

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal From: Keith G. Jones
Dept: City Manager Dept: Public Works
Subject: LEASE AGREEMENT FOR PROPERTY Date: September 14, 2010
LOCATED AT 12885 AND 12891
MAIN STREET

OBJECTIVE

For City Council to approve a lease agreement for the property located at 12885 and 12891 Main Street to construct a temporary parking lot and to appropriate funding for the project.

BACKGROUND

The property located at 12885 and 12891 Main Street has been a vacant lot since 2008. The owners had demolished the previous building in order to construct a new 3-story commercial building; however, due to the economic downturn, the owners have been unable to secure financing for construction. The owners anticipate that construction would not take place for at least another two years.

DISCUSSION

At the Main Street Commission meeting held on July 8, 2010, the Commissioners expressed their concerns regarding the unsightly condition of the vacant lot. The Commissioners and City staff discussed various options to make the property more functional and create an effective use of space. The Commission and staff recommends that the vacant lot be developed into a temporary parking lot with a pedestrian breezeway for public access until the owners secure financing to construct a building. The parking lot would create 20 additional parking spaces and enable Main Street patrons to have easier access to the west parking lot (see attachment). The cost to construct a parking lot is estimated to be \$40,000.

In order to construct a parking lot on the property, a lease agreement between the City and the property owners is needed. On August 30, 2010, Staff met with the property owners to negotiate lease terms for public use of the property. The terms of the lease agreement are as follows:

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LOCATED AT 12885 AND 12891 MAIN STREET
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- Rent: The monthly rent for the property is \$2,000 per month.
- Term: Two-years with the option to extend the agreement for two additional one-year terms.
- Premises: The properties at 12885 and 12891 Main Street total approximately 9,150 square feet of unimproved land.
- Use of Premises: The City will operate the property as a public parking lot.

FINANCIAL IMPACT


The cost of the lease agreement is \$48,000 for two years. In addition, costs to construct a parking lot are estimated to be \$40,000. The total cost of \$88,000 will be paid with Parking District Maintenance Funds. Funds will need to be appropriated for Fiscal-Year 2010-2011 budget. There is no impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council:

- Approve the attached Lease Agreement with the property owners of 12885 and 12891 Main Street in the amount of \$24,000 for two years with the option to extend the agreement for two additional one-year terms.
- Authorize the City Manager to make minor modifications to the Lease Agreement on behalf of the City when appropriate to do so.
- Authorize the City Manager to execute the lease agreement on behalf of the City.
- Authorize the Finance Director to appropriate funds in the amount of \$88,000 to the Parking District Maintenance Fund Fiscal-Year 2010-11 Budget.


KEITH G. JONES
Public Works Director


By: Ann Eifert
Sr. Administrative Analyst

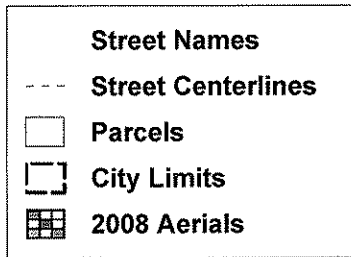
Recommended for Approval


Matthew Fertal
City Manager

Attachment: (1) Map
(2) Lease Agreement

GG GIS - City Map

ATTACHMENT 1



SCALE 1 : 1,675



**MAIN STREET PARKING
LEASE AGREEMENT**

This Lease Agreement (hereinafter, "Lease") is entered into as of _____, 2010, by and between, the **M & P CALIFORNIA PROPERTIES, LLC**, a California Limited Liability Company, and **DINAVI PROPERTY, LLC**, a California Limited Liability Company, collectively, the "Lessor," and the **CITY OF GARDEN GROVE**, a municipal corporation, referred to herein as "Lessee".

1. Lease of Premises

Lessor hereby leases to Lessee and Lessee hereby agrees to lease from Lessor upon the terms and conditions set forth herein that certain property located at 12885 & 12891 Main Street located in Garden Grove, CA, consisting of approximately 9,150 square feet of vacant, unimproved land (the "Premises").

2. Term

The term of this lease (the "Term") shall commence on September 14, 2010 and shall expire twenty-four (24) months thereafter, unless terminated earlier pursuant to the terms contained herein. If at any time Lessee desires to terminate the Lease, Lessee may do so by providing to Lessor written notice of intention to terminate. Such notice to terminate must be provided to Lessor at least thirty (30) days prior to the desired date of termination of the Lease. If at any time Lessor desires to terminate the Lease, Lessor may do so by providing to Lessee such written notice of intention to terminate at least thirty (30) days prior to the desired date of termination of the Lease.

3. Term Extension

Provided that this Lease shall be in full force and effect, and Lessee shall not be in default under any of Lessee's obligations under this Lease, the Lessee shall have the right to extend the Term of this lease by notifying the Lessor of its intent to extend the Term for up to two (2) additional two (2) year periods (the "Option Periods") by written notice thereof to the Lessor, not less than thirty (30) days prior to the expiration of the Term or the applicable Option Period.

4. Rent

During the duration of the Term and any extension thereof, Lessee shall pay Lessor the sum of Two Thousand Dollars (\$2,000) per month as Rent for the Term of the Agreement. The due date for Rent payment shall be the fifth (5th) day of each calendar month. The rent due by the Lessee for the first and last months will be prorated based on a thirty (30) day period.

5. Use of Premises

Lessor agrees that Lessee may utilize the Premises as parking for clients, customers, and patrons of the businesses located on Main Street, Garden Grove, CA.

6. Nuisance or Unlawful Uses

(a) Lessee shall not commit, authorize, or permit the commitment by any sublessee, licensee, invitee, or guest of Lessee, of waste or nuisance on the Premises, nor shall it use or allow the Premises to be used in violation of federal, state, county or city laws, ordinances or regulations.

(b) To the best of Lessor's knowledge, no hazardous materials are present upon, in or under, or have been released from the Premises.

(c) Lessee shall not cause or permit the release of hazardous materials in, on or under the Premises. The presence or use of hazardous materials in products required for the prudent and ordinary management and operation of the Premises held and used strictly in accordance with applicable laws and orders issued by insurance underwriters and prudent standards of practice shall not violate this covenant. If Lessor or any county, state, or federal enforcement agency finds Lessee to be in violation of this Section, then Lessee shall perform investigations, removal, or other remedial work required under applicable law. Lessee may delay commencement of remedial work pending resolution of a good faith contest regarding the application, interpretation or validity of laws, orders, or agreements. Lessor shall approve the remedial work, which approval shall not be unreasonably withheld or delayed.

7. Holdover and Surrender

(a) At the termination of this Lease, Lessee shall vacate the Premises, leaving the Premises in the same condition as existed at the commencement of the Lease, reasonable wear and tear, acts of God, and damage by casualty beyond the control of Lessee excepted. Lessee shall leave the Premises free and clear of all rubbish upon vacating.

(b) If Lessee holds over beyond the end of the Term with the consent, express or implied, of Lessor, such tenancy shall be deemed to be a month-to-month tenancy subject to all terms of this Lease except the definition of Term.

8. Fixtures and Improvements

(a) Lessor shall permit Lessee to pave and stripe the Premises and install landscaping along the Premises frontage at Lessee's sole expense.

(b) Notwithstanding Section 8(a), Lessee shall not construct or place or permit to be constructed or placed, signs, awnings, marquees, or other structures projecting from the exterior of the Premises without Lessor's prior written consent, not to be unreasonably withheld, conditioned, or delayed. Lessee shall remove signs, displays, advertisements or decoration Lessee has placed or permitted to be placed, on the premises, which, in Lessor's reasonable opinion, are offensive or otherwise objectionable. If Lessee fails to remove such signs, displays, advertisements or decorations within thirty days after having received written notice to remove the same from Lessor, Lessor may re-enter the premises and remove them at Lessee's expense.

(c) Lessee may not structurally alter the Premises other than as described herein without the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion.

(d) Lessee shall not remove leasehold improvements, but may remove fixtures, equipment and other personal property placed on the Premises by Lessee or under its authority. Lessee shall repair damage resulting from removal of fixtures, equipment and other personal property.

9. Inspection and Maintenance

(a) Condition of Premises. Lessee has examined the Premises and acknowledges that it is clean and in operative condition.

(b) Notwithstanding the provisions of Section 8, Lessee shall, at its sole cost and expense, at any time and from time to time during the Term, make any alterations, improvements or replacements in, on, to or of the Premises, in whole or in part, which may be necessary or desirable to keep the Premises in good and safe condition and repair.

(c) If all or a portion of the Premises is damaged or destroyed by fire or other casualty, Lessor shall have the prerogative, at its sole discretion, either to (a) repair or rebuild the Premises (or portion thereof) and diligently pursue the same to completion, or (b) not to repair or rebuild the Premises (or any portion thereof). Lessor shall, by written notice to Lessee, make its election whether to repair and rebuild the Premises within ninety (90) days after the date of the fire or other casualty. In the event that Lessor elects not to repair or rebuild, this Lease shall terminate as of the date of the fire or other casualty and Lessee shall pay any Rent accrued only through the date of such termination. The provisions of the Lease, including this Section, constitute an express agreement between Lessor and Lessee with respect to any and all damage to, or destruction of, all or any part of the Premises.

10. Utilities

Lessee shall furnish to the Premises all required gas, water, electricity, sewer, and all other utilities, including, but not limited to, sufficient electricity to provide adequate security lighting in all common areas during periods of unrestricted public access. Lessee shall indemnify and hold harmless Lessor from and against any liability or damages resulting from, arising out of, or connected with, the provision of, or failure to provide or pay any charges assessed against the Premises for such utility services.

11. Indemnification; Insurance

(a) Lessee shall hold Lessor, its officers, agents, and employees, free and harmless from liability, costs or damages, including attorney fees, resulting from negligent acts or omissions to act by Lessee, its officers, agents, or employees arising out of Lessee's occupancy of the Premises.

Lessee's personal property, fixtures, equipment, inventory and vehicles (collectively, "Lessee's Property") are not insured by Lessor against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Lessee is self-insured, and if requested by Lessor, shall provide Lessor with a written acknowledgement of this fact at the time of the execution of this Lease.

12. Assignment

Lessee shall not assign this Lease or sublease the Premises, or any right or privilege hereunder without Lessor's prior written consent to be given or withheld in Lessor's sole and absolute discretion. Consent by Lessor to any assignment or sublease shall not constitute a consent to a subsequent assignment or sublease. Lessee's unauthorized assignment or sublease shall be void and shall terminate this Lease at Lessor's option. Lessee's interest in this Lease is not assignable by operation of law.

13. Lessor's Remedies on Lessee's Breach

(a) In the event of any default hereunder which default has not been timely cured, Lessor may, at its option:

(1) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default;

(2) Maintain and operate the Premises and the Lessee Improvements, without terminating this Lease; or

(3) Terminate this Lease by written notice to Lessee of its intention to do so, but only if the default occurs after the initial Term of this Lease.

14. Miscellaneous

(a) Notices given pursuant to the provisions of this Lease, or necessary to carry out its provisions, shall be in writing and delivered personally to the person to whom the notice is to be given, or mailed postage prepaid, addressed to such person. Lessor's and Lessee's addresses for this purpose shall be:

Lessor: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: Real Property

Lessee: M & P Properties
27525 Puerta Real #153
Mission Viejo, CA 92691
Attention: Craig Peterson

(b) Lessor's waiver of a default of any term, covenant or condition of this Lease is not a waiver of any other or subsequent default of the same or other provisions hereof. Lessor's acceptance of rent after breach is not waiver of the breach.

(c) This Lease and its terms, covenants and conditions apply to and are binding upon and inure to the heirs, successors, executors, administrators and assigns of the parties hereto.

(d) Time is of the essence herein.

(e) In the operations pursuant to this Lease and otherwise in the use of the Premises, Lessee will not discriminate or permit discriminations against any person or class of persons by reason of race, color, creed, sex, age or national origin.

(f) If any provision of this Lease or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Lease nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

(g) The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the Lessor or Lessee.

(h) The parties hereby agree that this document contains the entire agreement between the parties and this Lease shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

(i) The prevailing party shall recover attorney fees and costs in the event litigation is necessary to enforce this Lease.

(j) This Lease shall be interpreted and enforced in accordance with California law.

(k) The Lease and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

(SIGNATURES ON THE FOLLOWING PAGE)

THE PARTIES HAVE CAUSED THIS LEASE TO BE EXECUTED AS OF THE DATE WRITTEN FIRST ABOVE.

‘Lessor’

M & P CALIFORNIA PROPERTIES, LLC, a
California Limited Liability Company, and

By: _____

Its: _____

DINAVI PROPERTY, LLC, a California Limited
Liability Company

By: _____

Its: _____

“Lessee”

Attested By:

CITY OF GARDEN GROVE, a municipal corporation

City Clerk

Mayor

Approved as to form:

City Attorney