

PARKING PERMIT AGREEMENT

(City Owned Parking Garage #7, 801 Van Ness)

This Parking Agreement (the "Agreement") is dated as of ____ day of _____, 2014, by and between City of Fresno, a California municipal corporation, ("City"), and Housing Authority of the City of Fresno, a public body corporate and politic ("Licensee"). Licensee together with City shall be referred to herein as the "Parties."

RECITALS

WHEREAS, the City owns in fee all rights, title and interest in and to five hundred and eighty (580) parking spaces in the parking garage located at 801 Van Ness ("Parking Garage"), and more specifically described/depicted in the attached Exhibit "A," incorporated herein; and

WHEREAS, Licensee is completing commercial and residential space at 816 Van Ness, the former Droge Building Site, and desires to obtain twenty-five (25) parking spaces ("Parking Spaces," as more fully defined in Section 4 of this Agreement) in the adjacent Parking Garage specifically for use by the Housing Authority tenants ("Tenants"); and

WHEREAS, the Parties acknowledge and agree that the Parking Garage is encumbered by certain 2010 Private Placement Bonds and Indenture (City Hall and various capital projects) and covenants/conditions therein and that this Agreement is expressly subordinate to said Bonds and Indenture and that this Agreement shall be deemed modified to any extent required, at any time in the opinion of City's bond counsel for compliance with the Bonds and Indenture.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein and for good and valuable consideration, the City and Licensee do hereby agree as follows:

1. Effective Date of Agreement. For purposes of this Agreement, "Effective Date," shall mean the date first set forth above which shall be the date City signs this Agreement, which shall be after Licensee signs this Agreement.

2. Commencement Date. The initial term of this Agreement shall be two (2) years, commencing on _____, 2014 ("Commencement Date") and ending on _____, 2016, ("Initial Term") subject to earlier termination in accordance with this Agreement. The Initial Term may be extended by mutual agreement of the Parties, in writing, for no more than two (2) additional one (1) year periods, on the same terms and conditions as set forth in this Agreement except as to monthly rates. The party seeking to extend this Agreement under the terms and conditions contained herein shall provide written notice to the other party a minimum of sixty (60) days prior to expiration of the then current term of this Agreement. Before any extension is approved by the Parties, monthly rates shall be subject to renegotiation.

3. Purpose of Agreement. The purpose of this Agreement is to allow the Tenants reasonably necessary ingress and egress and the non-exclusive licensed use of the Parking Spaces solely for the specific public purpose described in Section 4 of this Agreement, and for no other purpose whatsoever, subject to the terms, conditions, and restrictions set forth in this Agreement.

4. Definitions and Terms of Use.

Parking Spaces. For purposes of this Agreement, Licensee is granted non-exclusive use of a maximum of twenty-five (25) non-reserved "as-is" parking spaces for monthly parking by the Tenants on any floor of the garage as designated by the City.

Hours of Use. Parking will be available to the Tenants twenty-four (24) hours a day and seven (7) days a week including Holidays.

Parking Pass. Entry and parking in the Parking Garage shall be pursuant to monthly parking passes or access cards issued by City or City's designated Parking Facilities operator to the Tenants through the Licensee solely for the Tenants' use.

Compliance. Licensee shall handle parking passes, and cause the Tenants to use the Parking Spaces for parking of vehicles in accordance with all applicable laws, ordinances, rules and regulations applicable to the Parking Garage, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Parking Garage, as may be amended from time to time ("Rules and Regulations"). Such Rules and Regulations are incorporated as if set forth in full herein. Licensee acknowledges receipt of a copy of the Rules and Regulations. Any change in the above Rules or Regulations shall be provided to Licensee in writing.

Closure. City reserves the right to temporarily close the Parking Garage, or certain areas therein, in order to perform necessary repairs, maintenance or improvements. City will post a notice in the Parking Garage of such closures. City may conduct emergency closures without prior notification.

5. Improvements. Licensee shall not make any alterations, additions or improvements in or to the Parking Garage.

6. Termination.

(a) Either party may terminate this Agreement where the other party substantially fails to observe, fulfill or perform any obligation, term or condition of this Agreement. This failure shall constitute a material breach. The breaching party shall receive written notice of breach, and shall be given sixty (60) calendar days to cure the breach from the date notice is received. If breaching party does not correct the failure

within sixty (60) calendar days, then the non-breaching party may terminate the Agreement upon written notice.

(b) Notwithstanding the foregoing, the City may terminate this Agreement, at any time after the Commencement Date, in the public interest, by giving prior written notice to the Licensee.

7. Invoicing and Payment.

(a) Licensee agrees to pay City for the use of the Parking Spaces as follows: During the Initial Term, Licensee agrees to pay City a monthly rate of thirty-five dollars (\$35.00) per space ("Monthly Rate Per Space") for twenty five (25) parking stalls, beginning on the last day of the first full month following the Commencement Date and then on the last day of each month thereafter. Licensee will be issued all applicable parking passes and or access cards through the City Contracted parking Operator. Monthly rate can be renegotiated after the initial 2 year term. City will calculate the adjustment and provide Licensee written notice of the adjusted Monthly Rate Per Space at least thirty (30) days prior to when the adjusted Monthly Rate Per Space is due. Licensee shall not be obligated to pay the adjusted Monthly Rate Per Space until Licensee receives written notice from City of the adjusted Monthly Rate Per Space.

(b) All payments shall be made to the City of Fresno, Parking Services, 2600 Fresno Street, Room 4019, Fresno, CA 93721.

(c) Licensee shall make all payments in full. Payment or receipt of a payment of less than the amount stated in the Agreement shall be deemed to be nothing more than a partial payment. Under no circumstances shall City's acceptance of a partial payment constitute accord and satisfaction, nor will City's acceptance of a partial payment forfeit City's right to collect the balance due on the account. City may accept any partial payment check with any conditional or restrictive endorsement or memorandum without prejudice to City's right to recover the balance remaining due or to pursue any other remedy available under this Agreement.

(d) Licensee hereby acknowledges that any late payment to City of sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed upon City by terms of any mortgage or trust deed or financing arrangement covering the Parking Garage. Any payments of any kind returned for insufficient funds will be subject to an additional handling charge of twenty-five dollars (\$25.00), and thereafter, City may require Licensee to pay all future payments of the Monthly Rate Per Space or other sums due by money order or cashier's check.

8. Assignment.

(a) Licensee shall not assign, subcontract or otherwise transfer its rights or obligations under this Agreement without the prior written consent of City. Any assignment, subletting, occupation or use without the consent of City shall be void and,

at the option of City, shall terminate this Agreement. No interest of Licensee in this Agreement shall be assignable by involuntary assignment through operation of law. Each of the following acts shall be considered an involuntary assignment: (i) if Licensee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes proceedings under the Bankruptcy Act in which Licensee is the bankrupt; or (ii) if a writ of attachment or execution is levied on this Agreement; or (iii) if in any proceeding or action to which Licensee is a party, a receiver is appointed with authority to take possession of the Parking Spaces. An involuntary assignment shall constitute a default by Licensee and City shall have the right to elect to terminate this Agreement, in which case this Agreement shall not be treated as an asset of Licensee.

(b) City may assign this Agreement, and/or sell the Parking Garage, in whole or in part, to any other party, without providing Licensee with prior written notice. Licensee agrees to attorn to any assignee/purchaser.

9. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by the Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

10. Property Tax. Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by City is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Licensee under this Agreement, Licensee, by its signature hereunto affixed, agrees to pay any property taxes levied upon such interest, or thereby warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Agreement, Licensee either took a copy of this Agreement to the office of the Fresno County tax assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined that Licensee will not be taxed on its possessory interest hereunder.

11. Notices. Any notices required or permitted to be given under the terms of this Agreement must be in writing and may be: (a) personally delivered; (b) mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) sent by reputable overnight delivery service, addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

If to the Licensee:

Housing Authority
1331 Fulton Mall
Fresno, CA 93721

If to the City:

City of Fresno
Development and Resource Management Department
Parking Manager
2600 Fresno Street Room 4019
Fresno, CA 93721-3623
Phone: 559-621-7275
Fax: 559-457-1265

12. Governing Laws and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

13. Condemnation. If the Parking Spaces or any portion thereof are taken under the power of eminent domain, or sold to a public authority under the threat of the exercise of said power (all of which is herein referred to as "Condemnation"), this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. All awards for the taking any payment made under the threat of the exercise of condemnation shall be payable to the City, and Licensee shall not claim any portion of such award by virtue of any interests created by this Agreement or otherwise.

14. Severability. If any term, provision, covenant, or restriction in this Agreement is determined to be invalid, void, unenforceable, or otherwise inconsistent with applicable law, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated. It is hereby stipulated and declared to be the intention of City and the Licensee that they would have executed the remaining terms, provisions, covenants, and restrictions set forth in this Agreement without including any of such terms, provisions, covenants, or restrictions that may be hereafter declared invalid, void, or unenforceable.

15. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

16. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

17. Interpretation. Should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall be resolved by construing the terms of this Agreement in accordance with their generally accepted meaning.

18. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and

integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Licensee.

19. Binding. Once this Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

20. Compliance with Law. Licensee shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

21. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

22. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific Parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

23. Bond and Indenture Requirements and Subordination. Notwithstanding any other terms or provisions of this Agreement, the Parties acknowledge and agree that the Parking Garage is encumbered by certain 2010 Private Placement Bonds and Indenture (City Hall and various capital projects) and covenants/conditions therein. This Agreement shall be deemed modified to any extent required, at any time in the opinion of City's bond counsel for compliance with the Bonds and Indenture. Without limiting the foregoing, the Parties acknowledge and agree that, the terms, covenants, provisions and conditions herein are and shall be subject and subordinate to the Bond and Indenture and any and all City bond and other financings and refinancings of the Parking Garage. Licensee agrees to provide a written subordination upon City's reasonable request.

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IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY:

LICENSEE:

CITY OF FRESNO,
a California municipal corporation

Housing Authority of the City of Fresno,
a public body corporate and politic

By: _____
Bruce Rudd, City Manager

Its: CEO / Executive Director

Date: _____

By: _____
Preston Prince, CEO / Executive Director

ATTEST:
Yvonne Spence, CMC
City Clerk

By: _____
Deputy Date

REVIEWED & RECOMMENDED FOR
APPROVAL:

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: _____
Del Estabrooke
Parking Manager,
Development and Resource
Management Department

By: _____
Tracy N. Parvanian, Date
Deputy

Attachments:
Exhibit A - Description/Depiction of Parking Garage

TNP:ns:pn [65021ns/tnp] – 10/02/14

EXHIBIT A

