



City of Santa Rosa

December 19, 2011

Hugh Futrell, for Museum on the Square, LLC
c/o Hugh Futrell Corporation
200 Fourth Street, Suite 250
Santa Rosa, CA 95401

TECHNICAL MODIFICATION OF AN EASEMENT OFFERED TO THE REDEVELOPMENT AGENCY AND AN OPERATING AGREEMENT REGARDING THE VEHICULAR GATE FOR THE PROPOSED MUSEUM ON THE SQUARE PROJECT – 520 THIRD STREET

Dear Mr. Futrell:

The City has received your request (by e-mail correspondence and through submittal of Final Design Review materials) regarding the proposed AT&T site easement for conveyance to the Redevelopment Agency and the associated operating memorandum, approved by the City Council on June 28, 2011. We understand your request will modify these documents in order to change the vehicular gate on the south side of the proposed Museum on the Square (MOTS) project, 520 Third Street to (1) allow a sliding gate located along the MOTS' side of the sidewalk, rather than a swinging gate set back 18 feet, and (2) keep the gate in an open position until 8:00 p.m. instead of 6:00 p.m. to address any queuing and operations issues.

The City's Transportation and Public Works Department evaluated the request and determined that keeping the gate open until 8:00 p.m. Monday through Saturday will satisfy concerns related to operational and safety issues due to potential queuing with the gate located at the back of sidewalk.

Pursuant to Council Resolution No. 27923¹, the City Manager may make minor technical changes to the easement and operating memorandum, subject to approval by the City Attorney. I concur with City staff that gate location and hours of operation are technical matters related to operational details and, therefore, are appropriate for my action.

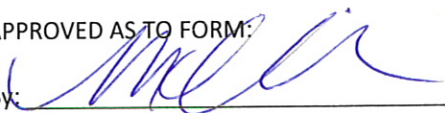
I hereby approve modification of the easement and operating memorandum, heretofore approved by Council Resolution 27923, to remove all specific references to gate location (in the easement and operating memorandum) and to modify the hours that the gate will remain in an open position to 7:00 a.m. to 8:00 p.m. Monday through Saturday (in the operating memorandum). The easement to be evaluated for acceptance by the Redevelopment Agency, and the associated operating memorandum will be modified as generally described above and as reflected in the attached redlined documents, revised December 13, 2011.

THE CITY OF SANTA ROSA,
California Charter City

APPROVED:

By: 
Kathleen A. Millison, City Manager

APPROVED AS TO FORM:

By: 
City Attorney

¹ Council Resolution No. 27923 approves and conveys an easement to the Redevelopment Agency of the City of Santa Rosa that allows limited passenger vehicle access through the Transit Mall for future residents at the former AT&T Site, 520 Third Street, and approves an operating memorandum that addresses operational details of the easement.

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Redevelopment Agency of the City of Santa Rosa
Attn: Executive Director
90 Santa Rosa Avenue
Santa Rosa, CA 95404

R&T 11922 DEED TO PUBLIC AGENCY, -0- TRANSFER TAX DUE

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made by and between The City of Santa Rosa, a California charter City (hereinafter, the "City"), and The Redevelopment Agency of the City of Santa Rosa (hereinafter, "Grantee").

R E C I T A L S

WHEREAS, the City is the owner of that certain real property located in the City of Santa Rosa, commonly known as Second Street between B Street and Santa Rosa Avenue, used as a regional bus transit terminal and commonly referred to as the Santa Rosa Transit Mall (hereinafter the "Transit Mall"); and

WHEREAS, Grantee is the owner of that certain real property located in the City of Santa Rosa, located at 520 Third Street, Santa Rosa, Assessor's Parcel Numbers 010-063-019 and 010-063-027 as more specifically described on Exhibit A attached hereto and made part hereof, commonly known as the AT&T Building, which is adjacent to Transit Mall (hereinafter "AT&T Building"); and

WHEREAS, on May 29, 1986, the then current owner of the AT&T Building conveyed certain property rights to the City pursuant to that certain Easement Limiting Access, recorded in the Official Records of Sonoma County on July 18, 1986 as Document No. 86053182 ("Original Easement"), which conveyance effected a limitation on the use of the Transit Mall for purpose of access to the AT&T Building.

WHEREAS, based on the limitations set forth and contained in the Original Easement, the Grantee may only use the Transit Mall for commercial vehicle access and without the additional rights to be conveyed herein, would have no right to use the Transit Mall for passenger vehicles.

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WHEREAS, Grantee is currently in contract to sell the AT&T Building to Museum on the Square LLC, a California limited liability company (“MOTS”) under the terms and conditions of that certain Disposition and Development Agreement by and between Redevelopment Agency of the City of Santa Rosa and Museum on the Square, LLC 520 Third Street-Former AT&T Site, Santa Rosa Center Redevelopment Project dated June 29, 2010, pursuant to which MOTS will be making further improvements to the AT&T Building for utilization of said property and improvements to include the addition of 43 residential units.

WHEREAS, Grantee desires to have certain limited rights of access for passenger vehicles of residents within the AT&T Building reinstated in order to facilitate the future development of residential units in downtown Santa Rosa and City desires to assist in the facilitation of development of residential units within the downtown.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantee and the City covenant and agree as follows:

A G R E E M E N T

1. Grant of Easement. For valuable consideration, the City reconveys certain of the rights given in that Original Easement and hereby grants to Grantee easement rights for limited passenger vehicle access over and across the Transit Mall for residents of the AT&T Building, the nature, character, and extent to be as described and set forth herein, which easement rights shall be subject to the conditions set forth in this Agreement (such conveyance hereinafter referred to as the “Easement”).

2. Character of Easement. The Easement granted by the City to Grantee hereunder shall run appurtenant to the AT&T Building in accordance with the Term herein described.

3. Description of Easement. The Easement shall be for the specific purpose of allowing passenger vehicle access into and out of the Transit Mall via B Street to the AT&T Building solely for those individuals residing in the residential units within the AT&T Building, and shall not be extended to any invitees, guests or other users. The scope of the Easement shall not be expanded unless done in a written agreement between the City and the Grantee, or its successor in interest.

4. Term. This Easement shall have no force or effect unless and until the residential units anticipated to become part of the AT&T Building are constructed and ready for occupancy and shall only continue to serve the purpose of providing passenger vehicle access to the AT&T Building as specifically set forth herein.

5. Access Gate; Restrictions on Use. Grantee shall have the right to install an access gate at the entrance from the Transit Mall to the AT&T Building equipped with a keyed or coded

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access gate to discourage general public access (the "Access Gate"). Grantee shall be solely responsible to construct and maintain the Access Gate and associated signage in good operating condition and repair. ~~The Access Gate shall be set back not less than eighteen (18) feet from the Transit Mall back of sidewalk and shall open towards the AT&T Building.~~ An audible and visual warning system shall be provided at the access driveway's outbound lane to be activated when a car is present at the stop bar in such form as may be approved by the City's Traffic Engineer (the "Warning System"). Grantee shall be solely responsible to construct and maintain the Warning System in operating condition and repair. Access through the Transit Mall shall be solely from and to B Street and not from or to Santa Rosa Avenue. Passenger vehicles allowed under this Easement shall only enter the Transit Mall from B Street and then turn left onto the AT&T Building property, and when exiting, shall exit to the right back onto the Transit Mall to B Street. Grantee shall be responsible for the cost of installing and maintaining signs, markings and pavement treatments in the Transit Mall intended to allow limited access to the AT&T Building property as described herein, all of which shall be installed in a manner acceptable to the City prior to any use pursuant to this Easement. Grantee hereby understands and acknowledges that nothing herein shall be construed so as to prohibit the continued use and operation of the Transit Mall as a regional transit hub for the greater Santa Rosa area and Grantee shall at all times endeavor to maintain and operate the AT&T Building in a manner compatible with such primary use of the Transit Mall, including but not limited to allowance for the temporary blockage of the driveway into and out of the AT&T Building by buses or transit passengers and the expansion of mass transit use over time within the Transit Mall.

6. Operating Memorandum. In conjunction with the granting and recording of this Easement, Grantee shall also enter into an operating memorandum with the City for purposes of addressing operational details of the use of the Easement ("Operating Memorandum"), to include without limitation, the hours during which the Access Gate shall be left open to prevent passenger vehicle queuing that could interfere with transit use and the process for permitting and educating residents who reside within the residential units (whether owners or tenants) of the limitations set forth in the Easement and the need to conduct ingress and egress through the Transit Mall with care to the primary use (including bus and transit passenger use). The City and Grantee, or its successor, shall each be entitled to request a review of the Operating Memorandum at least once annually as each party may deem necessary, to address any operational issues that may arise due to use of the Easement. The City shall also have the right to make unilateral changes to the Operating Memorandum in order to address identified safety issues, recorded ongoing negative impacts to bus operations in the Transit Mall, or failures to adhere to the conditions and limitations on use as contained in this Easement, provided that such changes shall not materially impact Grantee's rights of access under this Easement. The City shall provide not less than thirty (30) days prior written notice to Grantee of any changes. In the event that Grantee objects to changes to the Operating Memorandum as proposed by the City, Grantee shall notify the City in writing of such objections within fifteen (15) days from receipt of notice of the proposed changes and the City and Grantee shall meet to discuss possible alternatives prior to the expiration of said thirty-day period. The City Manager shall be the final decision-maker in the event of any dispute regarding proposed changes to the Operating Memorandum.

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7. **Indemnity.** The City shall not be liable to the Grantee or any third party for any injury, loss, or damage arising out of or in connection with the use, by or through the City, of the Easement granted herein, except to the extent that such injury, loss, or damage is caused by the sole, active negligence or due to the willful misconduct of the City, its agents or employees. The City shall have no responsibility or liability for the operation or maintenance of the Access Gate. As an ongoing requirement and condition of granting this Easement, Grantee agrees, on behalf of its officers, employees, successors, tenants and agents, to defend, indemnify, hold harmless, and release the City, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses (including attorneys' fees and court costs) that may be asserted by any person or entity arising out of or relating to the use of the Easement granted herein, excepting only that resulting from the sole, active negligence or willful misconduct of the City, its officers, agents or employees. Grantee further agrees to compensate the City for any damage to the Transit Mall as a result of the installation, operation or maintenance of the Access Gate and the use of the Easement, excepting normal wear and tear resulting from use consistent with the terms of this Easement.

8. **Insurance.** Grantee shall at all times during the term of this Easement maintain in full force and effect commercial general liability insurance (occurrence policy form) from an insurer reasonably acceptable to the City, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$3,000,000 per occurrence and \$5,000,000 annual aggregate. All insurance coverage available or applicable to this Easement is intended to apply to the full extent of the policies. Nothing contained in this Easement shall be construed to limit the application of such coverage.

All coverage types and minimum coverage amounts are subject to approval, modification and additional requirements by the City, as the need arises. Grantee shall not make any reductions in scope of coverage that may affect City's protection without City's prior written consent.

Endorsements:

Said insurance coverage shall be evidenced by a certificate of insurance with policy endorsements and shall be executed by an authorized official of the insurer(s). In addition to the minimum coverage amounts provided hereinabove, policy endorsements shall be attached to the certificate, which also provides the following:

- (A) "The City of Santa Rosa, its officers, employees and agents are covered as additional insured with respect to any liability arising out of or connection with any use and operation of the property, including use of the easement granted by the City for limited passenger vehicle use of the Santa Rosa City Transit Mall at Second Street."
- (B) "The insurance coverage afforded by this policy shall be primary insurance with respect to the City of Santa Rosa, its officers, officials and employees. Any insurance or self-insurance maintained by the City of Santa Rosa, its officers, officials or

employees shall be in excess of the insurance afforded to the named insured by this policy and shall not contribute to any loss."

- (C) An unqualified statement that "The insurer or its authorized agent will provide to the City at least thirty (30) days prior notice of cancellation or material change in coverage," or alternatively a broker letter agreeing to provide such notice to the City.

9. No Waiver of Breach. Enforcement of the provisions of this Agreement shall be at the discretion of each party, and any forbearance by a party to exercise its rights under this Agreement in the event of any breach of any provision of this Agreement by the other party shall not be deemed or construed to be a waiver by that party of such provision or of any subsequent breach of the same or any other provision of this Agreement or of any of that party's rights under this Agreement.

10. Amendment. This Agreement may be amended or terminated only by a writing signed by both parties.

11. Termination. Except as otherwise provided herein or as may be provided by law or in equity, this Agreement may only be terminated by a writing signed by both parties.

12. Severability. If any provision of this Agreement is found to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision of this Agreement.

13. Notices. Any notice, demand, request, approval, or other communication that either party desires or is required to be given under this Agreement shall be in writing and may be given by personal delivery or by mail. Notices, demands, requests, approvals, or other communications sent by mail should be addressed as follows:

GRANTEE: Redevelopment Agency of the City of Santa Rosa
Attn: Executive Director
90 Santa Rosa Avenue
Santa Rosa, CA 95404

CITY: City of Santa Rosa
Attn: City Manager
100 Santa Rosa Avenue, Room 10
Santa Rosa, CA 95404

and when so addressed, shall be deemed given upon deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid. In all other instances, notices, demands, requests, approvals, or other communications shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, approvals, or other communications are to be given by giving notice pursuant to this section.

14. Applicable Law and Forum. Interpretation and performance of this Agreement shall be governed by California law and any action to enforce the provisions of this Agreement or the breach thereof shall be brought and tried in the County of Sonoma.

15. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

16. Integration. This Agreement is the final and complete expression of an easement agreement delineating property rights between the parties.

17. Binding Effect; Successors and Assigns. This Agreement shall run with the land and shall be binding on and shall inure to the benefit of the heirs, administrators, successors, and assigns of Grantee and the City.

18. Captions. The captions in this Agreement have been included solely for convenience of reference. They are not a part of this Agreement and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, Grantee and the City have executed this Agreement as set forth below.

THE CITY OF SANTA ROSA,
a California charter city

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA ROSA

By: _____

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
Agency Counsel

ATTACHMENTS:

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Revised: December 13, 2011

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Notary Acknowledgments
Certificate of Acceptance for RDA
Exhibit A - Legal description for AT&T Building

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State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interests in real property conveyed by the Easement Agreement dated _____, 2011 from the City of Santa Rosa, a California Charter City, to the Redevelopment Agency of the City of Santa Rosa, a public body organized and existing under laws of the State of California (Agency), is hereby accepted by order of the Agency on _____ pursuant to authority conferred by Resolution No. _____, adopted on - _____, and the Agency consents to recordation of the Easement Agreement with this Certificate of Acceptance by its duly authorized officer.

Dated

REDEVELOPMENT AGENCY
OF THE CITY OF SANTA ROSA,
a public body organized and existing
under the laws of the State of
California

By: _____
DAVID E. GOUIN
Executive Director

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

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LEGAL DESCRIPTION OF THE SITE

Real Property in the City of Santa Rosa, County of Sonoma, State of California, described as follows:

PARCEL A, AS SHOWN UPON RECORD OF SURVEY FILED FOR RECORD ON DECEMBER 9, 1983 IN BOOK 352 OF MAPS AT PAGES 22 AND 23, SONOMA COUNTY RECORDS.

APN: 010-063-027 AND 010-063-019

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OPERATING MEMORANDUM
520 Third Street – AT&T Building
CITY OF SANTA ROSA AND REDEVELOPMENT AGENCY OF THE CITY OF
SANTA ROSA

OWNER is the Redevelopment Agency of the City of Santa Rosa, or any future owner, of that certain property located at 520 Third Street, Santa Rosa. OWNER is currently in contract to sell the AT&T Building to Museum on the Square LLC, a California limited liability company (“DEVELOPER”) under the terms and conditions of that certain Disposition and Development Agreement by and between Redevelopment Agency of the City of Santa Rosa and Museum on the Square, LLC 520 Third Street-Former AT&T Site, dated June 29, 2010, pursuant to which DEVELOPER will be making further improvements to the AT&T Building for utilization of said property, and improvements to include the addition of museum, restaurant, office and residential uses, a project called Museum on the Square (“MOTS”).

The purpose of this Operating Memorandum is to (1) meet the obligations pursuant to the Easement Agreement by and between The City of Santa Rosa (“CITY”) and OWNER, by which CITY grants to OWNER easement rights for limited passenger vehicle access over and across the Transit Mall for residents of the AT&T Building for purposes of the use of the Easement recorded in the Official Records of Sonoma County as Document No. _____; and (2) to fulfill the condition of design review approval for the Museum on the Square project for operational details to minimize any practical conflicts between building requirements/use of Second Street driveway and transit operations.

This Operational Agreement will follow the conveyance of the property and easement rights to future property owners, the first of which is anticipated to be the DEVELOPER.

The OWNER shall take the following steps to minimize conflicts between Transit Mall and MOTS operations.

I. Definitions

1. “Delivery/Service” vehicles are those vehicles that enter the site for a commercial, service, operational, or similar purpose for the commercial or residential tenants of the building.
2. “Large Truck” is defined as a truck which exceeds the maximum length able to turn around within the MOTS parking lot, as identified by a turning movement study performed by DEVELOPER for OWNER and approved by the CITY.
3. “Commercial tenants” includes all non-residential owners or tenant occupants.
4. “Operating hours” is defined as the regular operating times of Santa Rosa CityBus from the first bus pull-in to the last bus pull-out at the Transit Mall.

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Operating Memorandum – AT&T Building – Final

II. Contact Information

Prior to commencement of construction of the MOTS project or the Transit Mall Revitalization (TM) project, the OWNER and the City of Santa Rosa Transit Department (CITY) shall provide each other with the following contact information in writing:

- Contact Name
- Contact email
- Contact address
- Contact office phone number and fax
- Contact cell number if available

This information shall be provided for both primary and alternative contacts and shall be kept up to date by the CITY and OWNER. OWNER and CITY shall also provide this information for the construction-period project superintendents and project managers.

III. Ordinary Use by Commercial Tenants Prohibited

OWNER shall incorporate into its leases or rental agreements with commercial tenants a provision prohibiting owners of commercial spaces, commercial tenants, their employees, customers or invitees using Transit Mall to access the building site for parking or passenger drop-off purposes, whether transient or for extended hours. Should Covenants, Conditions and Restrictions be prepared and recorded by OWNER as part of any subdivision of the building, this provision shall be incorporated therein. Only Delivery/Service vehicles with a commercial, service, operational or similar purpose are excluded from the provision set forth in this section.

IV. Residential Parking

Residential tenants or owners shall be provided access for one vehicle per on-site parking space through the Transit Mall. The OWNER will furnish each vehicle to access the MOTS site through the Transit Mall with a visible identifier of the right to do such. Vehicles must display the visible identifier at any time they attempt to traverse the Transit Mall in order to enter or exit the MOTS site. OWNER will be responsible for ensuring that no more than one identifier is provided per each on-site residential space.

OWNER shall incorporate into its leases, rental or purchase agreements with residential tenants or buyers a provision prohibiting their visitors using Transit Mall to access the building site for visitor parking, whether transient or for extended hours. Should Covenants, Conditions and Restrictions be prepared and recorded by OWNER as part of any subdivision of the building, this provision shall be incorporated therein.

All residential tenants or buyers must attend a Transit Mall Orientation, of no greater than one hour in duration, provided by the CITY prior to, or within one week, of accessing on-site parking

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located on the MOTS site. CITY shall make regular Transit Mall Orientations available no less than twice in any given calendar month. At OWNER'S request, CITY must provide more frequent Transit Mall Orientations if more than three residential tenants require such.

Residential vehicles shall access the MOTS Project site through the Transit Mall only by the B Street/Second Street intersection, thus restricting project access driveway operations to left-in-right-out movements.

V. Incidental Deliveries and Service Vehicles

Vehicles performing incidental deliveries and/or service calls shall not be restricted from using the Transit Mall except as follows:

1. Large Trucks shall be prohibited from using the Transit Mall during Operating Hours. During non-Operating Hours, Large Trucks must comply with Section VI "Large Truck Deliveries" section of this Operating Memorandum, or during the MOTS construction, with Section VII, "Construction Period Conditions.
2. The Delivery/Service vehicle shall pull fully into the driveway so that at no time does it block the public sidewalk or project into the Second Street travel way.
3. The Delivery/Service vehicle shall exit the building site head-out and shall not back into Transit Mall.
4. The Delivery/Service vehicle shall access and exit the Transit Mall only from B Street and in no case shall use the intersection of 2nd Street and Santa Rosa Avenue.

"Incidental Deliveries and Service Calls" are (1) those delivery of items customarily provided to commercial or residential tenants in the course of the business day or afterward; (2) tasks performed by persons laboring on, or providing services or materials for, exterior or interior building components or building or office equipment, whether those people are on-site maintenance staff or outside service personnel; (3) the use of commercial vehicles to move household or commercial goods into the building from another location; and (4) garbage and waste pickup.

VI. Large Truck Deliveries

Large Trucks shall be prohibited from using the Transit Mall to access the MOTS site during Operating Hours. During non-Operating Hours large truck(s) are permitted to idle or park in the Transit Mall solely for the purposes of unloading material deliveries to the MOTS site. Large trucks are prohibited from idling and/or parking in the Transit Mall when not actively unloading materials. Large trucks are only permitted to idle or park curbside in the area to the west of the MOTS driveway, and cannot impede the traffic flow by buses through the Transit Mall.

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Operating Memorandum – AT&T Building – Final

VII. Construction-Period Conditions

During the initial and any subsequent period of MOTS building construction, use of Transit Mall shall be restricted as follows:

1. Delivery of construction materials, mobilization or demobilization of cranes, booms and other equipment, and removal of construction debris shall be limited to non-Operating Hours except as set forth at 2, below.
2. During Operating Hours, the activities set forth at 1, above, shall be permitted provided that (a) OWNER gives CITY contact listed in Section II above 72 hours prior written notice for movement through the Transit Mall of cranes and booms and at least 24 hours for the other activities, (b) OWNER provides safety and management personnel to conduct the vehicle to the site, first meeting the vehicle at any off-site location, (c) OWNER ensures that the operator of the vehicle conforms with any instructions provided by identified CITY contact listed in section II above, and (d) does not impede the normal bus traffic in the Transit Mall.
3. Notwithstanding 2, above, OWNER shall endeavor to use the adjoining property (1 Santa Rosa Avenue) to the west whenever possible for such deliveries during operating hours.

During the initial and any subsequent period of construction related to the Transit Mall Revitalization Project, OWNER must provide a schedule to CITY of regular delivery/service vehicle access. CITY will make all reasonable efforts to allow continuous access to the MOTS parking lot by OWNER. CITY will take all reasonable efforts to minimize temporary periods of MOTS site access closure and will provide no less than one week notice to OWNER of the expected duration for said closures.

VIII. Security Gates

The vehicular security gate on the MOTS site shall ~~(1) be set back 18' from the back of sidewalk, and (2)~~ remain open 7:00 a.m. to 8:00 p.m. Monday through ~~Friday~~Saturday. During non-operating hours, OWNER shall provide to operators of all vehicles having the right to access the site from the Transit Mall with all necessary information to operate the gate safely and expeditiously.

IX. Signage

OWNER shall install permanent traffic-control signage on the MOTS site in accordance with the approved project plans. CITY has the right to review and approve any additional traffic control signage prior to its installation by OWNER on the external face of the southernmost fence and/or Access Gate on the MOTS site.

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Operating Memorandum – AT&T Building – Final

X. Operating Memorandum Review and Revisions

The CITY and OWNER, or its successor, shall each be entitled to request a review of the Operating Memorandum at least once annually as each party may deem necessary, to address any operational issues that may arise due to use of the Easement. The CITY shall also have the right to make unilateral changes to the Operating Memorandum in order to address identified safety issues, recorded ongoing negative impacts to bus operations in the Transit Mall, or failures to adhere to the conditions and limitations on use as contained in this Operating Memorandum, or the Easement provided that such changes shall not materially impact Grantee's rights of access under the Easement. The Operating Memorandum is binding on OWNER, its employees, officers and agents, and heirs or assigns.

CITY must provide no less than 60 days notice to OWNER of changes to the CityBus schedule that may impact the conditions of this Operating Memorandum.

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Operating Memorandum – AT&T Building – Final

2. The Purchaser shall make progress with the redevelopment of the Project as set forth in the DDA.

3. Term. The term of this Agreement shall commence upon full execution, subject to approval of the Santa Rosa City Council, and shall continue until the earlier of a) March 31, 2013, b) purchase of the total number of permits authorized under this Agreement, or c) termination of the DDA. Upon request by the Purchaser, the City may agree to one or more extensions to this Agreement, depending on availability of parking spaces and the progress the Purchaser has made with the redevelopment of the Project Site.

4. Purchase Price and Renewal of Permits. In the event Purchaser elects to acquire permits for Garage 12 or another nearby parking facility, Purchaser shall be obligated to pay the monthly permit fee in accordance with the Schedule of Parking User Fees adopted by the Santa Rosa City Council, as may be amended and updated from time to time. Any permits acquired by Purchaser will be held in accordance with Council Policy No. 400-02, Parking Permit Sale Policy, as amended or revised from time-to-time, which policy currently provides that “a permit holder’s option to renew shall continue as long as the valid permit is renewed prior to expiration” by timely payment of the current fees.

5. Limitation on Liability. Other than as expressly provided in this Agreement, the City shall have no obligation to guarantee or provide assurances of parking space availability within any City owned facility. Nothing herein shall be deemed or construed as implied or express approval from the City for the proposed redevelopment of Purchaser’s project located at 520 Third Street. It is hereby understood and agreed by the parties that Purchaser will proceed with said redevelopment proposal through the appropriate City process independent of this Agreement.


6. Miscellaneous.

(A) Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

(B) Modification. No modification or change to the terms of this Agreement will be binding on a Party unless in writing and signed by an authorized representative of that party.

(C) Governing Law; Venue. This Agreement shall be construed, and its performance enforced, under California law. Any judicial proceeding in connection with any dispute under, or enforcement of, the Agreement shall be brought in Sonoma County, California.

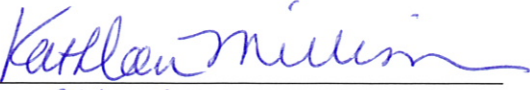
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

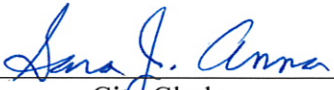
By: 
Name: HUGH FOTRELL
Title: Manager

Taxpayer ID # _____

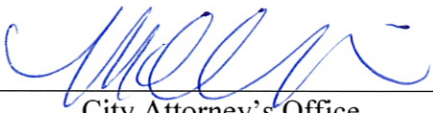
By: 
Name: BILL CARLO
Title: Manager

CITY OF SANTA ROSA,
a charter city

By: 
Title: City Manager

ATTEST: 
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney's Office

RESOLUTION NO. 27923

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING AND CONVEYING AN EASEMENT TO THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA ROSA THAT ALLOWS LIMITED PASSENGER VEHICLE ACCESS THROUGH THE TRANSIT MALL FOR FUTURE RESIDENTS AT THE FORMER AT&T SITE, 520 THIRD STREET, AND APPROVING AN OPERATING MEMORANDUM THAT ADDRESSES OPERATIONAL DETAILS OF THE EASEMENT

WHEREAS, in carrying out the Redevelopment Plan for the Santa Rosa Center Redevelopment Project Area and the Five-Year Implementation Plan, the City of Santa Rosa (City) and the Redevelopment Agency of the City of Santa Rosa (Agency) on June 29, 2010, approved a Disposition and Development Agreement (DDA) executed between the Agency and Museum on the Square, LLC, for the redevelopment of the former AT&T site (Project Site), located at 520 Third Street, including museum, restaurant, office and residential uses (MOTS Project); and

WHEREAS, on May 29, 1986, AT&T and Pacific Bell (Grantors) conveyed to the City of Santa Rosa an Easement Limiting Access, consisting of the Grantors' rights of ingress and egress to and from the site through Second Street for vehicles intended solely for carrying of passengers to and from the subject property; and

WHEREAS, pursuant to Community Redevelopment Law, Health and Safety Code Section 33220 permits the City to convey property to the Agency for the purpose of aiding and co-operating in a redevelopment project; and

WHEREAS, the proposed Easement Agreement to the Project Site which is attached hereto at Exhibit A (Easement) and the accompanying Operating Memorandum called for in the Easement at Exhibit B (Operating Memorandum) would be appurtenant to the Project Site and would be transferred to Museum on the Square, LLC, upon sale of the property pursuant to the DDA.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa hereby finds and determines that:

Section 1. The Easement and Operating Memorandum will help implement the Redevelopment Plan for the Santa Rosa Center Redevelopment Project Area in that it will facilitate the redevelopment and improvement of the building located on the Project Site pursuant to the DDA and will assist in the elimination of blight through the development of a currently vacant and underutilized building, located at a prime location within the downtown area, with a mix of uses, including a museum, restaurant and office uses, and including the remediation of existing hazardous materials contamination currently located on the Project Site. The Project is consistent with the Five-Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490, which specifically calls for the redevelopment of the AT&T building.

Section 2. The Easement is consistent with the DDA in that the DDA describes the ground floor of the MOTS Project to include the building lobby, museum space, restaurant space, and flexible space. The flexible space provides access for residential tenants to the parking at the rear of the Project site from Third Street, or in the event that the developer is able to secure access to the parking in the rear of the Project Site through other means, provides for additional restaurant or other commercial purposes. The Easement would provide the alternative access to the parking area, allowing for the flexible space to be utilized for commercial uses.

Section 3. Conveyance of the Easement to the Agency will benefit the City in that it would 1) enhance the extent of the pedestrian-friendly experience on Third Street, consistent with the General Plan Downtown Station Area Specific Plan and Zoning Code; and 2) facilitate the success of the Project, which is anticipated to result in economic benefits to the City, including the creation of hundreds of jobs, net revenues to the City, and generation of tens of millions of dollars in local economic activity annually.

Section 4. The MOTS Project, as enhanced by the Easement, constitutes an in-fill development that (i) is consistent with applicable general plan and zoning designations for the Site; (ii) is located on a site of less than five acres; (iii) is located on a site that has no value as habitat for endangered, rare or threatened species; (iv) will not result in any significant effects related to traffic, noise, air quality or water quality; and (v) can be adequately served by all required utilities and public services; and is therefore categorically exempt from the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Section 15332 of Title 14 of the California Code of Regulations.

BE IT FURTHER RESOLVED that the Council hereby approves conveyance of the Easement to the Agency to allow limited passenger vehicle access through the Transit Mall for future residents at the former AT&T site, 520 Third Street, in substantially the form on file with the City Clerk, attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the Council hereby approves the Operating Memorandum that addresses operational details of the Easement, in substantially the form on file with the City Clerk, attached hereto as Exhibit B.

BE IT FURTHER RESOLVED that the Council hereby authorizes and directs the City Manager and City Clerk to undertake such further actions as are necessary to convey the Easement to the Agency on behalf of the City, including without limitation the execution of documents and all other actions, subject to any minor conforming, technical or clarifying changes approved by City Attorney; and the City Manager is hereby further authorized and directed carry out and complete the obligations of the City under the Easement and Operating Memorandum on behalf of the Council.

IN COUNCIL DULY PASSED this 28th day of June, 2011.

AYES: (7) Mayor Olivares, Vice Mayor Ours, Council Members Bartley, Gorin, Sawyer, Vas Dupre, Wysocky

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

ATTEST: Stephanie Williams, Deputy City Clerk APPROVED: Ernesto Olivares, Mayor

APPROVED AS TO FORM:
Caroline Fowler, City Attorney

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Redevelopment Agency of the City of Santa Rosa
Attn: Executive Director
90 Santa Rosa Avenue
Santa Rosa, CA 95404

R&T 11922 DEED TO PUBLIC AGENCY, -0- TRANSFER TAX DUE

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made by and between The City of Santa Rosa, a California charter City (hereinafter, the "City"), and The Redevelopment Agency of the City of Santa Rosa (hereinafter, "Grantee").

R E C I T A L S

WHEREAS, the City is the owner of that certain real property located in the City of Santa Rosa, commonly known as Second Street between B Street and Santa Rosa Avenue, used as a regional bus transit terminal and commonly referred to as the Santa Rosa Transit Mall (hereinafter the "Transit Mall"); and

WHEREAS, Grantee is the owner of that certain real property located in the City of Santa Rosa, located at 520 Third Street, Santa Rosa, Assessor's Parcel Numbers 010-063-019 and 010-063-027 as more specifically described on Exhibit A attached hereto and made part hereof, commonly known as the AT&T Building, which is adjacent to Transit Mall (hereinafter "AT&T Building"); and

WHEREAS, on May 29, 1986, the then current owner of the AT&T Building conveyed certain property rights to the City pursuant to that certain Easement Limiting Access, recorded in the Official Records of Sonoma County on July 18, 1986 as Document No. 86053182 ("Original Easement"), which conveyance effected a limitation on the use of the Transit Mall for purpose of access to the AT&T Building.

WHEREAS, based on the limitations set forth and contained in the Original Easement, the Grantee may only use the Transit Mall for commercial vehicle access and without the additional rights to be conveyed herein, would have no right to use the Transit Mall for passenger vehicles.

WHEREAS, Grantee is currently in contract to sell the AT&T Building to Museum on the Square LLC, a California limited liability company (“MOTS”) under the terms and conditions of that certain Disposition and Development Agreement by and between Redevelopment Agency of the City of Santa Rosa and Museum on the Square, LLC 520 Third Street-Former AT&T Site, Santa Rosa Center Redevelopment Project dated June 29, 2010, pursuant to which MOTS will be making further improvements to the AT&T Building for utilization of said property and improvements to include the addition of 43 residential units.

WHEREAS, Grantee desires to have certain limited rights of access for passenger vehicles of residents within the AT&T Building reinstated in order to facilitate the future development of residential units in downtown Santa Rosa and City desires to assist in the facilitation of development of residential units within the downtown.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantee and the City covenant and agree as follows:

A G R E E M E N T

1. Grant of Easement. For valuable consideration, the City reconveys certain of the rights given in that Original Easement and hereby grants to Grantee easement rights for limited passenger vehicle access over and across the Transit Mall for residents of the AT&T Building, the nature, character, and extent to be as described and set forth herein, which easement rights shall be subject to the conditions set forth in this Agreement (such conveyance hereinafter referred to as the “Easement”).

2. Character of Easement. The Easement granted by the City to Grantee hereunder shall run appurtenant to the AT&T Building in accordance with the Term herein described.

3. Description of Easement. The Easement shall be for the specific purpose of allowing passenger vehicle access into and out of the Transit Mall via B Street to the AT&T Building solely for those individuals residing in the residential units within the AT&T Building, and shall not be extended to any invitees, guests or other users. The scope of the Easement shall not be expanded unless done in a written agreement between the City and the Grantee, or its successor in interest.

4. Term. This Easement shall have no force or effect unless and until the residential units anticipated to become part of the AT&T Building are constructed and ready for occupancy and shall only continue to serve the purpose of providing passenger vehicle access to the AT&T Building as specifically set forth herein.

5. Access Gate; Restrictions on Use. Grantee shall have the right to install an access gate at the entrance from the Transit Mall to the AT&T Building equipped with a keyed or coded access gate to discourage general public access (the “Access Gate”). Grantee shall be solely

responsible to construct and maintain the Access Gate and associated signage in good operating condition and repair. The Access Gate shall be set back not less than eighteen (18) feet from the Transit Mall back-of-sidewalk and shall open towards the AT&T Building. An audible and visual warning system shall be provided at the access driveway's outbound lane to be activated when a car is present at the stop bar in such form as may be approved by the City's Traffic Engineer (the "Warning System"). Grantee shall be solely responsible to construct and maintain the Warning System in operating condition and repair. Access through the Transit Mall shall be solely from and to B Street and not from or to Santa Rosa Avenue. Passenger vehicles allowed under this Easement shall only enter the Transit Mall from B Street and then turn left onto the AT&T Building property, and when exiting, shall exit to the right back onto the Transit Mall to B Street. Grantee shall be responsible for the cost of installing and maintaining signs, markings and pavement treatments in the Transit Mall intended to allow limited access to the AT&T Building property as described herein, all of which shall be installed in a manner acceptable to the City prior to any use pursuant to this Easement. Grantee hereby understands and acknowledges that nothing herein shall be construed so as to prohibit the continued use and operation of the Transit Mall as a regional transit hub for the greater Santa Rosa area and Grantee shall at all times endeavor to maintain and operate the AT&T Building in a manner compatible with such primary use of the Transit Mall, including but not limited to allowance for the temporary blockage of the driveway into and out of the AT&T Building by buses or transit passengers and the expansion of mass transit use over time within the Transit Mall.

6. Operating Memorandum. In conjunction with the granting and recording of this Easement, Grantee shall also enter into an operating memorandum with the City for purposes of addressing operational details of the use of the Easement ("Operating Memorandum"), to include without limitation, the hours during which the Access Gate shall be left open to prevent passenger vehicle queuing that could interfere with transit use and the process for permitting and educating residents who reside within the residential units (whether owners or tenants) of the limitations set forth in the Easement and the need to conduct ingress and egress through the Transit Mall with care to the primary use (including bus and transit passenger use). The City and Grantee, or its successor, shall each be entitled to request a review of the Operating Memorandum at least once annually as each party may deem necessary, to address any operational issues that may arise due to use of the Easement. The City shall also have the right to make unilateral changes to the Operating Memorandum in order to address identified safety issues, recorded ongoing negative impacts to bus operations in the Transit Mall, or failures to adhere to the conditions and limitations on use as contained in this Easement, provided that such changes shall not materially impact Grantee's rights of access under this Easement. The City shall provide not less than thirty (30) days prior written notice to Grantee of any changes. In the event that Grantee objects to changes to the Operating Memorandum as proposed by the City, Grantee shall notify the City in writing of such objections within fifteen (15) days from receipt of notice of the proposed changes and the City and Grantee shall meet to discuss possible alternatives prior to the expiration of said thirty-day period. The City Manager shall be the final decision-maker in the event of any dispute regarding proposed changes to the Operating Memorandum.

7. **Indemnity.** The City shall not be liable to the Grantee or any third party for any injury, loss, or damage arising out of or in connection with the use, by or through the City, of the Easement granted herein, except to the extent that such injury, loss, or damage is caused by the sole, active negligence or due to the willful misconduct of the City, its agents or employees. The City shall have no responsibility or liability for the operation or maintenance of the Access Gate. As an ongoing requirement and condition of granting this Easement, Grantee agrees, on behalf of its officers, employees, successors, tenants and agents, to defend, indemnify, hold harmless, and release the City, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses (including attorneys' fees and court costs) that may be asserted by any person or entity arising out of or relating to the use of the Easement granted herein, excepting only that resulting from the sole, active negligence or willful misconduct of the City, its officers, agents or employees. Grantee further agrees to compensate the City for any damage to the Transit Mall as a result of the installation, operation or maintenance of the Access Gate and the use of the Easement, excepting normal wear and tear resulting from use consistent with the terms of this Easement.

8. **Insurance.** Grantee shall at all times during the term of this Easement maintain in full force and effect commercial general liability insurance (occurrence policy form) from an insurer reasonably acceptable to the City, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$3,000,000 per occurrence and \$5,000,000 annual aggregate. All insurance coverage available or applicable to this Easement is intended to apply to the full extent of the policies. Nothing contained in this Easement shall be construed to limit the application of such coverage.

All coverage types and minimum coverage amounts are subject to approval, modification and additional requirements by the City, as the need arises. Grantee shall not make any reductions in scope of coverage that may affect City's protection without City's prior written consent.

Endorsements:

Said insurance coverage shall be evidenced by a certificate of insurance with policy endorsements and shall be executed by an authorized official of the insurer(s). In addition to the minimum coverage amounts provided hereinabove, policy endorsements shall be attached to the certificate, which also provides the following:

- (A) "The City of Santa Rosa, its officers, employees and agents are covered as additional insured with respect to any liability arising out of or connection with any use and operation of the property, including use of the easement granted by the City for limited passenger vehicle use of the Santa Rosa City Transit Mall at Second Street."
- (B) "The insurance coverage afforded by this policy shall be primary insurance with respect to the City of Santa Rosa, its officers, officials and employees. Any insurance or self-insurance maintained by the City of Santa Rosa, its officers, officials or employees shall be in excess of the insurance afforded to the named insured by this policy and shall not contribute to any loss."

- (C) An unqualified statement that "The insurer or its authorized agent will provide to the City at least thirty (30) days prior notice of cancellation or material change in coverage," or alternatively a broker letter agreeing to provide such notice to the City.

9. No Waiver of Breach. Enforcement of the provisions of this Agreement shall be at the discretion of each party, and any forbearance by a party to exercise its rights under this Agreement in the event of any breach of any provision of this Agreement by the other party shall not be deemed or construed to be a waiver by that party of such provision or of any subsequent breach of the same or any other provision of this Agreement or of any of that party's rights under this Agreement.

10. Amendment. This Agreement may be amended or terminated only by a writing signed by both parties.

11. Termination. Except as otherwise provided herein or as may be provided by law or in equity, this Agreement may only be terminated by a writing signed by both parties.

12. Severability. If any provision of this Agreement is found to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision of this Agreement.

13. Notices. Any notice, demand, request, approval, or other communication that either party desires or is required to be given under this Agreement shall be in writing and may be given by personal delivery or by mail. Notices, demands, requests, approvals, or other communications sent by mail should be addressed as follows:

GRANTEE: Redevelopment Agency of the City of Santa Rosa
Attn: Executive Director
90 Santa Rosa Avenue
Santa Rosa, CA 95404

CITY: City of Santa Rosa
Attn: City Manager
100 Santa Rosa Avenue, Room 10
Santa Rosa, CA 95404

and when so addressed, shall be deemed given upon deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid. In all other instances, notices, demands, requests, approvals, or other communications shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, approvals, or other communications are to be given by giving notice pursuant to this section.

14. Applicable Law and Forum. Interpretation and performance of this Agreement shall be governed by California law and any action to enforce the provisions of this Agreement or the breach thereof shall be brought and tried in the County of Sonoma.

15. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

16. Integration. This Agreement is the final and complete expression of an easement agreement delineating property rights between the parties.

17. Binding Effect; Successors and Assigns. This Agreement shall run with the land and shall be binding on and shall inure to the benefit of the heirs, administrators, successors, and assigns of Grantee and the City.

18. Captions. The captions in this Agreement have been included solely for convenience of reference. They are not a part of this Agreement and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, Grantee and the City have executed this Agreement as set forth below.

THE CITY OF SANTA ROSA,
a California charter city

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA ROSA

By: _____

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
Agency Counsel

ATTACHMENTS:

Notary Acknowledgments
Certificate of Acceptance for RDA
Legal description for AT&T Building

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interests in real property conveyed by the Easement Agreement dated _____, 2011 from the City of Santa Rosa, a California Charter City, to the Redevelopment Agency of the City of Santa Rosa, a public body organized and existing under laws of the State of California (Agency), is hereby accepted by order of the Agency on _____ pursuant to authority conferred by Resolution No. _____, adopted on - _____, and the Agency consents to recordation of the Easement Agreement with this Certificate of Acceptance by its duly authorized officer.

Dated

REDEVELOPMENT AGENCY
OF THE CITY OF SANTA ROSA,
a public body organized and existing
under the laws of the State of
California

By: _____
DAVID E. GOUIN
Executive Director

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

LEGAL DESCRIPTION OF THE SITE

Real Property in the City of Santa Rosa, County of Sonoma, State of California, described as follows:

PARCEL A, AS SHOWN UPON RECORD OF SURVEY FILED FOR RECORD ON DECEMBER 9, 1983 IN BOOK 352 OF MAPS AT PAGES 22 AND 23, SONOMA COUNTY RECORDS.

APN: 010-063-027 AND 010-063-019

OPERATING MEMORANDUM

520 Third Street – AT&T Building

CITY OF SANTA ROSA AND REDEVELOPMENT AGENCY OF THE CITY OF SANTA ROSA

OWNER is the Redevelopment Agency of the City of Santa Rosa, or any future owner, of that certain property located at 520 Third Street, Santa Rosa. OWNER is currently in contract to sell the AT&T Building to Museum on the Square LLC, a California limited liability company (DEVELOPER) under the terms and conditions of that certain Disposition and Development Agreement by and between Redevelopment Agency of the City of Santa Rosa and Museum on the Square, LLC 520 Third Street-Former AT&T Site, dated June 29, 2010, pursuant to which DEVELOPER will be making further improvements to the AT&T Building for utilization of said property, and improvements to include the addition of museum, restaurant, office and residential uses, a project called Museum on the Square (MOTS).

The purpose of this Operating Memorandum is to (1) meet the obligations pursuant to the Easement Agreement by and between The City of Santa Rosa (CITY) and OWNER, by which CITY grants to OWNER easement rights for limited passenger vehicle access over and across the Transit Mall for residents of the AT&T Building for purposes of the use of the Easement recorded in the Official Records of Sonoma County as Document No. _____; and (2) to fulfill the condition of design review approval for the Museum on the Square project for operational details to minimize any practical conflicts between building requirements/use of Second Street driveway and transit operations.

This Operational Agreement will follow the conveyance of the property and easement rights to future property owners, the first of which is anticipated to be the DEVELOPER.

The OWNER shall take the following steps to minimize conflicts between Transit Mall and MOTS operations.

I. Definitions

1. “Delivery/Service” vehicles are those vehicles that enter the site for a commercial, service, operational, or similar purpose for the commercial or residential tenants of the building.
2. “Large Truck” is defined as a truck which exceeds the maximum length able to turn around within the MOTS parking lot, as identified by a turning movement study performed by DEVELOPER for OWNER and approved by the CITY.
3. “Commercial tenants” includes all non-residential owners or tenant occupants.
4. “Operating hours” is defined as the regular operating times of Santa Rosa CityBus from the first bus pull-in to the last bus pull-out at the Transit Mall.

II. Contact Information

Prior to commencement of construction of the MOTS project or the Transit Mall Revitalization (TM) project, the OWNER and the City of Santa Rosa Transit Department (CITY) shall provide each other with the following contact information in writing:

- Contact Name
- Contact email
- Contact address
- Contact office phone number and fax
- Contact cell number if available

This information shall be provided for both primary and alternative contacts and shall be kept up to date by the CITY and OWNER. OWNER and CITY shall also provide this information for the construction-period project superintendents and project managers.

III. Ordinary Use by Commercial Tenants Prohibited

OWNER shall incorporate into its leases or rental agreements with commercial tenants a provision prohibiting owners of commercial spaces, commercial tenants, their employees, customers or invitees using Transit Mall to access the building site for parking or passenger drop-off purposes, whether transient or for extended hours. Should Covenants, Conditions and Restrictions be prepared and recorded by OWNER as part of any subdivision of the building, this provision shall be incorporated therein. Only Delivery/Service vehicles with a commercial, service, operational or similar purpose are excluded from the provision set forth in this section.

IV. Residential Parking

Residential tenants or owners shall be provided access for one vehicle per on-site parking space through the Transit Mall. The OWNER will furnish each vehicle to access the MOTS site through the Transit Mall with a visible identifier of the right to do such. Vehicles must display the visible identifier at any time they attempt to traverse the Transit Mall in order to enter or exit the MOTS site. OWNER will be responsible for ensuring that no more than one identifier is provided per each on-site residential space.

OWNER shall incorporate into its leases, rental or purchase agreements with residential tenants or buyers a provision prohibiting their visitors using Transit Mall to access the building site for visitor parking, whether transient or for extended hours. Should Covenants, Conditions and Restrictions be prepared and recorded by OWNER as part of any subdivision of the building, this provision shall be incorporated therein.

All residential tenants or buyers must attend a Transit Mall Orientation, of no greater than one hour in duration, provided by the CITY prior to, or within one week, of accessing on-site parking located on the MOTS site. CITY shall make regular Transit Mall Orientations available no less than twice in any given calendar month. At OWNER'S request, CITY must provide more frequent Transit Mall Orientations if more than three residential tenants require such.

Residential vehicles shall access the MOTS Project site through the Transit Mall only by the B Street/Second Street intersection, thus restricting project access driveway operations to left-in-right-out movements.

V. Incidental Deliveries and Service Vehicles

Vehicles performing incidental deliveries and/or service calls shall not be restricted from using the Transit Mall except as follows:

1. Large Trucks shall be prohibited from using the Transit Mall during Operating Hours. During non-Operating Hours, Large Trucks must comply with Section VI "Large Truck Deliveries" section of this Operating Memorandum, or during the MOTS construction, with Section VII, "Construction Period Conditions.
2. The Delivery/Service vehicle shall pull fully into the driveway so that at no time does it block the public sidewalk or project into the Second Street travel way.
3. The Delivery/Service vehicle shall exit the building site head-out and shall not back into Transit Mall.
4. The Delivery/Service vehicle shall access and exit the Transit Mall only from B Street and in no case shall use the intersection of 2nd Street and Santa Rosa Avenue.

"Incidental Deliveries and Service Calls" are (1) those delivery of items customarily provided to commercial or residential tenants in the course of the business day or afterward; (2) tasks performed by persons laboring on, or providing services or materials for, exterior or interior building components or building or office equipment, whether those people are on-site maintenance staff or outside service personnel; (3) the use of commercial vehicles to move

household or commercial goods into the building from another location; and (4) garbage and waste pickup.

VI. Large Truck Deliveries

Large Trucks shall be prohibited from using the Transit Mall to access the MOTS site during Operating Hours. During non-Operating Hours large truck(s) are permitted to idle or park in the Transit Mall solely for the purposes of unloading material deliveries to the MOTS site. Large trucks are prohibited from idling and/or parking in the Transit Mall when not actively unloading materials. Large trucks are only permitted to idle or park curbside in the area to the west of the MOTS driveway, and cannot impede the traffic flow by buses through the Transit Mall.

VII. Construction-Period Conditions

During the initial and any subsequent period of MOTS building construction, use of Transit Mall shall be restricted as follows:

1. Delivery of construction materials, mobilization or demobilization of cranes, booms and other equipment, and removal of construction debris shall be limited to non-Operating Hours except as set forth at 2, below.
2. During Operating Hours, the activities set forth at 1, above, shall be permitted provided that (a) OWNER gives CITY contact listed in Section II above 72 hours prior written notice for movement through the Transit Mall of cranes and booms and at least 24 hours for the other activities, (b) OWNER provides safety and management personnel to conduct the vehicle to the site, first meeting the vehicle at any off-site location, (c) OWNER ensures that the operator of the vehicle conforms with any instructions provided by identified CITY contact listed in section II above, and (d) does not impede the normal bus traffic in the Transit Mall.
3. Notwithstanding 2, above, OWNER shall endeavor to use the adjoining property (1 Santa Rosa Avenue) to the west whenever possible for such deliveries during operating hours.

During the initial and any subsequent period of construction related to the Transit Mall Revitalization Project, OWNER must provide a schedule to CITY of regular delivery/service vehicle access. CITY will make all reasonable efforts to allow continuous access to the MOTS parking lot by OWNER. CITY will take all reasonable efforts to minimize temporary periods of MOTS site access closure and will provide no less than one week notice to OWNER of the expected duration for said closures.

VIII. Security Gates

The vehicular security gate on the MOTS site shall (1) be set back 18' from the back-of-sidewalk, and (2) shall remain open 7:00 a.m. to 6:00 p.m. Monday through Friday. During non-operating hours, OWNER shall provide to operators of all vehicles having the right to access the site from the Transit Mall with all necessary information to operate the gate safely and expeditiously.

IX. Signage

OWNER shall install permanent traffic-control signage on the MOTS site in accordance with the approved project plans. CITY has the right to review and approve any additional traffic control signage prior to its installation by OWNER on the external face of the southernmost fence and/or Access Gate on the MOTS site.

X. Operating Memorandum Review and Revisions

The CITY and OWNER, or its successor, shall each be entitled to request a review of the Operating Memorandum at least once annually as each party may deem necessary, to address any operational issues that may arise due to use of the Easement. The CITY shall also have the right to make unilateral changes to the Operating Memorandum in order to address identified safety issues, recorded ongoing negative impacts to bus operations in the Transit Mall, or failures to adhere to the conditions and limitations on use as contained in this Operating Memorandum, or the Easement provided that such changes shall not materially impact Grantee's rights of access under the Easement. The Operating Memorandum is binding on OWNER, its employees, officers and agents, and heirs or assigns.

CITY must provide no less than 60 days notice to OWNER of changes to the CityBus schedule that may impact the conditions of this Operating Memorandum.