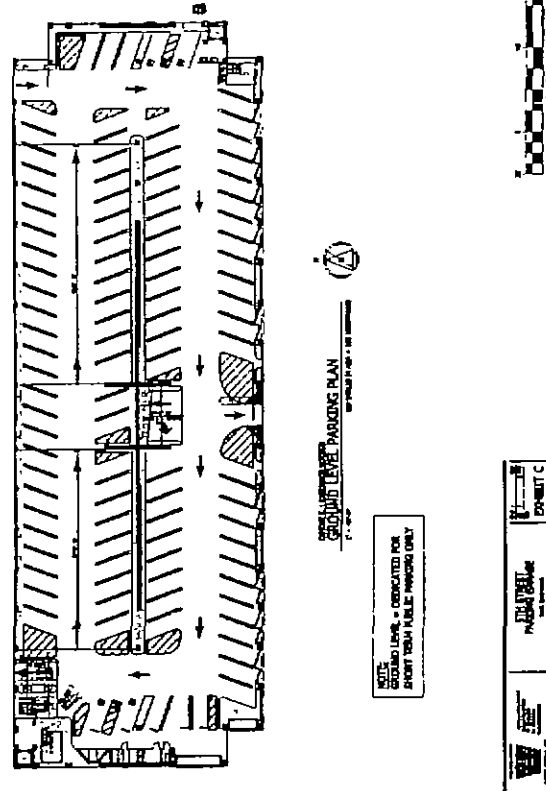
DIAGRAM OF PARKING STRUCTURE SETTING FORTH NUMBER AND LOCATION OF
COUNTY, CITY, PARTICIPANT, AND OTHER PARTICIPANT PARKING SPACES

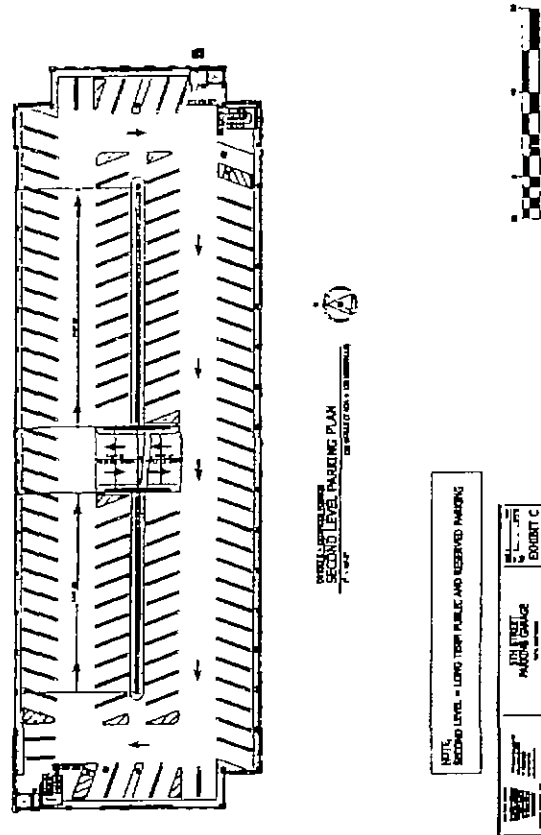
ANTICIPATED DIAGRAM OF PARKING STRUCTURE

SETTING FORTH NUMBER AND LOCATION OF COUNTY,
CITY PARTICIPANT AND OTHER PARTICIPANT PARKING SPACES,
SUBJECT TO CHANGE THROUGH THE DESIGN BUILD PROCESS

-
- GROUND LEVEL = DEDICATED FOR SHORT TERM PUBLIC PARKING ONLY
 - SECOND LEVEL = LONG TERM PUBLIC AND RESERVED PARKING
 - THIRD LEVEL = RESERVED PRIVATE PARKING
 - FOURTH LEVEL = RESERVED COUNTY PARKING

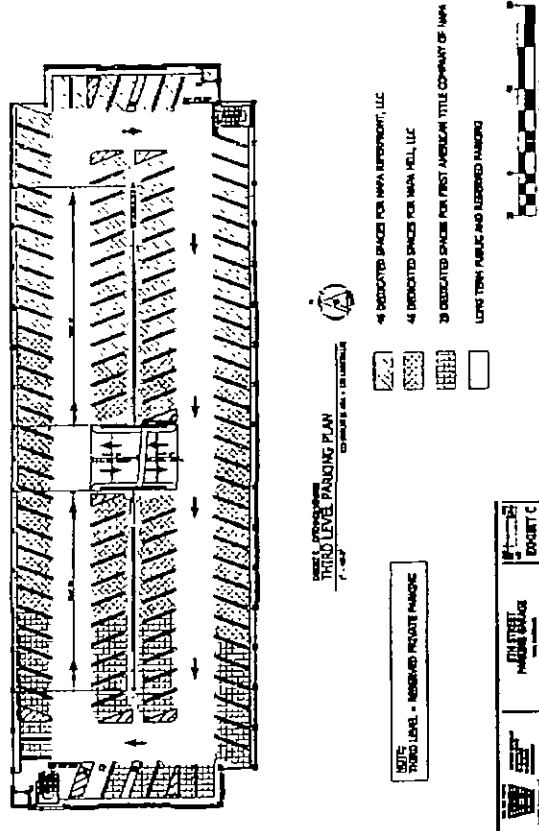


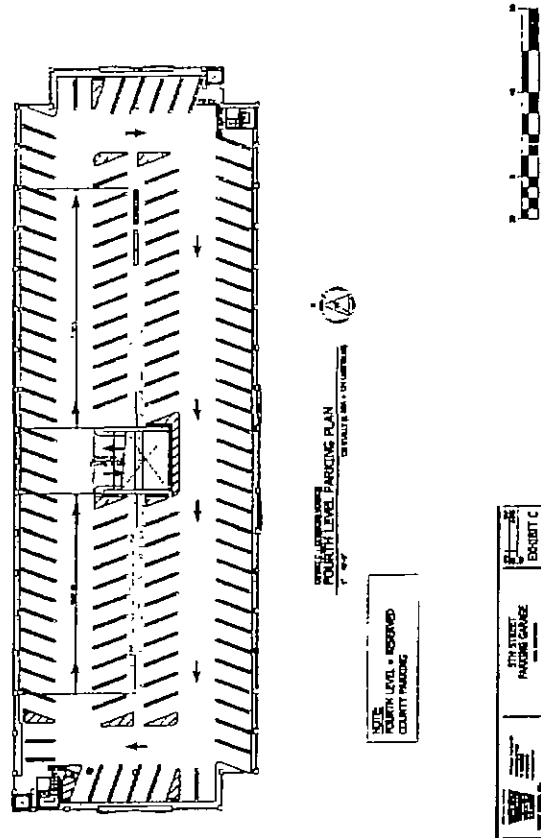




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EXHIBIT "D"

ESTIMATED TOTAL COST/PROJECT BUDGET WORKSHEET AS OF 12/18/16

<u>Item</u>	<u>Amount</u>
Construction	\$11,960,000
Construction Contingency	\$ 1,196,000
Watry (County's Architect)	\$ 469,200
County Project & Construction Mgmt.	\$ 490,000
Utility Fees, Inspections, Labor Compliance, & Permits	\$ 520,000
<u>County Public Works Administration</u>	<u>\$ 440,000</u>
Grand Total	\$15,075,200

NAPA COUNTY AGREEMENT NO. 637258**PARKING GARAGE PRIVATE PARTICIPATION AGREEMENT**

THIS PARKING GARAGE PRIVATE PARTICIPATION AGREEMENT ("Agreement") is made and entered into as of this 9th day of January, 2007, ("Commencement Date") by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and NAPA MILL, LLC whose mailing address is 500 Main Street, Napa, California 94559, hereinafter referred to as "PARTICIPANT."

RECITALS

WHEREAS, COUNTY plans to construct a four level parking structure ("Parking Structure") located at the COUNTY superblock site bordered by Main, Fifth, Coombs and Third Streets in Napa ("Property") a graphic description of which is depicted in Exhibit "A" and a legal description of which is attached hereto as Exhibit "B" both incorporated herein by reference which is anticipated to accommodate approximately four hundred sixty-six (466) spaces and cost approximately Fifteen Million Seventy-Five Thousand Two Hundred Dollars (\$15,075,200) to construct. A diagram of the Parking Structure which sets forth the anticipated number and location of the PARTICIPANT, COUNTY and CITY Parking Spaces and other participant parking spaces, based on tentative plan subject to change through the design build process, is attached hereto and incorporated herein as Exhibit "C"; and

WHEREAS, COUNTY anticipates using the design-build process in order to complete the design and construction of the Parking Structure, with an anticipated contract award date of Spring of 2007, and an anticipated completion of construction in the summer of 2008; and

WHEREAS, COUNTY plans to reserve approximately eighty-five (85) parking spaces on the fourth level of the Parking Structure to be available for the sole use of COUNTY vehicles and have one hundred fifteen (115) non-reserved parking spaces on the second level of the Parking Structure for employees and visitors; and

WHEREAS, COUNTY has entered into Napa County Agreement No. 6372 with the City of Napa ("CITY") by which CITY has agreed to participate in funding a portion of the Parking Structure in return for a certain number of parking as designated in Exhibit "C" referenced above; and

WHEREAS, in order to optimize the utilization of the Property for the Parking Structure, COUNTY anticipates entering into Parking Garage Participation Agreements with up to three owners of property near the Parking Structure, by which the COUNTY may license up to approximately one hundred thirty (130) parking spaces for use by such licensees (including PARTICIPANT and or its agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers, invitees, or visitors). Such spaces are in addition to the COUNTY and CITY parking spaces referred to in the third and fourth recitals above; and

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WHEREAS, PARTICIPANT desires to purchase a license for the use of approximately forty-six (46) parking spaces in the Parking Structure based on the terms and conditions set forth in this Agreement.

TERMS

NOW, THEREFORE, The parties agree as follows:

1. Contribution for Licensing Parking Spaces.

(a) PARTICIPANT shall make available approximately One Million Five Hundred Dollars (\$1,500,000) to the COUNTY for licensing certain parking spaces as more particularly described herein within thirty (30) days after execution of this Agreement. The estimated total cost of the Parking Structure is Fifteen Million Seventy-Five Thousand Two Hundred Dollars (\$15,075,200) ("Estimated Total Cost") and is set forth in more detail in Exhibit "D" attached hereto and incorporated by reference herein. The estimated cost per parking space, based on an estimated four hundred sixty-six (466) spaces is Thirty-Two Thousand Three Hundred Fifty Dollars (\$32,350). The actual cost of the Parking Structure shall be the amount of the accepted design build proposal received for the Parking Structure plus the combined estimated Three Million One Hundred Fifteen Thousand Two Hundred Dollars (\$3,115,200) costs for the following items (to be determined exactly and subject to adjustment after construction of the Parking Structure is complete): construction contingency; County architect; County project and construction management; utility fees, inspections, labor compliance and permits; and County Public Works administration ("Actual Cost"). The Actual Cost divided by the total number of parking spaces (466) equals the cost per parking space. The cost per parking space multiplied by the number of Participant Parking Spaces forty-six (46) equals the actual Participant contribution ("Actual Participant Contribution"). The Actual Participant Contribution shall be in the form of a letter of credit or equivalent financial instrument, including but not limited to a certificate of deposit, in a form reasonably suitable to the COUNTY. COUNTY shall have the right to draw upon the funds in the letter of credit in increments of up to Five Hundred Thousand Dollars (\$500,000) as needed for the construction of the Parking Structure; provided however, that COUNTY shall draw upon the funds provided by COUNTY, CITY, and PARTICIPANT only after COUNTY has executed a construction contract and construction of the Parking Structure has commenced. COUNTY shall license approximately forty-six (46) parking spaces ("PARTICIPANT Parking Spaces") to PARTICIPANT in accordance with the terms of this Agreement; provided, however, COUNTY's obligations may be terminated in accordance with Paragraph 14. The location of the PARTICIPANT Parking Spaces has been determined by COUNTY in consultation with the PARTICIPANT. A diagram of the Parking Structure sets forth the number and location of the COUNTY, CITY, and PARTICIPANT Parking Spaces and other participant parking in Exhibit "C" referenced above. In the event that any of the one hundred fifteen (115) non-reserved parking spaces referred to in the third recital above are later converted to reserved spaces by COUNTY, PARTICIPANT Parking Spaces shall be relocated to the second level of the Parking Structure.

(b) COUNTY shall keep PARTICIPANT regularly informed regarding the status of design of the Parking Structure, PARTICIPANT may submit to COUNTY suggested modifications to the design, and COUNTY shall reasonably consider any such suggestions submitted by PARTICIPANT.

(c) After design-build bids are received by COUNTY, COUNTY shall provide PARTICIPANT written notice ("COUNTY Notice") as to the Actual Total Cost of the Parking Structure (as defined above), and the cost per parking space, and whether COUNTY has sufficient funds available to construct a Parking Structure which includes the PARTICIPANT Parking Spaces. If the COUNTY Notice indicates that:

(i) the cost per parking space is Thirty Three Thousand Dollars (\$33,000) or less, COUNTY and PARTICIPANT shall meet and confer in a good faith effort to negotiate a modification to this Agreement by which either PARTICIPANT's Contribution is decreased, or the number of PARTICIPANT Parking Spaces is increased; or

(ii) the cost per parking space is greater than Thirty Three Thousand Dollars (\$33,000), then PARTICIPANT may either negotiate a modification to this Agreement with the COUNTY regarding the Actual PARTICIPANT's Contribution and the number of PARTICIPANT's Parking Spaces, or PARTICIPANT may terminate its obligations under this Agreement by providing written notice to COUNTY within thirty (30) days following receipt of the COUNTY Notice (in which event the COUNTY shall not draw upon any of PARTICIPANT's source of funds, and the COUNTY shall execute and deliver to PARTICIPANT and the issuer of the letter of credit such documentation as is reasonably necessary to cancel and terminate the same within 30 days of PARTICIPANT's notice of termination).

Within sixty (60) days following receipt of the COUNTY Notice, except in the event of PARTICIPANT's termination of this Agreement pursuant to Section 1(c)(ii) above, PARTICIPANT and COUNTY shall execute an amendment to this Agreement indicating the PARTICIPANT's total Contribution and the total number of Participant's Parking Spaces based on the terms of this Section 1(c).

2. Term of the Agreement.

The term of this Agreement shall commence on the date of execution of this Agreement and shall be for a term of fifty-five (55) years unless terminated earlier in accordance with Paragraph 14 (Termination for Cause), except that the obligations of the parties under Paragraph 13 (Indemnification) shall continue in full force and effect after said expiration date or early termination date in relation to acts or omissions occurring prior to such dates.

3. Damage or Destruction of Parking Structure.

(a) If the Parking Structure is damaged or destroyed by a casualty or similar event that results in a reduction of Parking Rights, and less than fifty-five (55) years have elapsed from the Commencement Date, then the COUNTY shall make good faith efforts to repair or replace the Parking Structure on the Property, provided the COUNTY has sufficient funds for the repair or replacement from insurance proceeds or from a third party source of funds. COUNTY represents that it participates in a self-insurance program as further described in Paragraph 12 below.

(b) If the Parking Structure is damaged or destroyed by a casualty or similar event and fifty-five (55) or more years have elapsed since the Commencement Date, the COUNTY shall not be obligated to replace the Parking Structure.

(c) Within one hundred twenty (120) days following the damage or destruction of the Parking Structure described in subparagraph (a), the COUNTY shall notify PARTICIPANT as to whether it will replace the Parking Structure on the Property, or whether it lacks sufficient funds for the repair or replacement thereof. If the COUNTY does not elect to repair or replace the Parking Structure on the Property, either party may terminate this Agreement, in which event the COUNTY shall

reimburse PARTICIPANT to the extent that PARTICIPANT did not realize the benefits of its Contribution for the full term of this Agreement. By way of example, if PARTICIPANT contributed One Million Dollars (\$1,000,000), and the Parking Structure was damaged or destroyed twenty-two (22) years into the fifty-five (55) year term and the COUNTY elected not to repair or replace the structure, PARTICIPANT would be entitled to a Six Hundred Thousand Dollars (\$600,000) reimbursement of its Contribution, representing sixty percent (60%) of its original contribution, based on the unavailability of Parking Rights for the remaining thirty-three (33) years, (or sixty percent (60%)) of the initial term of this Agreement.

(d) If the Parking Structure is damaged by a casualty or similar event, during the period in which the Parking Rights are reduced or unavailable, the COUNTY shall reimburse PARTICIPANT on a pro-rata basis based on a calculation of the PARTICIPANT's cost per day for such Parking Rights given the size of the Contribution and term of the Agreement. Such refund shall be the PARTICIPANT's sole remedy for the reduction or lack of availability of the parking provided by the Parking Rights.

(e) After fifty-five (55) years have elapsed since the Commencement Date, COUNTY in its sole discretion may decide to discontinue the use of the Property for a Parking Structure. In such case, COUNTY shall provide PARTICIPANT one hundred twenty (120) days notice prior to the expiration date of the Agreement. If after fifty-five (55) years have elapsed since the Commencement Date, and COUNTY still desires to operate the Parking Structure, COUNTY and PARTICIPANT agree to negotiate in good faith an extension of this Agreement under the same terms and conditions.

4. License for Parking Rights.

(a) "Parking Rights" shall mean PARTICIPANT's exclusive right to use of an estimated forty-six (46) spaces, which shall be more specifically determined pursuant to the calculations based on the Actual Cost of the Parking Structure set forth in Section 1 above and shall be designated as "Reserved Spaces" for PARTICIPANT.

(b) The COUNTY hereby grants to PARTICIPANT (including PARTICIPANT's agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers, invitees, or visitors), a license to use for the term of the Agreement the Parking Rights as defined above and more particularly set forth in the diagram in Exhibit "C" attached hereto. The COUNTY and PARTICIPANT agree to cooperate in good faith in determining a method for designating the Reserved Spaces, and ensuring that PARTICIPANT's rights to such Reserved Spaces are protected and enforced. COUNTY and PARTICIPANT may also mutually agree to a change in the location of Participant Parking Spaces.

5. Operations and Maintenance of Parking Structure.

(a) Operating Costs.

(i) Costs for the operations and maintenance of the Parking Structure ("Operating Costs") are estimated at approximately Two Hundred Thousand Dollars (\$200,000) per year. This amount shall be determined with more specificity in an Operations and Use Agreement to be entered into in the future among COUNTY, CITY, PARTICIPANT and other participants. For purposes of this Agreement, Operating Costs shall include commercially reasonable expenses and costs which COUNTY shall pay or become obligated to pay because of or in connection with the ownership, operation, repair and/or maintenance of the Parking Structure, including, without limitation: (A) all maintenance, janitorial and security costs; (B) costs for all materials, supplies and

equipment; (C) costs of water, electricity, refuse collection, parking lot sweeping, landscaping, and other utilities and services relating to the Parking Structure; (D) all costs of alterations or improvements to the Parking Structure made to achieve compliance with any federal, state and local law including, without limitation, the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) ("ADA"), or to reduce Operating Costs or improve the operating efficiency of the Parking Structure, all of which costs will be amortized over the useful life of such alterations or improvements as COUNTY shall reasonably determine; (E) costs for repairs, replacements, and general maintenance of the Parking Structure, but excluding any repairs or replacements paid for out of insurance proceeds or by other parties; (F) costs of maintaining machinery, equipment and directional signage or other markers, and (G) any insurance premiums that are specifically allocatable to insuring the Parking Structure

Operating Costs shall not include (A) capital improvements (except as otherwise provided above); (B) costs of special services rendered to other private participants (including PARTICIPANT) for which a special charge is made; (C) attorneys' fees and other expenses incurred in connection with the Parking Structure or enforcing rules and regulations for the Parking Structure; (D) depreciation or amortization, other than as specifically enumerated in the definition of Operating Costs above; (E) nonrecurring costs incurred to remedy defects in the original construction of the Parking Structure; and (F) repairs or other work needed due to fire, windstorms, or other casualty or cause to the extent COUNTY has received insurance proceeds for such repairs or other work.

(ii) PARTICIPANT shall pay to COUNTY, "PARTICIPANT's Parking Percentage Share" of the Operating Costs on a bi-monthly basis commencing on the first day of the first month following the completion of the construction of the Parking Structure. For purposes of this Agreement, "PARTICIPANT's Parking Percentage Share" shall mean the number of spaces licensed to PARTICIPANT for its Parking Rights pursuant to this Agreement divided by the total number of parking spaces in the Parking Structure. If the number of spaces in the Parking Structure or PARTICIPANT's Parking Rights are changed, then PARTICIPANT's Parking Percentage Share shall be adjusted accordingly.

(iii) The COUNTY shall be responsible for "COUNTY's Parking Percentage Share" of the Operating Costs. "COUNTY's Parking Percentage Share" shall mean the number of spaces reserved for the COUNTY's use pursuant to this Agreement divided by the total number of parking spaces in the Parking Structure. If the number of spaces in the Parking Structure or the number of COUNTY's reserved parking spaces are changed, then COUNTY's Parking Percentage Share shall be adjusted accordingly.

(iv) It is understood among the parties that the CITY shall be responsible for a share of the Operating Costs to be determined more specifically in a subsequent Operations and Use Agreement entered into among the COUNTY, CITY, PARTICIPANTS and other participants; provided however, that the extent of CITY's responsibility for a share of the Operating Costs as determined in the Operations and Use Agreement, shall have no effect on the calculation of PARTICIPANT's operating costs pursuant to Paragraph 5(a)(ii), above.

(v) COUNTY shall also establish a reserve fund in the amount of Thirty Thousand Dollars (\$30,000) annually comprised of proportional contributions from COUNTY, CITY, PARTICIPANT and other participants ("Reserve Fund") for the duration of this Agreement for the preventive maintenance, periodic repair, replacement of components, and related improvements of the Parking Structure, which shall be contributed to proportionally by COUNTY, CITY, PARTICIPANT, and other participants. The Parties agree to regularly negotiate and determine

necessary adjustments to the amount of the Reserve Fund every five (5) years or more frequently as needed for the duration of this Agreement. The County Auditor-Controller shall be responsible for establishing and maintaining the Reserve Fund for the duration of this Agreement.

(vi) PARTICIPANT shall have the right to employ vendors and contractors for the operations of the Parking Structure, including but not limited to valet operators.

(vii) Notwithstanding any terms or provisions of this Paragraph 5(a) to the contrary, in the event that the COUNTY charges the public to park in the Parking Structure ("Public Parking Fees"), the proceeds from such Public Parking Fees shall be used to pay the Operating Costs for the Parking Structure. To the extent that a portion of the Operating Costs are paid with the proceeds of Public Parking Fees, the Operating Costs payable by COUNTY, CITY, and PARTICIPANT pursuant to this Paragraph 5(a) shall be offset such that each party shall only be responsible for their parking percentage share of the remaining Operating Costs.

(b) Maintenance.

(i) Following completion of construction of the Parking Structure, the COUNTY shall maintain the Parking Structure in good condition and repair consistent with customary maintenance practices. Any maintenance or improvement work performed on the Parking Structure shall be diligently performed and completed in a good, workmanlike and timely manner, and shall be completed in such a manner as to return the Parking Structure to no less than the same condition that it was in prior to the commencement of such maintenance and repair work. The COUNTY shall coordinate and reasonably cooperate with the PARTICIPANT in performing the repair and maintenance obligations described in this Agreement and shall give the PARTICIPANT reasonable notice prior to commencing any repair or maintenance to the Parking Structure.

(ii) Any work done on the Parking Structure by the COUNTY shall be performed in a manner which causes the least interference reasonably possible, and reasonable steps shall be taken by COUNTY to ensure that the performance of such maintenance and repairs does not adversely affect the PARTICIPANT.

(iii) The parties to this Agreement shall be required to contribute to the cost of any maintenance as part of their respective obligations for Operating Costs, as described in Paragraph 5(a) above.

6. General Use Prohibitions.

PARTICIPANT and COUNTY agree that in connection with and to the extent of the PARTICIPANT's and COUNTY's use and operation of the Parking Structure, PARTICIPANT and COUNTY will not:

- (a) Create, cause, maintain or permit any nuisance in or about the Parking Structure; or
- (b) Commit or suffer to be committed any waste in or about the Parking Structure or the Property; or
- (c) Knowingly allow the Parking Structure to be used for any unlawful purpose; or
- (d) Permit undue accumulations of garbage, trash, rubbish or any other refuse in the Parking Structure; or
- (e) Cause or permit obnoxious odors to emanate from or be discharged in or from the Parking Structure; or
- (f) Create, cause, maintain or permit any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness (excluding the occasional noise from an errant car alarm); or

(g) Create, reuse, maintain, or permit creation of any dust, dirt, or fly ash in excessive quantities; or

(h) Create, cause, maintain or permit any motor vehicle servicing, including but not limited to the washing of cars, or repair shop that provides any such servicing.

7. Security; Enforcement.

The regular hours of operation of the Parking Structure by COUNTY shall be set forth with more specificity in an Operations and Use Agreement to be entered into among COUNTY, CITY, PARTICIPANT and other participants in the future. The COUNTY shall provide security for the Parking Structure for certain hours of operation of the Parking Structure, which shall be substantially consistent with the level of service that COUNTY or CITY provides in other parking structures in Downtown Napa; however, such provision of security may not be for the entire duration of the operational hours of the Parking Structure referenced immediately above. COUNTY will not provide security at other times even though the Parking Structure is being used for parking for public use. At PARTICIPANT's sole cost, PARTICIPANT may provide additional security during hours in which the COUNTY is not providing security. The PARTICIPANT shall coordinate any additional security it provides with the security the COUNTY provides and with security for other participants in similar parking participant agreements.

The COUNTY and PARTICIPANT agree to cooperate in good faith in determining a method for designating the Reserved Spaces, and ensuring that PARTICIPANT's rights to such Reserved Spaces are protected and enforced.

8. Approvals of Transfers.

"Transfer" means: any total or partial sale, sublicense, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement, of the ownership in the Parking Rights or any interest therein, or any contract or agreement to do any of the same.

Subject to the terms and conditions of this paragraph, PARTICIPANT shall have the right to Transfer its Parking Rights. Any Transfer not permitted by this paragraph shall be null and void. In the event that PARTICIPANT desires to Transfer its Parking Rights, PARTICIPANT shall provide COUNTY and CITY with thirty (30) days notice of any such Transfer, and such Transfer shall be subject to the COUNTY's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if each of the following conditions are satisfied, PARTICIPANT's Transfer of its Parking Rights shall not be subject to COUNTY's consent:

(a) The transferee enters into an assignment and assumption agreement with the PARTICIPANT pursuant to which the transferee agrees to undertake the obligations of PARTICIPANT under this Agreement;

(b) The PARTICIPANT and the transferee execute and provide to the COUNTY documentation reasonably satisfactory to the COUNTY of PARTICIPANT's assignment of the rights and delegation of duties under this Agreement to the transferee;

(c) There is no uncured Event of PARTICIPANT Default under this Agreement; and

(d) Following any Transfer, PARTICIPANT must remain in compliance with the CITY's parking requirements (as set forth in applicable use permits, etc.) regarding the PARTICIPANT's obligation to provide parking for the use of its property.

In addition to the foregoing terms and conditions regarding the PARTICIPANT's rights to Transfer its Parking Rights, PARTICIPANT may assign its rights under this Agreement, without

any approval of COUNTY or CITY, to any entity which is wholly owned by PARTICIPANT or by a parent of a PARTICIPANT, or any entity in which PARTICIPANT or a parent of PARTICIPANT has an equity interest and is a general or managing partner/member, and shall include any new or existing entity so long as such entity is owned, controlled or managed by (or under common control with) PARTICIPANT. No assignment by PARTICIPANT shall result in PARTICIPANT being released from any obligations of PARTICIPANT to COUNTY under this Agreement.

9. Prohibited Encumbrances.

PARTICIPANT shall not have the right to place or create any mortgage or deed of trust upon the Parking Rights or the Property, or place or suffer to be placed upon the Parking Rights or Property any lien, levy or attachment or other encumbrance. Notwithstanding the foregoing, in connection with obtaining financing related to PARTICIPANT's real property, PARTICIPANT may assign its Parking Rights to a lender as additional security for the financing of such real property. However, any such financing and assignment for security purposes shall require the lender to be subject to all terms of this Agreement as of the date of foreclosure (i.e., all obligations and restrictions related to PARTICIPANT's use of the Parking Structure).

Any such mortgage, lien, levy or attachment or other encumbrances prohibited by this paragraph shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless PARTICIPANT shall, within sixty (60) days of such date of execution or filing of record, remove any such mortgage, lien, levy or attachment or other encumbrances.

10. Rights of Lenders.

If PARTICIPANT provides COUNTY with the name of any lender to whom PARTICIPANT has made a Transfer, COUNTY shall give such lender notice of any default or failure by PARTICIPANT under this Agreement and such lender shall have the right to cure such default or failure within ninety (90) days following receipt of such notice of PARTICIPANT's default.

11. Transfer by the COUNTY.

At any time and without the consent of the PARTICIPANT, the COUNTY may Transfer its rights and obligations under this Agreement so long as the transferee owns or has the right to operate the Parking Structure. A transferee of COUNTY's rights and obligations under this Agreement shall agree in writing to perform all obligations of the COUNTY pursuant to the terms of this Agreement, including without limitation, the obligation to maintain insurance on the Parking Structure at such levels as are reasonable and customary for such property and improvements.

12. Insurance.

COUNTY is a participant in a self-insurance program with casualty and excess liability coverage limits up to Twenty-Five Million Dollars (\$25,000,000) to cover any third-party claims for damages against the COUNTY resulting from the operations of the Parking Structure. The COUNTY also maintains first-party property insurance coverage in the amount of Seventy-Five Million Dollars (\$75,000,000) which includes earthquake and flood liability to cover any such potential damage to the Parking Structure. The PARTICIPANT shall be named as an additional insured for such policies. COUNTY shall maintain the above mentioned insurance for the duration of this Agreement.

However, in the event PARTICIPANT hires any vendor or contractor to perform any service in connection with the operations of the Parking Structure including but not limited to valet services, PARTICIPANT shall, or require its vendor or contractor to obtain liability insurance with a minimum of One Million Dollars (\$1,000,000) of liability coverage to cover such vendors or contractors. Such coverage shall be subject to the reasonable approval of COUNTY's Risk Manager and verified by certificates of coverage. PARTICIPANT shall be named as an additional insured for any such vendor or contractor insurance coverage.

13. Hold Harmless/Defense/Indemnification.

(a) To the full extent permitted by law, PARTICIPANT shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of PARTICIPANT or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of COUNTY or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) To the full extent permitted by law, COUNTY shall hold harmless, defend at its own expense, and indemnify PARTICIPANT and the officers, agents, employees and volunteers of PARTICIPANT from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of COUNTY or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of PARTICIPANT or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

14. Termination for Cause.

If either party shall be in Default under this Agreement and fail to cure such Default within thirty (30) days of receipt of written notice from the other party describing the nature of the Default, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving thirty (30) days prior written notice to the defaulting party in the manner set forth in Paragraph 17 (Notices); provided, however, that if the nature of such Default is such that the same is curable but cannot reasonably be cured within such thirty (30) day period, a party shall not be deemed to be in Default if such party shall within such period commence such cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion. COUNTY hereby authorizes the Napa County Executive Officer to make

all decisions and take all actions required under this paragraph to terminate this Agreement on behalf of COUNTY for cause.

15. Default.

(a) The following shall constitute a "Default" by PARTICIPANT under this Agreement: a failure by PARTICIPANT to observe and perform any material provision of this Agreement to be observed or performed by PARTICIPANT, where such failure continues for sixty (60) days after notice thereof from COUNTY; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, PARTICIPANT shall not be deemed to be in default if PARTICIPANT shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion.

(b) The following shall constitute a "Default" by COUNTY under this Agreement: a failure by COUNTY to observe and perform any material provision of this Agreement to be observed or performed by COUNTY, where such failure continues for sixty (60) days after notice thereof from PARTICIPANT; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, COUNTY shall not be deemed to be in default if COUNTY shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion.

16. No Waiver.

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

17. Notices.

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five (5) days following the date of deposit, whichever is earlier.

COUNTY
Napa County Executive Officer
1195 Third Street, Suite 310
Napa, California 94559

PARTICIPANT
Napa Mill, LLC
Attn: Harry Price
500 Main Street
Napa, California 94559

18. Amendment/Modification.

Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

19. Interpretation; Venue.

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

20. Compliance with Laws.

Except as to those matters that are the responsibility of the COUNTY, PARTICIPANT shall, at PARTICIPANT's sole cost and expense, comply with and shall cause any of its managers, employees or contractors to comply with all federal, state, county, municipal and other government statutes, laws, rules, orders, regulations and ordinances affecting the Property and the Parking Structure, the use thereof, or construction thereon, to the extent of PARTICIPANT's use and operation of the Parking Structure, excluding those which require the making of any structural or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Agreement, or involve a change of policy on the part of the government body enacting the same. County shall construct the facility to comply with all laws including the ADA and shall keep the property in compliance with the ADA provisions to the expenditure of funds which will be billed proportionately to the CITY, COUNTY and PARTICIPANTS.

21. Access to Records/Retention.

PARTICIPANT, or the duly authorized representatives thereof, shall have access to any books, documents, papers and records of COUNTY which are directly pertinent to the subject matter of this Agreement (including without limitation, records related to Operating Costs) for the purpose of making audit, examination, excerpts and transcriptions.

22. Authority to Contract.

PARTICIPANT and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

24. Attorney's Fees.

In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in

such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

25. Severability.

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

26. Entirety of Contract.

This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

NAPA MILL, LLC, by its managing member, Napa Mill Development Company, a California Limited Partnership

By: Harry T. Price
Harry T. Price, General Partner
"PARTICIPANT"

COUNTY OF NAPA, a political subdivision of the State of California

By: Harold Moskowitz
HAROLD MOSKOWITE, Chair of the Board of Supervisors

"COUNTY"

ATTEST:

Clerk of the Board of Supervisors

By: Mary Jo McLaughlin

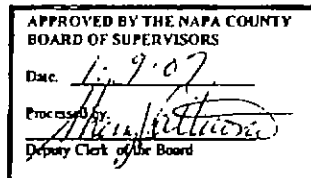
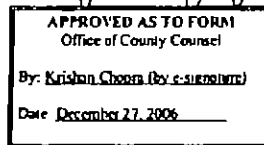
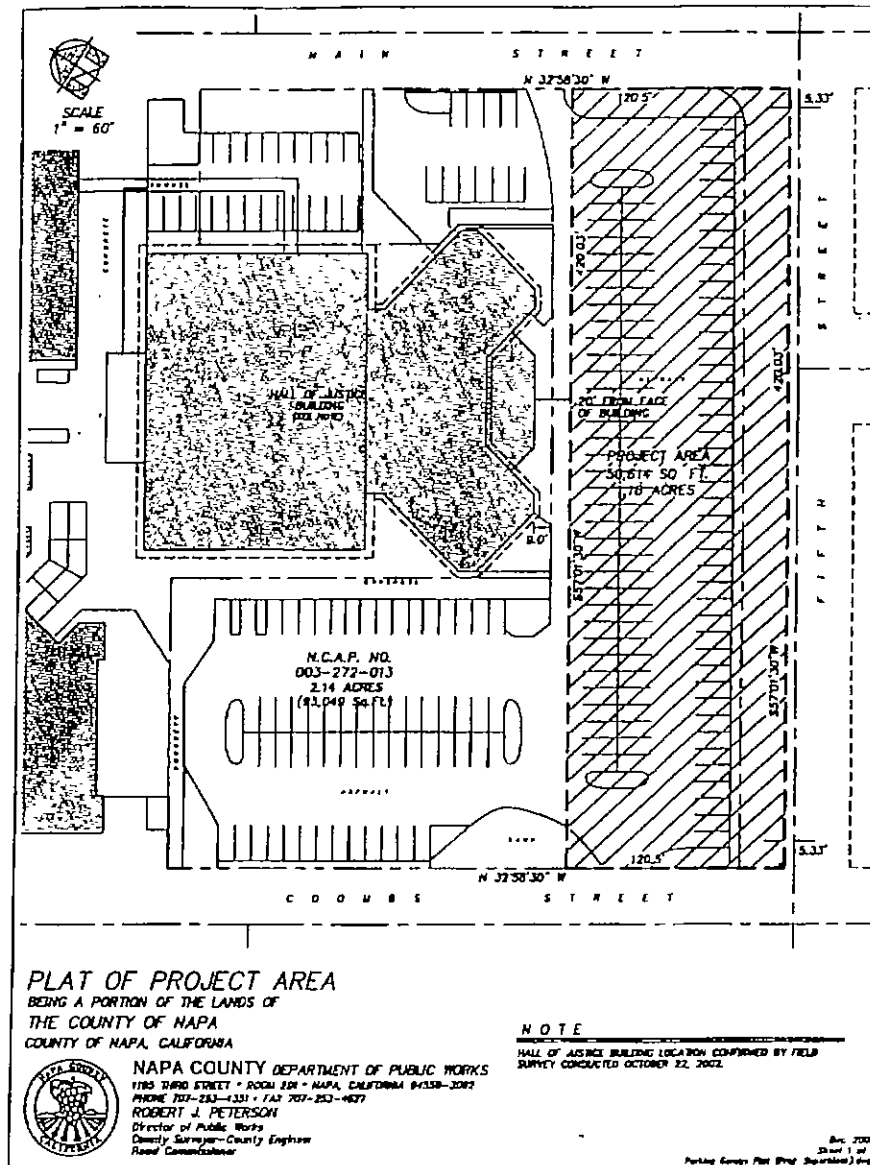


EXHIBIT "A"

GRAPHIC DESCRIPTION OF THE PROPERTY



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EXHIBIT "B"

LEGAL DESCRIPTION OF PROPERTY

The project area corridor is defined by a line of demarcation drawn parallel to the southeasterly line of the parcel of land described in the Grant Deed filed January 15, 2003 and recorded as Document No. 2003-0002112 in the office of the Recorder of Napa County, California and 20 feet from the southeasterly face of the Napa County Hall of Justice Building. Said project demarcation line extends to the northeasterly and southwesterly lines of the above mentioned parcel and is offset by a parallel line 120.5 feet to the southeast also bounded by the extended northeasterly and southwesterly lines of the above mentioned parcel.

The above project area comprises 50,614 square feet or 1.16 acres.

EXHIBIT "C"

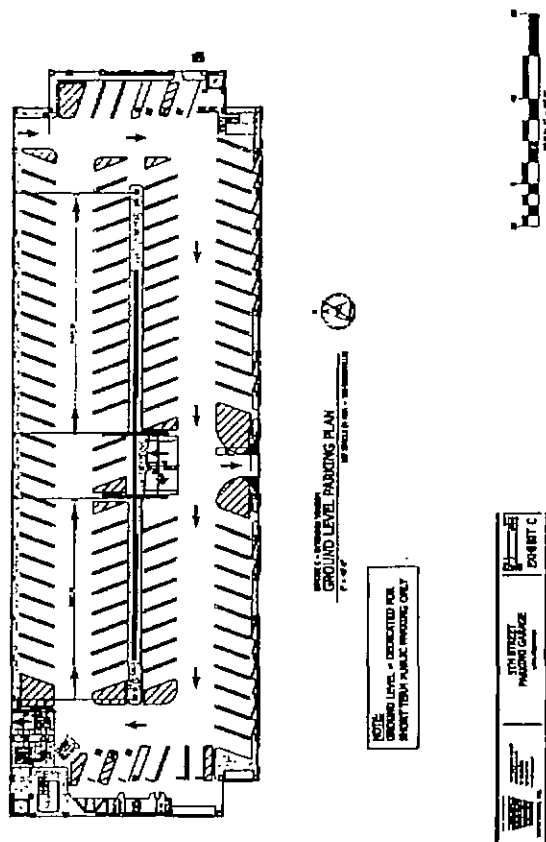
DIAGRAM OF PARKING STRUCTURE SETTING FORTH NUMBER AND LOCATION OF
COUNTY, CITY, PARTICIPANT, AND OTHER PARTICIPANT PARKING SPACES

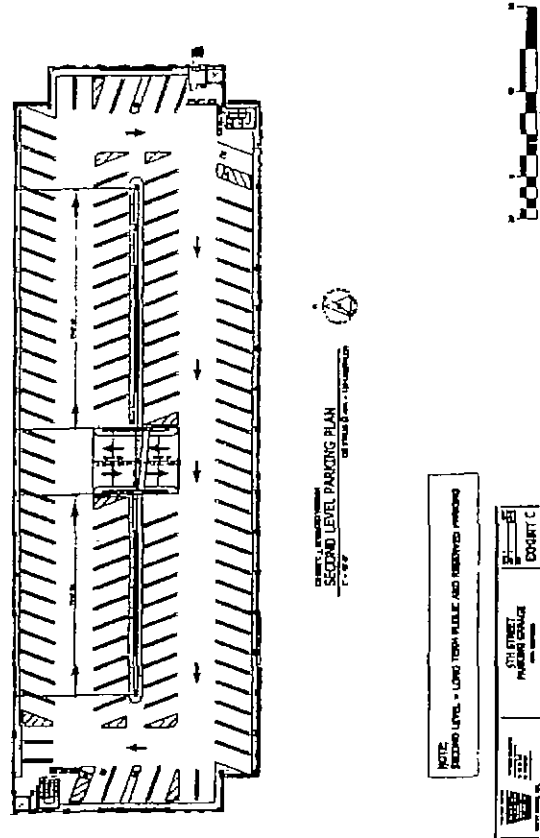
ANTICIPATED DIAGRAM OF PARKING STRUCTURE

SETTING FORTH NUMBER AND LOCATION OF COUNTY,
CITY PARTICIPANT AND OTHER PARTICIPANT PARKING SPACES,
SUBJECT TO CHANGE THROUGH THE DESIGN BUILD PROCESS

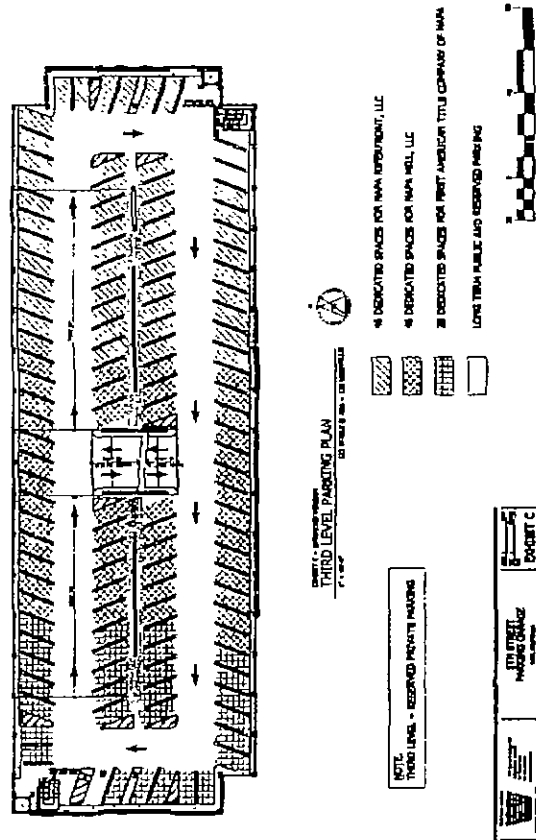
- GROUND LEVEL = INDICATED FOR SHORT TERM PUBLIC PARKING ONLY
- SECOND LEVEL = LONG TERM PUBLIC AND RESERVED PARKING
- THIRD LEVEL = RESERVED PRIVATE PARKING
- FOURTH LEVEL = RESERVED COUNTY PARKING

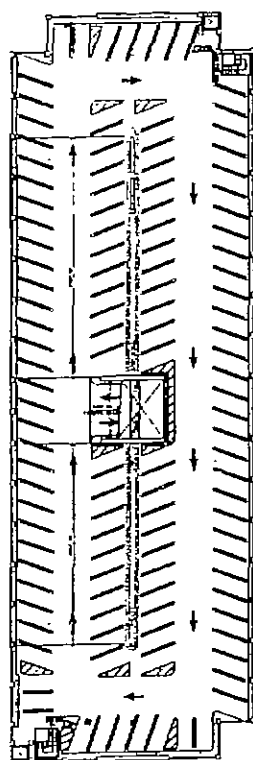






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PROPERTY & INTERESTS
FOURTH LEVEL PARKING PLAN
11-1-2007

NOTE:
FOURTH LEVEL - RESERVED
COUNTY PARKING

FOURTH LEVEL
PARKING GARAGE
DISTRICT C



EXHIBIT "D"

ESTIMATED TOTAL COST/PROJECT BUDGET WORKSHEET AS OF 12/18/16

<u>Item</u>	<u>Amount</u>
Construction	\$11,960,000
Construction Contingency	\$ 1,196,000
Watry (County's Architect)	\$ 469,200
County Project & Construction Mgmt.	\$ 490,000
Utility Fees, Inspections, Labor Compliance, & Permits	\$ 520,000
<u>County Public Works Administration</u>	<u>\$ 440,000</u>
Grand Total	\$15,075,200

NAPA COUNTY AGREEMENT NO. 6372

PARKING GARAGE PRIVATE PARTICIPATION AGREEMENT

THIS PARKING GARAGE PRIVATE PARTICIPATION AGREEMENT ("Agreement") is made and entered into as of this 9th day of January, 2007, ("Commencement Date") by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and ANDREA SCHRADER whose mailing address is P.O. Box 388, Napa, California 94559, hereinafter referred to as "PARTICIPANT."

RECITALS

WHEREAS, COUNTY plans to construct a four level parking structure ("Parking Structure") located at the COUNTY superblock site bordered by Main, Fifth, Coombs and Third Streets in Napa ("Property") a graphic description of which is depicted in Exhibit "A" and a legal description of which is attached hereto as Exhibit "B" both incorporated herein by reference which is anticipated to accommodate approximately four hundred sixty-six (466) spaces and cost approximately Fifteen Million Seventy-Five Thousand Two Hundred Dollars (\$15,075,200) to construct. A diagram of the Parking Structure which sets forth the anticipated number and location of the PARTICIPANT, COUNTY and CITY Parking Spaces and other participant parking spaces, based on tentative plan subject to change through the design build process, is attached hereto and incorporated herein as Exhibit "C"; and

WHEREAS, COUNTY anticipates using the design-build process in order to complete the design and construction of the Parking Structure, with an anticipated contract award date of Spring of 2007, and an anticipated completion of construction in the summer of 2008; and

WHEREAS, COUNTY plans to reserve approximately eighty-five (85) parking spaces on the fourth level of the Parking Structure to be available for the sole use of COUNTY vehicles and have one hundred fifteen (115) non-reserved parking spaces on the second level of the Parking Structure for employees and visitors; and

WHEREAS, COUNTY has entered into Napa County Agreement No. 6372 with the City of Napa ("CITY") by which CITY has agreed to participate in funding a portion of the Parking Structure in return for a certain number of parking as designated in Exhibit "C" referenced above; and

WHEREAS, in order to optimize the utilization of the Property for the Parking Structure, COUNTY anticipates entering into Parking Garage Participation Agreements with up to three owners of property near the Parking Structure, by which the COUNTY may license up to approximately one hundred thirty (130) parking spaces for use by such licensees (including PARTICIPANT and or its agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers, invitees, or visitors). Such spaces are in addition to the COUNTY and CITY parking spaces referred to in the third and fourth recitals above; and

WHEREAS, PARTICIPANT desires to purchase a license for the use of approximately twenty-eight (28) parking spaces in the Parking Structure based on the terms and conditions set forth in this Agreement

TERMS

NOW, THEREFORE, The parties agree as follows

1. Contribution for Licensing Parking Spaces.

(a) PARTICIPANT shall make available approximately Nine Hundred Thousand Dollars (\$900,000) to the COUNTY for licensing certain parking spaces as more particularly described herein within thirty (30) days after execution of this Agreement. The estimated total cost of the Parking Structure is Fifteen Million Seventy-Five Thousand Two Hundred Dollars (\$15,075,200) ("Estimated Total Cost") and is set forth in more detail in Exhibit "D" attached hereto and incorporated by reference herein. The estimated cost per parking space, based on an estimated four hundred sixty-six (466) spaces is Thirty-Two Thousand Three Hundred Fifty Dollars (\$32,350). The actual cost of the Parking Structure shall be the amount of the accepted design build proposal received for the Parking Structure plus the combined estimated Three Million One Hundred Fifteen Thousand Two Hundred Dollars (\$3,115,200) costs for the following items (to be determined exactly and subject to adjustment after construction of the Parking Structure is complete): construction contingency; County architect, County project and construction management; utility fees, inspections, labor compliance and permits; and County Public Works administration ("Actual Cost"). The Actual Cost divided by the total number of parking spaces (466) equals the cost per parking space. The cost per parking space multiplied by the number of Participant Parking Spaces twenty-eight (28) equals the actual Participant contribution ("Actual Participant Contribution"). The Actual Participant Contribution shall be in the form of a letter of credit or equivalent financial instrument, including but not limited to a certificate of deposit, in a form reasonably suitable to the COUNTY. COUNTY shall have the right to draw upon the funds in the letter of credit in increments of up to Three Hundred Thousand Dollars (\$300,000) as needed for the construction of the Parking Structure; provided however, that COUNTY shall draw upon the funds provided by COUNTY, CITY, and PARTICIPANT only after COUNTY has executed a construction contract and construction of the Parking Structure has commenced. COUNTY shall license approximately twenty-eight (28) parking spaces ("PARTICIPANT Parking Spaces") to PARTICIPANT in accordance with the terms of this Agreement; provided, however, COUNTY's obligations may be terminated in accordance with Paragraph 14. The location of the PARTICIPANT Parking Spaces has been determined by COUNTY in consultation with the PARTICIPANT. A diagram of the Parking Structure sets forth the number and location of the COUNTY, CITY, and PARTICIPANT Parking Spaces and other participant parking in Exhibit "C" referenced above. In the event that any of the one hundred fifteen (115) non-reserved parking spaces referred to in the third recital above are later converted to reserved spaces by COUNTY, PARTICIPANT Parking Spaces shall be relocated to the second level of the Parking Structure.

(b) COUNTY shall keep PARTICIPANT regularly informed regarding the status of design of the Parking Structure, PARTICIPANT may submit to COUNTY suggested modifications to the design, and COUNTY shall reasonably consider any such suggestions submitted by PARTICIPANT.

(c) After design-build bids are received by COUNTY, COUNTY shall provide PARTICIPANT written notice ("COUNTY Notice") as to the Actual Total Cost of the Parking Structure (as defined above), and the cost per parking space, and whether COUNTY has sufficient funds available to construct a Parking Structure which includes the PARTICIPANT Parking Spaces. If the COUNTY Notice indicates that:

(i) the cost per parking space is Thirty Three Thousand Dollars (\$33,000) or less, COUNTY and PARTICIPANT shall meet and confer in a good faith effort to negotiate a modification to this Agreement by which either PARTICIPANT's Contribution is decreased, or the number of PARTICIPANT Parking Spaces is increased; or

(ii) the cost per parking space is greater than Thirty Three Thousand Dollars (\$33,000), then PARTICIPANT may either negotiate a modification to this Agreement with the COUNTY regarding the Actual PARTICIPANT's Contribution and the number of PARTICIPANT's Parking Spaces, or PARTICIPANT may terminate its obligations under this Agreement by providing written notice to COUNTY within thirty (30) days following receipt of the COUNTY Notice (in which event the COUNTY shall not draw upon any of PARTICIPANT's source of funds, and the COUNTY shall execute and deliver to PARTICIPANT and the issuer of the letter of credit such documentation as is reasonably necessary to cancel and terminate the same within 30 days of PARTICIPANT's notice of termination).

Within sixty (60) days following receipt of the COUNTY Notice, except in the event of PARTICIPANT's termination of this Agreement pursuant to Section 1(c)(ii) above, PARTICIPANT and COUNTY shall execute an amendment to this Agreement indicating the PARTICIPANT's total Contribution and the total number of Participant's Parking Spaces based on the terms of this Section 1(c)

2. Term of the Agreement.

The term of this Agreement shall commence on the date of execution of this Agreement and shall be for a term of fifty-five (55) years unless terminated earlier in accordance with Paragraph 14 (Termination for Cause), except that the obligations of the parties under Paragraph 13 (Indemnification) shall continue in full force and effect after said expiration date or early termination date in relation to acts or omissions occurring prior to such dates.

3. Damage or Destruction of Parking Structure.

(a) If the Parking Structure is damaged or destroyed by a casualty or similar event that results in a reduction of Parking Rights, and less than fifty-five (55) years have elapsed from the Commencement Date, then the COUNTY shall make good faith efforts to repair or replace the Parking Structure on the Property, provided the COUNTY has sufficient funds for the repair or replacement from insurance proceeds or from a third party source of funds. COUNTY represents that it participates in a self-insurance program as further described in Paragraph 12 below.

(b) If the Parking Structure is damaged or destroyed by a casualty or similar event and fifty-five (55) or more years have elapsed since the Commencement Date, the COUNTY shall not be obligated to replace the Parking Structure.

(c) Within one hundred twenty (120) days following the damage or destruction of the Parking Structure described in subparagraph (a), the COUNTY shall notify PARTICIPANT as to whether it will replace the Parking Structure on the Property, or whether it lacks sufficient funds for the repair or replacement thereof. If the COUNTY does not elect to repair or replace the Parking Structure on the Property, either party may terminate this Agreement, in which event the COUNTY shall

reimburse PARTICIPANT to the extent that PARTICIPANT did not realize the benefits of its Contribution for the full term of this Agreement. By way of example, if PARTICIPANT contributed One Million Dollars (\$1,000,000), and the Parking Structure was damaged or destroyed twenty-two (22) years into the fifty-five (55) year term and the COUNTY elected not to repair or replace the structure, PARTICIPANT would be entitled to a Six Hundred Thousand Dollars (\$600,000) reimbursement of its Contribution, representing sixty percent (60%) of its original contribution, based on the unavailability of Parking Rights for the remaining thirty-three (33) years, (or sixty percent (60%)) of the initial term of this Agreement.

(d) If the Parking Structure is damaged by a casualty or similar event, during the period in which the Parking Rights are reduced or unavailable, the COUNTY shall reimburse PARTICIPANT on a pro-rata basis based on a calculation of the PARTICIPANT's cost per day for such Parking Rights given the size of the Contribution and term of the Agreement. Such refund shall be the PARTICIPANT's sole remedy for the reduction or lack of availability of the parking provided by the Parking Rights.

(e) After fifty-five (55) years have elapsed since the Commencement Date, COUNTY in its sole discretion may decide to discontinue the use of the Property for a Parking Structure. In such case, COUNTY shall provide PARTICIPANT one hundred twenty (120) days notice prior to the expiration date of the Agreement. If after fifty-five (55) years have elapsed since the Commencement Date, and COUNTY still desires to operate the Parking Structure, COUNTY and PARTICIPANT agree to negotiate in good faith an extension of this Agreement under the same terms and conditions.

4. License for Parking Rights.

(a) "Parking Rights" shall mean PARTICIPANT's exclusive right to use of an estimated twenty-eight (28) spaces, which shall be more specifically determined pursuant to the calculations based on the Actual Cost of the Parking Structure set forth in Section 1 above and shall be designated as "Reserved Spaces" for PARTICIPANT.

(b) The COUNTY hereby grants to PARTICIPANT (including PARTICIPANT's agents, employees, contractors, licensees, assignees, sublessees, transferees, representatives, guests, customers, invitees, or visitors), a license to use for the term of the Agreement the Parking Rights as defined above and more particularly set forth in the diagram in Exhibit "C" attached hereto. The COUNTY and PARTICIPANT agree to cooperate in good faith in determining a method for designating the Reserved Spaces, and ensuring that PARTICIPANT's rights to such Reserved Spaces are protected and enforced. COUNTY and PARTICIPANT may also mutually agree to a change in the location of Participant Parking Spaces.

5. Operations and Maintenance of Parking Structure.

(a) Operating Costs.

(i) Costs for the operations and maintenance of the Parking Structure ("Operating Costs") are estimated at approximately Two Hundred Thousand Dollars (\$200,000) per year. This amount shall be determined with more specificity in an Operations and Use Agreement to be entered into in the future among COUNTY, CITY, PARTICIPANT and other participants. For purposes of this Agreement, Operating Costs shall include commercially reasonable expenses and costs which COUNTY shall pay or become obligated to pay because of or in connection with the ownership, operation, repair and/or maintenance of the Parking Structure, including, without limitation: (A) all maintenance, janitorial and security costs; (B) costs for all materials, supplies and

equipment; (C) costs of water, electricity, refuse collection, parking lot sweeping, landscaping, and other utilities and services relating to the Parking Structure; (D) all costs of alterations or improvements to the Parking Structure made to achieve compliance with any federal, state and local law including, without limitation, the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) ("ADA"), or to reduce Operating Costs or improve the operating efficiency of the Parking Structure, all of which costs will be amortized over the useful life of such alterations or improvements as COUNTY shall reasonably determine; (E) costs for repairs, replacements, and general maintenance of the Parking Structure, but excluding any repairs or replacements paid for out of insurance proceeds or by other parties; (F) costs of maintaining machinery, equipment and directional signage or other markers; and (G) any insurance premiums that are specifically allocatable to insuring the Parking Structure.

Operating Costs shall not include (A) capital improvements (except as otherwise provided above); (B) costs of special services rendered to other private participants (including PARTICIPANT) for which a special charge is made; (C) attorneys' fees and other expenses incurred in connection with the Parking Structure or enforcing rules and regulations for the Parking Structure; (D) depreciation or amortization, other than as specifically enumerated in the definition of Operating Costs above, (E) nonrecurring costs incurred to remedy defects in the original construction of the Parking Structure; and (F) repairs or other work needed due to fire, windstorms, or other casualty or cause to the extent COUNTY has received insurance proceeds for such repairs or other work.

(ii) PARTICIPANT shall pay to COUNTY, "PARTICIPANT's Parking Percentage Share" of the Operating Costs on a bi-monthly basis commencing on the first day of the first month following the completion of the construction of the Parking Structure. For purposes of this Agreement, "PARTICIPANT's Parking Percentage Share" shall mean the number of spaces licensed to PARTICIPANT for its Parking Rights pursuant to this Agreement divided by the total number of parking spaces in the Parking Structure. If the number of spaces in the Parking Structure or PARTICIPANT's Parking Rights are changed, then PARTICIPANT's Parking Percentage Share shall be adjusted accordingly.

(iii) The COUNTY shall be responsible for "COUNTY's Parking Percentage Share" of the Operating Costs. "COUNTY's Parking Percentage Share" shall mean the number of spaces reserved for the COUNTY's use pursuant to this Agreement divided by the total number of parking spaces in the Parking Structure. If the number of spaces in the Parking Structure or the number of COUNTY's reserved parking spaces are changed, then COUNTY's Parking Percentage Share shall be adjusted accordingly.

(iv) It is understood among the parties that the CITY shall be responsible for a share of the Operating Costs to be determined more specifically in a subsequent Operations and Use Agreement entered into among the COUNTY, CITY, PARTICIPANTS and other participants; provided however, that the extent of CITY's responsibility for a share of the Operating Costs as determined in the Operations and Use Agreement, shall have no effect on the calculation of PARTICIPANT's operating costs pursuant to Paragraph 5(a)(ii), above.

(v) COUNTY shall also establish a reserve fund in the amount of Thirty Thousand Dollars (\$30,000) annually comprised of proportional contributions from COUNTY, CITY, PARTICIPANT and other participants ("Reserve Fund") for the duration of this Agreement for the preventive maintenance, periodic repair, replacement of components, and related improvements of the Parking Structure, which shall be contributed to proportionally by COUNTY, CITY, PARTICIPANT, and other participants. The Parties agree to regularly negotiate and determine

necessary adjustments to the amount of the Reserve Fund every five (5) years or more frequently as needed for the duration of this Agreement. The County Auditor-Controller shall be responsible for establishing and maintaining the Reserve Fund for the duration of this Agreement.

(vi) PARTICIPANT shall have the right to employ vendors and contractors for the operations of the Parking Structure, including but not limited to valet operators.

(vii) Notwithstanding any terms or provisions of this Paragraph 5(a) to the contrary, in the event that the COUNTY charges the public to park in the Parking Structure ("Public Parking Fees"), the proceeds from such Public Parking Fees shall be used to pay the Operating Costs for the Parking Structure. To the extent that a portion of the Operating Costs are paid with the proceeds of Public Parking Fees, the Operating Costs payable by COUNTY, CITY, and PARTICIPANT pursuant to this Paragraph 5(a) shall be offset such that each party shall only be responsible for their parking percentage share of the remaining Operating Costs.

(b) Maintenance.

(i) Following completion of construction of the Parking Structure, the COUNTY shall maintain the Parking Structure in good condition and repair consistent with customary maintenance practices. Any maintenance or improvement work performed on the Parking Structure shall be diligently performed and completed in a good, workmanlike and timely manner, and shall be completed in such a manner as to return the Parking Structure to no less than the same condition that it was in prior to the commencement of such maintenance and repair work. The COUNTY shall coordinate and reasonably cooperate with the PARTICIPANT in performing the repair and maintenance obligations described in this Agreement and shall give the PARTICIPANT reasonable notice prior to commencing any repair or maintenance to the Parking Structure.

(ii) Any work done on the Parking Structure by the COUNTY shall be performed in a manner which causes the least interference reasonably possible, and reasonable steps shall be taken by COUNTY to ensure that the performance of such maintenance and repairs does not adversely affect the PARTICIPANT.

(iii) The parties to this Agreement shall be required to contribute to the cost of any maintenance as part of their respective obligations for Operating Costs, as described in Paragraph 5(a) above.

6. General Use Prohibitions.

PARTICIPANT and COUNTY agree that in connection with and to the extent of the PARTICIPANT's and COUNTY's use and operation of the Parking Structure, PARTICIPANT and COUNTY will not:

- (a) Create, cause, maintain or permit any nuisance in or about the Parking Structure; or
- (b) Commit or suffer to be committed any waste in or about the Parking Structure or the Property; or
- (c) Knowingly allow the Parking Structure to be used for any unlawful purpose; or
- (d) Permit undue accumulations of garbage, trash, rubbish or any other refuse in the Parking Structure; or
- (e) Cause or permit obnoxious odors to emanate from or be discharged in or from the Parking Structure; or
- (f) Create, cause, maintain or permit any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness (excluding the occasional noise from an errant car alarm); or

- (g) Create, reuse, maintain, or permit creation of any dust, dirt, or fly ash in excessive quantities; or
- (h) Create, cause, maintain or permit any motor vehicle servicing, including but not limited to the washing of cars, or repair shop that provides any such servicing.

7. Security; Enforcement.

The regular hours of operation of the Parking Structure by COUNTY shall be set forth with more specificity in an Operations and Use Agreement to be entered into among COUNTY, CITY, PARTICIPANT and other participants in the future. The COUNTY shall provide security for the Parking Structure for certain hours of operation of the Parking Structure, which shall be substantially consistent with the level of service that COUNTY or CITY provides in other parking structures in Downtown Napa; however, such provision of security may not be for the entire duration of the operational hours of the Parking Structure referenced immediately above. COUNTY will not provide security at other times even though the Parking Structure is being used for parking for public use. At PARTICIPANT's sole cost, PARTICIPANT may provide additional security during hours in which the COUNTY is not providing security. The PARTICIPANT shall coordinate any additional security it provides with the security the COUNTY provides and with security for other participants in similar parking participant agreements.

The COUNTY and PARTICIPANT agree to cooperate in good faith in determining a method for designating the Reserved Spaces, and ensuring that PARTICIPANT's rights to such Reserved Spaces are protected and enforced.

8. Approvals of Transfers.

"Transfer" means: any total or partial sale, sublicense, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement, of the ownership in the Parking Rights or any interest therein, or any contract or agreement to do any of the same.

Subject to the terms and conditions of this paragraph, PARTICIPANT shall have the right to Transfer its Parking Rights. Any Transfer not permitted by this paragraph shall be null and void. In the event that PARTICIPANT desires to Transfer its Parking Rights, PARTICIPANT shall provide COUNTY and CITY with thirty (30) days notice of any such Transfer, and such Transfer shall be subject to the COUNTY's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if each of the following conditions are satisfied, PARTICIPANT's Transfer of its Parking Rights shall not be subject to COUNTY's consent:

- (a) The transferee enters into an assignment and assumption agreement with the PARTICIPANT pursuant to which the transferee agrees to undertake the obligations of PARTICIPANT under this Agreement;
- (b) The PARTICIPANT and the transferee execute and provide to the COUNTY documentation reasonably satisfactory to the COUNTY of PARTICIPANT's assignment of the rights and delegation of duties under this Agreement to the transferee,
- (c) There is no uncured Event of PARTICIPANT Default under this Agreement; and
- (d) Following any Transfer, PARTICIPANT must remain in compliance with the CITY's parking requirements (as set forth in applicable use permits, etc.) regarding the PARTICIPANT's obligation to provide parking for the use of its property.

In addition to the foregoing terms and conditions regarding the PARTICIPANT's rights to Transfer its Parking Rights, PARTICIPANT may assign its rights under this Agreement, without

any approval of COUNTY or CITY, to any entity which is wholly owned by PARTICIPANT or by a parent of a PARTICIPANT, or any entity in which PARTICIPANT or a parent of PARTICIPANT has an equity interest and is a general or managing partner/member, and shall include any new or existing entity so long as such entity is owned, controlled or managed by (or under common control with) PARTICIPANT. No assignment by PARTICIPANT shall result in PARTICIPANT being released from any obligations of PARTICIPANT to COUNTY under this Agreement.

9. Prohibited Encumbrances.

PARTICIPANT shall not have the right to place or create any mortgage or deed of trust upon the Parking Rights or the Property, or place or suffer to be placed upon the Parking Rights or Property or any lien, levy or attachment or other encumbrance. Notwithstanding the foregoing, in connection with obtaining financing related to PARTICIPANT's real property, PARTICIPANT may assign its Parking Rights to a lender as additional security for the financing of such real property. However, any such financing and assignment for security purposes shall require the lender to be subject to all terms of this Agreement as of the date of foreclosure (i.e., all obligations and restrictions related to PARTICIPANT's use of the Parking Structure).

Any such mortgage, lien, levy or attachment or other encumbrances prohibited by this paragraph shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless PARTICIPANT shall, within sixty (60) days of such date of execution or filing of record, remove any such mortgage, lien, levy or attachment or other encumbrances.

10. Rights of Lenders.

If PARTICIPANT provides COUNTY with the name of any lender to whom PARTICIPANT has made a Transfer, COUNTY shall give such lender notice of any default or failure by PARTICIPANT under this Agreement and such lender shall have the right to cure such default or failure within ninety (90) days following receipt of such notice of PARTICIPANT's default.

11. Transfer by the COUNTY.

At any time and without the consent of the PARTICIPANT, the COUNTY may Transfer its rights and obligations under this Agreement so long as the transferee owns or has the right to operate the Parking Structure. A transferee of COUNTY's rights and obligations under this Agreement shall agree in writing to perform all obligations of the COUNTY pursuant to the terms of this Agreement, including without limitation, the obligation to maintain insurance on the Parking Structure at such levels as are reasonable and customary for such property and improvements.

12. Insurance.

COUNTY is a participant in a self-insurance program with casualty and excess liability coverage limits up to Twenty-Five Million Dollars (\$25,000,000) to cover any third-party claims for damages against the COUNTY resulting from the operations of the Parking Structure. The COUNTY also maintains first-party property insurance coverage in the amount of Seventy-Five Million Dollars (\$75,000,000) which includes earthquake and flood liability to cover any such potential damage to the Parking Structure. The PARTICIPANT shall be named as an additional insured for such policies. COUNTY shall maintain the above mentioned insurance for the duration of this Agreement.

However, in the event PARTICIPANT hires any vendor or contractor to perform any service in connection with the operations of the Parking Structure including but not limited to valet services, PARTICIPANT shall, or require its vendor or contractor to obtain liability insurance with a minimum of One Million Dollars (\$1,000,000) of liability coverage to cover such vendors or contractors. Such coverage shall be subject to the reasonable approval of COUNTY's Risk Manager and verified by certificates of coverage. PARTICIPANT shall be named as an additional insured for any such vendor or contractor insurance coverage.

13. Hold Harmless/Defense/Indemnification.

(a) To the full extent permitted by law, PARTICIPANT shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of PARTICIPANT or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of COUNTY or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) To the full extent permitted by law, COUNTY shall hold harmless, defend at its own expense, and indemnify PARTICIPANT and the officers, agents, employees and volunteers of PARTICIPANT from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of COUNTY or its officers, agents, employees, volunteers, contractors and sub-contractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of PARTICIPANT or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

14. Termination for Cause.

If either party shall be in Default under this Agreement and fail to cure such Default within thirty (30) days of receipt of written notice from the other party describing the nature of the Default, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving thirty (30) days prior written notice to the defaulting party in the manner set forth in Paragraph 17 (Notices); provided, however, that if the nature of such Default is such that the same is curable but cannot reasonably be cured within such thirty (30) day period, a party shall not be deemed to be in Default if such party shall within such period commence such cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion. COUNTY hereby authorizes the Napa County Executive Officer to make

all decisions and take all actions required under this paragraph to terminate this Agreement on behalf of COUNTY for cause.

15. Default.

(a) The following shall constitute a "Default" by PARTICIPANT under this Agreement: a failure by PARTICIPANT to observe and perform any material provision of this Agreement to be observed or performed by PARTICIPANT, where such failure continues for sixty (60) days after notice thereof from COUNTY; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, PARTICIPANT shall not be deemed to be in default if PARTICIPANT shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion.

(b) The following shall constitute a "Default" by COUNTY under this Agreement: a failure by COUNTY to observe and perform any material provision of this Agreement to be observed or performed by COUNTY, where such failure continues for sixty (60) days after notice thereof from PARTICIPANT; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, COUNTY shall not be deemed to be in default if COUNTY shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually prosecute the same to completion.

16. No Waiver.

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

17. Notices.

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five (5) days following the date of deposit, whichever is earlier.

COUNTY
Napa County Executive Officer
1195 Third Street, Suite 310
Napa, California 94559

PARTICIPANT
Andrea Schrader
P.O. Box 388
Napa, California 94559

18. Amendment/Modification.

Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

19. Interpretation; Venue.

(a) **Interpretation.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) **Venue.** This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

20. Compliance with Laws.

Except as to those matters that are the responsibility of the COUNTY, PARTICIPANT shall, at PARTICIPANT's sole cost and expense, comply with and shall cause any of its managers, employees or contractors to comply with all federal, state, county, municipal and other government statutes, laws, rules, orders, regulations and ordinances affecting the Property and the Parking Structure, the use thereof, or construction thereon, to the extent of PARTICIPANT's use and operation of the Parking Structure, excluding those which require the making of any structural or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Agreement, or involve a change of policy on the part of the government body enacting the same. County shall construct the facility to comply with all laws including the ADA and shall keep the property in compliance with the ADA provisions to the expenditure of funds which will be billed proportionately to the CITY, COUNTY and PARTICIPANTS.

21. Access to Records/Retention.

PARTICIPANT, or the duly authorized representatives thereof, shall have access to any books, documents, papers and records of COUNTY which are directly pertinent to the subject matter of this Agreement (including without limitation, records related to Operating Costs) for the purpose of making audit, examination, excerpts and transcriptions.

22. Authority to Contract.

PARTICIPANT and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

24. Attorney's Fees.

In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in

such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

25. Severability.

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

26. Entirety of Contract.

This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

By: *Andrea Schrader*
Andrea Schrader

"PARTICIPANT"

COUNTY OF NAPA, a political subdivision of
the State of California

By: *Harold Moskowitz*
HAROLD MOSKOWITZ, Chair of the Board of
Supervisors

"COUNTY"

ATTEST:

Clerk of the Board of Supervisors

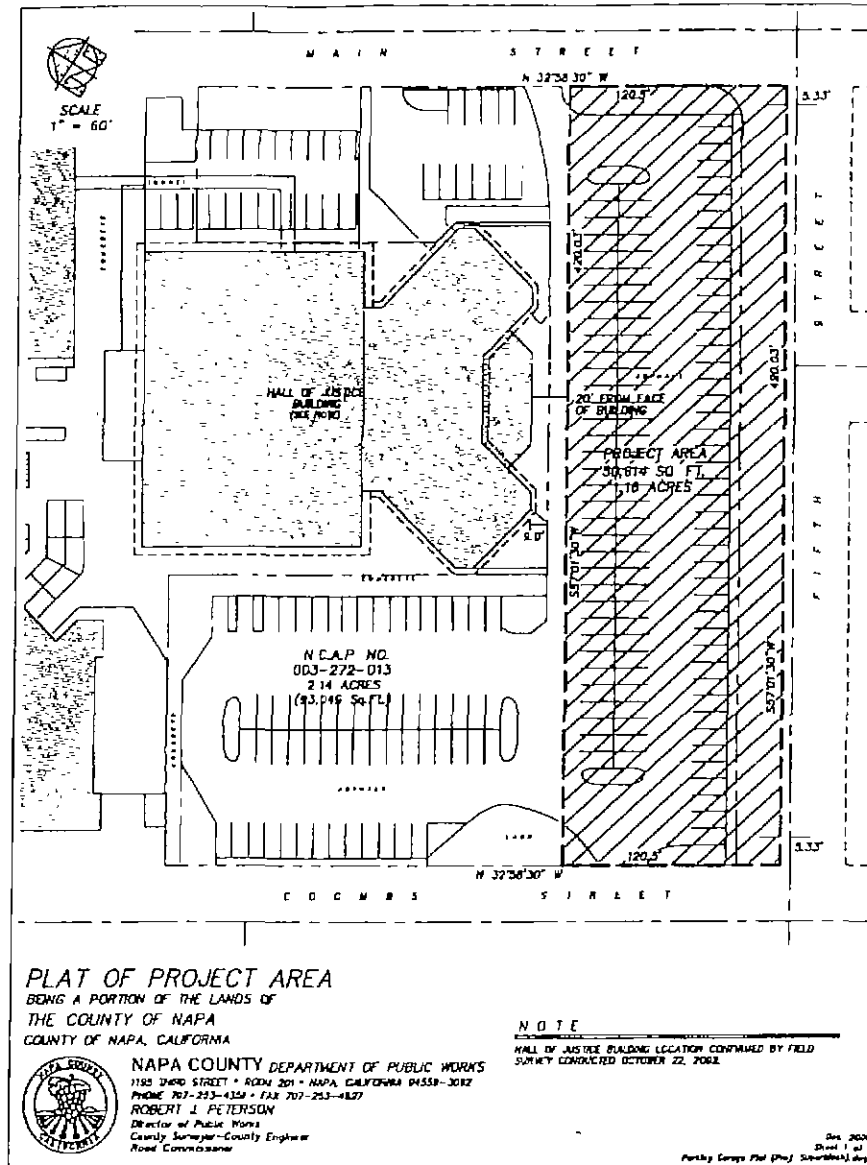
By: *Mary Jean McLaughlin*

APPROVED AS TO FORM Office of County Counsel
By: <i>Krishna Chopra</i> (by e-signature)
Date: December 27, 2006

APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS
Date: <u>1-9-07</u>
Processed by: <u><i>[Signature]</i></u>
Deputy Clerk of the Board

EXHIBIT "A"

GRAPHIC DESCRIPTION OF THE PROPERTY



cc:\BOS\B-C\Napa\Plg\Gai\Schraeder.doc

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EXHIBIT "B"

LEGAL DESCRIPTION OF PROPERTY

The project area corridor is defined by a line of demarcation drawn parallel to the southeasterly line of the parcel of land described in the Grant Deed filed January 15, 2003 and recorded as Document No. 2003-0002112 in the office of the Recorder of Napa County, California and 20 feet from the southeasterly face of the Napa County Hall of Justice Building. Said project demarcation line extends to the northeasterly and southwesterly lines of the above mentioned parcel and is offset by a parallel line 120.5 feet to the southeast also bounded by the extended northeasterly and southwesterly lines of the above mentioned parcel.

The above project area comprises 50,614 square feet or 1.16 acres.

EXHIBIT "C"

DIAGRAM OF PARKING STRUCTURE SETTING FORTH NUMBER AND LOCATION OF
COUNTY, CITY, PARTICIPANT, AND OTHER PARTICIPANT PARKING SPACES

ANTICIPATED DIAGRAM OF PARKING STRUCTURE

SETTING FORTH NUMBER AND LOCATION OF COUNTY,
CITY PARTICIPANT AND OTHER PARTICIPANT PARKING SPACES.
SUBJECT TO CHANGE THROUGH THE DESIGN BUILD PROCESS

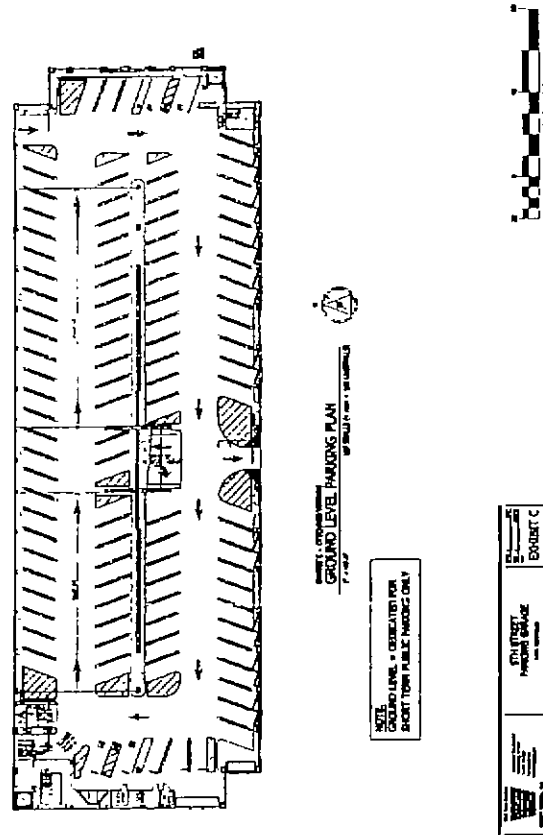
-
- GROUND LEVEL = DEDICATED FOR SHORT TERM PUBLIC PARKING ONLY
 - SECOND LEVEL = LONG TERM PUBLIC AND RESERVED PARKING
 - THIRD LEVEL = RESERVED PRIVATE PARKING
 - FOURTH LEVEL = ASSIGNED COUNTY PARKING



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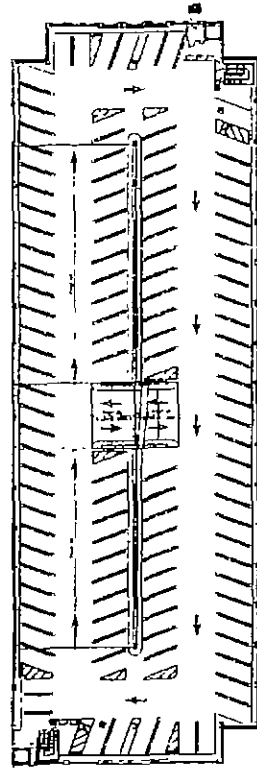
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11-6-02



SECOND LEVEL PARKING PLAN
1" = 40'

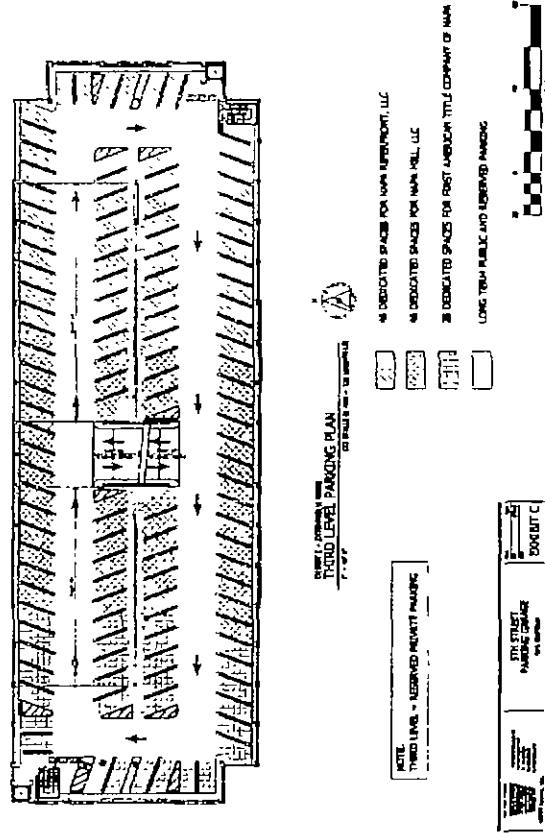
NOTES:
SECOND LEVEL - LONG TERM PUBLIC AND RESERVED PARKING

STREET	STREET
PARKING ORANGE	PARKING C

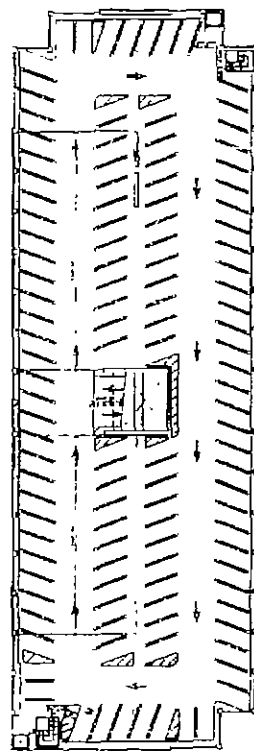


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FOURTH LEVEL PARKING PLAN
 1/1/00

NOTE:
 FOURTH LEVEL RESERVED
 COUNTY MUSEUM

	CITY STREET PARKING PERMIT NO. 12345678	EXHIBIT C
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EXHIBIT "D"

ESTIMATED TOTAL COST/PROJECT BUDGET WORKSHEET AS OF 12/18/16

<u>Item</u>	<u>Amount</u>
Construction	\$11,960,000
Construction Contingency	\$ 1,196,000
Watry (County's Architect)	\$ 469,200
County Project & Construction Mgmt.	\$ 490,000
Utility Fees, Inspections, Labor Compliance, & Permits	\$ 520,000
<u>County Public Works Administration</u>	<u>\$ 440,000</u>
Grand Total	\$15,075,200



CITY of NAPA

CITY CLERK
955 School Street
Mailing Address:
PO Box 660
Napa, California 94559-0660
(707) 257-9503
FAX # (707) 257-9534
www.cityofnapa.org

March 27, 2009

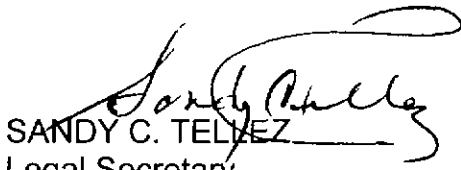
Ms. Andrea Schrader
P.O. Box 388
Napa, CA 94559

Re: Operations and Use Agreement for the Fifth Street Parking Garage; City Agreement No. 9831; County Agreement No. 7191

Dear Ms. Schrader

Enclosed please find an original of the above-referenced agreement for your records.

Very truly yours,


SANDY C. TELIEZ
Legal Secretary

Enclosure

cc. Jennifer La Liberte



CITY of NAPA

CITY CLERK
955 School Street
Mailing Address:
PO Box 660
Napa, California 94559-0660
(707) 257-9503
FAX # (707) 257-9534
www.cityofnapa.org

March 27, 2009

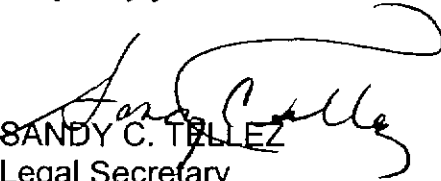
Mr. Harry Price
Napa Mill, LLC
500 Main Street
Napa, CA 94559

Re: Operations and Use Agreement for the Fifth Street Parking Garage; City Agreement No. 9831; County Agreement No. 7191

Dear Mr. Price:

Enclosed please find an original of the above-referenced agreement for your records.

Very truly yours,


SANDY C. TELLEZ
Legal Secretary

Enclosure

cc. Jennifer La Liberte



CITY of NAPA

CITY CLERK
955 School Street
Mailing Address:
PO Box 660
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(707) 257-9503
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March 27, 2009

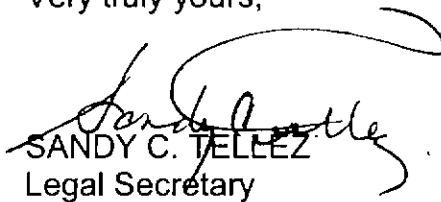
Mr. Massimo Desimoni
Channel Properties, Inc.
100 W. Cutting Boulevard
Richmond, CA 94804

Re: Operations and Use Agreement for the Fifth Street Parking Garage; City Agreement No. 9831; County Agreement No. 7191

Dear Mr. Desimoni:

Enclosed please find an original of the above-referenced agreement for your records.

Very truly yours,


SANDY C. TELLEZ
Legal Secretary

Enclosure

cc. Jennifer La Liberte