



City Manager's Report
April 26, 2016 City Council Meeting
Prepared By: M. Cleve Morris
Item#: 8.4

Subject: Adopt a Resolution Approving a Lease Agreement with Fidelity National Title for 549 Main Street and Authorizing the City Manager to Execute the Agreement.

Background: In 2014, the Council leased 549 Main Street to Vindler and Associates. The Vindler lease ended on December 31, 2015 and they vacated the building. The Council authorized staff to continue to attempt to lease the lower floor of 549 Main Street. Staff has been in negotiation and has now reached an agreement with Fidelity National Title for lease of the building. The terms of the contract are as follows:

Term: 6 Months – month to month after 6 months.
 Cost: \$1,871.05/mo. (\$1.15/sq.ft.)
 Parking: \$40 per leased space (up to 4)
 Utilities: 50% of cost of utilities for the joint buildings.

Attached is the final agreement.

Options:

1. Approve the agreement as proposed.
2. Direct Staff to make changes and bring back the agreement.
3. Reject the agreement.

Cost: There is no cost associated with this item at this time.

Budget Impact: If approved, the City would receive additional revenue for the lease. At the beginning of this fiscal year, we did not anticipate Vindler and Associates moving out, therefore we budgeted that revenue for the full year. This will not make up that amount, but will assist with meeting that revenue projection. The Council has discussed designating any revenue from the lease to be set aside for improvements to the building. Staff recommends that if we do that, it should begin on July 1, 2016, the start of the new fiscal year.

Recommendation: Adopt a Resolution Approving a Lease Agreement with Fidelity National Title for 549 Main Street and Authorizing the City Manager to Execute the Agreement.



M. Cleve Morris, City Manager

Attachments:

1. Resolution
2. Lease Agreement

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PLACERVILLE ADOPTING A LEASE AGREEMENT
BETWEEN THE CITY OF PLACERVILLE
AND FIDELITY NATIONAL TITLE**

BE IT, AND IT IS HEREBY RESOLVED that the City Council of the City of Placerville hereby approves a Lease Agreement between the City of Placerville and Fidelity National Title, a copy of which Agreement is attached hereto and by reference made a part hereof.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Placerville held on April 26, 2016, by Councilmember _____, who moved its adoption. The motion was seconded by Councilmember _____. The motion was passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor Trisha Wilkins

ATTEST:

Kelly Witt, City Clerk

LEASE

THIS LEASE, executed at _____, El Dorado County, California, is made on _____, 2016, between the City of Placerville, a municipal corporation, hereinafter referred to as "Lessor," and Fidelity National Title Company, a California corporation, hereinafter referred to as "Lessee."

Article I

A. Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, on and subject to all of the terms, covenants and conditions hereinafter set forth, that certain real property described as: the first floor of the Emigrant Jane portion of "Old City Hall" consisting of approximately sixteen hundred twenty seven (1,627) square feet, located at 489 Main Street, Placerville, California, (the Premises).

B. Lessee shall be entitled to use of four (4) parking stalls located at the rear of and adjacent to the Premises. Lessee may place signage indicating said parking stalls are for Lessee's use.

Article II

A. The term of this Lease shall be for the period of six (6) months, hereinafter called the "leased term," commencing on May 1, 2016, and ending on November 1, 2016.

B. In the event Lessee shall hold over after the expiration of the term of this Lease with the consent, express or implied, of Lessor, such holding over shall be deemed merely a tenancy from month-to-month on the same terms, covenants and conditions so far as applicable as herein contained.

C. Lessee shall be allowed access to the Premises as of May 1, 2016. Lessee will be provided with a key for the Premises on April 30, 2016. Upon full execution of this Lease, Tenant shall have the right to enter the Premises for the sole purpose of installing cabling, wiring and furniture, at times prearranged with the Lessor.

Article III

A. Lessee agrees to and shall pay to Lessor at 3101 Center Street, Placerville, California, or at such other place as Lessor shall from time to time designate in writing, as rent for the leased Premises, the following: a fixed rent in the sum of One Thousand Eight Hundred Seventy One Dollars and Five Cents (\$1,871.05) payable in advance on the first day of each calendar month, but no later than the 5th day of the month, commencing on May 1, 2016, and continuing during the term hereof.

B. Lessee agrees to pay Forty Dollars (\$40) per month per parking space for up to 4 total parking spaces. Total monthly cost will be One Hundred Sixty Dollars (\$160).

C. Lessee shall pay upon execution of this Lease a deposit in the amount of One Thousand Dollars (\$1,000.00), which shall be applied toward the amounts due in Paragraph D below.

D. On or before April 30, 2016, Lessee shall pay first and last month's rent consisting of Three Thousand Seven Hundred Forty Two Dollars and Ten Cents (\$3,742.10).

Article IV

A. Lessor shall pay the real property taxes, if any, on the Premises and the fire and comprehensive insurance on the Premises. Lessor shall be entitled to retain any and all proceeds from said fire and comprehensive insurance and Lessee shall not be entitled to any portion of said proceeds. Lessee shall be responsible, at Lessee's sole cost and expense, for providing insurance coverage, if any, for Lessee's personal property located on the Premises.

B. Lessee will obtain and pay for any licenses required by any governmental agency for Lessee's use of said Premises and will pay for any personal property taxes levied against the personal property on the Premises.

C. Lessee agrees to and shall, within ten (10) days from the date hereof, secure from a good and responsible company or companies doing insurance business in the state of California, and maintain during the entire term of this Lease the following insurance coverage: Public liability insurance in the minimum amount of \$1,000,000 for any one person injured, or \$2,000,000 for any one accident, or \$1,000,000 for property damage. Lessee agrees that Lessor shall be named as an additional insured on the aforementioned policies of insurance. Lessee shall provide such policies as to insure the liability of Lessor and such policies are to be placed with the Lessor, and Lessee is to obtain a written obligation on the part of the insurance carrier to notify Lessor in writing of any cancellation thereof, and Lessee agrees, if Lessee does not keep such insurance in force and effect, the Lessor may take out the necessary insurance with a domestic company, and otherwise with such company as may write such insurance, and pay the premium, and the repayment thereof shall be deemed to be part of the rental, without termination. The Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any such breach, in addition to any other remedies he may have, he may recover from Lessee all damages he may incur by reason of such breach.

Article V

A. Lessee shall during the term hereof pay all charges for telephone, electricity, internet, and any other utilities, except water and sewer, used in or on the leased Premises before they shall become delinquent and shall hold Lessor harmless from any liability therefore. Electricity costs shall be billed monthly based on 52% of the average monthly cost of service

from January 2015 through December 2015. The City reserves the right to evaluate the cost annually and make an adjustment based on actual costs for the previous 12 month period.

B. The parties acknowledge that utility services to the Premises are provided in common with utility services to other portions of “Old City Hall” as well as the public restroom adjacent to “Old City Hall.” The parties agree to establish a formula for the apportionment of the costs of such utilities between the Premises and the other areas served by those utilities. Lessor shall invoice Lessee monthly for Electricity on a pro-rata share based on the agreed formula from Paragraph A Lessee shall pay the agreed upon amount within 30 days of receipt of invoice.

Article VI

A. The leased Premises shall be used for the purpose of a Title Company Service office.

B. Lessee shall not commit or suffer to be committed any waste on the leased Premises, nor shall Lessee maintain, commit or permit the maintenance or commission of any nuisance on the leased Premises or use the leased Premises for any unlawful purpose.

C. Lessee shall not commit or permit any act or acts in or on the leased Premises or use the leased Premises or suffer them to be used in any manner which will increase the existing fire, liability or other insurance rates on the leased Premises or the building in which the leased Premises are situated or which will cause any cancellation of any insurance policy covering said Premises or building or any part thereof. Lessee shall not keep, hold, store, use or sell in or on the leased Premises any product or article prohibited by the standard form of fire insurance policy, as it now exists or may hereafter provide, covering the said Premises or building and its contents, or permit or suffer any such product or article to be kept, held, stored, used or sold in or on the leased Premises, and Lessee shall, at Lessee’s sole expense, comply with any and all requirements of Lessor’s insurance carriers pertaining to the leased Premises necessary for the continued maintenance of reasonable fire and liability insurance for said Premises or building, its contents and appurtenances.

Article VII

A. Lessee shall, at Lessee’s sole cost and expense, comply with all requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the said Premises, and shall observe in the use of the Premises all municipal ordinances and state and federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any such ordinance or statute in the use of the Premises shall be conclusive of that fact as between Lessor and Lessee.

B. Notwithstanding the provisions of the forgoing Paragraph A, the Lessee's obligation under this Article shall not apply to correcting any preexisting ADA and/or Building Code violations. It is the understanding of Lessor and Lessee that Lessee will not be doing any improvements to the Premises which would require the Premises to become compliant with current ADA requirements or require any preexisting non-compliant Code conditions (including asbestos, lead paint, etc.) to become Code compliant. In the event that a claim is made that the Premises are not ADA complaint, either party may terminate this Lease upon thirty (30) days' notice to the other party.

Article VIII

A. Lessee represents that Lessee has inspected the Premises and by entry hereunder, Lessee accepts the Premises in an "as is" condition and repair, and agrees on the last day of said term or sooner termination of this Lease to surrender to Lessor all and singular said Premises with said appurtenances in the same condition or better as when received, reasonable use and wear and tear thereof and damage by fire, act of God or by the elements excepted. Lessor makes no warranties or representations that the Premises are fit for Lessee's intended use or as to the condition of the Premises. Subject to Article X, in the event that the Premises become uninhabitable for any reason other than through the fault of Lessee, either party may terminate this lease.

Article IX

A. Lessee shall at all times keep the Premises in a clean, orderly and sanitary condition, and shall not cause, or permit any unusual or objectionable noises or odors to emanate therefrom.

B. Lessee shall, at Lessee's sole cost, keep and maintain said Premises and appurtenances and every part thereof, including, but not limited to, windows and skylights and heating and air conditioning (HVAC), and the interior of the Premises, in good and sanitary order, condition and repair, hereby waiving all right to make repairs at the expense of Lessor as provided in Section 1942 of the Civil Code of the State of California and all rights provided for by Sections 1941 and 1941.1 of said Civil Code. Lessor shall be responsible for maintaining the storefront of the Premises and the sidewalk adjacent to the Premises, and for repairs and maintenance to exterior walls and roof. Lessor will have the HVAC system inspected and in good working order, and will be responsible for any repairs and/or replacements.

Article X

A. In the event of a total destruction of the leased Premises, this Lease shall terminate and the parties hereto shall thereafter be released from all obligations thereafter accruing hereunder; provided, however, that Lessee shall be liable to Lessor for all damages resulting from such destruction caused by Lessee's want of ordinary care or the want of ordinary

care of agents, servants or employees. As used herein, "total destruction" means any of the following: (1) any destruction requiring more than Ten Thousand Dollars (\$10,000.00) to repair; or (2) any destruction requiring more than ninety days to repair; or (3) any destruction occurring during the last sixty days of the initial term of this lease requiring more than Twenty-five Hundred Dollars (\$2500.00) to repair.

B. Lessor agrees to and shall, to the extent of available insurance proceeds, forthwith upon receiving written notice from Lessee to do so, rebuild or restore to their present condition the leased Premises destroyed in part by fire or other casualty, and in such case Lessee hereby waives the provisions of Section 1932, Subdivision 2, of the California civil Code. As used herein, "destroyed in part" is any destruction other than a total destruction as hereinbefore defined. Lessee shall not be liable for any rent hereunder from the time of such destruction until the Premises are restored by Lessor as herein provided, and rent accruing during such period shall be deducted from the total rental herein reserved. In the event that Lessee should continue to use the Premises after such destruction during the period of restoration by Lessor, rent shall be abated based on the proportion of the Premises that Lessee is unable to occupy.

Article XI

A. Lessee shall make no installation, additions or improvements in or to the Premises except as otherwise authorized in this Lease, or structural alterations either to the interior or exterior of the building initially constructed on the Premises, or on the bearing walls, supports, beams or foundations without the written consent of the Lessor.

B. Plans and specifications showing such proposed installations, additions or improvements and alterations and changes shall be submitted to Lessor for approval upon application for such consent.

C. All installations, additions, improvements and alterations and changes made with the written consent of the Lessor shall be made at the sole cost and expense of the Lessee, under the supervision of an architect or engineer satisfactory to Lessor.

D. If, during the term of this Lease, any additions, alterations or improvements in or to the Premises as distinguished from repairs are required by any governmental regulation because of the use to which the Premises are put by Lessee and not by reason of the character or structure of the building, they shall be made and paid for by Lessee.

E. All alterations, additions or improvements which are made in or to the Premises shall be surrendered with the Premises upon termination of this Lease, unless prior to such termination Lessor give Lessee written notice to remove some or all thereof, in which case, Lessee shall cause the item so designated to be removed and the Premises restored to their original condition, all at the expense of Lessee.

F. It is understood and agreed between the parties that all installations, additions and improvements erected or installed at any time upon the Premises during the term of this Lease, except furniture, fixtures and equipment installed and belonging to Lessee, shall immediately become the property of and belong to Lessor on such erection or installation.

G. Lessee may install in and affix to the Premises such fixtures and equipment as Lessee deems desirable.

H. Not later than the expiration of the time under which any provision of this Lease, Lessee is required to surrender the Premises to Lessor. Lessee may, and if prior to the expiration of such time Lessor gives written notice requiring Lessee to do so, Lessee shall remove all trade fixtures installed in the Premises by Lessee. All trade fixtures not removed within such time shall become and remain the property of Lessor. The removal of such trade fixtures shall be effected solely at the expense of the Lessee and in a manner satisfactory to Lessor and without injury or damage to the Premises or the building, and Lessee covenants to repair immediately, at Lessee's expense, any injury or damage caused by such removal.

I. Any signage placed on the Premises shall be in compliance with the City of Placerville's sign regulations. Window signage (such as listings) shall not cover more than twenty-five percent (25%) of any window. Lessee may, at Lessee's expense, erect on the Premises such signs and provide such exterior lighting as shall be provided for in the plans and specifications for the improvements and mutually approved, but Lessee shall not thereafter erect or maintain any other additional signs or any other exterior lighting on the Premises without the prior written approval and consent of Lessor.

Article XII

A. This Lease is made on the express condition that except due to Landlord's gross negligence or intentional acts, Lessor is to be free from all liability or loss by reason of injury to person or property, from whatever cause, while in or on the leased Premises, or in any way connected with the leased Premises or with the improvements or personal property therein or property of Lessee, Lessee's agents, officers and employees. Lessee hereby covenants and agrees to and shall indemnify Lessor and save Lessor harmless from any and all liability, loss or obligations on account of, or arising out of, any injury or loss however occurring, except as provided herein.

Article XIII

A. Lessor at all times during the leased term shall have the right to sublet and subordinate this Lease to the lien of any mortgage or mortgages heretofore or hereafter placed upon Lessor's interest in the Premises. Lessee shall execute and deliver, upon demand of Lessor, Lessor's successors and assigns, such other instrument subordinating this Lease to the lien of any

such mortgage or mortgages; provided, however, that such mortgage shall recognize the validity and continuance of this Lease in the event of foreclosure of Lessor's interest.

Article XIV

A. Lessee shall neither permit nor suffer any mechanic's liens or other liens to be filed against the leased Premises or any part thereof by reason of any work, labor or materials done on or in, or supplied to, the leased Premises at Lessee's request or at the request of any of Lessee's agents, employees or sublessees.

B. Should any such lien be filed, Lessee agrees to and shall cause it to be removed forthwith.

C. Should Lessee fail to discharge any such lien or furnish a bond against the foreclosure thereof, Lessor may but shall not be obligated to, discharge the same or take such other action as Lessor deems necessary to prevent a judgment of foreclosure on said lien from being executed against the property, and all costs and expenses, including reasonable attorney's fees incurred by Lessor, shall be repaid by Lessee to Lessor on written demand therefore.

D. Nothing in this Lease shall be construed as in any way constituting a consent or request by Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific or general improvement, alteration or repair of or to the leased Premises or to any building or improvements thereon, or to any part thereof. Lessor shall have the right in the event of any construction, alteration, repair, or work in, on, or to the leased Premises or to any part thereof, to post and file such notices of nonresponsibility as are now or shall hereafter be provided by law.

Article XV

A. Lessee shall not assign this Lease, or any interest therein, and shall not sublet the leased Premises or any part thereof, or any right or privilege thereto, or suffer any other person to occupy or use the leased Premises, or any portion thereof, without the written consent of Lessor first had and obtained, and a consent to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without Lessor's consent shall be void and shall, at Lessor's option, terminate this Lease. The Lease shall not, nor shall any interest therein, be assignable, so as to the interest of Lessee, by operation of law, without the written consent of Lessor. Notwithstanding the above, Lessee shall have the right to assign this Lease to an affiliate of Lessee, without Lessor's consent, provided successor entity's business is the same or similar to Lessee. An "affiliate of Lessee" is defined to be a wholly owned subsidiary of Lessee.

Article XVI

A. Should Lessee be guilty of a default and breach of this Lease, Lessor, in addition to any other remedies given Lessor by law or equity, may:

1. Continue this Lease in effect by not terminating Lessee's right to possession of said Premises and thereby be entitled to enforce all Lessor's rights and remedies under this Lease, including the right to recover the rent specified in this Lease as it becomes due under this Lease; or

2. Terminate Lessee's right of possession of said Premises thereby terminating this Lease, and recover from Lessee:

(a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of the Lease;

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Lessee proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease; or

3. In lieu of, or in addition to, bringing an action for any or all of the recoveries described Subparagraph 2 of this paragraph, bring an action to recover and regain possession of said Premises in the manner provided by law of unlawful detainer of the State of California then in effect.

Article XVII

A. The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any prior occurring breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted regardless of Lessor's knowledge of such prior existing breach at the time of acceptance of such rent.

Article XVIII

A. In the event that either party hereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of this lease by him to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to his court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if any. As used herein, "the party prevailing" means the party in whose favor final judgment is rendered.

Article XIX

A. Lessee shall, at least thirty (30) days prior to expiration of the term of this Lease or any extension thereof, give to Lessor a written notice of Lessee's intention to holdover in the leased Premises, but nothing contained herein shall be construed as an extension of the term hereof or as consent of Lessor to any holding over by Lessee.

Article XX

A. Lessor shall have the right throughout the leased term to enter the Premises at reasonable hours to show the same to other persons who may be interested in buying or leasing the Premises and for the purpose of inspecting the Premises, and make such repairs as Lessor may deem necessary for the protection and preservation of the Premises; but Lessor shall not be bound to make any repairs whatsoever, except as provided in this Lease. In the event of an emergency or electrical malfunction, Lessor shall have the right, but not the obligation, to enter the Premises at any time.

Article XXI

A. Except as otherwise provided in this Lease, all notices and demands herein required to be given by Lessor to Lessee or by Lessee to Lessor shall be in writing and delivered in person or by registered or certified mail.

B. Notice and demands delivered to Lessee by mail shall be addressed to Lessee at: The Premises, 489 Main Street, Placerville, CA 95667.

C. Notice and demands delivered to Lessor by mail shall be addressed to Lessor at: 3101 Center Street, Placerville, California 95667.

D. Any such notice or demand shall be deemed served at the time of delivery if delivered in person, or following deposit thereof in the United States mail where sent by registered or certified mail.

Article XXII

A. The terms, covenants and conditions of this Lease shall apply to and bind the heirs, executors, administrators and assigns of the parties hereto.

Article XXIII

A. Time is hereby expressly declared to be of the essence of this Lease and all the covenants, agreements and conditions and obligations herein contained.

Article XXIV

A. In the event that Lessor desires to sell "Old City Hall" and receives an acceptable offer for the purchase and sale of "Old City Hall," Lessor shall provide Lessee with a true and correct copy of the offer and Lessee shall have ten (10) days to agree to purchase "Old City Hall" on the same terms and conditions as contained in the offer.

IN WITNESS WHEREOF, the parties have executed this Lease on the date and year first above written.

Lessor:
City of Placerville

By: _____
M. Cleve Morris, City Manager

Lessee:
Fidelity National Title Company

By: _____
Todd A. Nelson, Vice President