

WARRANT

For Meeting On: 7/28/2009



CITY OF FILLMORE

CENTRAL PARK PLAZA
250 Central Avenue
Fillmore, California 93015-1907
(805) 524-3701 • FAX (805) 524-5707

Agenda Item No.:

3A

To: Redevelopment Agency Board of Directors

From: Redevelopment Agency Finance Director

Subject: Warrant List for July 28, 2009

Demand Resolution No. 442

Warrant Numbers: 14741-14775

Voided Checks: None

Accounts Payable: \$ 402,618.68

Prepared By:

[Handwritten Signature]

Accounts Payable

Finance Review:

[Handwritten Signature]

Finance Director

Recommended for Approval:

Executive Director

<u>Invoice No</u>	<u>Description</u>	<u>Reference</u>	<u>Invoice Date</u>	<u>Check Amount</u>
Check No: 14741 6/1/2009	Check Date: 06/23/2009 DDA, Section 5.8	Vendor: C0086	C.E.D.C. 06/01/2009	252,522.44
			Check Total:	252,522.44
Check No: 14742 5/14/2009 6/8/2009 6/11/2009 6/12/2009	Check Date: 06/24/2009 newegg.com - Server Memory Aspen Publishers - Book HDTV Supply - Output Switcher GFOA - Finance Director Ad	Vendor: f0001	City of Fillmore 05/14/2009 06/08/2009 06/11/2009 06/12/2009	103.92 208.63 401.47 75.00
			Check Total:	789.02
Check No: 14743 900000	Check Date: 07/01/2009 2009/2010 Crime Insurance	Vendor: D0013	Driver Alliant Insurance 05/27/2009	345.68
			Check Total:	345.68
Check No: 14744 PRIM00572	Check Date: 07/01/2009 09/10 Gen. Liability, Worker's Comp,	Vendor: C0028	California JPIA 05/21/2009	62,849.67
			Check Total:	62,849.67
Check No: 14745 01-0984281 01-0992268	Check Date: 06/30/2009 Sherman, Sheldon - Clerical - 6/6/20 Sherman, Sheldon - Clerical - 6/13/2	Vendor: A0013	Apple One Employment Services 06/10/2009 06/17/2009	560.50 277.88
			Check Total:	838.38
Check No: 14746 33381	Check Date: 06/30/2009 2009 CRA Legal Issues Symposium-Bart	Vendor: C0017	CA Redevelopment Association 06/18/2009	455.00
			Check Total:	455.00
Check No: 14747 30261	Check Date: 06/30/2009 Litter Receptacles	Vendor: D0035	Dave Bang Associates, Inc. 06/19/2009	6,989.60
			Check Total:	6,989.60
Check No: 14748 477797 477797 477830	Check Date: 06/30/2009 Antenna Supplies Antenna Supplies HT1250 Portable Radio	Vendor: D0054	Destin Thomas Communications 06/05/2009 06/05/2009 06/19/2009	171.04 1,080.87 729.61
			Check Total:	1,981.52
Check No: 14749 41997	Check Date: 06/30/2009 Deposit - Round Concrete Planters	Vendor: d0016	Dura Art Stone 06/17/2009	710.00
			Check Total:	710.00
Check No: 14750 33481	Check Date: 06/30/2009 ICMA Membership - Bill Bartels	Vendor: I0024	ICMA 06/25/2009	285.92
			Check Total:	285.92
Check No: 14751 24526 24526 24526 24517 24526	Check Date: 06/30/2009 Misc. Supplies Misc. Supplies Misc. Supplies Misc. Supplies Misc. Supplies	Vendor: K0008	KR Nida Corporation 06/04/2009 06/04/2009 06/04/2009 06/10/2009 06/04/2009	8,000.54 445.54 244.65 237.96 2,791.00
			Check Total:	11,719.69
Check No: 14752 28744 28741 28740 28738	Check Date: 07/01/2009 Re-Key City Facilities Re-Key City Facilities Re-Key City Facilities Re-Key City Facilities	Vendor: S0026	Santa Paula Lock & Key 06/03/2009 06/03/2009 06/03/2009 06/03/2009	461.50 440.00 165.50 433.00

<u>Invoice No</u>	<u>Description</u>	<u>Reference</u>	<u>Invoice Date</u>	<u>Check Amount</u>
			Check Total:	1,500.00
Check No: 14753 28738	Check Date: 07/07/2009 Re-Key City Facilities	Vendor: S0026	Santa Paula Lock & Key 06/03/2009	597.00
			Check Total:	597.00
Check No: 14754 45935	Check Date: 07/08/2009 Final Payment for 2009 Fireworks Sho	Vendor: P0027	Pyro-Spectaculars 06/30/2009	6,000.00
			Check Total:	6,000.00
Check No: 14755 2209	Check Date: 07/09/2009 Bronze Palque - Neil Schmidt Memoria	Vendor: H0038	High Camp Creations 06/29/2009	1,022.19
			Check Total:	1,022.19
Check No: 14756 PLC2201	Check Date: 07/14/2009 Hard Drives	Vendor: C0039	CDW Government 06/22/2009	54.38
			Check Total:	54.38
Check No: 14757 4404	Check Date: 07/14/2009 Storefront Rehab - 340 Central Avenu	Vendor: K0025	Kenstruction Inc. 06/15/2009	986.56
			Check Total:	986.56
Check No: 14758 22566	Check Date: 07/14/2009 Trash Enclosure Roof	Vendor: R0043	RJM Design Group, Inc. 06/24/2009	598.50
			Check Total:	598.50
Check No: 14759 6/17/2009	Check Date: 07/14/2009 May 2009 Professional Services	Vendor: T0003	Tompkins & Parrington 06/17/2009	337.50
			Check Total:	337.50
Check No: 14760 Fill-20090701 Fill-20090801	Check Date: 07/28/2009 July 2009 Computer Support August 2009 Computer Support	Vendor: B0018	James Branson 07/01/2009 08/01/2009	300.00 300.00
			Check Total:	600.00
Check No: 14761 6/30/2009	Check Date: 07/28/2009 Fillmore Central Station For Sale -	Vendor: C0086	C.E.D.C. 06/30/2009	1,457.79
			Check Total:	1,457.79
Check No: 14762 1224 1231	Check Date: 07/28/2009 2009/2010 Board Dues 2009/2010 Business Enhancement Progr	Vendor: E0034	EDC-VC 07/01/2009 07/01/2009	2,000.00 3,000.00
			Check Total:	5,000.00
Check No: 14763 242-070509	Check Date: 07/28/2009 Clean Up of Delores Day Park - 7/5/0	Vendor: A0116	Fillmore AYSO 242 07/13/2009	500.00
			Check Total:	500.00
Check No: 14764 7688-IN	Check Date: 07/28/2009 Property Tax Data 2008/2009 Parcel D	Vendor: H0004	HdL Software, LLC 06/26/2009	1,648.40
			Check Total:	1,648.40
Check No: 14765 119907-H 119907-H	Check Date: 07/28/2009 June 2008 Housing Element Update June 2008 Housing Element Update	Vendor: H0048	HDR Engineering, Inc. 07/09/2009 07/09/2009	1,921.56 5,590.70
			Check Total:	7,512.26

<u>Invoice No</u>	<u>Description</u>	<u>Reference</u>	<u>Invoice Date</u>	<u>Check Amount</u>
Check No: 14766 6594428	Check Date: 07/28/2009 Anti-Graffiti Supplies	Vendor: H0025	Home Depot Credit Services 07/08/2009	345.39
			Check Total:	345.39
Check No: 14767 79802418 79787053 79802418 79787053	Check Date: 07/28/2009 6/26/2009 - 7/25/2009 6/24/2009 - 7/23/2009 6/26/2009 - 7/25/2009 6/24/2009 - 7/23/2009	Vendor: I0001	Ikon Financial Services 06/30/2009 06/29/2009 06/30/2009 06/29/2009	210.01 76.90 225.01 82.41
			Check Total:	594.33
Check No: 14768 852203	Check Date: 07/28/2009 Sony Joystick Remote Control	Vendor: M0023	Markertek Video Supply 07/03/2009	1,437.32
			Check Total:	1,437.32
Check No: 14769 209 209	Check Date: 07/28/2009 June 2009 Legal Services June 2009 Legal Services	Vendor: M0002	Myers, Widders, Gibson, Jones 06/30/2009 06/30/2009	9,535.25 2,014.03
			Check Total:	11,549.28
Check No: 14770 11724 7940 11724 7940	Check Date: 07/28/2009 Annual Software Maintenance: 2009/20 Revenue Credit for BP Module Annual Software Maintenance: 2009/20 Revenue Credit for BP Module	Vendor: S0016	Springbrook Software, Inc. 03/02/2009 04/28/2009 03/02/2009 04/28/2009	2,708.66 -1,274.00 2,902.14 -1,365.00
			Check Total:	2,971.80
Check No: 14771 4367	Check Date: 07/28/2009 6' Steel Benches, Powder Coated Blac	Vendor: W0022	The Wakefield Company 07/20/2009	11,530.61
			Check Total:	11,530.61
Check No: 14772 7/17/2009	Check Date: 07/28/2009 June 2009 Professional Services	Vendor: T0003	Tompkins & Parrington 07/17/2009	787.50
			Check Total:	787.50
Check No: 14773 128278	Check Date: 07/28/2009 Lighting Supplies	Vendor: V0028	Variety Lighting Supply 06/18/2009	108.95
			Check Total:	108.95
Check No: 14774 616	Check Date: 07/28/2009 Lease #710380	Vendor: V0020	Ventura County Transportation 09/24/2009	2,417.00
			Check Total:	2,417.00
Check No: 14775 GIS FY09-10 003GIS Data Maintenance Agreement 2009/	Check Date: 07/28/2009	Vendor: V0030	Vta Co Info Systems Dept. 03/23/2009	3,575.00
			Check Total:	3,575.00
			Report Total:	402,618.68

**Fillmore Redevelopment Agency
Demand Resolution No. 442**

July 28, 2009

Adopted and Approved for Payment on July 28, 2009

Agency Member

Agency Member

Agency Member

Agency Member

Chairperson

I hereby Certify as to the accuracy of the demands and availability of funds for payment thereof; and that the foregoing resolution was duly adopted by the City of Fillmore Redevelopment Agency at a regular meeting thereof held on 7/28/2009 by the following called vote of the Agency:

Aye: _____

No: _____

Absent: _____

Finance Director

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CITY OF FILLMORE
CENTRAL PARK PLAZA
250 Central Avenue
Fillmore, California 93015-1907
(805) 524-3701 • FAX (805) 524-5707

AGENDA ITEM # **5A**

July 28, 2009

TO: Mayor and City Council

FR: Transitional City Manager Larry F. Pennell *LFP*

RE: Lease Agreement between Fillmore Redevelopment Agency and Heritage Valley Tourism Bureau and Fillmore & Western Railway for 364 Main Street

RECOMMENDED ACTION

Approve Lease Agreement between the Fillmore Redevelopment Agency and Heritage Valley Tourism Bureau, Inc. and Fillmore & Western Railway, Inc. for 364 Main Street.

BACKGROUND

With the departure of Joanna's Ice Cream Parlor, the building at 364 Main Street is vacant and available for lease to outside parties.

The City of Fillmore would like to enter into a lease between the Fillmore Redevelopment Agency ("Lessor") and Heritage Valley Tourism Bureau, Inc. and Fillmore & Western Railway, Inc. ("Lessee") at a cost of \$750.00 per month to the "Lessee". The Fillmore & Western Railway would be responsible for painting and carpeting the interior of the building, and provide the connection of the phone service and computer terminals to the building, within one month of the Commencement Date of the Lease.

The Heritage Valley Tourism Bureau, Inc. would hold their primary business at the building and the Fillmore & Western Railway would conduct ticket sales, waiting room and other promotional activities at the building during the period of the Lease Agreement.

CONSISTENCY WITH CITY COUNCIL GOALS

The recommended action is not directly related with the City Council's proposed goals, but ties the Central Business District to the Tourist Railroad.

CONSISTENCY WITH VISION 2020 GOALS

The recommended action is not directly related to any Vision 2020 goals.

FISCAL IMPACT

The recommended action increases our revenue by up to \$9,000.

K:\City Clerk\Staff Reports\Lease Agreement - 364 Main Street.doc

LEASE AGREEMENT

between

FILLMORE REDEVELOPMENT AGENCY,
("Lessor")

and

HERITAGE VALLEY TOURISM BUREAU, INC.

and

FILLMORE & WESTERN RAILWAY, INC.

("Lessee")

Dated as of _____, 2009

LEASE AGREEMENT

THIS LEASE (this "Lease") is made and entered into effective _____, 2009, by and between FILLMORE REDEVELOPMENT AGENCY, ("Lessor"), and HERITAGE VALLEY TOURISM BUREAU, INC. ("HVTB") and FILLMORE & WESTERN RAILWAY, INC. ("FWR") (HVTB and FWR are referred to herein collectively as "Lessee").

IN CONSIDERATION OF the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. Description of Building. Lessor leases to Lessee and Lessee leases from Lessor, for the Term, at the rental, and upon the terms and conditions set forth herein, that certain building located at 364 Main Street, in the City of Fillmore, County of Ventura, State of California, as more particularly described in Exhibit A attached hereto (the "Building").

2. Commencement Date and Term. The term of this Lease shall be for a period of twelve (12) months (the "Term"), commencing on _____, 2009 (the "Commencement Date") and terminating _____, 2010, unless sooner terminated pursuant to any provisions of this Lease.

3. Rent; Security Deposit.

3.1. Base Rent. Lessee shall pay to Lessor as base rent each month (the "Base Rent"), the amount of Seven Hundred Fifty Dollars (\$750.00). The Base Rent shall be due to Lessor in advance on the first day of each calendar month during the Term. Rent for any period during the term of this Lease which is for less than one month shall be a pro rata portion of the monthly installment. Because Lessee consists of more than one person, the obligation of all such persons, including the payment of Base Rent, shall be joint and several. The Base Rent shall be payable without notice or demand and without any deduction, offset, or attachment in lawful money of the United States of America to Lessor at the address stated in this Lease or to such other persons or at such other places as Lessor may designate in writing. All other sums which Lessee is obligated to pay under this Lease shall be deemed to be additional rent due hereunder, whether or not such sums are designated "additional rent." The term "Rent" means the Base Rent and all additional rent payable hereunder.

3.2. Late Charges and Interest. Lessee acknowledges that the late payment of any monthly installment of Rent will cause Lessor to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, if any installment is not received by Lessor within five (5) days from the date it is due, Lessee shall pay to Lessor a late charge equal to six percent (6%) of such installment. Lessor and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Lessor for the loss suffered from such non-payment by Lessee. If Lessee fails to pay when due any Rent or other amounts or charges which Lessee is obligated to pay under the terms of this Lease, and such failure continues for a period of thirty (30) days after the date the payment was due, the unpaid amount shall bear interest at the maximum rate then allowed by law beginning the thirty-first (31st) day after such payment was due. In the case of delinquent Rent, the interest shall be in addition to the six-percent (6%) late charge. Acceptance of any interest or late charge shall not constitute a waiver of Lessee's default with respect to such non-payment by Lessee nor prevent Lessor from exercising any other rights or remedies available to Lessor under this Lease.

3.3. Security Deposit. Upon the execution of this Lease, Lessee shall pay to Lessor a security deposit of \$750.00 (the "Security Deposit"). The Security Deposit shall secure the full and

faithful performance of each provision of this Lease to be performed by Lessee. Lessor shall not be required to pay interest on the Security Deposit or to keep the Security Deposit separate from Lessor's own funds. If Lessee fails to perform fully and timely all or any of Lessee's covenants and obligations hereunder, Lessor may, but without obligation, apply all or any portion of the Security Deposit toward fulfillment of Lessee's unperformed covenants and/or obligations. If Lessor does so apply any portion of the Security Deposit, Lessee shall immediately pay Lessor sufficient cash to restore the Security Deposit to the amount of the then current Base Rent per month. Upon any increase in Base Rent, Lessor may require the Security Deposit to be increased by the amount of the increase in Base Rent per month. After Lessee vacates the Building, upon the expiration or sooner termination of this Lease, if Lessee is not then in default, Lessor shall return to Lessee any unapplied balance of the Security Deposit

4. Indemnity; Exculpation; Insurance:

4.1. Exculpation. Lessee covenants with Lessor that Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the Term, from any cause whatsoever, by reason of the use, occupancy, and enjoyment of the Building by Lessee or any of Lessee's employees, sublessees, agents, representatives, customers or invitees under Lessee, and Lessee hereby waives all claims in respect thereof against Lessor, except such claims as are caused solely by Lessor's gross negligence or willful misconduct. Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the property of Lessee, or injury to or death of Lessee, Lessee's employees, invitees, customers, agents or contractors or any other person in or about the Building, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Building, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee, except damage or injury caused solely by Lessor's gross negligence or willful misconduct.

4.2. Indemnity. Lessee shall, jointly and severally, indemnify, protect, defend (by counsel acceptable to Lessor) and hold harmless Lessor and its partners, directors, officers, employees, shareholders, agents, contractors, successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, (ii) Lessee's use of the Building, the conduct of Lessee's business or any activity, work or things done, permitted or suffered by Lessee in or about the Building, or (iii) the presence of Hazardous Materials (as defined in Section 15) on, under or about the Building or other property as a result of Lessee's activities, or failure to act, in connection with the Building, except for claims caused solely by Lessor's gross negligence or willful misconduct. The obligations of Lessee under this Section 4.2 shall survive the termination of this Lease with respect to any claims or liability arising prior to such termination.

4.3 Insurance. Lessee covenants and agrees that from and after the Commencement Date, Lessee shall carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

4.3.1. Public Liability; Property Damage; Errors and Omissions.

Comprehensive general public liability insurance issued by one or more insurance carriers, insuring against liability for injury to or death of persons and loss of or damage to property occurring in or on the Building, or arising out of the use, occupancy, or maintenance of the Building, and including the coverage known as personal injury coverage. Said liability insurance shall be in an amount of not less than One Million Dollars (\$1,000,000.00), combined single limits for bodily injury, personal injury and property damage. The limit of any such insurance shall not, however, limit the liability of Lessee under this Lease. All such bodily injury liability insurance, and property damage liability insurance shall specifically insure the performance by Lessee of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property as hereinabove provided.

4.3.2. Policy Form. All policies of insurance provided for herein shall be issued by insurance companies with general policy holder's rating of not less than A8 and a financial rating of "XII", as rated in the most current available "Best's" insurance reports and qualified to do business in the State of California, and shall be issued in the names of Lessor and Lessee, which policies shall be for the mutual and joint benefit and protection of Lessor and Lessee, and executed copies of such policies of insurance or certificates thereof shall be delivered to the Lessor within ten (10) days after execution of this Lease by the parties, and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All policies shall contain a provision that the Lessor, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by the Lessee in like manner and to like extent. All policies of insurance delivered to the Lessor must contain a provision that the company writing said policy will give to the Lessor thirty (30) days notice in writing in advance of any cancellation of insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which the Lessor may carry. Notwithstanding anything to the contrary contained within this paragraph, the Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by the Lessee, *provided, however*, that the Lessor shall be named as an additional insured thereunder as its interest may appear and that the coverage afforded the Lessor shall not be reduced or diminished by reason of the use of such blanket policy of insurance and provided further that the requirements set forth herein are otherwise satisfied. Lessee agrees to permit Lessor at all reasonable times to inspect the policies of insurance of the Lessee covering risks upon the Building for which policies or copies thereof are not required to be delivered to the Lessor.

4.3.3. Waiver of Subrogation. Lessor and Lessee hereby waive any right each may have against the other on account of any loss or damage occasioned to the Lessor or the Lessee, as the case may be, their respective property, or the Building or its contents, arising from any risk generally covered by fire and extended coverage insurance; and the parties each, on behalf of their respective insurance companies insuring the property of either the Lessor or the Lessee against any such loss, waive any right of subrogation that it may have against the Lessor or the Lessee, as the case may be. Lessee, on behalf of its insurance companies insuring the Building, its contents, or Lessee's other property, waives any right of subrogation which such insurer or insurers may have against the Lessor. The foregoing waivers of subrogation shall be operative only so long as available in the State of California and do not invalidate any such policy.

5. Alterations and Additions. Within one (1) month following the Commencement Date, FWR shall, at FWR's sole cost and expense, paint and carpet the interior of the Building, and provide for the connection of phone service to the Building (the "Required Improvements"). Lessee may install necessary trade fixtures, equipment and furniture in the Building, provided that such items are installed and are removable without structural or material damage to the Building, and in each case complying with all applicable governmental laws, ordinances and regulations. Lessee shall repair or pay the cost of repairing any damage to the Building resulting

from such removal. Except for the Required Improvements, Lessee shall not make any alterations, improvements, additions, or Utility Installations in, on, or about the Building during the Term without Lessor's prior written consent. As used in this paragraph, the term "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. In the event Lessee makes any alterations, improvements, additions, or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee remove any or all of the same at Lessee's sole cost and expense.

6. Possession and Use.

6.1. Permitted Use. Lessee shall use the Building solely for the purpose of office administration and the sale of tickets to the FWR railroad operation, and any other related lawful uses provided such use does not materially increase the aggregate risk of environmental contamination or environmental damage to the Building as determined by Lessor is its sole discretion. Lessee shall not use or permit the Building to be used for any other purpose or purposes without the prior written consent of Lessor. Lessee further covenants and agrees that it will not use or suffer or permit any person or persons to use the Building or any part thereof to commit waste or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the state, county and city where the Building is situated, or other lawful authorities, and that during the Term, the Building, and every part thereof, shall be kept by the Lessee in a clean condition, free of any objectionable noises, odors or nuisances, and that all health and police regulations shall, in all respects and at all times, be fully complied with by Lessee.

6.2. Business Hours. FWR shall continuously, during the entire term of this Lease, conduct and carry on FWR's business in the Building, and shall keep the Building open for business and cause FWR's business to be conducted in the Building seven (7) days per week, excluding holidays and days upon which businesses of like character in the area in which the Building is located are customarily closed. HVTB shall provide staffing for the office portion of the Building and supply information related to the City of Fillmore to riders of the FWR train.

6.3 Condition of Building. Lessee hereby accepts the Building in the condition existing as of the date of possession of same, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Building, and accepts this Lease subject to such laws, ordinances, regulations, all matters disclosed in connection with same and by any exhibits attached to this Lease. Lessee acknowledges that neither Lessor nor Lessor's agents or employees have made any representation or warranty as to the suitability of the Building for the conduct of Lessee's business.

7. Surrender of Building. On expiration of the term of the Lease, Lessee shall surrender to Lessor the Building, except for alterations that Lessor requires Lessee to remove as provided in Paragraph 5. Lessee will surrender the Building, together with all keys, in good condition and repair, reasonable wear and tear excepted. Prior to expiration of the Term, Lessee shall remove all its personal property and shall perform all restoration made necessary by the removal of any alterations or Lessee's personal property. If Lessee fails to surrender the Building to Lessor upon expiration of the Term, Lessee shall hold Lessor harmless from all damages resulting from Lessee's failure to surrender the Building, including, without limitation, claims made by a succeeding Lessee resulting from Lessee's failure to surrender the Building. All of Lessee's furniture, movable trade fixtures and other personal property not removed by Lessee from the Building within five (5) days after Lessor shall request such removal in writing following the termination of this Lease, whether termination shall occur by lapse of time or otherwise, shall be conclusively presumed to have been abandoned by Lessee, and Lessor may, at its option and election, subsequently take possession of such property and either (i) declare same to be the property of Lessor, or (ii) at the cost and expense of Lessee, dispose of such property in any manner Lessor, in its sole discretion, shall deem most advisable. Rights granted Lessor under this

Section 7 shall be cumulative of Lessor's rights as set forth in Section 11.2.

8. Maintenance and Repair. Lessee shall keep and maintain the Building, including floors and floor coverings, equipment, plumbing, heating, air conditioning, light bulbs, security lights, ventilating, electrical and lighting facilities, fixtures, interior walls, ceilings, exterior windows, doors, plate glass, door locks and handles and skylights located within the Building, and the sidewalks adjacent to the Building in good repair and in a clean and safe condition, and repair and/or replace any and all of the foregoing in a professional and workmanlike manner. Except as provided in the previous sentence, Lessee shall have no maintenance or repair responsibilities related to the structural portions of the Building, including the roof; *provided, however*, that if any such maintenance or repair is required in whole or in part by reason of or as a result of any act or omission of Lessee, its employees, sublessees, customers or invitees, Lessee will be responsible for the cost of such maintenance and repair. Lessor shall not be liable to Lessee for injury or damage that may result from any defect in the construction or condition of the Building, nor for any damage that may result from interruption of Lessee's use of the Building during any repairs by Lessor. Lessee shall be responsible for all damage sustained as the result of any break in or vandalism to the Building, including but not limited broken windows, locks, doors, walls, ceilings, and outside storage areas. If Lessee fails to perform Lessee's obligations under this Section 8, Lessor may, at Lessor's option, enter upon the Building after five (5) days' prior written notice to Lessee, and put the same in good order, condition, and repair, and the cost of same, together with interest at the rate of ten percent (10%) per annum, shall be due and payable as additional rent to Lessor together with Lessee's next Rent installment.

9. Utilities; Services; Taxes.

9.1 Utilities. Lessee shall pay for all water, sewer, gas, heat, light, power, telephone, and other utilities and services supplied to the Building, whether supplied by the utility companies, governmental agencies, or Lessor, together with any taxes. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises. In the event Lessee fails to make such utility payment, Lessor may elect, in its sole discretion, to pay for such utilities, and the cost of such payment, together with penalties, late fees and/or interest as outlined on bills or late notices, shall be due and payable, as additional rent to Lessor, together with Lessee's next rental installment. If utilities are in Lessor's name, and re-billed to Lessee, Lessee agrees to pay for such bills within seven (7) days of receipt, directly to Lessor, or to utility provider, if so directed in writing by Lessor. Failure to pay such bills will be considered a default of the Lease, if they remain uncured for seven (7) days following notice of such delinquency. Such amounts due for utilities shall be considered additional rent due for the Building. Payments received for Rent shall be applied first to any utility bills, then to late fees (whether current or previously billed), and then to amounts due for Base Rent.

9.2 Real Property Taxes. Lessor shall pay all real property taxes applicable to the Building; *provided, however*, that Lessee shall pay, in addition to rent, the amount, if any, by which real property taxes applicable to the Building increase over the first fiscal tax year after the Commencement Date; *provided, however*, in no event shall Lessee be liable for any increase in real property taxes assessed as a result of the transfer of ownership of the Building. Lessee, if applicable, shall make such payment within thirty (30) days after receipt of Lessor's written statement setting forth the amount of such increase and the computation of it. If the Building is not separately assessed, Lessee's liability, if any, shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination of Lessee's liability, in good faith, shall be conclusive.

9.3 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes

assessed against and levied upon trade fixtures, furnishings, equipment, and all other personal property of Lessee contained in the Building or elsewhere. Lessee shall cause said trade fixtures, furnishings, equipment, and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property. Notwithstanding Section 9.2, Lessee shall pay any increase in real property taxes resulting from any and all improvements of any kind placed on or in the Building for the benefit of or at the request of Lessee regardless of whether said improvements were installed or constructed either by Lessor or Lessee.

10. Lessor's Access. Lessor and Lessor's agents shall have the right, subject to the requirements of California and federal law regarding patient confidentiality, at reasonable times to enter and use the Building or to maintain, repair or make alterations or additions to the Building or any portion thereof, or to show the Building to prospective purchasers, Lessees or lenders. Lessor may at any time during the last ninety (90) days of the term of this Lease place on or about the Building any ordinary "for lease" signs. Lessee hereby waives any claim for abatement of rent or for damages for any injury or inconvenience to or interference with Lessee's business, any loss or occupancy or quiet enjoyment of the Building, and any other loss occasioned thereby.

11. Default by Lessee and Remedies of Lessor.

11.1. Default. All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby leased to Lessee. The following constitute a material default and breach of this Lease by Lessee:

11.1.1. Any failure to pay Rent when due when the failure continues for five (5) days after written notice to pay that Rent is served on Lessee by Lessor.

11.1.2. Any failure to perform any other covenant, condition, or agreement contained in this Lease when the failure is not cured within ten (10) days after written notice of the specific failure is given by Lessor to Lessee.

11.1.3. The bankruptcy or insolvency of Lessee, the making by Lessee of any general assignment for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or of a petition for reorganization or arrangement under the Bankruptcy Act (unless, in the case of a petition filed against Lessee, it is dismissed within thirty (30) days; the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Building or of Lessee's interest in this lease, if possession is not restored to Lessee within thirty (30) days; or the attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the Building or of Lessee's interest in this lease, when that seizure is not discharged within thirty (30) days.

11.1.4. The abandonment or vacating of the Building by Lessee (which, for purposes of this Lease, shall mean Lessee's failure to occupy and operate the Building for business for a period of at least ten (10) consecutive days).

11.2. Remedies. If Lessee breaches this Lease, Lessor, in addition to any other remedy given Lessor by law or equity, may:

11.2.1. Continue this Lease in effect by not terminating Lessee's right to possession of the Building, in which case Lessor shall be entitled to enforce all Lessor's rights and remedies

under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease;

11.2.2. Terminate this Lease and recover from Lessee:

(a) the worth, at the time of award, of the unpaid rent that had been earned at the time of termination of the lease;

(b) the worth, at the time of award, of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided;

(c) the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Lessee proves could be reasonably avoided; and

(d) any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform the obligations under this lease; or

11.2.3. Terminate this Lease and, in addition to any recoveries Lessor may seek under Section 11.2.2, above, bring an action to reenter and regain possession of the Building in the manner provided by the laws of unlawful detainer then in effect in California.

11.3. Cumulative Remedies. The remedies granted to Lessor in this Lease shall not be exclusive but shall be cumulative and in addition to all other remedies now or hereafter allowed by law or authorized in this Lease. No act of Lessor, including but not limited to Lessor's entry on the Building or efforts to relet the Building, or the giving by Lessor to Lessee of a notice of default, shall be construed as an election to terminate this Lease unless a written notice of the Lessor's election to terminate is given to Lessee or unless termination of this Lease is decreed by a court of competent jurisdiction. The waiver by Lessor of any breach by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent default or breach by Lessee either of the same or a different provision of this Lease.

12. Destruction and Reconstruction. In the event of a partial or total destruction of the Building during the Term, Lessor and Lessee shall each have the option to terminate this Lease upon giving written notice to the other of exercise thereof within thirty (30) days after such destruction. For purposes of this Section, "partial destruction" shall be deemed a destruction to an extent of at least thirty-three and one-third percent (33-1/3%) of the then full replacement cost of the Building as of the date of destruction.

13. Assignment; Subletting. Lessee shall not assign this Lease or any interest therein, and shall not sublet the Building or any portion thereof, or any right or privilege appurtenant thereto, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. The merger of Lessee with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Lessee, or the assignment of a substantial portion of the assets of Lessee shall constitute an assignment hereunder. The consent to one assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting. Any such assignment or subletting without Lessor's prior written consent shall be void and, at Lessor's option, shall terminate this Lease. Neither this Lease nor any interest therein shall be assignable by operation of law, as to Lessee's interest, without Lessor's prior written consent. Lessor's consent to any assignment or subletting shall not relieve Lessee from any obligation under this Lease.

14. Notices. All notices and other communications hereunder shall be in writing and shall

be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile, upon written confirmation of receipt by facsimile, e-mail or otherwise, (b) on the first business day following the date of dispatch if delivered by a recognized next-day courier service or (c) on the earlier of confirmed receipt or the fifth business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder to Lessee shall be delivered to the Building, and to Lessor shall be delivered to City of Fillmore, 250 Central Avenue, Fillmore, CA 93015, Attention: City Manager; or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

15. Hazardous Materials. Lessee shall not cause nor permit, nor allow any of Lessee's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subLessees (collectively, "Lessee's Parties") to cause or permit, any Hazardous Materials to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, disposed or used on, under or about the Building, except for routine office and janitorial supplies in usual and customary quantities stored, used and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance, material, controlled substance, object, condition, waste, living organism or combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs), refrigerants, and all of those substances which are now or become in the future listed, defined or regulated in any manner by any Environmental Law. As used herein, "Environmental Laws" means any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Lessee or the Building. Lessee and Lessee's Parties shall comply with all Environmental Laws and promptly notify Lessor of the violation of any Environmental Law or presence of any Hazardous Materials on the Building. In the event of any adverse condition relating to Hazardous Materials, Lessee shall take any and all steps necessary to rectify the same to Lessor's reasonable satisfaction or shall, at Lessor's election, reimburse Lessor, upon demand, for the cost to Lessor of performing rectifying work.

16. Miscellaneous Provisions.

16.1. Subordination. This Lease shall be subject and subordinate to all ground or underlying Leases which now exist or may hereafter be executed affecting the Building and to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever, now or hereafter placed on or against the Building or on or against Lessor's or Lessee's interest or estate therein.

16.2. Quiet Enjoyment. Lessor covenants and agrees with Lessee that upon Lessee's paying Base Rent and other monetary sums due under the Lease and performing its covenants and conditions, Lessee shall and may peaceably and quietly have, hold, and enjoy the Building for the term, subject however, to the terms of this Lease and of any of the aforesaid ground leases, mortgages or deeds of trust described above.

16.3. Attornment. In the event any proceedings are brought for default under any ground or any underlying lease or in the event of foreclosure or the exercise of the power of sale under any mortgage or deed of trust made by Lessor covering the Building, Lessee shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Lessor under this Lease, provided such purchaser expressly agrees in writing to be bound by the terms of the Lease.

16.4. Estoppel Certificate. Lessee shall, within three (3) days after receipt of a

request therefor from Lessor, execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any), and (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults in Lessor's performance of Lessor's obligations hereunder, or a description of such defaults, if any are claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer of the Building. Lessee's failure to deliver such statements within such time shall be conclusive upon Lessee (i) that this Lease is in full force and effect without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one month's rent has been paid in advance.

16.5. Transfer of Lessor's Interest. In the event of a sale or conveyance by Lessor of Lessor's interest in the Building other than a transfer for security purposes only, Lessor shall be relieved from and after the date specified in a notice of such transfer duly given to Lessee of all obligations and liabilities accruing thereafter on the part of Lessor, provided that any funds in the hands of Lessor at the time of transfer in which Lessee has an interest shall be delivered to the successor of Lessor. This Lease shall not be affected by any such sale and Lessee agrees to attorn to the purchaser or assignee provided all Lessor's obligations hereunder are assumed in writing by the transferee.

16.6. Captions, Attachments, Defined Terms. The captions of the Sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein. The words "Lessor" and "Lessee" as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there are more than one Lessor or Lessee, the obligations hereunder imposed upon the Lessor or Lessee shall be joint and several. The obligations contained in this Lease to be performed by Lessor shall be binding on Lessor's successors and assigns only during their respective periods of ownership.

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

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

16.9. Costs of Suit. If Lessee or Lessor shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. In the event Lessor, without fault on Lessor's part, be made a party to any litigation instituted by Lessee or by any third party against Lessee, or by or against any person holding under or using the Building by license of Lessee, or for the foreclosure of any lien for labor or materials furnished to or for Lessee or any such other person or otherwise arising out of or resulting from any act or transaction of Lessee or of any such other person, Lessee covenants

to save and hold Lessor harmless from any judgment rendered against Lessor or the Building or any part thereof, and all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in connection with such litigation. Additionally, Lessee shall reimburse Lessor for all legal expense and cost actually incurred by Lessor for the preparation and service upon Lessee of any notices to Lessee from Lessor concerning Lessee's non-payment of Rent, failure to timely perform duties or obligations required of Lessee by the terms of this Lease and/or any failure of performance of the terms of this Lease by Lessee.

16.10. Time of the Essence. Time is of the essence in this Lease and each and every provision hereof except as to the conditions relating to the delivery of possession of the Building to Lessee.

16.11. Binding Effect. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof; subject to any provisions hereof restricting assignment or subletting, and subject to any provisions hereof pertaining to transfer of Lessor's interest, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

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

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

16.14. Holding Over. If Lessee remains in possession of all or any part of the Building after the expiration of the Term, with or without the express or implied consent of Lessor, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term and in such case, such month to month tenancy shall be subject to every term, covenant and agreement contained herein; provided, however, rent due shall be payable in an amount equal to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over.

16.15. Recording. Lessee shall not record this Lease without Lessor's prior written consent, and such recordation shall, at the option of Lessor, constitute a non-curable default of Lessee hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes.

16.16. Authorization. Each individual executing this Lease on behalf of Lessee represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Lessee and that such execution is binding upon Lessee.

16.17. Governing Law. This Lease shall be subject to and governed by the laws of the State of California.

16.18. Signs. FWR and HVTB shall each provide signs for the Building for their

respective operations. All signs and graphics of every kind visible in or from public view or corridors or the exterior of the Building shall be subject to Lessor's and the City of Fillmore's prior written approval, and shall be subject to all applicable laws. Lessee shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Building; and Lessee shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Lease effective the day and year first above written.

LESSOR:

FILLMORE REDEVELOPMENT AGENCY

By: _____

Name: Larry F. Pennell

Title: Executive Director

LESSEE:

HERITAGE VALLEY TOURISM BUREAU,
INC.

By: _____

Name: _____

Title: _____

FILLMORE & WESTERN RAILWAY, INC

By: _____

Name: _____

Title: _____