

RESOLUTION NO. 99-01

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL PASO DE ROBLES
TO APPROVE PLANNED DEVELOPMENT 98014
(San Luis Bay Motors)
APN: 009-851-009 & 007

WHEREAS, Planned Development 98014 has been filed by Dutch Sawyer on behalf of San Luis Bay Motors (Ottmar Thomas) for the development of a new car dealership with service garage, located at 2700 Theater Drive just north of the Boatman Furniture site, and

WHEREAS, in conjunction with the development plan is an application for a Conditional Use Permit 98012 for the construction of a 30 foot high highway oriented sign, and

WHEREAS, the subject site would be Parcel 2 of Tentative Lot Line Adjustment PRAL 98-0204, and

WHEREAS, the development plan would consist of the construction of a 17,180 square foot building with 13,680 square foot being built in Phase I and 3,500 square feet being built in Phase II, and

WHEREAS, the site is zoned C2,PD, according to Section 21.16A of the Zoning Code, in the PD overlay zone a development plan is required to be reviewed and approved by the Planning Commission, and

WHEREAS, a public hearing was conducted by the Planning Commission on December 8, 1998, to consider the initial study prepared for this application, and to accept public testimony regarding this proposed environmental determination on the development plan and street abandonment, and

WHEREAS, a resolution was adopted by the Planning Commission approved a Negative Declaration status for this project, and a Negative Declaration was prepared for the proposed Planned Development and Street Abandonment application in accordance with the California Environmental Quality Act, and

WHEREAS, the Planning Commission on November 24, 1998, granted the approval of Planned Development PD 98014 and CUP 98012, and

WHEREAS, An appeal was filed by a member of the City Council on December 9, 1998, to request the City Council discuss the Planning Commission decision to reduce the street improvement postponement from five years to three years, and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles does hereby resolve, determine and order as follows, based upon the facts and analysis presented in the staff reports, and public testimony:

That the City Council of the City of El Paso de Robles does hereby make the following findings:

1. That the proposed Planned Development is consistent with the goals and policies established by the general plan;
2. That the proposed Planned Development is consistent with the zoning code;

Section 8. Indemnification

Owner hereby indemnifies and holds the City harmless from all demands, claims, actions and damages to any person or property arising out of or connected with the terms of this Agreement.

Section 9. Default

Failure by either party to perform its obligations hereunder shall constitute a default under this Agreement, and the other party may institute legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy whether at law or in equity, consistent with the purpose of this Agreement.

Section 10. Termination of this Agreement

This Agreement and the obligations of Owner and City hereunder shall terminate upon the earliest occurrence of any of the following events:

- a. The termination of Owner's operation of its new & used automobile dealership on the Property;
- b. When the total aggregate amount of the reimbursement payments paid to Owner by City equals the respective amounts set forth in Sections 5 and 7, above.
- c. Seven (7) years from the date of this Agreement.

Section 11. Miscellaneous Provisions

- a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- b. Time of the Essence. Time is of the essence of each and every provision of this Agreement.
- c. Notices. Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first-class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Attention: City Manager

San Luis Bay Motors
2700 Theatre Drive
Paso Robles, CA 93446
Attention: Mr. Ottmar Thomas, Owner

d. Headings. The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

e. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

f. Further Assurances. The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

g. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.

h. Entire Agreement. This Agreement and Exhibit A, which is incorporated herein, together constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the day first written above.

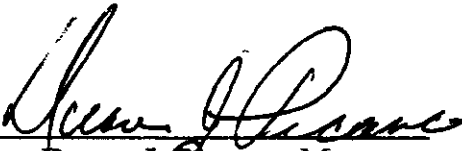
CITY:

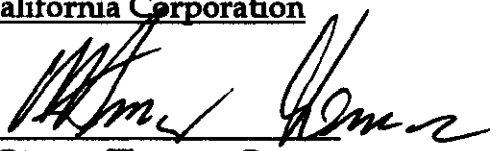
-AND-

OWNER:

CITY OF EL PASO DE ROBLES

SAN LUIS BAY MOTORS
a California Corporation

By: 
Duane J. Picanco, Mayor

By: 
Ottmar Thomas, Owner

Attest:

By: 
Madelyn Paasch, City Clerk

3. That the proposed Planned Development will be consistent with all other adopted codes, policies, standards and plans of the city;
4. That the proposed Planned Development will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the person residing or working in the neighborhood, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the city;
5. That the proposed Planned Development accommodates the aesthetic quality of the city as a whole;
6. That the proposed Planned Development is compatible with, and is not detrimental to, surrounding land uses and improvements, provides appropriate visual appearance, and contributes to the mitigation of environmental and social impacts;
7. That the proposed Planned Development contributes to the orderly development of the city as a whole.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles does hereby resolve, determine and order as follows, based upon the facts and analysis presented in the staff reports, and public testimony:

STANDARD CONDITIONS:

1. The applicant shall comply with all those conditions which are indicated on "Exhibit A" to this resolution.
2. The project shall be constructed so as to substantially conform with the following listed exhibits and conditions established by this resolution:

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
B	Preliminary Site Plan
C1-C3	Building Elevations
D	*Landscaping Plan

*Large copies of plans are on file in the Community Development Department

COMMUNITY DEVELOPMENT SITE SPECIFIC CONDITIONS:

3. This planned development application, PD 98014, would allow the construction of a 17,180 square foot building with 13,680 square foot being built in Phase I and 3,500 square feet being built in Phase II. Building design of Phase II shall be subject to DRC approval.
4. At the developer's expense, an archaeological survey of the site shall be performed prior to issuance of a grading permit. If the archaeologist's report so recommends, an archaeologist shall monitor grading for the project and the applicant shall pay for the archaeologist's services. Grading shall be halted in the event that significant archaeological resources are discovered. Grading may be resumed upon determination and implementation of appropriate mitigation measures as recommended by the archaeologist and approved by the City Engineer.

5. The applicant shall agree not to protest to the formation of an Assessment District to construct any future improvements at the intersections of Highways 46 West and 101 for the area served by Theater Drive, Ramada Drive and South Vine Street. The agreement shall be in a form approved by the City Attorney. The applicant shall pay his pro-rata share based on the benefit to the manufacturing facility project. The agreement shall be fully executed prior to the issuance of a Certificate of Occupancy.
6. The monument sign shall be no taller than 6 feet tall (from the base to the top) and the signage can not be greater than 32 square feet. Final monument sign shall be approved by the Development Review Committee and receive the necessary building permits.
7. The total square footage for all building and canopy mounted signs shall not exceed 88 square feet. All signage will need to be reviewed by the Development Review Committee.
8. The final materials and colors of the highway oriented sign shall be reviewed by the Development Review Committee.
9. All on-site operations of this facility shall comply with Section 21.21.040 of the Zoning Code (General Performance Standards for all uses) in relation to noise, dust, odor, hazards, vibration, glare, et cetera (copy attached as Exhibit E).
10. There shall be no unshielded lighting on the building such as wall mounted "light packs". All lighting shall be fully shielded and soffit lighting to enhance the architectural features of the building in the wall reveal areas is encouraged. The applicant shall demonstrate that lighting is shielded in conjunction with Planning staff review of the construction drawings.
11. The oak trees which are located at the proposed entrance of the site, adjacent to Theater Drive, are to remain. In the event that any grading or construction is to occur in this area, at the developers expense, a certified Arborist shall be hired to assess the situation prior to any grading.
12. A trash enclosure shall be installed on the site. The enclosure shall be constructed of decorative masonry and be painted to match the building and have "view obscuring" metal gates. The final design shall be submitted to Staff for approval.

ENGINEERING SITE SPECIFIC CONDITIONS:

13. Prior to the issuance of a grading permit, the applicant shall submit and incorporate any recommendations from a certified arborist regarding any construction within and adjacent to the driplines of the existing oak trees.
14. Within five years from the issuance of a Certificate of Occupancy, the applicant shall have widened Theater Drive and install curb, gutter, sidewalk, pavement, streetlights and parkway landscaping along the property frontage of this planned development application in accordance to the Environmental Impact Report prepared for the Target Shopping Center. Prior to the issuance of a grading permit, the applicant shall enter an agreement with the City regarding the deferral of these improvements. The agreement shall be in a form and manner as approved by the City Attorney and/or the City Engineer.
15. Prior to the issuance of a Grading Permit, the applicant shall dedicate the necessary public road right of way along Theater Drive in accordance to the EIR prepared for the Target Shopping Center.

16. Prior to the issuance of a Grading Permit, the applicant shall complete and file an Industrial Waste Discharge Permit with the Public Works Department.
17. A sewer lateral shall be installed for the proposed development, connecting to an existing manhole in Theater Drive. The sewer lateral shall remain private and its maintenance shall be the responsibility of the applicant.
18. Prior to the issuance of a Certificate of Occupancy, the applicant shall install a backflow prevention device at its domestic, landscape, and fireline services.
19. Prior to the issuance of a Certificate of Occupancy, the applicant shall install an asphalt berm, and pipeline to connect to an existing inlet just north of this subject property. The applicant's design shall be reviewed and approved by the City Engineer prior to construction.
20. The final map for Tentative Lot Line Adjustment 98-024 shall be recorded prior to the issuance of building permits for the new car dealership.

PASSED AND ADOPTED THIS 5th day of January, 1999 by the following roll call vote:

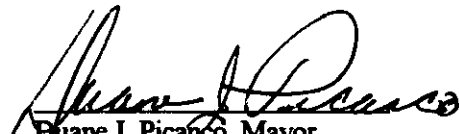
AYES: Baron, Macklin, Swanson, and Picanco

NOES: Mecham

ABSENT: None

ABSTAIN: None

ATTEST:


Duane J. Picanco, Mayor


Madelyn Paasch, City Clerk

**ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF EL PASO DE ROBLES
AND SAN LUIS BAY MOTORS**

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 6th day of January, 1999, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation organized and existing under the laws of the State of California (the "City") and SAN LUIS BAY MOTORS, a California corporation ("Owner").

Recitals

A. Owner is the owner and operator of a new & used car dealership and intends to expand its current operation and relocate its automobile dealership business on certain property to be acquired or leased by Owner for purposes of the development and construction of the automobile dealership facilities to be located at 2700 Theatre Drive (the "Property"), which is located within the City of El Paso de Robles. The proposed development and construction of the necessary facilities for and operation of the automobile dealership is referred to herein as the "Project."

B. Owner has entered into a "Contingent Reimbursement Agreement and Covenant Not to protest", dated December 24, 1998, and a "Build-To-Suit Lease and Purchase Option", dated December 24, 1998, with CGLPT Enterprises, a California General Partnership. Both agreements are collectively referred to herein as the "Additional Agreements". It is in part because Owner has entered into the Additional Agreements that the City has agreed to enter into this Agreement.

C. Pursuant to the City's Economic Development Assistance Policy, City wishes to encourage and assist in the location and expansion of the facility, which will generate additional sales tax, property tax and employment opportunities within the City.

D. The City has determined that the proposed Project, if approved, will present certain public benefits and opportunities which are made possible by the parties entering into this Agreement. The Agreement will, among other things: (1) ensure the productive use of property and foster orderly growth and quality development in the City; (2) strengthen the City's economic base by providing a means of retaining existing sales tax revenues and existing jobs and providing the opportunity to increase its sales tax base and employment opportunities; (3) reduce uncertainties in planning and provide for the orderly development of the Project; (4) contribute to the provision of needed public improvements; and (5) provide for the reimbursement to Owner of costs for certain development fees and construction of public improvements in order to make development of the Project economically feasible and achieve the City's goals described in paragraph B., above.

E. Inasmuch as this Agreement provides for the participation of Owner in financing the public improvements required to carry out the project approvals for this Project, this Agreement constitutes a financing agreement within the meaning and scope of Government Code section 53511 in that it provides for a means of satisfying financing obligations for various public improvements and facilities to be owned by or maintained for the benefit of City and the public generally in the City's planning area.

NOW, THEREFORE, in consideration of the mutual covenants and promises of City and Owner, City and Owner agree as follows:

Agreements

Section 1. Parties

The City is a municipal corporation. The office of the City is located at 1000 Spring Street, Paso Robles 93446. "City" as used in this Agreement, includes the City of El Paso de Robles and any assignee of or success to its rights, powers and responsibilities.

Owner is San Luis Bay Motors, a California corporation. The Owner's offices for purposes of this Agreement are located at 2700 Theatre Drive, Paso Robles, California. Wherever the term "Owner" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided. The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with Owner. No voluntary or involuntary success in interest of Owner shall acquire any rights or powers under this Agreement.

Section 2. Property

The Property is described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. Obligations Conditional

a. Owner acknowledges and agrees that the City's reimbursement obligations, as set forth in Section 5 below, are entirely contingent upon Owner's satisfaction of the conditions set forth in Section 6, below, and the City's reimbursement obligations, as set forth in Section 7 below, are entirely contingent upon Owner's satisfaction of the conditions set forth in Section 7, below.

b. The City acknowledges and agrees that Owner does not by this Agreement covenant to continue its business operations on the Property for any specified period of time, or maintain any particular level of employment on the Property. However, the continuation of such business operations is a condition to the City's obligations under this Agreement.

Section 4. Lease and Development of the Property

Pursuant to the Additional Agreements, Owner intends to lease the Property and to develop, or cause the development of, improvements on the Property, which shall include the development of facilities to house Owner's relocated and expanded new and used car dealership. Owner agrees that it will be responsible, at its sole cost and expense, for applying for and obtaining all necessary environmental and land use approvals and making any submissions required by the City for the development and operation of the Project.

It is anticipated that in connection with the development of the Project, Owner will be required to install certain public improvements which include, but are not limited to, the installation and construction of the following improvements and related actions (collectively, the "Public Improvements"): submission of wastewater discharge permit application to the City; sewer lateral extended to serve the Project; installation of water backflow prevention device at each water service to the Property; arborist recommendations for any work around the existing oak trees on the Property; dedication of street right-of-way on Theater Drive, as approved by the City Engineer; installation of AC berm and drainage facilities south of the Property as approved by the City Engineer. The cost of such Public Improvements is estimated to exceed thirty nine thousand DOLLARS (\$39,000.00). Owner shall install all such required Public Improvements in accordance with all City requirements, standards and conditions, and maintain records and invoices of the costs of such Public Improvements, including evidence of payment therefor, and submit all such documentation to the City.

Section 5. City Initial Obligations

Subject to the satisfaction by Owner of all of the conditions described in Section 6., below, the City agrees as follows:

a. City agrees that, in consideration of the Owner's acquiring the Property and obtaining all approvals necessary for development of the Project improvements on the Property, that it shall waive a portion of the building permit fees to be paid by Owner in an amount not to exceed FIFTY THOUSAND DOLLARS (\$50,000).

b. City agrees to reimburse Owner for a portion of the costs actually incurred by the Owner for the construction and installation of the Public Improvements, until such reimbursement payments have reached a total aggregate amount of THIRTY THOUSAND DOLLARS (\$30,000), but in no event shall such reimbursement exceed the total cost of the Public Improvements. The amount of any such reimbursement shall be made at the following times and in the following amounts:

Within thirty (30) days of receipt by the City of four (4) full quarters of sales tax generated by Owner on the Property, City shall pay to Owner an amount equal to ONE PERCENT (1.0%) of the Sales Tax Generated from the Project (as defined

below) pursuant to Sections 5a. & 5b above, to a maximum of \$80,000. As used herein, "Sales Tax Generated from the Project" shall mean that portion of the annual sales tax generated from the Owner's automobile dealership to be operated on the Property and allocated to the City.

Section 6. Conditions to Reimbursement

Owner shall be entitled to receive a reimbursement payment for the costs for the Public Improvements under Section 5.b. if and only if the following conditions have been satisfied:

a. The Project has been completed in accordance with the Project approvals and the description set forth in Section 4. hereof, and the City has issued a Certificate of Occupancy for the improvements on the Property.

b. Owner is operating its new & used automobile dealership on the Property at the time such reimbursement is due.

c. The City has received one (1) full year of Sales Tax Generated from the Project equal to at least Eighty Thousand Dollars (\$80,000). In the event Sales Tax Generated from the Project is less than Eighty Thousand Dollars for the first year of operation, the amount of reimbursement to be paid to Owner by the City under Section 5.b shall be reduced on a dollar-for-dollar basis.

Section 7. Deferred Street Improvements

In consideration of the Owner's development and operation of the Project, the City agrees to allow the Owner to delay the construction of certain street expansion improvements that the Owner would otherwise be required to construct in connection with the Project. Five (5) years following the issuance of a Certificate of Occupancy for the improvements to be constructed on the Property, the Owner shall be required to construct certain public improvements which shall include: the widening of Theatre Drive for the full frontage of the Property, to an engineering standard of 77 feet wide right-of-way, and construction and installation of new curb, gutter, sidewalk, pavement, streetlights and parkway landscaping, as approved by the City Engineer along such frontage (collectively, the "Deferred Street Improvements"). The cost of such Deferred Street Improvements is estimated to exceed one hundred thousand DOLLARS (\$100,000). Owner shall commence construction and installation of the Deferred Street Improvements within thirty (30) days following the fifth (5th) anniversary of the issuance of the Certificate of Occupancy referred to above, and shall diligently work to complete such construction and installation work within 180 days following commencement of construction. Owner shall construct and install all such required Deferred Street Improvements in accordance with all City requirements, standards and conditions, and maintain records and invoices of the costs of such Deferred Street Improvements, including evidence of payment therefor, and submit all such documentation to the City.

The City agrees to reimburse Owner for a portion of the costs actually incurred by the Owner for the construction and installation of the Deferred Street Improvements, up to a maximum amount of FIFTY THOUSAND DOLLARS (\$50,000), but in no event shall such reimbursement exceed the total cost of the Deferred Street Improvements. The amount of any such reimbursement shall be made at the following times and in the following amounts:

Subject to the conditions set forth below, within thirty (30) days after completion of the Deferred Street Improvements and receipt by the City of evidence of the costs incurred by the Owner for such improvements, City shall pay to Owner an amount equal to ONE PERCENT (1%) of the incremental difference in the amount of Sales Tax Generated from the Project during the first (1st) full year of operation of the Project, and the amount of Sales Tax Generated from the Project during the fifth (5th) full year of operation of the Project.

Owner shall be entitled to receive a reimbursement payment for the costs of the Deferred Street Improvements if and only if the following conditions have been satisfied:

a. Not later than the fifth (5th) anniversary of the issuance of a Certificate of Occupancy for the improvements on the Property, Owner shall have secured and established a major automobile dealership (as defined below) on the Property. "Major automobile dealership" shall mean a dealership for the sale of, and ancillary uses relating to, new automobiles and/or motor vehicles, made by an industry-recognized major automobile manufacturer which produces at least 500,000 new cars and/or trucks annually, which is not already being sold within the City.

b. Owner has continuously operated its new & used car dealership business on the Property during such five-year period.

c. Owner received a reimbursement from the City under Section 5.b above.

d. The amount of Sales Tax Generated from the Project during the fifth (5th) year of operation is at least Fifty Thousand Dollars (\$50,000) greater than the amount of Sales Tax Generated from the Project during the first (1st) year of operation of the Project.

e. The amount of such reimbursement for the Deferred Street Improvements shall not exceed Fifty Thousand Dollars (\$50,000). In the event the Sales Tax Generated from the Project in the fifth (5th) year of the operation of the Project is less than Fifty Thousand Dollars (\$50,000) greater than those from the first (1st) year of operation, the amount of the reimbursement shall be reduced on a dollar-for-dollar basis.