

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

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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 Vagin  
Rene Watahira  
Larry Westerlund

**AGENCY BRIEFING REPORT**

Date: June 13, 2018  
To: Oversight Board  
From: Marlene Murphey, Executive Director  
RE: Agenda Item IV-1 - Disposition of Agency Property

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- **PROPERTY:** LRPMP #41 is approximately 4.79 acres located at 1153 Fresno Street (APN 467-310-12T), the Kearney Palms Shopping Center Parking Lot.
- **Introduction** - The Kearney Palms Shopping Center Parking Lot (Parking Lot) is part of an enforceable obligation pursuant to a Disposition and Development Agreement (DDA) and Covenants for Public Parking, Lease, Operation and Maintenance for Public Parking Reciprocal Easements and Option to Purchase (Parking Agreement) between the Successor Agency and the developer, Thomas Beggs, Managing Member of Kearney Palms, LLC (Developer). The Parking Lot of approximately 4.79 acres is generally located at the northeast corner of Fresno and "B" Streets within and serving the Kearney Palms Shopping Center. An updated appraisal dated May 10, 2018 values the Lot (APN 467-310-12) at \$791,000.
- **Background** - The Parking Agreement and the DDA include provisions pertinent to the sale of the Parking Lot briefly summarized below.

- The Parking Lot is to be used solely as a public parking lot without charging for its use; and, the developer, customer, tenants, occupants of the shopping center and general public park free.
- The Developer pays the Agency a monthly fee of \$1.00.
- The Developer has the exclusive right, but not the obligation, to purchase the Lot until April 26, 2044.
- The Developer may not assign the option without the prior consent of the Agency except under limited conditions.
- The purchase price for the Parking Lot is the market value determined by appraisal or \$1,270,915 whichever is greater.
- The Agency bears the cost for removal and replacement of the Parking Lot's asphalt as necessary from age or damage. The cost of replacement is estimated at \$1,043,000. The Agency's obligation does not terminate with the sale of the Lot.
- The Developer is obligated to pay the Agency 60 % of all rents for Parcel C (the chain grocery) that exceed the base of \$0 .38 per square foot (Excess Rents).
- The Developer's obligation to pay Excess Rents to the Agency terminates when the Developer exercises the option to purchase.
- The provision to pay Excess Rents will apply to any other person unless or until the obligation is terminated by purchase of the Parking Lot. The effect of this provision is that the future owner of the Parking Lot would not receive any Excess Rents from Parcel C thereby precluding Parking Lot-generated income and the incentive for purchase of the Parking Lot through the open market. Sale through the open market would require the Developer's waiver of the exclusive option to purchase through 2044.
- Offer to Purchase - The Oversight Board requested staff initiate discussions with Mr. Beggs regarding the potential for his purchase of the Parking Lot in the near future. Mr. Beggs expressed interest in purchasing the Parking Lot and in meeting the outstanding obligation for full payment of excess rents pursuant to Section 12.3 of the DDA. The attached Purchase Letter submitted by Mr. Beggs dated May 24, 2018 offers to:
  - Make an all cash purchase of the Parking Lot at the current appraised value of \$791,000 with close of escrow by the end of July 2018.
  - Make full payment for the Excess Rents obligation through June 2018 in the amount of \$642,000.
  - Remove the Agency's obligation to replace the Parking Lot improvements estimated at \$1,043,000.

The current appraisal and offer of \$791,000 is less than the purchase price indicated in the Parking Agreement dated April 1999. However, the ongoing, long term Agency obligation to replace the Parking Lot's asphalt impacts value. The estimate to replace the Lot's asphalt is \$1,043,000. The present value of that obligation discounted at 5% per year for eleven years -at which time the Lot reaches 30 years of age- is \$602,447.00. The Developer's offer to purchase at the appraised value of \$791,000 in cash plus the \$602,447.00 (the present value of the Agency's \$1,043,000 liability) yields

\$1,383,447.00 as total consideration for purchase of the Parking Lot. This amount is approximately 9 % greater than the purchase price of \$1,270,915.00 referenced in the Parking Agreement.

The sale of the Parking Lot 26 years prior to the expiration of the Developer's option period, the removal of the Agency's liability for Parking Lot improvements, the total consideration for purchase price greater than contemplated in the Parking Agreement and the full payment of Excess Rents combine to maximize value, remove liability and conclude an enforceable obligation advancing overall wind-down objectives.

Attachments:

Location Map  
Appraisal Summary  
Offer to Purchase Letter  
Purchase and Sale Agreement

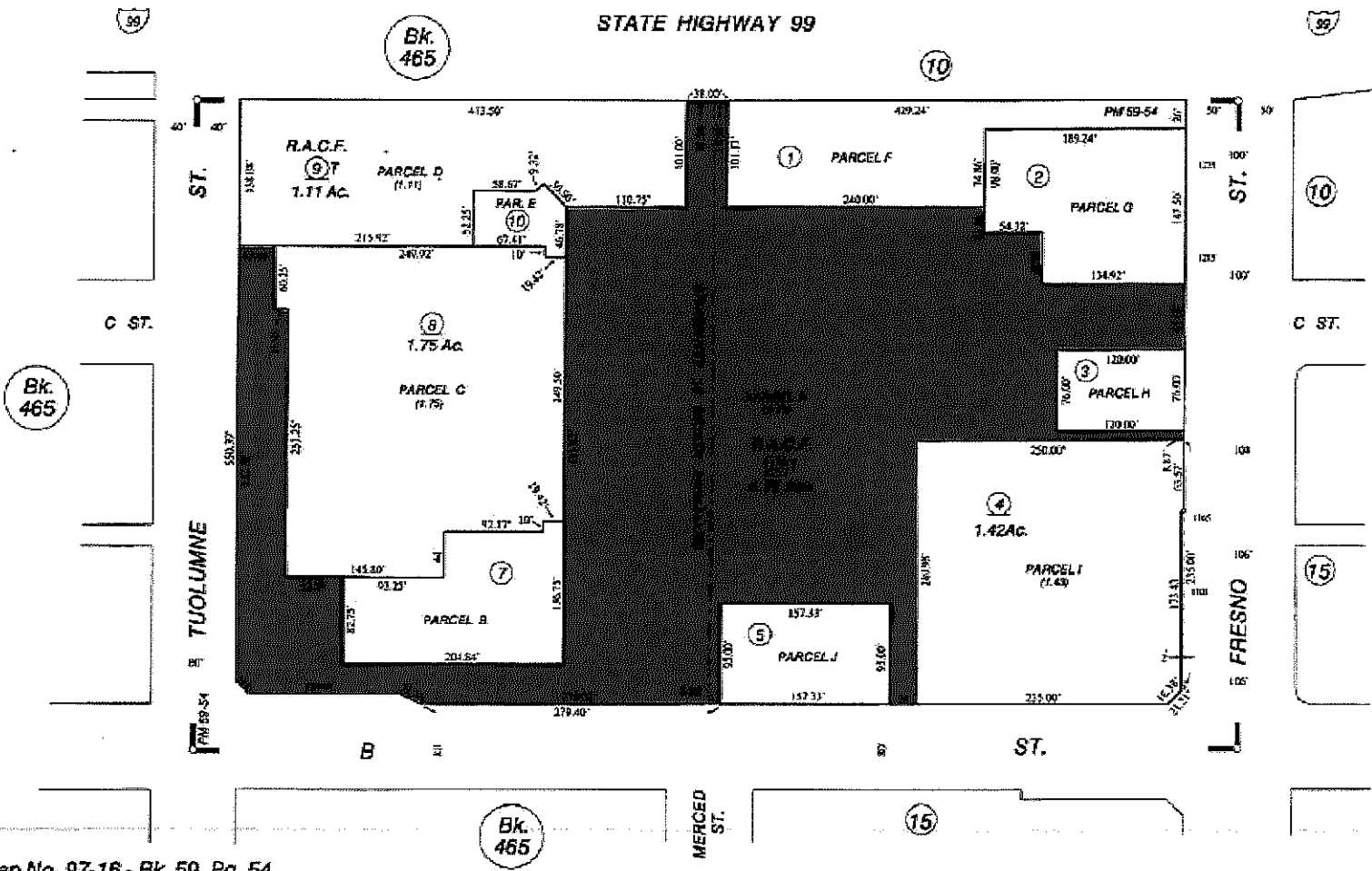
--- NOTE ---  
 This map is for Assessment purposes only.  
 It is not to be construed as portraying  
 legal ownership or divisions of land for  
 purposes of zoning or subdivision law.

SUBDIVIDED LAND IN SEC. 9, T. 14 S., R. 20 E., M.D.B.& M.

Tax Rate Area  
 5-224

467-31

1" = 100'



Parcel Map No. 97-16 - Bk. 59, Pg. 54

Assessor's Map Bk. 467 - Pg. 31  
 County of Fresno, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.  
 Assessor's Parcel Numbers Shown in Circles.

JUL 06 2010



**JAMES G. PALMER**  
APPRAISALS INC.

1285 W. Shaw  
Suite 108  
Fresno, CA 93711  
T 559.226.5020  
F 559.226.5063  
jgpinc.com

May 10, 2018

Ms. Marlene Murphy – CFO  
Successor Agency to the Redevelopment Agency of the City of Fresno  
848 "M" Street – Third Floor  
Fresno, California 93721

Re: Market Valuation  
Kearney Palms Shopping Center Parking Lot  
NEQ Fresno & "B" Streets  
Fresno, California 93706

Dear Ms. Murphy:

At your request and authorization, James G. Palmer Appraisals Inc. has completed an appraisal report on the above-mentioned real property, more particularly described in the enclosed appraisal report.

The appraisal report has been prepared to comply with the requirements of:

- Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).
- The Uniform Standards of Professional Appraisal Practice (USPAP) including the Ethics and Competency Provisions as promulgated by the Appraisal Standards Board of the Appraisal Foundation.
- The Federal Deposit Insurance Corporation (FDIC) appraisal standards, which include compliance with USPAP.
- The Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The 2018-2019 edition of USPAP states that under Standards Rules 2-2, 8-2 and 10-2, each written real property appraisal report must be prepared under one of the following two formats: Appraisal Report [Standards Rules 2-2(a), 8-2(a) and 10.2(a)] or Restricted Use Appraisal Report [Standards Rules 2-2(b), 8-2(b) and 10-2(b)]. In the case of this report, the appraisal is being communicated in an Appraisal Report format.

The property consists of a parking lot associated with a retail development located in the City of Fresno. The location of the property is referenced above. The purpose of the appraisal was to arrive at an opinion of value the fee simple estate, the value to be used to assist the client in asset evaluation and possible sale of the property. A single value will be reported.

The effective date of valuation is as of May 5, 2018. The following value is subject to the value definitions, extraordinary assumptions and limiting conditions as set forth in this report. One of the values reported herein is subject to a hypothetical condition that will be discussed later in this report.

In the opinion of the undersigned, the market value of the real property as of the date of value is as follows:

MARKET VALUE AS IS

\$791,000.00

The undersigned hereby certify that they have no present or future intended interest in the property, and that neither the fee nor employment for this assignment was contingent upon the value reported herein. It is also the opinion of the undersigned that the subject has no significant natural, cultural, recreational or historic value. This letter must remain attached to the report in order for the value opinion set forth to be considered valid. Please note that I have provided appraisal services regarding this property within 3 years immediately preceding acceptance of this assignment.

This appraisal is only valid for the purpose for which it is intended. It is invalid for a third party use or to establish a sales price for limited partners or syndication. Unless prior arrangements have been made with the appraiser, the right to photocopy all or part of this appraisal is strictly prohibited.

Thank you for this opportunity of serving you.

Sincerely,



Gregg J. Palmer, MAI  
Certified General Real Estate Appraiser  
California License AG002880  
Expiration: April 24, 2020

# ||||| KEARNEY PALMS LLC

Kearney Palms Shopping Center

204 W. Ridgepoint Drive • Fresno, CA 93711 • Ph. 559.225.5600 • FAX 559.225.5666

May 24, 2018

Ms. Marlene Murphey  
Ms. Debra Barletta  
Redevelopment/Successor Agency  
CITY OF FRESNO  
848 'M' Street 3<sup>rd</sup> floor  
Fresno, CA 93720

**RE: OFFER TO PURCHASE, KEARNEY PALMS SHOPPING CENTER PARKING LOT PARCEL,  
APN #467-310-12, CONTAINING APPROXIATELY 4.79 ACRES**

Dear Ms. Murphey and Ms. Barletta:

Regarding our recent discussions, I am interested in exercising the option to purchase the above referenced parking lot parcel from the successor agency to the City of Fresno Redevelopment Agency.

I have recapped below the specifics related to my purchase request:

**Land Area:** Approximately 4.79 acres (208,652 square feet)

**Land Lease:** We entered into a long term land lease with the RDA for a term of 45 years, ending December, 2044. The remaining term is approximately 26 years.

**Monthly Land Rent:** The monthly land rent is \$1.00 per month or \$12.00 annually.

#### Rental Proceeds

**Owed to the RDA:** According to Section 12.3; 12.3.1; 12.3.2 and 12.3.3 of the DDA, the percentage of excess rents over base is \$642,000 through June, 2018. Note: this obligation terminates upon the purchase of the parking lot parcel pursuant to the DDA.

#### Owner Contribution

**to Supermarket:** As part of the lease negotiations with the original supermarket tenant Fleming Foods/Food 4 Less, owner contributed \$436,500 to offset

Tenant's improvements and start-up costs. The Agency did not participate in this cost.

Agency Replacement

of Parking Lot Parcel: Pursuant to Section 6.7.4 of the "Parking Agreement", the Agency is required to replace the parking lot parcel when needed. This cost estimate is approximately \$5.00 per square foot or \$1,043,000 (208,652 sf x \$5.00 per square foot). This requirement (does not) go away if I purchase the parking lot parcel, but I would consider removing this condition from our settlement, subject to Agency's approval of the below purchase price proposal.

Parking Lot

Appraised Value: \$791,000 pursuant to RDA recent appraisal

Purchase Offer:	Parking lot parcel appraised value	-	\$791,000
	Rental proceeds through June, 2018	-	<u>\$642,000</u>
	<b>Total pricing</b>	-	<b>\$1,433,000</b>

Terms: All cash at close of escrow.

Close of Escrow: July 31, 2018

Thank you and please contact me if you have any questions.

Very truly yours,

  
Thomas W. Beggs  
KEARNEY PALMS LLC

TWB.sb



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PURCHASE SALE AND SETTLEMENT AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS

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THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic (Seller or Successor Agency), and KEARNEY PALMS, LLC (Buyer), enter into this Real Property Purchase, Sale and Settlement Agreement and Joint Escrow Instructions (the Agreement), effective as of the date the Buyer has executed it and both the Successor Agency and Oversight Board have approved it.

RECITALS

- A. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as 1153 Fresno Street (APN 467-310-12T), Fresno, California, and more particularly described in Exhibit A, attached, (the Property).
- B. Buyer and Seller entered into Covenants for Public Parking, Lease, Operation, and Maintenance for Public Parking Reciprocal Easements and Option to Purchase dated April 27, 1999, (Parking Covenant) and a Disposition and Development Agreement (DDA) dated April 27, 1999, which, among other things, dictates the obligations of the parties regarding the lease, maintenance, and sale of the Property.
- C. Buyer has approximately twenty-six years remaining on a forty-five year lease of the Property pursuant to the Parking Covenant, with a lease termination date in 2044.
- D. The Parking Covenant provides Buyer with an option to purchase the Property that is non-assignable except under limited circumstances.
- E. The Parking Covenant requires the Seller to bear the cost to remove and replace the Parking Lot's asphalt in the event the Parking Lot's surfacing is damaged or excessively worn.
- F. The DDA contains an excess rents over base (Excess Rent) provision wherein the Buyer is required to pay the Seller 60% of all rents that exceed the rental base for Parcel C (the chain grocery). Pursuant to the terms of the DDA, Buyer's Excess Rent requirement terminates upon Buyer's exercise of the option to purchase the Property from Seller.
- G. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the Plan) governing the land area identified as the Southwest Fresno GNRA Redevelopment Plan Area (the Project Area), in accordance with the California Community Redevelopment Law (Health and Safety Code Sections 33000, *et. seq.*; hereafter the CRL). The Plan and the CRL authorize the Agency to purchase property for redevelopment purposes.
- H. On January 26, 2012, the City Council adopted Resolution No. 2012-12 electing

to serve as the Successor Agency to the Redevelopment Agency of the City of Fresno (Successor Agency). Pursuant to Health & Safety Code Section 34181(a) the Oversight Board (Oversight Board) shall direct the Successor Agency to dispose of certain Property purchased by the former redevelopment agency with tax increment funds expeditiously and in a manner aimed at maximizing value.

- I. The Buyer has agreed to purchase the Property as-is, and subject to the terms and conditions set forth in this Agreement, the Parking Covenant, DDA, and the covenants in the grant deed.
- J. The Buyer shall execute this Agreement when submitting an offer to purchase. The Agreement shall become a contract for sale, purchase and settlement of the Property binding on the Buyer following the Successor Agency and Oversight Board approval.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

#### AGREEMENT

1. Purchase and Sale. Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement. Sale of this Property is subject to compliance with Community Redevelopment Law of the State (California Health and Safety code Sections 33000 *et seq*),
2. Conditions Precedent. Closing shall be conditioned upon performance of all of obligations in this Agreement.
3. Purchase Price. The purchase price for the Property is SEVEN HUNDRED NINETY ONE THOUSAND DOLLARS (\$791,000.00) (Purchase Price). The Purchase Price, subject to adjustments provided in this Agreement (if any), will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing. The purchase price also includes value added to the community as presented by Buyer.
4. Covenants. Buyer agrees to the covenants set forth in the grant deed attached hereto as Exhibit B. If any covenant contained therein is found legally invalid or unenforceable, this Agreement shall be voidable.
5. Seller's Warranties. Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Property from adjacent Property, encroachments from the Property onto adjacent Property, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with any code, statute, regulation, ordinance, judicial order, judicial holding, or other applicable law concerning the Property; (d) Seller has no knowledge of any material defects in

the Property.

The continued accuracy in all respects of Seller's representations and warranties shall be a condition precedent to Buyer's obligation to close. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Closing and shall survive the Closing. If any of the representations and warranties are not correct at the time made or as of the Closing, Buyer may terminate this Agreement and there shall be no further liability on the part of Buyer to Seller.

6. Buyer's Payment of Rental Proceeds Owed to Seller. Pursuant to Section 12.3 of the DDA, Buyer is obligated to pay excess rents (Excess Rent) over base to Seller. The parties stipulate and agree the Excess Rent amount currently owed to Seller is \$642,000 through June of 2018. Buyer shall pay Excess Rent in the amount of \$642,000, in full, at the close of escrow. Payment of Excess Rent shall not be included in the Purchase Price of the Property, but shall be a condition precedent to the Close of Escrow. Buyer's Excess Rent obligations to Successor Agency shall terminate upon Buyer's payment of \$642,000 and the close of escrow.
7. Termination of Agency Obligation to Replace Parking Lot Parcel. Pursuant to Section 6.7.4 of the Parking Covenant, the Successor Agency, when necessary and subject to Available funds, must bear the cost to remove and replace the Parking Lot's asphalt in the event that the Parking Lot's surfacing is damaged or excessively worn. The Agency's obligation does not extend to repairs or replacement for any other reasons, including aesthetics or safety. In consideration for this Agreement, the Parties agree the Successor Agency's maintenance obligations to Buyer, including, but not limited to the Successor Agency's obligation for replacement of asphalt, as set forth in Section 6.7.4, shall terminate upon close of escrow.
8. Opening Escrow/Escrow Deposit. Within five business days after the execution of this Agreement by both parties, the parties will open an escrow (Escrow) with Old Republic Title, 7451 N. Remington Ave. Suite 102, Fresno, CA 93711 (Title Company), Attention: Chris Brazil.
  - 8.1 Agreement as Joint Escrow Instructions. This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.
  - 8.2 Deposits into Escrow. Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within thirty days after the Agreement is executed, Buyer will deposit the balance of the Purchase Price and Seller will deposit, or will conditionally deliver to Buyer, a recordable grant deed duly

executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any signatory executing such deed on behalf of Seller.

- 8.3 Title. Seller will convey title of the Property to Buyer AS IS, without regard to all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller.
- 8.4 Title and Closing Costs. Buyer will pay any costs of clearing and conveying title. Buyer will pay the cost of a CLTA or ALTA owner's title policy insuring Buyer's title in the condition described in Section 5.3. Escrow fees, costs to record the grant deed, etc., shall be split equally between Buyer and Seller.
- 8.5 Closing. The escrow will be considered closed (Closing or Close or the Closing Date) on the date that the Title Company records the grant deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Unless extended by the mutual consent of the parties, the escrow and this Agreement shall terminate if Closing does not occur within sixty days following final execution of this Agreement (including attestation by the Clerk) (the Outside Closing Date). Seller's Executive Director is authorized to agree to administratively extend this Agreement as necessary to accommodate satisfaction of conditions precedent. Upon termination of the escrow, the Title Company will return all funds and documents to the respective depositor, including deposit if Seller defaults under section 14.16, and this Agreement will be of no further effect except as herein provided. If Buyer defaults under section 14.17 deposit is nonrefundable, and this Agreement will be of no further effect except as herein provided.
- 8.6 Recordation. At Closing, Title Company shall date the grant deed, and all other undated documents in escrow, with the date of Closing, and the Title Company shall record the grant deed, performance deed of trust and all other documents necessary to the Closing.
- 8.7 Disbursements. At Closing, Title Company shall disburse the Purchase Price, less Seller's costs to clear title (placing it in the condition set forth in Section 8.3), prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA or ALTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 8.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 8.8 Risk of loss. Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 8.9 Broker. Neither party engaged a broker for this transaction.

9. Delivery of Possession. Seller shall deliver exclusive possession of the Property at Closing.
10. Buyer's Acceptance of the Property "As Is". The Property is being sold in an "As is" condition which is accepted by the Buyer
11. Release. Following payment of Excess Rents, termination of Seller's maintenance obligations and close of escrow for sale of the Property, the Parties hereby release each other, their employees, elected officials, agents, successors and assignees from liability regarding any and all actions, causes of actions, claims, debts, demands, damages, costs, interests, expenses, liens, obligations, or any other legal or judicial theory that may give rise to a claim for compensation, attorney's fees or debts whatsoever, in law or in equity, arising of the sale of the Property, the Parking Covenant as it relates to the sale of the Property and termination of seller's maintenance obligations, and the DDA as it relates to termination of buyer's obligation to pay excess rents. Nothing contained in this paragraph or elsewhere in this Agreement shall be deemed to release or relieve any party of its remaining obligations under this Agreement.
12. Waiver of Civil Code §1542. With respect to the claims released in Paragraph 11 of this Agreement, the Parties hereby expressly waive the provisions of Section 1542 of the Civil Code of the State of California which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by his or her, must have materially affected his or her settlement with the debtor.

The Parties acknowledge that the effect and import of Section 1542 has been explained to them by counsel. The Parties further acknowledge and agree that these waivers of rights under Section 1542 of the Civil Code have been separately bargained for and are essential and materials terms of this Agreement and, without such waivers, the Parties would not have entered into this Agreement.

13. Miscellaneous Provisions.
  - 13.1 Further Assurances. Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
  - 13.2 Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of service if served personally on the person to receive the notice, (b) on the date deposited in the U.S. mail, if delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and addressed to the relevant party at the address set forth below, (c) on the date of transmission if delivered by facsimile, to the number provided below, that provides a transmission confirmation showing the date and time transmitted, or (d) on the date of transmission if delivered

electronically via email and showing the date and time transmitted.

To Seller:

SUCCESSOR AGENCY TO THE REDEVELOPMENT  
AGENCY OF THE CITY OF FRESNO, a public body  
corporate and politic  
Attention: Executive Director  
848 M Street, 3rd floor  
Fresno, CA 93721  
Phone No.: 559.621.7600  
Fax No.: 559.498.1870

To Buyer:

KEARNEY PALMS, LLC  
Attention: Thomas W. Beggs, Managing Member  
204 W. Ridgepoint Drive  
Fresno, CA 93711  
Phone No.: 559.225.5600

- 13.3 Entire Agreement. Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.
- 13.4 Amendment or Cancellation. Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.
- 13.5 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this Agreement and its rights hereunder without the consent of Seller, subject to the duties and obligations of any successor in interest, as defined herein, to the Buyer as set forth herein.
- 13.6 Time of the Essence. Time is of the essence of each term in this Agreement.
- 13.7 Attorneys' Fees. If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.
- 13.8 Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed according to California law.

Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California

- 13.9 Headings and Titles. The title and section headings in this Agreement are for convenience only. The headings and titles are not part of this Agreement and shall not be used to construe it.
- 13.10 Waiver. If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.
- 13.11 Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 13.12 Interpretation. This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.
- 13.13 Precedence of documents. If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.
- 13.14 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.
- 13.15 Survival. All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.
- 13.16 Seller's Default and Buyer's Remedies. If the sale of the Property is not consummated due to Seller's material default hereunder that is not cured within five business days of Notice from Buyer of Default, then Buyer shall have the right, to elect, as its sole and exclusive remedy, to either (a) terminate this Agreement by written notice to Seller, promptly after which the Deposit shall be returned to Buyer, (b) waive the default and proceed to close the transaction contemplated herein. Notwithstanding anything to the contrary contained herein, Seller shall not be deemed in default unless and until Buyer provides Seller with written notice of such default and Seller fails to cure such default within five business days of its receipt of such written notice.
- 13.17 Buyer's Default and Seller's Remedies. If the sale of the Property is not consummated due to Buyer's material default, then Seller shall have the right, to elect, as its sole and exclusive remedy, to terminate this

Agreement by written notice to Buyer, after which the Deposit shall be forfeited.

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates set forth below.

BUYER:

SELLER:

KEARNEY PALMS, LLC, a California limited liability company

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

By: \_\_\_\_\_  
Thomas W. Beggs, Managing Member

By: \_\_\_\_\_  
Marlene Murphey, Executive Director

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on \_\_\_\_\_, 20\_\_

ATTEST:  
YVONNE SPENCE, MMC

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By \_\_\_\_\_  
Deputy

By \_\_\_\_\_  
Tracy N. Parvanian  
Senior Deputy City Attorney

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

Attachments:  
Exhibit A: Legal Description  
Exhibit B: Grant Deed



EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A OF PARCEL MAP NO. 97-16, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 59 AT PAGE 54 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

APN 467-310-12T

EXHIBIT "B"

GRANT DEED

**Recording Requested By:**

Successor Agency to the Redevelopment  
Agency of the City of Fresno  
848 M Street, Third Floor  
Fresno, CA 93721  
Attn: Executive Director

**When Recorded Mail To:**

Kearney Palms LLC  
C/O Thomas W. Beggs  
Managing Member  
204 W. Ridgepoint Drive  
Fresno, CA 93711

**Mail Tax Statements To:**

Kearney Palms LLC  
C/O Thomas W. Beggs  
Managing Member  
204 W. Ridgepoint Drive  
Fresno, CA 93711

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APN 467-310-12T

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PUBLIC AGENCY RECORDING - NO FEES DUE  
GRANT DEED

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a body corporate and politic of the State of California (Grantor), acting to carry out the Redevelopment Plan for the Southwest Fresno General Neighborhood Renewal Area Project (Redevelopment Plan) under the Community Redevelopment Law of the State of California (Law), grants to KEARNEY PALMS LLC, a California limited liability company (Grantee), all that real property in the City of Fresno, County of Fresno, State of California, as described in Exhibit A.

Grantor grants the Property to Grantee subject to the following:

1. All matters of record affecting the title and use of the property including, without limitation, easements, encumbrances, and the Redevelopment Plan, as from time to time amended; and

2. The Covenants for Public Parking, Lease, Operation, and Maintenance for Public Parking Reciprocal Easements and Option to Purchase Agreement (Parking Agreement) between Grantor and Grantee, dated April 27, 1999, and recorded May 18, 1999, as Document No. 1999-0074946 in the Official Records of Fresno County, and by this reference incorporated into this deed, excluding the lease and payment obligations thereunder.

3. The following covenants. Grantee covenants for itself, its successors and assigns, and all persons claiming under or through them, that they will:

3.1 Comply with all indemnification provisions of the Parking Agreement which; by their nature, are to survive recording of the Parking Agreement and this deed.

3.2 Not discriminate against or segregate any person or group of persons because of race, color, creed, religion, sex, marital status, age, physical or mental disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property and Improvements; and not establish or permit any practice of discrimination -or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees.

All deeds, leases or contracts for the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property and Improvements shall first be submitted to the Grantor for approval. Each deed, lease, or contract shall contain express provisions in substantially the following form:

3.2.1 In deeds:

"The grantee herein covenants for grantee, grantee's heirs, executors, administrators, and assigns, and all persons claiming under or through them. that: (a) there shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, marital status, age, physical or mental disability national origin or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, and (b) neither grantee nor any person claiming under or through grantee, shall establish or permit any practice of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. These covenants shall run with the land."

3.2.2 In leases:

"The lessee covenants for lessee, lessee's heirs, executors, administrators, successors and assigns, and all persons claiming through lessee, that: (a) there shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, sexual orientation, age, marital status, national origin or ancestry in

the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, and (b) neither the lessee nor any person claiming under or through lessee, will establish or permit any such practice of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the leased property."

### 3.2.3 In contracts:

"There shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, age, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land. Neither the transferee nor any person claiming under or through transferee, will establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants or vendees in the land. These covenants are binding upon and obligate the contracting party or parties and any subcontracting party or parties, or other transferees under this instrument."

This Section 3.2 runs with the land in perpetuity, and binds and obligates Grantee, Grantee's successors and assigns, and any party contracting or subcontracting with Grantee.

4 No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this deed will defeat, invalidate, or impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the Agreement. Nevertheless, the remaining covenants, conditions, restrictions, limitations and provisions, shall bind any successor of Grantee, whether such successor acquires title by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5 The covenants in this deed are covenants running with the land and shall benefit, and are enforceable by, the following persons, except as specifically provided otherwise herein, to the fullest extent permitted by law and equity: (a) the Grantor, its successor and assigns. (b) the Grantee, its successors and assigns. The covenants will be enforceable against the following persons: (i) Grantee, its successors and assigns, (ii) every successor in interest to the Property or any part of it or any interest therein, and (iii) any party in possession or occupancy of the Property or any part of it. The covenants will run for the periods stated in the Agreement, the Parking Agreement, and this deed, whether or not the Grantor remains an owner of the Property or any interest therein. Upon breach of any covenant, the Grantor and the aforementioned persons will have the right to exercise all rights and remedies, and to maintain any actions at law or in equity or other proceedings to enforce the covenants.

6 The Grantor, its successors and assigns and the Grantee and its successors and assigns having a fee interest in the Property (and with the consent of the Agency), may consent or agree to do the following, without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or other person having any interest less than a fee in the Property: (a) change or

eliminate, in whole or in part, any of the covenants in this deed, or (b) subject the Property to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee include only those persons holding fee title to all or part of the Property. The term does not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having an interest less than a fee in the Property.

7. Grantee represents that it is purchasing the Property for use as a parking lot that benefits the Kearney Palms Shopping Center and the public, as described in the Agreement and the Parking Agreement, and not for land speculation.

8. If a conflict exists or arises between the provisions of this deed and the Parking Agreement, the Grantor and Grantee intend for themselves, and their successors in interest, that the Parking Agreement will control.

IN WITNESS WHEREOF the parties hereto have signed this Grant Deed the \_\_\_\_ day of \_\_\_\_\_, 2018.

GRANTEE:

KEARNEY PALMS, LLC., a California limited liability company

By: \_\_\_\_\_  
Thomas W. Beggs,  
Managing Member

Dated: \_\_\_\_\_, 20\_\_

GRANTOR:

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

By: \_\_\_\_\_  
Marlene Murphey, Executive Director

Dated: \_\_\_\_\_, 20\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A OF PARCEL MAP NO. 97-16, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 59 AT PAGE 54 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

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