

## RESOLUTION NO. 2010-597

Adopted by the Sacramento City Council

October 19, 2010

### APPROVING THIRD AMENDMENT TO GROUND LEASE WITH RAPTON INVESTMENT GROUP LLC

#### BACKGROUND

- A. Under City Agreement No. 2007-0555 (a ground lease dated June 5, 2007), the City leases approximately 17.63 acres of City-owned property to Raption Investment Group LLC ("Raption"). The north half of the property ( $\pm 9.01$  acres) is designated in the lease as Area 1 and is the site of Raption's Honda dealership. The south half of the property ( $\pm 8.62$  acres) is designated in the lease as Area 2 and is currently vacant.
- B. The City and Raption have amended City Agreement No. 2007-0555 twice. The first amendment, City Agreement No. 2007-0555-1, clarified various provisions in the ground lease. The second amendment, City Agreement No. 2007-0555-2, granted Raption a temporary, one-year reduction in rent so that Raption could cope with the steep decline in revenues caused by the severe financial and economic crisis that has beset the nation since late 2008.
- C. On May 8, 2010, the City Council approved a lease with Clear Channel Outdoor, Inc. ("CCO"). Under this lease, the City leases to CCO a portion of Area 2, which CCO will use to construct and operate a digital billboard. CCO also agrees in the lease to make the digital billboard available to Raption, at no cost, for the display of Raption's advertising messages.
- D. On September 7, 2010, the City Council approved an Exclusive Right to Negotiate ("ERN") with Chrysler Group Realty Company LLC ("Chrysler") for the purchase of  $\pm 5.119$  acres in Area 2.
- E. To facilitate the City's lease to CCO and the City's proposed sale of the  $\pm 5.119$  acres to Chrysler, Raption is willing to relinquish its leasehold on all of Area 2, except for a 0.14-acre site Raption needs for a sign, in return for the following: a right of first refusal and an option to purchase (at fair-market value) the portion of Area 2 not covered by CCO's digital billboard or subject to the ERN ( $\pm 3.36$  acres); a pro-rata rent reduction to reflect the reduced acreage leased; and an additional rent reduction to compensate Raption for the lost opportunity to sublease Area 2 in accordance with the lease.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The facts set forth in the Background are correct.
- Section 2. In accordance with section 3.68.120 of the Sacramento City Code, the City Council hereby approves the *Third Amendment to Ground Lease* that is attached to this resolution as Exhibit A.
- Section 3. In accordance with section 3.88.090 of the Sacramento City Code, the City Council hereby approves the *Agreement for Right of First Refusal* that is attached to this resolution as Exhibit B.
- Section 4. In accordance with section 3.88.090 of the Sacramento City Code, the City Manager (or his designee) is hereby authorized to negotiate with Raption an agreement granting Raption an option to purchase (at fair-market value) the portion of Area 2 that is not subject to the ERN or covered by CCO's digital billboard, i.e., ±3.36 acres, which is the ±3.36 acres not covered by the ERN less the ±0.14-acre site of CCO's billboard but including the ±0.14-acre site in the southeast corner. This agreement, which the City Manager (or his designee) is directed to bring back to the City Council for consideration at its meeting on November 2, 2010, is to address the following essential provisions:
- (a) the purchase price set forth in the option is to be the fair-market value fixed by an MAI appraiser acceptable to both parties, and it is to be subject to increase to account for inflation and any appreciation in value between the time the option is entered into and the time Raption exercises the option;
  - (b) the option term is to be 24 months;
  - (c) the option agreement may grant Raption the right to conduct a "Phase I Environmental Assessment" of the property before deciding whether to exercise the option and purchase the property;
  - (d) the City will make no warranty as to the physical condition of the property, which Raption is to accept "as is and with all faults" and in exclusive reliance on its own independent investigation;
  - (e) Raption is to take the property subject to the Maintenance Agreement for the cap (between the City and the County of Sacramento Environmental Management Department, and binding on the City's successors in interest) and the recorded Covenant to Restrict Use of Property – Environmental Restriction.

The City Council hereby finds that entering into such an agreement would be in the best interest of the City.

- Section 5. This resolution supersedes Resolution No. 2010-533, adopted on September 7, 2010, which the City Council hereby rescinds.

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Exhibit B Agreement of First Refusal

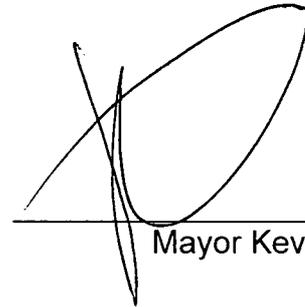
Adopted by the City of Sacramento City Council on October 19, 2010 by the following vote:

Ayes: Councilmembers Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmember Cohn.



\_\_\_\_\_  
Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**Exhibit A**

**Third Amendment to Ground Lease**

### THIRD AMENDMENT TO GROUND LEASE

This Third Amendment to Ground Lease, dated October 1, 2010, is between the **City of Sacramento** ("Landlord"), a California municipal corporation; and **Rapton Investment Group LLC** ("Tenant"), a California limited-liability company.

#### Background

Landlord and Tenant are parties to a Ground Lease dated June 5, 2007, and designated as City Agreement No. 2007-0555 ("the Ground Lease"). They are also parties to a First Amendment to Ground Lease dated July 2, 2007, and designated as City Agreement No. 2007-0555-1 ("the First Amendment"); and a Second Amendment to Ground Lease dated February 17, 2009, and designated as City Agreement No. 2007-0555-2 ("the Second Amendment"). As used below, "the Amended Lease" means the Ground Lease as amended by the First Amendment and the Second Amendment.

Under the Amended Lease, Landlord leases approximately 17.63 acres to Tenant. The north half of the leased property ( $\pm 9.01$  acres) is described in the Amended Lease as Area 1 and is the site of a Honda dealership operated by Tenant's affiliate, Mel Rapton, Inc. ("Rapton"). The south half of the leased property ( $\pm 8.62$  acres) is described in the Amended Lease as Area 2. Although the Amended Lease authorizes Tenant to sublease Area 2 to a "High-Volume Dealership," Tenant has not subleased Area 2, which remains vacant.

On May 8, 2010, Landlord's governing body, the Sacramento City Council, approved a lease between Landlord and Clear Channel Outdoor, Inc. ("CCO") under which CCO will construct and operate a digital billboard within the southeastern portion of Area 2. Among other things, CCO agrees in the lease to make the digital billboard available to Rapton's Honda dealership on Area 1, at no cost, for the display of the dealership's advertising messages.

On September 7, 2010, the City Council approved an Exclusive Right to Negotiate ("ERN") with Chrysler Group Realty Company LLC ("Chrysler") for the purchase of  $\pm 5.119$  acres in the western portion of Area 2.

To facilitate Landlord's lease to CCO and Landlord's proposed sale of the  $\pm 5.119$  acres to Chrysler, Tenant is willing to relinquish its leasehold on all of Area 2, except for a  $\pm 0.14$ -acre site Rapton needs for a sign, in return for the following: a right of first refusal and an option to purchase (at fair-market value) the portion of Area 2 not covered by CCO's digital billboard or subject to the ERN ( $\pm 3.36$  acres); a pro-rata rent reduction to reflect the reduced acreage leased; and an additional rent reduction to compensate Tenant for the lost opportunity to sublease Area 2 in accordance with the Amended Lease.

***With these background facts in mind, Landlord and Tenant hereby agree as follows:***

**1. Modification of the Property.** Section 1.02 of the Amended Lease defines "the Premises" to include "the Property," which is identified in Background Paragraph A of the Amended Lease and described and depicted in Exhibit A to the Amended Lease. As of October 1, 2010, "the Property"

that is included within the definition of "the Premises" consists of the approximately 9.15 acres described and depicted in the documents attached to this Third Amendment to Ground Lease as **Exhibit 1**.

**2. Modification of Section 3.03.** As of October 1, 2010, Section 3.03 in the Amended Lease is modified to read in its entirety as follows:

**Section 3.03. Monthly Rent**

- (a) *Monthly Rent.* As rental for use and occupancy of the Premises during the Operations Phase of the Initial Term ("Monthly Rent"), Tenant shall pay Landlord \$25,000.00 a month unless that amount is prorated under Subsection 3.03(b) or adjusted under Subsection 3.03(c).
- (b) *Proration of Monthly Rent.* If the Operations Phase begins on a day other than the first day of a month, then the first and last months' payment of Monthly Rent will be prorated.
- (c) *Adjustments to Monthly Rent.* On the first day of the sixth year of the Operations Phase, and every five years afterward while this Lease is in effect, the Monthly Rent will be increased by 12%.
- (d) *Due Date for Monthly Rent.* Monthly Rent is due and payable on the first day of each calendar month at the address set forth in Subsection 14.01.

**3. Modification of Exhibits A and B to the Ground Lease.** As of October 1, 2010, the documents attached to the Amended Lease as Exhibits A and B are replaced with the documents attached to this Third Amendment to Ground Lease as **Exhibit 1**, which describes and depicts both the Property and the Premises in accordance with section 1 above.

**4. All Other Terms Remain in Force.** Except as modified by sections 1, 2, and 3 above, the Amended Lease remains in full force.

**5. Interpretation.** The Amended Lease is to be interpreted and applied consistently with the modifications in sections 1, 2, and 3 above as if all necessary changes have been made.

**6. Entire Agreement.** This Third Amendment to Ground Lease sets forth the parties' entire understanding regarding the matters set forth and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

**7. Counterparts.** The parties may execute this Third Amendment to Ground Lease in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

October 19, 2010

**8. Effective Date.** This Third Amendment to Ground Lease is effective as of October 1, 2010, when both parties have signed it. The modifications described in sections 1, 2, and 3 are prospective only.

**City of Sacramento**

**Rapton Investment Group LLC**

By: \_\_\_\_\_  
Gus Vina, Interim City Manager  
Date: October \_\_\_\_, 2010

By: \_\_\_\_\_  
Curtis Rapton, Manager  
Date: October \_\_\_\_, 2010

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Joseph P. Cerullo  
Senior Deputy City Attorney

## Exhibit 1 – Third Amendment to Ground Lease

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The Property consists of the  $\pm 4.857$  acres designated in the attached documents as Area A-2, the  $\pm 0.140$  acre ( $\pm 6,109$  square feet) designated in the attached documents as Area B-2, and the  $\pm 4.154$  acres designated in the attached documents as Area B-3 – a total of  $\pm 9.151$  acres.

- Attached document 1 is a two-page description of Area A-2.
- Attached document 2 is a one-page depiction of Area A-2
- Attached document 3 is a one-page description of Area B-2
- Attached document 4 is a one-page depiction of Area B-2
- Attached document 5 is a two-page description of Area B-3
- Attached document 6 is a one-page depiction of Area B-3

Tenant and its subtenants may use Area B-2 for the following purposes only:

- (a) to construct, maintain, repair, and operate one monument sign that displays the name and logo of the automobile dealership operating on Area A-2 and Area B-3; and
- (b) to display automobiles offered for sale or lease by the automobile dealership operating on Area A-2 and Area B-3.

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**Document 1**

**DESCRIPTION OF AREA A-2**

Being a portion of Parcel A as shown and so designated on that certain Parcel Map entitled "Haggin Oaks" filed for record in Book 207 of Parcel Maps, at Page 9, Sacramento County Records situate in Sections 26 and 31 of Rancho Del Paso, City of Sacramento, County of Sacramento, State of California, said property being more particularly described as follows:

Beginning at a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking the intersection of the easterly right-of-way line of Fulton Avenue with the centerline of the private Rapton Drive as shown on said Parcel Map; thence from said **POINT OF BEGINNING** coincident with said easterly right-of-way line of Fulton Avenue for the following 7 arcs, courses and distances:

1. North 05°28'37" East a distance of 29.50 feet to a point of curvature;
2. from a radial line which bears South 05°28'37" West, 11.25 feet along the arc of a non-tangent 429.50 foot radius curve to the right through a central angle of 01°30'04" to a point of compound curvature;
3. 38.48 feet along the arc of a tangent 25.83 foot radius curve to the right through a central angle of 85°21'59" to a point of reverse curvature;
4. 148.21 feet along the arc of a tangent 526.67 foot radius curve to the left through a central angle of 16°07'25";
5. North 08°01'16" West a distance of 53.38 feet to a point of curvature;
6. from a radial line which bears North 70°31'12" East, 102.65 feet along the arc of a non-tangent 534.67 foot radius curve to the left through a central angle of 10°59'59"; and
7. 48.24 feet along the arc of a tangent 30.83 foot radius curve to the right through a central angle of 89°38'39" to the southerly right-of-way line of Haggin Oaks Drive as shown on said Parcel Map;

thence leaving said easterly right-of-way line of Fulton Avenue, coincident with said southerly right-of-way line of Haggin Oaks Drive for the following 7 arcs, courses and distances:

1. North 59°09'52" East a distance of 44.41 feet to a point of curvature;
2. 197.35 feet along the arc of a tangent 565.00 foot radius curve to the right through a central angle of 20°00'47";
3. North 79°10'39" East a distance of 143.60 feet to a point of curvature;
4. 138.52 feet along the arc of a tangent 635.00 foot radius curve to the left through a central angle of 12°29'55";
5. North 66°40'44" East a distance of 12.10 feet to a point of curvature;
6. 33.92 feet along the arc of a tangent 32.00 foot radius curve to the right through a central angle of 60°43'57" to a point of reverse curvature; and
7. 26.58 feet along the arc of a tangent 58.00 foot radius curve to the left through a central angle of 26°15'12";

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thence leaving said southerly right-of-way line of Haggin Oaks Drive, coincident with the easterly line of said Parcel A for the following 5 courses and distances:

1. South 13°32'50" East a distance of 98.71 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944;
2. South 79°10'40" West a distance of 69.11 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944;
3. South 10°49'20" East a distance of 240.99 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944;
4. South 79°10'40" West a distance of 289.83 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944; and
5. South 13°32'50" East a distance of 133.68 feet to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking the centerline of the private Rapton Drive as shown on said Parcel Map;

thence leaving said easterly line of Parcel A, coincident with said centerline of the private Rapton Drive for the following 2 arcs:

1. from a radial line which bears South 06°32'01" East, 151.13 feet along the arc of a non-tangent 2994.00 foot radius curve to the right through a central angle of 02°53'32" to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking a point of compound curvature;
2. 73.05 feet along the arc of a tangent 459.00 foot radius curve to the right through a central angle of 09°07'06" to the Point of Beginning.

Containing 4.857 acres of land, more or less.

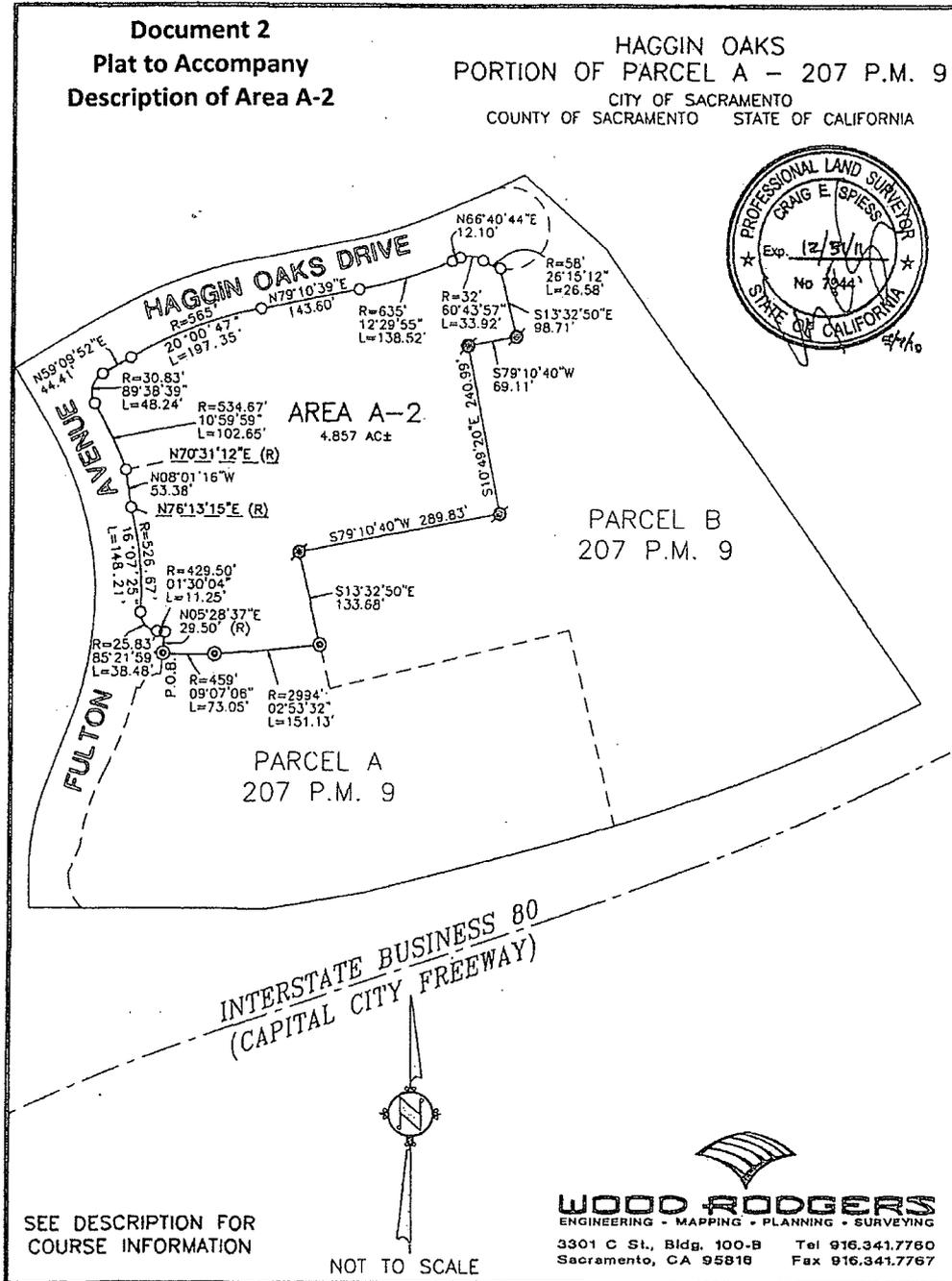
*See Exhibit "B", plat to accompany description, attached hereto and made a part hereof.*

The Basis of Bearings for this description is California State Plane Coordinate System, Zone 2, NAD'83, as measured between GPS Station "G3709", and GPS Station "G3810 as shown and so designated on that certain Record of Survey entitled "Record of Survey GPS Static Survey" filed for record in Book 63 of Surveys, at Page 29, Sacramento County Records. Said bearing is North 61°25'55" East. Distances shown are ground based.

  
Craig E. Spiess P.L.S. 7944  
Expires: December 31, 2011  
Date: 5/7/10



PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA



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Document 3

DESCRIPTION OF AREA B-2

Being a portion of Parcel B as shown and so designated on that certain Parcel Map entitled "Haggin Oaks" filed for record in Book 207 of Parcel Maps, at Page 9, Sacramento County Records situate in Sections 26 and 31 of Rancho Del Paso, City of Sacramento, County of Sacramento, State of California, said property being more particularly described as follows:

Beginning at a found 6" x 6" concrete highway monument marking the southeast corner of said Parcel B as shown on said Parcel Map; thence from said POINT OF BEGINNING coincident with the south line of said Parcel B, from a radial line which bears South 26°29'08" East, 106.08 feet along the arc of a non-tangent 2750.00 foot radius curve to the right through a central angle of 02°12'37" to the intersection with the multi-purpose easement line as shown on said Parcel Map; thence leaving said south line of Parcel B, coincident with said multi-purpose easement line, North 11°31'43" East a distance of 143.22 feet to the east line of said Parcel B; thence leaving said multi-purpose easement line, coincident with the east line of said Parcel B, South 35°18'51" East a distance of 116.26 feet to the Point of Beginning.

Containing 6,109 square feet of land, more or less.

*See Exhibit "B", plat to accompany description, attached hereto and made a part hereof.*

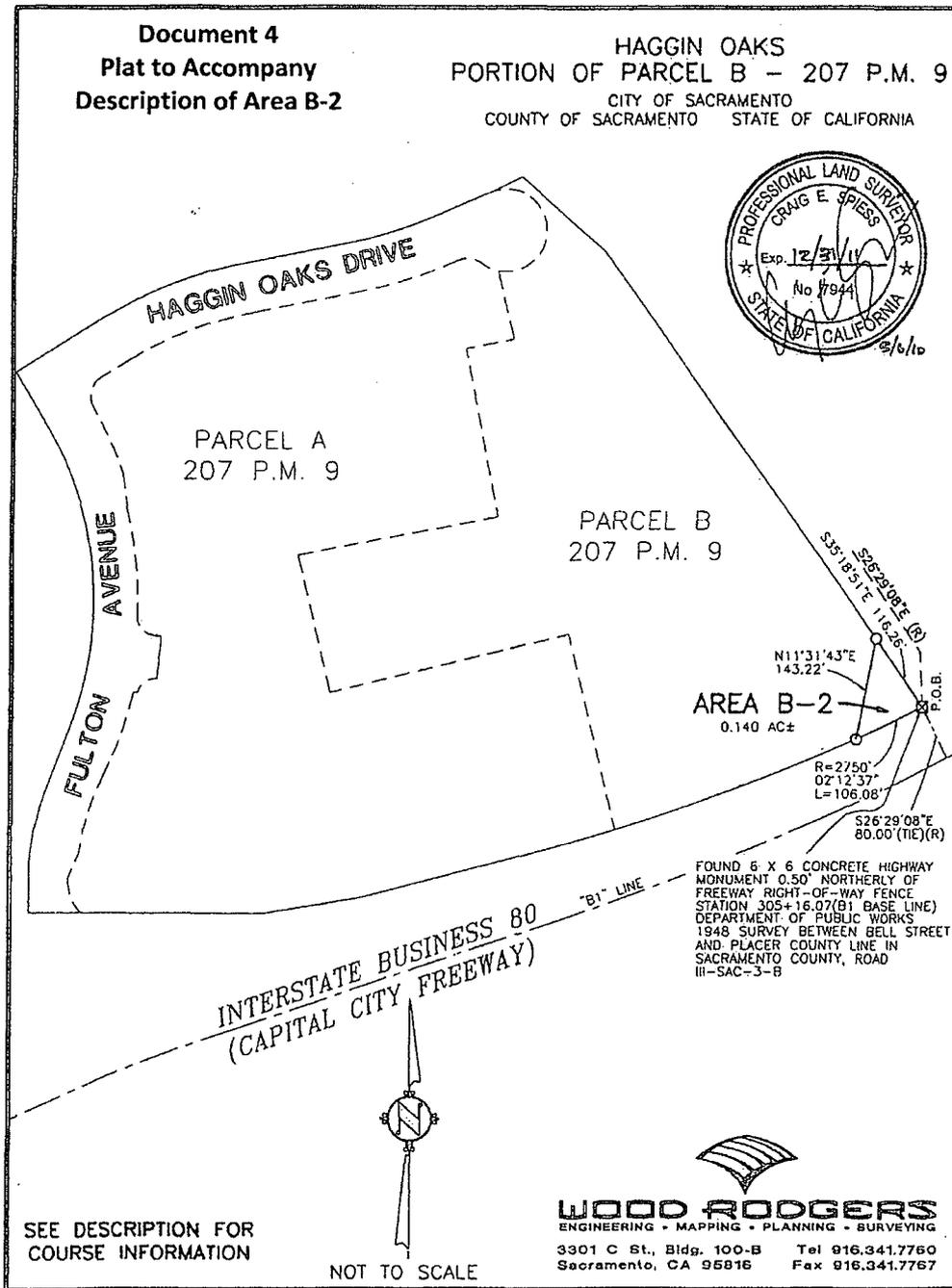
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Expires: December 31, 2011

Date: 5/6/10



PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA



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**Document 5**

**DESCRIPTION OF AREA B-3**

Being a portion of Parcel B as shown and so designated on that certain Parcel Map entitled "Haggin Oaks" filed for record in Book 207 of Parcel Maps, at Page 9, Sacramento County Records situate in Sections 26 and 31 of Rancho Del Paso, City of Sacramento, County of Sacramento, State of California, said property being more particularly described as follows:

Beginning at a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking the intersection of the westerly line of said Parcel B with the centerline of the private Raption Drive as shown on said Parcel Map; thence from said **POINT OF BEGINNING** coincident with said westerly line of Parcel B for the following 5 courses and distances:

1. North 13°32'50" West a distance of 133.68 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944;
2. North 79°10'40" East a distance of 289.83 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944;
3. North 10°49'20" West a distance of 240.99 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944;
4. North 79°10'40" East a distance of 69.11 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944; and
5. North 13°32'50" West a distance of 98.71 feet to the southerly right-of-way line of Haggin Oaks Drive as shown on said Parcel Map;

thence coincident with said right-of-way line of Haggin Oaks Drive, from a radial line which bears South 11°09'29" West, 217.12 feet along the arc of a non-tangent 58.00 foot radius curve to the left through a central angle of 214°28'45" to the northerly line of said Parcel B; thence coincident with said northerly line of Parcel B, North 64°01'34" East a distance of 50.01 feet to a found 1-1/4 inch iron pipe with cap stamped L.S. 7944 marking the most northerly corner of Parcel B; thence leaving said northerly line of Parcel B, coincident with the east line of said Parcel B for the following 2 courses and distances:

1. South 48°53'25" East a distance of 158.17 feet to a found 1-1/4 inch iron pipe with cap stamped L.S. 7944; and
2. South 35°18'51" East a distance of 426.90 feet to a found 1-1/4 inch iron pipe with cap stamped L.S. 7944 marking the intersection of the east line of Parcel B with the centerline of the private Raption Drive as shown on said Parcel Map;

thence leaving said east line of Parcel B, coincident with the centerline of the private Raption Drive for the following 4 arcs, courses and distances:

1. South 54°41'09" West a distance of 72.63 feet to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking a point of curvature;

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2. 88.30 feet along the arc of a tangent 365.00 foot radius curve to the right through a central angle of 13°51'42" to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking a point of compound curvature;
3. 472.76 feet along the arc of a tangent 1965.00 foot radius curve to the right through a central angle of 13°47'05" to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking a point of compound curvature; and
4. 59.27 feet along the arc of a tangent 2994.00 foot radius curve to the right through a central angle of 01°08'03" to the Point of Beginning.

Containing 4.154 acres of land, more or less.

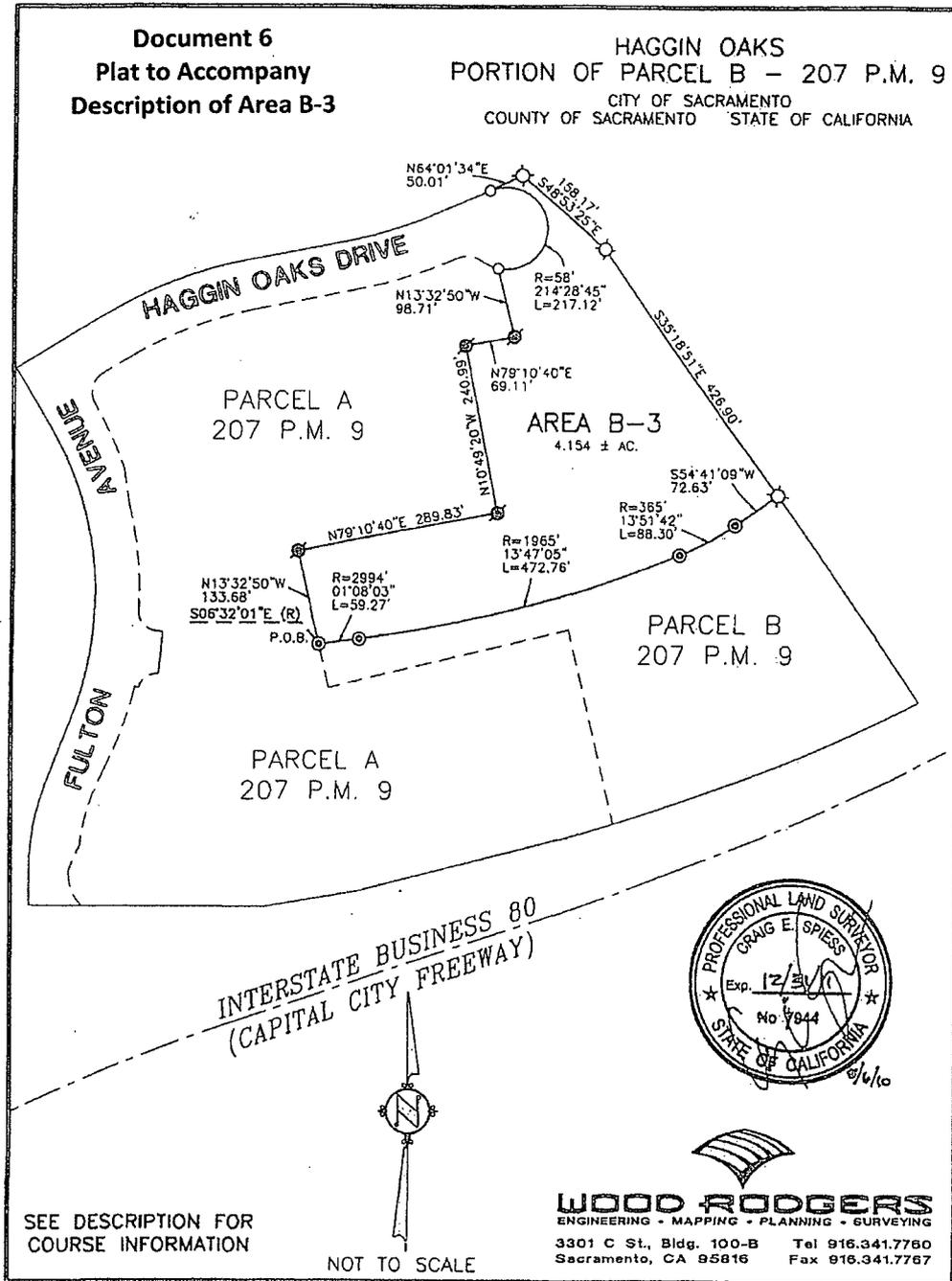
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Craig E. Spiess P.L.S. 7944  
Expires: December 31, 2011  
Date: 5/6/10



PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA



**Exhibit B**

**Agreement for Right of First Refusal**

## AGREEMENT FOR RIGHT OF FIRST REFUSAL

This agreement, dated October 19, 2010, for purposes of identification only, is between the **City of Sacramento** ("the City"), a California municipal corporation; and **Rapton Investment Group LLC** ("Rapton"), a California limited-liability company.

### Background

The City and Rapton are parties to a Ground Lease dated June 5, 2007, and designated as City Agreement No. 2007-0555 ("the Ground Lease"). They are also parties to a First Amendment to Ground Lease dated July 2, 2007, and designated as City Agreement No. 2007-0555-1 ("the First Amendment"); and a Second Amendment to Ground Lease dated February 17, 2009, and designated as City Agreement No. 2007-0555-2 ("the Second Amendment"). As used below, "the Amended Lease" means the Ground Lease as amended by the First Amendment and the Second Amendment.

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On September 7, 2010, the City Council approved an Exclusive Right to Negotiate ("ERN") with Chrysler Group Realty Company LLC ("Chrysler") for the purchase of  $\pm 5.119$  acres in the western portion of Area 2.

To facilitate the City's lease to CCO and the City's proposed sale of the  $\pm 5.119$  acres to Chrysler, Rapton is willing to relinquish its leasehold on all of Area 2, except for a  $\pm 0.14$ -acre site Rapton needs for a sign, in return, among other things, for a right of first refusal and an option to purchase (at fair-market value) the portion of Area 2 not covered by CCO's digital billboard or subject to the ERN. That portion of Area 2 ("the Property"), consisting of  $\pm 3.36$  acres, is described and depicted in **Exhibit A** to this agreement, which addresses the right of first refusal; the parties will address the option to purchase in a separate agreement.

***With these background facts in mind, the City and Rapton hereby agree as follows:***

- 1. Consideration.** The consideration for this agreement is the amendment of Rapton's ground lease, described above in the Background, by which Rapton relinquishes its leasehold on all of Area 2, except for the 0.14-acre site Rapton needs for a sign, in return for a rent reduction, the right of first

refusal set forth in Section 2 below, and the option to purchase that will be set forth in a separate agreement.

**2. Right of First Refusal.** The City shall not sell or agree to sell the Property without first offering the Property to Rapton (see Section 3(m)(3) for the definition of "sell").

- (a) *Offer to Sell.* Before the City sells or agrees to sell the Property to a third party ("the Offeror"), the City shall offer to sell the Property to Rapton ("the First Offer"). The First Offer must be in writing, must be on terms and conditions identical to those proposed for the sale of the Property to the Offeror, and must include the following information:
- (1) the name of the Offeror;
  - (2) the purchase price proposed for the sale to the Offeror;
  - (3) the method of paying the purchase price;
  - (4) the amount of any earnest money deposit;
  - (5) the time and location for the close of escrow; and
  - (6) the other material terms and conditions of the proposed sale of the Property.
- (b) *Acceptance.* Rapton will have until 5:00 p.m. on the 10th business day (see Section 3(m)(1)) after the date the First Offer is effective ("the Acceptance Period") to accept the First Offer by delivering to the City an unequivocal, unconditional written notice of acceptance. If Rapton fails to accept the First Offer before the end of the Acceptance Period, then the First Offer will be considered rejected unequivocally and unconditionally, and the City may sell the Property to the Offeror on the same terms and conditions set forth in the First Offer.
- (c) *Counteroffer.* If Rapton responds to the First Offer with anything other than an unequivocal, unconditional acceptance or rejection, then the right of first refusal will terminate, and the City may consider the response to be an offer to purchase the Property on the terms and conditions in the response ("the Counteroffer"). The City may accept or reject the Counteroffer at its sole discretion. If the City rejects the Counteroffer, then the City will have no further obligations under this agreement.
- (d) *Closing Period.* If Rapton accepts the First Offer in accordance with Section 2(b), then Rapton shall immediately consummate the transaction with the City on the terms and conditions specified in the First Offer. The consummation shall occur at the later of the time specified for consummation in the First Offer or 30 calendar days after the date Rapton's acceptance of the First Offer is effective ("the Closing Period"). If Rapton fails to consummate the purchase of the Property within the Closing Period, then both Rapton's agreement to purchase the Property and this agreement for right of first refusal will terminate. After that termination, the City may enter

into an agreement concerning the sale of the Property with any third party, on whatever terms the City chooses, without further obligation under this agreement.

- (e) *Second Offer.* If, within 120 calendar days after Rapton unequivocally and unconditionally rejects the First Offer, the City enters into negotiations with the Offeror and is otherwise willing to enter into an agreement with the Offeror on terms substantially less favorable to the City than those contained in the First Offer, then the City shall offer to sell the Property to Rapton on those new terms ("the Second Offer"). The Second Offer must be in writing, must be on terms and conditions substantially identical to those proposed for the sale of the Property to the Offeror, and must include the information described in Sections 2(a)(1) through 2(a)(6) above. Rapton will have until 5:00 p.m. on the 10th business day after the Second Offer is effective to accept the new terms in writing, unequivocally and unconditionally. If Rapton fails to accept the new terms or rejects the new terms in writing, then the City will be free to consummate the transaction with the Offeror without any liability to Rapton. If Rapton accepts the new terms in accordance with this Section 2(e), then Rapton shall immediately consummate the transaction with the City on the terms and conditions specified in the Second Offer. The consummation shall occur at the later of the time specified for consummation in the Second Offer or 30 calendar days after the date Rapton's acceptance of the Second Offer is effective.

### 3. Miscellaneous Provisions.

- (a) *Term.* This agreement becomes effective when both parties have signed it, as indicated by the dates in the signature blocks below, and it expires at 5:00 p.m. on October 19, 2012, unless sooner terminated in accordance with Section 2(c), 2(d), or 3(b).
- (b) *Termination.* This agreement terminates on the first of the following events to occur:
- (1) Without the City's prior written consent, Rapton assigns or attempts to assign its rights under this agreement;
  - (2) Rapton rejects a First Offer or a Second Offer and the City subsequently consummates a sale of the Property to the Offeror in accordance with the First Offer or Second Offer;
  - (3) The expiration of the term; or
  - (4) Rapton's purchase of the Property.
- (c) *Notices.* Any offer, notice, or other communication under this agreement must be in writing and will be considered effective only when mailed or delivered in the manner provided by this Section 3(c) to the persons identified below. A mailed offer, notice, or other communication will be effective on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. An offer, notice, or other communication sent in any other manner will be effective when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 3(c).

*If to the City:*

City of Sacramento  
Economic Development Department  
915 I Street, Third Floor  
Sacramento, California 95814  
Attention: Diana Sasser, Project Manager

*If to Rapton:*

Rapton Investment Group LLC  
3630 Fulton Avenue  
Sacramento, California 95821  
Attention: Curtis Rapton, Manager

- (d) *Assignment.* Rapton may not assign its rights and obligations under this agreement without the City's prior written consent, and any assignment without such consent is void.
- (e) *Successors and Assigns.* Subject to the restriction on assignment in Section 3(d), this agreement inures to the benefit of, and is binding on, the parties and their successors and assigns.
- (f) *Time of Essence.* Time is of the essence in this agreement.
- (g) *Waiver.* A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon the other party's breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- (h) *Memorandum for Recordation.* A memorandum of this agreement may be recorded at Rapton's option, and the City, at Rapton's request, shall deliver to Rapton a signed and acknowledged memorandum in the form attached to this agreement as **Exhibit B**.
- (i) *Quitclaim Deed.* Concurrently with the execution of this agreement, Rapton shall deliver to the City a signed and acknowledged quitclaim deed in the form of attached **Exhibit C**. The City may record the quitclaim deed following the termination of this agreement. If Rapton purchases the Property, then the City shall return the quitclaim deed to Rapton at the consummation of the purchase.
- (j) *Litigation Costs.* The party prevailing in any litigation or arbitration concerning this agreement will be entitled to reasonable attorneys' fees and litigation costs through final resolution on appeal in addition to any other relief that may be granted in the litigation. If the City is the prevailing party, then this Section 3(k) will apply whether the City is represented in the litigation by the Office of the City Attorney or by outside counsel. "Prevailing party" includes a party dismissing an action in exchange for sums allegedly due; a party receiving performance from the other party of an alleged breach of covenant or a desired remedy where the performance is substantially equal to the relief sought in an action; or the prevailing party as determined by a court of law or an arbitrator.
- (k) *Severability.* If a court with jurisdiction holds any nonmaterial provision of this lease to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.

(l) *Definitions.* The following definitions apply in this agreement:

- (1) "Business day" means any day the City's main offices located at 915 I Street, Sacramento, California, are open to the public.
- (2) "Include" and its variants are not restrictive. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to."
- (3) "Sell" includes any transfer, conveyance, assignment, or lease of all or any portion of the Property or the City's interest in the Property

(m) *Interpretation.* This agreement is to be interpreted and applied in accordance with California law without regard to conflict-of-laws principles, except that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits A, B, and C are part of this agreement.

(n) *Counterparts.* The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

(o) *Integration and Modification.* This agreement sets forth the parties' entire understanding regarding the matters addressed. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

*(Signature Page Follows)*

October 19, 2010

**City of Sacramento**

By: \_\_\_\_\_  
Gus Vina, Interim City Manager  
Date: October \_\_, 2010

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Joseph P. Cerullo  
Senior Deputy City Attorney

**Rapton Investment Group LLC**

By: \_\_\_\_\_  
Curtis Rapton, Manager  
Date: October \_\_, 2010

**Exhibit A to Agreement for Right of First Refusal  
Property Description**

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The Property consists of the following three parcels:

1. The  $\pm 3.359$  acres designated in the attached documents as Area B-1, except for a  $\pm 0.140$ -acre parcel, generally located in the southwest corner of the Property, that is the site of a digital billboard constructed and operated by Clear Channel Outdoor, Inc. The parties do not have the exact location of the  $\pm 0.140$ -acre parcel but will amend this Exhibit A to show the exact location once it has been determined.
2. The  $\pm 0.140$  acre ( $\pm 6,109$  square feet) designated in the attached documents as Area B-2.
3. The  $\pm 0.403$  acre ( $\pm 17,539$  square feet) designated in the attached documents as Area B-2. This parcel will be burdened an easement in favor of the City and the City's successors in interest.

Attached documents:

- Document 1 is a two-page description of Area B-1
- Document 2 is a one-page depiction of Area B-1
- Document 3 is a one-page description of Area B-2
- Document 4 is a one-page depiction of Area B-2
- Document 5 is a one-page description of Area B-4
- Document 6 is a one-page depiction of Area B-4

## Document 1

### DESCRIPTION OF AREA B-1

Being a portion of Parcel B as shown and so designated on that certain Parcel Map entitled "Haggin Oaks" filed for record in Book 207 of Parcel Maps, at Page 9, Sacramento County Records situate in Sections 26 and 31 of Rancho Del Paso, City of Sacramento, County of Sacramento, State of California, said property being more particularly described as follows:

Commencing at a found 6" x 6" concrete highway monument marking the southeast corner of said Parcel B as shown on said Parcel Map; thence coincident with the south line of said Parcel B, from a radial line which bears South 26°29'08" East, 106.08 feet along the arc of a non-tangent 2750.00 foot radius curve to the right through a central angle of 02°12'37" to the True Point of Beginning; thence from said TRUE POINT OF BEGINNING continuing from a radial line which bears South 24°16'32" East, 363.78 feet along the arc of a non-tangent 2750.00 foot radius curve to the right through a central angle of 07°34'45" to a found 3/4 inch iron pipe with cap stamped L.S. 7944 marking an angle point in the westerly line of said Parcel B; thence leaving the south line of Parcel B, coincident with said westerly line of Parcel B, North 13°32'50" West a distance of 281.46 feet to a found 3/4 inch iron pipe with cap stamped L.S. 7944; thence coincident with the prolongation of said westerly line of Parcel B, North 13°32'50" West a distance of 47.73 feet to the centerline of private Raption Drive as shown on said Parcel Map; thence coincident with said centerline of private Raption Drive for the following 3 arcs, courses and distances:

1. from a radial line which bears South 16°10'02" East, 181.26 feet along the arc of a non-tangent 1965.00 foot radius curve to the left through a central angle of 05°17'07" to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944 marking the point of compound curvature;
2. 88.30 feet along the arc of a tangent 365.00 foot radius curve to the left through a central angle of 13°51'42" to a found 1-1/2 inch long by 1/4 inch diameter mag nail tagged L.S. 7944; and
3. North 54°41'09" East a distance of 72.63 feet to a found 1-1/4 inch iron pipe with cap stamped L.S. 7944 marking the intersection with the east line of said Parcel B;

thence leaving said centerline of private Raption Drive, coincident with the east line of Parcel B, South 35°18'51" East a distance of 238.68 feet to the intersection with the multi-purpose easement line as shown on said Parcel Map; thence leaving said east line of Parcel B, coincident with the multi-purpose easement line, South 11°31'43" West a distance of 143.22 feet to the Point of Beginning.

Containing 2.956 acres of land, more or less.

*See Exhibit "B", plat to accompany description, attached hereto and made a part hereof.*

The Basis of Bearings for this description is California State Plane Coordinate System, Zone 2, NAD'83, as measured between GPS Station "G3709", and GPS Station "G3810 as shown and so designated on that certain Record of Survey entitled "Record of Survey GPS Static Survey" filed

October 19, 2010

1518.007  
05/05/10  
CES

for record in Book 63 of Surveys, at Page 29, Sacramento County Records; Said bearing is North 61°25'55" East. Distances shown are ground based.

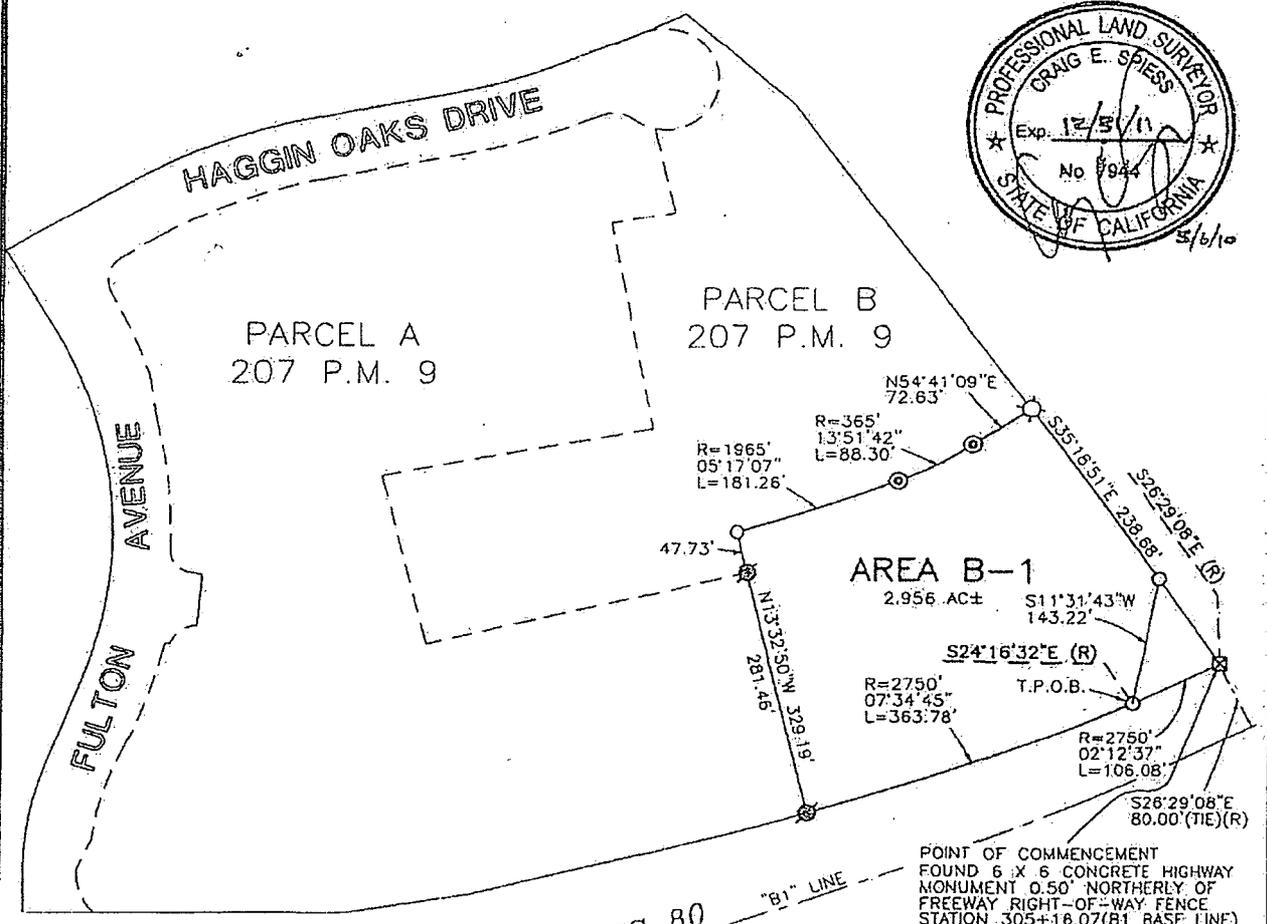
  
Craig E. Spiess P.L.S. 7944  
Expires: December 31, 2011  
Date: 5/6/10



PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

Document 2  
Plat to Accompany  
Description of Area B-1

HAGGIN OAKS  
PORTION OF PARCEL B - 207 P.M. 9  
CITY OF SACRAMENTO  
COUNTY OF SACRAMENTO STATE OF CALIFORNIA

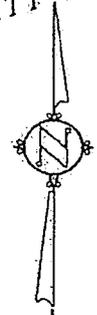


POINT OF COMMENCEMENT  
FOUND 6 X 6 CONCRETE HIGHWAY  
MONUMENT 0.50' NORTHERLY OF  
FREEWAY RIGHT-OF-WAY FENCE  
STATION 305+18.07 (B1 BASE LINE)  
DEPARTMENT OF PUBLIC WORKS  
1948 SURVEY BETWEEN BELL STREET  
AND PLACER COUNTY LINE IN  
SACRAMENTO COUNTY, ROAD  
III-SAC-3-B

INTERSTATE BUSINESS 80  
(CAPITAL CITY FREEWAY)

SEE DESCRIPTION FOR  
COURSE INFORMATION

NOT TO SCALE



**WOOD RODGERS**  
ENGINEERING • MAPPING • PLANNING • SURVEYING  
3301 C St., Bldg. 100-B Tel 916.341.7760  
Sacramento, CA 95816 Fax 916.341.7767

1518.097  
05/05/10  
CES

**Document 3**

**DESCRIPTION OF AREA B-2.**

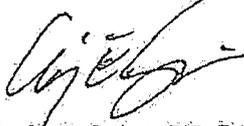
Being a portion of Parcel B as shown and so designated on that certain Parcel Map entitled "Haggin Oaks" filed for record in Book 207 of Parcel Maps, at Page 9, Sacramento County Records situate in Sections 26 and 31 of Rancho Del Paso, City of Sacramento, County of Sacramento, State of California, said property being more particularly described as follows:

Beginning at a found 6" x 6" concrete highway monument marking the southeast corner of said Parcel B as shown on said Parcel Map; thence from said **POINT OF BEGINNING** coincident with the south line of said Parcel B, from a radial line which bears South 26°29'08" East, 106.08 feet along the arc of a non-tangent 2750.00 foot radius curve to the right through a central angle of 02°12'37" to the intersection with the multi-purpose easement line as shown on said Parcel Map; thence leaving said south line of Parcel B, coincident with said multi-purpose easement line, North 11°31'43" East a distance of 143.22 feet to the east line of said Parcel B; thence leaving said multi-purpose easement line, coincident with the east line of said Parcel B, South 35°18'51" East a distance of 116.26 feet to the Point of Beginning.

Containing 6,109 square feet of land, more or less.

*See Exhibit "B", plat to accompany description, attached hereto and made a part hereof.*

The Basis of Bearings for this description is California State Plane Coordinate System, Zone 2, NAD'83, as measured between GPS Station "G3709", and GPS Station "G3810" as shown and so designated on that certain Record of Survey entitled "Record of Survey GPS Static Survey" filed for record in Book 63 of Surveys, at Page 29, Sacramento County Records. Said bearing is North 61°25'55" East. Distances shown are ground based.

  
Craig E. Spiess P.L.S. 7944  
Expires: December 31, 2011  
Date: 5/6/10

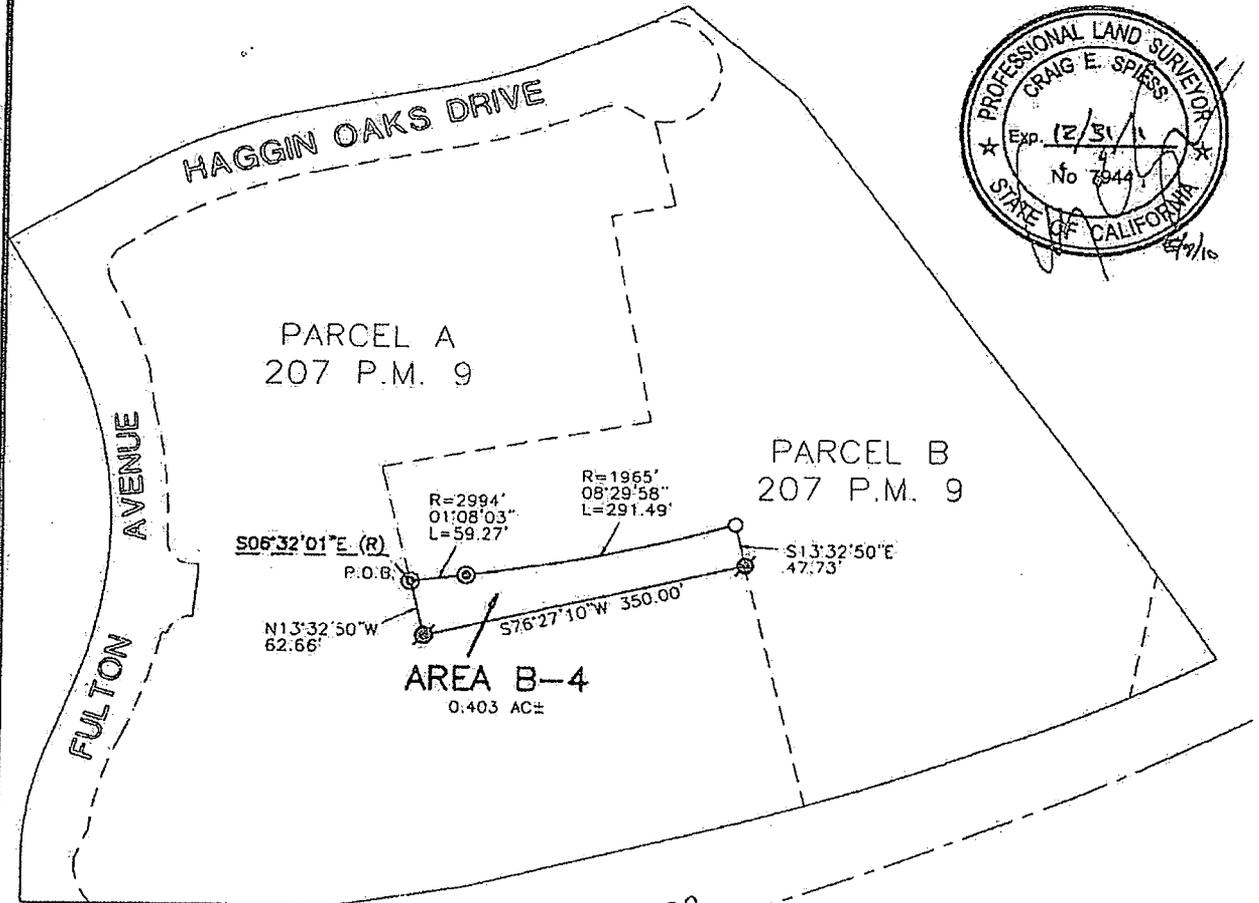


PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

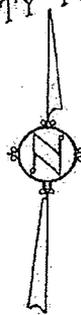


Document 6  
Plat to Accompany  
Description of Area B-4

HAGGIN OAKS  
PORTION OF PARCEL B - 207 P.M. 9  
CITY OF SACRAMENTO  
COUNTY OF SACRAMENTO STATE OF CALIFORNIA



INTERSTATE BUSINESS 80  
(CAPITAL CITY FREEWAY)



SEE DESCRIPTION FOR  
COURSE INFORMATION

NOT TO SCALE



**WOOD RODGERS**  
ENGINEERING • MAPPING • PLANNING • SURVEYING  
3301 C St., Bldg. 100-B Tel 916.341.7760  
Sacramento, CA 95816 Fax 916.341.7787

**Exhibit B to Agreement for Right of First Refusal  
Memorandum for Recordation**

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*Recording requested by and  
when recorded return to—*

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SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**Memorandum of Agreement for First Refusal**

This Memorandum of Agreement for Right of First Refusal, dated October \_\_, 2010, for purposes of identification, is between the **City of Sacramento** (the "City"), a California municipal corporation; and **Raption Investment Group LLC** ("Raption"), a California limited-liability company.

**Background**

The City and Raption have entered into an *Agreement for Right of First Refusal* dated October 19, 2010 (the "Agreement"), by which the City granted Raption the preemptive right to purchase the real property described and depicted in **Exhibit A** to this memorandum (the "Premises") should the City decide to sell it. The City and Raption entered into this memorandum to give constructive notice to all third parties of Raption's rights and obligations under the *Agreement for Right of First Refusal*.

***With these background facts in mind, the City and Raption hereby agree as follows:***

- 1. Term.** The term of Raption's right of first refusal concerning the Premises begins on October 19, 2010, and, unless sooner terminated, ends on October 19, 2012.
- 2. Other Provisions.** Raption's preemptive right to purchase the Premises from the City is subject to the terms and conditions of the *Agreement for Right of First Refusal*, which are incorporated by reference into this memorandum.
- 3. Addresses.** The addresses of the City and Raption are as follows:

<i>If to the City:</i>	<i>If to Raption:</i>
City of Sacramento	Raption Investment Group LLC
Economic Development Department	3630 Fulton Avenue
915 I Street, Third Floor	Sacramento, California 95821
Sacramento, California 95814	Attention: Curtis Raption, Manager
Attention: Diana Sasser, Project Manager	
- 4. Assignment.** Raption may not assign its rights under the *Agreement for Right of First Refusal* without the City's prior written consent.

October 19, 2010

5. **Information Only.** This memorandum is for informational purposes only. It does not modify or otherwise affect the *Agreement for Right of First Refusal* in any way.

**City of Sacramento**

**Rapton Investment Group LLC**

By: \_\_\_\_\_

Gus Vina  
Interim City Manager

Dated: October \_\_\_\_, 2010

By: \_\_\_\_\_

Curtis Rapton  
Manager

Dated: October \_\_\_\_, 2010

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_

Joseph Cerullo Jr.  
Senior Deputy City Attorney

*[Attach as Exhibit A the same description and depiction that are attached as Exhibit A to the Agreement for Right of First Refusal.]*

**Exhibit C to Agreement for Right of First Refusal**

**Quitclaim Deed**

---

*Recording requested by and  
when recorded return to—*

Office of the City Attorney  
City of Sacramento  
915 "I" Street, Fourth Floor  
Sacramento, California 95814  
Attention: Joseph Cerullo

---

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**Quitclaim Deed**

**Rapton Investment Group LLC** ("Rapton"), a California limited-liability company, is the holder of a preemptive right to purchase the real property described and depicted in **Exhibit A** to this deed ("the Property"), which the **City of Sacramento** ("the City"), a California municipal corporation, granted to Rapton under an *Agreement for Right of First Refusal* dated October 19, 2010. A memorandum of that agreement is recorded with the Sacramento County Clerk/Recorder in Book \_\_\_\_ at page \_\_\_\_.

For valuable consideration received, Rapton hereby remises, releases, and forever quitclaims to the City all of its right, title, and interest in the Property. Rapton gives this deed to relinquish and release any right, title, and interest it may have under the Agreement for Right of First Refusal.

Executed on \_\_\_\_\_, at \_\_\_\_\_.  
Date City and State

**Rapton Investment Group, LLC**

By: \_\_\_\_\_  
Curtis Rapton  
Manager

*[Attach as Exhibit A the same description and depiction that are attached as Exhibit A to the Agreement for Right of First Refusal.]*