

IN LIEU PARKING AGREEMENT

THIS IN LIEU PARKING AGREEMENT is entered into this 2nd day of JULY, 1985, by and between the **CITY OF PLEASANTON**, a municipal corporation ("City"), and **LARRY OSBORNE** and **FRANK MENDICINO** (collectively referred to as "Developer").

RECITALS

A. Developer owns certain real property located in the City of Pleasanton, County of Alameda, State of California, consisting of approximately 0.10 acres at the northeast corner of Peters Avenue and Rose Avenue ("Property"). The Property is more particularly described in Exhibit A, attached hereto.

B. Developer intends to improve the Property by constructing an approximately 3,568 sq. ft. office project ("Project").

C. Developer is unable to provide on the Property all of the off-street parking required by the Ordinance Code of the City of Pleasanton, and Developer desires to fulfill its obligation to provide parking facilities for the Project under the terms of this agreement.

D. City and Developer enter this agreement pursuant to Section 2-9.22 of Article 16, Title II of the Ordinance Code of the City of Pleasanton which requires Developer to deposit funds with the City to be used exclusively for acquiring, developing and maintaining off-street parking facilities available to the general public and located in an area benefiting the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. Area of Benefit. The area of benefit ("Area of Benefit") shall be generally that portion of the central business district and adjacent lands located no more than three blocks from the Property. The Area of Benefit is more particularly shown on Exhibit B, attached hereto.

2. In Lieu Payment. Developer and City agree that the dollar amount necessary to provide off-street parking facilities within the Area of Benefit is **Three Thousand Eight Hundred Seventy-five Dollars (\$3,875.00)** per parking space. Based on the presently contemplated uses of the Project, Developer is three (3) spaces short of the minimum number of off-street parking spaces required by City, and Developer shall meet its minimum off-street parking requirement by making an in lieu payment of **Eleven Thousand Six Hundred Twenty-five Dollars (\$11,625.00)**.

3. Future In Lieu Payment. If at some time in the future Developer wishes to utilize the Project for a more

parking-intensive use, Developer may meet its obligation to provide such additional off-street parking as may be required by making an in-lieu payment in an amount mutually agreed upon by the Developer and the City Engineer, said amount to be based upon the cost per parking space as described in Paragraph 2 herein and adjusted to reflect the then-current cost of acquiring and developing off-street parking facilities in the Area of Benefit.

4. In Lieu Parking Fund. Any payment made by Developer under this agreement shall be deposited by City in a special fund designated as the "CBD In Lieu Parking Fund" ("In Lieu Fund"). Any interest earned by said fund shall be retained by City in said In Lieu Fund.

5. Use of In-Lieu Fund. The In-Lieu Fund shall be used exclusively for acquiring, developing, and maintaining off-street parking facilities available to the general public in the Area of Benefit.

6. Satisfaction of Parking Requirements. The payment to the In-Lieu Fund provided for herein shall be deemed to provide three (3) off-street parking spaces for the Property. Developer may lease to tenants of Developer's choosing or otherwise utilize the Project until the off-street parking spaces provided in the Project and in this paragraph, together, have been fully allocated to users of the Project in accordance with the Ordinance Code's requirements for provision of off-street parking.

7. Refund of In Lieu Payment. If Owner constructs off-street parking spaces in the Area of Benefit available for use by the Project in accordance with the provisions of the City's Ordinance Code, City shall refund to Developer, within fifteen (15) days of receipt of written notice from Developer that such additional off-street parking spaces have been provided, an amount calculated at the rate of Three Thousand Eight Hundred Seventy-five Dollars (\$3,875.00) for each off-street parking space so provided Developer shall consult with City prior to constructing any such additional off-street parking spaces to ensure that Developer's plans are acceptable to City.

8. General Provisions.

a. Amendment and Termination. City and Owner may by mutual written agreement terminate or amend the terms of this Agreement. Any amendment shall be in accordance with the terms of Section 1-9.22 for the adoption of in lieu parking agreements.

b. Construction of Agreement. The language in this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California. If any material provision of this Agreement shall be judged to be invalid, void or illegal, the

parties may by mutual agreement amend or terminate this Agreement in the manner provided by Section 2-9.22 for the adoption of in lieu parking agreements.

c. No Waiver. No delay or omission by the City in exercising any right or power accruing upon the noncompliance or failure to perform by Owner under the provisions of this Agreement shall impart any such right or power or be construed to be a waiver thereof.

d. Exhibits. Exhibits A and B are incorporated herein.

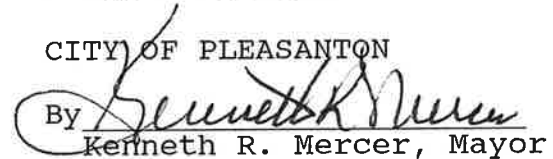
e. Recording. This agreement shall run with the land and be binding upon any and all heirs, assigns, and successors in interest of Developer having an interest in the Property for the duration of the time the Project remains on the Property.

IN WITNESS WHEREOF, City and Developer have executed this Agreement in one (1) or more copies, on the day and year first above written.


Larry Osborne


Frank Mendicino

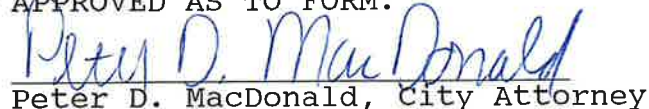
CITY OF PLEASANTON

By 
Kenneth R. Mercer, Mayor

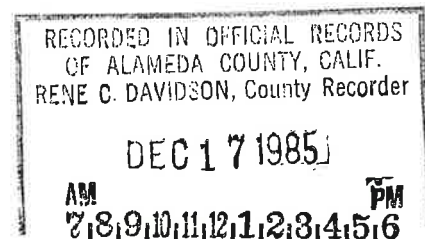
ATTEST:


James R. Walker, City Clerk

APPROVED AS TO FORM:


Peter D. MacDonald, City Attorney

ATTACH ACKNOWLEDGMENTS



DH

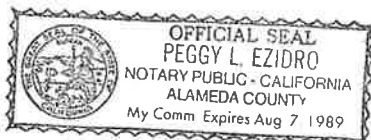
85-267815

STATE OF CALIFORNIA)
) ss.
 County of Alameda)

On this 30th day of August, in the year 1985,
 before me, Peggy L. Ezidro, Notary Public in and for said county
 and state, personally appeared LARRY W. OSBORNE

personally known to me (or proved to me on the basis of satisfactory
 evidence) to be the person whose name is subscribed to this
 instrument, and acknowledged that he executed it.

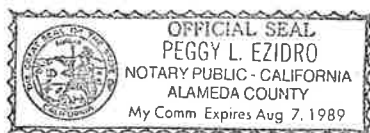
IN WITNESS WHEREOF, I have hereunto set my hand and affixed
 my official seal in the City of Pleasanton, County of Alameda on
 the date set forth above in this certificate.



Peggy L. Ezidro
 Notary Public, State of California
 My commission expires Aug. 2, 1985

STATE OF CALIFORNIA)
) ss
 COUNTY OF ALAMEDA)

On this 2nd day of July, 1985, before me the ⁸⁵⁻²⁶⁷⁸¹⁵
 undersigned, personally appeared KENNETH R. MERCER,
 known to me to be the Mayor of the City of Pleasanton,
 and known to me to be the person who executed the within instrument
 on behalf of said public corporation, and acknowledged to me that
 such public corporation executed the same.



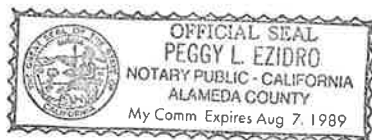
Peggy L. Ezidro
 Notary Public

STATE OF CALIFORNIA)
) ss.
 County of Alameda)

On this 11th day of December, in the year 1985,
 before me, Peggy L. Ezidro, Notary Public in and for said county
 and state, personally appeared FRANK MENDICINO

personally known to me (or proved to me on the basis of satisfactory
 evidence) to be the person whose name is subscribed to this
 instrument, and acknowledged that he executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
 my official seal in the City of Pleasanton, County of Alameda on
 the date set forth above in this certificate.



Peggy L. Ezidro
 Notary Public, State of California
 My commission expires Aug. 2, 1985

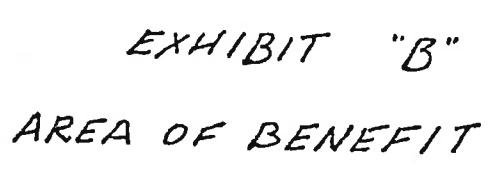
EXHIBIT A

All that certain real property situated in the City of Pleasanton County of Alameda, state of California, described as follows:

Being a portion of that certain parcel of land as described in that certain Deed to City of Pleasanton, a Municipal Corporation recorded August 26, 1976, in Book 4501 at Image 29, Recorder's Series Number 76-142925, Records of Alameda County, California and also being Parcel 13-3 as said Parcel is shown on the map of "Right-of-Way Record Map, Peters Avenue, City of Pleasanton" filed May 20, 1971 in Book 60 of Maps at Page 86, Records of Alameda County, California.

Containing 4,580 square feet more or less.

Assessor's Parcel No.: 94-151-9-2



85-267815