

CITY OF SALINAS  
PROPERTY USE AGREEMENT  
WITH MONTEREY AND SALINAS VALLEY MODEL RAILROAD AND HISTORICAL SOCIETY  
FOR USE OF THE "RAILWAY EXPRESS AGENCY BUILDING" AND RAIL EXHIBIT ON  
CITY OWNED PROPERTY AT 20 STATION PLACE

THIS PROPERTY USE AGREEMENT, hereinafter called "Agreement", is executed between the CITY OF SALINAS, a municipal corporation, hereinafter called "City", and the **MONTEREY AND SALINAS VALLEY MODEL RAILROAD AND HISTORICAL SOCIETY**, hereinafter called "PERMITTEE".

**RECITALS**

WHEREAS, CITY is the owner of that certain real property situated in the City of Salinas, County of Monterey, California, and more particularly described in Exhibit "A" attached hereto and made part of this agreement. Said real property is hereinafter called the "PREMISES"; and

WHEREAS, PERMITTEE is a recognized non-profit public service organization providing a train museum for public viewing. This service and educational program will be open to the public and is desirous of providing said Services from the PREMISES; and

WHEREAS, CITY acknowledges that said Services provided by PERMITTEE are valuable to the citizens of the City of Salinas and is desirous of allowing PERMITTEE the use of said real property in accordance with the terms, covenants, conditions and provisions contained herein.

**AGREEMENT**

**SECTION 1: USES**

**1.01 Premises.** CITY hereby authorizes PERMITTEE, in accordance with the terms, covenants, conditions and provisions of this Agreement, the exclusive use of the PREMISES, located at 20 Station Place, as more particularly described on the attached Exhibit "A".

**1.02 Uses.** It is expressly agreed that the PREMISES shall be used by PERMITTEE solely and exclusively for the purpose of providing Model Railroad and Railroad Museum and services for all citizens and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no such other purpose whatsoever.

PERMITTEE agrees to establish a reasonable process by which access to the PREMISES is provided, within normal business hours, to other services organizations, including the First Mayor's House, and coordinate the use of the PREMISES with these organizations to maximize the benefit of the PREMISES to the whole community.

PERMITTEE covenants and agrees to use the PREMISES for the above specified purpose and to diligently pursue said purposes throughout the term hereof. In the event that PERMITTEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for other purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under the Agreement.

## **SECTION 2: TERM**

**2.01 Commencement.** The term of this Agreement shall be for a period of two (2) years, beginning July 1, 2014 and terminating June 30, 2016.

**2.02 Extension of Term.** The term of this Agreement may be extended only upon the mutual written consent of the parties.

**2.03 Termination Provisions.** Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least **sixty (60) days** prior written notice of such termination.

**2.04 Business License.** PERMITTEE agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Salinas during the full term of this Agreement, provided such a license is required for PERMITTEE'S operations under this Agreement. Further, PERMITTEE agrees to maintain corporate status and a 501(c)(3) designation for the full term of this Agreement.

**2.05 Permits and Licenses.** PERMITTEE shall obtain and maintain, during the term of this Agreement, all local, county, state and federal permits and licenses required for the operation of the services on the PREMISES.

## **SECTION 3: PROPERTY USE PAYMENT**

**3.01 Property Use Payment.** PERMITTEE agrees to pay CITY, as rent for said premises, an amount equal to two-thousand and four hundred-dollars (\$2,400) per year payable in advance by the 5<sup>th</sup> day of July 2014 and July 2015. It is understood and

acknowledged by the parties that the rental amount is based on the non-profit status of the PERMITTEE.

**3.02 Rent Credit.** Notwithstanding Section 3.01, PERMITTEE may perform certain work on the PREMISES and the cost of such work shall be credited or substituted for rent payments on a dollar for dollar basis. Any work for which PERMITTEE seeks rent credit pursuant to this Subsection 3.02 must (i) be performed in accordance with applicable City of Salinas codes and standards (ii) be approved by the CITY (iii) be performed in accordance with the scope of work, schedule of performance, and budget approved in advance by the CITY in writing, and (iv) shall be related to the maintenance and restoration of the PREMISES, repairs to the PREMISES and its foundation or fixtures, installation of permanent utilities to the PREMISES, and repairs to and maintenance of the PREMISES. PERMITTEE shall not receive credit for interior work on the Railway Express Building or its displays. In order to receive credit for work pursuant to this Subsection 3.02 PERMITTEE must also provide CITY with a full accounting of all such improvements at least forty-five (45) days prior to the date upon which rent payments are due. The accumulated credit of \$14,000 from prior year's labor is applicable to this Agreement. Any cost of work that exceeds the required rent payment shall be credited toward rent due in subsequent years; provided that CITY shall, at no time, be obligated for any payment to PERMITTEE for such work performed.

#### **SECTION 4: RECORDS**

**4.01 Inspection of Records.** PERMITTEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine PERMITTEE'S compliance with this Agreement. These records and accounts will be made available by PERMITTEE at the PREMISES and will be complete and accurate showing all income and receipts from the use of the PREMISES. PERMITTEE'S failure to keep and maintain such records and make them available for inspection by CITY shall be deemed a default of this Agreement. PERMITTEE shall maintain all such records and accounts for a minimum period of **five (5) years**.

**4.02 Annual Program Report.** PERMITTEE shall be required to provide CITY with a written annual financial and operations report regarding all phases of PERMITTEE'S use and occupation of the PREMISES. Permittee shall submit said report to city within **sixty (60) days** of each anniversary date of this Agreement.

#### **SECTION 5: INSURANCE AND INDEMNIFICATION**

**5.01 Indemnity.** PERMITTEE shall indemnify and hold harmless the CITY, its officers, employees, agents, and contractors from all liability, claims, actions, demands, costs, damages (whether tort or contract), expenses and attorneys' fees arising directly or indirectly

out of, attributable to or otherwise occasioned, in whole or in part, by any act or omission of the PERMITTEE, its agents, contractors, servants, employees or invitees, arising under this Agreement or arising from or relating to operation of the PREMISES.

The CITY shall indemnify and hold harmless the PERMITTEE, its officers, employees, agents, contractors, servants, directors, stockholders, partners or principals from all liability, claims, actions, demands, costs, damages (whether tort or contract), expenses and attorneys' fees arising out of, attributable to or otherwise occasioned, solely by any willful misconduct or grossly negligent act or omission of the CITY, its agents, contractors, servants, or employees, arising under this Agreement.

**5.02 Insurance.** PERMITTEE shall take out and maintain in full force and effect at all times during the term of this Agreement a standard all risk policy in amounts such that the proceeds of such insurance shall not be less than the replacement value of the Property and the following specific insurance at its sole expense:

a. PERMITTEE shall maintain the following minimum limits, or the maximum limits of coverage under the policies, whichever is greater:

General Liability

Combined Single Limit per Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Property Damage	\$ 500,000

b. All policies required by this Agreement shall be required to add the City and its officers, employees and agents, as additional insured by endorsement in a form acceptable to the City.

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. PERMITTEE shall provide evidence of compliance with the Insurance requirements listed above by providing a certificate of insurance, in a form acceptable to the City Attorney, concurrently with submittal of this Agreement.

e. All insurance companies affording coverage shall provide a **thirty (30) day** written notice by certified mail to the City should the policy be canceled or reduced in coverage before the expiration date. For the purposes of this notice requirement, any material change prior to expiration shall be considered cancellation.

f. PERMITTEE shall provide a substitute certificate of insurance no later than thirty (30) days prior to the expiration date. Failure by the PERMITTEE to provide such a substitution and extend the policy expiration date shall be considered a default by PERMITTEE and may be subject to the PERMITTEE to a termination of this agreement.

g. All insurance proceeds received from any and all claims made for property damage as required in Section 5.02 of this Agreement, shall be re-invested in the PREMISES.

h. Maintenance of insurance by the PERMITTEE as specified in this Agreement shall in no way be interpreted as relieving the PERMITTEE of any responsibility whatever the PERMITTEE may carry, at its own expense, such additional insurance as it deems necessary.

i. If PERMITTEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by PERMITTEE on the First (1<sup>st</sup>) day of the month following the notice of payment by CITY.

j. CITY, at its discretion, may require the revision of the amounts and coverage at any time during the term of this Agreement by giving PERMITTEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the PREMISES. PERMITTEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

**5.03 Accident Reports.** PERMITTEE shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the PREMISES. This report shall contain the names and address of the parties involved, a statement of circumstances, the date and hour, the names and addresses of witnesses and other pertinent information.

**5.04 Hours/Days of Operation.** PERMITTEE will be allowed to operate seven (7) days a week between 9:00 AM and 9:00 PM. PERMITTEE shall be open to the general public at least an annual average of **ten (10) hours** per month.

## **SECTION 6: GENERAL PROVISIONS**

**6.01 Maintenance.** With respect to the PERMITTEE'S operations at or on the PREMISES, PERMITTEE shall make all repairs and replacements necessary to maintain and

preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to the CITY and in compliance with all applicable laws. With respect to the CITY'S ownership of the PREMISES, it shall be responsible for all structural systems, and for maintaining the roofing, electrical, plumbing and structural needs of the PREMISES in good working order.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary conditions, and the cause is not deemed to be the result of neglect to the systems within the PREMISES, CITY shall have the right, upon written notice to PERMITTEE, to have any necessary maintenance work done at the expense of the PERMITTEE, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe and healthy sanitary condition. PERMITTEE shall make payment no later than **thirty (30) days** after written notice from the CITY. Failure to make payment in a timely manner may be considered a default by PERMITTEE and may subject the PERMITTEE to a termination of this Agreement

**6.02 Utilities.** PERMITTEE shall be responsible for monthly electric and water utilities costs.

**6.03 Sign.** PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices, or advertising without the prior consent of the CITY. If any such unauthorized item is found on the PREMISES, PERMITTEE shall remove the item at its sole expense within twenty-four (24) hours of written notice thereof by CITY, or CITY may thereupon remove the item at PERMITTEE'S expense.

**6.04 Taxes and Assessments.** PERMITTEE covenants and agrees during the entire term of the Agreement, at its own cost and expense, to pay before delinquency all real property taxes, assessments and Possessory Interest Taxes, if any are levied or imposed upon the PREMISES.

**6.05 Notices**

All notices hereunder shall be in writing signed by authorized officer(s) and shall be sufficient if sent by United States first class, certified mail, postage prepaid, or express delivery service with a receipt showing the date of delivery, addressed:

If to City:                      Public Works Department  
    City of Salinas  
    200 Lincoln Avenue  
    Salinas, CA 93901

w/copy to:                      City Attorney

City of Salinas  
200 Lincoln Avenue  
Salinas CA 93901

If to the Tenant: The Monterey and Salinas Valley Railroad  
Modeling and Historical Society  
c/o Mark Dorman  
711 Bruce Avenue  
Salinas, CA 93901

or any other address as either party may have furnished to the other in writing pursuant to the requirements of this Section as a place for service of notice. Notices will be deemed effective (i) two (2) days after mailing, or (ii) twenty-four (24) hours after being deposited with a nationally recognized overnight courier service (such as Federal Express).

**6.06 City Approval.** The City Manager shall be the City's authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purpose of directing the PERMITTEE in accordance with this Agreement which does not result in change to the Agreement, the City Manager delegates authority to the Public Works Director.

**6.07 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters set forth herein. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the CITY and the PERMITTEE relating to the use of the PREMISES by the CITY to the PERMITTEE.

**6.08 Compliance with Laws.** The PERMITTEE shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or determined to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successor and assigns.

**6.09 Agreement Modification.** This Agreement may not be modified orally or in manner other than by an Agreement in writing signed by the parties hereto.

**6.10 Assignment and Subletting- No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force and effect. Consent by CITY to one assignment, transfer, sub-Agreement, or delegation shall not be deemed to consent to any subsequent assignment, transfer, Sub-Agreement, or delegation.

**6.11 Defaults and Termination.** If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within **ninety (90) days** of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within ninety (90) days of the notice, or, if more that ninety (90) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of the due performance within ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

CITY may also terminate this Agreement upon written notice to PERMITTEE in the event that:

PERMITTEE fails to maintain corporate status and a 501(c)(3) designation.

PERMITTEE has previously been notified by CITY of PERMITTEE'S default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or

PERMITTEE voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or

PERMITTEE makes a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the PREMISES.

**6.12 Other Regulations.** All use of the PREMISES under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with the applicative rules and regulations and ordinances of the County of

Monterey and City of Salinas now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by state or federal law.

**6.13 Waiver.** Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Agreement. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. The CITY'S acceptance of rents is not a waiver of any default preceding the rent payment. CITY and PERMITTEE specifically agree that the property constituting the PREMISES is CITY-owned and held in trust for the benefit of the City of Salinas and that any failure by the City Manager or the CITY staff to discover a default or take prompt action require the cure or any default shall not result in an equitable estoppel, but CITY shall, at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and such defaults are discovered or when and as the City Council directs the City Manager to take actions or require the cure of any default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

**6.14 Waste, Damage or Destruction.** PERMITTEE shall give notice to City of any fire or other damage that occurs on the PREMISES within seventy-two (72) hours of such fire or other damage. PERMITTEE shall not commit or suffer to be committed any waste or injury or any public or private nuisance. PERMITTEE agrees to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage trash, and rubbish in a manner satisfactory to City.

If the PERMITTEE is found to be the cause, either directly or indirectly, with or without intention, by neglect or willful misconduct, of damages to the PREMISES which puts the PREMISES into a condition which is not decent, safe, healthy and sanitary, PERMITTEE agrees to make or cause to be made full repair of said damage and restore the PREMISES to the condition which existed prior to said damage and to restore the PREMISES to the condition which existed prior to said damage; or, at CITY'S option, and upon receipt of written demand thereof, PERMITTEE agrees to clear and remove from the PREMISES all debris resulting from said damage and rebuild the PREMISES in accordance with the plans and specifications previously submitted to CITY and approved in writing in order to replace in-kind and scope of the operation which existed prior to such damage.

**6.15 Improvements/Alterations.** No improvements, structures, or installations shall be constructed on the PREMISES, and the PREMISES may not be altered by PERMITTEE without prior written approval by the City Manager. Further, PERMITTEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not

be made on the PREMISES without written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve PERMITTEE of any obligation under this Agreement to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements.

**6.16 Liens.** PERMITTEE shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the PREMISES without prior written consent of the City Manager. PERMITTEE shall promptly, at its own expense, take such actions as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the PREMISES for which PERMITTEE does not have the prior written consent of the City Manager.

**6.17 Security.** PERMITTEE shall be responsible for the public's access to the PREMISES and keep the facilities secure and free from trespassers to the best of its ability when not open to the general public.

**SECTION 7: SIGNATURES**

**7.01 Signature Page.** The individuals executing this Agreement represent and warrant that they have the right, power and legal capacity and authority to enter into and to execute this agreement on behalf of their respective legal entities of the PERMITTEE and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY  
CITY OF SALINAS  
a municipal corporation

Date: \_\_\_\_\_

\_\_\_\_\_

Ray E. Corpuz Jr., City Manager

APPROVED AS TO FORM

\_\_\_\_\_

Christopher A. Callihan, City Attorney

PERMITTEE

MONTEREY AND SALINAS VALLEY MODEL RAILROAD AND HISTORICAL SOCIETY

Date \_\_\_\_\_

BY \_\_\_\_\_

Name/Title \_\_\_\_\_

Date \_\_\_\_\_

BY \_\_\_\_\_

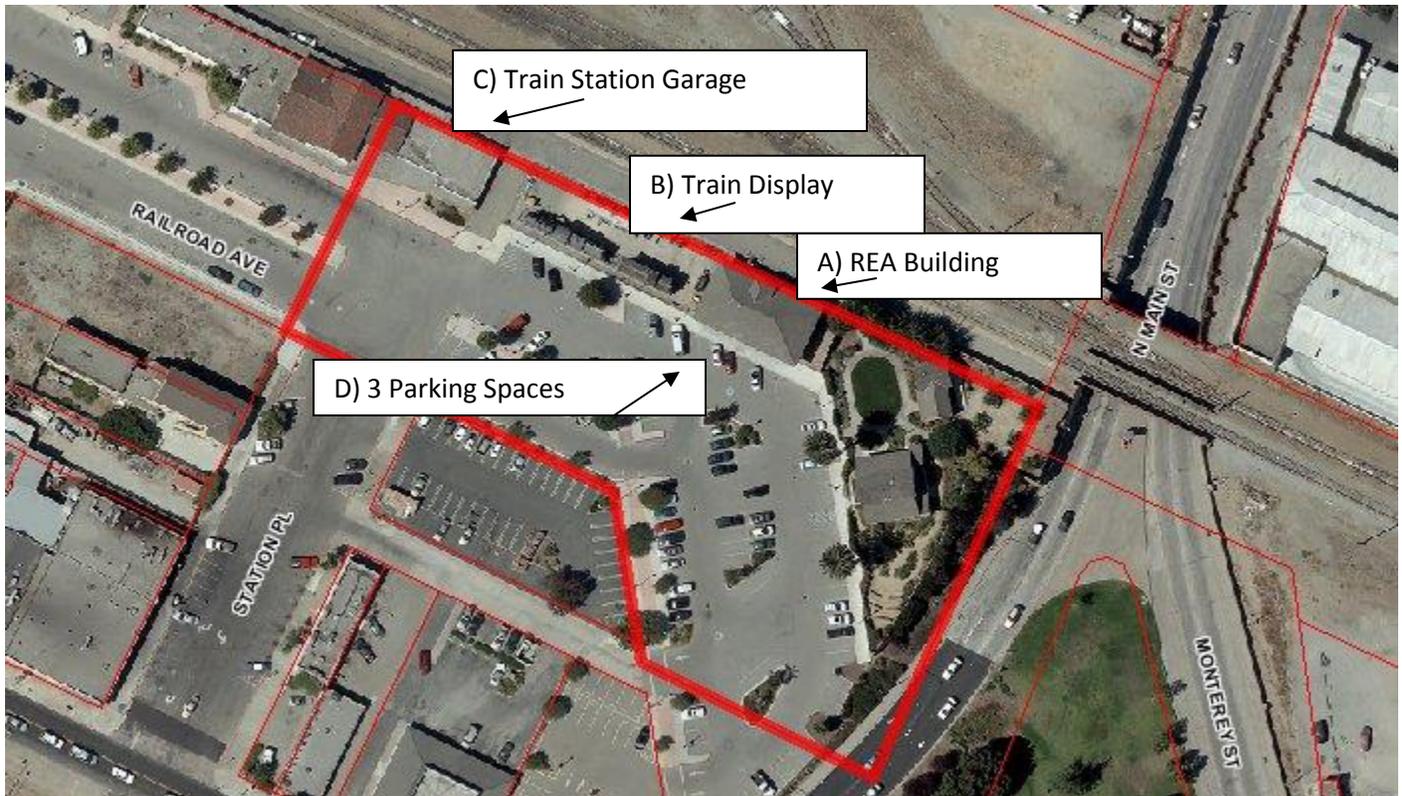
Name/Title \_\_\_\_\_

EXHIBIT A

PREMISES AND PROPERTY DESCRIPTION

The Attached Property Description accurately describes Parcel 002.171.035, circled in Red below. The property leased by the Tenant includes only these portions of it:

- A) 3,000 square foot building "REA" Building ("20 Station Place")
- B) 5,700 square foot Historic Train Display adjacent and west of the REA Building
- C) Half of the 1,500 Square foot Train Station Garage, adjacent and west of the Train Display
- D) 3 Parking Spaces



## EXHIBIT "A"

Certain real property, situate in the City of Salinas, Monterey County, California, being a portion of that certain 25.67 acre tract of land described in deed from Eugene Sherwood, et al, to the Southern Pacific Railroad Company dated October 9, 1872, and recorded in Vol. M of Deeds at Page 34, records of said County, and all of that certain tract of land described in deed from A.W. Branch to Southern Pacific Railroad Company dated August 31, 1872 and recorded in Vol. L of Deeds at Page 439, records of said county, being particularly described as follows:

Beginning at a 1" diameter iron pipe at the intersection of the easterly line of Palmetto Street, as shown on Map of Salinas City, filed in Vol. 1 of Cities and Towns at Page 36, records of said county, with the southerly boundary of said 25.67 acre tract of land and running thence along said southerly boundary

- 1) N 65° 36' W, 37.50 feet to intersection with the centerline of said Palmetto Street, thence leave said southerly boundary and along the extension northerly of said centerline
- 2) N 24° 23' 38" E, 113.47 feet; thence leave said centerline extension
- 3) N 65° 36' W, 37.50 feet; thence
- 4) N 24° 23' 38" E, 53.14 feet to a 1" diameter iron pipe; thence along a line parallel to and 25 feet southerly from, measured at a right angle, the main line of the Southern Pacific Railroad Company track
- 5) S 66° 30' 04" E, 928.84 feet to the intersection with the westerly line of North Main Street, a City street; thence leave said parallel line and along the line of said North Main Street
- 6) S 24° 22' 41" W, 25.00 feet to a 1" diameter iron pipe at the intersection of said street line with the northerly line of that certain tract of land described in Final Judgement of Condemnation, City of Salinas vs. Southern Pacific Transportation Company, dated October 16, 1975 and recorded in Reel 1009 of Official records at Page 241, records of said county; thence leave said street line and along said line of condemnation
- 7) N 66° 30' 04" W, 30.00 feet to a 1" diameter iron pipe; thence continuing along said condemnation line, to and along the easterly line of Parcel A, as shown on map filed in Vol. 14 of Parcel maps at Page 84, records of said county
- 8) S 27° 31' 00" W, 250.77 feet to a 3/4" diameter iron pipe, LS 3509; thence continuing along said parcel boundary
- 9) N 65° 40' 09" W, 105.03 feet; thence

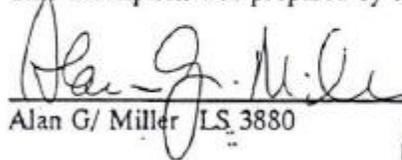
## EXHIBIT "A"

- 10) N 9° 50' 45" W, 116.16 feet to a 1" diameter steel bar at the most westerly corner of said Parcel A. in the southerly boundary of said 25.67 acre tract of land; thence along said southerly boundary
- 11) N 65° 37' 57" W, 137.69 feet to a 2" diameter iron pipe in the easterly line of Station Place (shown as Natividad Street on said Map of Salinas City); thence continuing along said southerly boundary
- 12) N 65° 41' 51" W, 100.00 feet to the westerly line of said Station Place; thence continuing along said southerly boundary
- 13) N 65° 36' W, 402.01 feet to intersection with said easterly line of Palmetto Street; thence along said street line
- 14) S 24° 23' 38" W, 1.00 feet to the point of beginning.

Containing an area of 3.775 acres of land, more or less.

Courses all true.

This description was prepared by me, or under my direction.

  
Alan G/ Miller LS 3880

