

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is made and entered into in Orange County, California, as of August 22, 1996, by and among THE FULLERTON REDEVELOPMENT AGENCY ("Agency"), on the one hand, and GEORGE K. BUSHALA, JR., ANTHONY N. BUSHALA, and ALBERT C. BUSHALA (collectively, "Lessees"), on the other, with reference to and based on the following:

R E C I T A L S

- A. The Agency is the owner of that certain real property located within the City of Fullerton, State of California, commonly known as the "Fullerton Station."
- B. On or about February 20, 1990, the Agency entered into a written lease agreement ("Original Lease Agreement") with an entity known as "Bushala Brothers, Inc.," under which agreement the Agency agreed to lease certain portions of the Fullerton Station ("Leased Premises") to Bushala Brothers, Inc. A map which accurately portrays the location of the Leased Premises in relation to the Fullerton Station is attached hereto as Exhibit "A."
- C. On or about July 7, 1992, the Agency entered into a "First Amended Agreement to Lease" ("Amended Lease Agreement") with Bushala Brothers, Inc., which Amended Lease Agreement replaced and superseded the Original Lease Agreement in its entirety.
- D. On or about September 15, 1992, Bushala Brothers, Inc. entered into a written "Assignment and Assumption Agreement" ("Assignment") whereby Bushala Brothers, Inc., assigned, transferred, and delegated all of its rights, title, and interest in, and obligations and duties under, the Amended Lease Agreement to Lessees, jointly and severally, and whereby Lessees expressly assumed and agreed to keep, perform, and fulfill all of the terms, conditions,

covenants, and obligations required to be kept, performed, and fulfilled by Bushala Brothers, Inc. under the Amended Lease Agreement.

E. Pursuant to paragraph 6.1 of the Amended Lease Agreement, and pursuant to the Assignment, Lessees were required to construct and rehabilitate certain improvements on the Leased Premises and, in return for such construction and rehabilitation of improvements, were entitled to receive a reimbursement payment in the amount of eighteen per cent (18%) of Lessees' rehabilitation costs not to exceed Sixty-One Thousand Two Hundred Dollars (\$61,200), all as more particularly described in the Amended Lease Agreement.

F. A dispute has arisen between the Agency and Lessees with respect to whether Lessees have performed the required construction and rehabilitation to entitle Lessees to said reimbursement payment. The Agency contends that Lessees were required to complete those items listed as numbers 1 through 17 in the document attached hereto as Exhibit "B" and that Lessees have not satisfactorily or timely constructed or rehabilitated some of said improvements in accordance with Lessees' obligations set forth in said paragraph 6.1 of the Amended Lease Agreement. The Agency further contends that Lessees were required under paragraph 6.1 of the Amended Lease Agreement to expend a minimum of Three Hundred Forty Thousand Dollars (\$340,000.00) in order to be entitled to reimbursement for construction and rehabilitation expenditures and that Lessees have not expended this minimum amount. Lessees, on the other hand, contend that they have satisfactorily completed the construction and rehabilitation of said listed improvements at least to the extent they were obligated to so perform under the Amended Lease Agreement and that they are entitled to a reimbursement payment from the Agency in the full amount of Sixty-One Thousand Two Hundred Dollars (\$61,200).

G. The parties believe that it would be in their respective best interests to settle their differences with respect to the duties and obligations set forth in said paragraph 6.1 of the

Amended Lease Agreement on the terms specified in this Agreement, save and except those rights, claims, and causes of action expressly reserved in Section 4.01 of this Agreement relating to the relocation of the electrical box described in Item No. 4 of attached Exhibit "B."

H. Further disputes have arisen between the Agency and Lessees with respect to the following subjects: (i) the parties' respective liabilities for the FOUR THOUSAND THREE HUNDRED EIGHTY DOLLARS AND 86 CENTS (\$4,380.86) cost incurred by the Agency to repair certain roof leaks and related damage at the Fullerton Station in approximately March-April of 1996; (ii) the respective rights and obligations of the parties with regard to installation of public telephones inside the "Amtrak Premises" of the Fullerton Station and in other areas of the Fullerton Station or in the immediate vicinity of the exterior of the Fullerton Station off of the Leased Premises, and with regard to entitlement to the revenues generated from the use of such public telephones, pursuant to Section 4.3 of the Amended Lease Agreement; and (iii) Lessees' duties to indemnify, defend, and hold harmless the Agency and the City of Fullerton pursuant to Article 7 of the Amended Lease Agreement and the Agency's and City's right to contribution, equitable indemnification, or apportionment of damages in a lawsuit entitled Ogden v. City of Fullerton, et al., North Orange County Municipal Court Case No. C24985.

I. The parties believe that it would be in their respective best interests to settle their differences with respect to the roof repair issue (clause (i) of Recital H hereinabove), but have been unable to resolve and therefore desire to reserve their respective rights, remedies, and defenses relating to the telephone dispute and the Ogden v. City of Fullerton lawsuit (clauses (ii) and (iii) of Recital H hereinabove).

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A G R E E M E N T

NOW, THEREFORE, in consideration of the above Recitals and the covenants, conditions, promises, and agreements contained herein, it is mutually agreed by and among the parties hereto as follows:

ARTICLE 1: AGENCY'S OBLIGATIONS

1.01 PAYMENT TO LESSEES

In consideration of all the obligations of Lessees set forth herein, within five (5) business days after the date of this Agreement the Agency shall pay to Lessees the total sum of FIFTY THOUSAND DOLLARS (\$50,000.00) to be distributed jointly to George K. Bushala, ^{JR.} Anthony N. Bushala, and Albert C. Bushala. Said payment shall fully satisfy and extinguish all claims of Lessees for the reimbursement payment set forth in paragraph 6.1 of the Amended Lease Agreement and described above in Recital E of this Agreement.

gKBJR

ARTICLE 2: LESSEES' OBLIGATIONS

2.01 RIGHT OF ENTRY ONTO LEASED PREMISES FOR INSPECTION, CONSTRUCTION OR REHABILITATION OF ITEMIZED IMPROVEMENTS

From and after the effective date of this Agreement, the Agency and its authorized representative(s) shall have the right, but not the obligation, to come onto the Leased Premises during normal business hours for the purposes of inspection, construction and rehabilitation of any of the improvements listed in Paragraphs 1, 2, 3, 9, and 17 of the attached Exhibit "B." The Agency, in its sole discretion and at no cost to Lessees, shall have the right to construct or rehabilitate any such improvements listed in Paragraphs 1, 2, 3, 9, and 17 of the attached Exhibit "B" without regard to whether Lessees believe such construction or rehabilitation is necessary or appropriate and without regard to whether such construction or rehabilitation was

required to be performed under the Amended Lease Agreement. The Agency shall provide Lessees or Lessees' representatives no less than twenty-four (24) hours notice of any entry onto the Leased Premises pursuant to the Right of Entry granted herein. Such notice shall specify the person or persons entering onto the Leased Premises, the general nature of the activities to be conducted, and a reasonable estimate of the time during which such activity will occur. The notice may be written or oral.

**2.02 RIGHT OF ENTRY ONTO LEASED PREMISES FOR INSPECTION,
MAINTENANCE, AND STABILIZATION OF LOADING DOCK ROOF
STRUCTURE**

The parties hereto acknowledge that there currently exists a roof structure on and over the loading dock located adjacent to the railroad tracks as shown on the map attached hereto as Exhibit "A." The parties further acknowledge that the portion of said structure located within Area 5 shown on Exhibit "A" is within the area of the Leased Premises and that the Agency, in order to maintain and improve said structure, necessarily must enter onto the Leased Premises.

Thus, from and after the effective date of this Agreement, the Agency and its authorized representative(s) shall have the right to enter onto the Leased Premises during normal business hours for the purpose of inspecting, maintaining, and/or improving the roof structure, including but not limited to, the performance of any work necessary or appropriate for stabilizing the structure. Any work performed by the Agency pursuant to the authorization contained in this Section 2.02 shall be at no cost to Lessees. Prior to entering onto the Leased Premises to perform any such work, Agency shall submit to Lessees the plans and specifications therefor. Lessees shall have the right to approve or disapprove such plans and specifications, provided that such approval shall not be unreasonably withheld and granted by Lessees if the work complies with applicable building code requirements and does not adversely affect Lessees' use or opera-

tion of the Leased Premises (with the exception of minor inconvenience during the construction period, which shall be permitted and shall not be a justification for Lessees' disapproval of the work). Any disapproval by Lessees of such work shall be in writing and shall state the reasons therefor. Lessees shall notify the Agency of Lessees' approval or disapproval of the work within ten (10) days after Lessees' receipt of the Agency's plans and specifications as set forth above, and Lessees' failure to notify the Agency of Lessees' approval or disapproval within said time period shall be automatically deemed to constitute an approval of the work.

Prior to the actual commencement of work pursuant to this Section 2.02, the Agency or its contractor shall provide Lessees no less than twenty-four (24) hours notice of the intent to enter onto the Leased Premises pursuant to the Right of Entry granted herein. Such notice shall specify the person or persons entering onto the Leased Premises, the general nature of the activities to be conducted, and a reasonable estimate of the time during which such activity will occur. The notice may be written or oral.

**2.03 RIGHT OF ENTRY ONTO LEASED PREMISES FOR ACCESS TO
TELEPHONE BOARD**

The parties hereto acknowledge that the telephone board that services the entire Fullerton Station is located on the Leased Premises. From and after the effective date of this Agreement, the Agency and its authorized representative(s), including without limitation Amtrak and any other tenants, subtenants, or occupants of any portion of the Fullerton Station not part of the Leased Premises, shall have the right to come onto the Leased Premises during normal business hours to obtain access to the telephone board and as necessary for the inspection, installation, removal, repair, and maintenance of telephone equipment and facilities located within such other portions of the Fullerton Station. Except in the case of an emergency, the Agency and its authorized representative(s) shall provide Lessees or Lessees' representatives no less than

twenty-four (24) hours notice of any entry onto the Leased Premises pursuant to the Right of Entry granted herein. Such notice shall specify the person or persons entering onto the Leased Premises, the general nature of the activities to be conducted, and a reasonable estimate of the time during which such activity will occur. The notice may be written or oral.

2.04 CERTIFICATE OF COMPLETION AND RELEASE OF SECURITY

Within one (1) week after the date of this Agreement, the Agency shall issue its Certificate of Completion pursuant to Section 6.7 of the Amended Lease Agreement and shall release and/or reconvey the security instruments currently held by the Agency to secure Lessees' obligation to complete the construction and rehabilitation work referred to in Section 6.1 and Paragraph I.D of Exhibit "B" of the Amended Lease Agreement.

ARTICLE 3: GENERAL RELEASE

3.01 MUTUAL RELEASE

In consideration of the agreements of the Agency as set forth herein, Lessees, on behalf of themselves, and their heirs, representatives, attorneys, successors, and assigns, do hereby release the Agency, and its members, directors, officials, boards, commissions, employees, attorneys and other representatives (collectively, the "Released Parties"), from any and all claims, actions, and causes of action, litigation expenses, obligations, liabilities, indebtedness, breaches of duty, claims for injunctive and other equitable relief, suits, liens, losses, costs or expenses, including attorneys' fees, of any nature whatsoever, known or unknown, fixed or contingent, including those claims arising out of, based upon, or relating to the facts or allegations contained in the Recitals herein, and any and all claims relating in any manner to the obligations of the Agency set forth in Section 6.1 of the Amended Lease Agreement, save and except those issues as to which the parties are unable to agree as specifically set forth in Article 4 of this Agreement. The Agency likewise releases Lessees from any and all claims, actions,

and causes of action of any nature whatsoever, known or unknown, fixed or contingent, including but not limited to those claims arising out of, based upon, or relating to the facts or obligations contained in the Recitals herein and any and all claims relating in any manner to the obligations of Lessees set forth in Section 6.1 of the Amended Lease Agreement, save and except those obligations upon which the parties are unable to agree as specifically set forth in Article 4 of this Agreement.

3.02 WAIVER OF CIVIL CODE SECTION 1542

By releasing and forever discharging claims both known and unknown as provided, the parties expressly waive any and all rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The parties waive and relinquish any and all rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California. The parties and their counsel have performed a full and complete investigation of the facts pertaining to this settlement. Nevertheless, the parties acknowledge they are aware they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but it is their intention hereby to fully and finally forever settle and release any and all matters, disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist or heretofore have existed, as against each other, save and except as expressly provided in Article 4 of this Agreement, and in furtherance of this intention, the release herein given shall be and remain in effect as a full

and complete general release notwithstanding discovery or existence of any such additional or different facts, except as expressly provided in Article 4 of this Agreement.

3.03 CONSULTATION WITH COUNSEL

By initialing below, Lessees acknowledge they have specifically reviewed with their attorney the meaning and effect of the release set forth above in Paragraph 3.01, the language from Civil Code section 1542 set forth in Paragraph 3.02, and the waiver contained in Paragraph 3.02, their attorney has fully explained the impact of these provisions and they knowingly accept the risks associated with these provisions.

George K. Bushala JKB JK
Anthony N. Bushala TNB
Albert C. Bushala ACB

ARTICLE 4: UNRESOLVED ISSUES; RESERVATION OF RIGHTS

4.01 PARTIES "AGREE TO AGREE" ON RELOCATION OF ELECTRICAL BOX

The parties hereto acknowledge that they have not been able to agree on their respective rights and obligations relating to the relocation of the electrical box as set forth in Recital G of this Agreement and as listed in Item No. 4 of Exhibit "B" attached hereto. The Agency agrees that it shall not require relocation of the electrical box unless and until Lessees commence additional on-site construction which adds additional enclosed square footage and Lessees agree that resolution of such issue may be deferred until said time. The parties agree that nothing contained in this Agreement shall limit any party's rights, claims, or causes of action currently existing with respect to the relocation of the electrical box and that, except as expressly provided

herein, this particular dispute shall be resolved solely in accordance with the terms of the Amended Lease Agreement.

4.02 DISPUTE RELATING TO PUBLIC TELEPHONES

The parties hereto acknowledge that they have not been able to agree on their respective rights and obligations relating to the placement of public telephones inside the Amtrak Premises and in areas of the Fullerton Station or the immediate vicinity of the exterior of the Fullerton Station other than the Leased Premises occupied by Lessees, nor have the parties been able to agree as to the entitlement to revenue generated from the use of such telephones. The parties agree that nothing contained in this Agreement shall limit any party's rights, claims, or causes of action currently existing with respect to such matters and that this particular dispute shall be resolved solely in accordance with the terms of the Amended Lease Agreement.

4.03 DEFENSE AND INDEMNITY OBLIGATIONS ARISING OUT OF PENDING LAWSUIT

The parties hereto acknowledge that they have not been able to agree on the issue of Lessees' obligation, if any, pursuant to Article VII of the Amended Lease Agreement to defend and indemnify the Agency and the City of Fullerton from the claims asserted by the plaintiff in the lawsuit entitled Ogden v. City of Fullerton, et al., North Orange County Municipal Court Case No. C24985. The parties agree that nothing contained in this Agreement shall limit any party's rights, claims, or causes of action currently existing with respect to such matter and that this particular dispute shall be resolved solely in accordance with the terms of the Amended Lease Agreement.

ARTICLE 5: MISCELLANEOUS

5.01 ADVICE OF COUNSEL

The undersigned and each of them hereby declare and represent that in executing this Agreement, each has received full legal advice as to their respective legal rights and each hereby certifies that he, she, or it has read this Agreement in its entirety and fully understands the same.

5.02 ATTORNEYS' FEES

In any proceeding at law or in equity to enforce any of the provisions or rights under this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs and expenses, including without limitation reasonable attorneys' fees incurred therein by the prevailing party (including without limitation such costs, expenses, and fees on appeal), whether or not the proceeding proceeds to a final determination or judgment.

5.03 WARRANTY OF NO UNDUE INFLUENCE

The parties hereby warrant and represent they are not aware of any duress, menace, fraud, coercion, or undue influence which has caused any party to enter this Agreement. Each of the parties hereby warrants and represents he, she, or it is not aware of any acts or conduct by which, in executing this Agreement, the mind of any of the parties hereto has been overcome by the will of another person.

5.04 SEVERABILITY

If any provision of this Agreement is held to be invalid, void, or unenforceable, the remaining provisions shall nevertheless remain in full force and effect and shall not be affected, impaired, or invalidated.

5.05 ATTORNEYS' FEES AND COSTS PREVIOUSLY INCURRED

Each party shall be responsible for his, her, or its own costs, attorneys' fees, and expenses incurred in connection with or relating in any way to the dispute described in Recital F of this Agreement.

5.06 CONSTRUCTION OF AGREEMENT

The parties to this Agreement, and each of them, acknowledge: (i) this Agreement and its reduction to final written form is the result of extensive good faith negotiations between the parties through their respective counsel; (ii) said counsel have carefully reviewed and examined this Agreement before the execution by said parties; and (iii) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

5.07 COUNTERPARTS

This Agreement may be executed in counterparts and may be executed in multiple originals so that each of the parties hereto shall have an original signed document and each shall be deemed an original.

5.08 GOVERNING LAW

This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

5.09 AGREEMENT BINDING ON SUCCESSORS

This Agreement, and all the terms and provisions contained herein, shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

5.10 NO IMPLIED WAIVER

Failure to insist upon compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

5.11 AMENDED LEASE AGREEMENT TO REMAIN IN FULL FORCE

Except as expressly set forth herein, this Agreement shall not be construed as a modification to or amendment of the Amended Lease Agreement and the same shall remain in full force and effect.

5.12 INTEGRATION

This Agreement and the Exhibits attached hereto contain the entire agreement and understanding of the parties concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements between Lessees and the Agency, whether written or oral, except as expressly provided herein. Each of the parties acknowledges representation by counsel throughout all negotiations which preceded the execution of this Agreement and that this Agreement has been executed with the consent and upon the advice of counsel. Each of the parties acknowledges no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

IN WITNESS WHEREOF, the parties have executed this agreement on the date set forth below.

"AGENCY"

THE FULLERTON REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: August 22, 1996

By: Chris Norby
Chairman

ATTEST:

By: Audrey K. Culver

Audrey K. Culver, Secretary to the
Fullerton Redevelopment Agency

APPROVED AS TO FORM:
RUTAN & TUCKER

By: Jeffrey M. Oderman
Jeffrey M. Oderman, Special Counsel to the
Fullerton Redevelopment Agency

"LESSEES"

GEORGE K. BUSHALA, JR., a single man, ANTHONY
N. BUSHALA, a single man, and ALBERT C. BUSHALA,
a single man, jointly and severally

Dated: July 29 1996

George K. Bushala
George K. Bushala

Dated: 7-29-96

Anthony N. Bushala

Dated: 7-29-96

Albert C. Bushala