

People Serving
People

CITY OF RIVERSIDE

CITY COUNCIL MEMORANDUM



HONORABLE MAYOR AND CITY COUNCIL

DATE: August 10, 2004

ITEM NO: 52

SUBJECT: LEASE AGREEMENT FOR EASTSIDE BRANCH LIBRARY –
SUPPLEMENTAL APPROPRIATION

BACKGROUND:

On January 6, 1998, the City entered into a lease for 1,584 square feet for the purpose of establishing the Eastside Cybrary Connection (ECC). The ECC, an innovative community computing center, was started with federal Library Services and Technology Act funds and the initial rent costs were covered by the grant. The ECC flourished and received numerous awards as a best practice for reducing the Digital Divide. These awards came from Senator Barbara Boxer, League of California Cities, American Library Association Young Adult Services, and the Tomas Rivera Policy Institute. In the beginning there were twelve (12) computer workstations and they were used to teach computing skills to children 10-14 years old. The project goal was to reach 5,000 children each year.

Today, there are twenty (20) workstations and during the 40 hours open each week, over 700 children and adults use the ECC. This is a 728% increase in usage. Each week more than 378 computer work sessions are logged-in. There is also daily homework assistance offered by tutors from La Sierra University, Riverside Community College, and UC Riverside. The existing space is much too small. The single room is bursting at the seams and children are being turned away because there is insufficient space for them to work.

Contributing to the increase in usage are the partnerships that have been established with UC Links providing a practicum for students in the programs of Education and Psychology; the Riverside Unified School District's Even Start program that uses the ECC computers and staff assistance for teaching computer use to parents; and Smart Riverside that accepts the ECC certification as part of the eligibility for the Riverside Computer Investment Program.

To sustain the momentum generated by the ECC program and to add a circulating collection so that library borrowers can checkout and return items at the site, it necessary to move to a larger space. A suitable space of 10,816 square feet is available across the street from the ECC at the Town Square Shopping Center. The attached 15 year lease agreement has been negotiated with the property owners.

FISCAL IMPACT:

Monthly rent plus common area charges will be \$14,663.20 per month. With an anticipated occupancy date of October, the first year costs will be \$131,968.80, with first three months paid in advance at point of occupancy. There will also be a savings to the Library of \$17,500 due to the termination of current ECC lease.

Library Measure C will be the source of payment for the Lease. Measure C was a parcel tax for the library passed in 2002 for a period of ten years, with annual revenue of approximately \$1,250,000 to increase public library service hours and after school programs for children. The measure also provides for the improvement of library facilities. There are sufficient funds in the 2004-05 fund balance to cover the lease costs.

In subsequent years, rent will also be drawn from Measure C. When Measure C sunsets in 2012, it is anticipated that the parcel tax will have been renewed by the voters until 2022. The Lease will extend for 15 years, until 2019.

ALTERNATIVES:

The City Council can direct staff to search for an alternative site.

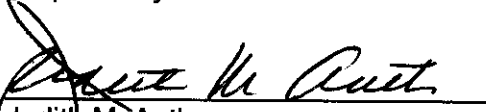
RECOMMENDATIONS:

That the City Council:

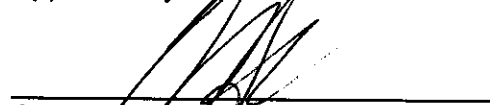
1. Approve the attached Shopping Center Lease with Sugarbush-1 Properties, L. L. C. for 10, 816 square feet at 4033 Chicago Avenue, #C, Riverside, California, for use as a branch of the Riverside Public Library.
2. Authorize a supplemental appropriation of \$131,968.80 from Library Measure C revenue account 210-3115500 to 5105000-423200 (Land & Building Rental).
3. Authorize the City Manager, or his designee, to execute the attached Lease Agreement

Attachment - Lease

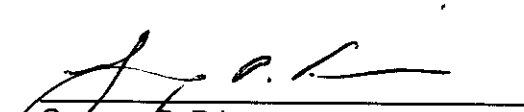
Prepared by:


Judith M. Auth
Library Director

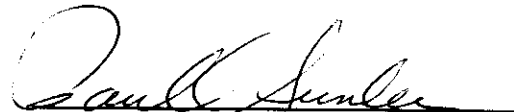
Approved by:


George A. Carvalho
City Manager

Approved as to form:


Gregory P. Priamos
City Attorney

Certifies availability of funds:


Brent A. Mason
Interim Finance Director

SHOPPING CENTER LEASE
(City-Sugarbush-1 Properties, L.L.C.)
(4033 Chicago Avenue, #C)

THIS LEASE ("Lease"), is made and entered into this day of , 2004, by and between SUGARBUSH-1 PROPERTIES, L.L.C., a California general partnership ("Lessor"), as the fee owner of the Premises, and the CITY OF RIVERSIDE, a municipal corporation ("City") for that certain space containing approximately Ten Thousand Eight Hundred Sixteen (10,816) square feet of office space ("Premises"), all having an address of 4033 Chicago Avenue, #C, Riverside, California ("Shopping Center"), more particularly shown in Exhibit "A" attached hereto and incorporated herein by reference.

1. **LEASED SPACE:** Lessor hereby leases the Premises to City, and City hereby leases the Premises from Lessor during the Term, subject to all of the terms, covenants, and conditions set forth in this Lease. All of the terms, covenants, and conditions set forth in this Lease shall commence as of the Commencement Date.

2. **LEASE TERM:** The term of this Lease ("Term") shall be for a period of fifteen (15) years commencing on October 1, 2004, ("Commencement Date") and shall expire as of October 1, 2019 (the "Expiration Date"), unless extended or terminated as set forth in this Lease.

3. **RENT:** City shall pay to Lessor the monthly sum of \$12,500 as rent for the Premises during the first year of the term of this Lease. The monthly rental rate shall be adjusted on each annual anniversary of this Lease, beginning on October 1, 2005, by an amount equal to the percentage differential between the then current Consumer Price Index (Los Angeles-Anaheim-Riverside, All Urban Consumers, All Items published monthly by the U.S. Department of Labor) for the month in which such anniversary occurs and the Consumer Price Index for the same month in the preceding year. If the Consumer Price Index is discontinued or revised during the term hereof, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued. Such rental and other charges are due on the first day of each month and shall be late if not paid by the sixth day of the month. If Tenant does not pay rent and other charges by then, there shall be a late fee equaling ten percent (10%) of the applicable monthly rent assessed each month.

4. **SECURITY DEPOSIT:** City shall not be required to deposit with Lessor a security deposit at any time during the Term.

5. **USE:** For purposes of this Lease, "Permitted Use" shall mean library, cybrary and associated administrative use and for no other purpose. City may not use the Premises for any purpose other than for the Permitted Use. City Prohibited uses include market, market items, pharmacy, payday advance, buffet restaurant, electronics, 99¢ store, one price concept store or

clothing. City shall not do or permit anything to be done in or about the Premises, nor bring nor keep anything therein, which will in any way (a) adversely affect the fire or other insurance covering the Premises or any of its contents, or (b) conflict with any law, ordinance, rule or regulation affecting the occupancy and use of the Premises which is or may hereafter be enacted or promulgated by any public authority having jurisdiction over the Premises.

6. **VEHICLE PARKING:** City shall be entitled to use at least 20 unreserved parking spaces on those portions of the Common Areas designated from time to time by Lessor for parking. City may use more parking spaces than said number, if available.

7. **CONDITION OF PREMISES:**

Lessor shall deliver the Premises to City in a broom clean and safe condition, free of hazards and debris, on the Commencement Date, and Lessor warrants that as of the Commencement Date, all systems and equipment, including but not limited to, electrical, plumbing, fire sprinklers, fire suppression systems, fire/life/safety systems, elevators, security systems, lighting, heating, ventilation and air conditioning systems ("HVAC"), loading doors, if any, that serve the Premises and all other such elements in the Premises, other than those installed or constructed by City, shall be in safe, hazard free, good operating condition, and the roof, bearing walls and foundation of the Premises shall be free of material defect. At time of delivery, Lessor shall have constructed various tenant improvements as set forth in attached Exhibit "B." Lessor agrees to and shall construct the improvements in compliance with all state and local codes, regulations, conditions, and requirements and in conformance with industry standards, and shall obtain all necessary permits and inspections.

8. **DELAY IN COMMENCEMENT:** Lessor shall not be liable to City if Lessor does not deliver possession of the Premises to City on the Commencement Date. Lessor's non-delivery of the Premises to City on that date shall not affect this Lease or the obligations of Lessor and City under this Lease. However, the Commencement Date shall be delayed until possession of the Premises is delivered to City. If Lessor does not deliver possession of the Premises to City within ninety (90) days after the Commencement Date unless delayed solely due to action of the City or other governmental agency, City may elect to cancel this Lease by giving written notice to Lessor within (10) days after the ninety (90) period ends, unless Landlord delivers possession to City prior to the expiration of this ten-day period. If City gives such notice, this Lease shall be canceled and neither Lessor nor City shall have any further obligations to the other. If delivery of possession of the Premises to City is delayed, Lessor and City shall, upon such delivery, execute an amendment to this Lease setting forth the Commencement Date and the Expiration Date of this Lease. Notwithstanding the above, this Lease shall automatically terminate and be of no force or effect should Lessor fail to deliver possession of the Premises to City within 180 days from the date this Lease was entered into.

9. **HOLDING OVER:** City shall not retain possession of the Premises following the Expiration Date or earlier termination of this Lease without the express written consent of

Lessor in each instance. If City retains possession of the Premises following the Expiration Date, or earlier termination of this Lease and Lessor has not expressly consented in writing to such continued possession, then the tenancy shall be on the same terms, conditions, and provisions of this Lease, except that: (a) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (b) such tenancy will not constitute a renewal or extension of this Lease for any further Term; (c) such tenancy may be terminated by Lessor or City upon 30 days advance written notice to the other or the earliest date permitted by law; and (d) rent for such tenancy shall be calculated as 125% of the last monthly rental payment of the expired Lease.

10. **REAL PROPERTY TAXES:** City shall pay to Lessor, as part of the common area maintenance ("CAM") charges, City's prorata share, calculated to be 6.4% (six and four tenths percent) all taxes and assessments levied against the land and all improvements thereon (except for the trade fixtures, improvements, and personal property of City located in or about the Premises). For purposes of this Lease "Real Property Tax" shall collectively mean:

(a) Any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Shopping Center, the Premises (other than City's trade fixtures, improvements, and personal property), or land upon which the Premises is located;

(b) Any tax on the Lessor's right to receive, or the receipt of, rent or income from the Premises or against Lessor's business of leasing the Premises;

(c) Any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises by any governmental agency unless such services are being used solely by City, in which instance charges for such services will be paid solely by City directly to such governmental agency;

(d) Any tax imposed upon this transaction, or based upon a reassessment of the Shopping Center due to a change in ownership or transfer of all or part of Lessor's interest in the Shopping Center; and

(e) Any charge or fee replacing any tax previously included within the definition of Real Property Tax. For purposes of this Lease "Real Property Tax" shall exclude Lessor's federal or state income, franchise, inheritance or estate taxes which are the sole responsibility of Lessor.

11. **PERSONAL PROPERTY TAXES:** City shall pay all taxes levied upon all of City's trade fixtures, improvements made to the Premises, its personal property and inventory, and all other property not owned by Lessor and kept in the Premises.

12. **UTILITIES AND HVAC SYSTEM:** Lessor shall furnish, in a safe, hazard-free and in a good working order, a heating, ventilation and air conditioning system ("HVAC") and water, gas, and telephone facilities up to the exterior of the Premises. City shall maintain, repair,

replace and pay for the usage, in good working order, a heating, ventilation and air conditioning system as required for City's use. City shall pay, directly to the appropriate supplier, the cost and expense of any and all utilities required for the Premises including, without limitation, electricity, gas, water and telephone service, garbage, janitorial maintenance, together with any and all service activation and deactivation fees, services charges for moves, adds, or changes, taxes and levies for such utilities, and all cabling and equipment made or required in connection therewith. Lessor shall obtain and assign any and all warranties, including but not limited to repair, replacement and maintenance warranties, to the City for the HVAC system.

13. **COMMON AREAS:** As used in this Lease, "Common Areas" shall mean all areas within the Shopping Center which are available for the common use of tenants of the Shopping Center and which are not leased or held for the exclusive use of City or other lessees or tenants, including, but not limited to, parking areas, driveways, sidewalks, loading areas, access roads, corridors, landscaping, and planted areas. Lessor may from time to time change the size, location, nature and use of any of the common areas, including converting common areas into leaseable areas, constructing additional parking facilities in the common areas, and increasing or decreasing Common Area and/or the Shopping Center. City shall have the nonexclusive right to use the Common Areas for the purposes intended, subject to such reasonable rules and regulations as Lessor may establish from time to time. At any time, Lessor may close any Common Areas to perform any acts in and to the Common Areas as, in Lessor's judgment, may be desirable to improve the Shopping Center. City shall not, at any time, interfere with the rights of Lessor, or other tenants, or any other person entitled to use the Common Areas.

Lessor shall maintain the Common Areas in good order, condition, and repair (subject to any remodeling thereof undertaken by Lessor) and shall operate the Shopping Center in Lessor's sole discretion. City shall pay its proportionate share of the Common Area expenses. City's proportionate share shall be deemed to be the ratio that the approximate entire floor building area of the Premises occupied by City bears to the approximate leased floor area of the Shopping Center. Parties agree that the City's proportionate share is 6.4% (six and four tenths percent). Lessor estimates such expenses to be \$2,163.20 per month. Such Common Area expenses include costs incurred by Lessor for the operation and maintenance of the Common Areas. Common Area costs include, but are not limited to, costs and expenses for the following: gardening and landscaping; common area utilities, water and sewage charges; maintenance of signs (other than City's signs); premiums for liability, property damage, fire and other types of casualty insurance on the Common Areas and Workers' Compensation insurance; all real property taxes and assessments levied on or attributable to the Common Areas and all Common Area improvements; repairing, resurfacing paving, maintaining, painting, lighting, cleaning, refuse removal, security and similar items. Lessor may cause any or all of such services to be provided by third parties, and the expenses for such services may include Landlord's management fee of fifteen percent (15%) of the expenses, except for the expenses related to utilities, insurance premiums, taxes and assessments

14. **INSURANCE**: City is and will remain self-insured during the Term of this lease for casualty (general liability), bodily injury, property damage and personal injury liability each with a limit of liability of \$5,000,000.00 for each occurrence and in the aggregate. City shall deliver a copy of proof of such self-insurance to Lessor prior to the Commencement Date.

15. **HAZARD AND RENTAL INCOME INSURANCE**: During the Term, Lessor may maintain policies of insurance covering loss of or damage to the Premises in such amount or percentage of replacement value as Lessor or its insurance advisor deems reasonable in relation to the age, location, type of construction and physical condition of the Premises and the availability of such insurance at reasonable rates. Such policy may provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage, earthquake and inflation guard endorsement, and any other insurance which Lessor may deem necessary. Lessor may obtain insurance coverage for City's fixtures, equipment or building improvements installed by City in or on the Premises. City may, at City's expense, maintain such primary or additional insurance on its fixtures, equipment and building improvements as City deems necessary to protect its interest. City shall not do or permit to be done anything which invalidates any such insurance policies.

16. **COMPLIANCE**:

16.1 **Compliance**. Lessor warrants that as of the Commencement Date of the Lease that the Premises and improvements on the Premises shall comply with all applicable State and Federal laws, covenants or restrictions of record, building codes, regulations and ordinances ("Applicable Requirements") in effect on the Commencement Date of this Lease, regardless of the use to which City will put the Premises. If the Premises do not comply with said warranty, Lessor shall, promptly after receipt of written notice from City or any governmental agency having jurisdiction over such matters setting forth the nature and extent of such non-compliance, rectify the same at Lessor's expense prior to delivery of possession of the Premises and if the cost is unreasonable to rectify the same Lessor shall have the right to terminate this Lease. If the Applicable Requirements are hereinafter changed so as to require during the term of this Lease, unless same is the result of the use to which City puts the Premises, the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance as hereinafter defined, or the reinforcement or other physical modification of the Premises Lessor shall, promptly after receipt of written notice from City or any governmental agency having jurisdiction over such matters setting forth the nature and extent of such non-compliance, rectify the same at Lessor's expense.

16.2 **Americans With Disabilities**. Lessor warrants that as of the Commencement Date of the Lease that the Premises shall be readily accessible to and usable by individuals with disabilities in compliance with Title III of the Americans with Disabilities Act of 1990 as amended from time to time and regulations issued pursuant thereto and in effect from time to time. Any cost incurred prior to the Commencement Date of the Lease to cause the

Premises to comply with said Act shall be borne by Lessor. Any cost incurred after the Commencement Date of the Lease to cause the Premises to comply with said Act shall be borne by City

16.3 Sick Building Syndrome. Lessor warrants that as of the Commencement Date of the Lease that the Premises shall be constructed, operated and maintained free of certain hazards, including, but not limited to: spores, fungus, molds, bacteria, chemicals or fumes or other causes of any hazardous micro-environments, also known as "Sick Building Syndrome", emanating from or within the Premises that may cause bodily injury, sickness or death. Any cost incurred prior to the Commencement Date of the Lease to cause the Premises to be free of such hazard shall be borne by Lessor. Any cost incurred after the Commencement Date of the Lease to cause the Premises to be free of such hazard shall be borne by City.

17. CUSTODIAL SERVICES: City shall provide, or cause to be provided, and pay for all custodial services, repair, maintenance and replacements in connection with the Premises.

18. REPAIRS AND MAINTENANCE:

18.1 Lessor's Repair and Maintenance Obligations. Lessor shall, at Lessor's sole expense and in accordance with the terms of this Lease, except as otherwise provided below, repair, replace and maintain in good order and condition throughout the Term the structural portions of the Premises (understood to include the roof, foundation and load bearing walls) unless such repair, replacement or maintenance is caused by the City's use of the Premises. It is the intent of this paragraph that Lessor perform any and all building repairs, replacements and maintenance, unless such repair, replacement or maintenance is caused by the City's use of the Premises, including any vandalism to the interior of the Premises. Lessor agrees to make all repairs to or alterations of the Shopping Center and Premises that may become necessary by reason of defects in any construction thereof by Lessor.

18.2 Lessor's Default. Repairs shall be made promptly when appropriate to keep the applicable portion of the Shopping Center and Premises and other items in the condition described in this Section. Lessor shall not be in default of its repair and maintenance obligations under this Section, if Lessor performs the repairs and maintenance within thirty (30) days after written notice by City to Lessor of the need for such repairs and maintenance. If, due to the nature of the particular repair or maintenance obligation, more than thirty (30) days are reasonably required to complete it, Lessor shall not be in default under this Section if Lessor begins work within this thirty (30) day period and diligently prosecutes this work to completion.

18.3 City's Right to Make Repairs and Deduct Cost. If City provides notice to Lessor of an event or circumstance that requires the action of Lessor with respect to the replacement, repair or maintenance to the Shopping Center and/or Premises as set forth in this Section and Lessor fails to provide such action as required by the terms of this Lease within the period specified in Section 18.2, City may (but shall not be obligated to do so) take the required

action if: (a) City delivers to Lessor an additional written notice advising Lessor that City intends to take the required action if Lessor does not begin the required repair or maintenance within thirty (30) after the written notice; and (b) Lessor fails to begin the required work within this thirty (30) day period.

18.3.1 If such action was required under the terms of this Lease to be taken by Lessor, City shall be entitled to prompt reimbursement by Lessor of City's reasonable costs and expenses in taking such action, plus interest at the then prevailing legal rate of interest from the date these costs are incurred until the date of Lessor's repayment. Lessor's obligation to reimburse City shall survive expiration or earlier termination of this Lease.

18.3.2 If, within thirty (30) days after receipt of City's written demand for payment of City's costs incurred in taking such action on Lessor's behalf, Lessor has not paid the invoice or delivered to City a detailed written objection to it, City may deduct from rent payable by City under this Lease the amount set forth in the invoice, plus interest at the interest rate described above from the date these costs are incurred until the date of City's rent set off.

18.4 Emergency Repairs.

18.4.1 An "Emergency Repair Situation" is defined as the existence of any condition that requires prompt repair, replacement or service to minimize the impact of an event or situation which affects City's ability to conduct business in a neat, clean, safe and functional environment.

18.4.2 If City notifies Lessor of an Emergency Repair Situation which occurs in or about the Premises which is the responsibility of the Lessor to repair or maintain, then Lessor shall commence appropriate repairs or maintenance immediately after notice of the condition is given by City, which notice may be via telephone, facsimile, personal contact or any other means, and Lessor shall thereafter diligently pursue to completion said repairs or maintenance.

18.4.3 If Lessor fails to commence repairs within twenty-four (24) hours of the aforementioned notice, or if the City is unable to contact Lessor or any designated agent within a reasonable time based upon the seriousness of the event or situation, City may, but shall not be so obligated to, cause said repairs or replacements to be made or such maintenance to be performed. Upon demand by City, Lessor shall promptly reimburse City the actual cost and expenses thereof, provided said costs and expenses are reasonable. Should Lessor fail to promptly pay the cost and expenses, City may deduct and offset that amount from Rent payable under this Lease, provided that such deductions do not exceed \$500.00 annually.

18.5 Lessor's Right to Make Repairs and Add Cost to Rent. If Lessor provides notice to City of an event or circumstance that requires the action of City with respect to the replacement, repair or maintenance to the Premises as set forth in this Lease and City fails to provide such action as required by the terms of this Lease, Lessor may (but shall not be obligated

to do so) take the required action if: (a) Lessor delivers to City an additional written notice advising City that Lessor intends to take the required action if City does not begin the required repair or maintenance within thirty (30) after the written notice; and (b) City fails to begin the required work within this thirty (30) day period.

18.5.1 If, within thirty (30) days after receipt of Lessor's written demand for payment of Lessor's costs incurred in taking such action on City's behalf, City has not paid the invoice or delivered to Lessor a detailed written objection to it, Lessor may add to rent payable by City under this Lease the amount set forth in the invoice, plus interest at the interest rate described above from the date these costs are incurred until the date of Lessor's rent set off.

19. **DESTRUCTION OF PREMISES:**

19.1 **Destruction of Premises.** Should the Premises be damaged at any time during City's possession thereof by fire, earthquake, or other casualty ("Casualty") so as to render the Premises wholly untenable, then (a) the discovering party shall notify the other, and (b) Lessor and City shall each have the right to terminate this Lease effective as of the date the Casualty occurred, unless such Casualty is caused by the City's use of the Premises, including use by City's employees, agents or customers. If this Lease is not terminated and Lessor desires to restore the Premises, then Lessor shall thereafter complete the restoration within reasonable time period.

19.2 **Rent Abatement.** Lessor and City agree that City's rent shall be fully abated during the period beginning on the later of: (a) the date of the Casualty; or (b) the date on which City ceases to occupy the Premises and ending on the date in which Lessor has completed all restoration and City is able to occupy the Premises.

20. **ENTRY:** City shall permit Lessor and Lessor's agents or employees to enter into and upon the Premises and make such alterations and repairs to the Premises or the Shopping Center as may become necessary, desired, or advisable without any interference or claim for damages by City. Lessor shall give City a minimum of twenty-four (24) hours notice of such entry unless such entry is precipitated by an emergency.

21. **SIGN CRITERIA:** City shall be entitled to place a sign at the front of the Premises. City shall be responsible for the fabrication, installation and removal of such sign. Any and all signs shall be subject to Lessor's review and acceptance of such sign. Lessor shall consent to all appropriate signs and fully cooperate with City in obtaining all necessary permits, including granting written consent for such sign. Such sign shall be individual channel letter signs internally illuminated.

22. **MUTUAL INDEMNIFICATION :**

Each party hereto shall protect, defend, and hold the other, their officers and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Lease and/or the use or occupancy of the Premises or the acts or omissions, whether active or passive, of the parties' officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of that party and regardless of whether the party may have been benefited by the act or omission. Each party shall give to the other reasonable notice of any such claims or actions. Each party shall also use counsel reasonably acceptable to the other in carrying out its obligations hereunder. The provisions of this Section 22 shall survive the expiration or early termination of this Lease.

23. **QUIET POSSESSION:** Lessor covenants that City shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the use of the Leased Premises so long as City shall fully and faithfully perform the terms and conditions that it is required to do under this Lease. If the Premises are part of a building shared with other tenants of Lessor, during City's tenancy Lessor may make or permit other tenants to make alterations, renovations and improvements to those portions of the building not occupied by City. Lessor covenants for itself and anyone deriving title from or holding title under Lessor that City's access, ingress, loading and unloading and sufficient parking for City's business shall not unreasonably be obstructed nor shall the daily business of City be disrupted as a result of such alterations, renovations and improvements except for reasonable temporary remodeling and promotions in the Shopping Center.

24. **ALTERATIONS:** City shall not make, or suffer to be made, any alteration, addition or improvement to the Premises, or any part thereof, without first obtaining the written consent of Lessor in each instance. Any additions to or alterations of the Premises, except movable furniture and trade fixtures, shall become at once a part of the realty of the Premises and belong to Lessor as of the Expiration Date. City shall keep the Premises free from any mechanics' or materialmans' liens arising out of any work performed, material furnished, or obligations incurred or made by or through City.

25. **CONDITION UPON TERMINATION:** Upon the termination of the Lease, City shall surrender the Premises to Lessor, in broom clean condition except for ordinary wear and tear which City was not otherwise obligated to remedy under any provision of this Lease. However, City shall not be obligated to repair any damage which Lessor is required to repair under Section 19 [Destruction of Premises]. In addition, Lessor may require City to remove any alterations, additions, or improvements (whether or not made with Lessor's consent) prior to the termination of this Lease and to restore the Premises to its prior condition, all at City's expense. City may remove any of City's machinery or equipment which can be removed without material damage to the Premises. City shall repair, at City's expense, any damage to the Premises caused

by the removal of any such machinery or equipment. In no event, however, shall City remove any of the following materials or equipment without Lessor's prior written consent: any power wiring or power panels; lighting or lighting fixtures; wall coverings, drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gate; or other similar building operating equipment and decorations.

26. **CONDEMNATION:** If any part of the Premises shall be taken or condemned under the right of eminent domain to such an extent determined by City as to render the remainder of the Premises unsuitable for continued use by City, then Lessor and City shall each have the right to terminate this Lease effective as of the date title vests with the condemning authority. All compensation awarded or obtained for such taking or condemnation shall go to Lessor and City shall have no claim thereto, and City hereby irrevocably assigns and transfers to Lessor any right to compensation or damages to which City may become entitled as a result of such taking or condemnation.

27. **ASSIGNMENT:** City shall not assign this Lease or any interest therein, or permit the occupancy of the Premises by any other, without the written consent of Lessor. Assignment, use, or subletting without such consent shall be void, and shall, at the option of the Lessor, terminate this Lease. Neither this Lease nor any interest therein shall be assignable, as to the interest of City, by operation of law without the written consent of Lessor which shall not be unreasonably withheld or delayed. If City wanted to assign or sublease, Landlord shall have the right to terminate the Lease. All profits of City from sublease/assignee shall be divided $\frac{1}{2}$ - $\frac{1}{2}$ by and between Landlord and Tenant.

28. **TERMINATION:** Lessor and City acknowledge and agree that all of the covenants and terms of this Lease are conditions of this Lease and that any default of Lessor or City in fulfilling any of the same may allow the aggrieved party at its option to forfeit and terminate this Lease.

29. **DEFAULT AND REMEDIES:** In the event of a default of this Lease by either party, and in addition to other rights and remedies it may have, the non-defaulting party shall have the right to terminate this Lease. However, prior to any termination, the non-defaulting party must give two consecutive thirty (30) days written notice to the alleged defaulting party and the opportunity to cure the alleged default. If the alleged defaulting party fails to cure the default, then, at the option of the non-defaulting party, the Lease is automatically terminated.

30. **SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE:**

30.1 **Subordination.** Subject to the provisions of Section 30.3 below, this Lease and any option granted herein shall be subject and subordinate to any mortgage, deed of trust, or other hypothecation or security device (collectively "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all

renewals, modifications, and extensions thereof. City agrees that the holders of any such Security Device shall have no liability or obligation to perform any of the obligations of Lessor under this Lease, unless and until they, under the terms of their Security Device, become the Lessor. Any lender may elect to have this Lease and any option granted hereby superior to the lien of its Security Device by giving written notice thereof to City, whereupon this Lease and any options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** Subject to the non-disturbance provisions of Section 30.3 below, City agrees to attorn to a lender or any other party who acquires ownership of the Shopping Center by reason of a foreclosure or deed in lieu of foreclosure of a Security Device.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, City's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement ("Non-Disturbance Agreement") from the lender which Non-Disturbance Agreement provides that City's possession of the Premises, and this Lease, including any options to extend the Term, will not be disturbed so long as Lessee is not in breach hereof and attorns to the record owner of the Shopping Center.

31. **ESTOPPEL CERTIFICATES:** Upon Lessor's written request, City shall execute, acknowledge, and deliver to Lessor a written statement certifying: (a) that none of the terms, conditions, and provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (b) that this Lease has not been canceled or terminated; (c) that Lessor is not in default under this Lease (or, if Lessor is claimed to be in default, stating why); and (d) such other matters as may be reasonably required by Lessor or the holder of a Mortgage, deed of trust, or lien to which the Premises are or become subject. City shall deliver such statement to Lessor within twenty (20) days after Lessor's request. Any such statement by City may be given by Lessor to any prospective purchaser or encumbrancer of the Premises. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct. If City does not deliver such statement to Lessor within such twenty (20) day period, Lessor, any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (a) that the terms and provisions of this Lease have not been changed except as otherwise represented by Lessor; (b) that this Lease has not been canceled or terminated except as otherwise represented by Lessor; and (c) that Lessor is not in default under this Lease, and in such event, City shall be estopped from denying the truth of such facts.

32. **LESSOR'S LIABILITY:** As used in this Lease, the term "Lessor" means only the current owner or owners of the fee title to the Premises, the Shopping Center, or the leasehold estate under a ground lease of the Premises at the time in question. Lessor is obligated to perform the obligations of Lessor under this Lease only during the time such Lessor owns such interest or title. Any Lessor who transfers its title or interest is relieved of all liabilities with respect to the obligations of Lessor under this Lease to be performed on or after the date of transfer. However, each Lessor shall deliver to its transferee all funds, if any, previously paid by

City if such funds have not yet been applied under the terms of this Lease. City shall give written notice of any failure by Lessor to perform any of its obligations under this Lease to Lessor and to any ground lessor, mortgagee or beneficiary under deed of trust encumbering the Shopping Center whose name and address have been furnished to City in writing. Lessor shall not be in default under this Lease unless Lessor (or such ground lessor mortgagee or beneficiary) fails to cure such nonperformance within thirty (30) days after receipt of City's notice. However, if such nonconformance reasonably requires more than thirty (30) days to cure, Lessor shall not be in default if Lessor commences to cure the default within such thirty (30) day period and thereafter diligently pursues the cure to its completion.

33. **SEVERABILITY:** A determination by a court of competent jurisdiction that a provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

34. **INTERPRETATION:** The section headings of this Lease are to assist the parties in reading this Lease and are not a part of the terms, conditions, or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine feminine and neuter genders shall each include the other. The terms "Lessor" and "City" whenever they occur in this Lease shall include the singular and plural, masculine and feminine, and shall include their respective heirs, successors, executors, administrators and assigns.

35. **INCORPORATION OF PRIOR AMENDMENTS/MODIFICATIONS:** This Lease is the only agreement between Lessor and City pertaining to the leasing of the Premises and the rights conferred pursuant to this document, and no other agreements are effective for any purpose. To be binding and effective, all amendments to this Lease must be in writing and duly executed and delivered by and between the parties to this Lease.

36. **NOTICES:** Any notice, request, demand, consent, approval, or other communication (singularly and collectively, "Notices") required or permitted under this Lease must be in writing and will be deemed to have been given and received when personally delivered, deposited with any nationally recognized overnight carrier that routinely issues receipts, or deposited in any depository regularly maintained by the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the party for whom it is intended at its address set forth in this Section. Either Lessor or City may add additional addresses or change its address for purposes of receipt of any Notices by giving ten (10) days' prior written notice of such change to the other party. As of the Commencement Date, Lessor's and City's respective address for Notices shall be:

City's Address
City of Riverside
Real Property Services Division

Lessor's Address
Sugarbush-1 Properties, L.L.C.
c/o Reliable Properties

3560 University Ave Suite "B"
Riverside, California 92501
Attn: Kenneth Trettin

6399 Wilshire Boulevard, Suite 604
Los Angeles, California 90048-5709

37. **ATTORNEY'S FEES:** Should either Lessor or City institute any legal action to enforce or determine any provision of this Lease to be kept and performed by the other, the prevailing party in such action shall be entitled to an award of reasonable attorney's fees which shall be fixed by the court, and all other reasonable costs and expenses of such suit.

38. **WAIVERS:** All waivers to this Lease must be in writing and be fully executed and delivered to the other party. No waiver of any provision of this Lease shall be implied by any failure of either party to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver shall affect only the provision specified and only for the time and in the manner stated in the writing.

39. **NO RECORDING LEASE:** Neither party shall record this Lease.

40. **BINDING EFFECT/CHOICE OF LAW:** The covenants, conditions, and agreements contained in this Lease will bind and inure to the benefit of Lessor and City and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided in this Lease, their assigns. This Lease shall be governed by the laws of the State of California applicable to transactions to be performed wholly therein.

Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Lease shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

41. **FORCE MAJEURE:** Neither Lessor nor City shall be in default under this Lease nor shall Lessor or City be liable to the other or their respective affiliates or agents for any liabilities if either Lessor or City are unable to fulfill any of their respective obligations, or are delayed in doing so, if the inability or delay is caused by reason of accidents, breakage, strike, labor troubles, acts of nature (including, without limitation, earthquake), or any other cause, whether similar or dissimilar, which is beyond the reasonable control of either Lessor or City.

42. **RELATIONSHIP OF PARTIES:** This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Lessor and City.

43. **TIME OF THE ESSENCE:** Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties under this Lease.

44. **CONSENT:** Whenever Lessor's or City's consent is required under any provision of this Lease, it shall not be unreasonably withheld, conditioned or delayed.

45. **TITLE:** Lessor represents and warrants that Lessor currently is well seized of and has good title to the Premises, and Lessor does represent and warrant and will defend the title thereto, and will indemnify City against any damage and expense which City may suffer by reason of any lien, encumbrance, restriction or defect in title or description herein of the Premises. If, at any time, Lessor's title or right to receive rent and any other sums due hereunder is disputed, City may withhold such sums thereafter accruing until City is furnished satisfactory evidence as to the party entitled thereto.

46. **AUTHORITY:** The individuals executing this Agreement and the instruments referenced herein on behalf of Consultant each represent and warrant that they have the legal power, right, capacity and actual authority to bind Consultant to the terms and conditions hereof and thereof.

47. **APPROVAL:** Anything to the contrary notwithstanding, this Lease shall not be binding or effective until its approval by the City Council of the City of Riverside.

48. **LANDLORD'S TERMINATION:** If Tenant closes the location for more than thirty (30) consecutive days, unless for any remodeling of not more than sixty (60) consecutive days, Landlord shall have the right to terminate the Lease.

49. **PREPAYMENT:** Upon delivery of possession of the Premises, City shall prepay the first three (3) months rent.

50. **BUILDING PERMITS:** City shall cooperate with Landlord to obtain any building permits required for the tenant improvements set forth in Exhibit "B". City shall cooperate with Lessor on any reasonable remodeling to the Shopping Center or the Premises.

[signatures on next page]

IN WITNESS WHEREOF, Lessor and City have caused this Lease to be executed the day and year first above written.

LESSOR

SUGARBUSH⁻¹ PROPERTIES, L.L.C.,
a California ~~general partnership~~
LIMITED LIABILITY CO.

Address: c/o Reliable Properties
6399 Wilshire Blvd., Suite 604
Los Angeles, CA 900148-5709

By: *Jack Nourafshan*
JACK NOURAFSHAN
Printed Name
Its: *manager*

By: _____

Printed Name
Its: _____

O:\Cycom\WPDocs\1024\1003\100031999.WPD
CA 04-0894
06/17/04

CITY

CITY OF RIVERSIDE,
a municipal corporation

Address: 3560 University Avenue, Suite B
Riverside, CA 92501

By: _____
George A. Carvalho
City Manager

ATTESTED:

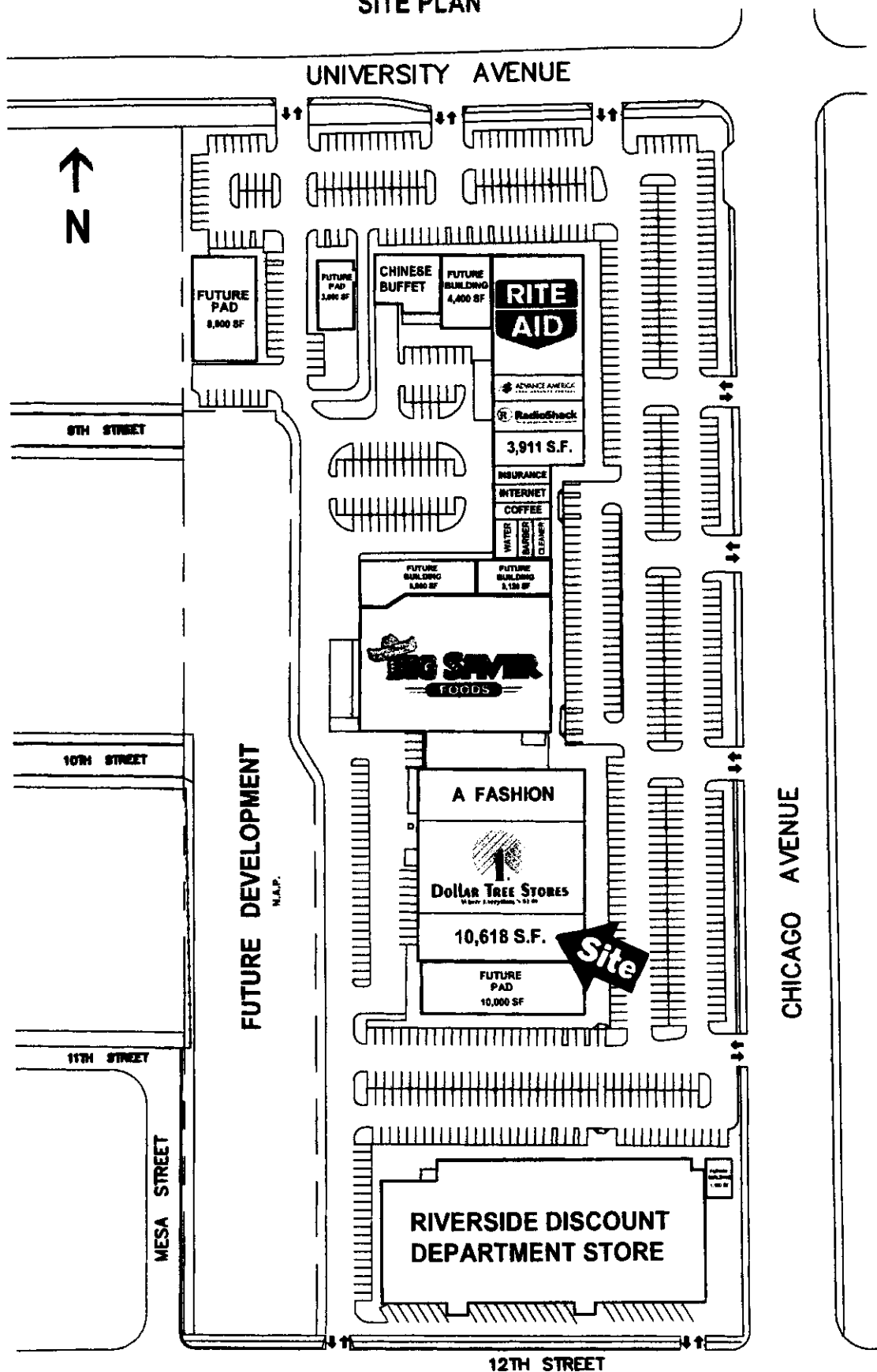
By: _____
Colleen J. Nicol
City Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
Susan Wilson
Deputy City Attorney

If Landlord does not receive the signed lease from Tenant on or before Aug. 12, 2004,
Landlord shall have the right to cancel the lease.

EXHIBIT "A"
LOCATION OF PREMISES

SITE PLAN



The information contained herein has been obtained from sources we deem reliable. We have no reason to doubt its accuracy but we make no representations or warranties, expressed or implied, as to the accuracy of the information. The site plan is only an illustration, no representation is being made that specific tenants will occupy the center, and the center is subject to change from time to time by the landlord. References to square footage or age are approximate. Lessees must verify the information by their own source.

EXHIBIT "B"
DESCRIPTION OF LANDLORD'S WORK

EXHIBIT B
TENANT IMPROVEMENTS

DESCRIPTION OF LANDLORD'S WORK

LANDLORD will

1. Provide and install Commercial grade vinyl flooring, 12" x 12" squares, and 4" vinyl cove base, color to be specified by CITY
2. Provide and install all new matching 2' x 4' drop-in ceiling tiles or all painted new.
3. Provide and install all new fluorescent light bulbs, preferably energy conserving.
4. Construct and finish permanent, built in place dry walls (per code) as indicated in GM Business Interiors design ("GM Plans") a copy of which is attached as Attachment 1.
5. Paint all interior wall surfaces in Frazee-brand single color to be specified by the CITY
6. New HVAC, represented by LANDLORD as installed on June 9, 2004 by Thermal-Cool. Upon occupancy, CITY will assume responsibility for maintenance, repair and replacement of unit.
7. Provide and install fifteen (15) 20 AMP circuits for computers with four (4) of these circuits terminated in junction boxes in the ceiling at locations designated on plans. Wire mold shall be used to bring power down the walls to feed receptacles that will accommodate the system furniture as designated on the GM Plans. Additional circuits shall be provided as necessary from the existing panel to feed electrical power to the system furniture as designated on the GM Plans. It is the sole responsibility of the LANDLORD to verify that the existing MAIN service panel is adequately sized to provide power to these and all other circuits within the Library space. All electrical plans and connections to furniture will be the responsibility of CITY per GM Plans.
8. Provide and install two (2) 30 AMP dedicated circuits for the telecom room as designated on the GM Plans.
9. Provide and install a dedicated 2-ton A/C unit for telecom room. Electrical power for this unit shall come from an additional dedicated circuit of sufficient size to power the unit.
10. Construct three (3) ADA compliant restrooms, single use type, one each for men, women, and one designated unisex to accommodate library staff as shown on the GM Plans.
11. Provide and install panic hardware if required by code
12. CITY acknowledges that any architectural/artist rendering of the project shall be an approximation only as to help CITY visualize the project's concept. The final building might end up somewhat different than the rendering.
13. All other works by CITY

