

**RESOLUTION NO. 1592**

**A RESOLUTION AUTHORIZING THE CITY TO PARTICIPATE IN AN AGREEMENT WITH CAPITAL REALTY TO PROVIDE PARKING FOR RIDERS OF SMART TRANSIT AT PARK AND RIDE LOCATIONS IN WILSONVILLE TOWN CENTER.**

WHEREAS, the City of Wilsonville was approved for expansion of the Wilsonville Community Center in 99DB07; and

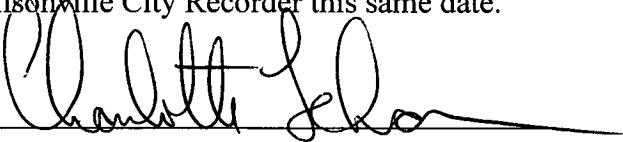
WHEREAS, condition of approval No. 7 required that: "The existing 20 Ride Share spaces shall be relocated and signs removed with written agreement for at least 20 spaces with the owner prior to final occupancy."

WHEREAS, Capital Realty has agreed to relocate ride share spaces to Wilsonville Town Center.

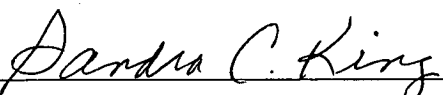
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager is authorized to sign an agreement with Capital Realty, a copy of which is attached as Exhibit A to relocate ride share spaces.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 20<sup>th</sup> day of September, 1999 and filed with the Wilsonville City Recorder this same date.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
\_\_\_\_\_  
Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Helser	Yes
Councilor Barton	Yes
Councilor Kirk	Yes
Councilor Holt	Yes

**SMART PARK & RIDE AGREEMENT  
FOR WILSONVILLE TOWN CENTER**

Dated: August 31, 1999

Between: CITY OF WILSONVILLE, "City"  
a municipal corporation  
Attention: City Manager  
30000 SW Town Center Loop E.  
Wilsonville, OR 97070  
Phone (503) 682-1011; Fax (503) 682-1015

-and-

CAPITAL REALTY CORP., "Capital Realty"  
an Oregon corporation  
101 SW Main, Suite 320  
Portland, OR 97204  
Phone (503) 223-0011; Fax (503) 223-0200

This agreement for SMART Park & Ride facility ("Agreement") is made and entered into by and between the City of Wilsonville, a municipal corporation (the "City") and Capital Realty Corp., an Oregon corporation ("Capital Realty") (collectively, "Parties").

**RECITALS**

WHEREAS, the City of Wilsonville operates a transit system under the name South Metro Area Rapid Transit (SMART), that is funded by an employer payroll tax pursuant to Ordinance No. 340;

WHEREAS, pursuant to a development agreement dated March 2, 1998, the City and Capital Realty undertook cooperative management of Special Event Parking in Town Center and for the Town Center Park;

WHEREAS, the operation of the transit system includes a fleet of buses and vans, that stop and pick up along fixed routes and on-demand throughout the city;

WHEREAS, in order to accommodate users of SMART buses, the City has designated transit "Park & Ride" locations, provided on both public and private property;

WHEREAS, Town Center Park ("Park") and the Clackamas County Visitor Center ("Visitor Center") were designed to accommodate a transit stop and shelter, which have been constructed and are in use;

WHEREAS, Capital Realty dedicated a five-acre parcel to the City for use as the Park and Visitor Center pursuant to a condition of development approval for a commercial unit development known as Wilsonville Town Center ("Center"), and granted easements for vehicular and pedestrian egress to the Park;

WHEREAS, due to expansion of City facilities and increased ridership, there is a need to transfer the City Hall Park & Ride facility to another location;

WHEREAS, Capital Realty has agreed to provide a Park & Ride facility on its property at the Center;

WHEREAS, Capital Realty acknowledges that it receives benefits from providing parking facilities for SMART riders.

NOW, THEREFORE, in consideration of these recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Capital Realty agree as follows:

#### **AGREEMENT**

1. Capital Realty agrees to provide 35 parking spaces at two designated Park & Ride locations in the Center parking lot, 15 at one location and 20 at the other location. SMART will pick up riders at these locations.
2. The location of the Park & Ride facilities are designated on Exhibit A, attached.
3. Upon 15 days written notice to the City, Capital Realty may move the Park & Ride locations to two other locations in Center parking lot.
4. Upon 30 days written notice to the City, Capital Realty may (1) terminate this Agreement and any obligation to provide parking spaces for SMART Park & Ride; or (2) terminate this Agreement with respect to either of the Park and & Ride locations designated on Exhibit A.
5. The City hereby agrees to indemnify and hold Capital Realty harmless from and against all suits, claims, demands, actions, damages or liabilities or proceedings of every kind and nature whatsoever arising from or relating to injury to property or

persons occurring from or associated in any way with the use of the Center as a SMART Park & Ride parking area under the same terms and conditions as that certain Hold Harmless and Indemnification Agreement between the parties dated May 14, 1999, incorporated by reference herein, and attached as Exhibit B.

- 6. SMART vehicles shall not use the service road behind the Center. The Center will only be used for parking by SMART riders and no permanent transit stop or shelter shall be established on Center property.
- 7. This Agreement is the sole agreement between the Parties regarding the Park & Ride transit system.

IN WITNESS WHEREOF, the undersigned City of Wilsonville and Capital Realty Corp. have executed this Agreement.

**CITY OF WILSONVILLE**

By \_\_\_\_\_ Date

**CAPITAL REALTY CORP.**

By *Susan Meyer* Date 8-31-99

STATE OF OREGON, County of \_\_\_\_\_) ss

On this \_\_\_\_ day of \_\_\_\_\_, 1999, before me, a notary public in and for said County and State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ for the City of Wilsonville, whose name \_\_\_\_\_ subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON, County of Clackamas) ss

On this 31 day of Aug, 1999, before me, a notary public in and for said County and State, personally appeared Susan Myers, known to me to be the General Manager of Capital Realty Corp. whose name she subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

Diane M. Pankonin

Notary Public for Oregon

My Commission Expires: 11/29/99



APPROVED AS TO FORM

this \_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Michael E. Kohlhoff, City Attorney  
City of Wilsonville, Oregon

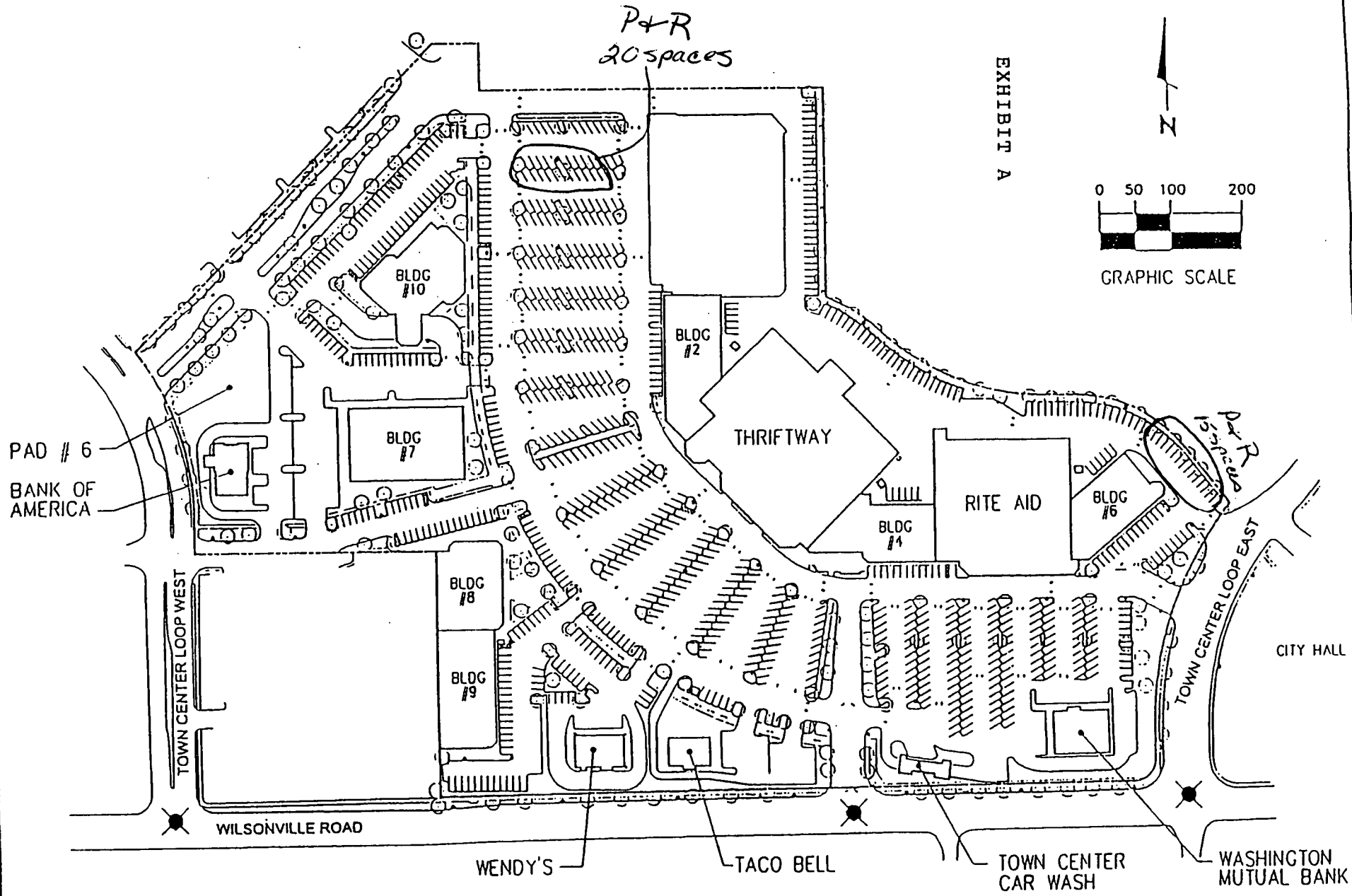
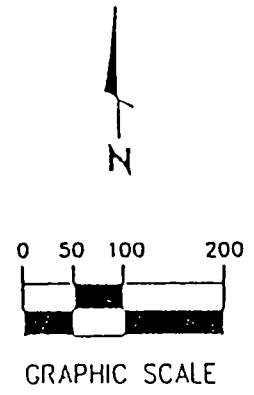


EXHIBIT A



WILLIAM M. RUECKER  
 ARCHITECTURE  
 600 S.W. BROADWAY, SUITE 605  
 PORTLAND, OR 97205  
 P. 503.224.1777 F. 503.224.1788

SONVILLE TOWN CENTER  
 PHASE 1 - SITE

DATE: 3-10-  
 REVISIONS:  
 DRAWN BY:  
 CHECKED BY:

LP.

*file*

**HOLD HARMLESS AND INDEMNIFICATION  
AGREEMENT**

DATED: May 14, 1999

BETWEEN: **CAPITAL REALTY CORP.**, an "Capital Realty"  
Oregon corporation  
101 SW Main, Suite 320  
Portland, OR 97204  
Fax No. (503) 223-0200

-and-

**CITY OF WILSONVILLE** "City"  
Attention: City Manager  
30000 SW Town Center Loop E.  
Wilsonville, OR 97070  
Fax No. (503) 682-1015

RECITALS

WHEREAS, Pursuant to the Development Agreement for Town Center Park entered into between the parties March 2, 1998, portions of Town Center Park have been completed, including the combined Visitor Information Center and Chamber of Commerce Office Building; and

WHEREAS, the City, Clackamas County Tourism Development Council and Chamber of Commerce wish to conduct a grand opening event; and

WHEREAS, this event is likely to make use of Capital Realty's parking areas, and the City desires to provide by way of this document to Capital Realty a "hold harmless" and indemnification agreement in keeping with the aforementioned Development Agreement, not only for this first grand opening event, but for any and all events, special or otherwise, at which Town Center Park patrons make use of Capital Realty parking areas.

**THEREFORE:**

1. Indemnification. The City of Wilsonville hereby agrees to indemnify and hold Capital Realty harmless from and against all suits, claims, demands, actions, damages, including consequential damages, or liabilities or proceedings of every kind and nature whatsoever (collectively, "Damages") arising from or relating to injury to property or persons



occurring from or associated in any way with the use of Capital Realty's parking area by Town Center Park patrons.

2. Notice of Claim. If Capital Realty or any of its employees or representatives receives notice of any claim, demand or incident giving rise to a right of indemnification under this Agreement (a "Notice"). Capital Realty shall, within thirty (30) days of receipt of the Notice, notify City in writing of the Notice. The notice to City shall set forth in reasonable detail the facts and circumstances giving rise to the claim for indemnification and, if a third party claim is involved, shall tender the defense of the claim to the City. If Capital Realty fails to give this notice within the aforementioned thirty (30) days, Capital Realty shall lose its right of indemnification against City; if, but only if, such failure to give notice causes the loss to the City of any tort claim notice or other defenses under the statutory tort claim provisions for governmental bodies. City, upon being given notice by Capital Realty, shall take all actions reasonable and necessary to protect Capital Realty's interests.

In the event Capital Realty gives the above Notice to the City, but the City fails or refuses to defend Capital Realty, then in the event Capital Realty subsequently prevails in its claims for indemnification or for the right to be held harmless, the City will be liable to Capital Realty for all of the latter's costs and expenses, including its attorneys fees, both at trial and on any appeal thereof.

3. Defense of Claims. City shall be responsible for selecting the attorneys to defend any matters subject to indemnification. City shall be solely responsible for taking all actions necessary or appropriate to resolve, defend and/or settle the claims subject to indemnification and for keeping the City and Capital Realty fully advised in these matters. Capital Realty shall cooperate fully with City and its counsel and shall provide City and its counsel reasonable access to Capital's employees, consultants, agents, attorneys, accountants and files to the extent necessary or appropriate to defend or resolve the matter. Capital Realty shall not take any actions or fail to take any actions reasonably requested by City that would prejudice City's ability to defend and/or settle the matter. Capital Realty acknowledges that the settling of any

claim against or involving a municipality such as the City is governed by state statutes and is subject ultimately to approval by the City Council in open meeting. Capital Realty shall be entitled at its own expense to monitor any action or proceeding, and City shall make all pleadings in such actions or proceedings available to Capital Realty at City's expense, upon request. City shall be subrogated to any and all claims, rights, positions or defenses that Capital Realty may have against any third party or parties in connection with the occurrence giving rise to the indemnity obligation described in this Agreement.

4. Sale of Property. If Capital Realty conveys the Property to a third party, Capital Realty may, in its sole discretion, assign this Agreement to the third party. If Capital Realty elects to do so, it shall give the City 30 days notice of its election, together with documentation that the third party has agreed to assume the duties under this Agreement and is financially capable of undertaking such duties. The City's approval of the proposed release of Capital Realty shall not be unreasonably withheld. Unless the City objects in writing within 30 days of receiving notice from Capital Realty, Capital Realty shall be deemed to be released from any duties under this Agreement arising after the date on which the conveyance to the third party is recorded.

5. Insurance.

5.1 City is currently insured through City County Insurance Services (CCIS), a self-insurance pool of city and county governments, and represents it has coverage sufficient to meet the requirements of the Development Agreement and this Hold Harmless and Indemnification Agreement subject only to those limitations on indemnification as may be placed upon local governmental bodies in general in accord with state statutory and constitutional law. In the event City should change its insurance carrier, the City will so advise Capital Realty, and City shall take all steps reasonable and necessary to prevent any lapse of coverage.

5.2 The City's insurance coverage includes comprehensive liability insurance insuring the City in the amount of not less than \$1,000,000 for injury or death of one person in

any one accident or occurrence, and in the amount of not less than \$2,000,000 for injury or death of more than one person in any one accident or occurrence. The City's insurance further insures the City against liability for property damage up to \$50,000. In the event further insurance information is shared by the City with Capital Realty in the course of carrying out the terms of this Agreement, such information shall be used solely by Capital Realty on a "need to know" basis and shall otherwise be deemed confidential.

6. General.

6.1 Successors and Assigns. This Agreement shall bind the parties and their respective successors and assigns.

6.2 Notices. All notices shall be in writing and shall be personally delivered, sent by facsimile, or sent by registered or certified mail, postage prepaid, addressed to the party at the address set forth in this Agreement or at such other address as a party designates by written notice to the other. Notices shall be deemed given when personally delivered or 48 hours after they are postmarked, if sent by mail. Notice by facsimile received after 5:00 p.m. shall be deemed sent the following day.

6.3 Waiver. No waiver with respect to the provisions of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. No such waiver shall constitute a waiver of any subsequent breach or default.

6.4 Prior Agreements. This Agreement supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth in this Agreement.

6.5 Attorneys' Fees. If an action is filed by any party to enforce or interpret a provision of this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled, in addition to other rights and remedies it may have, to reimbursement for its expenses incurred with respect to such action, including court costs and reasonable attorneys' fees at trial, on appeal and in connection with any petition for review.

6.6 Amendment. This Agreement may be amended only by an instrument in writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CAPITAL REALTY CORP.

By: *[Signature]*

Title: *[Signature]*

CITY OF WILSONVILLE

By: *[Signature]*

Arlene Loble

Title: City Manager

ATTESTED TO:

*[Signature]* 5/14/99  
Sandra C. King, CMC, City Recorder Date

APPROVED AS TO FORM this  
14 day of May, 1999.

*[Signature]*  
Michael E. Kothhoff  
City Attorney for the City of Wilsonville. OR



**SMART TRANSIT  
STAFF REPORT**

**DATE:** September 14, 1999  
**TO:** Honorable Mayor and Councilors  
**FROM:** Cynthia Thompson, Transit Director  
**SUBJECT:** Participate in the agreement with Capital Realty

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**Summary:** Capital Realty agrees to provide 35 spaces at two designated park and ride locations in the Town Center parking lot, 15 at one location and 20 at the other location. The locations of the park and ride facilities are identified on exhibit A.

Capital Realty and or SMART may terminate this agreement with thirty days written notice. In this event, SMART would utilize the park and ride spaces at Main Street Village.

The long-range goal for SMART is to build a park and ride in conjunction with commuter rail.

**Recommendation:** Staff recommends council approve resolution #1592 and the attached agreement dated August 31, 1999.

**Background:** Twenty spaces at City Hall were designated as a park and ride for SMART. In February 1999, the proposal for the Wilsonville Community Center expansion required additional parking. The expansion resulted in SMART needing to move its park and ride lot.

SMART had a verbal agreement with Capital Realty to use spaces immediately across from City Hall and near the Clackamas Regional Tourism Center. Over the last few months, SMART and Capital Realty negotiated a written agreement for the park and ride spaces in the Town Center parking lot.