

#12C

**City of Carson City
Agenda Report**

Date Submitted: November 11, 2008

Agenda Date Requested: November 20, 2008

Time Requested: Consent

To: Redevelopment Authority

From: Purchasing & Contracts

Subject Title: Action to approve Lease Agreement Number 0809-137 to lease the Carson Nugget's main street parking lot located at 525 North Curry Street, Carson City, Nevada to install and operate a recreational ice skating rink for .10 per day effective through February 23, 2009 from Redevelopment Funds.

Staff Summary: On November 6, 2008, the Redevelopment Authority approved the collaboration between the Carson Nugget, the Redevelopment Authority and the Downtown Consortium on the Development of a first-time Holiday Season Ice Skating Rink. This action will allow for Carson City Redevelopment Authority to enter into an agreement with the Carson City Nugget for this purpose.

Type of Action Requested: (check one)

☒ Resolution

☐ Ordinance

☐ Formal Action/Motion

☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to approve Lease Agreement Number 0809-137 to lease the Carson Nugget's main street parking lot located at 525 North Curry Street, Carson City, Nevada to install and operate a recreational ice skating rink for .10 per day effective through February 23, 2009 from Redevelopment Funds.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 244.275

Fiscal Impact: \$0.10 per day

Explanation of Impact: If approved the below listed account could be reduced by .10 per day

Funding Source: Redevelopment Funds

Supporting Material: Lease Agreement Number 0809-137

Prepared By: Sandy Scott, Purchasing & Contracts Coordinator

Reviewed By:

Sammy Westergaard
(Redevelopment)

Date: 11-10-08

(City Manager)

Date: 11-10-08

Melanie Bybee
(District Attorney)

Date: 11-11-08

Theresa Proudfoot
(Finance Director)

Date: 11-10-08

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

LEASE AGREEMENT NO. 0809-137

THIS LEASE is made and entered into this 20th day of November, 2008 by and between Carson City Nugget, hereinafter referred to as Lessor and the Carson City Redevelopment Authority, hereinafter referred to as Lessee.

WHEREAS, Lessor owns certain real property located at 525 North Curry Street, Carson City, Nevada, and commonly known as County Assessor's Parcel No. 993-000-94 which real property is more specifically described as follows:

Parking Lot located between US 395, West Spear Street, North Curry Street, and West Robinson Street,

And which real property is the site known as the Carson City Nugget's Main Street Parking Lot:

WHEREAS, the subject of this lease is a portion of the property described above, and which portion is described as follows and is hereinafter referred to as the Premises:

Approximately 190' x 170' Parking Lot

WHEREAS, NRS 279.470 gives Carson City Redevelopment Authority the power to lease real property for the use of Carson City to install and operate a recreational ice skating rink;

and

WHEREAS, the Carson City Redevelopment Authority specifically finds that the lease of the Premises is necessary for the use of the Carson City Redevelopment Authority by approving this lease at a duly noticed public meeting;

IN CONSIDERATION of the mutual promises of both parties and other good and valuable consideration as hereafter set forth, the parties hereto covenant and agree as follows:

1. LEASE AND TERM:

Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, the Premises. This lease becomes effective on the 20th day of November, 2008, provided it has been approved by the Carson City Redevelopment Authority and signed by all necessary parties as indicated by the signature lines below. The term of this lease is from the effective date as just described until 11:59 p.m. on the 23rd day of February, 2009, unless sooner terminated by mutual agreement of the parties or for violation of any term or condition of this Lease as specified below or the Joint Funding Agreement entered into between the Carson City Redevelopment Authority, and the Carson City Nugget.

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2. RENT:

As rent for the Premises Lessee agrees to pay Lessor ten cents (.10) per day payable on or before February 23, 2009.

3. THE USE OF PREMISES:

The Premises are leased to Lessee for use to install and operate a recreational ice skating rink. Any change of said use shall not be made unless such change of use is lawful and Lessee first obtains the written consent of Lessor. Lessee will not use the premises for any illegal trade, manufacturing or other business, or any other illegal purpose or for any purpose not expressly allowed by this lease.

4. ALTERATIONS, LIENS, ENCUBRANCES AND REPAIRS:

Lessee will not make any permanent alterations, additions, improvements or repairs on the Premises without first obtaining the consent of the Lessor in writing. All alterations, additions, and improvements which are made, will be at the sole cost and expense of Lessee, and will become the property of Lessor, at completion of improvements, trade fixtures excluded. On expiration, or if the lease is terminated prior to expiration, Lessee shall peacefully and quietly surrender to Lessor the premises and all Lessee's improvements and alterations in good order and condition (except for ordinary wear and tear). If the Lessee performs the work with the consent of Lessor, Lessee agrees to comply with all laws, ordinances, rules and regulations of the local agencies having jurisdiction hereof. The Lessee further agrees to hold the Lessor free and harmless from all damage, loss and expense arising out of said work. Lessee agrees to keep and maintain the leased premises free from any liens or encumbrances caused by any act or the Lessee.

5. ENTRY AND INSPECTION:

Lessee agrees to permit Lessor or its authorized agents to enter the Premises with reasonable prior notice to Lessee to perform Lessor's duties under the Lease or for any reasonable purpose, including, without limitation, the following purposes: to inspect the Premises, to show the Premises to prospective purchases, to maintain or repair the Premises.

6. ASSIGNMENT AND SUBLEASING:

Lessee may only transfer, assign this lease or sublet the leased premises in whole or in part, after first obtaining the written consent of Lessor. If Lessor consents, no assignments or sublease will be effective until Lessee

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delivers a copy of the assignment and the assignee or sublessee executed a new lease assuming all of the obligations of the Lessee. No assignment or subletting will relieve Lessee from any obligations under this lease. The consent by Lessor to any transfer, assignment or sublease will not be deemed to be a waiver on the part of Lessor of any prohibition against any future transfer, assignment, or subletting.

7. IDEMNIFICATION:

Unless due to the negligence of Lessor or Lessor's failure to abide by the terms of this lease, to the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, Lessee hereby indemnifies and agrees to hold Lessor harmless from and against all claims, which either arise from or in connection with the possession, use, occupation, management, repair, maintenance or control of the premises or any portion thereof or which claims result from any default, breach, violation or non-performance of this lease or any provision of this Lease by Lessee. Lessee will defend any claims against Lessor with respect to the foregoing or in which it may be impleaded. Lessee will pay, satisfy and discharge any judgments, orders and decrees which are recovered against Lessor in connection with the foregoing. Lessor hereby indemnifies and agrees to hold Lessee harmless and will defend any claims against Lessee in any action where Lessor was negligent or failed to abide by the terms of this lease. Lessor will not be liable to Lessee for any loss or damage caused by the acts or omissions of any persons occupying any space adjacent to or adjoining the Premises unless the Lessor or its agents caused the loss or damage. Except for loss or damage caused by Lessor's negligence, Lessor shall not be responsible or liable to Lessee for any loss or damage resulting to Lessee or Lessee's property from water, gas, or steam or the bursting, stoppage or leakage of pipes.

8. LIABILITY INSURANCE:

Prior to Lessee's occupation of the Premises, Lessee shall provide a certificate of liability insurance in the face amount of ONE MILLION DOLLARS (\$1,000,000.00) and will add Lessor's name as additional insured. The policy shall provide coverage for the following: bodily injury including physical injury to any person, including death, sickness, disease or disability associated with or arising from such bodily injury and property damage. A certificate of said insurance shall be presented to Lessor prior to occupancy.

9. DEFAULT:

- A. DEFINITION OF DEFAULT: Each of the following events shall constitute a default:

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1. Insolvency (this includes as assignment for the benefit of creditors; filing or acquiescing to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings.)
2. Assignment by operation of law.
3. Vacating the premises after occupation.
4. Refusing to take possession of the premises or permitting the premises to remain unoccupied and unattended after renovation has been completed.
5. Failure to pay any installment of rent or any other charge required to be paid by Lessee under this lease when due and payable and failure shall continued for (10) days after written notice.
6. Failure to perform any other conditions required to be performed by Lessee under this Lease and the failure shall continue for fifteen (15) days after written notice.

B. EFFECT OF DEFAULT:

If a default occurs, Lessor shall give Lessee a written notice of intention to cancel this Lease at the expiration of a thirty (30) day notice period. The written notice shall specify the breach. At the expiration of the notice period, the term of this Lease shall end if said default has not been cured by Lessee. Lessee must then quit and surrender the premises to Lessor. Lessee's liability under all of the provisions of this Lease will continue notwithstanding any expiration and surrender, or reentry, repossession or disposition pursuant to the following paragraph with a set off to Lessee for any new rents collection by Lessor from any new tenant during the term of this Lease.

If the term of this Lease expires, Lessor or its agents or employees may immediately or anytime thereafter reenter the premises and remove Lessee, Lessee's agents, any subtenants, any licensees, any concessionaires and any invitees, and any of its or their property from the premises. Reentry and removal may be effectuated by summary dispossession proceedings or by a suitable action or proceeding at law, by force, or otherwise. If the term of this Lease expires, Lessor may repossess and enjoy the premises. Lessor will be entitled to the benefits of all provisions of law respecting the speedy recovery of lands and tenements held over by Lessee or proceedings in forcible entry and detainer. Lessee's liability, subject to any set off, will survive Lessor's reentry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

C. DEFICIENCY:

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If this Lease is canceled pursuant to (B) above, Lessee will remain liable (in addition to accrued liabilities) to the extent legally permissible for the rent and all other charges Lessee would be required to pay until the date this lease would have expired had such cancellation not occurred, Lessee's liability for rent shall continue notwithstanding reentry or repossession of the premises by Lessor subject to a set off pursuant to (B) above.

D. ATTORNEY'S FEES AND COSTS:

Lessee will pay Lessor and/or Lessor will pay Lessee reasonable attorney's fees and court costs incurred in any lawsuit or action instituted by Lessor or Lessee to enforce the provisions of this Lease upon determination of the prevailing party.

E. WAIVER OF REDEMPTION:

Except for set offs discussed above Lessee hereby waives (to the extent legally permissible), for itself and all persons claims by, through, or under it, any right of redemption or for the restoration of the operations of this lease in case Lessee is dispossessed for any cause, or in case Lessor obtains possession of the premises as herein provided.

F. LESSOR MAY CURE LESSEE'S DEFAULT:

If Lessee is in default under this Lease, Lessor may cure the default at anytime for Lessee. If Lessor cures a default for Lessee, Lessee will reimburse Lessor for any amount expended by Lessor in connection with the cure. Lessor will also be entitled to interest at the maximum legal rate on any amount advanced by Lessor to cure a default of Lessee from the date the expense is incurred to the date of reimbursement. The rights and remedies of Lessor set forth herein are in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No delay or omission by Lessor in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default. No waiver of a default shall extend to or affect any other default or impair any right or remedy with respect thereto. No waiver of a default will be effective, unless it is in writing.

10. DESTRUCTION OF PREMISES:

Lessor shall maintain a policy of insurance to cover events of partial destruction of the Premises without fault, negligence or carelessness on the part of Lessee, its agents, employees or those holding under it, Lessor will use reasonable efforts to repair such damage.

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11. HOLDING OVER:

Should Lessee holdover the term hereby created with the consent of Lessor, Lessee will become a tenant from month to month on the terms herein specified, but at a monthly rental of 120% of the current monthly rate, payable monthly in advance on the first day of each month, and Lessee will continue to be a month-to-month tenant until the tenancy is terminated by Lessor or until Lessee has given Lessor a written notice at least one month prior to the termination of the monthly tenancy of his intention to terminate the tenancy.

12. SALE OF PREMISES:

In the event of a sale or conveyance by Lessor of the building containing the premises, said sale shall be subject to the terms and conditions of this Lease. In such event, Lessee agrees to look solely to the responsibility of the successor in interest of Lessor. Lessor may transfer any security deposits held from Lessee to the purchaser of the reversion and thereupon Lessor will be discharged from any further liability in reference thereto.

13. CONDEMNATION:

If all of the demised premises is taken by eminent domain, condemnation, or purchase under threat thereof, except for a taking for temporary use, this Lease will be canceled automatically as of the taking date. If a part of the premises is taken, Lessor may cancel this Lease. The option to cancel may be exercised within six (6) months of the taking date by giving Lessee notice that the option has been exercised. If there is a taking of the premises for temporary use, this Lease will continue in full force and effect, and Lessee will continue to comply with Lessee's obligation under this Lease, except to the extent compliance is rendered impossible or impracticable by reason of the taking.

Lessor and Lessee agree that in the event of a condemnation or taking within the period of the lease, Lessor will compensate Lessee for costs of improvements carried on Lessee's balance sheet minus depreciation. All other compensation awarded will belong to Lessor.

14. SUBORDINATION:

Lessee agrees that this Lease is and will subordinate to any mortgage, deed of trust or other instrument of security, existing on the land and building of which the Premises is part. Such subordination is hereby made effective without any further act by Lessee. Lessee agrees at any time, upon request by Lessor, to

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execute and deliver any instrument, release or other document that may be required in connection with subjecting and subordinating this Lease to the lien of any mortgage, deed of trust or other instrument of security.

This provision will be without effect unless and until the holder of the mortgage, deed of trust or other instrument of security in question delivers to Lessee a written agreement providing, in effect, that so long as Lessee is not in default in the observance of performance of any obligation to be observe or performed by it hereunder, Lessee will not be disrupted in its possession of the premises hereunder.

15. SURRENDER OF LEASE:

No act or conduct of Lessor, whether consisting of the acceptance of the Premises, or otherwise, shall be deemed to or constitute an acceptance of the surrender of the Premises by Lessee prior to the expiration the term hereof. Acceptance by Lessor of surrender by Lessee must be evidenced by a written acknowledgment of acceptance of surrender by Lessor. The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, will not work a merger, and Lessor may terminate all of the any existing subleases or subtenancies, or concessions, or may at the option of Lessor, operate as an assignment to the Lessor or any or all such subleases or subtenancies or concessions.

16. NOTICES:

Notices to the respective parties must be in writing and sent by certified or registered mail, addressed to the respective party at the address set out below, or at such other address as either party may elect to provide in advance in writing, to the other party.

Lessor: Carson City Nugget
Attn: Alan Adams
P.O. Box 2027
Carson City, Nevada 89701

Lessee: Robin Williamson, Chairperson
Carson City Redevelopment Authority
201 North Carson Street
Carson City, Nevada 89701
Telephone: 887-2100

17. NO ORAL CHANGES:

This Lease may not be changed or terminated orally.

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18. SUCCESSOR AND ASSIGNS:

Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

19. UTILITIES:

The following utilities will be supplied to the premises by Lessee: electrical power for parking lot lights and garbage removal service for the parking lot. No utilities will be provided by Lessor.

20. QUIET ENJOYMENT:

The Lessor agrees that the Lessee, paying rental provided herein, and observing all of the terms, conditions and provisions hereof, will quietly enjoy the Premises for the full term of this lease. No use will be made or permitted to be made of the premises or any part thereof and no acts will be done therein which may disturb the quiet enjoyment of any other tenant in the building of which the premises are a part.

21. CONTINUING APPROPRIATION:

Pursuant to NRS 244.320 the Carson City Redevelopment Authority has no authority to bind the City to a contract beyond the terms of the Supervisors in office at the time of the contract approval. If a future Redevelopment Authority does not appropriate money for this agreement, the city is no longer bound by this agreement.

This Lease when executed by the parties hereto shall represent the entire Agreement between the parties, and no amendment to the contract herein shall be effective unless made in writing and attached hereto.

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IN WITNESS WHEREOF, the parties hereto have subscribed their names, and if corporations, executed this lease by officers thereunder duly authorized by resolution of said corporations, in duplicate, the day and year executed by the Mayor of Carson City as shown below.

LESSOR

CARSON CITY NUGGET

Alan Adams, Owner
507 N. Carson Street
Carson City, NV 89701
Telephone (775) 883-1626
Fax (775) 883-1106
Aadams@ccnugget.com

(Signature)

DATED _____

LESSEE

**CARSON CITY
REDEVELOPMENT AUTHORITY**

Robin Williamson, Chairperson
201 N. Carson Street
Carson City , NV 89701
Telephone (775) 887-2100
Fax (775) 887-2286
RWilliamson@ci.carson-city.nv.us

(Signature)

DATED _____

CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney

I have reviewed this Contract and
approve as to its legal form.

By:

Deputy District Attorney

DATED _____

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CONTRACT ACCEPTANCE AND EXECUTION:

The Redevelopment Authority for Carson City, Nevada at their publicly noticed meeting of November 20, 2008 approved **LEASE No. 0809-137**. Further, the Redevelopment Authority authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this contract in accordance with the action taken.

CARSON CITY, NEVADA

MARV TEIXEIRA, MAYOR

DATED this 20TH day of November, 2008.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 20th day of November, 2008.