

PARKING AGREEMENT
926 J Street Building
Between Rubicon Partners, Inc. and the City of Sacramento
For 183 parking permits in City Hall Garage

This Parking Agreement (hereafter the "Agreement") is made on SEPT. 19, 2006, between the City of Sacramento (hereafter "City"), a charter municipal corporation, and Rubicon Partners, Inc. (hereafter "Rubicon"), who agree as follows:

RECITALS

- A. Rubicon is presently processing the approvals to convert an existing 14-story building located within the City at 926 J Street into a hotel ("Hotel"), a restaurant ("Restaurant") and for other permitted uses (collectively, the "Project").
- B. Rubicon desires to acquire from the City the right to use a certain number of parking permits to provide parking to the guests, occupants, employees and other users of the Project.

In consideration of the mutual covenants and agreements set forth below, the City and Rubicon agree as follows:

- 1. **Term of Agreement.** Unless terminated pursuant to the provisions hereof, the initial term ("Initial Term") of the Agreement shall be thirty (30) years, commencing December 1, 2008 or the date the Hotel opens for business, whichever is earlier. Rubicon agrees to provide City Ninety (90) days advance notice of date the Hotel will open for business. Rubicon is entitled to two (2) five (5) year options to extend this agreement ("Extended Term"), by providing a written notice of extension to City not less than 180 days prior to the expiration of the Initial Term or, if applicable, the first Extended Term (subject to earlier termination as provided herein).
- 2. **Allocated Parking Permits.** Upon commencement of the Initial Term of this Agreement City shall allocate to Rubicon a total of one hundred eighty three (183) monthly parking permits, in accordance with the terms of this Agreement. Payment shall be made in accordance with sections 4 and 5, below. The number of permits allocated may be increased upon mutual consent in writing by both parties. Permits issued under this agreement shall only be distributed and used by guests, invitees, occupants, employees and tenants of the Project or users of Project valet parking.
- 3. **Valet Parking.** Upon approval by the City, a single level, and the ramps serving that level, of City Hall Garage or another City-owned or operated parking facility located within a 3-block radius of the Project may be used exclusively by Rubicon for a valet parking service to be provided solely for the use of guests, invitees,

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occupants, employees and tenants of the Project. The spaces located on such a parking level and associated ramps will be used to satisfy the City's obligation of providing spaces for the 183 monthly parking permits described Section 2. Rubicon agrees to reimburse the City for the full cost of the purchase, installation, and maintenance of valet parking equipment plus any expense directly attributed to such equipment including, but not limited to, re-striping of the facility and relocation of electric vehicle terminals.

4. **Parking Garage.** Parking permits issued under this agreement will be for use at City Hall Garage, located at 1000 I Street (See Attachment A). Upon providing Sixty (60) days written notice to Rubicon City, at its sole discretion, may relocate the parking spaces Rubicon is entitled to use hereunder to another City-owned or operated parking facility located within a 3-block radius of the building located at 926 J Street (such selected garage described in this section to be referred to herein as the "Lot"). Upon relocation to another facility, and any subsequent relocation, City shall be responsible for the installation and all related costs to move any equipment of which Rubicon paid for per Section 3. City will reinstall the equipment in a location in the new facility that will accommodate 183 permits.
5. **Renewal of Issued Permits.** Each permit issued shall be automatically renewed as of the first day of each month.
6. **Compensation to City.** For each permit issued, Rubicon shall pay a parking fee equal to a percentage of the prevailing monthly parking rate established from time to time by the City for the Lot. The fee per permit shall be determined by the following schedule:
 - (a) Permits issued for use at City Hall Garage or another parking facility located within a 3-block radius of 926 J Street, 105% of the prevailing monthly parking rate established from time to time by the City for the Lot, for each permit.
 - i. Beginning on the date of execution of this agreement, rate increases charged to Rubicon will be limited on an annual basis to a percentage equal to the Consumer Price Index (CPI) for the San Francisco, Oakland and San Jose Metropolitan Area for All Urban Consumer (CPI-U), All Items (1982-84=100), published by the United States Department of Labor, Bureau of Labor Statistics. In the event that the Index shall ever be converted to a different standard reference base or otherwise be revised, a determination of subsequent increase to the Parking Fee shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics. In the event the Index shall cease to be published, the index designated by the Bureau of Labor Statistics as replacing the Index, or the most comparable substitute if said Bureau fails to designate a replacement, shall be used thereafter.

- ii. Such rate increases as previously described will continue until the rate charged to Rubicon equals 105% of the prevailing monthly parking rate charged to the public in general.
 - (b) Payment shall be made in the form of one check for all permits issued.
 - (c) If full payment for all permits issued is not received by or on the first day of the month for which it is due, the total parking fee for all permits issued that month will be increased 10%.
7. **Monthly Payments.** On or before the first day of each month during the term of this Agreement, Rubicon shall pay to City, in advance, the monthly payment required by section 6, above, at 921 10th Street, Suite 100, Sacramento, CA 95814, or at such other location as City may designate to Rubicon in writing. The monthly payment shall be for use of the issued permits for the month in which the payment is due. Failure to make full payment by the 10th day of the month for which it is due will result in the deactivation of all permits issued under this agreement. Failure to make payment by the last business day of any month as required herein shall constitute a default by Rubicon, and this Agreement shall be subject to termination by City for such default, pursuant to the procedures specified in section 10.
8. **Use of Lot.** The rules and conditions attached hereto, marked Attachment "B" and fully incorporated herein by this reference, shall apply to each and every permit issued hereunder. Rubicon shall inform the individuals parking under a permit issued to Rubicon hereunder of these rules and conditions. Subject to the rules and conditions set forth in Attachment "B", the users of issued permits shall have the right of ingress and egress from the Lot, Monday through Sunday, twenty four (24) hours a day; provided however, that such rights are subject to such interference as may be necessary from time to time, in the sole discretion of City for repairs, reconstruction or maintenance of the parking structure or any appurtenances thereto, or associated improvements.
9. **Insurance Requirements.** During the term of this Agreement, Rubicon shall purchase at its sole cost and expense and maintain in full force the following insurance coverage:
- (a) **Commercial General Liability Insurance,** providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy. Rubicon's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers.

The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects general

liability arising out of activities performed by or on behalf of Rubicon, products and completed operations of Rubicon, premises owned, leased or used by Rubicon.

Rubicon shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in section 19. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

The insurance requirements of this section are subject to review and revision every 5 years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards.

Rubicon is responsible for requiring and verifying that the minimum scope and limits of insurance coverage shall be maintained by, or on behalf of, all subcontractors.

The CITY may cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement.

10. **Termination.** In addition to provisions for termination specified elsewhere in this Agreement, City shall provide written notice of a violation or default to Rubicon, who shall forthwith use its best efforts to take action to remedy the default or violation. In the event the Rubicon fails, within ten (10) days from the date of the notice or such longer time period as may be specified by City, to take the necessary corrective action, this Agreement will terminate automatically, upon written notice from City to Rubicon, provided that City may, in its discretion, extend the time for correction. Permits issued hereunder will cease to be valid at the end of the month during which the termination occurs. The termination procedures specified above shall not apply in the event that the City determines, in its sole discretion that an emergency situation exists, in which case City may take any action deemed necessary by City to respond to the emergency situation.
11. **Permit Distribution.** Quarterly, during the term of this Agreement, and beginning on July 1, 2006, Rubicon shall provide City an updated and current list of all names and vehicle license numbers of each person to whom a permit is distributed. Multiple incidents of misuse of a permit by any individual as reasonably determined by the City shall constitute a default by Rubicon, and shall entitle City to terminate this Agreement pursuant to the notice to cure procedures specified in section 10. City may deactivate permit upon initial occurrence of incident. Said permit will remain deactivated until Rubicon takes necessary corrective action.

12. **Access to Records.** City shall have reasonable access to the records of Rubicon regarding the administration of parking permits issued under this agreement.

13. **Damage to or Destruction of the Lot.**

- (a) **Temporary Damage:** In the event that the Lot is temporarily damaged to such an extent that it may not be used for parking, or such that its use is so restricted that all or a portion of Rubicon's issued permits may in City's reasonable judgment no longer be accommodated, then City may cancel the affected permits until such time as the damaged facilities have been restored; provided, however, that at the request of Rubicon, and only to the extent that City determines, in its sole and exclusive judgment after considering the parking space requirements of other City parking customers and City employees, that space is available in another City parking facility or facilities, City shall use its best efforts to redesignate the affected permits for use at another City parking facility or facilities until the Lot is repaired, rather than cancel the affected permits. Rubicon shall pay for such redesignated permits in accordance with the provisions of this Agreement. Rubicon may reject any proposed redesignation of permits, in which case the affected permits shall be canceled until such time as the damaged facilities have been restored.
- (b) **Destruction:** If the City is prevented or delayed, or is rendered unable to provide Rubicon the parking services described in this Agreement by reason of any act of God, strike, lockout, labor trouble, restrictive governmental laws or regulations, or any other cause not the fault of the City, which removes the City's right to possess and occupy the site of the Lot for purposes of operating parking services at the Lot, the City's performance hereunder shall be excused. Nothing in this Agreement shall be construed to obligate the City to reconstruct the Lot in order to perform its obligations under this Agreement, nor shall cause an extension of the term of this Agreement. Notwithstanding the preceding sentence, City shall use its best efforts to relocate Rubicon to another City parking facility (taking into account section 3 above) to the extent there are spaces available at such other facility and Rubicon and City shall modify this Agreement to address any such relocation. Nothing in this Agreement shall be construed to obligate the City to reconstruct the Lot in order to perform its obligations under this Agreement, nor shall cause an extension of the term of this Agreement. Any temporary interference with City's ability to perform under this Agreement which is beyond the reasonable control of City to remedy shall be handled pursuant to the process set forth in clause (a) above.

14. **Nondiscrimination.** Rubicon covenants that there shall be no discrimination against any person or group of persons on account of race, color, creed, sex, marital status, disability, national origin, ancestry, or any other basis prohibited by

local, state, or federal law or regulation, in the distribution or use of permits. Any breach of this covenant shall constitute a default by Rubicon, and this Agreement shall be subject to termination by City pursuant to the procedures specified in section 10.

15. **Assignment.** Rubicon's rights under the Agreement shall not be transferred or assigned, by operation of law or otherwise, without the prior written consent of City and which such consent shall not be unreasonably withheld. Any attempt to transfer or assign without having first obtained such consent may, in the City's sole discretion, and without the need for procedures specified in section 10, immediately terminate this Agreement. In addition to any other relevant and reasonable conditions, City shall be entitled to condition its consent on the execution by the assignee or transferee of an agreement satisfactory in form and content to the City Attorney, under which the assignee or transferee expressly assumes the obligations specified in this Agreement. Upon full execution of such an assumption agreement, Rubicon shall be released from all of its obligations hereunder which otherwise would accrue, from and after the effective date of the assumption agreement.
16. **Conflict.** In the event of a material conflict between any provisions of this Agreement and any rule, regulation or law of general application enacted by any governmental agency including, but not limited to City, the County of Sacramento, the Sacramento Air Quality Maintenance District or any successor thereto, or any state or federal agency or legislative body, the enactment of the governmental agency or legislative body shall prevail and the obligations of the parties to this Agreement shall be modified accordingly. In the event that City determines that the provisions of this section would require modification of the Agreement, City shall so notify Rubicon and the parties shall meet and endeavor in good faith to reach resolution of the issues. In the event that a good faith impasse is reached in such negotiations, the parties shall submit the unresolved issues to the Sacramento City Council, acting in its quasi-legislative capacity, for resolution.
17. **Subordination.** This Agreement shall be subject and subordinate at all times to the lien of any mortgage or trust deed or deeds or other evidence of obligation which may now exist upon or which may be placed upon the Lot, or any other lot which in the future is utilized as a substitute lot for parking permits issued pursuant to this Agreement. "Evidence of obligation", for purposes of this section, includes but is not limited to documents relating to any form of public financing (e.g., bonds, certificates of participation) wherein the said parking facilities or any of them are used as an asset securing the public financing in any manner. Rubicon covenants that it will execute and deliver to City, or its nominee, at no cost to City and subject to no conditions or other limitations, proper subordination agreements to this effect at any time upon the request of City. Notwithstanding any such subordination, Rubicon's right to use the parking permits allocated under this Agreement shall not be disturbed if Rubicon is not in

default beyond any applicable cure period and so long as Rubicon shall pay the Fee and observe and perform all of the provisions set forth in this Agreement, and any subordination agreement shall reflect the agreement of the lender or financing entity to the same.

18. **Project Mortgagee.** If any mortgagee of the owner of the Project requests, City shall provided such mortgagee notice of any default of Rubicon hereunder concurrently at the time of delivery of notice to Rubicon and afford such mortgagee an opportunity to cure such default on behalf of Rubicon prior to termination of this Agreement. Upon the request of Rubicon, any mortgagee or prospective mortgagee of the Hotel owner or any prospective purchaser of the Hotel, City shall provide within 15 days of written notice an estoppel certificate in a commercially reasonable form providing, among other things, whether this Agreement is in full force and effect, whether the Agreement has been modified, and whether any party is in default hereunder
19. **Attorney Fees and Costs.** If either party shall bring any suit or proceeding to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable costs and expenses, including reasonable attorney fees and including such fees and costs as may be incurred in enforcing a judgment or order entered in any arbitration or legal action. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of such attorneys' fees and cost. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
20. **Notice.** Any notice, documentation, or other communication required or desired to be given pursuant to this Agreement shall be given in writing either by personal service, by certified mail, return receipt requested, postage fully prepaid or by national overnight delivery service, to the following respective addresses:

City	Rubicon
Parking Services Division City of Sacramento 921 10 th Street, 1 st Floor Sacramento, CA 95814	Rubicon Partners, Inc. 3300 Douglas Boulevard Suite 369 Roseville, CA 95661

The above addresses may be changed by written notice in accordance with this section.

21. **Condemnation.** In the event that any portion or all of the Lot should be taken by eminent domain or acquired under the threat of the exercise of the power of eminent domain, this Agreement shall automatically, without the need for action

by either party, terminate, and Rubicon shall have no interest whatsoever in any proceeds from such taking payable to City, and City shall be under no legal obligation whatsoever to pay to or reimburse Rubicon for any loss or damage whatsoever relating to or arising out of the taking of the structure. Provided, however, that at Rubicon's request, City shall make a reasonable effort to, but shall not be under legal obligation to, provide alternate City parking facilities for some or all of the permits issued hereunder. In the event that City determines, in its reasonable discretion, that alternate City parking facilities are available and City agrees that such facilities may be used for some or all of the issued permits, the parties shall enter into a modification of this agreement for the issuance of parking permits for such facilities. Provided, further, that Rubicon shall be entitled to exercise any right it may have, in law or in equity, to independently seek compensation from the condemning agency for any of Rubicon's losses or damages.

22. **Security.** The nature of any permit issued pursuant to this Agreement is that of a license, and no agency or relationship of landlord and tenant shall arise from this Agreement. City shall not be responsible for the personal security of any person or personal property in the Lot, or in any substitute or alternate facilities furnished pursuant to this Agreement or otherwise.
23. **Failure To Terminate Not A Waiver.** No failure of City to terminate this Agreement for default upon any breach shall constitute a waiver of the right to terminate this Agreement for the same or any other default or violation subsequently occurring.
24. **Time is of the Essence.** Time is of the essence to each and every term and condition of this Agreement.
25. **Indemnity and Hold Harmless.** Rubicon shall indemnify and save harmless the City, its officers, employees, and agents and each and every one of them, from and against any and all liability, loss, expense, including reasonable attorney's fees, or claims for injury or damages arising out of, caused by or resulting from the negligent or intentional acts or omissions of Rubicon, its directors, trustees, officers, employees, or agents in connection with this Agreement or any permit issued hereunder. The provisions of this section 24 shall survive any termination of this Agreement, notwithstanding anything herein to the contrary.
26. **Third Party Beneficiaries.** Unless otherwise expressly provided, this Agreement shall not create any third-party beneficiary rights for any person or entity.
27. **Complete Agreement.** This Agreement contains all of the terms and conditions of the agreement between City and Rubicon regarding use of City parking facilities.

28. **Execution.** By their signatures below, each of the following represent that they have authority to execute this agreement and to bind the party on whose behalf their execution is made.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

LICENSEE:

Rubicon Partners, Inc.
A California Corporation

By: [Signature]
Its: President

By: _____
Its: _____

68-0478326
Federal Tax ID

124784
City of Sacramento
Business Operations Tax Cert. No.

CITY:

CITY OF SACRAMENTO,
A Municipal Corporation

By: [Signature]

Marty Hanneman, Assistant City Manager
For: Ray Kerridge, City Manager

APPROVED AS TO FORM:

By: [Signature]
Deputy City Attorney

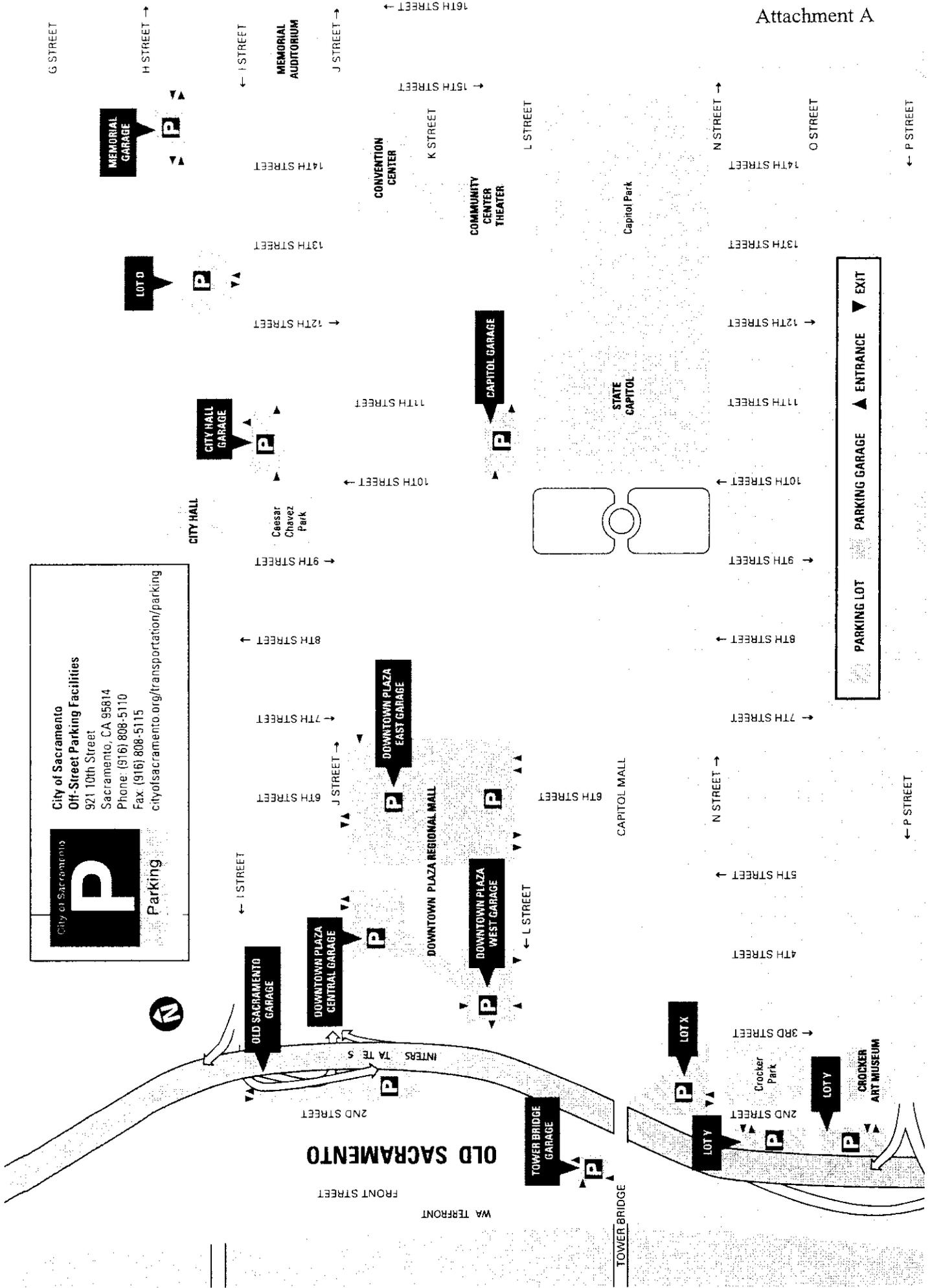
ATTEST:

By: [Signature]
City Clerk
9-18-06

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City of Sacramento
Off-Street Parking Facilities
 921 10th Street
 Sacramento, CA 95814
 Phone: (916) 808-5110
 Fax: (916) 808-5115
cityofsacramento.org/transportation/parking

This map displays locations of City of Sacramento parking facilities. The map does not reflect changing road conditions or delays due to road construction and may not provide sufficient designations of one way, dead-end and through streets. The City of Sacramento and its employees assume no responsibility for any delays in travel as a result of reliance on this map.

ATTACHMENT B

RULES AND CONDITIONS

1. Care of the computer access cards issued under this Parking Agreement is the Rubicon's responsibility, such as protecting the computer access cards issued to permit users from abnormal wear due to warping by not leaving it in the sun or clipped to visors and other reasonable measures to prevent damage.
2. Rubicon shall pay a replacement fee established by resolution (the current replacement fee is \$25.00) of the City Council for the replacement of computer access cards that are lost or damaged beyond normal wear and tear.
3. Permits issued under this agreement are for the sole use of the registered Permit user and are non-transferable. The permit authorizes the parking of one (1) passenger vehicle or light truck at any single time. Permit is for ingress to and egress from designated facility or lot only and no definite space is assigned. Computer access card must be used to enter and exit facility at all times. Use of an invalid permit is prohibited and use of said invalid permit shall be charged the daily parking rate. There shall be no refunds for daily fees paid for use of an invalid card, lost card or improper use of card.
4. Equipment and supplies provided for the operation of a valet parking program will be used in accordance with manufacturer guidelines and reasonable rules established from time to time by the Parking Services Manager.
5. Permit users shall comply at all times with the conditions of this Agreement, as well as all regulations established by State law or City Code and/or posted in the parking facilities (such as No Parking, Red Zone, Handicap Park, parking between the lines, Compact Car Only, Speed Limits, Directional Flows, etc.) and any violation of such regulations by any permit user shall be punished as provided by State law and/or the City Code, in addition to any remedies available under this Agreement.

RESOLUTION NO. 2006-691

Adopted by the Sacramento City Council

September 19, 2006

926 J STREET PARKING AGREEMENT

BACKGROUND

- A. Rubicon Partners, Incorporated is the owner of the historic building located at 926 J Street. Joie de Vivre Hospitality ("JDV") is the largest boutique hotel operator in California with 30 hotels. Locations include: San Francisco, Los Angeles, San Jose, Marin, and Napa.
- B. Rubicon Partners and JDV are partnering to develop an upscale, 200 room, boutique hotel in the 926 J Street building. Renovations are currently underway at the building.
- C. JDV has projected the need for up to 183 parking spaces to support the hotel operations, including valet parking services. To meet funding requirements for the project, Rubicon Partners must secure a long-term, convenient source of parking. The initial term of the agreement will be for 30 years, with two 5-year options. Fees will be equal to 105% of the prevailing market rate charged at City Hall Garage.

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

- Section 1. The City Manager is authorized and directed to execute a parking agreement with Rubicon Partners for 183 parking spaces at City Hall Garage.

Adopted by the City of Sacramento City Council on September 19, 2006 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters.

Noes: None.

Abstain: None.

Absent: Mayor Fargo.

Attest:


Shirley Concolino, City Clerk


Robert King Fong, Vice Mayor