

SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR

LEASE AGREEMENT #231-L0511

AMENDMENT II

THIS AMENDMENT II to Lease Agreement #231-L0511, dated November 1, 2014 (the "Lease"), by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California (herein "Lessor"), and **MARLON R. GINNEY AND RICHARD J. KOVACH**, as individuals, lawfully doing business in the State of California and Lessor's jurisdiction (herein "Lessee"), is hereby amended as follows:

WHEREAS, COUNTY OF EL DORADO and **MARLON R. GINNEY AND RICHARD J. KOVACH**, entered into a lease agreement ("Lease") dated November 9, 2004, for the designated real property known as Assessor Parcel Number 90-040-031 ("Premises"); and

WHEREAS, on January 6, 2006, the Lease was amended for a first time to increase the size of Premises and sublease a portion of said Premises to Sally Moore, Bonnie Boatman, Rebecca Smith and Linda Schel, dba Grampy's Produce; and

WHEREAS, on November 3, 2009, the Board of Supervisors approved the exercise of the first option to extend the Lease for an additional five year term commencing November 1, 2009 through October 31, 2014.

WHEREAS, upon the death of Richard J. Kovach, all obligations, covenants, and conditions and/or liabilities of the Lease inured to the benefit of, and became binding upon Bernitta Kovach, as successor to Richard J. Kovach; and

WHEREAS, on April 14, 2014, Lessee notified Lessor of their intent to exercise the second option to extend the Lease for an additional five (5) year term commencing on November 1, 2014 through October 31, 2019; and

WHEREAS, Lessee has requested assignment of the Lease to Shingle Springs Station, LLC; and

WHEREAS, Lessee will remain liable for all obligations, covenants, and conditions, and/or liabilities related to their use of the Premises prior to November 1, 2014 under the terms and conditions of the Lease, as approved by the Board of Supervisors and executed on November 9, 2004, incorporated herein and made by reference a part hereof; and

WHEREAS, Shingle Springs Station, LLC acknowledges and agrees that all existing indemnity and insurance obligations of Lessee will remain in full force and effect for the duration of Lease #231-L0511, Amendment I, and Amendment II, and as thereafter required by the Lease; and

WHEREAS, effective November 1, 2014, Shingle Springs Station, LLC will assume all the obligations, covenants, and conditions, and/or liabilities of Lessee under the terms and conditions of the Lease and the amendments thereto; and

WHEREAS, the parties have determined and agreed to amend the Lease, by substituting Shingle Springs Station, LLC in place of Marlon R. Ginney and Richard J. Kovach for all purposes in all references to "Lessee" in the Lease; and

WHEREAS, Lessee no longer has a sublease agreement with Sally Moore, Bonnie Boatman, Rebecca Smith and Linda Schel, dba Grampy's Produce and has subsequently entered into a sublease agreement with Karen Morse, doing business as Antique Depot.

NOW, THEREFORE, the parties agree to the assignment of the Lease from Marlon R. Ginney and Bernitta Kovach, as successor to Richard J. Kovach, to Shingle Springs Station, LLC effective November 1, 2014; and that Shingle Springs Station, LLC assumes all duties, covenants and obligations of Marlon R. Ginney and Bernitta Kovach, as successor to Richard J. Kovach, under the Lease, as amended, effective November 1, 2014, in accordance with all terms and conditions as defined in the Lease; and that Marlon R. Ginney and Bernitta Kovach, as successor to Richard J. Kovach, shall remain liable, jointly and severally, for their use of the Premises prior to November 1, 2014, and that Shingle Springs Station, LLC further agrees that all indemnity and insurance obligations remain in full force and effect for the Lease of Premises, as stated

herein above. Additionally, the parties do hereby agree that Lease #231-L0511 shall be amended a second time to read as follows:

- A. Paragraph 3, Lessee Payments, is amended in its entirety to read as follows:**

Effective November 1, 2014, Lessee agrees to pay Lessor One Hundred Thirty-Seven Dollars and Eighty-One Cents (\$137.81) per month during the second and final extension of the lease.

M.R. 91

Payments shall be mailed to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, CA 95667
Ref: SPTC Lease #231-L0511

- B. Paragraph 9, Assignment or Subleasing Property, as amended by Amendment I, is further amended to add as follows:**

Effective November 1, 2014, by way of this Amendment II to the Lease, Lessor consents to a sublease for that portion of the Premises to Karen Morse dba Antique Depot, substituting Karen Morse dba Antique Depot in place of Sally Moore, Bonnie Boatman, Rebecca Smith and Linda Schel, dba Grampy's Produce for all purposes in all references to "Tenant" in the Lease.

- C. Paragraph 10, Insurance Requirements, Section E is amended in its entirety to read as follows:**

The certificate of insurance must include the following provisions stating that both the LESSOR and SPTCA JPA, their officers, officials, and employees and volunteers are included as additional insured, but only insofar as the operations under this Lease are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance.

- D. Paragraph 11, Notices, is amended in its entirety to read as follows:**
Except as otherwise provided by law, any and all notices or other

communications required or permitted by the Lease or by law to be served on or given to either party hereto by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party, Lessor or Lessee, to whom it is directed, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

All notices will be sent to the Lessor below:

County of El Dorado
Chief Administrative Office
Facilities Division
3000 Fairlane Court, Suite One
Placerville, CA 95667
Attn: Russell Fackrell, Facilities Manager
Telephone: (530) 621-7596

All notices will be sent to the Lessee below:

Shingle Springs Station, LLC
c/o Pat Turner, CPA
4970 Windplay Drive #6
El Dorado Hills, CA 95762
Attention: Marlon Ginney
Telephone: (916) 939-9933

Either party, Lessor or Lessee, may change its address for purposes of this paragraph by giving written notice of the change to other party in the manner provided in this paragraph.

E. Paragraph 16, Lease Administration is amended in its entirety to read as follows:

The County officer or employee with responsibility for administering this lease is Russell Fackrell, Facilities Manager, Chief Administrative Office, or successor.

F. New Paragraph 18, Restrictions on Use, Transfers and Encumbrances is added to read as follows:

Parties acknowledge that the Premises is but one segment of a continuous railroad right-of-way corridor ("Rail Corridor") and that some portions of the Rail Corridor may be subject to reversionary rights in the event portions of the Rail Corridor (a) cease to be used for transportation purposes and/or (b) are used for purposes inconsistent with any Notice of Interim Trails Use issued by the Interstate Commerce Commission or Surface Transportation Board and any amendments or extension thereof (the "NITU's"). Notwithstanding anything to the contrary in this Lease, Lessee agrees that (i) Lessee will not use nor permit the use of the Premises in a manner which would cause any reversionary rights in the Premises to vest, other than such rights of the State of California as may vest pursuant to an executed "Fund Transfer Agreement" allocating State funds for the purchase of the Rail Corridor, or in a manner that will otherwise threaten the continuity of any portion of the Rail Corridor; (ii) use of the Premises will not violate the terms of any NITU's with respect to the Rail Corridor; and (iii) Lessee will not use nor permit the use of the Premises to be in conflict with the terms of any then-existing "Fund Transfer Agreement," leases, easements, licenses or other agreements affecting the Premises. Any attempt to sell, transfer, convey, alienate, encumber, hypothecate, pledge, or otherwise dispose of any interest in the Premises, or use all or any portion of the Premises in violation of this paragraph shall be void and confer no rights on the transferee. Lessee will be notified prior to Lessor (the County) signing any documents which place additional restrictions on the Premises that would affect the current Lease.

G. New Paragraph 19, Indemnification is added to read as follows:

Lessee does hereby assume liability for, and agrees to defend, indemnify, protect, and hold harmless Lessor and SPTCA JPA and their directors, officers, employees and their successor and assigns from and against any

and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements including reasonable attorneys' fees and expenses for any kind and nature imposed in, asserted against, incurred or suffered by Lessor or SPTCA JPA or their directors, officers or employees by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property in any way relating to or arising out of any (i) willful or negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of Lessee or any of its officers, agents, employees, contractors, subcontractors in its or their performance except for the active or sole negligence of Lessor or SPTCA JPA; (ii) a release by Lessee or any of its officers, agents, employees, contractors or subcontractors in its or their performance hereunder of any substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environmental statute or regulation in effect when the release occurs, or as amended or promulgated in the future.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment II to Agreement 231-L0511 on the dates indicated below.

LESSEE: SHINGLE SPRINGS STATION, LLC

Dated: 11-22-14 Signed: Marlon Ginney
Marlon Ginney
Member

Dated: 11-22-14 Signed: Bernitta A. Kovach
Bernitta A. Kovach
Successor Trustee of the Richard J.
Kovach and Bernitta A Kovach Family
Trust dated September 2, 1992

LESSOR: COUNTY OF EL DORADO

Dated: 1-27-15 Signed: Brian K. Veerkamp
Brian K. Veerkamp, Chair
Board of Supervisors

ATTEST:

James S. Mitrising, Clerk of the Board of Supervisors

By: Stephan Tyler Dated: 1-27-15
Deputy Clerk

**SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR
JOINT POWERS AUTHORITY**

Dated: 11/11/14 Signed: John C. Segerdell
John C. Segerdell
Chief Executive Officer