

**PARKING AGREEMENT
BETWEEN THE CITY OF SANTA ROSA AND 1SRA, LLC
FOR THE USE OF THE FIRST STREET GARAGE**

This Parking Agreement ("Agreement") is made this _____ day of _____ ("Effective Date"), by and between the CITY OF SANTA ROSA, a municipal corporation of the State of California ("City"), and 1SRA, LLC, a Delaware limited liability company authorized to do business in California ("Developer"). City and Developer are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Developer has plans to build a multi-family housing project consisting of 120 units to be located in Santa Rosa, California at One Santa Rosa Avenue bounded by Third Street, Santa Rosa Avenue, the Transit Mall, and B Street (the "Project"); and

WHEREAS, construction activity associated with the Project is tentatively scheduled to occur approximately between May 2021 and May 2023; and

WHEREAS, the City is interested in encouraging more residential development in downtown Santa Rosa; and

WHEREAS, Developer wishes to secure access to Parking Permits to provide Project residential tenants to be Permit Holders and gain access to proximate parking; and

WHEREAS, City and Developer now desire to enter into this Agreement to set forth the terms and conditions pursuant to which City will issue up to ninety (90) Parking Permits to Developer for use by Project residential tenants to park in the First Street Garage, located at 555 First Street, Santa Rosa, California ("First Street Garage") for up to fifty (50) years; and

WHEREAS, Developer is aware that the First Street Garage is part of the City's Parking District, which was created to ensure adequate parking for commercial purposes downtown.

NOW THEREFORE, in consideration of the mutual conditions and covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Agreement, the definitions in this Section 1 in addition those set forth elsewhere in this Agreement (including Recitals) shall govern the application and interpretation of this Agreement.

- (A) "*Extension Term(s)*" has the meaning set forth in Section 2(C) of this Agreement.
- (B) "*First Street Garage*" means the municipal off-street parking facility owned by City and situated in Santa Rosa, California in the block bounded by Santa Rosa Avenue, First Street, B Street, and the Transit Mall, located at 555 First Street.
- (C) "*Force Majeure Event*" means any matter or condition beyond the reasonable control of a Party, including war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought

by third parties against either the City or Developer or both, or any governmental order or law which causes an interruption in the operation of the First Street Garage.

- (D) *“Initial Term”* has the meaning set forth in Section 2(B) of this Agreement.
- (E) *“Monthly Rate”* means the then-applicable rate for a Parking Permit set forth in the City Schedule of Parking User Fees for the First Street Garage as established by the Santa Rosa City Council, as the same may be adjusted or otherwise amended from time to time.
- (F) *“Parking Permit”* means a non-reserved license to park in the form of a credential, electronic access or other form of access or permit issued by the City to the Developer to allow for the Permit Holders to access and park in the First Street Garage pursuant to this Agreement.
- (G) *“Payment Amount”* has the meaning set forth in section 4(B) of this Agreement.
- (H) *“Permit Holders”* means all residential tenants authorized by Developer to hold one or more valid Parking Permits to park in the First Street Garage.
- (I) *“Phase I Development Holding Period”* means the period that commences on the Effective Date through September 30, 2025 or upon Developer’s receipt of its Certificate of Occupancy, whichever occurs first.
- (J) *“Phase II Occupancy Period”* means the period commencing immediately following the conclusion of the Phase I Development Holding Period and continuing through the remaining Initial Term of this Agreement where the Initial Term and Agreement have not expired for failure to obtain a Certificate of Occupancy as provided for in Section 2(B).

SECTION 2. TERM

- (A) This Agreement shall commence on the Effective Date and be broken into two (2) phases and three (3) potential Extension Term(s). **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO CASE SHALL THE TOTAL TERM OF THE AGREEMENT EXTEND BEYOND FIFTY (50) YEARS FROM THE EFFECTIVE DATE.**
- (B) Initial Term. The Initial Term of the Agreement includes the Phase I Development Holding Period and the Phase II Occupancy Period. The Phase II Occupancy Period and the Initial Term expire fifteen (15) years after the commencement of the Phase II Occupancy Period.
 - (i) Developer shall notify the City’s Finance Department within five (5) business days upon receipt of the Project’s Certificate of Occupancy, at which point the parties agree to execute the Confirmation of Phase II Occupancy Period, substantially in the form of Exhibit A.
 - (ii) Notwithstanding the foregoing, if Developer has not secured a Certificate of Occupancy prior to expiration of the Phase I Development Holding Period, the Initial Term and Agreement automatically expires.

(C) Options to Extend.

- (i) Following the Initial Term, Developer has three (3) 10-year options to extend the Term (each, an “Extension Term”).
- (ii) To exercise its option for an Extension Term, Developer must provide City written notice pursuant to Section 12 herein no later than ninety (90) days prior to the expiration of the Initial Term or the respective Extension Term.

SECTION 3. USE OF FIRST STREET GARAGE

(A) Parking Use.

- (i) Any Parking Permit(s) issued by City to Developer under this Agreement are a non-exclusive license to park only, and shall be used solely by Developer for the parking of motor vehicles allowed in City garages by Permit Holders in the First Street Garage during the Term of the Agreement and under the terms and conditions herein.
- (ii) Permit Holders may park in any parking spaces within the First Street Garage which shall include parking spaces on any floor of the First Street Garage, except such spaces as the City may designate for other uses in the First Street Garage from time to time, which as of the date of this Agreement are those parking spaces that are located on the top floor of the building and reserved for the use of the Hotel E as described in the Agreement titled, *Valet Parking Agreement – Hugh Futrell Corporation* and dated March 14, 2017. Nothing in this Agreement will limit the City’s authority to designate or reserve parking spaces for other purposes in the First Street Garage for any reason.

(B) No Warranty. City is providing the parking spaces in the First Street Garage to Developer and Permit Holders in an “As Is” physical condition. City disclaims all warranties, express and implied. City makes no warranty or representations of any kind concerning the condition of the First Street Garage, including whether any repairs, upgrades, or improvements may be required during the Term that may impact this Agreement.

(C) Issuance of Parking Permits. City will provide the Developer with Parking Permits in amounts requested by Developer from time to time, up to a maximum total of ninety (90) as set forth below:

- (i) Phase I Development Holding Period. Developer will not request, and the City will not issue any Parking Permits under this Agreement during the Phase I Development Period
- (ii) Phase II Occupancy Period. During the first two (2) years of the Phase II Occupancy Period, the Developer agrees to request its number of Parking Permits from the City by the first (1st) of each month for the upcoming month. Following the first two (2) years of the Phase II Occupancy Period, Developer agrees to request Parking Permits from City no later than November 1st of each year specifying the number of Permits for the upcoming year.

(iii) Extension Term(s).

- (a) During any of the subsequent Extension Term(s), the number of Parking Permits issued to Project by City shall be determined by the average utilization of Parking Permits over the prior two years, and consistent with applicable local and state law (including City municipal code sections related to parking and the parking district) in effect at time of extension. For example, for year sixteen (16) (the first year of an Extension Term), if during years fourteen through fifteen (14 –15) during the Phase II Occupancy Period, the average utilization of the Parking Permits issued to Developer is 70 Parking Permits, then the number of Parking Permits to be issued for the upcoming year of the Extension Term may not exceed 70 Parking Permits, so long as that number consistent with applicable local and state law (including City municipal code sections related to parking and the parking district) in effect at that time.
- (b) During any year of an Extension Term, and based on mutual consent of the Parties, the number of Parking Permits may be decreased or increased to no more than 90 Parking Permits regardless of the prior year's average, based on demonstrated need and occupancy data supporting the request; provided that such increases or decreases are consistent with applicable local and state law (including City municipal code sections related to parking and the parking district) in effect at that time.

(D) Repairs, Maintenance and Improvements to First Street Garage.

(i) Planned Repairs, Maintenance and Improvements.

- (a) City has the right, at its sole discretion, at any time to make any repairs, upgrades, and/or improvements to the First Street Garage during the Term of this Agreement.
- (b) The City agrees to provide reasonable notice to Developers and Permit Holders concerning any planned repairs, upgrades or improvements to the First Street Garage, including notice concerning the anticipated repairs, upgrade, or improvements to be completed at the First Street Garage and the anticipated length of the work.

(ii) Emergency Response and Repairs. City has the right, at its sole discretion and without notice to make any emergency repairs, emergency upgrades, and/or emergency improvements to the First Street Garage or to take necessary steps at the First Street Garage respond to public health or other emergencies (e.g. public safety power shutoffs) or a Force Majeure Event at any time during the Term of this Agreement without any prior notice to Developer and Permit Holders.

(iii) City will make good faith efforts to offer Developer alternative parking options during any disruptions or closures under this section. Where the City does not make alternative parking options available to Developer, the Monthly Rate charged to Developer will be prorated for any closures to the First Street Garage under this section, subtracting any fees or charges owed to City.

(E) Redevelopment/Reconstruction of First Street Garage.

- (i) City has the right, at its sole discretion, to redevelop, reconstruct, demolish or otherwise improve the First Street Garage in any manner and at any time during the Term of this Agreement, without limitation.
- (ii) If the City determines, in its sole discretion, to redevelop, reconstruct or otherwise improve the First Street Garage which would prohibit or limit use of the First Street Garage by Developer or Permit Holders, City will provide six (6) months written notice to Developer and reasonable advance notice to Permit Holders describing:
 - (a) the anticipated redevelopment, reconstruction or improvements to be completed at the First Street Garage site;
 - (b) the anticipated length of the work; and
 - (c) whether the redevelopment and/or reconstruction of the First Street Garage will require temporary or permanent relocation of Permit Holders.
- (iii) City will make good faith efforts to offer Developer alternative parking options during any disruptions or closures under this section. Where the City does not make alternative parking options available to Developer, the Monthly Rate charged to Developer will be prorated for any temporary or permanent closures to the First Street Garage under this section, subtracting any fees or charges owed to City.

SECTION 4. MONTHLY RATE & PAYMENT AMOUNT

(A) Monthly Rate. The Monthly Rate applies during the Initial Term (inclusive of the Phase I Development Holding Period and the Phase II Occupancy Period) and any Extension Term(s).

(B) Payment Amount.

- (i) Phase I Development Holding Period. The City and Developer agree that a Monthly Rate applicable during the Phase I Development Holding Period is of zero dollars (\$0) because the City will issue zero Parking Permits to Developer during the Phase I Development Holding Period.
- (ii) Phase II Occupancy Period; Extension Terms. During the Phase II Occupancy Period, and each of the three (3) Extension Terms (if exercised), the Payment Amount owed by Developer to City is the Monthly Rate multiplied by the number of Parking Permits to be issued for the month, plus any additional administrative or other fees generally applicable to City parking garages (e.g. lost card charges) as set forth in the City's Schedule of Parking User Fees or otherwise established by Council, as the same may be amended from time to time.
- (iii) For the avoidance of doubt, the Payment Amount will be calculated based on date the Phase II Occupancy Period begins, regardless of when Developer provides notice to City as required by Section 2(B)(i) of this Agreement.

(C) Late Charges

- (i) Developer recognizes that late payment of all monies due under this Agreement will result in administrative and other additional expenses to City, the extent of which additional expense is extremely difficult and economically impractical to ascertain.
- (ii) Developer therefore agrees that if payment due hereunder from Developer to City remains unpaid fifteen (15) days after payment is due, Developer shall pay to City a one-time late charge equal to five percent (5%) of the delinquent amount owed to City.
- (iii) Developer agrees that such amount is a reasonable estimate of the loss and expense to be suffered by City as a result of such late payment by Developer and may be charged by City to defray such loss and expense.
- (iv) The provisions of this Section in no way relieve Developer of the obligation to pay City any amount on or before the date on which they are due, nor do the terms of this Section in any way affect City's remedies under this Agreement in the event any amount is unpaid after the due date.

(D) Invoicing and Payment.

(i) Invoicing.

- (a) City agrees to issue an initial invoice to Developer at the commencement of the Phase II Occupancy Phase.
- (b) During the Phase II Occupancy Period and any Extension Term(s), City agrees to send an annual written notice and invoice to Developer by November 15th of each year setting forth the estimated monthly Payment Amounts based on the then current number of Parking Permits issued by the City to the Developer. Any additional administrative or other charges applicable to all City parking garages that the City anticipates may be due will also be identified on such notice and invoice. The City's annual notice and invoice is an estimate and will not relieve Developer of its obligation to pay the full Payment Amount based on its actual number of Parking Permits each month.

(ii) Payment Process.

- (a) Developer agrees to pay City in advance on a monthly basis. Developer's first payment must be made within five (5) business days of the date of the City's initial invoice to Developer, and it will be prorated based on the days of the month the Parking Permits are issued. All subsequent Payment Amounts are due on the twenty-third (23rd) of each month for the upcoming month.
- (b) Payments from Developer shall be made by wire transfer to a designated City bank account or in the form of a check, cashier's check, or other immediately available fund sent to the City at the address set forth in section 12 of this Agreement.

SECTION 5. TERMINATION

- (A) Mutual Consent. The Parties may terminate this Agreement at any time by mutual written consent. Unless the Parties agree otherwise, the termination shall become effective sixty (60) days after the date of the written agreement to mutually terminate.
- (B) Force Majeure. In the event that the First Street Garage is damaged by a Force Majeure Event and the City determines in its sole and reasonable discretion that the First Street Garage is inaccessible, unsafe or otherwise unusable (whether in whole or in part), the City may terminate this Agreement by giving Developer fourteen (14) days written notice thereof. In the event of termination by City under this section, Developer shall be refunded all Payment Amounts paid in advance, subtracting any fees or charges owed to City, for each day that the First Street Garage was inaccessible or unusable before the date of termination.
- (C) Taking by Eminent Domain. If the real property where the First Street Garage is located is partially or wholly taken by eminent domain or is the subject of a pending taking which has not been consummated, City shall notify Developer in writing of the event. In this event, this Agreement shall be terminated not sooner than forty-five (45) days prior to consummation of the taking. On termination of this Agreement under this section, neither party shall have any rights or responsibilities to the other as of the date of termination, except for those obligations that incurred prior to the date of termination or survive termination.
- (D) For Cause. In the event that either of the Parties fails to perform any terms, conditions, or obligations or otherwise defaults under this Agreement and that failure to perform or default is not cured within thirty (30) days of written notice, in addition to all other remedies provided by law, either Party may terminate this Agreement for cause upon written notice of not less than thirty (30) days.

SECTION 6. PARKING RULES AND REGULATIONS

Developer agrees to comply, and shall cause all Permit Holders to agree in writing to comply, with any and all rules and regulations established by City for use of the First Street Garage, including, without limitation the Parking Garage Permit terms and conditions (“Rules”) that are applicable to the First Street Garage and City parking facilities in general. Developer is aware and will make its Permit Holders aware that the City may modify or amend such Rules from time to time and neither Developer, nor its Permit Holders shall not have any right to approve or consent to any change in the Rules.

SECTION 7. INDEMNITY AND HOLD HARMLESS

Developer agrees to indemnify, hold harmless, and defend City, its officers, employees and agents from and against any and all claims, demands, suits, liabilities, losses, damages and payments, including reasonable attorney fees and court costs, claimed or made against City, its officers, employees or agents to the extent arising from: (A) Developer’s access to or use of the First Street Garage by Developer’s officials, employees or agents; or (B) any breach or violation by Developer under this Agreement. This indemnity provision shall survive the expiration or sooner termination of this Agreement.

SECTION 8. INSURANCE

Developer agrees to obtain and maintain in full force and effect during the term of this Agreement, the insurance requirements in Attachment One to this Agreement. Developer’s compliance with this section does not limit Developer’s obligations under Section 7 of this Agreement.

SECTION 9. WAIVER

City's failure, or Developer’s failure, to enforce any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such terms, covenants or conditions, or any subsequent breach of same, or any other term, covenant or condition contained herein.

SECTION 10. ASSIGNMENT OR TRANSFER

This Agreement, including any rights and/or obligations hereunder, may not be assigned or transferred in whole or in part by Developer during without the prior written consent of the City, which shall not be unreasonably withheld. Any attempted assignment or other transfer of this Agreement by Developer in violation of this section shall be void.

SECTION 11. GOVERNING LAW

The law governing this Agreement shall be that of the State of California.

SECTION 12. COMPLIANCE WITH LAW

Developer agrees to comply with all applicable local, state and federal laws, regulations, and ordinances.

SECTION 13. NOTICES

Any notice which is required to be given hereunder, or which either the City or Developer may desire to give to the other, shall be in writing and may be personally delivered or mailed by registered or certified United States mail, postage prepared, to the following addresses:

To CITY: City of Santa Rosa - Finance Department
90 Santa Rosa Avenue
Santa Rosa, CA 95404
ATTN: Parking Division Manager

To DEVELOPER: 1 SRA, LLC
1025 Kaiser Road
Napa, CA 94558

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the U.S. mail.

SECTION 14. NONDISCRIMINATION

Neither City nor Developer shall discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 15. CAPTIONS

The article and paragraph captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

SECTION 16. TIME OF ESSENCE

Time is of the essence with respect to the performance of each and every provision of this Agreement.

SECTION 17. SEVERABILITY

If one or more of the provisions contained herein is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

SECTION 18. VENUE

In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Sonoma or if federal jurisdiction is appropriate, exclusively in a United States District Court for the Northern District of California, San Francisco, California.

SECTION 19. ENTIRE AGREEMENT AND AMENDMENTS

This Agreement contains all the agreements of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no other agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added, except by an agreement in writing signed by the Parties.

SECTION 20. FORCE MAJEURE

Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section shall notify the other Parties within ten (10) days of the affected Party's knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.

SECTION 21. AUTHORITY

The Parties represent and warrant that they have the power and authority to enter into this Agreement, and that the appropriate governing body and/or officers have approved such power and authority to enter into this Agreement and bind the Parties, that this Agreement shall be executed, delivered and performed pursuant to the power and authority conferred by the appropriate governing body, and that the individual(s) executing this Agreement is duly authorized to do so.

SECTION 22. COUNTERPARTS AND ELECTRONIC SIGNATURES

This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both City and Developer wish to permit this Agreement and future documents relating thereto to be electronically signed in accordance with applicable federal and California law. Either Party to this Agreement may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to the Agreement. The Parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective Agreement. The City reserves the right to reject any digital signature that cannot be positively verified by the City as an authentic electronic signature.”

WITNESS THE EXECUTION HEREOF on the Effective Date:

DEVELOPER:

Name of Firm: 1SRA, LLC

CITY OF SANTA ROSA

a Municipal Corporation

TYPE OF BUSINESS ENTITY

____ Limited Liability Corporation

By: _____

Print Name: _____

Title: _____

Signatures of Authorized Persons:

By: _____

Print Name:

Title: CEO

APPROVED AS TO FORM:

Office of the City Attorney

By: _____

Print Name:

Title:

ATTEST:

City Clerk

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One – Insurance Requirements

Exhibit A – Form of Confirmation of Phase II Occupancy Period under the Parking Agreement Between the City of Santa Rosa and 1SRA, LLC for the Use of the First Street Garage

EXHIBIT A

**FORM OF CONFIRMATION OF PHASE II OCCUPANCY PERIOD
UNDER THE PARKING AGREEMENT
BETWEEN THE CITY OF SANTA ROSA AND 1SRA, LLC
FOR THE USE OF THE FIRST STREET GARAGE**

This Confirmation of Phase II Occupancy Period is made and entered into as of _____, 20__, by and between the City of Santa Rosa, a municipal corporation of the State of California (“City”), and 1SRA, LLC, a Delaware limited liability company authorized to do business in California (“Developer”).

RECITALS

WHEREAS, City and Developer entered into an agreement dated _____ entitled “Parking Agreement Between the City of Santa Rosa and 1SRA, LLC for Use of the First Street Garage” (“Agreement”); and

WHEREAS, the parties desire to enter into this Confirmation of Phase II Occupancy Period pursuant to the Agreement to set forth the commencement and expiration dates of the Phase II Occupancy Period.

The Parties agree as follows:

The Phase II Occupancy Period, as defined in the Agreement, commenced on ____ (insert date)_____ and continues through _____, which is the fifteenth (15th) anniversary of the commencement of the Phase II Occupancy Period.

1SRA, LLC
By _____
Name:
Title:

City of Santa Rosa, a municipal corporation
By _____
Name:
Title: