

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO**

848 M Street, 3rd floor / Fresno, CA 93721
(559) 621-7600
(559) 498-1870 (Fax)

**Oversight Board to the
Successor Agency to the Redevelopment Agency
of the City of Fresno**

**Executive Director
Marlene Murphey**

**Chair
Alan Hofmann**

**Members
Jeff Becker
Larry Hodges
Brian Pacheco
Doug Vagim
Rene Watahira
Larry Westerlund**

AGENCY BRIEFING REPORT

Date: January 17, 2018
To: Oversight Board
From: Enrique Mendez, Project Manager
Through: Marlene Murphey, Executive Director
RE: Agenda Item IV. - Line 9 - Old Armenian Town Development, ROPS 18-19

This obligation pertains to a Master Disposition and Development Agreement between the Redevelopment Agency of the City of Fresno ("Agency") and ESSAYONS, LP ("Developer") for a master development of approximately 9.72 acres located in the Convention Center Project Area generally bounded by O Street, Ventura Street, M Street and Freeway 41 (the "Master Development Site"). ROPS 18-19 provides for ongoing project costs including fence rentals and storage rentals.

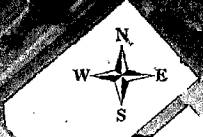
Interested Parties:

State of California acting by and through its Department of General Services
Judicial Council of California, Administrative Office of the Courts
on behalf of the Court of Appeal, Fifth Appellate District
Administrative Presiding Justice Brad R. Hill

ESSAYONS, a Limited Partnership
PENTORI, a California Corporation
The Penstar Group, Inc.



Agency Acquired To Be Acquired



SECOND AMENDMENT TO MASTER DISPOSITION AND DEVELOPMENT AGREEMENT

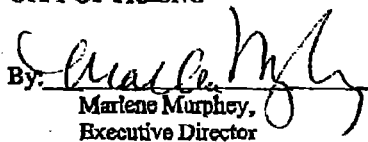
This SECOND AMENDMENT TO MASTER DISPOSITION AND DEVELOPMENT AGREEMENT (the "Second Amendment") is entered into between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (the "Agency"), and OLD ARMENIAN TOWN, LLC, a California limited liability company (the "Developer"), as of the Effective Date (defined in the First Amendment). This Second Amendment is entered into in respect to that certain MASTER DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") between Agency and Developer, with an effective date of July 29, 2005, as amended by the terms of the First Amendment to Master Disposition and Development Agreement, with an effective date of December 6, 2006 (the "First Amendment"). All terms whose initial letters are capitalized and not otherwise defined herein shall have the meanings ascribed to them in the Agreement or in the First Amendment, as applicable.

AGREEMENT

1. Parking Letter Agreement. Reference is made to that certain Agreement dated August 10, 2007 from the Agency to Dennis Frye, as agent of Developer, attached as Exhibit "A" (the "Parking Letter Agreement"). The parties hereby incorporate the terms of the Parking Letter Agreement in its entirety into the terms of this Second Amendment, as though fully set forth herein.
2. Extension of Conveyance Deadline. Section 5.3 of the First Amendment is hereby amended by striking the reference to "December 31, 2007", and inserting in its place a reference to "May 1, 2008".
3. Asbestos Abatement. Agency will remove all hazardous materials, including asbestos, from the interior of the Fire Department Headquarters within 60 days of vacation of the premises by the Fire Department.
4. Continuing Effect. All terms and provisions of the Agreement and the First Amendment not expressly amended hereby shall remain in full force and effect.
5. Counterparts. The Parties may sign this Second Amendment in counterparts. Each counterpart, when executed and delivered, will be one instrument with the other counterparts. The Parties will sign at least four duplicate originals of this Second Amendment.

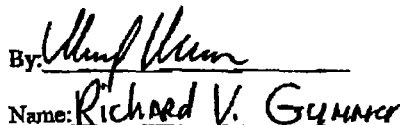
6. Effective Date. The effective date of this Second Amendment shall be December 13, 2007.

**REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO**

By: 
Marlene Murphy,
Executive Director

Dated: 3/13/08

OLD ARMENIAN TOWN, LLC,
a California limited liability company

By: 
Name: Richard V. Gummer

Title: Member

Dated: March 3, 2008

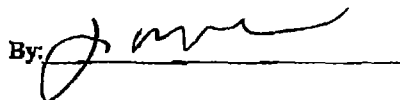
ATTEST:
REBECCA KLISCH
Ex Officio Clerk
Redevelopment Agency of the
City of Fresno

By: 
Deputy

Dated: Mar 25, 2008

APPROVED AS TO FORM:

Attorneys
Old Armenian Town, LLC.

By: 

Dated: March 3, 2008

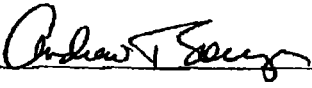
APPROVED AS TO FORM:
JAMES SANCHEZ
Attorney
Redevelopment Agency of the
City of Fresno

By: 
Deputy/Assistant/Special Counsel

Dated: 3-3-08

The City of Fresno hereby concurs in the Second Amendment's provisions that modify the obligations for contingent payment of the Unreimbursed Storm Drain Expenses.

City of Fresno,
a California municipal corporation

By: 
ANDREW T. SOUZA
Printed Name
CITY MANAGER
Title

Dated: 3/20/08

ATTEST:
REBECCA KLISCH
Clerk of the City of Fresno

By: 
Deputy

Dated: Mar 25, 2008

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney
City of Fresno

By: 
Deputy/Assistant/Special Counsel

Dated: 3-3-08

Exhibit A

Parking Letter Agreement

Development Agency
of the City of Fresno



2344 Tulare Street, Suite 200 • Fresno, California 93721 • (559) 621-7600 • (559) 498-1870 (Fax)

August 10, 2007

Dennis Fryc
Gunter and Andros
555 W. Shaw, #B4
Fresno, CA 93704

Dear Mr. Fryc,

I understand that Old Armenian Town, LLC (the "Developer"), wants to commence marketing and potentially constructing Office Building No. 1. However, as you know, the Court order in the Heritage Fresno lawsuit currently designates the Fire Station Parcel as the Final Receiver Site for the historical homes, and those homes are temporarily stored on a site adjacent to the Fire Station Parcel.

The Agency is considering whether, in compliance with the terms of the Court order, further evaluations of a Final Receiver Site should be conducted, and if conducted, how to assure that they meet the requirements of the Court's order. Unless those matters are addressed, the Agency does not intend to take any action that would impede the Fire Station Parcel's use as the Final Receiver Site.

The temporary storage of the homes and the Court's decision about the Final Receiver Site means that, for the time being, those portions of the Fire Station Parcel designated as the Final Receiver Site and the site being used for temporary storage cannot be used for the surface parking for Office Building No. 1. If the homes are finally located on Fire Station Parcel as the Final Receiver Site, the parties may need to further amend the Master Disposition and Development Agreement to modify the final long-term parking arrangements for the Old Armenian Town Project.

However, in order to begin marketing Office Building No. 1, you have proposed a concept for interim parking. This plan is solely an interim proposal. It does not reflect a long term parking arrangement that would satisfy the needs of the overall Old Armenian Town Project development. This is evident, in part, by the fact that your plan proposes surface parking on certain sites that are otherwise designated for the Armenian Cultural Center and Office Building No. 2.

You have asked us to evaluate your interim parking plan and to confirm that it is acceptable to the Agency as a temporary measure. Your plan requires that certain properties be made available on a schedule different than as originally envisioned by the Master Disposition and Development Agreement.

The Agency hopes and intends that the properties will be conveyed and the Project, including the permanent long-term parking, will proceed according to the Master Disposition and Development Agreement, as amended by the First Amendment.

However, to assist the Developer in marketing Office Building No. 1 to potential tenants, the Agency will agree to the following arrangement for temporary surface parking:

Before December 31, 2007, if another Final Receiver Site for the homes has not by that time been selected in compliance with the Court's order, the Agency will convey to the Developer Parcel H of the Master Plan except that portion that comprises the Fire Station Parcel and except that portion that comprises the existing temporary storage site for the historic resource homes. The land conveyed will include portions of Santa Clara and "N" Streets which will be vacated. The portion of Parcel H to be conveyed is referred to as "Reduced Parcel H." The portion of Parcel H not to be conveyed at that time is referred to as the "Parcel H Remainder." The Developer then will have Reduced Parcel H available for surface parking. Further, any rights of Developer under Section 5 of the First Amendment to Master Disposition and Development shall continue, except that all references to Parcel H shall instead apply to the Parcel H Remainder.

Conveyance of Reduced Parcel H will be subject to written confirmation by the Developer that, as to Reduced Parcel H only, it is waiving its rights concerning conveyance of Parcel D under Section 5.2 of the First Amendment to Master Disposition and Development.

The Agency is willing to lease the Fire Station Parcel (which is part of the Parcel H Remainder) to Developer for temporary surface parking uses, with the lease commencing December 31, 2007 (or later, at the Developer's option). However, the lease must terminate on reasonable notice if necessary to use the Fire Station Parcel as the Final Receiver Site for the five historic homes. If the lease is terminated and the five historic homes moved to the Fire Station Parcel, the Agency would convey to the Developer the land that comprises the current temporary storage site.

In addition, the Agency is willing, no later than April 1, 2008, to lease the Developer a portion of Parcel B of the Master Plan for temporary surface parking. The portion of Parcel B to be leased is the area that comprises the current Thrift Store. However, that lease must terminate on reasonable notice also if necessary to use Parcel B as the site for the development of the Armenian Cultural Center as required by the Master Disposition and Development Agreement. Also, if the Developer requests, the Agency will use its best efforts in securing, by purchase or lease agreement, your use of the existing Armenian Center parking lot during normal business hours.

When the lease for the Thrift Store is terminated and the Armenian Cultural Center is relocated to Parcel B, the Agency would then convey or lease Parcel E (the current Armenian Cultural Center site) to the Developer, which you could then use for surface parking purposes in connection with Office Building No. 1. So long as its use is limited

to temporary surface parking for Office Building No. 1, the conveyance of Parcel E would not trigger any Phase II development obligations.

The Agency also will explore with you the possibility of additional parking opportunities on the East side of O Street between Ventura and Fwy 41 for transitional parking until multi level parking structures are completed as provided in the Master Disposition and Development Agreement, subject to such limitations as the Fire Station's use as the Final Receiver Site may impose.

We believe the foregoing accurately reflects your interim parking proposal. It should assure prospective tenants of Office Building No. 1 that there will be adequate on-site parking regardless of what happens with the Fire Station Parcel. I believe these proposals are consistent with the existing DDA and are approved based on the authorities delegated to the Executive Director under that DDA and existing Agency policies.

Sincerely,



Marlene Murphey
Executive Director

Cc: Doug Sloan, City Attorney

2:45 pm "B"
12/1/06

FIRST AMENDMENT TO MASTER DISPOSITION AND DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO MASTER DISPOSITION AND DEVELOPMENT AGREEMENT (the "First Amendment") is entered into between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (the "Agency"), and OLD ARMENIAN TOWN, LLC, a California limited liability company (the "Developer"), as of the Effective Date (defined in this First Amendment). This First Amendment is entered into in respect to that certain MASTER DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") between Agency and Developer, with an effective date of July 29, 2005. All terms whose initial letters are capitalized and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

AGREEMENT

1. Developer Construction of Expedited Facilities. Developer shall promptly initiate and diligently pursue completion of construction of the facilities detailed on attached Exhibit "A" (the "Expedited Facilities") on the portion of the Common Area Parcel to be conveyed as part of Phase 1A, and shall complete the Expedited Facilities no later than the date the Courthouse Facilities are completed. Developer has obtained and provided to Agency and State an architect's estimate from Robert Boro, landscape architect, which reflects that the Expedited Facilities shall cost approximately Three Hundred Fifty Thousand Dollars (\$350,000.00).
2. License to Access. Agency hereby grants to Developer a license to enter upon and access Agency land on the Master Development Site to do all things necessary to install the Expedited Facilities. This license shall continue until Agency transfers title to the Common Area Parcel or the Agreement is terminated.
3. Further Common Area Improvements. Notwithstanding any other term or provision of the Agreement or the present draft of the Master Plan CC&R's, Developer and Agency confirm the following schedule for construction of further Common Area improvements:
 - 3.1. Further Common Area improvements that are in addition to the Expedited Facilities and which are to be located upon a further portion of the Office Building No. 1 Parcel (Parcel D of the Master Plan) shall be constructed in conjunction with the construction of Office Building No. 1. Developer's obligation to construct such improvements is subject to the condition precedent that all conditions under the Agreement to Close of Escrow for Phase 1A and Phase 1B of the Project as defined in the Master Plan CC&R's are satisfied or waived.
 - 3.2. Further Common Area improvements to be located upon a portion of the Cultural Center Parcel (Parcel B) and the Office Building No. 2 Parcel (Parcel E) shall be constructed in conjunction with the construction of Office Building No. 3. Developer's obligation to construct such improvements is subject to the condition precedent that all conditions under the Agreement to Close of Escrow for conveyance of the entirety of the Phase II lands are satisfied or waived.
4. Agency Reimbursement for Courthouse Utility Expenses. Developer states that it has incurred the following expenses to install certain Courthouse Utilities, which are subject to verification of the amounts (the "Courthouse Utility Expenses"):

M

- 4.1. \$24,018.00 for PG&E fees;
- 4.2. \$34,000.00 for SBC telephone lines;
- 4.3. \$49,274.92 for storm drain improvements, which is the amount allocable to the Courthouse improvements on account of a total of \$219,964.12 of storm drain expenses incurred by Developer. (The expenses incurred for storm drain improvements not reimbursed hereunder, totaling \$170,689.20, is hereafter referred to as the "Unreimbursed Storm Drain Expenses")

After completion of the Courthouse Utilities and upon presentation by Developer to Agency of documentation that allows verification of the amounts expended by Developer, Agency shall reimburse Developer the above Courthouse Utility Expenses totaling no more than \$107,292.92 in full within 60 days of the Effective Date of this First Amendment.

5. Reimbursement of Specified Expenses, Schedule Postponement and Termination Rights.

5.1. Reference is made to certain pending litigation concerning compliance with the California Environmental Quality Act in the Superior Court for the County of Fresno (Case No. 05-CE CG 00012). A central feature of that case concerns the efforts by Agency to relocate certain Historic Homes from a temporary storage area on the Master Development Site to a new receiver site that is not located within the Master Development Site (the "Historic Homes Relocation"). "CEQA Case" shall be defined herein as Case No. 05-CE CG 00012, as well as any subsequently filed case, to the extent any such case may contain a legal claim that the Historic Homes be permanently located within the Master Development Site, and any such claim has not been dismissed by the court or adjudicated adversely to the claimant.

5.2. Agency shall not issue a notice of readiness to convey the Office Building No. 1 Parcel (Parcel D of the Master Plan) pursuant to Section 7.6 of the Agreement, except in conjunction with the concurrent issuance of a notice of readiness to convey the Surface Parking Parcel (Parcel H of the Master Plan). Further, Developer shall not be obligated to accept a tender of title and possession of the Office Building No. 1 Parcel (Parcel D) except conjunction with the concurrent tender of title and possession of the Surface Parking Parcel (Parcel H).

5.3. If Agency has not tendered to Developer on or before December 31, 2007, title and possession to the Office Building No. 1 Parcel (Parcel D) and the Surface Parking Parcel (Parcel H), free of the physical presence of the Historic Homes within the Master Development Site, then Agency shall reimburse Developer for amounts Developer has actually expended for the Expedited Facility improvements, in a total amount not to exceed \$350,000.00 (the "Expedited Facilities Reimbursement").

5.4. Payment of the Expedited Facilities Reimbursement shall be further conditioned upon the Developer confirming in writing that it will complete Developer's obligations under the Agreement and the Master Plan CC&Rs, as amended herein, but on a schedule postponed by one hundred twenty days plus the number of days after December 31, 2007, that the Historic Homes remain on the Master Development Site.

ch

5.5. If a CEQA Case is pending on or after December 31, 2007, then, at the election of Developer, with written notice to Agency, Developer's schedule set forth in the Agreement, as amended in this First Amendment, as to construction activities to be performed by Developer on or after that date, and all construction and maintenance obligations imposed on Developer under Sections 11, 12, 14 or 15 of the Agreement, as well as payment of the Expedited Facilities Reimbursement, may be delayed until 120 days after any such CEQA Case is no longer pending.

5.6. If a CEQA Case remains pending on December 31, 2009, then the Agreement may be terminated upon 30 days written notice by either party. During that 30 day time period, the parties shall meet and confer to determine whether the Agreement may be extended upon mutually acceptable terms.

5.7. If the Agreement terminates pursuant to Section 5.6, and if the Expedited Facilities Reimbursement has not been previously paid, then Agency shall, not less than 60 days following the termination of this Agreement, pay to Developer the Expedited Facilities Reimbursement, and additionally not less than 60 days following termination pursuant to Section 5.6, the City of Fresno shall pay to Developer the Unreimbursed Storm Drain Expenses (and Developer shall assign to City all rights to reimbursement of the Storm Drain Expenses), and the Developer's sole remedy as to any claim arising from the Agreement as to the Agency and the City of Fresno is acceptance of the Expedited Facilities Reimbursement and Unreimbursed Storm Drain Expenses.

5.8. Notwithstanding the foregoing, the provisions of this Section shall no longer apply as to any portion of the Master Development Site after the Developer provides a Certificate of Readiness to Proceed pursuant to Section 7.6 of the Agreement, with respect to any Development Parcel.

6. Continuing Effect. All terms and provisions of the Agreement not expressly amended hereby shall remain in full force and effect.

7. Effect on Interpretations. Certain provisions of this Agreement are intended to clarify terms of the Agreement which the parties may dispute. Therefore, this First Amendment shall not be used as a tool of interpreting any term or provision of the Agreement which is not otherwise expressly amended hereby. The parties also acknowledge that each has participated in drafting this First Amendment, through legal counsel, and no potentially ambiguous or vague term is to be construed against any particular party by reason of a claim that that party drafted the term.

8. Counterparts. The Parties may sign this First Amendment in counterparts. Each counterpart, when executed and delivered, will be one instrument with the other counterparts. The Parties will sign at least four duplicate originals of this First Amendment.


9. Effective Date. The effective date of this First Amendment shall be December 6, 2006.

**REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO**

By: 
Marlene Murphey,
Executive Director

Dated: 12/13/06

OLD ARMENIAN TOWN, LLC,
a California limited liability company

By: 
Name: Richard V. Gunner

Title: Member

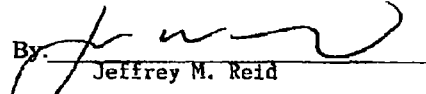
Dated: December 5, 2006

ATTEST:
REBECCA KLISCH
Ex Officio Clerk
Redevelopment Agency of the
City of Fresno

By: 
Deputy

Dated: December 13, 2006

APPROVED AS TO FORM:
Attorneys
Old Armenian Town, LLC.

By: 
Jeffrey M. Reid

Dated: December 5, 2006

APPROVED AS TO FORM:
JAMES SANCHEZ
Attorney
Redevelopment Agency of the
City of Fresno

By: 
Deputy/Assistant/Special Counsel

Dated: 12-8-06

For purposes of approval of the contingent payment of the Unreimbursed Storm Drain Expenses, the City of Fresno hereby states its agreement:

City of Fresno,
a California municipal corporation

By: Andrew T. Souza

Andrew T. Souza
Printed Name

City Manager
Title

Dated: 12/13/06

ATTEST:
REBECCA KLISCH
Clerk of the City of Fresno

APPROVED AS TO FORM:
JAMES SANCHEZ
City Attorney
City of Fresno

By: Sherrie L. Badertcher
Deputy

Dated: December 13, 2006

By: [Signature]
Deputy/Assistant/Special Counsel

Dated: 12-9-06

Exhibit A

Expedited Facilities:

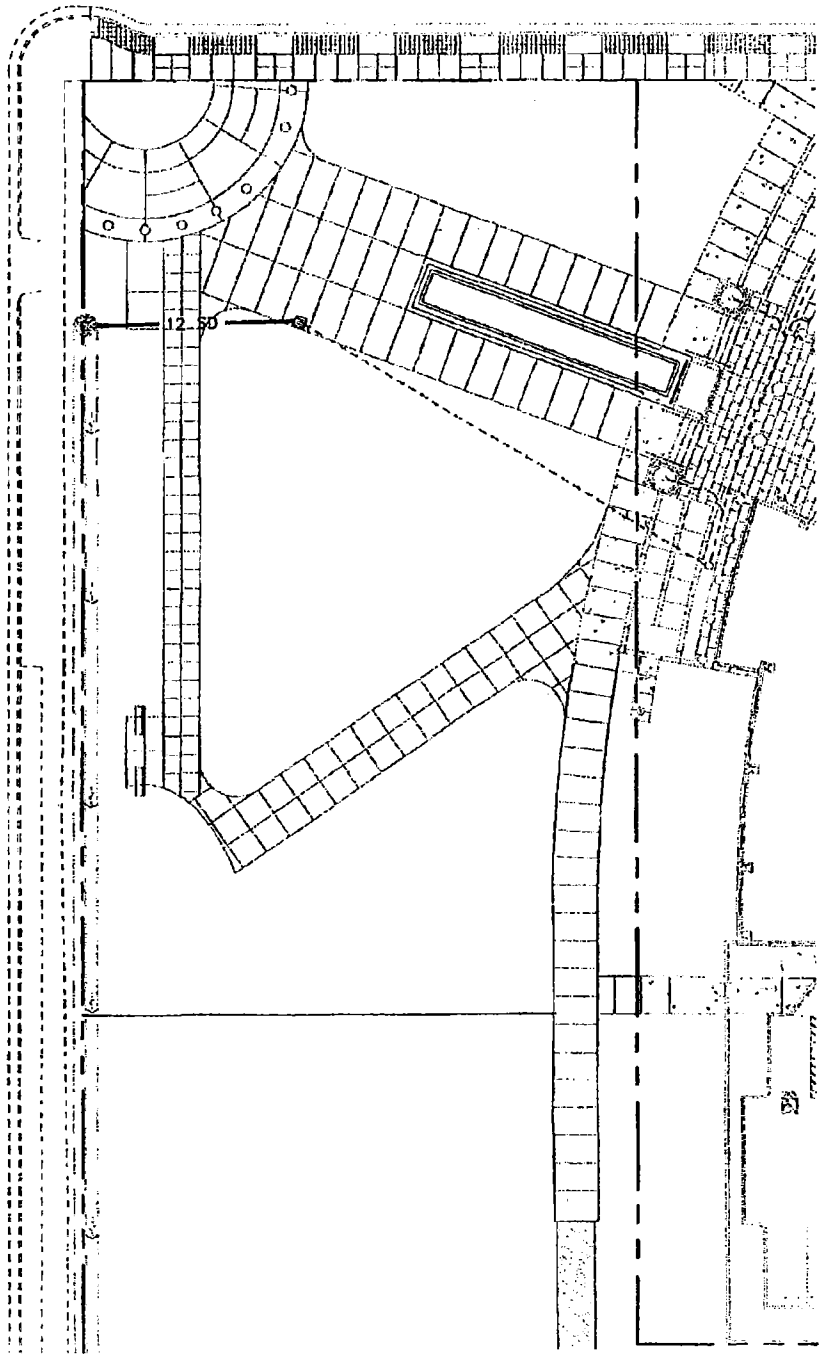
All expenses associated with the engineering and construction of those Common Area Improvements whose scope is detailed as follows:

[Mutually Approved Boro Landscaping Plans to be attached]

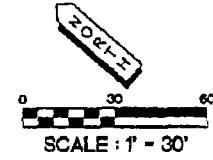
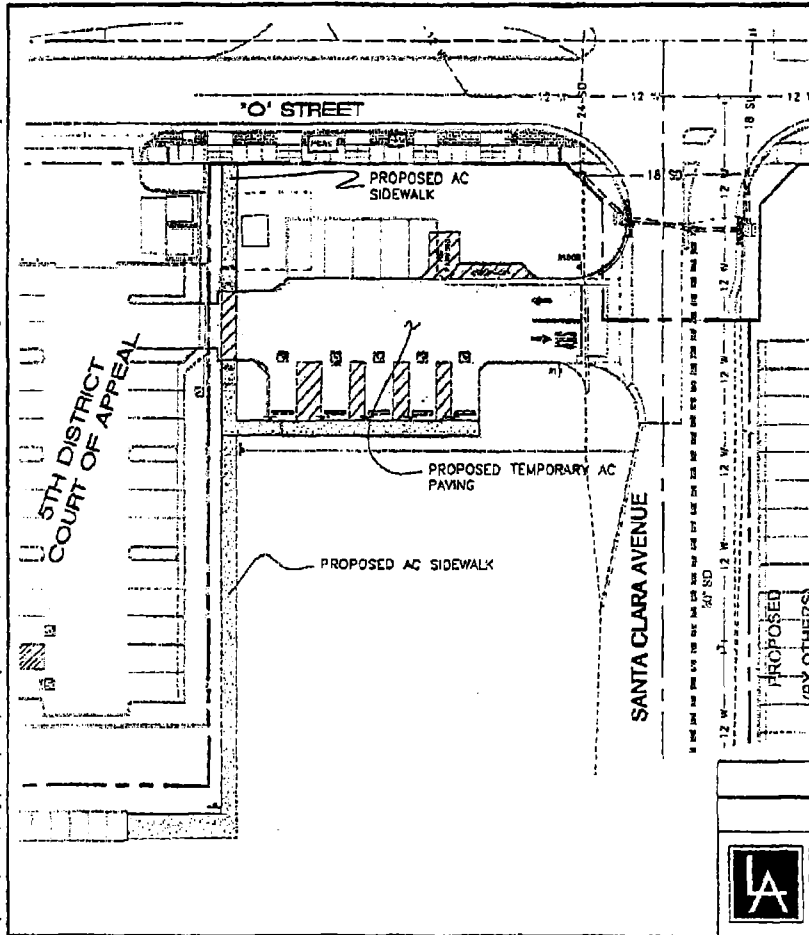
**[Plans for Temporary Installation of
Courthouse Dropoff and Handicapped Parking Improvements]**

VENTURA STREET



"N" STREET



P:\PROJECTS\04066\04066.dwg\PLAN\CIVIL\FINAL\Scheme: F:\Exhibits\A\ES4-TEMP-DWP-F-OPTION 3.dwg 11-07-08 Dr. 4:14 PM jterfo



LEGEND:

-  PROPOSED TEMPORARY AC PAVING/PARKING
-  PROPOSED TEMPORARY AC SIDEWALK

OPTION 3

EXHIBIT 'A': PROPOSED TEMPORARY AC PARKING

PROJECT: OLD ARMENIAN TOWN-FRESNO, CA



LARS ANDERSEN AND ASSOCIATES, INC
 CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS
 4830 WEST JACQUELYN AVE, SUITE 119, FRESNO, CA 93722
 559-276-2790 FAX 559-276-0850

JOB No: 04066.00 SHEET NO. 1
 DR. BY: AC
 CH. BY: JRT
 DATE: 11-07-08 OF 1 SHEET
 SCALE: 1"=30'

LA JOB NO. 04066.00

Recording Requested by:
City Clerk, Fresno, California
No Fee-Gov't. Code 6103

When Recorded, Return to City Clerk
City of Fresno
2600 Fresno Street, Room 2133
Fresno, CA 93721-3623

1127



FRESNO County Recorder
Robert C. Werner
DOC- 2005-0171775
Friday, JUL 29, 2005 14:21:18
Ttl Pd \$0.00 Nbr-0001902048
JZG/R2/1-112

Space above this line reserved for Fresno County Recorder's Office

COPY

MASTER DISPOSITION AND DEVELOPMENT AGREEMENT

THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

and

OLD ARMENIAN TOWN, LLC

MASTER DISPOSITION AND DEVELOPMENT AGREEMENT

The REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (the "Agency"), and OLD ARMENIAN TOWN, LLC, a California limited liability company (the "Developer"), enter this MASTER DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") as of the Effective Date (defined in this Agreement).

RECITALS:

The Parties enter this Agreement based on the following facts, understandings, and intentions:

- A. By authority granted under California Redevelopment Law (the "Law"), the Agency is responsible for carrying out the Redevelopment Plan for the Convention Center Redevelopment Project Area, as amended (the "Plan").
- B. The Council of the City of Fresno (the "Council") adopted the Plan on January 12, 1982, by Ordinance No. 82-6. The Council amended the Plan on December 6, 1994, by Ordinance No. 94-118, and on June 30, 1998, by Ordinance No. 98-46. The Plan, including the amendments, are recorded in the Official Records of Fresno County.
- C. The Plan affects and controls real property development and use within that area in the City of Fresno, California, described in the Plan (the "Project Area").
- D. The Agency has selected the Developer to be the master developer of approximately 9.97 acres located in the Project Area generally bounded by O Street, Ventura Street, M Street and Freeway 41 (the "Master Development Site"). The Master Development Site is more particularly described on attached Exhibit B.
- E. The Developer proposes to develop the Master Development Site, other than the Courthouse Parcel and the State Parking Parcel (but including the Parking Structure Easement on, over and under the State Parking Parcel), in two phases, Phase I and Phase II as shown on the Master Plan attached as Exhibit A (the "Master Plan"), as an integrated high-quality mixed-use commercial development containing office, retail, parking, restaurant, service and community uses and related facilities. The proposed name of the Master Development Site, after development, is "Old Armenian Town." As proposed by the Developer, and pursuant to the Plan and the Master Plan, the Agency has entered into the separate State Agreement with the State of California, acting through its Department of General Services, whereby the Agency has assembled and conveyed the Courthouse Parcel and the State Parking Parcel to the State for development, as part of Phase I, of a multi-level court, parking lot and related facilities for use by the California Fifth District Court of Appeal, all pursuant to and as an integrated part of the Master Plan.

- F. The Agency owns some real property within Phase I of the Master Development Site (but not the Courthouse Parcel and the State Parking Parcel, which has been conveyed to the State) and some real property in Phase II of the Master Development Site. Other real property in the Master Development Site is owned by private persons and entities. The Developer proposes that, upon the Commencement Date for Phase I, the Agency use best efforts to acquire the real property in Phase I owned by private persons or entities (excluding the Courthouse Parcel and the State Parking Parcel), assemble the acquired real property with real property in Phase I owned by the Agency into separate legal parcels, and convey the individual parcels to the Developer for development of Phase I pursuant to the Master Plan, the Schedule of Performance and this Agreement. The Developer further proposes that, upon the Commencement Date for Phase II, the Agency use best efforts to acquire the real property in Phase II owned by private persons or entities (excluding the Lahvosh Bakery Parcel), assemble the acquired real property with real property in Phase II owned by the Agency into separate parcels, and convey the individual parcels to the Developer for development of Phase II pursuant to the Master Plan, the Schedule of Performance and this Agreement. The Developer further proposes that the Agency (i) enter into an owner participation agreement with the owner of the Lahvosh Bakery Parcel for development as provided in this Agreement, and (ii) provide other development assistance as provided in this Agreement.
- G. The Housing and Community Development Commission reviewed the Project and this Agreement on October 20, 2004, and recommended that the Council approve it.
- H. The Project and this Agreement have been environmentally assessed in compliance with the California Environmental Quality Act ("CEQA") by Environmental Impact Report SCH No. 2003051046 (the "EIR").
- I. On March 19, 2002, the Agency approved the replacement housing plan for the Project and the Master Development Site.
- J. In a joint hearing held on November 30, 2004, (i) the Agency Board, by Agency Resolution No. 1655, certified the EIR, (ii) the Council and the Agency Board, by Council Resolution No. 2004-449/Agency Resolution No. 2004-1656, approved this Agreement between the Agency and the Developer, substantially in the form presented to Council and the Agency, and (iii) the Council and the Agency Board made certain findings required by the Law.
- K. The Agency has determined that this Agreement is in the best interests of, and will materially contribute to, Plan implementation in the downtown area of the City. Further, the Agency has found that the Project (i) will have a positive influence on the Master Development Site, the Project Area and surrounding environs, (ii) is in the vital and best interests of the Agency, the City and the health, safety, and welfare of City residents, (iii)

complies with applicable federal, state and local laws and requirements, (iv) will help eliminate blight, (v) will put underutilized land to economically viable use, (vi) will alleviate depreciated and stagnant property values and impaired investments, (vii) will attract a variety of office, commercial and service facilities and services to the Project Area and the community, and (viii) will expand employment opportunities for City residents.

AGREEMENT

1 PARTIES, FACTS AND DEFINITIONS. The following terms, where used in the above Recitals and other provisions of this Agreement, have the meanings in this Section unless expressly provided to the contrary:

1.1 "Acquisition Parcels" means the parcels of land within the Master Development Site (other than the Courthouse Parcel and the State Parking Parcel, which have been conveyed to the State, and the Lahvosh Bakery Parcel) that are owned by private persons or entities on the Effective Date.

1.2 "Agency" means the Redevelopment Agency of the City of Fresno, a public body, corporate and politic, exercising governmental powers, organized and existing under the Law. The term also includes any assignee of, or successor to, the rights, powers, and responsibilities of the Agency.

1.3 "Agency Board" means the Council sitting as the governing board of the Agency, or any successor governing board of the Agency.

1.4 "Agency Parcel" means those parcels of real property owned by the Agency within Phase I and Phase II of the Master Development Site as of the Effective Date.

1.5 "Armenian Cultural Center" means the Developer Improvements to be constructed on the Cultural Center Parcel, consisting of a mix of retail, conference and cultural facilities, containing approximately 30,000 to 40,000 square feet, as further described in the Scope of Development.

1.6 "Available Funds" means money available for particular expenditures according to all applicable laws, and the policies and procedures of the Agency, as determined in the sole discretion of the Agency Board.

1.7 "City" means the City of Fresno, a municipal corporation, having its offices at 2600 Fresno Street, Fresno, California 93721-3605, and operating through its Council and its various departments. The City is an entity distinct and separate from the Agency, is not a party to this Agreement and will have no rights or obligations hereunder.

1.8 “Closing” means the closing of each escrow opened to bring about the purchase and transfer of each Development Parcel from the Agency to the Developer, as provided in the Schedule of Performance and evidenced by a recorded Grant Deed.

1.9 “Commencement Date” means (i) for Phase I, 45 days after the Effective Date of this Agreement (defined below), and (ii) for Phase II, 45 days after the Developer gives notice to the Agency that the Developer is ready to proceed with Phase II and the Agency has approved the Developer’s Financing Plan for Phase II.

1.10 “Common Area” means that area of the Master Development Site that will be subject to mutual and reciprocal easements for common use by all the Development Parcels, the Lahvosh Bakery Parcel, the Courthouse Parcel and the State Parking Parcel pursuant to the Master Plan CC&R’s. The Common Area will contain common use amenities such as pedestrian walkways, landscaping, lighting and water amenities such as fountains, as described in the Scope of Development. The Common Area is designated as such on the Master Plan and is to be established as a separate parcel in each Parcel Map pursuant to the Davis-Stirling Common Interest Development Act (California Civil Code Sections 1350–1376).

1.11 “Construction Costs” means the Developer’s aggregate estimated costs to complete the Developer Improvements on a Development Parcel, as described in Exhibit E, including but not limited to all development-related fees, utility hook-up charges and mitigation fees or exactions imposed as conditions of development or occupancy of the Developer Improvements.

1.12 “Council” means the City Council of the City.

1.13 “Courthouse Facilities” means the courthouse building, containing approximately 60,000 gross square feet, and related improvements to be constructed and developed on the Courthouse Parcel by the State pursuant to the State Agreement. The Courthouse Facilities will be used by the judicial and administrative staff of the Fifth Appellate District of the State of California for courtrooms and offices.

1.14 “Courthouse Parcel” means Parcel A shown on the Master Plan, located at the corner of Ventura and O Streets. The Courthouse Parcel has been assembled by the Agency and conveyed to the State for development of the Courthouse Facilities pursuant to the State Agreement.

1.15 “Cultural Center Parcel” means the Parcel B on the Master Plan, located at the southwest corner of Ventura and M Streets.

1.16 **“Default”** means a Party’s failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.17 **“Developer”** means OLD ARMENIAN TOWN, LLC, a California limited liability company, with offices at 555 West Shaw Avenue, No. B4, Fresno, California 93704, and any successors, transferees and assignees authorized and approved pursuant to this Agreement. **“Developer”** also means a redeveloper under the Law.

1.18 **“Developer Improvements”** means the new on-site and off-site improvements the Developer or its authorized transferee, assignee, lessee or successor is to construct on or adjacent to the individual Development Parcels, or the on-site and off-site improvements that any other purchaser of an individual Development Parcel authorized by this Agreement is required by the disposition and development agreement, deed covenants, the Master Plan CC&R’s and the Master Plan to construct on or adjacent to the Development Parcel, and all approvals and permits required for the Developer, its transferee, assignee, lessee or successor or other authorized purchaser to complete the improvements, all as more particularly described in this Agreement, the Master Plan and the Scope of Development. Unless the context requires otherwise, the Developer Improvements for an individual Development Parcel include improvements in those portions of the Common Area adjacent or related to that Development Parcel, as described in the Master Plan. The Developer Improvements do not include those improvements to be constructed by the Agency or the City as provided in subsection 11.1 or the Lahvosh Bakery Project as provided in subsection 13.7.

1.19 [Not Used.]

1.20 **“Development Parcels”** means the Office Building No. 1 Parcel, the Office Building No. 2 Parcel, the Office Building No. 3 Parcel, the Parking Structure Parcel, the Surface Parking Parcel, the Cultural Center Parcel and, unless the context requires otherwise, the Common Area. The Development Parcels do not include the Lahvosh Bakery Parcel, the Courthouse Parcel or the State Parking Parcel.

1.21 **“Environmental Laws”** means any federal, state or local laws, statutes, ordinances or regulations pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials including, without limitation, any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any governmentally required environmental permit, approval, authorization, license, variance or permission.

1.22 **“Escrow”** means each escrow opened with the Escrow Holder to convey one or more Development Parcels to the Developer.

1.23 **"Escrow Holder"** means Fidelity National Title Insurance Company, 1680 West Shaw Avenue, Suite 101, Fresno, California, or another title company mutually satisfactory to both parties.

1.24 **"Effective Date"** means the date that the Executive Director signs this Agreement after the Agency Board approves the Agreement and the Developer has met any conditions to the Executive Director's signing, which conditions are delivered to the Developer in writing prior to the time the Developer executes this Agreement.

1.25 **"Executive Director"** means the person appointed and acting as the Executive Director or Interim Executive Director of the Agency.

1.26 **"Financing Plan"** means, for either Phase I or Phase II, (i) loan commitments, which the Developer has accepted in writing, from qualified conventional commercial lenders for construction financing sufficient to complete the Developer's construction obligations hereunder for that Phase, (ii) a pro forma construction budget, and pro forma operating financials for a one-year period, (iii) the Developer's construction contract with one or more general contractors licensed to do business in California, and (iv) any other financial data reasonably requested by the Agency. The Executive Director may, in his or her discretion, permit the construction loan commitments and the construction contracts for the Phase II Financing Plan to be submitted separately for each Development Parcel in Phase II.

1.27 **"Grant Deed"** means each grant deed, substantially in the form of Exhibit F, by which the Agency will convey any Development Parcel to the Developer. Each Grant Deed will contain all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, the Plan and this Agreement.

1.28 **"Hazardous Materials"** means any substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government including, without limitation, any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health & Safety Code, (ii) defined as a "hazardous substance" under Section 25316 of the California Health & Safety Code, (iii) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under Section 25501 of the California Health & Safety Code, (iv) defined as a "hazardous substance" under Section 25281 of the California Health & Safety Code, (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §§6901 *et seq.*), or (xi) defined as

“hazardous substances” pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§9601 *et seq.*)

1.29 “**Lahvosh Bakery Parcel**” means Parcel C shown in Phase II of the Master Plan, located at the northeast corner of M Street and Santa Clara Street, owned by Valley Lahvosh Baking Company, Inc.

1.30 “**Lahvosh Bakery Project**” means the repair, remodeling and rehabilitation of the approximately 10,175 square foot retail bakery facility and related improvements and facilities presently existing on the Lahvosh Bakery Parcel, pursuant to an owner participation agreement as further described in subsection 13.7.

1.31 “**Law**” means the Community Redevelopment Law of the State of California (Health & Safety Code §§ 33000 *et seq.*).

1.32 “**Master Development Site**” means the real property containing approximately 9.97 acres, generally bounded by O Street, Ventura Street, M Street and Freeway 41, as depicted on the Master Plan and described in attached Exhibit B. The Master Development Site includes all the Development Parcels, the Common Area, the Lahvosh Bakery Parcel, the Courthouse Parcel and the State Parking Parcel.

1.33 “**Master Plan**” means the drawing attached as Exhibit A, showing the Development Parcels, the Common Area, the Lahvosh Bakery Parcel, the Courthouse Parcel and the State Parking Parcel, and the location of the proposed Phase I and Phase II improvements on the Master Development Site.

1.34 “**Master Plan CC&R’s**” means the covenants, conditions and restrictions executed by the Developer and to be recorded on the entire Master Development Site, providing uniform criteria, conditions and requirements for development, use, operation and maintenance of all common use areas, landscaping, buildings and other structures within the Master Development Site, including those provisions required by subsections 2.5 and 3.3 of this Agreement. The Master Plan CC&R’s must be approved by the Agency and the State prior to execution and recording. The Master Plan CC&R’s, in the form approved by the Agency and the State, will be executed by the Developer and delivered to the Agency no later than 45 days after the Commencement Date for Phase I. The executed Master Plan CC&R’s will be recorded on each Development Parcel and the Common Area in Phase I or Phase II as provided in subsection 7.10 and paragraph 8.3.5.4. Additionally, the Master Plan CC&R’s will be recorded against the Lahvosh Bakery Parcel as a condition of the owner participation agreement described in subsection 13.7.

1.35 “**Material Change**” means a change, modification, revision or alteration to plans, drawings, or other documents, Financing Plans or requirements that substantially deviates from those previously approved by the Agency.

1.36 "Office Building No. 1" means the Developer Improvements to be constructed on the Office Building No. 1 Parcel as part of Phase I, consisting of a five to eight story office building containing approximately 100,000 to 220,000 gross square feet of Class A office space, and related improvements and facilities, as further described in the Scope of Development. The ground floor plate of Office Building No. 1 shall not exceed 30,000 square feet, and the height of Office Building No. 1 shall not exceed 135 feet.

1.37 "Office Building No. 1 Parcel" means Parcel D shown on the Master Plan, located at the corner of Santa Clara and O Streets.

1.38 "Office Building No. 2" means the Developer Improvements to be constructed on the Office Building No. 2 Parcel and a portion of the Surface Parking Parcel as Part of Phase II, consisting of a five to eight story office building, containing approximately 100,000 to 250,000 gross square feet of Class A office space, and related improvements and facilities, as further described in the Scope of Development.

1.39 "Office Building No. 2 Parcel" means Parcel E shown on the Master Plan, located north of Santa Clara Street between M and O Streets, west of the Office Building No. 1 Parcel.

1.40 "Office Building No. 3" means the Developer Improvements to be constructed on the Surface Parking Parcel as part of Phase II, consisting of a seven to 14 story office building, containing approximately 210,000 to 345,000 gross square feet of Class A office space, and related improvements and facilities, as further described in the Scope of Development.

1.41 "Office Building No. 3 Parcel" means Parcel F shown on the Master Plan, to be located north of Santa Clara Street, between the Office Building No. 1 Parcel and the Lahvosh Bakery Parcel. The Office Building No. 3 Parcel is to be created out of the Surface Parking Parcel through an amendment to the Parcel Maps, a lot line adjustment or other approval required by the City, as provided in paragraph 10.2.4.

1.42 "Outside Date" means, as to conveyance of an individual Development Parcel, the last date on which the parties intend to Close Escrow for that Development Parcel, or such later date on which the parties may mutually agree in writing.

1.43 "Parcel Map" means the Parcel Map PM 2004-21, dividing Phase I of the Master Development Site into the separate Development Parcels, the Courthouse Parcel, the State Parking Parcel and the Common Area. "Parcel Map" also means the parcel map dividing Phase II of the Master Development Site into the Lahvosh Bakery Parcel, separate Development Parcels and the Common Area.

1.44 **"Parking Structure"** means the Developer Improvements consisting of a multi-level parking structure and related improvements and facilities to be constructed as part of Phase II, as further described in the Scope of Development. The Parking Structure will be constructed as two structures. The first structure is to contain approximately 505 parking spaces and is to be constructed within the Parking Structure Easement on, over and under the State Parking Parcel to accommodate some of the parking for Office Building No. 1 and the Courthouse Facilities. The second structure is to contain approximately 850 additional parking spaces (1355 total parking spaces) and is to be constructed on the Surface Parking Parcel to accommodate some of the parking for Developer Improvements in Phase II.

1.45 **"Parking Structure Easement"** means a perpetual easement and right on, under and over the State Parking Parcel, including the airspace above the State Parking Parcel, reserved by the Agency from conveyance of the State Parking Parcel to the State for purposes of construction, operation and use of the first structure of the Parking Structure.

1.46 **"Party,"** where capitalized, means the Agency or the Developer and, when plural, means both.

1.47 **"Phase I"** means Office Building No. 1, the Courthouse Facilities, the State Parking Facilities, the Surface Parking Facilities, and that portion of the Common Area associated therewith, as shown on the Master Plan.

1.48 **"Phase I Parcels"** means the Office Building No. 1 Parcel, the Surface Parking Parcel and the associated portion of the Common Area to be conveyed to or developed by the Developer within Phase I.

1.49 **"Phase II"** means Office Building No. 2, Office Building No. 3, the Parking Structure (both structures), the Armenian Cultural Center, the Lahvosh Bakery Project, and that portion of the Common Area associated therewith, as shown on the Master Plan.

1.50 **"Phase II Parcels"** means the Office Building No. 2 Parcel, the Office Building No. 3 Parcel, the Parking Structure Easement, the Cultural Center Parcel and the associated portion of the Common Area to be conveyed to or developed by the Developer in Phase II, and the Lahvosh Bakery Parcel.

1.51 **"Plan"** means the Redevelopment Plan for the Convention Center Redevelopment Project Area, as now or hereafter amended.

1.52 **"Project"** means, collectively, all the on-site and off-site improvements which are to be constructed on or around all Development Parcels, the Common Area and

other portions of Phase I and Phase II of the Master Development Site under this Agreement and the Master Plan as described in the Scope of Development. "Project" includes, but is not limited to, Office Building No. 1, Office Building No. 2, Office Building No. 3, the Armenian Cultural Center, the Lahvosh Bakery Project, the Surface Parking Facilities, the Parking Structure; related landscaping improvements; parking, pedestrian and vehicular circulation facilities; and other ancillary improvements in the Common Area and on the Development Parcels, the Courthouse Parcel and the State Parking Parcel. "Project" does not include construction of the Courthouse Facilities on the Courthouse Parcel or the State Parking Facilities on the State Parking Parcel, which are being separately constructed pursuant to the State Agreement.

1.53 "Project Area" means the boundaries of the land area included within the Convention Center Redevelopment Project Area, as amended.

1.54 "Redevelopment Administrator" means the person appointed and acting as the Redevelopment Administrator of the Agency.

1.55 "Release of Construction Covenants" means the document, substantially in the form attached as Exhibit G, which evidences the Developer's satisfactory completion of the Developer Improvements on a Development Parcel.

1.56 "Schedule of Performance" means the schedule attached as Exhibit D, setting forth the dates and times by which the Parties must accomplish certain obligations under this Agreement, as it may be revised from time to time on mutual written agreement of the Developer and the Executive Director or the Redevelopment Administrator. The Executive Director or the Redevelopment Administrator is authorized to make revisions to the Schedule of Performance on behalf of the Agency as he or she deems necessary.

1.57 "Scope of Development" means the scope, quantity and quality of the Developer Improvements to be constructed on the Development Parcels, the Common Area and other portions of Phase I and Phase II of the Master Development Site pursuant to this Agreement, all as more fully described herein and in Exhibit E attached. The Scope of Development includes specific descriptions of and criteria for the Developer Improvements to be constructed on each individual Development Parcel and in the portions of the Common Area adjacent or related to the Development Parcel.

1.58 "Security Financing Interest" means a security interest which the Developer grants in a Development Parcel before the Agency issues and records a Release of Construction Covenants to secure an underlying obligation, the proceeds of which are used in the construction of Developer Improvements on that Development Parcel.

H

1.59 "State" means the State of California and its various departments and divisions, including but not limited to its Department of General Services, its Public Works Board and/or its Administrative Office of the Courts.

1.60 "State Agreement" means the Agreement and Escrow Instructions for the Transfer and Development of Real Property dated February 25, 2004, between the Agency and the State providing for conveyance of the Courthouse Parcel and the State Parking Parcel by the Agency to the State and the development thereon of the Courthouse Facilities and the State Parking Facilities by the State.

1.61 "State Parking Facilities" means the surface vehicle parking lot and related improvements to be constructed on the State Parking Parcel pursuant to the State Agreement.

1.62 "State Parking Parcel" means Parcel G shown on the Master Plan, which is located south of Santa Clara Street between N and O Streets.

1.63 "Surface Parking Facilities" means the surface vehicle parking lot and related improvements to be constructed on the Surface Parking Parcel as part of Phase I. The Surface Parking Facilities, containing initially approximately 450 parking spaces, is to accommodate the parking requirements for Office Building No. 1 until completion of the first structure of the Parking Structure.

1.64 "Surface Parking Parcel" means Parcel H shown on the Master Plan, which is located south of Santa Clara Street between M and N Streets.

1.65 "Toxics Reports" has the meaning set forth in Subsection 3.4.

2 CONDITIONS PRECEDENT TO AGENCY OBLIGATIONS. The following are conditions precedent to the effectiveness of this Agreement against the Agency. Until the conditions are satisfied as to Phase I or Phase II, the Agency is not obligated to take any action under this Agreement as to that Phase. These conditions must be satisfied by the time stated or, if no time is stated, then within 45 days after the Commencement Date for the applicable Phase. The Agency, in writing, may waive any condition or agree in writing to extend the time for satisfaction; except that as to those conditions specified in subsections 2.1, 2.4 and 2.5, such waiver or extension will be effective only if the waiver or extension has been consented to in writing by the Developer. Alternatively, the Agency may terminate this Agreement as provided herein if there is a failure of a condition.

2.1 Funding. Within 45 days after the Commencement Date for Phase I, the Agency will have identified potentially Available Funds of at least \$1,200,000.00 for its costs related to Phase I. Within 45 days after the Commencement Date for Phase II, the

Agency will have identified potentially Available Funds and contingency funds in amounts the Agency reasonably determines are necessary for its costs related to Phase II.

2.2 Existence and Authority of Developer. Before the Executive Director signs this Agreement, and as a condition of the Executive Director's signature, the Developer shall have delivered the following to the Agency: (i) a copy of the articles of organization with a certification or other evidence from the Secretary of State showing that the articles have been filed and the Developer is a limited liability company, duly and legally formed under California law; (ii) a certified copy of the Developer's operating agreement, signed by all members, (A) confirming that the purpose of the entity is to construct and operate the Project, (B) authorizing the Developer to enter into and perform this Agreement, (C) authorizing the designated managing member of the Developer to execute this Agreement and any and all documents necessary to carry out the purposes of this Agreement, (D) setting forth the members of the Developer and their ownership interest; (E) a tax identification number for the Developer, and (F) evidence that the Developer is adequately capitalized.

2.3 Toxics Reports. The Developer shall have delivered a certification to the Agency confirming that it has accepted all conditions of the Master Development Site, including any Acquisition Parcels, that are revealed in the Toxics Reports (as that term is defined in Section 3.4 below) and that the Developer has had sufficient opportunity to notify the Agency of any objections to any environmental condition disclosed in the Toxics Reports. Notwithstanding the foregoing, the Developer may condition its certification on the requirement that the Agency obtain and deliver "no further action" letters as to one or more Agency Parcels or Acquisition Parcels in the Master Development Site, as provided in paragraph 4.2.2 below.

2.4 Loan Commitments. On or before the Commencement Date for Phase I, the Developer shall have provided one or more construction loan commitments from qualified conventional commercial lenders in sufficient amounts for the Developer to complete the Developer Improvements in Phase I. On or before the Commencement Date for Phase II, the Developer shall provide one or more construction loan commitments from qualified conventional commercial lenders in sufficient amounts for the Developer to complete the Developer Improvements in Phase II; provided that the Executive Director may, in his or her discretion, accept at that time a construction loan commitment(s) for only the Developer Improvements on the Office Building No. 2 Parcel. Any conditions to the loan commitments must be acceptable to the Agency Board, in its sole discretion. The commitments must be signed by the lenders and accepted in writing by the Developer. The construction loan(s) for Phase I must, in the aggregate, be not less than \$25,000,000.00. The construction loan(s) for Phase II must be not less than an amount the Agency reasonably determines will be sufficient to complete the Developer Improvements for Phase II or, if applicable as provided above, the Developer Improvements for the Office Building No. 2 Parcel.

10

2.5 Reciprocal Pedestrian Access Rights. The Master Plan CC&R's shall include provisions that each owner of property in the Master Development Site, including the State, and its respective employees, contractors, tenants and invitees, will have a right for pedestrian travel on, over and across (i) the Common Area, and (ii) the walkways designated for public use on and/or around the Courthouse Parcel, the State Parking Parcel, the Lahvosh Bakery Parcel and the various Development Parcels, as shown on Exhibit A. Also, any portion of the Common Area identified for vehicular access and use must be identified in the Master Plan CC&R's. The condition of this subsection 2.5 will be satisfied for each Phase by execution and recording of the Master Plan CC&R's containing such provisions on the real property in that Phase, as provided in Subsection 7.10.

2.6 Credit Reports and Financial Statements. On or before the date the Council and the Agency Board approve this Agreement, the Developer shall have provided credit reports, financial statements and financial data, reasonably satisfactory to the Agency Board or its designee, evidencing the Developer's financial ability to complete the Project.

3 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS. The following are conditions precedent to the effectiveness of this Agreement against the Developer as to Phase I or Phase II, as applicable. Until the conditions are satisfied as to Phase I or Phase II, the Developer is not obligated to take any action under this Agreement as to that Phase. These conditions must be satisfied by the time stated or, if no time is stated, then within 45 days after the Commencement Date for the applicable Phase. The Developer, in writing, may waive any condition or agree to extend the time for satisfaction in writing; except that other than the condition specified in subsection 3.4 below, such waiver or extension shall be effective only if the waiver or extension has been consented to in writing by the Agency. Alternatively, the Developer may terminate this Agreement as provided herein if there is failure of a condition.

3.1 Funding. Within 45 days after the Commencement Date for Phase I, the Agency will have identified potentially Available Funds of at least \$1,200,000.00 for its costs related to Phase I. Within 45 days after the Commencement Date for Phase II, the Agency will have identified potentially Available Funds in amounts the Agency reasonably determines are necessary for its costs related to Phase II.

3.2 Loan Commitments. On or before the Commencement Date for Phase I, the Developer shall have obtained one or more construction loan commitments from qualified conventional commercial lenders in sufficient amounts for the Developer to complete the Developer Improvements in Phase I. On or before the Commencement Date for Phase II, the Developer shall have obtained one or more construction loan commitments from qualified conventional commercial lenders in sufficient amounts for the Developer to complete the Developer Improvements in Phase II; provided that the

Executive Director may, in his or her discretion, accept at that time a construction loan commitment(s) for only the Developer Improvements on the Office Building No. 2 Parcel. Any conditions to the loan commitments must be acceptable to the Agency Board, in its sole discretion. The commitments must be signed by the lenders and accepted in writing by the Developer. The construction loan(s) for Phase I must, in the aggregate, be not less than \$25,000,000.00. The construction loan(s) for Phase II must be not less than an amount the Agency reasonably determines will be sufficient to complete the Developer Improvements for Phase II or, if applicable as provided above, the Developer Improvements for the Office Building No. 2 Parcel.

3.3 Reciprocal Pedestrian Access Rights. The Master Plan CC&R's shall include provisions that each owner of property in the Master Development Site, including the State, and its respective employees, contractors, tenants and invitees, will have a right for pedestrian travel on, over and across (i) the Common Area, and (ii) the walkways designated for public use on and/or around the Courthouse Parcel, the State Parking Parcel, the Lahvosh Bakery Parcel and the various Development Parcels, as shown on Exhibit A. Also, any portion of the Common Area identified for vehicular access and use must be identified in the Master Plan CC&R's. The condition of this subsection 3.3 will be satisfied for each Phase by execution and recording of the Master Plan CC&R's containing such provisions on the real property in that Phase, as provided in subsection 7.10.

3.4 Toxics Reports. The Agency shall have obtained and delivered the following to the Developer: (i) all environmental site assessments and updates thereof, prepared and/or performed with respect to any Agency Parcel or Acquisition Parcel, the Lahvosh Bakery Parcel, the Courthouse Parcel and the State Parking Parcel to the extent such reports are in the possession or reasonable control of the Agency or were performed by, for the benefit of or at the request of the Agency; and (ii) all notices and non-confidential written communications of any nature received or sent by the Agency from or to any governmental entity in connection with or relating to any Environmental Laws or the environmental condition, circumstance or condition of any Agency Parcel or Acquisition Parcel, the Lahvosh Bakery Parcel, the Courthouse Parcel and the State Parking Parcel (collectively, the "Toxics Reports"). The Developer acknowledges having received the following Toxics Reports from the Agency:

- 3.4.1 Program EIR No. 2001-01, Convention Center Redevelopment Project Area Downtown Prestige-Mixed Use Development, October 2, 2001;
- 3.4.2 Mitigated Negative Declaration/Environmental Assessment No. C-02-061, November 19, 2002;

15

3.4.3 Categorical Exemption, State of California JCC and Fifth District Court of Appeal, April 2, 2003;

3.4.4 Phase I Environmental Site Assessment prepared by BSK Engineering, April 26, 2002.

4 CONDITIONS PRECEDENT TO COMMENCEMENT OF PARTIES' PREDISPOSITION ACTIVITIES.

4.1 Conditions to Agency's Predisposition Obligations. The following are conditions precedent to the Agency's obligations to acquire any Acquisition Parcel and to commence its predisposition obligations specified in Section 5 below as to any Acquisition Parcel or Agency Parcel in Phase I or Phase II of the Master Development Site. The Agency, in writing, may waive any such condition; except that such waiver will be effective only if the waiver has been consented to in writing by the Developer. Any waiver will apply only as to the obligation to pursue the Agency's predisposition obligations for the Agency Parcel or Acquisition Parcel to which the condition pertains. Alternatively, the Agency may terminate this Agreement as provided herein if there is failure of any of the following conditions.

4.1.1 Satisfaction of Conditions in Sections 2 and 3. The conditions in Sections 2 and 3 have been satisfied or waived by the Party(ies) who are to benefit from the conditions.

4.1.2 No Action Letter and/or other Assurances. The Agency will have received and obtained the Developer's approval of any required "no further action" letter related to a particular Acquisition Parcel pursuant to paragraph 4.2.2 below.

4.1.3 Financing Plan. The Developer shall have obtained approval of its Financing Plan for the applicable Phase by the Agency, through its Executive Director or Redevelopment Administrator, in accordance with the following procedures:

The Developer shall have submitted its Financing Plan to the Agency for Phase I or Phase II, as applicable at the time specified in the Schedule of Performance (Exhibit D). Within 30 business days after receiving the Financing Plan, the Agency, through its Executive Director or Redevelopment Administrator, will review the Financing Plan and approve it or disapprove it. If the Agency disapproves the Financing Plan, it will specify the reason for disapproval and ask the Developer to provide any additional information the Agency may need to approve the Financing Plan. The Developer shall promptly submit such additional information. Within 30 business days after receiving the additional information,

the Agency, through its Executive Director or Redevelopment Administrator, will review the additional information and, based thereon, will approve or disapprove the Financing Plan as above.

After the Agency has approved a Financing Plan, the Developer shall submit any proposed Material Change to the approved Financing Plan for Phase I or Phase II to the Agency for review and approval. Until the Agency approves the Material Change, the Developer shall comply with the previously approved Financing Plan. If the Developer wants to make a Material Change to the minimum loan commitments or maximum liens, the modification must be approved by the Agency Board or its designee.

The Agency's review and approval of the Financing Plan are solely to confirm that the Developer has or will have the financial resources to complete the Developer Improvements for the Phase being developed and to fulfill the redevelopment objectives of the Plan and the Law. The Agency's review and approval are not approval or endorsement of the Developer Improvements or for any other purpose.

4.1.4 Condition of Title. The Agency and the Developer shall have approved the condition of title of any Acquisition Parcel in the Phase being developed, as provided in paragraph 4.2.4 below.

4.2 Conditions to Developer's Predisposition Obligations. The following are conditions precedent to the Developer's obligations to commence its predisposition obligations specified in Section 6 below as to any Development Parcel. The Developer, in writing, may waive any such condition; except that such waiver will be effective only if the waiver has been consented to in writing by the Agency. Any waiver will apply only as to the obligation to pursue the Developer's predisposition obligations for the Development Parcel(s) to which the condition pertains. Alternatively, the Developer may terminate this Agreement as provided herein if there is failure of any of the following conditions.

4.2.1 Satisfaction of Conditions in Sections 2 and 3. The conditions in Sections 2 and 3 have been satisfied or waived by the Party(ies) who are to benefit from the conditions.

4.2.2 No Action Letters and/or Other Assurances. For any Agency Parcel or Acquisition Parcel which will be included in a Development Parcel and which is contaminated and for which the Developer requests a "no further action" letter pursuant to subsection 2.3, the Agency shall have received and delivered to the Developer a "no further action" letter from the Health Department of the County of Fresno and/or from the Regional Water Quality Control Board ("RWQCB"), as applicable. The letters will assure the Agency and the Developer

17

that neither the Health Department nor RWQCB requires further remedial environmental action on the Agency Parcel or Acquisition Parcel.

The Developer, at its election, may require receipt of "no further action" letters for all contaminated Agency Parcels and Acquisition Parcels in Phase I or Phase II as a condition precedent to its obligation to commence its predisposition activities for any Development Parcel in that Phase.

4.2.3 Financing Plan Approval. The Developer's Financing Plan for Phase I or Phase II, as applicable, shall have been approved by the Agency in accordance with paragraph 4.1.3.

4.2.4 Condition of Title. The Agency and the Developer shall have approved the condition of title of the assembled Development Parcels in Phase I or Phase II, as applicable, according to the following procedures:

Within 45 days after the Effective Date, the Agency will deliver to the Developer copies of the most recent CLTA or other title reports in the Agency's possession for all Agency Parcels owned by the Agency in Phase I or Phase II as of the Effective Date. Also, within 15 days after obtaining a preliminary title report for acquisition of any Acquisition Parcel in Phase I or Phase II, the Agency will deliver of copy of such report to the Developer. The Developer, within 15 business days after receiving these title reports, shall notify the Agency of any exceptions to title on the Agency Parcels or Acquisition Parcels shown in such reports ("Exceptions") that the Developer will object to having included in the affected Development Parcel(s). However, the Developer may not object to the following Exceptions: (i) the Plan, (ii) this Agreement, (iii) real property taxes and assessments not yet due, or (iv) the Master Plan CC&R's. If the Developer objects to any Exceptions shown in such reports, the Agency and the Developer shall promptly meet and confer in good faith to review the documents underlying such Exceptions and agree on removal or other resolution of the Exceptions prior to assembly of the affected Development Parcel(s). Such resolution may include removal of the Agency Parcel or the Acquisition Parcel from proposed boundaries of the affected Development Parcel and reconfiguration of the Development Parcel.

Thereafter, upon assembly of a Development Parcel within Phase I or Phase II, the Agency will obtain and deliver to the Developer a copy of a new preliminary title report (the "Report") and related survey in support of an ALTA Owner's Policy of title insurance for that Development Parcel, with, as the Developer may request, copies of the documents underlying any Exceptions shown in such Report. The Developer, within 15 business days after receiving the Report, shall deliver notice of any objections to any new Exceptions or Exceptions that were not resolved by

18

the Agency and the Developer as described in the preceding paragraph. The Developer may not object to the following Exceptions: (i) the Plan, (ii) this Agreement, (iii) real property taxes and assessments not yet due, (iv) Exceptions that were resolved Parties as described in the preceding paragraph, or (v) the Master Plan CC&R's. The Developer's failure to object within the 15 days will be deemed approval of title. The Developer shall pay the costs of the Report and the related survey as needed to support an ALTA Owner's Policy. Notwithstanding the foregoing, the Developer, at its election, may waive in writing the requirement of a Report and survey in support of an ALTA Owner's Policy and instead receive and review a Report in support of a CLTA Owner's Policy.

If the Developer objects to any Exception in the Report, the Parties will promptly confer to resolve the title issue. The Parties may terminate or modify this Agreement as to an individual Development Parcel for the inability to remove, or the delay in removing, an Exception on a Development Parcel if the Parties agree, reasonably and in good faith, that the Exception will substantially interfere with development of the particular Development Parcel as proposed, or that the Exception will impair marketable title to Development Parcel.

If the Parties determine to terminate or modify this Agreement as to a Development Parcel due to the inability to remove or delay in removing an Exception, as provided in the preceding paragraph, the Parties also may terminate or modify this Agreement as to additional Development Parcels in Phase I or Phase II, as applicable, if the Parties agree, reasonably and in good faith, that the Exception will substantially interfere with the unified development goals of the Master Plan for that Phase, or that the Exception will impair marketable title to those additional Development Parcels.

5 AGENCY PREDISPOSITION ACTIVITIES. After the Parties have satisfied or have given written waivers for the conditions precedent in Sections 2, 3 and 4 for the Phase being developed, the Agency will begin and/or complete the following predisposition activities as to the Development Parcels in that Phase for which the predisposition conditions specified in Section 4 have been satisfied.

5.1 Acquisition Parcels. The Agency will use its best efforts to acquire the Acquisition Parcels in Phase I or Phase II on or before the date specified in the Schedule of Performance for that Phase. The Agency may acquire property through negotiated purchase, gift or other means provided by law. The Agency has the sole discretion in determining whether to hold hearings or to adopt a resolution of necessity authorizing it to acquire property by its power of eminent domain. Nothing in this Agreement obligates the Agency to adopt a resolution of necessity with respect to any Acquisition Parcel.

15

5.2 **Relocation.** The Agency will be responsible for relocating tenants and owners from an Acquisition Parcel, and paying relocation costs, as and when required by law.

5.3 **Historic Structures.** The Parties acknowledge that, as of the Effective Date, the Agency is responsible to relocate all historic structures off the Acquisition Parcels and Agency Parcels in Phase I of the Master Development Site in accordance with requirements of the Mitigated Negative Declaration adopted by the Council on November 19, 2002, in connection with its approval of Conditional Use Permit No. C-02-061 for the Project. The Agency will take all steps to complete relocation of the historic structures in accordance with the requirements of the EIR.

6 **DEVELOPER'S PREDISPOSITION ACTIVITIES.** After the Parties have satisfied or have given written waivers for the conditions precedent in Sections 2, 3 and 4 for the Phase being developed, the Developer shall perform and complete the following predisposition activities as to all Development Parcels, including the Common Area, in that Phase.

6.1 **Reason for, and Timing of, Due Diligence Inspection.** The Agency will convey all Development Parcels to the Developer "AS IS," with all faults. The Developer shall complete its due diligence inspection of all Agency Parcels in Phase I within 30 days after the Commencement Date for Phase I, and shall complete its due diligence inspection of each Acquisition Parcel in Phase I within 30 days after the Agency acquires title or possession to that Acquisition Parcel.

The Developer shall separately complete its due diligence inspection of the Agency Parcels that will be included in a Development Parcel in Phase II within 30 days after the Agency has acquired title or possession to the first Acquisition Parcel that is to be assembled and conveyed as part of the same Development Parcel. The Developer shall complete its due diligence inspection of each Acquisition Parcel in Phase II (including an Acquisition Parcel described in the preceding sentence) within 30 days after the Agency acquires title or possession to that Acquisition Parcel.

6.2 **Developer's Inspection.** The Developer will be solely responsible, at its expense, to investigate and determine all soil, seismic and other surface and subsurface conditions of real property in Phase I or Phase II that will be part of a Development Parcel, including the Common Area, and the suitability thereof for development as provided hereunder. The Developer's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials, except that the Developer will have no responsibility to determine the presence or absence of Hazardous Materials or other soil, seismic and other surface and subsurface conditions in or on the State Parking Parcel or the Courthouse Parcel. The Developer will promptly provide the Agency with a copy of all reports and test results. The Developer will indemnify, defend and hold the Agency harmless from any damages or claims for personal injury, death,

property damage or breach of contract caused by the Developer or its employees or contractors in performing any inspection, investigation or other work under this subsection 6.2; provided that the Developer will not be obligated to indemnify, hold harmless or defend from any diminution in real property value to the extent caused by any preexisting condition, not caused or contributed to by the Developer, that may be disclosed by the Developer's inspection, investigation or other due diligence work or investigation under this subsection 6.2.

6.3 Access to Parcels. The Agency will grant the Developer and its designated representatives access to the Agency Parcels in Phase I and Phase II at reasonable times, on 24 hours' prior notice, for purposes of conducting due diligence inspections and investigations. Additionally, after the Agency acquires ownership or possession of an Acquisition Parcel that will comprise all or part of a Phase I or Phase II Parcel, the Agency will grant the Developer and its designated representatives access to such Acquisition Parcel at reasonable times, on 24 hours' prior notice, for purposes of conducting due diligence inspections and investigations. To permit the Developer access to an Acquisition Parcel at the earliest possible time, the Agency will use best efforts, when negotiating a purchase agreement for the Acquisition Parcel, to help the Developer in obtaining the seller's permission for the Developer to enter the property for inspection. The Developer also may obtain consent for access directly from any property owner.

6.4 Environmental Remediation. If the Developer's inspection of an Acquisition Parcel or an Agency Parcel comprising part of a Development Parcel reveals any Hazardous Materials or environmental conditions requiring remediation, the Developer will promptly notify the Agency. The Parties will have 30 days after the notice to reach a written agreement regarding the allocation of any remediation costs. If the Parties cannot reach an agreement within the 30 days, (i) either Party may thereafter terminate this Agreement as to that Development Parcel by 30 days' notice to the other, in which event the Development Parcel will be severed from this Agreement; or (ii) the Parties may terminate this Agreement as to that Development Parcel and as to any additional Development Parcels if the Parties determine, reasonably and in good faith, that the Hazardous Materials or other environmental condition requiring remediation will substantially interfere with the development goals of such Development Parcels as set forth in the Master Plan, or will impair marketable title to such Development Parcels, in which event those Development Parcels will be severed from this Agreement. Any remediation will be pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction. The work will be performed according to applicable Environmental Laws and any governmental requirements.

6.5 Parcel Map Preparation and Application Fees. Immediately upon the Commencement Date for Phase I or, if the Agency gives prior written approval, upon the date the Agency has acquired title to or possession of all Acquisition Parcels in Phase I, whichever is later, the Developer, at its sole cost, shall prepare the tentative Parcel Map to

establish each Development Parcel and the portion of the Common Area in Phase I as separate legal parcels and shall take all steps to finalize and record the Parcel Map. Immediately upon the Commencement Date for Phase II or upon the date the Agency has acquired title to or possession of all Acquisition Parcels in Phase II, whichever is later, the Developer, at its sole cost, shall prepare a tentative Parcel Map to establish each Development Parcel, the Lahvosh Bakery Parcel and the portion of the Common Area in Phase II as separate legal parcels and shall take all steps to finalize and record the Parcel Map. The Parcel Map for Phase II will include any changes to the boundaries of the Surface Parking Parcel created by the Parcel Map for Phase I necessary to create the Office Building No. 2 Parcel and accommodate Office Building No. 2. The Developer will be responsible for all fees and costs associated with preparing, filing, processing and obtaining approval of the Parcel Map for each Phase.

The Agency will cooperate with the Developer in applying for, processing and obtaining approval of the Parcel Map for either Phase, and will sign or authorize, as a holder of record interest, any application, certificate or other document reasonably necessary to obtain such approval.

7 CONDITIONS PRECEDENT TO CONVEYANCE, ACQUISITION, DELIVERY AND ACCEPTANCE OF POSSESSION OF DEVELOPMENT PARCELS.

The following are mutual conditions precedent to the Agency's obligations to convey or deliver possession of the individual Development Parcels in either Phase I or Phase II to the Developer, and the Developer's obligations to acquire and accept delivery of such Development Parcels. The Parties may, by mutual written agreement, waive any of these conditions. Alternatively, if there is failure of any of these conditions, either Party may terminate this Agreement as to that Development Parcel as provided herein.

7.1 Conditions in Sections 2 Through 4. The Developer and the Agency, respectively, shall have satisfied or waived the conditions in Sections 2, 3 and 4 as to that Development Parcel.

7.2 Predisposition Activities. The Agency and the Developer shall have completed their respective predisposition activities under Sections 5 and 6 as to that Development Parcel.

7.3 Agency Rights to Development Parcel; Acquisition of Parcels. With respect to a proposed Development Parcel in either Phase I or Phase II that includes one or more Acquisition Parcels, the Agency shall have obtained irrevocable rights to acquire or possess the Acquisition Parcels included within the Development Parcel, whether by negotiated purchase, gift or other means provided by law, subject to the limitations in subsection 13.1. If the Agency, after using its best efforts, is unable to acquire title or possession to any Acquisition Parcel comprising a Development Parcel in time to close Escrow or deliver possession by the Outside Date for that Development Parcel, the

Agency and the Developer may by written agreement or amendment to this Agreement: (i) extend the Outside Date for Closing on the Development Parcel, (ii) sever any unacquired Acquisition Parcel and proceed with the Project on the remainder of the Development Parcel, or (iii) terminate this Agreement as to that Development Parcel. Alternatively, the Parties may terminate this Agreement as to that Development Parcel and additional Development Parcels in the applicable Phase due to the inability of the Agency to obtain irrevocable rights to acquire or possess an Acquisition Parcel that comprises part of such Development Parcel in time to close Escrow or deliver possession by the Outside Date if the Parties determine, reasonably and in good faith, that lack of such Acquisition Parcel will substantially interfere with the unified development goals for the applicable Phase as set forth in the Master Plan, or that development of the applicable Phase without ownership or possession of that Acquisition Parcel will impair marketable title to the the Development Parcels in that Phase. If the property to which the Agency has acquired title to or irrevocable rights is reasonably sufficient to proceed with the Developer Improvements on the Development Parcel(s), but the Developer requests to terminate this Agreement as to that or those Development Parcel(s), then as a condition of the Agency's agreement to the termination, the Developer will indemnify, defend, and hold the Agency harmless from any claim for precondemnation or inverse condemnation damages arising out of the Agency's acquisition efforts. If the Developer fails to request termination within 30 days after the Agency notifies it of the Agency's inability to acquire an Acquisition Parcel, the Developer will be deemed to have elected to sever the unacquired Acquisition Parcel and to proceed with the Developer Improvements on the balance of the Development Parcel(s).

7.4 Loan Closing. For each Development Parcel in Phase I or Phase II, the Developer's construction lender shall have opened an escrow for the construction loan for the Developer Improvements on the Development Parcel to be conveyed that will close concurrently with the Closing of the Escrow on that Development Parcel.

7.5 Governmental Actions. The matters specified below, each requiring governmental action, shall have been completed or approved. These matters are in addition to and without limitation on any other governmental permits, entitlements or approvals required for development of the Project, including those specified in subsection 9.4. Governmental action may be legislative, quasi-judicial or otherwise discretionary in nature. Neither the Agency nor the City can take action before environmental assessment of the Project on the Master Development Site and any individual Development Parcel under CEQA is completed. Neither the Agency nor the City can commit in advance to approve any matter. Neither the Agency, the City nor any other public or governmental entity will be liable to the Developer or any other person if it fails to grant any discretionary approval.

7.5.1 Parcel Map. The final Parcel Map creating the Development Parcels and the Common Area in Phase I or Phase II, as applicable, shall have been approved and recorded.

7.5.2 Conditional Use Permit (CUP). For Phase I, CUP No. C-02-061, including (if necessary) any amendment thereto, shall have been approved and is in effect, authorizing a unified mixed-use project, including mid-rise/high-rise office buildings, consisting of Office Building No. 1, the Surface Parking Facilities, the Courthouse Facilities, the State Parking Facilities and related improvements and facilities. For Phase II, a conditional use permit shall have been approved, authorizing a unified mixed-use project, including mid-rise/high-rise office buildings, consisting of Office Building No. 2, Office Building No. 3 (to be constructed on the Surface Parking Parcel), the Armenian Cultural Center, the Lahvosh Bakery Project, the Parking Structure and related improvements and facilities. The CUPs will also authorize, pursuant to Section 12-407.5 of the Fresno Municipal Code, modification of the property development standards for a unified commercial project.

7.5.3 Landscape Permit; Site Plan Review. A landscape permit and site plan review shall have been approved for Phase I or Phase II, as applicable, including a landscape plan for landscaping in the portion of the Common Area in that Phase.

7.5.4 Vacations/Abandonments. Vacation or abandonment of the Santa Clara Street right-of-way between N and O Streets, the Santa Clara Street right-of-way between M and N Streets, that portion of the N Street right-of-way within the boundaries of the Master Development Site, and any other public alley or public right-of-way, as needed for development of the Project on the Master Development Site, shall have been approved and recorded. The vacations may, at the discretion of the Agency, be recorded and become effective in phases corresponding to the Commencement Dates for Phase I and Phase II.

7.5.5 Easements. Public easements shall have been modified or abandoned as needed to develop the Project on the Master Development Site.

7.5.6 CEQA Review. The EIR shall have been completed and certified in accordance with the California Environmental Quality Act.

7.5.7 Environmental Clearances. Environmental clearances shall have been received from regulating agencies for any property within the Master Development Site that is found to be contaminated with Hazardous Materials.

216

7.6 Notice of Readiness to Convey and Certificate of Readiness to Proceed.

On or after the Commencement Date for Phase I or Phase II, as applicable, the Agency will notify the Developer when it is prepared to convey and/or deliver possession of any Development Parcel in that Phase to the Developer. Not later than 30 days before the date specified in the Schedule of Performance for conveyance of a particular Development Parcel, the Developer will certify to the Agency in writing that the Developer is ready to close escrow and construct the Developer Improvements on the Development Parcel, provided the Agency is prepared to convey or deliver possession. The Developer's certification will affirm that, as to that Development Parcel: (i) no financial or other event has occurred that would impair the Developer's ability to complete the Developer Improvements, (ii) the Developer is ready, willing and able to meet its obligations under this Agreement as to that Development Parcel, and (iii) all conditions precedent to the Developer's performance are satisfied.

7.7 Performance and Payment Bonds. The Developer shall have delivered labor and material bonds and performance bonds covering the Developer Improvements to be constructed on the Development Parcel, issued by an insurance company meeting the criteria for the Developer's insurance hereunder. The Developer may satisfy this condition by having the bonds provided by its contractor(s) for construction of the Developer Improvements. In either case, the bonds will each contain a penal sum at least equal to 100% of Developer's estimated construction costs for the Developer Improvements shown in the Scope of Development (Exhibit E). The bonds will name the Agency as co-obligee. On request of the Developer, the Agency may consider evidence other than performance and payment bonds of the Developer's ability to complete the Developer Improvements. Such evidence must be reasonably satisfactory to the Agency.

7.8 Evidence of Insurance. The Developer shall have on file with the Agency current certificates of insurance for all insurance which this Agreement requires the Developer to maintain, evidencing that all required insurance is in effect.

7.9 No Default. The Developer is not then in Default of this Agreement, and all representations and warranties herein of the Developer are true and correct in all material respects.

7.10 Master Plan CC&R's. Prior to conveyance of any Development Parcel in Phase I, but no later than 45 days after the Commencement Date for Phase I, the Master Plan CC&R's, in the form approved by the Agency and the State's Department of General Services, shall have been executed by the Developer and delivered to the Agency for recordation on all real property in Phase I and/or Phase II, as applicable. The executed Master Plan CC&R's will be recorded on each Development Parcel and any portion of the Common Area in Phase I or Phase II by the Escrow Holder as a condition of close of Escrow and conveyance of that Development Parcel or portion of the Common Area to the Developer.

8 DISPOSITION OF DEVELOPMENT PARCELS.

8.1 Sale and Purchase. As to each Development Parcel, after the Parties have satisfied or waived all the conditions precedent set forth in Sections 2, 3, 4 and 7, have completed all predisposition activities set forth in Sections 5 and 6, and have satisfied all requirements of the Law for the Agency to sell property acquired with tax increment funds, the Agency will sell, and the Developer will purchase, the Development Parcels, including the Common Area, in Phase I and Phase II according to this Section 8.

8.1.1 Cultural Center Parcel.

8.1.1.1 In addition to the requirements in subsection 8.1, the Agency will not sell, and the Developer will have no right to purchase, the Cultural Center Parcel until the Developer (i) has submitted, and the Agency has approved pursuant to subsection 9.2, final construction plans, landscaping plans, finish grading plans, drawings, elevations and other development-related items (as specified in subsection 9.2) for the Armenian Cultural Center, and (ii) has demonstrated to the Agency's reasonable satisfaction that construction loan(s) and/or other funding sufficient to construct the Armenian Cultural Center in accordance with the approved development-related items is or will be available.

8.1.1.2. Notwithstanding subparagraph 8.1.1.1:

(A) The Parties acknowledge that the proposed Armenian Cultural Center is to be financed in part by, and built for the use of, the Armenian Cultural Foundation, Inc. (the "ACF"), pursuant to the terms of a separate agreement between the Developer and the ACF. Therefore, in lieu of purchasing the Cultural Center Parcel and developing the Armenian Cultural Center itself, the Developer may request that the Agency approve a transfer and assignment to the ACF of the Developer's right to acquire the Cultural Center Parcel and develop the Armenian Cultural Center, in accordance with and subject to subsection 16.2. If the Agency approves such transfer and assignment pursuant to subsection 16.2, and if ACF purchases the Cultural Center Parcel from the Agency for development of the Armenian Cultural Center, the original Developer, Old Armenian Town, LLC, will be relieved of any obligation to make the payments specified in subsection 14.1 (property tax increment and in-lieu-of property tax increment payments) with respect to the Cultural Center Parcel.

(B) If the ACF determines that it will not finance or use the Armenian Cultural Center, the Developer shall notify the Agency and propose alternative Developer Improvements, consistent with the Master Plan and the Master Plan CC&R's, to be constructed on the Cultural Center

Parcel. If the Agency approves such alternative Developer Improvements, the Parties shall promptly negotiate and enter into an appropriate amendment to this Agreement as provided in subsection 21.15.

8.2 Purchase Price. The purchase price of each Development Parcel in Phase I and Phase II will be two dollars (\$2.00) per gross square foot, including all vacated public street rights-of-way and easements. The purchase price will represent and be no less than the reuse value of each Development Parcel, at the use and with the covenants, conditions and development costs set forth in this Agreement. The Developer will pay the full purchase price (calculated at \$2.00 per gross square foot) for each Development Parcel in cash or certified check, deposited with the Escrow Holder, within ten business days after delivering the Developer's certificate of readiness to proceed for that Development Parcel (see subsection 7.6).

8.3 Escrow. The following escrow procedures shall apply to purchase of each Development Parcel in either Phase I or Phase II:

8.3.1 Opening Escrow. Within five business days after receiving the Developer's certificate of readiness to proceed with a Development Parcel (subsection 7.6), the Parties will establish an Escrow with the Escrow Holder to accomplish the sale and purchase of the Development Parcel.

8.3.2 Escrow Instructions. This Agreement constitutes the initial joint escrow instructions of the Developer and the Agency for sale and purchase of each Development Parcel. If necessary to accomplish Closing, the Parties will sign supplemental escrow instructions. If there is any inconsistency between the supplemental escrow instructions and this Agreement, the provisions of this Agreement will control as between the Parties. The Parties will sign such other and further documents as necessary or appropriate to close the Escrow and otherwise carry out this Agreement.

The Parties will take all actions necessary to close each Escrow in the shortest possible time. The Agency will not transfer any fire or casualty insurance policies and will cancel its own policies or delete the property from its policies after each Closing. The Escrow Holder may deposit all funds received in the Escrow(s) with other escrow funds in a general escrow account, and may transfer the funds to any other escrow trust account in any state or national bank doing business in California.

8.3.3 Prorations. The Escrow Holder will prorate all ad valorem taxes and assessments, if any, as of Closing, between the Agency and the Developer. If the parties cannot ascertain then-current taxes and assessments, the Escrow Holder will apportion the taxes and assessments based on the amount of the most recent

27

statement of taxes and assessments. The Escrow Holder will adjust the proration, if necessary, within 30 days after finding out the actual amount of taxes and assessments.

8.3.4 Escrow and Title Costs. The Agency will pay all escrow fees, costs for CLTA owner's policy of title insurance, recording fees and documentary stamp taxes to convey the Development Parcel to the Developer. The Developer will pay any costs for the ALTA Owner's Policy of title insurance pursuant to paragraph 4.2.4, or any other endorsements in excess of the standard CLTA owner's policy that the Developer may request. The Agency and the Developer will pay any other costs associated with the Escrow according to the custom and practice in Fresno County. The Developer will be solely responsible for any costs associated with obtaining and closing the loans to the Developer or obtaining any other source of funds under the Financing Plan approved by the Agency.

8.3.5 Close of Escrow and Contingencies to Close. Each Escrow must close by the Outside Date for that Escrow specified in the Schedule of Performance, unless the parties mutually agree to extend the time for Closing. The Escrow Holder will close each Escrow and the Agency will convey each Development Parcel to the Developer when, and only when, the following have occurred:

8.3.5.1 Satisfaction of Conditions and Completion of Predisposition Activities. The Parties have satisfied the conditions precedent in Sections 2, 3, 4, and 7 and have completed their respective predisposition obligations in Sections 5 and 6, or the benefitting Party has waived the conditions or obligations in writing.

8.3.5.2 Concurrent Close of Construction Financing or Estoppel Certificate. The Agency and the Escrow Holder have received a written commitment from the Developer's construction lender to close and fund the Developer's construction financing for a Development Parcel concurrently with the Closing of the Escrow in which the Agency conveys that Development Parcel to the Developer. If the Developer's construction financing is for more than one Development Parcel, then as a condition precedent to each subsequent Closing, the Developer will deliver an estoppel certificate from its construction lender that Developer is performing under the loan agreement(s), is not in default of the agreement(s), and that the loan continues in effect.

8.3.5.3 Recording this Agreement. If this Agreement or a memorandum of this Agreement has not already been recorded, the Escrow Holder is prepared to record this Agreement or memorandum of this Agreement on the entire Master Development Site at the close of the Escrow

in which the Agency conveys the Office Building No. 1 Parcel in Phase I to the Developer.

8.3.5.4 Recording Master Plan CC&R's. If the Master Plan CC&R's have not been recorded already, the Escrow Holder is prepared to record the executed Master Plan CC&R's, including the provisions for reciprocal pedestrian access rights required by subsections 2.5 and 3.3 above, (i) on all real property in Phase I at the close of the Escrow in which the Agency conveys the Office Building No. 1 Parcel to the Developer, (ii) on any Development Parcel in Phase II, including associated portions of the Common Area, at the close of the Escrow for conveyance of that Development Parcel.

8.3.5.5 Grant Deed. The Escrow Holder is prepared to record a Grant Deed for the conveyance of the Development Parcel, substantially in the form in attached Exhibit F.

8.3.5.6 Title Policy. The Escrow Holder is prepared to issue an ALTA Owner's Policy of title insurance or, if elected by the Developer, a CLTA standard coverage title insurance policy, to the Developer insuring the Developer's title to the Development Parcel with the Exceptions consented to or permitted as provided in paragraph 8.4.8. The Escrow Holder will provide the Agency with a duplicate copy of the policy it issues.

8.3.5.7 Deposit of Purchase Price. The Developer has deposited into Escrow the purchase price for that Development Parcel.

8.3.6 Termination of Escrow. If an Escrow is not in condition to close by the Outside Date for that Escrow, then either Party not then in Default of this Agreement may give notice and demand for the return of its money or property and terminate this Agreement as to that Development Parcel. If either Party gives notice and makes a demand, the Escrow will not terminate until five business days after the Escrow Holder delivers copies of the notice and demand to the other Party. If the other Party objects within the five days, the Escrow Holder may hold all papers and documents until instructed by a court of competent jurisdiction or by mutual instructions of the Parties. Termination of any Escrow will be without prejudice to any legal rights either Party may have against the other under this Agreement. If neither Party makes a demand, the Escrow Holder will proceed to Closing as soon as possible.

8.3.7 Preliminary Change of Ownership. The Developer will be responsible for promptly executing and delivering any preliminary change-of-ownership report to the Escrow Holder.

291

8.3.8 Condition of Title. At Closing, title to each Development Parcel will be free and clear of title Exceptions, except current taxes and assessments, if any, and those Exceptions agreed to by the Developer or permitted pursuant to paragraph 4.2.4.

8.3.9 Closing Statements. After Closing, Escrow Holder will deliver separate closing statements to the Developer and the Agency in which the Escrow Holder accounts for all funds it has received and disbursed for each Party, and copies of documents signed and recorded or filed, with the recording and filing date information endorsed thereon.

8.4 Order of Possession. Notwithstanding any provision in this Agreement to the contrary, this subsection 8.4 will apply if the Agency before the Outside Date for a Development Parcel has not obtained title to an Acquisition Parcel within the Development Parcel but, without obligation to do so, has obtained a judicial order authorizing the Agency to take possession of the Acquisition Parcel. The Agency may deposit a copy of the order and a Grant Deed for the Development Parcel based on the order into Escrow, and the Developer will not terminate this Agreement, but will proceed with Closing and with completing the Developer Improvements on the Development Parcel, if all of the following occurs:

8.4.1 Exclusive Possession. The Agency delivers exclusive possession of the Acquisition Parcel by a written lease, deed or other document which the Parties approve to carry out the purposes of this Agreement.

8.4.2 Quality of Possession. The right of possession which the Agency delivers to the Developer is sufficient for the Escrow Holder to issue a policy of title insurance insuring title meeting the requirements of paragraph 8.3.8.

8.4.3 Final Judgment. The Agency diligently proceeds with the eminent domain action until the court renders a final judgment authorizing the taking, and Escrow Holder records the Grant Deed.

8.4.4 Construction Financing. The Developer is able to secure construction financing on the basis of the title policy.

If requested by the Escrow Holder, the Agency will provide reasonable indemnities and other assurances to insure the Agency's conveyance of title to the Developer after the court issues any order for prejudgment possession.



8.5 Nonmerger. The provisions of this Agreement will not merge with any Grant Deed. The Grant Deed will not affect, impair or limit the provisions, covenants, conditions or agreements of this Agreement.

8.6 Sale "AS IS"; No Warranty of Property Condition. Except as may be expressly provided otherwise in this Agreement, when the Agency conveys or delivers possession of any Development Parcel, including the Common Area, it will be in "AS IS" condition. The Agency makes and will make no representation or warranty, express or implied, on the condition, possession or title of any Development Parcel, the Common Area or any other part of the Master Development Site. "Condition" includes, without limitation, the condition of soil, geology, known or unknown seismic faults, the presence of Hazardous Materials, or the presence of any known or unknown faults on or below the surface of any Development Parcel. The Agency will have no obligation or liability to the Developer or any other party for the suitability of any Development Parcel or any portion of the Common Area for the development contemplated and makes no warranty of suitability or fitness for purpose.

The "AS IS" condition of the Master Development Site and the Development Parcels includes, but is not limited to, the following conditions: (i) those conditions that any Toxics Reports disclose, and (ii) those conditions disclosed by the files of the regulators, such as but not limited to the Fresno County Health Department, and the California Regional Water Quality Control Board.

8.7 Environmental Indemnification. From and after Closing on a Development Parcel, the Developer shall defend, indemnify and hold harmless the Agency and its representatives, employees, consultants, officers and volunteers from any claims, liabilities, damages, remediation costs and judgments which may result from the presence, removal and storage of any Hazardous Materials on the Development Parcel, including Common Area. The Developer will be obligated under this subsection whether the Agency or any of its respective officers, officials, employees, agents, boards or volunteers are actively or passively negligent. However, the Developer will not be obligated for any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the Agency or any of its officers, officials, employees, agents, boards or volunteers acting within the scope of their authority.

8.8 Agency Sale to Third Party.

8.8.1 Developer Failure to Proceed. If the Developer fails to give a certificate of readiness to proceed on a Development Parcel within the time specified in subsection 7.6, the Agency may give notice to the Developer that the Agency intends to sell the Development Parcel to another person or entity. If the Developer fails to give the certificate of readiness within 60 days after such notice, the Agency may then sell the Development Parcel to another person or entity that

31

the Agency determines, in the Agency's sole judgment, has sufficient financial strength and business experience in planning, financing, development, ownership, and operation of similar projects to acquire the Development Parcel and to complete on that Development Parcel the Developer Improvements, or other improvements acceptable to the Agency and the transferee, in accordance with the Master Plan and the Master Plan CC&R's.

8.8.2 Severed Parcels. If a Development Parcel, Agency Parcel or Acquisition Parcel is severed from this Agreement by the Parties pursuant to any provision of this Agreement, the Agency may then sell the Development Parcel, Agency Parcel or Acquisition Parcel to another person or entity that the Agency determines, in the Agency's sole judgment, has sufficient financial strength and business experience in planning, financing, development, ownership, and operation of similar projects to acquire the Development Parcel, Agency Parcel or Acquisition Parcel and to complete on that parcel Developer Improvements, or other improvements acceptable to the Agency and the transferee, in accordance with the Master Plan and the Master Plan CC&R's.

9 CONDITIONS PRECEDENT TO CONSTRUCTION. The following are conditions precedent to the Developer's obligation and right to begin construction of the Developer Improvements on any Development Parcel in either Phase I or Phase II. These conditions must be satisfied by the times set forth below or, if no time is stated, by the time set forth in the Schedule of Performance, unless the benefitting Party, in writing, waives the condition or the Parties extend the time for satisfaction. Either Party may terminate this Agreement as provided herein for failure of any condition following the date set for satisfaction, unless the Parties extend the date.

9.1 Conveyance of Development Parcel. The Agency shall have conveyed title and/or possession of the Development Parcel to the Developer.

9.2 Agency Review and Approval. Solely to assure the Agency that the Developer Improvements will further the redevelopment goals, requirements and expectations of the Plan, the Law and this Agreement, the Developer will submit all development-related items to the Agency for review and approval. If the Developer must submit the document to the City, the Developer will deliver a copy to the Agency at the same time. The Agency will approve or disapprove the items in writing within 30 days after receipt. These items include, but are not limited to, building permits, conditional use permits, site plans, building plans, reciprocal easements, reciprocal parking agreements, if needed, basic concept drawings, elevation and other drawings showing architectural style, design and features, landscaping plans prepared by a professional landscape architect (including any temporary landscaping on the Office Building No. 1 Parcel, the Surface Parking Parcel and the portion of the Common Area in Phase I), finish grading plans

(prepared by a licensed civil engineer), schematic plans, preliminary plans and final construction plans.

The Developer will submit the items for review within the times set forth in the Schedule of Performance (Exhibit D). The Agency's Executive Director, Redevelopment Administrator or designee will conduct the review and approval. The Agency's review will be in addition to and without limitation on any review and approval by the City or any other governmental agency having jurisdiction. The Agency will not require or permit the Developer to take any action or to refrain from any action that conflicts with or is less restrictive than any development requirement of the City.

If the Agency disapproves a development-related document, the Agency will notify the Developer and will provide reasonable detail of its reasons for disapproval and the changes it requires. The Agency and the Developer then will meet and confer in good faith to resolve the basis for disapproval. Upon conclusion of that process, the Developer will diligently and promptly revise, if necessary, the disapproved plans, drawings or development-related documents and resubmit them to the Agency. The Developer may appeal any disapproval by Agency's Executive Director, Redevelopment Administrator or designee to the Agency Board.

9.3 Incorporation and Ownership of Approved Documents; Material Change. After the Agency approves each development-related document, the Developer will provide a duplicate copy of each approved document to the Agency; after that, the document will become a part of this Agreement as though fully set forth herein. The duplicate document will belong to the Agency for use as it may deem advisable including, but not limited to, completion of the Project or any Developer Improvements upon any Default of the Developer. The Developer may not make any Material Change to an Agency-approved development-related document without first submitting the change to the Agency for review and approval according to the process in subsection 9.2. Until the Agency approves a Material Change, the previously approved document will be the controlling document.

9.4 City and Other Governmental Approvals. The Developer shall have obtained any City and/or other governmental permits or approvals required for the Developer to complete the Developer Improvements on the Development Parcel. The Developer will cooperate with the Agency and the State as needed to obtain any other governmental permits or approvals necessary to the Project, the State Parking Facilities or the Courthouse Facilities. Also, the Agency will assist the Developer as reasonably required in obtaining necessary City and other governmental permits or approvals for the Developer Improvements. The Agency's signature to this Agreement or approval of any governmental permit or approval, however, is not approval by the City and in no way limits the discretion of the City or any other governmental agency in the permit and approval

process including, without limitation, the City's or other governmental agency's detailed review and approval of the Developer's final construction plans and specifications.

9.5 Construction Contracts. The Developer's construction contracts with contractors, appropriately licensed and qualified for construction of the Developer Improvements on the Development Parcel and approved by the Agency, are in effect. Each construction contract will provide that the contractor will complete construction for some fixed or specified maximum amounts pursuant to the approved final construction plans and the approved Financing Plan.

Within 15 business days after the City issues a building permit for construction on a Development Parcel, the Developer shall submit copies of the construction contract(s) for that Development Parcel to the Agency's Executive Director, Redevelopment Administrator or a designee, for the sole and limited purposes of determining: (i) that the costs of work have been clearly fixed and are consistent with the approved Financing Plan, (ii) that no contract contains Material Changes, not already approved by the Agency, to the Financing Plan or any development-related document, and (iii) that the contract(s) contain the required equal opportunity covenants.

10 DEVELOPER'S CONSTRUCTION OBLIGATIONS FOR INDIVIDUAL DEVELOPMENT PARCELS.

10.1 Beginning Construction. Notwithstanding any other provision of this Agreement, the Developer will not begin construction on any Development Parcel until the Agency has title or possession rights in all portions of the Development Parcel and has conveyed title and/or possession to the Developer.

10.2 Development of Individual Development Parcels. The Developer will begin construction of the Developer Improvements on each Development Parcel: (i) within 90 days after the Closing in which the Agency conveys the Development Parcel to the Developer or the Agency delivers exclusive possession to the Developer under a prejudgment order of possession, or (ii) if the City has not issued a building permit for the Developer Improvements within the 90-day period through no fault of the Developer, then within 30 days after the City issues the building permit. The Developer may request an extension, and the Agency in its sole discretion may grant the extension. The Developer will diligently complete the Developer Improvements on each Development Parcel according to this Agreement, the Plan, the Scope of Development (Exhibit E), the Master Plan CC&R's, the Schedule of Performance (Exhibit D), the approved final construction plans, the Master Plan CC&R's, the Master Plan, all City permits and approvals, all Agency approvals and all applicable local, state and federal laws, codes, standards and regulations. Without limiting the generality of the foregoing, construction and completion of Developer Improvements on a Development Parcel shall comply with the following:

10.2.1 Construction Completion Deadline. The Agency will convey the Development Parcels to the Developer only for redevelopment pursuant to this Agreement, the Master Plan, the Master Plan CC&R's, the Plan and the Law, and not for land speculation. Therefore, the Developer will diligently pursue construction on each Development Parcel within the times shown in the Schedule of Performance for that Development Parcel and will complete such construction not later than the date shown in the Schedule of Performance (or another date as the Parties may agree in a writing approved by the Agency Board).

Without limiting the preceding paragraph, the Developer shall use best efforts to complete construction of Office Building No. 1 on the Office Building No. 1 Parcel within two years after completion of the Courthouse Facilities by the State. The Developer shall in any event commence construction of Office Building No. 1 no later than four years after the Effective Date of this Agreement.

10.2.2 Utilities. The Developer will remove or relocate, or arrange for removal or relocation of, utility lines and facilities that must be removed or relocated to accommodate development of the Development Improvements on the individual Development Parcels, according to the Schedule of Performance.

10.2.3 Site Clearance. Except for the historic structures relocated by the Agency (see subsection 5.3), the Developer will demolish structures and improvements and clear the individual Development Parcels to accommodate the Developer Improvements, all according to the Schedule of Performance.

10.2.4 Surface Parking Parcel and Surface Parking Facilities. As part of the Phase I Developer Improvements, the Developer shall construct the Surface Parking Facilities on the Surface Parking Parcel and use the Surface Parking Facilities to temporarily accommodate some of the vehicle parking for Office Building No. 1 until construction of the first structure of the Parking Structure in Phase II, as provided in paragraph 10.2.5.

Upon conveyance of the Office Building No. 2 Parcel to the Developer and satisfaction of all conditions precedent to construction of Office Building No. 2, as specified in Section 9, the Developer may use a portion of the Surface Parking Parcel for Office Building No. 2 improvements, provided that (i) the remaining portion of the Surface Parking Facilities contains at least 400 vehicle parking spaces, and (ii) the Developer obtains, at its expense, an amendment to the Parcel Maps for Phases I and II, a lot line adjustment or other approval required by the City to remove such portion of the Surface Parking Parcel from the boundaries of the Surface Parking Parcel and include it within the boundaries of the Office Building No. 2 Parcel.



If the Developer completes the first structure of the Parking Structure as provided in paragraph 10.2.5, and upon satisfaction of all conditions precedent to construction of Office Building No. 3 and the second structure of the Parking Structure, as specified in Section 9, some of the vehicle parking for Office Building No. 1 will be provided in the first structure of the Parking Structure and the Developer shall remove the Surface Parking Facilities and use the Surface Parking Parcel to construct, operate and maintain Office Building No. 3 and the second structure of the Parking Structure, as provided in this Agreement, provided that the Developer obtains, at its expense, an amendment to the Parcel Map for Phase II, a lot line adjustment or other approval required by the City to create the Office Building No. 3 Parcel (Parcel F shown on the Master Plan) on the Surface Parking Parcel for construction of Office Building No. 3, with the remainder of the Surface Parking Parcel to be used for construction of the second structure of the Parking Structure.

The Surface Parking Parcel and the Surface Parking Facilities shall continue to be used to accommodate some of the vehicle parking for Office Building No. 1 until completion of the first structure of the Parking Structure, subject to the following:

- (i) If the Developer loses its right to conveyance of the Parking Structure Easement as provided in paragraph 10.2.5 and is therefore unable to construct the first structure of the Parking Structure but proceeds with construction of Office Building No. 3 in Phase II; or
- (ii) If, after completion of Office Building No. 1 and the Surface Parking Facilities but prior to completion of the first structure of the Parking Structure, the Agency exercises its right of reentry, termination and reverter on the Surface Parking Parcel pursuant to Section 20.3 because the Developer fails to proceed with or abandons Phase II altogether, or fails to proceed with or complete or abandons Office Building No. 2, Office Building No. 3 or either structure of the Parking Structure;

the Agency will make available, at the Developer's expense, replacement vehicle parking for Office Building No. 1 on one or more sites within a radius of no more than two and one-half blocks from the boundaries of the Office Building No. 1 Parcel, at a rate no greater than 1.6 vehicle parking spaces per 1,000 gross square feet of space in Office Building No. 1. The Developer shall be responsible for obtaining, also at its expense, any replacement vehicle parking in addition to that made available by the Agency and required to meet the parking requirements for Office Building No. 1 under the City's Zoning Ordinance or other applicable codes or regulations.

10.2.5 Parking Structure. The Developer will be entitled to conveyance of the Parking Structure Easement only for, and shall use the Parking Structure

Easement only for, construction, operation and maintenance of the first structure of the Parking Structure. The Developer shall commence construction of the first structure of the Parking Structure within the time specified in the Schedule of Performance, but no later than the time construction of Office Building No. 2 is commenced. The design and operating specifications for the first structure of the Parking Structure shall be subject to prior review and approval by the State's Department of General Services.

If the Developer fails to give the Agency a certificate of readiness to proceed with the first structure of the Parking Structure, as required by subsection 7.6, within four years after the Effective Date of this Agreement, the Developer will have no right to conveyance of the Parking Structure Easement.

Notwithstanding the preceding paragraph or paragraph 10.2.1, the Developer acknowledges that paragraph 9.3.4.1 of the State Agreement provides that if the Developer has not commenced construction of Office Building No. 1 within four years after the Effective Date of the State Agreement, the Developer will have no right to transfer or use of the Parking Structure Easement for construction, operation or maintenance of the Parking Structure or any other purpose. Accordingly, if the Developer has not commenced construction of Office Building No. 1 within four years after the Effective Date of the State Agreement (February 25, 2004), and if the State demands in writing that the Agency comply with paragraph 9.3.4.1 of the State Agreement, the Developer will have no right to conveyance of the Parking Structure Easement, and the Agency will use or dispose of the Parking Structure Easement as provided in paragraph 9.3.4.1 of the State Agreement.

After completion of the first structure of the Parking Structure, the Developer shall construct the second structure of the Parking Structure on the Surface Parking Parcel to accommodate some of the vehicle parking for the Developer Improvements in Phase II, as shown on the Master Plan and described in the Project Description. The Developer shall commence construction of the second structure of the Parking Structure within the time specified in the Schedule of Performance, but no later than the time construction of Office Building No. 3 is commenced.

10.2.6 Office Building No. 1. The height of Office Building No. 1 shall not exceed 135 feet. The ground level floor plate of Office Building No. 1 shall not exceed 30,000 square feet. The plans, drawings and specifications for the exterior of Office Building No. 1, including all proposed signage and incidental exterior improvements, shall be subject to prior review and advice by the State's Department of General Services for the purpose of verifying that the exterior appearance of Office Building No. 1 will comply with the Master Plan CC&R's. The Developer also will give the State's Department of General Services the right

to review and approve, in advance, any retail or other commercial uses proposed in Office Building No. 1.

10.3 Progress Reports. Until the Developer completes the Developer Improvements on a Development Parcel and the Agency issues a Release of Construction Covenants for that Development Parcel, the Developer will provide monthly written reports to the Agency of its construction progress. The reports will be in such form and detail as the Agency may require.

10.4 Rights of Access. The Agency's representatives will have the right to enter any Development Parcel or other portions of the Master Development Site during construction, without charge or fee, during normal construction hours to assure compliance with this Agreement. Entry by Agency representatives will not interfere with the construction of the Master Plan improvements or the Developer Improvements.

10.5 Release of Construction Covenants. After the Developer has satisfactorily completed construction of the Developer Improvements on a particular Development Parcel according to this Agreement, the Developer may ask the Agency in writing to issue a Release of Construction Covenants for that Development Parcel. The Developer or its successor will provide the following with the request: (i) a certificate of occupancy, (ii) a certificate from the Developer's architect that construction on the Development Parcel is complete and complies with this Agreement, the Master Plan, the Master Plan CC&R's and the approved final construction plans, (iii) evidence that any recorded mechanics' or materialman's liens or stop notices have been released or bonded against, and (iv) one or more loan commitments, which the Developer has accepted in writing, from qualified lenders for permanent (take out) financing for the Developer Improvements, or other evidence reasonably satisfactory to the Agency that the Developer has secured such permanent (take out) financing.

The Agency, within 30 days after receiving the Developer's written request and supporting documents, will (i) issue the Release of Construction Covenants, or (ii) give the Developer its reasons for not issuing it and the actions that the Developer must take before the Agency will issue the Release. In the latter case, the Agency will thereafter issue the Release of Construction Covenants within 30 days after receiving the Developer's further written request and supporting documents demonstrating, to the Agency's reasonable satisfaction, compliance with the actions specified by the Agency in its prior response to the initial request for the Release. The Release, when recorded in the Official Records of Fresno County, is a conclusive determination that the Developer has satisfied its construction obligations under this Agreement for the Development Parcel(s) described therein.

The Release will not be evidence that the Developer has complied with or satisfied any obligation to a mortgagee holding a deed of trust securing money lent to finance the construction. The Release will not terminate the Developer's obligations under this

Agreement that, by their nature, are intended to survive the Developer's completion of construction on the specific Development Parcel(s) and will not terminate the Developer's construction obligations on any Development Parcel other than the Development Parcel(s) described in the Release. The Release is not the notice of completion under California Civil Code § 3093.

10.6 Effect of Recording Release of Construction Covenants. After a Release of Construction Covenants is recorded, any party then owning or afterwards purchasing, leasing or acquiring any interest in a Development Parcel described in the Release will not incur any obligation or liability for construction under this Agreement with respect to that Development Parcel.

11 Master Plan Improvements and Obligations. In addition to the Developer's obligation to construct Developer Improvements on individual Development Parcels as set forth in subsection 10.2, the following obligations, work and improvements for the Master Plan will be performed, constructed, installed and completed by the Agency, the City or the Developer, as specified below, in accordance with the Scope of Development, the approved final construction plans, the Master Plan CC&R's, all City permits and approvals, all Agency approvals and applicable provisions of the State Agreement.

11.1 Agency Phase I Improvements. The Agency shall be responsible for, and only for, constructing and installing the following work and improvements for Phase I of the Master Plan:

11.1.1 The Agency will perform, construct and install, or will cause the City to perform, construct and install, in reasonable coordination with the State's construction of the Courthouse Facilities, all work and improvements specified in paragraphs 9.3.1, 9.3.2, 9.3.4.4 and 9.3.4.5 of the State Agreement, including installation of curb, gutter, sidewalk and trees and landscaping improvements in public street rights-of-way along the boundaries of the Courthouse Parcel, the State Parking Parcel and the rest of Phase I of the Master Plan.

The Developer will have the right to review and recommend the types of street trees to be installed by the Agency or the City in the public street rights-of-way along the perimeter of Phase I. However, as many existing trees as possible will be retained.

The Developer, at its expense, shall properly irrigate and maintain the street trees and landscaping installed by the Agency or the City pursuant to this paragraph 11.1.1. The irrigation system for the street trees and landscaping installed by the Agency or the City will be connected to the irrigation system installed by the Developer for the Phase I Parcels. The curb, gutter and sidewalk improvements will be maintained by the City in accordance with City standards.

The Agency will be responsible for the costs of installing such improvements to the extent necessary to comply with City plans, codes, ordinances and specifications. If the State or the Developer requests other than standard City curb, gutter, sidewalk or landscaping along the perimeter of the Courthouse Parcel, the State Parking Parcel or any other portion of Phase I, the State or the Developer (whichever makes the request) will be responsible for any increased costs of such improvements.

On or before the Effective Date, the Agency will have delivered to the State and the Developer the final plans, drawings and specifications for construction and installation of public street right-of-way improvements required by this subsection 11.1.1 which will be used by the Agency or its contractor(s) for relocation and construction of such public street right-of-way improvements. The final plans, drawings and specifications for improvements along the perimeter of the Courthouse Parcel and the State Parking Parcel will be based on preliminary plans, drawings and specifications approved by the State prior to the Effective Date, pursuant to paragraph 9.3.2 of the State Agreement. If they have not already given their approvals before the Effective Date, the State (as to the perimeter of the Courthouse Parcel and the State Parking Parcel) and/or the Developer, as the case may be, will have 30 days after delivery to review and approve the final plans, drawings and specifications. Neither the State nor the Developer will withhold approval unreasonably and will give approval if they confirm that the work shown in the plans, drawings and specifications will comply with City plans, codes, ordinances and specifications and, if applicable, any additional requirements requested by the State or the Developer. The State and the Developer will give its approval or nonapproval in writing and, if nonapproval, the specific reasons for nonapproval. If either the State or the Developer does not approve any of the plans, drawings or specifications, authorized representatives of the State, the Developer, the Agency and the City shall meet within 10 days after notice of nonapproval and confer in good faith to remove or resolve the specified reasons for nonapproval.

The Agency shall complete or cause completion of construction and installation of the work and improvements specified in this paragraph 11.1.1 according to the approved final plans, specifications and drawings and the applicable time lines in the State Agreement, including any extensions thereof.

11.1.2 The Agency shall construct the State Parking Facilities on the State Parking Parcel in accordance with paragraph 2.6.4 of the State Agreement, including on-site landscaping and curb, gutter, sidewalk, street trees and landscaping in the public street right-of-way along the perimeter of the State Parking Parcel. The Developer, at its expense, shall properly irrigate and maintain the on-site landscaping and the street trees and landscaping in the public street right-of-way.

40

11.2. Developer Master Plan Improvements. Except for those Phase I improvement obligations expressly assumed by the Agency in subsection 11.1, the Developer shall perform, construct, install and complete, at its cost and expense, all other obligations, work and improvements for Phase I and Phase II of the Master Plan required by this Agreement; the State Agreement; all City or other government agency permits and approvals; the EIR; and Mitigated Negative Declaration No. C-02-061 (approved by the City on November 19, 2002), including but not limited to the following:

11.2.1 To the extent not already completed by the Agency pursuant to the State Agreement, the Developer shall clear all real property in Phase I of the Master Plan, other than the Courthouse Parcel and the State Parking Parcel, of any remaining existing structures, buildings and unneeded infrastructure as required by paragraph 2.6.4 of the State Agreement, and shall clear all real property in Phase II of the Master Plan, other than the Lahvosh Bakery Parcel, of all existing structures, buildings and unneeded infrastructure.

11.2.2 The Agency delegates and transfers to the Developer, and the Developer shall construct, install and complete all work and improvements specified in paragraphs 9.3.4.2, 9.3.4.3, 9.3.5.2, 9.3.5.4, 9.3.5.5 and 9.3.5.6 of the State Agreement.

11.2.3 The Developer shall develop the area between the Courthouse Parcel and the Office Building No. 1 Parcel as a plaza and associated improvements in accordance with the Master Plan, the Scope of Development and paragraph 9.3.5.3 of the State Agreement. The Developer shall complete these improvements on or before the date the Courthouse Facilities are completed.

12 GENERAL CONSTRUCTION OBLIGATIONS.

12.1 Coordination with Courthouse Facilities and State Parking Facilities. The work and improvements for Phase I of the Master Plan described in Section 11 shall be performed, constructed and installed, and the Developer shall perform, construct and install Office Building No. 1, the Surface Parking Facilities and all other Developer Improvements and work in Phase I, so as to prevent disruption of the completed Courthouse Facilities and State Parking Facilities, and prevent unreasonable interference with operations in the Courthouse Facilities or the State Parking Facilities during future development of Phase I.

12.2 Developer's Construction Costs. Except for obligations and fees expressly assumed by Agency in this Agreement, the Developer will be responsible for all costs and fees associated with developing the Master Plan improvements, the Development Parcels, the Common Area and other portions of the Master Development Site including, without

41

limitation, all fees and costs associated with obtaining governmental permits and approvals.

12.3 Compliance With Laws. The Developer shall comply with all applicable laws, regulations and rules of the governmental agencies having jurisdiction over the Master Development Site, the Project or the Developer, including, but not limited to, applicable federal and state labor standards and environmental laws and regulations.

The Developer, not the Agency, is responsible for determining applicability of, and compliance with, all local, state and federal laws to the Developer's activities on the Development Parcels, the Common Area and the Master Development Site including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City charter, and the City's municipal code. The Agency makes no representations as to the applicability or inapplicability of any such laws to this Agreement, the Developer, the Developer Improvements, the Master Plan improvements or the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. The Agency will not be liable or responsible in law or equity for any failure of the Developer to comply with any such laws, even if the Agency knew or should have known of the need for such compliance or failed to notify the Developer of the need for such compliance.

12.4 Equal Opportunity; Anti-Discrimination. Neither the Developer nor any of the Developer's contractors, subcontractors or employees will discriminate based on race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work or activities undertaken pursuant to this Agreement. The Developer and each of its construction contractors will give employment preference, to the extent practicable, to individuals residing within the Project Area.

12.5 Extension of Time for Completion. The Agency may extend, in writing, the Developer's deadline for completing the Master Plan improvements specified in subsection 11.2 or the Developer Improvements on a Development Parcel for a period reasonably necessary to overcome a delay if the delay is due to a cause that is beyond the Developer's reasonable control. A cause is beyond the Developer's reasonable control if the Developer, with reasonable diligence, could not have foreseen and avoided the cause. Such causes include, but are not limited to, acts of God; unusually severe weather or flood; war, riot or act of the public enemy; act of domestic or foreign terrorism; labor dispute; unavoidable inability to secure labor, materials, supplies, tools or transportation; or acts or failures to act by any governmental authority having jurisdiction (other than Agency acts contemplated by this Agreement), and other than the Developer's lack of funds or inability to obtain construction financing. As a condition precedent to any extension of time, the Developer will give the Agency notice within 10 days after any cause for delay occurs. The notice will set forth the cause of the delay, the extension the Developer expects is

42

necessary to overcome the cause, and a request that the Agency approve the extension. Any extension of time for completion of Office Building No. 1 or the Master Plan improvements in Phase I also must be approved by an authorized representative of the State. The Parties will confirm any approved extension in writing as a modification to the Schedule of Performance.

12.6 Liens and Stop Notices. The Developer will not allow any lien or stop notice to be placed on any Development Parcel, the Courthouse Parcel, the State Parking Parcel or any other part of the Master Development Site, from any act or omission of the Developer or any of its employees or contractors. If a claim of lien or stop notice is given or recorded, the Developer will take the following actions within 30 days after recording or service of the lien or notice:

12.6.1 Pay or discharge the lien or notice; or

12.6.2 Record and deliver a surety bond in sufficient form and amount or otherwise provide proof to the Agency of a source for the release of the lien or notice; or

12.6.3 Give the Agency other assurance that the Agency, in its sole discretion, deems satisfactory for paying the lien or bonding the stop notice and protecting the Agency.

13 AGENCY'S IMPROVEMENTS AND PROJECT OBLIGATIONS. Subject to all the conditions precedent and any other applicable express provisions of this Agreement, and in addition to those obligations specified in subsection 11.1, the Agency's obligations are as follows:

13.1 Site Acquisition and Assembly. After the Commencement Date for Phase I or Phase II, the Agency will be responsible for assembling the individual Development Parcels in that Phase as set forth in this Agreement and the Schedule of Performance.

The Agency will use best efforts to acquire the Acquisition Parcels in the Master Development Site and to assemble them with Agency Parcels into the Development Parcels as provided in this Agreement. If the Agency is unable to acquire an Acquisition Parcel through negotiated purchase, gift or other voluntary means, the Agency will commence and pursue all steps required by the Law and by the California Eminent Domain Law (Title 7 of Part III of the Code of Civil Procedure) to acquire the Acquisition Parcel through the power of eminent domain. However, the Agency's obligation to acquire any Acquisition Parcel through eminent domain is subject to the Agency Board holding a duly noticed public hearing, determining that the public interest and necessity require acquisition of the Acquisition Parcel and adopting a resolution of necessity making the findings, all as required by Code of Civil Procedure Sections 1245.220-1245.255. The Agency cannot

48

commit in advance that the Agency Board will be able to make such findings or that it will adopt a resolution of necessity as to any Acquisition Parcel.

13.2 Conveyance of Development Parcels. After the final Parcel Map for Phase I or Phase II (as applicable) is approved and recorded, and on receipt of a certificate of readiness to proceed from the Developer as provided in subsection 7.6, and subject to satisfaction or waiver of conditions precedent to conveyance under Section 7, the Agency will convey each Development Parcel in that Phase to the Developer as provided in this Agreement and according to the Schedule of Performance.

13.3 Relocation and Acquisition Information. The Agency will be the primary point of contact for owners, tenants and other interested persons for information and resolution of issues concerning acquisition of the Acquisition Parcels, eminent domain, relocation and replacement housing.

13.4 Vacations and Abandonments. Prior to the Effective Date, the City has vacated the Santa Clara Street right-of-way between N and O Streets, the N-O Alley between Ventura Street and Freeway 41, the alley along Freeway 41 between N Street and the N-O Alley and an associated sewer and water easement. Subject to public hearings, notices, findings and other proceedings required by law, the Agency will cause the City to evaluate and take all steps to abandon or vacate that portion of the N Street right-of-way within the boundaries of the Master Development Site, and any other public alley or public right-of-way, as needed for development of the Project, the Courthouse Facilities and the State Parking Facilities on the Master Development Site according to the Schedule of Performance.

13.5 Historic Structures. The Agency will be responsible to relocate off the Master Development Site existing historic structures as provided in subsection 5.3 and paragraph 10.2.3.

13.6 Master Plan CC&R's. The Agency will cooperate with and reasonably assist the Developer in preparing the Master Plan CC&R's and in obtaining the State's review and approval of the Master Plan CC&R's.

13.7 Lahvosh Bakery Project. Within 60 days after the Commencement Date for Phase II, the Agency will use its best efforts to negotiate and enter into an owner participation agreement with the owner of the Lahvosh Bakery Parcel for development of the Lahvosh Bakery Project, in accordance with the Law, the Plan and applicable owner participation rules under the Plan. The terms and conditions of the owner participation agreement will be separately determined by the Agency and the owner, but will provide for at least the following:

13.7.1 The owner shall commence construction of the Lahvosh Bakery Project within 24 months after the effective date of the owner participation agreement and shall complete the Lahvosh Bakery Project within 48 months after such effective date.

13.7.2 The design and appearance of the Lahvosh Bakery Project shall comply with the Master Plan and the Master Plan CC&R's. The Developer will have the right to review all plans, drawings and specifications for the Lahvosh Bakery Project to ensure such compliance. The owner shall coordinate construction of the Lahvosh Bakery Project with construction of the Developer Improvements on the Phase II Parcels to ensure compliance and consistency with the Master Plan and the Master Plan CC&R's.

13.7.3 If the owner fails to commence construction within 24 months after the effective date of the owner participation agreement (or any extension permitted thereunder), the Agency will have the right to take all steps required by law to acquire title to and possession of the Lahvosh Bakery Parcel and to thereafter convey such parcel to the Developer for development pursuant to the Master Plan and the Master Plan CC&R's, on terms mutually agreed by the Agency and the Developer.

If the Agency and the owner enter into the owner participation agreement described above, the Developer will cooperate with and assist the owner in development of the Lahvosh Bakery Project, and will coordinate construction of and connect the Developer Improvements in Phase II with the Lahvosh Bakery Project improvements.

If the Agency is unable to negotiate and enter into the owner participation agreement within 60 days after the Commencement Date for Phase II or such later date as the Agency, the owner and the Developer may agree, the Agency will take all steps required by law to acquire title to and possession of the Lahvosh Bakery Parcel and to thereafter convey such parcel to the Developer for development pursuant to the Master Plan and the Master Plan CC&R's, on terms to be agreed by the Agency and the Developer. The Agency's obligation to acquire the Lahvosh Bakery Parcel will be subject to the conditions and limitations in subsection 11.1 for the Agency's acquisition of an Acquisition Parcel.

14 DEVELOPER'S CONTINUING OBLIGATIONS.

14.1 **Taxes and Assessments.** The Developer will pay before delinquency all ad valorem real estate taxes and assessments on the Development Parcels conveyed to it, subject to a right to contest the taxes in good faith. The Developer will remove any levy or attachment made on the Development Parcels, or assure the satisfaction thereof within a reasonable time.

14.1.1 The Developer will not apply for or receive any exemption from property taxes or assessments on any interest in the Development Parcels, any other portion of the Master Development Site, or the Developer Improvements, except as expressly provided in this paragraph 14.1.1 or paragraph 14.1.2. If any tenant, lessee or other occupant of the Developer Improvements on a Development Parcel is a governmental agency, charitable entity, not-for-profit entity or any other person or entity which is not subject to property taxation or possessory use taxation, and such tenant, lessee or occupant entity requires that the Developer apply for and maintain a property tax exemption on the portion of a Development Parcel occupied by it, the Developer shall pay the Agency an annual amount equal to the property tax increment [(0.06) X (full cash value of the property, including the value of the Developer Improvements and other improvements)] the Agency would receive from such portion of the Development Parcel but for the tax exempt nature of the proposed tenant, lessee or occupant.

14.1.2 Notwithstanding paragraph 14.1.1, the Developer may notify the Agency that the Developer is attempting to solicit or retain a tax-exempt governmental agency as a tenant or lessee on a Development Parcel or in any building thereon and that, in order to be competitive with other potential lessors for such tenant, the Developer must be relieved from the obligation to pay the in-lieu property tax increment amount provided in paragraph 14.1.1. The notice must be accompanied by written evidence, signed by an authorized executive official of the governmental agency, establishing to the Agency's reasonable satisfaction that the governmental agency will require, as a condition of the new or continued lease or rental agreement, that the lessor apply for and maintain a property tax exemption on the property to be occupied by the agency and that the lease or rental rates not include any amount for property tax. If the Developer gives such notice and supporting written evidence, the Parties shall promptly meet and negotiate in good faith, for a period of 30 days, on whether the Developer will be relieved from all or part of the in-lieu tax increment payments with respect to lease or rental to that governmental agency. Any agreement reached by the Parties will be stated in writing and signed by the Executive Director or Redevelopment Administrator and an authorized representative of the Developer.

If the Parties are unable to agree within 30 days or any longer negotiation period to which the Parties may agree, the Developer shall, if it is successful in obtaining or retaining the lease or rental to the tax-exempt governmental agency, be obligated to pay the Agency an annual amount equal to one-half of the property tax increment [(0.03) X (full cash value of the property, including the value of the Developer Improvements and other improvements)] the Agency would receive from such portion of the Development Parcel but for the tax-exempt nature of the governmental agency.

46

The agreement between the Parties or the alternative payment obligation under this paragraph 4.1.2, as applicable, will apply to such portion of the Development Parcel for the entire term of the tax-exempt governmental agency's lease, rental or occupancy. On expiration or other termination of such lease, rental or occupancy, the obligations of paragraph 14.1.1 shall again apply to such portion of the Development Parcel.

14.2 Maintenance. The Developer will, at its expense, maintain all walkways, lighting and other improvements, structures and landscaping in the plaza area between the Courthouse Parcel and the Office Building No. 1 Parcel and all portions of the Common Area within the Master Development Site in good repair and first class condition, and in compliance with the Master Plan CC&R's. All landscaping shall be kept sufficiently irrigated and in a healthy, weed-free condition.

14.2.1 Upon the Agency's conveyance of the Parking Structure Easement to the Developer for construction, operation and maintenance of the first structure of the Parking Structure, the Developer or its successors in interest shall, in perpetuity: (i) be responsible for the State's share (in addition to the share(s) attributable to the balance of the Master Plan Area) of on-going landscape and hardscape maintenance costs, as provided in the Master Plan CC&R's, and (ii) maintain the landscaping and hardscape on the Courthouse Parcel, the State Parking Parcel and the balance of the Master Development Site, as required by the Master Plan CC&R's.

14.2.2 Upon completion of the first structure of the Parking Structure, the Developer shall maintain and repair the Parking Structure at no cost to the State, the Agency or the City.

14.3 Security.

14.3.1 The Developer shall, at its expense, provide a security patrol or equivalent security services for the Common Area in the Master Development Site during normal business hours (Monday through Friday, 8:00 a.m. to 6:00 p.m.).

14.3.2 Without limiting the paragraph 14.3.1, upon completion of the first structure of the Parking Structure, the Developer or its successors in interest shall in perpetuity, provide and maintain adequate lighting and security in the Parking Structure and the areas between the Parking Structure and the Courthouse Facilities for State personnel walking to and from the Courthouse Facilities.

14.4 State Parking Rights. Upon completion of the first structure of the Parking Structure, the Developer or its successors in interest shall, in perpetuity and at no cost to the State, provide 150 reserved parking stalls to the State on the first and/or second floor of

the Parking Structure for use in connection with the Courthouse Facilities; provided that the Developer will have a license from the State to use the 150 parking stalls after 5:00 p.m. and before 6:00 a.m. on State work days and all day on Saturdays, Sundays and State holidays. Prior to completion of the first structure of the Parking Structure, and as a condition to the Agency's issuance of a Release of Construction Covenants for the first structure of the Parking Structure, the Developer shall negotiate and enter into a separate agreement with the State to implement the requirements of this subsection.

15 CONTINUING COVENANTS. The following conditions and covenants shall be set forth or otherwise incorporated in each Grant Deed from the Agency to the Developer for any Development Parcel or other part of the Master Development Site:

15.1 Covenants Continuing Until Recording of the Release of Construction Covenants. The following will be a covenant running with the land until recording of the Release of Construction Covenants.

15.1.1 Construction Covenants. The Developer shall comply with all the covenants and obligations in this Agreement to complete the Developer Improvements on the particular Development Parcel in accordance with the Master Plan (Exhibit A), the Scope of Development (Exhibit B) and the Schedule of Performance (Exhibit D).

15.2 Covenants Continuing Until the Agency Land Use Controls Expire. The following covenants will survive recordation of the Release of Construction Covenants on each Development Parcel and will remain in effect and run with the land until the land use controls of the Plan expire.

15.2.1 Applicability. The Developer acknowledges that the generation of additional sales and property tax revenues to the City and the Agency, removal of physical and economic blight in the downtown area of the City, and enhancement of the appearance of an important entryway to the downtown area are a material consideration for the Agency's entering this Agreement. The development, use and the maintenance of the Master Development Site as provided in this Agreement are essential to its assessable value and to effecting the goals of the Plan. Accordingly, the Developer covenants for itself, its members, officers, successors and assigns, and all persons claiming through any of them, that the covenants in this Subsection 15.2 shall run with the land until the land use controls under the Plan, as amended, expire.

15.2.2 Use of the Development Parcels. The use of the Development Parcels is restricted to a unified mixed-use development consisting of office, commercial, service and community uses and related purposes, consistent with this Agreement, the Scope of Development, the Plan, the Conditional Use Permit, the

48

Parcel Maps, the Master Plan CC&R's, building permits, final construction plans, and all other plans and permits approved for the various components of the Project on the Development Parcels, as may be amended. The Developer may not use or permit any other use of the Development Parcels without review and approval by the Agency and, if for the Office Building No. 1 Parcel, review and approval by the State. If a different use is approved, the Parties will amend this Agreement to reflect the different use and record the amendment.

15.2.3 Maintenance. The Developer will maintain or cause the transferees, lessees, tenants or occupants to maintain all improvements on the Development Parcels, including facade improvements, and in the Common Area in first class condition and repair (and, as to landscaping, in a healthy, weed-free condition), all according to the approved plans, the Master Plan CC&R's, and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. The Developer shall keep the Development Parcels, the Developer Improvements and the Common Area free from graffiti and free from any accumulation of debris or waste material, and will promptly replace dead and diseased plants and landscaping with comparable materials.

The Agency will provide notice to the Developer of any breach of this maintenance covenant. The Agency and the Developer will meet and confer promptly after the notice to determine the corrective actions and a schedule of performance. The Developer must cure the default within the agreed schedule, or (if no agreed schedule) within (i) 10 days after the Agency's notice for any default involving landscaping, graffiti, debris, waste material or general maintenance, or (ii) 30 days after Agency's notice for any default involving maintenance of building improvements. If the Developer does not cure the default within those times, the Agency, without obligation to do so, may enter the affected Development Parcel, the Common Areas and other portions of the Master Development Site, cure the default and protect, maintain, and preserve the Developer Improvements, the Common Area improvements and other Master Development Site improvements and landscaping.

The Agency may lien or assess the subject Development Parcel for the Agency's expenses in protecting, maintaining, and preserving the improvements and aesthetics of the Development Parcel, including a 15 percent administrative charge, all in the manner used by the City in the abatement of public nuisances. The notice and opportunity to cure provided for in this paragraph 15.2.3 will substitute for the noticing, hearing, and nuisance abatement order used by the City. The Developer will promptly pay all such amounts to the Agency upon demand.

249

15.2.4 Covenants Required By the Plan. As required under the Plan, the provisions of the Plan regarding land uses, zoning, requirements, property development standards and restrictions are incorporated into this Agreement as covenants running with the land on the entire Master Development Site.

15.2.5 Hazardous Materials Covenants. The Developer covenants that, from and after Closing, the Developer, as to each Development Parcel and all portions of the Common Area conveyed to it:

15.2.5.1 Shall not cause or permit any improvements thereon to be used for the generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

15.2.5.2 Shall comply and cause the improvements and any contractors, lessees and tenants thereon to comply with all Environmental Laws.

15.2.5.3 Shall immediately notify the Agency of the following: (i) the discovery of any Hazardous Materials thereon, (ii) any knowledge by the Developer that the Development Parcel or the Common Area does not comply with any Environmental Laws; (iii) any claims or actions pending or threatened against the Developer, the Development Parcel, the Common Area or any improvements thereon by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Environmental Laws (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or near the Development Parcel or the Common Area that could cause the Development Parcel, the Common Area or any other part of the Master Development Site to be designated as "border zone property" under the provisions of California Health & Safety Code §§ 25220 et seq., or any regulation adopted in accordance therewith.

15.2.5.4 In response to the presence of any Hazardous Materials on, under or about the Development Parcel or portion of the Common Area, shall immediately take, at the Developer's sole expense, all remedial action required by any Environmental Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

Upon prior notice to the Developer, the Agency, its employees and agents, without obligation to do so, may enter any Development Parcel, any portion of the Common Area or other portion of the Master Development Site to investigate the existence, location, nature and magnitude of any past or present release or threatened release

50

of any Hazardous Materials into, onto, beneath or from the Development Parcels, the Common Area or the Master Development Site.

15.2.6 Post-Closing Environmental Indemnity. The Developer shall defend, indemnify, and hold the Agency, the City and their respective boards, commissions, councils, officers, officials, officers, employees, agents and volunteers (collectively, "indemnitees") harmless from any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs and penalties that any indemnitee may sustain because of a breach of any agreement or covenant contained in this Agreement with respect to Hazardous Materials, or because of any use, generation, manufacture, storage, release, disposal or presence (whether or not the Developer knew of it) of any Hazardous Materials occurring in, on or about any Development Parcel, including the Common Area, after the Closing on that Development Parcel. Indemnified costs include, but are not limited to, all costs of legal proceedings and attorneys' fees. This indemnity will survive the recording of the Release of Construction Covenants on each Development Parcel. This indemnification is in addition to, and without limitation on, the other indemnity provisions in this Agreement.

15.3 Nondiscrimination Covenants Running in Perpetuity. The following covenants shall run with the land in perpetuity on the entire Master Development Site:

15.3.1 Nondiscrimination Provisions in Deeds. Each Grant Deed by which the Agency conveys any Development Parcel to the Developer will contain a provision in substantially the following form as a covenant running with the land in perpetuity:

"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, age, physical or mental disability, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises herein conveyed. The foregoing covenants shall run with the land."

15.3.2 Mandatory Language in All Subsequent Deeds, Leases, and Contracts. All deeds or contracts for the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of any part of the Development Parcels or any

building or improvement thereon, including, but not limited to, those entered between the Developer and any third party, will each contain express nondiscrimination provisions in substantially the same form as set forth in paragraph 15.3.1 above. The Developer will submit each document first to the Agency for review to determine that its nondiscrimination clauses comply with this paragraph and Section 33436 of the Law.

15.4 Effect and Priority of Covenants. The Agency is a beneficiary of the covenants running with the land in this Section 15, in its own right and for protecting the interests of the community and other parties, public or private, intended to benefit from the covenants. The covenants will run without regard to whether Agency has been, remains, or is an owner of any land or interest therein in the Master Development Site or the Project Area. The Agency will have the right, if any covenant is breached, to exercise all legal or equitable rights and remedies to remedy the breach, after expiration of any applicable notice and cure periods.

Except Agency liens imposed pursuant to the maintenance covenant above (which shall be effective on the date recorded), the covenants contained in this Agreement have priority over the rights of all holders of any mortgage, deed of trust or other monetary lien or encumbrance on all or any portion of the Master Development Site. For purposes of this paragraph, issuance by Escrow Holder or another title insurance company, satisfactory to the Agency, of a preliminary title report showing that this Agreement or a memorandum thereof has been recorded before any mortgage, deed of trust or other monetary lien or encumbrance on the Master Development Site (other than non delinquent liens for taxes and assessments and easements previously existing), will be evidence satisfactory to the Agency that the covenants contained in this Agreement have priority.

16 DEVELOPER REPRESENTATIONS AND WARRANTIES; TRANSFER AND ASSIGNMENT.

16.1 Representations and Warranties of Developer. The following representations and warranties shall be deemed initially given on the Effective Date, shall be deemed reconfirmed and in effect on the date of Closing for each Development Parcel, and shall survive the recording of the Grant Deed for each Development Parcel. The Agency may rely on them throughout the life of this Agreement unless the Developer notifies the Agency of any substantial change affecting the representations and warranties. The Developer and each person executing this Agreement for the Developer represent and warrant that:

16.1.1 The documents evidencing the Developer's organization and existence which the Developer has delivered to the Agency are true and complete copies of originals, as amended.

16.1.2 The Developer is a limited liability company duly organized and validly existing under the laws of the State of California, in good standing and authorized to do business in the State of California, the County of Fresno and the City of Fresno.

16.1.3 The Developer has all power and authority to enter and perform its obligations under this Agreement.

16.1.4 The Developer's board of directors or membership, as required under its operating agreement, has duly authorized each person signing this Agreement for the Developer to sign and deliver this Agreement and to legally bind the Developer to its terms and conditions.

16.1.5 Neither the Developer's execution nor its performance of this Agreement violates any provision of any other agreement to which the Developer is a party or by which it is bound.

16.1.6 The Developer has not engaged any broker or finder with respect to this Agreement, any Development Parcel or any other part of the Master Development Site.

16.1.7 Except as may be specifically set forth in this Agreement, no approvals or consents not already obtained by the Developer are necessary for the Developer to sign or perform this Agreement.

16.1.8 The Developer has or, subject to the satisfaction of any conditions precedent to construction loan disbursements, will have sufficient funds available to complete the Developer Improvements on the particular Development Parcel and improvements in the Common Area and to pay all costs assumed by the Developer hereunder.

16.1.9 This Agreement is valid, binding and enforceable against Developer according to its terms.

16.1.10 The Developer's principal place of business is 555 West Shaw Avenue, No. B4, Fresno, California 93704.

16.1.11 Neither the Developer nor any of its members is the subject of a bankruptcy proceeding.

16.2 Prohibition Against Developer's Transfer of the Development Parcels or Master Development Site, or Assignment of Agreement. The Developer's qualifications and identity are of concern to the Agency. The Agency enters this

58

Agreement in primary part because of the Developer's qualifications. The purpose of this Subsection 16.2 is to maintain an experienced developer and operator of high quality, mixed-use office, commercial and service developments, to prevent land speculation and to assure that the developer, owner and operator of each Development Parcel, including the Common Area, and the Master Development Site, whether the Developer or any other person, complies with all obligations, covenants and conditions in this Agreement and the Master Plan CC&R's. Accordingly, the Developer will not sell, transfer, convey, assign or lease any right under this Agreement to acquire a Development Parcel, any ownership, leasehold or other interest in any Development Parcel or any improvements thereon, or the Developer's rights or obligations under this Agreement, without the prior written consent of the Agency. In addition to those items specified in paragraphs 16.2.1 through 16.2.6, the Agency will condition its consent to any sale or lease on the proposed purchaser, assignee, transferee affirmatively agreeing in writing to be bound by the continuing provisions of this Agreement. The prohibitions, conditions and restrictions under this subsection will continue on each Development Parcel, including the Common Area, until the later to occur of the following: (i) Release of Construction Covenants for that Development Parcel is recorded, or (ii) the Developer's obligations under Section 14 terminate.

16.2.1 Agency Consideration of Requested Transfer or Assignment of Interest in Development Parcel. Without limiting the generality of the preceding paragraph, not less than 60 days before (i) the Developer's deadline for acquiring a Development Parcel, or (ii) the Developer's deadline for commencing construction of Developer Improvements on a Development Parcel, or (iii) the Developer's deadline for completing construction of Developer Improvements on a Development Parcel, the Developer may request that the Agency approve a transfer or assignment to a qualified third party (the "Transferee") of the Developer's right and obligation to acquire the Development Parcel, and/or to construct the Developer Improvements on the Development Parcel, and/or to operate and maintain the Development Parcel and the Developer Improvements thereon as provided in Section 14.

The Agency will approve the transfer or assignment only if the following conditions are met:

16.2.1.1 The proposed Transferee demonstrates to the Agency that, in the Agency's reasonable determination, the proposed Transferee has sufficient financial strength and business experience in planning, financing, development, ownership, and operation of similar projects to acquire the Development Parcel, to complete the Developer's construction requirements on that Development Parcel, and/or to provide first class operation and management for the completed Developer Improvements on that Development Parcel in accordance with this Agreement, the Master Plan and the Master Plan CC&R's.

16.2.1.2 If the transfer or assignment is of the Developer's right to acquire a Development Parcel, it must be approved and completed at least 15 days before the scheduled date for conveyance of the Development Parcel to the Developer specified in the Schedule of Performance, and the proposed Transferee must sign and enter into a disposition and development agreement prior to the conveyance, in form and substance satisfactory to the Executive Director and the Agency's legal counsel, requiring the Transferee, its successors and assigns to acquire, develop, operate and maintain the Developer Improvements on the Development Parcel in accordance with this Agreement, the Master Plan and the Master Plan CC&R's.

16.2.1.3 If the transfer or assignment is to occur after the Development Parcel has been conveyed to the Developer and is of the Developer's right, duties and obligations to construct, complete and/or operate and maintain the Developer Improvements on the Developer Parcel, the proposed Transferee must sign and enter into a recordable assignment and assumption agreement, in form and substance satisfactory to the Executive Director and the Agency's legal counsel, whereby the Transferee, for itself and its successors and assigns, expressly accepts the transfer and assumes all the unfulfilled or ongoing obligations of the Developer under this Agreement and the Master Plan CC&R's with respect to that Development Parcel, the Developer Improvements thereon and associated Common Areas.

16.2.1.4 The Developer will submit to the Agency for review all documents proposed to effect any such transfer.

16.2.1.5 The Developer will deliver to the Agency all information the Agency may request to decide whether it will approve the proposed assignment or transfer.

16.2.1.6 If the proposed Transferee is a governmental entity, charitable entity, not-for-profit entity or any other person or entity which is not subject to property taxation or possessory use taxation, the Developer shall secure its obligation to pay the amounts required under paragraphs 14.1.1 and 14.1.2 to the reasonable satisfaction of the Agency.

If all the above conditions are met, the Agency will approve, conditionally approve or disapprove the request for transfer or assignment as soon as possible, subject to applicable legal requirements. The Developer will reimburse Agency for its actual, reasonable, out-of-pocket expenses (including attorneys' fees for in-house or

outside counsel) incurred in investigating a proposed Transferee's qualifications and in preparing or reviewing the agreements to effect the transfer or assignment.

16.2.2 No Release of Developer. In the absence of specific written agreement by the Agency to do so, which agreement the Agency will not unreasonably withhold, the Agency's approval of a transfer or assignment under this Subsection 16.2 will not relieve the Developer or any other party from any unfulfilled or ongoing obligations under this Agreement; except that on completion of an Agency-approved transfer or assignment by the Developer of all its rights, interests and obligations in a Development Parcel after issuance of the Release of Construction Covenants, and unless the Agency provides otherwise in its approval of the transfer or assignment, the Developer will be released from the obligations specified in subsection 14.1 and paragraphs 15.2.2, 15.2.3, 15.2.5 and 15.2.6 as to that particular Development Parcel that arise after the effective date of the transfer or assignment. Furthermore, if there is an Agency-approved transfer or assignment by the Developer of all its rights, interests and obligations in all Phase I Parcels, the Developer will be released from the obligations specified in subsections 14.2 and 14.3 as to Phase I, the Courthouse Parcel and the State Parking Parcel, but only if the State has consented in writing to the Transferee's assumption of such obligations as provided in subparagraph 16.2.1.3, including terms and conditions for the Transferee's performing such obligations.

16.2.3 Permitted Transfers. Notwithstanding the foregoing, the following transfer and assignments ("Permitted Transfers") will be permitted without further consent of the Agency under paragraph 16.2.2:

16.2.3.1 Creation of any Security Financing Interest, subject to consideration and approval of the Agency as provided in subsection 17.1; or

16.2.3.2 A sale, conveyance or transfer at foreclosure, or a conveyance in lieu of a foreclosure, resulting from a Security Financing Interest; or

16.2.3.3 Conveying or dedicating any part of the Master Development Site to the City or other governmental agency as required for the Project, or granting easements or permits to facilitate the Project; or

16.2.3.4 The grant of temporary easements or permits to facilitate the Project or the Developer Improvements; or

16.2.3.5 Leases and rental agreements for individual office, retail, commercial or other spaces in buildings located on Development Parcels; or

16.2.3.6 After recordation of the last Release of Construction Covenants for the improvements in the Common Area in Phase I or Phase II, conveyance of that portion of the Common Area to the Property Owners Association provided for in the Master Plan CC&R's for ownership, operation and maintenance in accordance with this Agreement and the Master Plan CC&R's.

The Developer nevertheless will give the Agency a notice of any Permitted Transfer (except the individual leases and rental agreements described in paragraph 16.2.3.5) at least 30 days before such assignment or transfer.

16.2.4 Construction of Subsection 16.2. The provisions of this subsection 16.2 shall be liberally interpreted to accomplish the purposes set forth in the introductory paragraph of the subsection, above.

17 SECURITY FINANCING AND RIGHTS OF HOLDERS.

17.1 Encumbrances Only for Development Purposes. Notwithstanding any other provision of this Agreement, the Developer shall not grant a security interest in any Development Parcel before the Agency issues and records a Release of Construction Covenants. This prohibition does not apply to a Security Financing Interest securing the construction and permanent financing set forth in the Financing Plan approved by the Agency.

Before the Developer begins construction on any Development Parcel, the Developer will notify the Agency of any proposed Security Financing Interest, and will give the Agency copies of the documentation for the financing. The words "mortgage" and "deed of trust," as used in this Agreement, include all other methods of secured financing real estate acquisition, construction and development.

17.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest is not obligated to perform the Developer's construction obligations or to guarantee construction of any Developer Improvements, whether under this Agreement or any Grant Deed. However, no holder of a Security Financing Interest may devote any Development Parcel to any use, and may not construct any improvements on any Development Parcel, except as authorized by this Agreement.

17.3 Notice of Default to Holder; Right to Cure. If a holder or the Developer gives a holder's address to the Agency and asks the Agency to notify the holder, the Agency will give a duplicate notice to the holder of any notice or demand that it gives to the Developer of breach or Default. Within 45 days after the receipt of the notice, each such holder of record will have the right, but not the obligation, to cure the Developer's Default or breach.

Except as necessary to conserve or protect improvements already constructed, a holder of a Security Financing Interest may not undertake to complete the Developer Improvements without first expressly assuming the Developer's obligations hereunder in a writing satisfactory to the Agency. Under any assumption agreement, the holder must agree to complete the Developer Improvements as provided in this Agreement. It must also submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the Developer Improvements will be entitled, upon written request and satisfaction of the requirements of subsection 10.5, to a Release of Construction Covenants from the Agency.

17.4 Failure of Holder to Complete Developer Improvements. If a holder of a Security Financing Interest assumes the Developer's construction obligations but, within six months after Developer's Default, does not proceed diligently with construction, the Agency will have the same rights against the holder as it would otherwise have against the Developer as to events occurring after the holder assumes control of the Development Parcel or Parcels, unless otherwise provided in the assumption agreement between the Agency and the holder.

17.5 Right of Agency to Cure. If (i) the Developer defaults under a Security Financing Interest before completing Developer Improvements on a Development Parcel, and (ii) the holder does not assume Developer's construction obligations, then the Agency may, but will not be obligated to, cure the default before foreclosure. If the Agency cures the default, the Developer will reimburse the Agency on demand for all costs and expenses it incurs to cure the default. The Agency may lien the Development Parcel to the extent of such costs and expenses. The lien will be subordinate to any Security Financing Interest on the Development Parcel as authorized in this Agreement.

17.6 Right of Agency to Satisfy Other Liens. Until the Developer completes the Developer Improvements on a Development Parcel and the Agency records the Release of Construction Covenants, the Agency may, but will not be obligated to, cure Developer's default of other liens. The Agency will not exercise the right until the Developer has had a reasonable time to challenge, cure or satisfy the lien. This provision does not prevent the Developer from contesting the validity or amount of a tax, assessment, lien or charge. In doing so, the Developer must act in good faith, the payment delay must not subject the Development Parcel(s) to forfeiture or sale, and before the tax, assessment, lien or charge is due and payable, the Developer must give reasonable security to the Agency for the lien or charge and notify the Agency that it will appeal any property tax assessment.

17.7 Holder to be Notified of Provisions. Before the Developer grants any Security Financing Interest in any Development Parcel, the Developer will cause the holder to insert or incorporate the provisions of this Section 17 into the documents evidencing the Security Financing Interest, or to acknowledge the provisions in writing.

18 **INSURANCE, BONDS AND INDEMNIFICATION.**

18.1 **Performance and Payment Bonds.** See requirements in subsection 7.7.

18.2 **Insurance During Construction.** Until the Agency issues and records the Release of Construction Covenants on a Development Parcel, the Developer will maintain in effect as to that Development Parcel the following policies of insurance, with insurance companies that are (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by the City's Risk Manager.

18.2.1 **Commercial General Liability** insurance, including contractual, products and completed operations coverages, owner's and contractor's protective, and bodily injury and property damage, with combined single limits of not less than \$1,000,000 per occurrence.

18.2.2 **Commercial Automobile Liability** insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence.

18.2.3 **Fire and Extended Coverage** insurance for at least the full replacement cost of the Developer Improvements on the Development Parcel, excluding foundations, footings and excavations and tenant improvements, fixtures and personal property.

18.2.4 **Workers' Compensation** insurance as required under the California Labor Code.

The above-described policies of insurance will be endorsed to provide an unrestricted 30-day notice in favor of the Agency of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy which will provide a 10-day notice of cancellation, change or reduction of coverage.

The General Liability, Automobile and Fire and Extended Coverage insurance policies will be written on an occurrence basis and will name the Agency, the City and their respective officers, officials, agents, boards, employees and volunteers as additional insureds. Such policies will be endorsed so the Developer's insurance will be primary and the Agency will not be required to contribute.

Before beginning construction on any Development Parcel, including any part of the Common Area, the Developer shall file a certificate executed by the insurer or an authorized agent of the insurer evidencing that the above-described policies of insurance and endorsements are in full force and effect as to that Development Parcel. The

Developer will furnish copies of policies to the Agency if the City's Risk Manager so requests. If any policies are due to expire during the term of this Agreement, the Developer will provide a new certificate evidencing renewal of the policy not less than 15 days prior to the expiration date of the expiring policy. When an insurer, broker or agent issues a notice of cancellation, change or reduction in coverage, the Developer will file a certified copy of the new or renewal policy and certificates for such policy with the Agency.

If the Developer fails to maintain the required insurance in effect, (i) the Developer will immediately stop all construction work on the Developer Improvements, and (ii) the Agency may declare a default and avail itself of all rights and remedies provided under this Agreement.

The Developer will require each contractor and subcontractor to provide insurance protection in favor of the Agency, the City and their respective officers, officials, employees, agents, boards and volunteers as required above, except that the contractors' and subcontractors' certificates and endorsements will be on file with the Developer and the Agency before the contractor or subcontractor begins any work.

18.3 Indemnification.

18.3.1 General Indemnity. The Developer shall indemnify, hold harmless and defend the Agency, the City and each of their respective officers, officials, employees, agents, boards and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to, personal injury, death at any time and property damage) incurred by the Agency, the City, the Developer, the State or any other person or entity, and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the Developer's performance or failure to perform under this Agreement. The Developer's obligations under the preceding sentence shall apply whether or not the Agency, the City or any of their respective officers, officials, employees, agents, boards or volunteers are actively or passively negligent. But this indemnification will not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the negligent acts or willful misconduct of the Agency, the City or any of their respective officers, officials, employees, agents, boards or volunteers.

The foregoing indemnity shall apply to, but is not limited to, the following: (i) any act, error or omission of the Developer or any of its officers, members, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Agreement, the Developer Improvements, the Project, the Development Parcels, the Common Area or any other portion of the Master Development Site; (ii) any use of the Master Development Site, the Developer Improvements, the

60

Project or any Development Parcel, including the Common Area, by the Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives; (iii) the design, construction, operation or maintenance of the Developer Improvements or the Project, or any portion thereof, or related improvements; or (iv) failure by the Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives to comply with any federal, state or local law, code, ordinance or regulation applicable to this Agreement, the Development Parcels, the Developer Improvements, the Common Area or other portions of the Master Development Site, or the Project.

18.3.2 Indemnification for State Claims. Specifically but without limitation on paragraph 18.3.1, the Developer shall indemnify, hold harmless and defend the Agency, the City, the State and their respective officers, officials, employees, agents and boards from any and all claims, costs, expenses and damages (whether in contract, tort or strict liability, including, but not limited to, personal injury, death at any time and property damage) incurred or made by the State's Department of General Services, Administrative Office of the Courts, Public Works Board or Fifth Appellate District caused by or based on the failure of the Developer, its contractors or subcontractors to meet or perform the Developer's obligations under this Agreement.

18.3.3 Indemnification by Contractors or Subcontractors. The Developer shall require each contractor and subcontractor to indemnify, hold harmless and defend the Agency, the City, the State and each of their respective officers, officials, employees, agents, boards, and volunteers according to the terms of paragraphs 18.3.1 and 18.3.2.

18.3.4 Physical Condition of Property. The Developer shall indemnify, defend, protect and hold the Agency, the City and each of their respective officers, officials, employees, volunteers, agents, boards, consultants and representatives, harmless from and against any liability, loss, damage, cost and expenses (including attorneys' fees and court costs) arising from or related to any action, suit, claim, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses which concern or in any way relate to the physical condition of each Development Parcel, including the Common Area, existing on or after the Closing for that Development Parcel. However, the foregoing indemnity obligations shall not cover any claims to the extent caused solely by the negligent acts or willful misconduct of the Agency, the City or any of their respective officers, officials or employees.

18.3.5 Action Arising Out of Approval of This Agreement. The Developer shall indemnify, defend and hold the Agency, the City and each of their respective officers, officials, employees, agents, boards and volunteers harmless

from any judicial action filed against the Agency or the City by any third party arising out of the Agency's or the City's approval of this Agreement or any permit, entitlement or other action required to implement this Agreement, including without limitation approvals under the Law, CEQA or the City's Municipal Code. The Agency will promptly notify the Developer of the action. Within 15 days after receipt of the notice, the Developer shall take all steps necessary and appropriate to assume defense of the action. The Agency will cooperate with the Developer in the defense of the action (at no cost to the Agency or the City). Neither the Developer nor the Agency will compromise the defense of such action or permit a default judgment to be taken against Agency or the City without the prior written approval of the other party(ies).

18.3.6 Survival of Indemnification Provisions. Except as otherwise specifically stated herein, the indemnification provisions in this subsection 18.3 and every other indemnification in this Agreement will survive any termination of this Agreement, will survive any Closing, will survive the expiration of any covenant herein and will not merge with any Grant Deed or other document evidencing an interest in real property.

19 ECONOMIC MATTERS.

19.1 Availability of Funds. The Agency's performance hereunder is contingent on Available Funds and on the Agency Board's authorization for the Agency to use the funds for the purposes stated herein. If the Agency is unable to appropriate funds to fulfill its obligations and it has not conveyed a Development Parcel to the Developer at the time required in the Schedule of Performance, the parties may terminate this Agreement as to that Development Parcel and sever the Development Parcel from the Master Development Site. After termination, neither Party will have any further obligations under this Agreement as to that Development Parcel, but this Agreement will remain in effect as to the balance of the Master Development Site. With respect to the Agency's other obligations hereunder, if Available Funds are initially appropriated but are subsequently stopped or withheld, the Agency will not be obligated to continue to perform. If the Agency has conveyed a Development Parcel to the Developer, and funds are not available for the Agency to perform any of its other obligations hereunder as to that Development Parcel, without the fault of the parties, the unavoidable delay provisions of this Agreement will apply.

Subject to the foregoing, the Agency represents that, to the best of its knowledge, as of the Effective Date the Agency has Available Funds sufficient for the Agency to perform its obligations under this Agreement and that it has no knowledge of any facts or circumstances which are likely to prevent the Agency from continuing to have such Available Funds. For purposes of this paragraph, "knowledge" means and is limited to the

62

actual knowledge of the Executive Director or the Redevelopment Administrator of the Agency on the Effective Date.

19.2 **Books and Records.** The Developer will establish and maintain, for five years after the Agency issues the Release of Construction Covenants on a Development Parcel, records and accounts on the Development Parcel and its development according to applicable laws, rules, and regulations. The Agency, at its cost, has the right with 24 hours' notice to inspect and copy the Developer's records, books and documents related to any Development Parcel or its development, or related to the Developer's obligations hereunder, construction costs, and the proceeds from any sale or refinancing.

20 **DEFAULTS AND REMEDIES.**

20.1 **Default.** Any of the following occurrences shall be a Default under this Agreement:

20.1.1 The Developer fails to comply with or satisfactorily perform any of its material obligations, agreements, duties, covenants, conditions or requirements under this Agreement or any amendment hereof.

20.1.2 Any material fact, representation or statement made by or on behalf of the Developer in this Agreement or in any document referred to or incorporated herein shall prove at any time to have been incorrect in any material respect when made.

20.1.3 The Developer generally fails to pay its debts as they become due or admits in writing its inability generally to pay debts as they become due, makes an assignment for the benefit of creditors, seeks an order for relief in bankruptcy, becomes insolvent or bankrupt within the meaning of the Federal Bankruptcy Code, petitions or applies to any tribunal for appointment of any receiver, custodian, liquidator, trustee or similar official (an "Official") for the Developer or any substantial part of its property, commences any proceeding relating to the Developer under any reorganization, arrangement, readjustment of debt, conservatorship, receivership, dissolution or liquidation law or statute of any jurisdiction (including without limitation the Federal Bankruptcy Code); or any such proceeding is commenced against the Developer and is unstayed or undismissed for a more than 60 days; or the Developer consents to, approves of or acquiesces in any such proceeding or the appointment of any such Official; or the Developer allows any such proceeding to continue undischarged for a period of more than 60 days.

20.1.4 The Developer makes an assignment or transfer, or attempted assignment or transfer, without the Agency's prior written consent in violation of subsection 16.2.

20.1.5 The Developer fails to submit preliminary plans or final construction plans or other development-related documents (as defined in subsection 9.2) to the Agency and to obtain the Agency's approval as set forth in this Agreement and the Schedule of Performance.

20.1.6 The Developer fails to timely submit to the Agency, or to obtain Agency approval of, any of the following with respect to a Development Parcel: (i) the Financing Plan, (ii) the construction contract(s) for the Developer Improvements, (iii) the performance and payment bonds, or (iv) the certificate of readiness.

20.1.7 If all conditions precedent to conveyance, acquisition, delivery and acceptance set forth in Section 7 have been satisfied or waived, the Developer refuses for any reason (including, but not limited to, lack of funds) to accept conveyance of any Development Parcel from the Agency at the time specified in the Schedule of Performance.

20.1.8 The Developer does not attempt in good faith to timely procure a building permit or any other permits or approvals for its construction obligations under this Agreement, or the Developer abandons such attempts when reasonable likelihood exists that the relevant agency would otherwise timely issue the permit or approval.

20.1.9 The Developer fails to begin or complete construction of the Developer Improvements on a Development Parcel, including adjacent or related improvements in the Common Area, as set forth in the Schedule of Performance and other provisions of this Agreement.

20.1.10 The Developer abandons or suspends construction of any Developer Improvements, including improvements in the Common Area, for 30 days without Agency consent.

20.1.11 The Developer voluntarily or involuntarily assigns, or transfers rights or obligations under this Agreement, or in any Development Parcels, the Common Area or other portions of the Master Development Site, except as permitted by this Agreement, or attempts to do so.

104

20.1.12 A change occurs in the ownership of, or in the parties controlling, the Developer or the Developer's assignees or successors without the Agency's approval to the extent required herein.

20.1.13 The Developer breaches any other material provision of this Agreement.

20.2 General Remedies. If there is a Default, and if the Developer fails to cure or remedy the Default (except a Default described in paragraph 20.1.3) within 30 days after written notice, the Agency may pursue any and all remedies available in law or equity, including without limitation specific performance of this Agreement or termination of the Agreement as to the particular Development Parcel. Failure or delay in giving notice of Default shall not be a waiver of the Default, nor shall it change the time of Default. All remedies are cumulative. Pursuit of any one remedy by the Agency will not be deemed an election of remedies or a waiver of any other remedy, and will not preclude the Agency from exercising any other remedy at the same time or different times for the same Default or any other Default.

Without limiting the generality of the preceding paragraph, the Agency will have the following remedies:

20.2.1 If the Agency acquires and assembles a Development Parcel and offers to convey, but through any fault of the Developer, the Developer does not take title to and develop the Development Parcel as required by the Schedule of Performance and the Scope of Development, the Developer will reimburse the Agency for its predisposition, eminent domain and other acquisition costs for acquiring and assembling the Development Parcel, less any such costs the Agency may have actually recovered through other means.

20.2.2 The Agency may bring an action at law or in equity to seek specific performance under this Agreement, or to cure or remedy any Default, or to recover any damages for Default, or to obtain any other remedy consistent with the purpose of this Agreement. Any legal action will be brought in Fresno County, in the appropriate state or federal court.

20.3 Right of Reentry, Termination and Reverter. Without limiting the generality of subsection 20.2, the Agency will have the right, at its option and in the manner provided by law for exercising power of termination, to reenter and take possession of a Development Parcel, including the Common Area, together with all improvements thereon, and to terminate and revert in the Agency the estate conveyed to the Developer if, after conveyance of possession or title to the Development Parcel and before the Release of Construction Covenants is recorded, the Developer, in violation of this Agreement:

20.3.1 Fails to proceed with or complete the Developer Improvements, including any Common Area improvements and other Project improvements on or in connection with the Development Parcel in accordance with the Performance Schedule for 30 days or more after written notice of such failure from the Agency; or

20.3.2 Abandons or substantially suspends construction of the Developer Improvements, including any Common Area improvements or other Project improvements, on or in connection with the Development Parcel for longer than 30 days after the Agency gives the Developer notice of such abandonment or suspension; or

20.3.3 Assigns or transfers, or attempts to assign or transfer, or permits involuntary transfer, of this Agreement or any rights herein, or the Development Parcel, the Developer Improvements, including any Common Area improvements or other improvements to be constructed on or in connection with the Development Parcel, without the Agency's prior consent in violation of subsection 16.2.

The Grant Deed and any subsequent deed for an approved transfer or conveyance of a Development Parcel will contain appropriate reference to, and provisions which will give effect to, the Agency's right to reenter, repossess, terminate and revest as described in this subsection 20.3. If title to a Development Parcel or any portion thereof revests in the Agency, the Agency will take all reasonable steps, pursuant to its responsibility under the Law, to resell or lease the Development Parcel or portion for redevelopment and use in conformity with the Plan. Any resale or lease will be at the time and in the manner as the Agency determines, in its sole discretion, to be feasible and consistent with the objectives of the Plan and the Law. All proceeds of any lease will be retained by the Agency as its property and applied as permitted by law. The proceeds of any resale of a Development Parcel, or any part of it, will be applied as follows:

20.3.6 First, to reimburse the Agency for (i) all costs and expenses reasonably incurred in connection with the recapture, management and resale of the Development Parcel or part of it, less any income the Agency derived from the Development Parcel in connection with the management; (ii) all taxes, assessments and water and sewer charges respecting the Development Parcel (or, if any of the Development Parcel is exempt from taxation or assessment or such charges during the Agency's ownership, then such taxes, assessments or charges as would have been payable if the Development Parcel were not so exempt); (iii) any payments necessary to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees from attaching or being made; (iv) any expenditures made or obligations incurred to complete the Developer Improvements or other Project improvements on the

we

Development Parcel; and (v) any amounts otherwise owing to the Agency from the Developer or by its successor or transferee; and

20.3.7 Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (i) the purchase price paid to the Agency for the Development Parcel; and (ii) the out-of-pocket costs incurred to develop and improve the Development Parcel; less (iii) any gains or income to the Developer from the Development Parcel, the Developer Improvements, including Common Area improvements, or other Project improvements on or in connection with the Development Parcel. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph shall not exceed the price that the Developer paid the Agency for the Development Parcel and the fair market value of the improvements on it when the Default occurred which led to the Agency's exercise of the rights under this Subsection 20.3. Any balance remaining after such reimbursements shall be retained by the Agency.

The Agency's exercise of its right of reentry, termination and reverter on the Surface Parking Parcel pursuant to Section 20.3 will be subject to the requirements of paragraph 10.2.4.

The Developer acknowledges that the Agency's rights and remedies in this subsection 20.3 are to be interpreted in light of the fact that the Agency will convey the Development Parcels to the Developer for development of the Project in furtherance of the Plan, the Master Plan CC&R's and the Master Plan, not for speculation in undeveloped land or for any other purpose, and that the Agency has entered into this Agreement in reliance thereon.

20.4 **Effect on Security Financing Interests.** The rights granted in this Section 20 are subject to and will not defeat, or limit the following:

20.4.1 Any Security Financing Interest permitted by this Agreement; or

20.4.2 Any rights or interests provided in this Agreement to protect the holder of Security Financing Interests.

20.5 **Inaction Not a Waiver of Default.** Any failure or delay by the Agency in asserting any right or remedy for any Default will not be a waiver of the Default or of any right or remedy. Such failure or delay will not deprive the Agency of any right to institute an action or proceeding that it deems necessary to protect, assert or enforce any right or remedy.

21 MISCELLANEOUS PROVISIONS.

21.1 Notice, Demands and Communication. Delivery of notices, demands and communications between the Agency and the Developer will be sufficient if given: (i) by personal delivery, or (ii) by a reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) by facsimile via a machine which issues a confirmation showing the date and time of transmission, and the office name or fax number of the recipient, or (iv) by deposit into the U.S. mail of registered or certified mail, return receipt requested, postage prepaid, or (v) by any commercially acceptable means, properly addressed to the Agency or the Developer as follows:

68

AGENCY:

Redevelopment Agency of the City of Fresno
2344 Tulare Street, Suite 200
Fresno CA 93721
Attention: Executive Director
Facsimile No.: (559) 498-1870

WITH COPIES TO:

City Attorney as Ex-Officio Attorney
for the Redevelopment Agency
2600 Fresno Street, Room 2031
Fresno, CA 93721-3602
Facsimile No.: (559) 488-1084

DEVELOPER:

OLD ARMENIAN TOWN, LLC
Attention: Dennis Frye
555 West Shaw Avenue, No. B4
Fresno, California 93704
Facsimile No.: (559) 227-5934

WITH COPIES TO:

Lowell T. Carruth, Esq.
McCormick, Barstow, Sheppard, Wayte & Carruth LLP
5 River Park Place East
P.O. Box 28912
Fresno, California 93729-8912
Facsimile No.: (559) 433-2300

Any address named above may change its address for notices, demands and communications by giving notice in the same manner as provided in this subsection.

21.2 Conflict of Interests. No member, official, officer or employee of the Agency shall have any direct or indirect interest in this Agreement or participate in any decision relating to this Agreement where the law prohibits such interest or participation. No officer, employee or agent of the Agency who exercises any function or responsibility in planning and carrying out the Project, or any other person who exercises any function or responsibility concerning any aspect of this Agreement or the Project, shall have any personal financial interest, direct or indirect, in this Agreement or the Project.



21.3 Non-Liability of Officials, Employees and Agents. No member, official, officer, employee or agent of the Agency or the City will be personally liable to the Developer, or any successor in interest, for any default by the Agency or for any amount or obligation which may become due to the Developer or its successor under this Agreement.

21.4 Unavoidable Delay. Neither Party will be in default where delays or defaults are due to war, insurrection, strikes, lock outs, riots, acts of the public enemy, acts of domestic or foreign terrorism, floods, earthquakes, fires, freight embargoes, court order, or any other similar cause beyond the control and without the fault of the Party claiming an extension of time to perform. A Party claiming an unavoidable delay must give notice to the other Party within 10 days after the delay begins. After that, the Parties may extend the time for performance by a writing signed by both Parties. This provision does not apply to delays in the Developer's construction obligations which this Agreement specifically covers elsewhere.

21.5 Provision Not Merged with Deeds. The provisions of this Agreement will not merge into any Grant Deed upon recording.

21.6 Headings and References. The headings of the sections, subsections and paragraphs in this Agreement are for reference only and do not explain or modify the provisions of this Agreement. References to section, subsection or paragraph numbers are to sections, subsections or paragraphs in this Agreement unless expressly stated otherwise.

21.7 Waiver. If either Party waives a breach by the other of any provision of this Agreement, it will not be a continuing waiver and will not be a waiver of a subsequent breach of the same or a different provision. Neither Party may waive any provision of this Agreement except in a writing signed by a duly authorized representative of the Party.

21.8 Attorneys' Fees. If either Party commences a lawsuit or arbitration proceeding in law or equity to enforce or interpret any provisions of this Agreement, the prevailing party in such lawsuit or arbitration shall be entitled to recover from the losing party reasonable attorneys' fees, court costs and legal expenses in the amounts determined by the court or tribunal having jurisdiction.

21.9 Broker. The Developer and the Agency each represent and warrant it has not engaged any broker or finder with respect to this Agreement, the Master Development Site or the Project. Each Party will indemnify, defend, protect and hold the other Party and its officers, officials, employees, agents and representatives harmless against any claim by any person or entity for any broker's or finder's (or similar) fee or commission arising out of any act or agreement of the indemnifying Party concerning this Agreement, the Master Development Site or the Project.

70

21.10 Severability. If a court of competent jurisdiction holds any term, provision, covenant or condition of this Agreement to be invalid, void or unenforceable, the remainder of the provisions will continue in effect.

21.11 Binding on Successors. Subject to the limitations on the Developer's transfer or assignment of this Agreement and the Development Parcels in subsection 16.2, this Agreement is binding upon and inures to the benefit of the members, officers, transferees, successors-in-interest and assigns of each Party. Any reference in this Agreement to a specifically named party applies to any member, officer, transferee, successor-in-interest or assign of that party who acquires an interest according to the terms of this Agreement or under law.

21.12 Relationship of the Parties. The relationship between the Agency and the Developer is and will remain solely that of a California redevelopment agency and an independent private redeveloper of property within a redevelopment project area pursuant to the Law. Nothing in this Agreement, the Grant Deeds or any other document executed in connection with this Agreement creates a partnership, joint venture, agency, employment relationship or other relationship between the Agency and the Developer or any of the Developer's contractors, subcontractors, employees, agents, representatives, executors, administrators, transferees, successors-in-interest or assigns. The Parties do not intend anything in this Agreement to establish a principal and agent relationship between the Parties. The Agency will have no rights, powers, duties or obligations respecting the development, operation, maintenance or management of the Development Parcels or improvements thereon except as expressly provided herein, in the Deeds or in the Plan. The Developer will indemnify, defend and hold the Agency and its officers, officials, employees, agents, boards and volunteers harmless from any claim against the Agency that arises from a claim of a partnership or joint venture with the Developer.

21.13 Nature of the Developer's Obligations. The Developer's obligation to complete the Developer Improvements, the Master Plan Improvements and the Project generally is a private undertaking. After the Agency conveys title or possession of a Development Parcel to the Developer, the Developer will have exclusive control over the Development Parcel, subject to the terms of this Agreement, the Master Plan CC&R's, the Master Plan, the Plan, the Law and all other applicable federal, state and local laws, ordinances, codes, regulations, standards and policies. By entering and performing this Agreement, the Agency does not approve or endorse the Project except to carry out the redevelopment purposes, goals, policies and objectives of the Plan and the Law.

21.14 Entire Understanding of the Parties. This Agreement includes the exhibits and attachments referenced herein, the Master Plan, the Master Plan CC&R's and the Grant Deeds. It is the entire understanding and agreement of the parties regarding the subject matter in this Agreement. This Agreement supersedes all prior discussions, understandings and agreements, oral or written. Each Party enters this Agreement solely

71

on the representations herein and on its own independent investigation of the facts each deems material.

21.15 Modifications, Amendments. The Parties will not modify or amend this Agreement except by written instrument signed by the parties and duly approved as required by law.

21.16 Agency Approvals and Actions. Whenever this Agreement requires action or approval by the Agency, the Executive Director or the Redevelopment Administrator of the Agency is authorized to act for the Agency unless specifically provided otherwise.

21.17 Consent, Reasonableness. Unless this Agreement specifically authorizes a Party to withhold its approval, consent or satisfaction in its sole discretion, a Party will not act unreasonably in withholding, conditioning or delaying approval or consent.

21.18 Cooperation and Further Assurances. The Parties will take such actions and execute such documents as necessary to carry out the intent and purposes of this Agreement.

21.19 Third Party Beneficiaries. The State's Department of General Services, Public Works Board, Administrative Office of the Courts and Fifth Appellate District are beneficiaries of this Agreement and shall have the right, but not the obligation, to pursue or enforce this Agreement against the Developer. Except as expressly provided in the preceding sentence, the Parties do not intend anything in this Agreement to create any third party beneficiaries to this Agreement. No person or entity other than the Agency, the Developer, the State's Department of General Services, Public Works Board, Administrative Office of the Courts or Fifth Appellate District and their permitted transferees, successors and assigns are authorized to enforce the provisions of this Agreement.

21.20 Governing Law and Venue. The provisions of this Agreement shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

Venue and jurisdiction (personal and subject matter) for any lawsuit commenced by either Party in connection with this Agreement shall be in the Superior Court of Fresno County or in the United States District Court for the Eastern District located in Fresno County.

21.21 Exhibits. Each exhibit referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes. However, the provisions in the body of this Agreement will prevail over any inconsistent provisions or references in any exhibit.

72

21.22 Interpretation. This Agreement in its final form is the result of the combined efforts of the Parties. If any provision of this Agreement is found ambiguous, the ambiguity will be resolved by construing the terms of this Agreement according to their generally accepted meaning. Masculine, feminine or neuter gender terms and singular or plural numbers will include others when the context so indicates. The word "including" will be construed as followed by the words "without limitation" or "but not limited to."

21.23 Computation of Time. The Parties will compute the time within which an act is to be completed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday, Saturday or Sunday, in which case the last day also shall be excluded.

21.24 Legal Advice. Each Party, in signing this Agreement, does so with knowledge of its legal rights. Each has received independent legal advice from its own legal counsel, or has chosen not to consult legal counsel. Each Party will be solely responsible for its own attorneys' fees in negotiating, reviewing, drafting, and obtaining the approval of this Agreement and all related agreements or documents.

21.25 Counterparts. The Parties may sign this Agreement in counterparts. Each counterpart, when executed and delivered, will be one instrument with the other counterparts. The Parties will sign at least four duplicate originals of this Agreement.

* * * * *

[Remainder of page left blank intentionally; signatures on next page.]



Each Party represents that this Agreement has been executed on the Party's behalf on or as of the date stated below by its duly authorized representative(s).

REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

**OLD ARMENIAN TOWN, LLC,
a California limited liability company**

By: *Marlene Murphey*
Marlene Murphey,
Interim Executive Director

By: *Richard V. Gunner*

Name: Richard V. Gunner

Dated: 7/11/05

Title: Member

Dated: July 6, 2005

**THE ABOVE PARTIES ARE TO SIGN THIS AGREEMENT BEFORE A NOTARY PUBLIC.
NOTARY ACKNOWLEDGMENTS ARE ATTACHED FOR CONVENIENCE.**

ATTEST:
REBECCA KLISCH
Ex Officio Clerk
Redevelopment Agency of the
City of Fresno

APPROVED AS TO FORM:
HILDA CANTU MONTROY
Ex Officio Attorney
Redevelopment Agency of the
City of Fresno

By: *Elvira Sommerwald*
Deputy

By: *Daniel J. ...*
Deputy/Assistant Special Counsel

Dated: 7/29/05

Dated: July 25, 2005

74

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On July 29, 2005 before me, Neil Hansen
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Marlene Murphey
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Neil Hansen
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Master Dispositon & Dev. Agreement

Document Date: July 11, 2005 Number of Pages: _____

Signer(s) Other Than Named Above: Richard V. Gunner

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

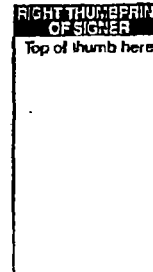
- Individual
- Corporate Officer Interim Ex. Dir.
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:
RDA of Fresno

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

MS

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

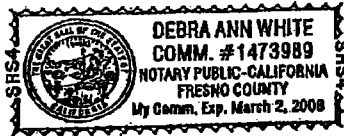
State of California

County of Fresno

On July 6, 2005 before me, Debra Ann White, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Richard V. Gunner
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Debra Ann White
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
 - CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
 - GENERAL
 - ATTORNEY-IN-FACT
 - TRUSTEE(S)
 - GUARDIAN/CONSERVATOR
 - OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

_____ SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

Handwritten initials/signature

CONTRACT
REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, CALIFORNIA
PUBLIC WORK

THIS CONTRACT is made and entered into by and between REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (hereinafter referred to as "Agency"), and Kroker, Inc., a California corporation (hereinafter referred to as "Contractor") as follows:

1. Contract Documents. The "Notice Inviting Bids," "Instructions to Bidders," "Bid Proposal," and the "Specifications" including "General Conditions," "Special Conditions," and "Technical Specifications" for the following: 505/525 "N" Street Demolition (Bid File No. 3081) copies of which are annexed hereto, together with all the drawings, plans, and documents specifically referred to in said annexed documents, including Performance and Payment Bonds, if required, and are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. Price and Work. For the monetary consideration of Twenty-Three Thousand, Eight Hundred Twenty-Three dollars and No cents (\$23,823.00), as set forth in the Bid Proposal, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, under the direction and to the satisfaction of the Agency's "Engineer," and in strict accordance with the Specifications, all of the Work as set forth in the Contract Documents.

3. Payment. Agency accepts Contractor's Bid Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents.

4. Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend Agency, City of Fresno and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by Agency, City of Fresno, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether Agency, City of Fresno or any of their officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of Agency, City of Fresno or any of their officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the Work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend Agency, City of Fresno and each of their officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

5. Trench Shoring Detailed Plan. Contractor acknowledges the provisions of Section 6705 of the California Labor Code and, if said provisions are applicable to this Contract, agrees to comply therewith.

6. Worker's Compensation Certification. In compliance with the provisions of Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this Contract and will make my subcontractors aware of this provision.

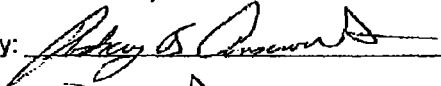
///

///

///

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by Agency shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

Kroeker, Inc.,
a California corporation

By: 

Name: ROONEY AINSWORTH
(Type or print written signature.)

Title: GENERAL MANAGER

Dated: 9-2-2011

By: _____

Name: _____
(Type or print written signature.)

Title: _____

Dated: _____

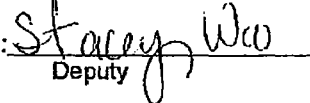
REDEVELOPMENT AGENCY OF THE CITY
OF FRESNO,
a public body corporate and politic

By: 

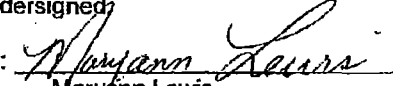
Marlene Murphey, Executive Director
Redevelopment Agency of the City of
Fresno

Dated: 9-16-11

ATTEST:
REBECCA E. KLISCH
Ex-officio Clerk

By:  9-19-11
Deputy

No signature of Ex-officio Attorney required.
Standard Document #RDA 11.0 has been
used without modification, as certified by the
undersigned.

By: 
Maryann Lewis
Construction Compliance Specialist
Redevelopment Agency of the City of
Fresno

Agency address:

Redevelopment Agency of the City of Fresno
Attention: Maryann Lewis,
2600 Fresno St. 4th Floor
Fresno, CA 93721

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of Fresno
 On 9/2/11 before me, C. E. Machado, Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared Rodney B. Ainsworth
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
 Signature C. E. Machado
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

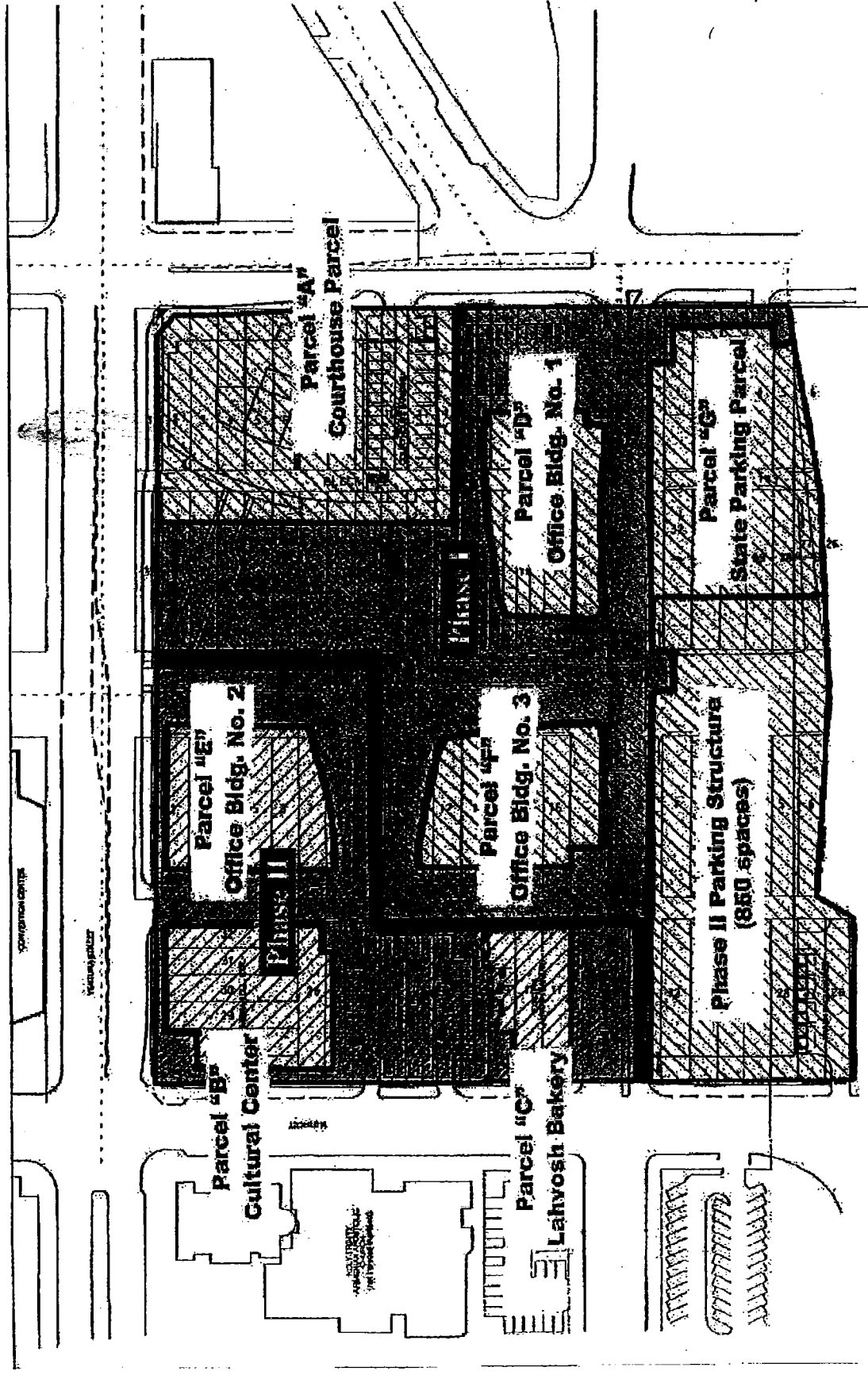
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
 Title or Type of Document: Contract - Redevelopment Agency
 Document Date: 9/2/11 Number of Pages: 3
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: <u>Rodney B. Ainsworth</u> <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporate Officer — Title(s): <u>Gen. Mgr.</u> <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here	Signer's Name: _____ <input type="checkbox"/> Individual <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here
--	---	---	---

Signer Is Representing: Krocker, Inc.



Legend: [Hatched Box] = Common Area Improvements

<p>88</p> <p>Old Armenian Town Master Plan</p> <p>Phase II Parking Structure (850 spaces)</p>	<p>Parcel 'A' Courthouse Parcel</p> <p>Parcel 'B' Cultural Center</p> <p>Parcel 'C' Lahvosh Bakery</p> <p>Parcel 'D' Office Bldg. No. 1</p> <p>Parcel 'E' Office Bldg. No. 2</p> <p>Parcel 'F' Office Bldg. No. 3</p> <p>Parcel 'G' State Parking Parcel</p>	<p>Common Area Improvements</p> <p>Phase I</p> <p>Phase II</p>	<p>Scale: 1" = 50'-0"</p> <p>North Arrow</p>
---	--	--	--

Old Armenian Town Master Plan
 Prepared by: [Firm Name]
 Date: [Date]

Convention Center # 9	01/01/14 -						
Old Armenian Town	6/30/2014	1/1/2014	2/1/2014	3/1/2014	4/1/2014	5/1/2014	6/1/2014
Legal (60 Hours per month x \$230 x 6)	13,800.00	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00
Project Management (240 hrs per month x 6)	28,537.33	4,756.23	4,756.22	4,756.22	4,756.22	4,756.22	4,756.22
Fencing	2,550.00	425.00	425.00	425.00	425.00	425.00	425.00
Property Acquisition & Relocation	1,980,000.00					755,000.00	1,225,000.00
Demo/Abatement and Site Clearance	145,000.00			-			145,000.00
Storage	3,114.00	519.00	519.00	519.00	519.00	519.00	519.00
Compliance DDA	360,000.00	-	-	360,000.00	-	-	-
Total	2,533,001.33	8,000.23	8,000.22	368,000.22	8,000.22	763,000.22	1,378,000.22

Additional Project Costs Thru 06/30/14 - 12/31/14

Legal (60 Hours per month x \$230 x 6)	13,800.00
Project Management (240 hours per month x 6)	28,537.33
Storage	3,114.00
Fencing	2,550.00
DD& A Compliance	360,000.00
Total	2,941,002.66

Additional Project Costs Thru 06/30/16

Legal (90 Hours x \$230)	20,700.00
Project Management (240 hours per month x 18)	28,537.33
Fencing	2,550.00
Storage	3,114.00
DD&A Compliance	360,000.00
Agency Assistance per OPA	
Total from 01/1/14 Thru 6/30/16	3,355,903.99

Date Prepared: 8/30/2013