

RESOLUTION NO. 2010-89

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A LAND LEASE FOR THE
REAL PROPERTY LOCATED AT 9108 ELK GROVE BOULEVARD FOR USE AS A
PUBLIC PARKING LOT**

WHEREAS, the City of Elk Grove desires to lease an existing parking lot located at 9108 Elk Grove Boulevard. The parking lot is presently improved with 38 marked stalls and 2 Americans with Disabilities Act (ADA) parking spaces located in the City of Elk Grove, State of California; and

WHEREAS, the City of Elk Grove proposes to use the existing parking lot as a Public Parking Lot to serve the Old Town merchants and its customers; and

WHEREAS, the existing parking lot will continue to serve the parking requirements of the restaurant located at 9085 Elk Grove Boulevard, unless a planning application is denied based on lack of parking, in which case the City's right to occupy the property under the lease will terminate; and

WHEREAS, California Environmental Quality Act (CEQA) Guidelines Class 1 exemption applies to the leasing of existing facilities; and

WHEREAS, no special circumstances exist that create a reasonable possibility that the activity may have a significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby finds as follows:

Finding: The project qualifies for Categorical exemption in accordance with CEQA Guidelines Section 15301

BE IT FURTHER RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the Land Lease by and between Freeport Ventures, LLC and the City of Elk Grove, a municipal corporation, a copy of which is attached and incorporated into this resolution as Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 12th day of May 2010.



SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

EXHIBIT A

LAND LEASE (Brewery Parking Lot)

This Land Lease ("Lease") is made and entered into as of May __, 2010, by and between ("Lessor") Freeport Ventures LLC and the City of Elk Grove ("Lessee"). Lessor and Lessee agree to the lease of the Property, as described herein (the "Property"), from Lessor to Lessee, upon the terms and conditions set forth herein:

1. **DESCRIPTION OF PROPERTY:** The property that is the subject of this Lease is a portion of real property commonly known as APN 125-0243-039, commonly known as 9108 Elk Grove Boulevard in the City of Elk Grove. The portion that Lessee is leasing is only the whole parking lot of the property not any structures ("Property").

2. **LEASE TERM:** The lease terms shall be for a fixed term of 1 year commencing June 1, 2010 with an option for two automatic one year renewals unless ninety days (90) notice is provided by lessee. Renewal of this Lease in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII B of the California Constitution and that the City Council may determine not to fund this Lease in subsequent years.

3. **DELIVERY OF POSSESSION:** Lessor represents that it has authority to enter into this Lease and to deliver possession of the Property to Lessee. Lessor shall deliver possession of the Property to Lessee on the commencement date of the Lease, All light standards shall be in working order, all pavement defects shall be remedied prior to commencement of lease, and any other improvements required to use the Property for its intended purpose as a parking lot.

4. **RENT:** The rent shall be nine hundred dollars (\$900). per month for each of the three years of the lease should it be renewed. The monthly rent shall be paid by Lessee on or before the first of the month to Freeport Ventures LLC at 8055 Freeport Blvd, Sacramento, CA 95832 or to such other person, firm or place as Lessor may, from time to time, designate in writing.

5. **PERMITS:** Lessee will apply for, pay for and keep current any applicable permits and licenses required for the lawful operation of the Property.

6. **USAGE:** The Property shall be used by Lessor for public purposes including but not limited to a **temporary public motor vehicle parking lot** and shall be posted as such. Lessor has a right to install signage identifying lot as "Public Parking Lot".

7. **INSURANCE:** No later than the commencement of the Lease, Lessee shall provide Lessor with evidence of liability insurance in an amount not less than one million dollars (\$1,000,000) in liability coverage per occurrence, two million dollars (\$2,000,000) aggregate. Lessee shall provide Lessor notice of suspended, voided, cancelled, or reduced in coverage or in limits its insurance through written notice by certified mail, return receipt requested, has been given to the Lessor.

8. **INDEMNIFICATION:** Lessee shall indemnify, defend, and hold the Lessor harmless for and against any and all claims, actions, liability, costs, expenses and damages, excluding attorney's fees, arising from (i) the Lessee's use and occupancy of the Property, (ii) any breach or default by the Lessee under the provisions of this Lease, or (iii) from any act, omission, or negligence on the Property by the Lessee, its agents, contractors, employees, or licensees. Lessee shall have no responsibility to indemnify such loss or damage which was caused by the negligence, or willful misconduct of the Lessor.

9. **MAINTENANCE/REPAIRS:** Lessee shall be obligated to conduct reasonable and routine maintenance to the Property during the term of this Lease. Reasonable and routine maintenance shall include parking lot sweeping, shrub trimming, ivy edging, weed removal, and trash and debris removal. Lessee may re-stripe the Property as necessary for Lessee's intended use as a parking lot. At the end of the Lease, Lessee, at Lessee's expense, shall restore and return the Property to Lessor in substantially the condition it was in at the commencement of the Lease, wear and tear excepted. If, however, the Property is re-striped, as provided herein, Lessee shall not be obligated to remove the striping.

10. **IMPROVEMENTS:** Except as provided herein, Lessee shall make no improvements to the Property without the Lessor's consent, which consent will not be unreasonably withheld. Lessor shall be responsible for repairing pavement defects, replacement and repair of pavement, light standards and any other feature deemed necessary to continue operating as a parking lot. Any improvements to the Property shall be with the approval of any government agency having jurisdiction over the matter and shall be completed according to the government agency's specifications.

11. **ASSIGNMENT:** Lessee shall not assign or transfer this Agreement, or sublet the Property or any part or parts thereof, without the prior written consent of Lessor.

12. **TERMINATION:** Either party may terminate the lease upon ninety days (90) written notice. Lessor may terminate lease with no notice if a Planning Application involving APN 125-0253-009, commonly known as 9085 Elk Grove Boulevard in the City of Elk Grove is denied, based in part on lack of parking.

13. **END OF LEASE/HOLDOVER:** If, at the end of the lease period, Lessee has not vacated the Property and has not returned possession of the Property to Lessor, Lessee will be considered to be a month-to-month tenant at the current rent.

14. **SECURITY DEPOSIT:** Lessee shall not be required to pay a security deposit. However, nothing herein shall relieve Lessee from its maintenance and repair obligations as provided in Paragraph 7.

15. **TAXES, ASSESSMENTS AND UTILITIES:** Lessor shall be responsible for payment of any and all Property taxes and/or assessments on the Property. Lessee shall be responsible for the payment of any and all utilities for the Property, including, but not limited to electricity, water, gas, and other utilities necessary for Lessee's use of the Property. Lessor

shall cooperate with Lessee to make arrangements to have the utilities providers bill Lessee directly for these utilities.

16. NOTICES/NAME AND ADDRESS OF LESSOR: All notices, requests, demands and other communications required to or permitted to be given under this Lease shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered to the other party; or (b) when received when sent by telex or facsimile at the address and number set forth below; or (c) three business days after the same have been deposited in a United States post office and addressed to the parties as set forth below; or (d) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express, Golden State Couriers, and DHL WorldWide Express being deemed approved by the parties), postage prepaid, addressed to the parties as set forth below with next-business-day delivery guaranteed:

To Lessor:

Freeport Ventures LLC
Attn: Wayne Riley
8055 Freeport Blvd.
Sacramento, CA 95630
Phone: (916) 665-4100 x14
Fax: (916) 665-4119

To Lessee:

Real Estate Manager
City of Elk Grove
8401 Laguna Palms Way
Elk Grove CA, CA 95758
Phone: (916) _____
Fax: (916) _____

17. NO THIRD PARTY BENEFICIARIES. This Lease is made and entered into for the sole protection and benefit of Lessor and Lessee, and their successors and assigns. No other person shall have any third party beneficiary rights, express or implied, by virtue of this Lease.

18. TIME: Time is of the essence of this Lease.

19. ATTORNEYS' FEES: If any party brings any legal action to enforce or interpret any of the terms or conditions hereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

20. ENTIRE AGREEMENT; AMENDMENT. This Lease contains the entire agreement between Lessor and Lessee. No amendment, alteration, modification, extension, or

addition to the Lease will be valid or binding unless expressed in writing and signed by both Lessor and Lessee.

21. NO WAIVER. The waiver by either Lessor or Lessee of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease.

22. GOVERNING LAW/VENUE. This Lease will be governed by and construed pursuant to the laws of the State of California. Should any judicial proceeding be brought relating to this Lease, venue shall lie exclusively in a court of competent jurisdiction located in Sacramento County.

23. SEVERABILITY. If any provision of this Lease proves to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid or unenforceable, a provision will be added as a part of this Lease as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date and year first above written.


LESSOR:
Freeport Ventures LLC

LESSEE:
City of Elk Grove

By: 
Title: Wayne Riley, Managing Member

By: _____
Laura S. Gill, City Manager

By: _____
Title

Approved As To Form:

Susan Cochran, City Attorney

Attest:

City Clerk

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2010-89**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)


I, Jason Lindgren, Interim City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 12, 2010 by the following vote:

AYES : **COUNCILMEMBERS:** *Scherman, Detrick, Davis, Hume*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN : **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *Cooper*



**Jason Lindgren, Interim City Clerk
City of Elk Grove, California**