

REAL PROPERTY LEASE

**SFT REAL ESTATE LLC
MONTEREY BRANCH LINE, SAND CITY**

LESSOR

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

55-B PLAZA CIRCLE

SALINAS, CALIFORNIA 93901

LESSEE

**SFT REAL ESTATE LLC
A California Limited Liability Corporation**

1845 Del Monte Blvd.

Sand City, CA 93955

May 1, 2020 through April 30, 2023

DAVID DELFINO dave@tamcmonterey.org 775-0903

THIS LEASE is entered into between the Transportation Agency for Monterey County as LESSOR, and SFT Real Estate LLC, a California limited liability company as LESSEE.

LESSOR, in consideration of the rent and agreements hereinafter set forth, does hereby lease to LESSEE, and LESSEE leases from LESSOR, those certain premises described as the raw land located in the City of Sand City, CA (hereafter referred to as the "Property").

1. THE PROPERTY:

- a. The Property is further identified as outlined on Attachment A.
- b. The Property encompasses an approximate area of **3,300** square feet represented by a **thirty-three (33) foot encroachment** into the railroad right-of-way for an approximate length of **One Hundred (100) feet** adjacent to LESSEE' S property at 1845 Del Monte Avenue, Seaside, California. Besides the railroad track, there are no buildings or permanent structures on the Property.
- c. The LESSEE is using the Property for parking and storage of cars and uses incidental to a retail auto service business.
- d. No trash, litter, boxes, crates, debris, or other used and/or discarded materials shall be stored on this Property.
- e. There shall be no business sign or any other commercial advertisement applied and/or attached to the Property, or otherwise established within the railroad right-of-way.
- f. Prior to any improvements to be made by LESSEE on the Property, LESSEE shall seek and obtain approval of the LESSOR and also seek and comply with and conditions imposed by the City of Sand City. Failure by Lessee to comply with this subparagraph shall be deemed a default of this LEASE.

2. TERM: The initial term shall be for three (3) years beginning May 1, 2020 and ending April 30, 2023, unless sooner terminated as provided in this LEASE. Upon completion of the initial LEASE term, if LESSOR intends to continue to offer the Property for lease, LESSEE is granted an option to lease the Property for another three (3) year term. So long as LESSOR continues to offer the Property for lease, and provided that LESSEE is not in default of the Lease, LESSEE shall have the option to renew this Lease, for eight (8) additional three-year periods. If LESSEE intends to exercise its option to renew the lease for any of the option periods, LESSEE shall give written notice to LESSOR of its intent to exercise such option at least sixty (60) days prior to the expiration of the Lease, or any option period.

3. TERMINATION:

- a. LESSEE understands and agrees that the LESSOR has future plans for the Property, such as the restoration of rail/transit service to the Monterey Peninsula, possibly a bicycle trail and possibly other transportation uses. Thus, LESSEE agrees to vacate the Property during the term of the Agreement or any renewal or extension of the Lease, without liability to the LESSOR, upon receipt of twelve (12) months' written notice to terminate.
- b. LESSOR may terminate this LEASE if there is a default by the LESSEE with respect to any of the provisions of this LEASE or LESSEE's obligations under it, including the payment of the Rent, after giving LESSEE notice of default and failure by LESSEE to cure the default within thirty (30) days.

- c. If LESSEE has not provided notice to LESSOR on or before June 1, 2020 that Escrow Number FWMN-5222000265-MD with Chicago Title has closed, then either LESSOR or LESSEE may unilaterally terminate the Lease, effective June 1, 2020.

4. **RENT:** LESSEE agrees to pay LESSOR a semi-annual payment of **Three Thousand One Hundred Fifty Dollars and Eighty-seven cents (\$3,150.87)**. Rent shall increase at a rate of three percent (3%) annually for each year of such term, cumulative and compounded. Such three percent (3%) annual increase shall only apply to the initial three option periods. Rental rates for the first twelve (12) years (constituting the Initial Term and three assumed renewals) has been calculated and is attached hereto as Attachment B. Thereafter, the rental is subject to negotiation by the parties during the period that LESSEE has to exercise its option and renew the LEASE prior to its expiration. If the parties do not agree to renewal and the rental at least sixty (60) days prior to expiration of the Lease or any option period, LESSOR may offer the Property for lease to another party at the same or a higher rental amount than it offered to LESSEE.

5. **DELIVERY OF PROPERTY:** LESSOR and LESSEE agree that the physical possession of the Property has been held by LESSEE's current tenant at 1845 Del Monte Boulevard, Sand City, since 2004.

6. **AS IS CONDITION OF PROPERTY:** LESSOR and LESSEE agree that LESSEE's successor(s) in interest have had possession and control of the Property since April 2004. LESSOR makes no representations as to the condition of the Property. LESSEE takes occupancy of the Property in an "as is" condition. Any improvements to the Property provided by LESSEE or any tenant of LESSEE shall be removed upon termination of this LEASE or any subsequent Agreement between LESSOR and LESSEE. LESSOR will not repair or maintain nor contribute funding toward the repair or maintenance of the Property now or in the future. Lessee shall not disturb the tracks or railroad ties within the railroad right of way, nor use property to the west of the railroad tracks.

7. **RESERVATIONS TO LESSOR:** The Property is accepted as is and where is by LESSEE subject to any and all presently existing easements and encumbrances. LESSOR reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Property or any part thereof, and to enter the Property for any and all such purposes. LESSOR also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Property. No right reserved by LESSOR in this paragraph shall be so exercised as to interfere unreasonably with LESSEE's operations hereunder. LESSOR agrees that rights granted to third parties by reason of this paragraph shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. LESSOR further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Property by LESSEE, the rent shall be reduced in proportion to the interference with LESSEE's use of the Property.

8. **USE:** The Property shall be used by the LESSEE solely and exclusively for the purposes mentioned: parking and storage of cars and uses incidental to the use of LESSEE's tenant for retail auto service business.

LESSEE must obtain the LESSOR'S written permission prior to installation of permanent structures, facilities or landscaping on the Property. LESSEE has not proposed site landscaping.

LESSEE'S use of the Property, as provided in this LEASE, shall be in accordance with the following:

- a. LESSEE shall comply with all laws concerning LESSEE'S use of the Property.

- b. LESSEE shall not use the Property in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties.
- c. If the City Council of the City of Sand City, or any duly authorized officer or department of the City, finds at any time that any activity or use of the Property constitutes a nuisance, or is otherwise detrimental to the neighborhood or to the community, such use shall be discontinued or modified as may be required by the City and LESSEE shall defend and indemnify LESSOR in any enforcement proceedings brought by the City or a third party. LESSEE's failure to comply with the requirements of the City in this regard shall be deemed a material default of this Lease.

9. LESSOR'S ENTRY ON PROPERTY: LESSOR and its authorized representatives shall have the right to enter the Property at all reasonable times for any of the following purposes:

- a. To determine whether the Property is in good condition and whether LESSEE is complying with its obligations under this LEASE.
- b. To do any maintenance and to make any restoration to the Property that LESSOR has the right and chooses to perform.
- c. Conduct studies or testing related to transportation projects and uses.

10. SUPERVISION: LESSEE agrees to provide responsible adult supervision for all activities on the Property.

11. UTILITIES: No utilities such as water, electricity, gas or telephone services are available, or are to be provided by LESSOR. LESSEE may arrange for such utilities to be provided to the Property on a temporary basis at LESSEE'S expense without obtaining prior written approval from the LESSOR.

12. INSURANCE COVERAGE REQUIREMENTS: Without limiting LESSEE'S duty to indemnify, LESSEE shall maintain in effect throughout the term of this LEASE a policy or policies of insurance with the following minimum limits of liability.

- a. Comprehensive general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000.00 per occurrence; and
- b. Business automobile liability insurance, covering all motor vehicles, including owned, leased, hired and non-owned, used for purposes under this LEASE, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000.00 per occurrence; and
- c. Worker's compensation insurance in the manner required by California Labor Code section 3700 and any other applicable state statute, and with Employers' Liability Limits not less than \$1,000,000.00 each person, \$1,000,000.00 each accident and \$1,000,000.00 each disease.

GENERAL INSURANCE REQUIREMENTS: All insurance required by this LEASE shall be with a company acceptable to LESSOR and authorized by law to transact insurance business in the State of California. All such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two years following termination of this LEASE.

Each liability policy shall provide that LESSOR shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation or intended non-renewal thereof.

Liability policies shall provide an endorsement naming LESSOR and City of Sand City, their directors, officers, agents and employees as Additional Insureds and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the LESSOR and the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by LESSEE'S insurance.

Prior to execution of this LEASE by LESSOR, LESSEE shall file certificates of insurance with LESSOR, showing that the LESSEE has in effect the insurance required by this LEASE. LESSEE shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy that would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

13. **INDEMNIFICATION:** In consideration for use of the Property, LESSEE agrees to indemnify, defend, and save harmless LESSOR and its officers, agents, and employees, from and against any and all claims, liabilities or losses whatsoever arising out of or in any way related to LESSEE'S use of the Property under this LEASE, including but not limited to claims for Property damage, personal injury, death, injuries to reputation, economic losses, and emotional distress, and any legal expenses (such as attorney's fees, court costs, investigation costs, and expert fees) incurred by the LESSOR in connection with such claims. "LESSEE'S use" includes LESSEE'S action or inaction and the action or inaction of its officers, employees, and agents, including but not limited to LESSEE'S tenants and customers. The obligation of LESSEE to indemnify does not extend to claims or losses arising out of the sole negligence or willful misconduct of the LESSOR or LESSOR'S directors, officers, agents, or employees.

LESSEE agrees to indemnify, defend and save harmless LESSOR and its directors, officers, agents and employees from and against any equipment or bodily injury damages sustained by any party using the Property.

14. **ABANDONMENT:** If LESSEE abandons the Property, the Property may be re-let by the LESSOR for such rent and upon such terms as LESSOR may see fit.

15. **WAIVER:** The waiver, by LESSOR or LESSEE, of any covenant or condition herein contained shall not vitiate the same or any other covenant or condition contained herein, and the terms and conditions contained herein shall apply to and bind the heirs, successors and assigns of the respective parties hereto.

16. **HOLDING OVER:** If LESSEE, with LESSOR'S consent, remains in possession of the Property after expiration or termination of the term, or after the date in any notice given in terminating this LEASE without a new agreement being reached, such possession by LESSEE shall be deemed to be a month-to-month tenancy terminable on thirty (30) days prior written notice given at any time by either party, on the same terms and conditions herein stated.

17. **NOTICE:** Any notices that either party desires to or is required to give to the other party or any other person shall be in writing and either served personally or sent by email and prepaid first class mail. Such notices shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within seventy- two (72) hours from the date of mailing, if mailed as provided in this paragraph.

Transportation Agency for Monterey County
55-B Plaza Circle
Salinas, CA 93901
dave@tamcmonterey.org

SFT Real Estate LLC
Attn.: Darius Sadeghi
8005 Quatro
Carmel, CA 93923
agmeter1@gmail.com

18. **SUCCESSORS AND ASSIGNS:** Subject to the restriction on assignment herein below written, this lease, and all terms, covenants, and conditions hereof, shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto.

19. **OWNERSHIP:** The LESSOR is the owner of the Property and all site improvements on the Property on the effective date of this LEASE. All right, title and interest in and to the Property and those site improvements shall belong to the LESSOR. All right, title and interest to site improvements made by LESSEE and personal Property shall be deemed to belong to LESSEE. Any improvements to the Property by LESSEE must be removed by LESSEE on termination of this LEASE.

20. **POSSESSORY INTEREST AND PROPERTY TAXES:** Pursuant to California Revenue and Taxation Code section 107.6, notice is hereby given that LESSEE is responsible for any possessory interest, utility or personal Property taxes that may be imposed as a result of, or related to, this LEASE.

21. **ASSIGNMENT:** LESSEE shall not, without LESSOR's written consent, assign its rights or delegate its duties pursuant to this LEASE.

22. **CAPTIONS:** The captions in this LEASE are inserted only as a matter of convenience and for reference and in no way define the scope or the extent of this LEASE or the construction of any provision.

23. **COUNTERPARTS:** This LEASE may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

24. **INTERPRETATION OF LEASE:** The parties understand and agree that this LEASE has been arrived at through negotiation, and that neither LESSOR nor LESSEE is to be deemed the party which prepared this LEASE within the meaning of Civil Code section 1654.

25. **ENTIRE AGREEMENT, AMENDMENTS:** This LEASE embodies the entire agreement and understanding between the parties relating to the subject matter and may not be amended, waived or discharged, except by an instrument in writing executed by both parties. This LEASE supersedes all prior agreements and memoranda relating to its subject matter.


[signatures on next page]

IN WITNESS WHEREOF the parties hereto have executed this LEASE this ____ day of _____, 2020.

TRANSPORTATION AGENCY FOR MONTEREY COUNTY, LESSOR

BY: _____
Debra L. Hale, Executive Director

**SFT REAL ESTATE LLC,
a California Limited Liability Corporation, LESSEE**

BY:  4.9.20 TAX ID # 82-2374649

Approved as to form:

TAMC Counsel