



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 5/15/2012

Report Type: Consent

Title: License Agreement and Indemnity Agreement: Sleep Train Driveway on Sports Parkway

Report ID: 2012-00482

Location: District 1

Recommendation: (1) Approve a License Agreement with Buzz Oates LLC, William C. Cummings, PDA Land LLC, Sleep Train, Inc., and Kings Arco Arena Limited Partnership relating to a driveway on Sports Parkway, and authorize the City Manager to sign the License Agreement on the City's behalf; (2) find that the City's entering into the License Agreement serves a public purpose by promoting economic development and creating jobs; and (3) approve an Indemnity Agreement related to the License Agreement, and authorize the City Manager to sign the Indemnity Agreement on the City's behalf.

Contact: Jim Rinehart, Director, (916) 808-7223, Economic Development Department

Presenter: None

Department: Economic Development Dept / General Services

Division:

Dept ID:

Attachments:

- 1-Description/Analysis
- 2- Buzz Oates Indemnity Agreement
- 3- Buzz Oates License Agreement

City Attorney Review

Approved as to Form
Joseph Cerullo
5/10/2012 11:10:20 a.m.

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart 5/10/2012 11:10:20 a.m.



Description/Analysis

Issue: Buzz Oates LLC, William C. Cummings, and PDA Land LLC (together, the “4400 East Commerce Owners”) have entered into a lease agreement with Sleep Train, Inc. (“Sleep Train”) for the property located at 4400 East Commerce Way (the “Site”). To operate a distribution center from the Site, Sleep Train requires access between the Site and the adjacent Stadium Loop Road and West Entrance Road. The 4400 East Commerce Owners have requested a License Agreement from the City that permits them to construct a gated “Delivery Truck Access” point that will provide Sleep Train with controlled access to Sports Parkway and West Entrance Road.

Policy Considerations: As a condition for its signing the License Agreement, the City required that the 4400 East Commerce Owners and Sleep Train agree to certain additional obligations in the City’s favor in addition to those set forth in the License Agreement. The Indemnity Agreement satisfies that requirement.

The recommended action serves a public purpose by promoting private investment in the local economy and creating jobs. The recommended action is consistent with previously approved policies to assist commercial projects and advances the goals of the City’s 2030 General Plan.

Environmental Considerations: The recommended action is exempt under California Environmental Quality Act (CEQA) because it consists of a minor alteration to land that does not involve the removal of healthy, mature, scenic trees. (Cal. Code Regs., tit. 14, § 15304.)

Sustainability: None

Rationale for Recommendation: The License Agreement will allow Sleep Train to occupy 65,000 square feet of vacant warehouse/distribution space. The operation and location of a new Sleep Train distribution center will create 100 new jobs within the City.

Founded in 1985, Sleep Train is the leading mattress retailer on the West Coast, with more than 90 California locations from Northern California to San Diego. Bringing Sleep Train’s new distribution center to Sacramento will provide a much-needed boost to the City’s economy.

Financial Considerations: None

Emerging Small Business Development (ESBD): None

Recorded for the benefit of the City of Sacramento and thus exempt from recording fees under Government Code sections 6103 and 27383.

When recorded, return document and tax statement to—

Office of the City Clerk
Historic City Hall
915 "I" Street, First Floor
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

INDEMNITY AGREEMENT

This agreement, dated April 10, 2012, for reference purposes only, is between BUZZ OATES LLC, a California limited-liability company; WILLIAM C. CUMMINGS, a married man as to his sole and separate property; and PDA LAND, LLC, a California limited-liability company (together, the "**4400 East Commerce Owners**"); SLEEP TRAIN, INC., a California corporation ("**Sleep Train**"); and the CITY OF SACRAMENTO, a California municipal corporation (the "**City**").

Background

- A. The 4400 East Commerce Owners are the owners of the real property described and depicted in Exhibit A to this agreement, and, concurrently with this agreement, they have leased that property to Sleep Train.
- B. The 4400 East Commerce Owners, Sleep Train, the City, and Kings Arco Arena Limited Partnership, a California limited partnership, are parties to City Agreement No. 2012-_____, which is a License Agreement dated the same date as this agreement (the "**License Agreement**"). The License Agreement permits the 4400 East Commerce Owners to construct a gated "Delivery Truck Access" point that will provide their tenant, Sleep Train, with limited access between 4400 East Commerce, Sacramento, California, and the adjacent Stadium Loop Road (a.k.a. Sports Parkway) and Stadium Connector Road (a.k.a. West Entrance Road), all as more particularly set forth in the License Agreement.
- C. As a condition for its signing the License Agreement, the City required that the 4400 East Commerce Owners and Sleep Train agree to certain additional obligations in favor of the City in addition to those set forth in the License Agreement. The parties have entered into this agreement to satisfy that requirement.

With these background facts in mind, the parties hereby agree as follows:

1. **Defined Terms.** Capitalized terms not defined in this agreement have the meanings set forth in the License Agreement
2. **Indemnity by 4400 East Commerce Owners.** The 4400 East Commerce Owners shall indemnify, defend, protect, and hold harmless the City and the City's officers and employees from and against all liabilities, claims, demands, damages, and costs (including but not limited to reasonable attorneys fees and litigation costs through final resolution on appeal) that arise in any way from the acts or omissions of the 4400 East Commerce Owners, or any of them, in connection with the License Agreement. The obligations of the 4400 East

Commerce Owners under this section 2 are joint and several and include but are not limited to liabilities, claims, demands, damages, and costs that arise from the design and construction of the Delivery Truck Access. The indemnity in this section 2 is in addition to the indemnity in section 4 of the License Agreement.

3. **Indemnity by Sleep Train.** Sleep Train shall indemnify, defend, protect, and hold harmless the City and the City's officers and employees from and against all liabilities, claims, demands, damages, and costs (including but not limited to reasonable attorneys fees and litigation costs through final resolution on appeal) that arise in any way from Sleep Train's acts or omissions in connection with the License Agreement. Sleep Train's obligations under this section 3 include but are not limited to liabilities, claims, demands, damages, and costs that arise from (a) Sleep Train's use under the License Agreement of the Stadium Loop Road (a.k.a. Sports Parkway); (b) Sleep Train's use under the License Agreement of the Stadium Connector Road immediately south of the 4400 East Commerce Property (a.k.a. West Entrance Road); and (c) Sleep Train's use, operation, and maintenance of the Delivery Truck Access (including but not limited to the controlled gate). The indemnity in this section 3 is in addition to the indemnity in section 4 of the License Agreement.
4. **Future Relocation of Delivery Truck Access.** As used in this section, "City" includes the City's successors in interest concerning the Stadium Property. The parties acknowledge that the manner in which the City may eventually develop the Stadium Property is currently undetermined. To preserve flexibility for developing the Stadium Property, the parties agree as follows: if, at any time after December 31, 2022, the location of the Delivery Truck Access conflicts with the proposed development of the Stadium Property, then the City will have the right, on giving written notice to the then owners of the 4400 East Commerce Property, to require that those owners, at no cost to the City, relocate the Delivery Truck Access to another portion of the 4400 East Commerce Property that fronts the Stadium Loop Road (a.k.a. Sports Parkway) and is reasonably acceptable to the City and, if contractually required, to the Arena Partnership or any successor in interest of the Arena Partnership. The relocation work must be completed within 60 days after the notice is given.
5. **Binding on Successors.** This agreement applies to, binds, and inures to the benefit of the heirs, grantees, successors, and assigns of the parties.
6. **Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
7. **Recordation.** The City may record this agreement with the Sacramento County Clerk/Recorder.
8. **Authority.** Each person signing this agreement hereby represents that he or she is fully authorized to sign this agreement on behalf of his or her party and to bind that party to perform under this agreement.

(Signature Page Follows)

CITY OF SACRAMENTO

By: _____
Signature

Print Name

Title

Dated: May __, 2012

Attest
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

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

Approved as to Form
Sacramento City Attorney

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

BUZZ OATES LLC

By: Oates Advisors LLC, a California limited liability company, Manager

By: [Signature]
Larry E. Allbaugh, Manager
Dated: May 3, 2012

By: [Signature]
Philip D. Oates, Manager
Dated: May 4, 2012

WILLIAM C. CUMMINGS

Dated: May __, 2012

PDA LAND, LLC

By: _____
David Pringle, President
Dated: May __, 2012

SLEEP TRAIN, INC.

By: _____
Signature

Print Name

Title
Dated: May __, 2012

[Attach Certificates of Acknowledgment – Civil Code § 1189]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Sacramento }

On 5/4/12 before me, Bonnie Allerhand, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Philip D. Oates; Larry E. Ailbaugh -
Name(s) of Signer(s)

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 signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

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: Bonnie Allerhand
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

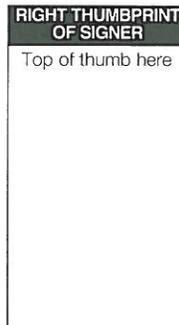
Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____



CITY OF SACRAMENTO

By: _____
Signature

Print Name

Title

Dated: May __, 2012

Attest
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

Approved as to Form
Sacramento City Attorney

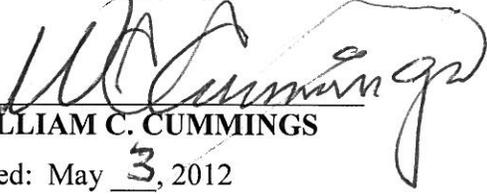
By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

BUZZ OATES LLC

By: Oates Advisors LLC, a California limited liability company, Manager

By: _____
Larry E. Allbaugh, Manager
Dated: May __, 2012

By: _____
Philip D. Oates, Manager
Dated: May __, 2012



WILLIAM C. CUMMINGS
Dated: May 3, 2012

PDA LAND, LLC

By: _____
David Pringle, President
Dated: May __, 2012

SLEEP TRAIN, INC.

By: _____
Signature

Print Name

Title
Dated: May __, 2012

[Attach Certificates of Acknowledgment – Civil Code § 1189]

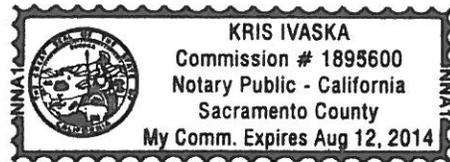
State of California)
County of Sacramento)

On May 3, 2012 before me, Kris Ivaska, A Notary Public in and for said State personally appeared William C. Cummings, who proved to me on the basis of satisfactory evidence to be the person whose names is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 *Kris Ivaska*



My commission expires on August 12, 2014

(Seal)

REMAINDER OF THIS PAGE IS INTENDED TO BE BLANK

CITY OF SACRAMENTO

By: _____
Signature

Print Name

Title

Dated: May __, 2012

Attest
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

BUZZ OATES LLC

By: Oates Advisors LLC, a California limited liability company, Manager

By: _____
Larry E. Allbaugh, Manager
Dated: May __, 2012

By: _____
Philip D. Oates, Manager
Dated: May __, 2012

WILLIAM C. CUMMINGS

Dated: May __, 2012

PDA LAND, LLC

By: David Pringle
David Pringle, President
Dated: May 3, 2012

SLEEP TRAIN, INC.

By: _____
Signature

Print Name

Title

Dated: May __, 2012

[Attach Certificates of Acknowledgment – Civil Code § 1189]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Sacramento

On May 3, 2012 before me, Bonnie Allerhand, Notary Public

personally appeared David Pringle

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 signature(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: Bonnie Allerhand

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Indemnity Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

- Corporate Officer - Title(s):
Individual
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing: _____

Signer Is Representing: _____

CITY OF SACRAMENTO

By: _____
Signature

Print Name

Title

Dated: May __, 2012

Attest
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

BUZZ OATES LLC

By: Oates Advisors LLC, a California limited liability company, Manager

By: _____
Larry E. Allbaugh, Manager
Dated: May __, 2012

By: _____
Philip D. Oates, Manager
Dated: May __, 2012

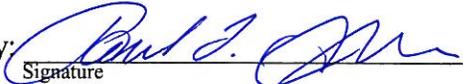
WILLIAM C. CUMMINGS

Dated: May __, 2012

PDA LAND, LLC

By: _____
David Pringle, President
Dated: May __, 2012

SLEEP TRAIN, INC.

By: 
Signature

Paul L. Grivam
Print Name

V.P. Real Estate
Title

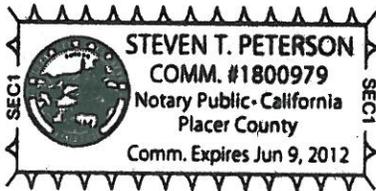
Dated: May 3, 2012

[Attach Certificates of Acknowledgment – Civil Code § 1189]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California }
County of PLACER }
On MAY 3, 2012 before me, STEVEN T. PETERSON, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared PAUL L. GRIMM
Name(s) of Signer(s)



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 signature(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: [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: INDEMNITY AGREEMENT

Document Date: MAY 3RD, 2012 Number of Pages: 4

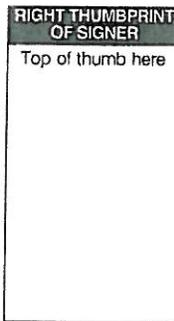
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: PAUL L. GRIMM Signer's Name:

[X] Corporate Officer - Title(s): V.P. REAL ESTATE [] Corporate Officer - Title(s):

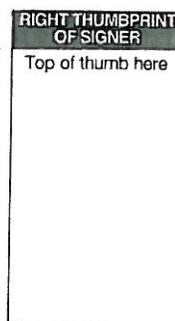
- [] Individual
[] Partner - [] Limited [] General
[] Attorney in Fact
[] Trustee
[] Guardian or Conservator
[] Other:



Signer Is Representing:

THE SLEEP TRAIN, INC.

- [] Individual
[] Partner - [] Limited [] General
[] Attorney in Fact
[] Trustee
[] Guardian or Conservator
[] Other:



Signer Is Representing:

Exhibit "A"
Legal Description

All of Parcel 2, together with all that portion of Parcel 3, as shown on that certain Parcel Map entitled Master Parcel Map of Del Paso Road Property, filed in Book 143 of Parcel Maps, Page 10, Official Records of Sacramento County, described as follows:

Beginning at a point in the Easterly line of said Parcel 3, from which point the Southeast corner of said Parcel 3 bears along said Easterly line, North 05°39'22" East 133.34 feet distant; thence from said point of beginning along the Easterly line of said Parcel 3 and 2, along the Southerly line of said Parcel 2, and along the Westerly lines of said Parcels 2 and 3, the following eight (8) courses: (1) South 05°39'22" West 254.38 feet; (2) along the arc of a curve to the left, concave Easterly, having a radius of 1200.00 feet, subtended by a chord bearing South 01°48'00" East 311.44 feet; (3) along the arc of a curve to the right, concave Northwesterly, having a radius of 25.00 feet, subtended by a chord bearing South 32°52'39" West 33.54 feet; (4) South 75°00'40" West 466.83 feet; (5) along the arc of a curve to the right, concave Northeasterly, having a radius of 25.00 feet, subtended by a chord bearing North 58°26'00" West 36.30 feet; (6) along the arc of a curve to the right, concave Easterly, having a radius of 1593.00 feet, subtended by a chord bearing North 10°04'35" West 100.34 feet; (7) North 10°48'36" West 50.05 feet, and (8) along the arc of a curve to the right, concave Easterly, having a radius of 1596.00 feet, subtended by a chord bearing North 04°52'24" East 628.17 feet, thence leaving said Westerly line of Parcel 3, South 79°16'31" East 318.72 feet; thence South 83°26'35" East 176.96 feet to the point of beginning as described in that Certificate of Lot Line Adjustment recorded March 2, 2001 in Book 20010302, Page 887, Official Records

Excepting From those portions of said land lying within former Lots 49, 50 and 51 of Natomas Central Subdivision filed in Book 16 of Maps, Pages 3 through 10, all oil, mineral, gas and other hydrocarbon substances below a depth of 500 feet under the above described real property, as reserved in the Deed from Richard N. Moseman, et al, to Sacramento Sports Association, a Partnership, dated June 28, 1979, recorded July 10, 1979 in Book 790710 of Official Records, Page 1243

Apn: 225-0070-092

EAST COMMERCE

SPORTS BOULEVARD

LOCATION OF TENANT
IMPROVEMENT

WEST ENTRANCE





LICENSE AGREEMENT

This License Agreement (“Agreement”) dated for reference purposes only April 10, 2012, is entered into by and between **BUZZ OATES LLC**, a California limited liability company, **WILLIAM C. CUMMINGS**, a married man as his sole and separate property, **PDA LAND, LLC**, a California limited liability company, (together, “4400 East Commerce Owners”), **SLEEP TRAIN, INC.**, a California corporation (“Sleep Train”), the **CITY OF SACRAMENTO**, a municipal corporation (“City”); and **KINGS ARCO ARENA LIMITED PARTNERSHIP**, a California limited partnership (“Arena Partnership”).

The PA

RECITALS

A. WHEREAS, the 4400 East Commerce Owners are all of the fee owners of that certain real property located in the City of Sacramento, County of Sacramento, State of California, commonly known as 4400 East Commerce Way, APN 225-0070-092 (the “4400 East Commerce Property”);

B. WHEREAS, the 4400 East Commerce Property, among others, is subject to certain conditions, covenants and restrictions of record pursuant to that certain document entitled “Relinquishment of Certain Easements and Rights Under 1989 and 1992 Reciprocal Easement Agreements and Further Definition of Exercise of Remaining Rights and Grant of Easements” dated July 22, 1997, and recorded on July 30, 1997, as Instrument number 197707301716, in the Official Records of Sacramento County (the “Declaration”). The 4400 East Commerce Property is among those properties which are collectively described as the “North Property” in the Declaration;

C. WHEREAS, City is the fee owner of that certain real property located in the City of Sacramento, County of Sacramento, State of California, more particularly described as the “Stadium Property”, the “Stadium Connector Roads” and the “Stadium Loop Road” as those terms are defined in the Declaration;

D. WHEREAS, Arena Partnership is the fee owner of that certain real property located in the City of Sacramento, County of Sacramento, State of California, more particularly described as the “Arena Property” in the Declaration;

E. WHEREAS, Article 2.1 of the Declaration provides that the owners of the North Property shall take the steps specified therein to prevent persons attending sporting and other public events on the Stadium Property and the Arena Property from parking on the North Property, including but not limited to the requirement in Article 2.1(b) of the Declaration that the North Property shall be developed without curb cuts onto or immediately adjacent to the Stadium Loop Road. The 4400 East Commerce Property was developed without curb cuts to the Stadium Loop Road;

F. WHEREAS, Sleep Train and 4400 East Commerce Owners have entered into a lease for a portion of the 4400 East Commerce Property (the “Sleep Train Lease”). In connection with

the Lease, the 4400 East Commerce Owners and Sleep Train have requested that City grant, with Arena Partnership's consent, a limited license for the installation and use of a gated, delivery truck access point between the 4400 East Commerce Property and the Stadium Connector Road for use by Sleep Train's delivery trucks during limited hours; and

G. WHEREAS, City is willing to grant the requested license, and Arena Partnership is willing to consent to such grant of license, all subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and other value received, the parties hereto agree as follows:

AGREEMENT

1. License. City hereby grants to the 4400 East Commerce Owners and Sleep Train a license (the "License") to do the following:

- (a) 4400 East Commerce Owners may construct one (1) gated delivery truck access point from 4400 East Commerce Property to the Stadium Loop Road as depicted on Exhibit "A" attached hereto (the "Delivery Truck Access"). The Delivery Truck Access shall be gated with a controlled gate to prevent use of the Delivery Truck Access except as specifically set forth in section (b) below. 4400 East Commerce Owners shall also install a security camera for the purpose of monitoring usage of the Delivery Truck Access; and
- (b) Sleep Train may use the Delivery Truck Access and the Stadium Loop Road for the limited purpose of ingress and egress between Sleep Train's fenced yard area located on the 4400 East Commerce Property and the nearest Stadium Connector Road by Sleep Train's delivery trucks operating in the ordinary course of Sleep Train's business in the leased premises located at the 4400 East Commerce Property. In no event shall Sleep Train's delivery trucks use any other portion of the Stadium Loop Road. In addition, the Delivery Truck Access shall not be used during any period that a public event is being hosted at the Arena Property, and the gate to the Delivery Truck Access shall be locked during such periods with a separate, manually-operated lock to prevent any inadvertent use. For purpose of this subsection, an Event shall be "occurring" from the time that traffic controls for the Event are set up on the Stadium Loop Road and continue until such traffic controls end following the Event.
- (c) Sleep Train shall keep the Delivery Truck Access (including the gate) in good condition and repair. Sleep Train shall not permit any non-commercial vehicles to park in Sleep Train's fenced yard area during any period that a King's Game is occurring.

Arena Partnership hereby consents to the foregoing grant of the License,
or Public Event *M*

2. Term of Agreement. This Agreement and the License shall remain in full force and effect until the earlier of: (1) the expiration or earlier termination of the Sleep Train Lease, or (2) any earlier termination of the Agreement in the event of default pursuant to Section 3 below. Upon termination of the Agreement, 4400 East Commerce Owners shall promptly remove the Delivery Truck Access and restore the area to its original condition.

3. Default. 4400 East Commerce Owners and Sleep Train shall not be in breach of this Agreement or the License except in the event of a failure to cure a default within fifteen (15) days following written notice from City specifying in reasonable detail the nature of the default, provided, however, that with respect to any default which cannot reasonably be cured within fifteen (15) days, such default shall be deemed to have been cured if 4400 East Commerce Owners or Sleep Train, respectively commences to cure such default within said fifteen (15) day period and thereafter diligently undertakes to complete the same.

4. Indemnity. 4400 East Commerce Owners and Sleep Train each agree to defend, indemnify and hold harmless City and Arena Partnership, and their respective members, managers, directors, officers, general partners, limited partners, and employees from and against any and all third party claims, damages, liens, liabilities or causes of action, arising out of or resulting from, directly or indirectly, the use of the Stadium Loop Road pursuant to the License.

5. Insurance. 4400 East Commerce Owners and Sleep Train shall each obtain and maintain in full force and effect during the term of this Agreement, a policy of commercial general liability insurance with broad form general liability endorsement in an amount not less than \$2,000,000 per occurrence of bodily injury and property damage combined, insuring against the risks of bodily injury, property damage and personal injury liability, and otherwise covering the activities of on or about the Stadium Loop Road ("Insurance"). All insurance required to be maintained hereunder will be primary to, and not contributory with, the insurance carried by City and Arena Partnership. Insurance required hereunder will be carried with companies duly licensed to transact business in the State of California who maintain during the policy term a "General Policy Holder's Rating" of at least A- or better and a financial rating of VIII or better, as set forth in the most current issue of "Best's Insurance Guide," to the maximum extent commercially feasible. City and Arena Partnership shall be named as additional insureds on the insurance policies required hereunder. Upon written request, 4400 East Commerce Owners and Sleep Train shall provide to City and Arena Partnership certificates evidencing the required insurance coverage.

6. Notices. All notices under this Agreement shall be in writing and sent by (a) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, or (b) by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier. Notice shall be addressed as follows, or at such other address for which that party may have given notice under the provisions of this Section.

4400 East Commerce Owners:

Del Paso Venture
Attn Buzz Oates Management Services
8615 Elder Creek Road
Sacramento, CA 95828

Sleep Train:

Sleep Train
Attn: Paul Grimm
2205 Plaza Drive
Rocklin, CA 95677

City:

Attn: _____

Arena Partnership:

Attn: John Rinehart
One Sports Parkway
Sacramento Ca. 95834

In the event of a default of this Agreement by either 4400 East Commerce Owners or Sleep Train, a notice of default shall be delivered to both 4400 East Commerce Owners and Sleep Train.

7. Binding on Successors. This Agreement shall apply to and bind and inure to the benefit of the parties to this Agreement, and their respective heirs, grantees, successors and assigns.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by PDF or facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

4400 EAST COMMERCE OWNERS:

BUZZ OATES LLC, a California limited liability company

By: **Oates Advisors LLC**, a California limited liability company, Manager

Dated: April __, 2012

By: _____
Larry E. Allbaugh, Manager

Dated: April __, 2012

By: _____
Phillip D. Oates, Manager

Dated: April 10, 2012

WILLIAM C. CUMMINGS

PDA LAND, LLC, a California limited liability company

Dated: April __, 2012

By: _____
David Pringle, President

SLEEP TRAIN:

SLEEP TRAIN, INC., a California corporation

Dated: April __, 2012

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

4400 EAST COMMERCE OWNERS:

BUZZ OATES LLC, a California limited liability company

By: Oates Advisors LLC, a California limited liability company, Manager

Dated: April __, 2012

By: 
Larry E. Allbaugh, Manager

Dated: April __, 2012

By: 
Philip D. Oates, Manager

Dated: April __, 2012

WILLIAM C. CUMMINGS

PDA LAND, LLC, a California limited liability company

Dated: April __, 2012

By: _____
David Pringle, President

SLEEP TRAIN:

SLEEP TRAIN, INC., a California corporation

Dated: April __, 2012

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

4400 EAST COMMERCE OWNERS:

BUZZ OATES LLC, a California limited liability company

By: Oates Advisors LLC, a California limited liability company, Manager

Dated: April __, 2012

By: _____
Larry E. Allbaugh, Manager

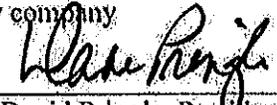
Dated: April __, 2012

By: _____
Philip D. Oates, Manager

Dated: April __, 2012

WILLIAM C. CUMMINGS

PDA LAND, LLC, a California limited liability company

By: 
David Pringle, President

Dated: April __, 2012

SLEEP TRAIN:

SLEEP TRAIN, INC., a California corporation

Dated: April __, 2012

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below,

4400 EAST COMMERCE OWNERS:

BUZZ OATES LLC, a California limited liability company

By: Oates Advisors LLC, a California limited liability company, Manager

Dated: April __, 2012

By: _____
Larry E. Allbaugh, Manager

Dated: April __, 2012

By: _____
Philip D. Oates, Manager

Dated: April __, 2012

WILLIAM C. CUMMINGS

PDA LAND, LLC, a California limited liability company

Dated: April __, 2012

By: _____
David Pringle, President

THE SLEEP TRAIN:

SLEEP TRAIN, INC., a California corporation

Dated: April 10, 2012

By: 
Name: PAUL L. GRIMM
Title: V.P. Real Estate

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Approved as to form.

Sacramento City Attorney

Dated: April __, 2012

CITY:

CITY OF SACRAMENTO,
a municipal corporation,

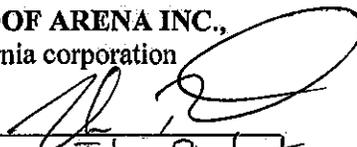
By _____
Name: _____
Its _____

ARENA PARTNERSHIP:

**KING ARCO ARENA LIMITED
PARTNERSHIP,** a California limited
partnership,

By: **ROYAL KINGS ARENA LIMITED
PARTNERSHIP,** a California limited
partnership, General Partner,

By: **MALOOF ARENA INC.,**
a California corporation

By: 
Name: John Rinehart
Its Authorized Agent

Dated: April 17, 2012

EXHIBIT A

Depiction of Delivery Access

