
**Lease Agreement
(With Right to Acquire)
Kearney Palms Police Substation
(Triple Net)**

THIS LEASE AGREEMENT ("**Lease**") is entered, as of the Effective Date (defined below), between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a body corporate and politic ("**Agency**" or "**Landlord**"), and the CITY OF FRESNO, a municipal corporation ("**City**" or "**Tenant**").

Recitals:

- A. The Agency is responsible for redevelopment activities that carry out the Urban Renewal Plan for the Southwest Fresno General Neighborhood Renewal Area Project, as amended (the "**Plan**") for the Southwest Fresno Redevelopment Project (the "**Project Area**").
- B. The effectiveness of th Plan expires January 14, 2009. After that date, the Agency will have no authority to act under the Plan, except to enforce existing covenants or contracts, and other limited activities as described in the Plan and permitted by the Law.
- C. November 13, 1998, to further the objectives of the California Community Redevelopment Law (California Health and Safety Code Section 33000, and following) (the "**Law**"), and to carry out the Plan, the Agency entered a Disposition and Development Agreement ("**DDA**") with Kearney Palms LLC, a limited liability company ("**Developer**") regarding the development of Kearney Palms Shopping Center (the "**Center**").
- D. Under the DDA, the Agency conveyed certain commercial development parcels to the Developer for Center development. The Agency retained two parcels. It developed one parcel as a public parking lot associated with the Center, and has developed the other parcel with a police substation, which is the subject of this Lease (the "**Substation**").
- E. The entire project, including the Substation, was environmentally assessed under Environmental Assessment No. 97-014, and under the Mitigated Negative Declaration for Environmental Assessment No. R-97-31/C-97-59/PM-97-16 (collectively the "**Environmental Assessments**"). The Council and Agency

November 9, 2000

approved the Environmental Assessments by Resolutions No. 98-103, and 1468, respectively, March 31, 1998 in connection with approving the DDA and Parking Agreements.

- F. August 17, 1999, at a noticed public hearing, the Agency Board and the City Council ("Council") approved, and prepared the requisite findings regarding, a "Cooperation Agreement and Agreement to Finance and Construct Police Substation" ("**Financing Agreement**") between the Agency and City for financing and constructing a police substation ("**Substation**").
- G. May 16, 2000, the Agency Board awarded a construction contract to Mauldin-Dorfmeier for the Substation, which has constructed the Substation on Parcel D of Parcel Map PM-97-16 ("**Parcel Map**"). The Parcel Map was recorded in the Official Records of Fresno County May 18, 1999, as Document No. 990074944, in Book 59 of Parcel Maps at Page 54. The parcels created under this Parcel Map, excluding Parcel D, are called the "**Site**" in this Lease.
- H. The Financing Agreement describes the Substation and related improvements as an approximately 8,400 square foot building, not less than 75 segregated and fenced parking stalls, trash enclosure, and related improvements (Parcel D and the Substation improvements on it are collectively called the "**Premises**" in this Lease).
- I. This Lease carries out Section 5 of the Financing Agreement, under which the Agency and City agreed to enter a lease for the Premises on certain primary terms, which include the City's title acquisition at the expiration of the Lease.

Lease:

- 1 **Incorporation of Recitals.** The above recitals are here incorporated and made a part of this Lease.
- 2 **Effective Date.** "Effective Date" means the date that the last party signs this Lease, after the Council and Agency Board approve it.
- 3 **Lease.** The Agency leases the Premises to the City, and the Agency leases the Premises from the Agency on the terms and conditions set forth in this Lease.
- 4 **Term.** The lease term shall be 20 years, beginning at 12:01 a.m. of the day after the last to occur of the following: (a) the date on which the Agency or City files the Notice of Completion, or (b) the date on which the Agency or City files the Certificate of Occupancy; and ending at 12:01 a.m. 20 years after that, unless the term is extended or sooner terminated as provided herein.
- 5 **Title Conveyance to City.** Upon the expiration of the lease term, if the City is not

then in default, and has paid quarterly rent payments when due for 80 full quarters, the Agency will convey title of the Premises to the City, and City will accept title, under a grant deed, substantially in the form attached as Exhibit A (the "Grant Deed").

- 5.1 **Deferral of title conveyance.** If, during the 20-year term, rent is abated, as provided herein, due to damage or destruction or non-occupation, and this Lease continues in effect, the lease term shall be extended and the Agency will not be obligated to convey title until and to the extent necessary for the Agency to receive rent, as defined in the rent provision, for 80 full quarters.
- 5.2 **Conveyance "AS IS."** The Agency conveyance to the City will be "AS IS" with all faults including, without limitation, environmental conditions and other Premises conditions.
- 5.3 **Escrow.** The City and Agency shall open an escrow to convey title of the Premises. The Agency shall execute and deposit the Grant Deed into an escrow with a mutually selected title company. Each party shall sign and deposit individual or joint escrow instructions into the escrow. The instructions will reflect the terms of conveyance set forth in this Section 5. The City and Agency will sign and deposit any supplemental joint escrow instructions that the title company may require.
- 5.4 **Close of escrow.** The escrow shall close on or after the City pays its 80th quarterly rent payment, but not later than six months after the 80th payment. City shall pay holdover rent for any holdover period. For any period less than a month, the holdover rent shall be prorated based on a 30-day month.
- 5.5 **Recording.** The parties will execute, acknowledge, and record this Lease, or a memorandum of this Lease substantially in the form of Exhibit B, attached.
- 5.6 **Terms of escrow.** The joint escrow instructions to the mutually selected title company will include the following terms: (a) a purchase price of \$1, (b) an "AS IS" sale, with all faults including, without limitation, any environmental conditions, (c) close on or within six months following the expiration date of this Lease, (d) City to take title subject to all non monetary title exceptions that do not affect the substation use and occupancy including, without limitation, easements and the title company's usual exceptions, (e) Agency to pay premium for CLTA title policy insuring City's title, the recording fees, the cost of any documentary transfer taxes, and one-half of the escrow fee, (f) City to pay one-half of the escrow fee, (g) prorations, if any, as the parties may then determine, (g) City and Agency to deposit into escrow their respective charges when the title company provides an estimated statement

of charges, (h) City and Agency to designate the title company, (i) City to take title subject to the terms and conditions of the attached Grant Deed, (j) Agency will have no obligation to remove or restore any improvements, and (k) other terms, as the parties may agree.

- 5.7 **Lease as consideration.** The Agency will convey title to the City in consideration for the City entering this Lease and making 80 full quarterly rent payments hereunder.

6 **Rent and Taxes.**

- 6.1 **Quarterly rent.** The City shall pay rent quarterly, in arrears, to the Agency, at the address set forth in the Notices section of this Lease. The quarterly rental payment shall be an amount equal to the sales taxes generated from the Site and allocated/payable to the City. The City shall pay the quarterly rent within 30 days after the City receives the sales tax, accompanied by supporting evidence from the State Board of Equalization. City shall pay the first rent payment 30 days following the end of the first calendar quarter following the Lease commencement date. If the first or last rental period is less than a full calendar quarter, City shall pay prorated rent based on a 30-day month.
- 6.2 **Sales tax an index only.** The sales tax will be an index to calculate the rent. Neither the use of the sales taxes as an index, nor any other provision of this Lease shall be construed as the City's pledge of taxes for a specific purpose. Sales taxes shall be deposited into the City's General Fund and used for any lawful purposes as determined within the lawful discretion of the City. This Lease is not a pledge of sales tax, general tax revenues, funds, or moneys of the City.
- 6.3 **Documentation.** City shall cooperate with the Agency to establish a procedure with the State Franchise Tax Board that permits the Agency and City to determine sales taxes generated on or from the Site. Supporting documentation, calculating the rent payment, shall accompany the rent payment.
- 6.4 **Payment.** City shall pay all rent, without deduction, to Agency at the address set forth in this Lease for notices to Agency, or at any other place or places that Agency may from time to time designate by written notice to the City.
- 6.5 **Nature of City Lease obligations.** The City obligation to pay the rental payments and other payment obligations under this Lease shall constitute a current expense to City for its use and occupancy of the Premises. The rental payments shall be payable only from current funds, budgeted and

appropriated, on deposit in a reserve fund, or otherwise legally available for the rental payments or other Premises costs. This Lease does not create an immediate debt for aggregate rental payments, and is not a pledge of the City's full faith and credit.

6.6 **Appropriations covenant.** During its annual budgeting process, City shall consider, and will use best efforts to appropriate funding to meet its payment, maintenance, and other estimated Premises costs under this Lease for the fiscal year under consideration.

6.7 **Rent abatement.** The City obligation to pay rent is contingent on the City's use and occupancy of the Premises. Rent shall be abated proportionately, during any period in which the City cannot occupy the Premises for reasons other than the fault of the City. For example, rent will be abated when the Premises are damaged or destroyed, if the damage or destruction is not due to any action or omission attributable to the City, and the damage or destruction substantially interferes with the City's use and occupancy of the Premises. Any abatement shall be based on a 30-day month and the ratio of unuseable structural square footage to the useable structural square footage of the Substation. Rent abatement shall be the City's sole remedy for loss of use. Unless the Agency elects otherwise, with notice to the City, this Lease shall continue and shall not terminate due to any damage or destruction.

6.8 **Additional rent for taxes and assessments.** City and Agency are tax exempt entities. However, should any tax that is not subject to the exemption (including general and special assessments), be assessed against the Premises, City shall pay such taxes as additional rent. Any such taxes and assessments levied or assessed against the Premises during the first and last years of the term shall be prorated based on a 30-day month.

7 **City to Pay all Premises Costs, as if an Owner.** This Lease is a triple net lease. During the term hereof, and any extended or holdover period, the City shall be solely responsible for all costs associated with the Premises. Costs shall include, without limitation, the following: (a) maintaining, repairing, restoring, or reconstructing all or any part of the Premises, (b) utility and other service costs, (c) environmental compliance costs, (d) insurance costs, and (e) any other costs associated with the Premises.

7.1 **Acceptance of Premises.** By taking possession of the Premises, the City accepts the Premises as in good condition, and acknowledges that the Premises were constructed according to the Financing Agreement, and with the plans and specifications for the Substation.

7.2 Repair, maintenance, and replacement. At its sole cost, the City, during the lease term and any extended or holdover period, shall maintain the Premises in good condition, all according to the Plan, and without regard to whether the cost may be a capital or noncapital, ordinary or extraordinary. City obligations extend, without limitation, to the exterior roof, sidewalls, structural supports, the building foundation, all interior improvements, the plumbing, heating, air conditioning, electrical systems, yards, grounds, paving, building doors, and glazing.

7.3 City alterations and improvements. At its sole cost, and without Agency approval, the City may make nonstructural alterations or improvements to the interior of the building that City deems necessary for Police Department business. The City may not make any structural or other alterations or improvements to the exterior of the Premises without first submitting the final construction plans and specifications to, and obtaining the Agency's written approval. Agency will not unreasonably withhold approval. All improvements or alterations that City makes on or to the Premises shall comply with the Plan, and the requirements of any federal, state, or local authority having jurisdiction.

7.4 Ownership. Any alterations, improvements, or installations that City makes to the Premises shall at once become a part of the realty and belong to the Agency. Title shall pass to the City upon conveyance as provided in Section 5 of this Lease. Should this Lease terminate without conveyance of title to the City, City shall surrender the Premises and all improvements thereon to Agency in good, sanitary, and neat order, condition, and repair, excluding ordinary wear and tear. Provided, however, that City may remove any trade fixtures it has paid for and installed or placed on the Premises. City shall repair any damage to the Premises caused by removing trade fixtures.

7.5 Liens. City will keep the Premises and each part of it including, without limitation, all other improvements and fixtures on the Premises free from all liens arising out of work or labor done, services performed, or materials or appliances furnished to or for the benefit of the City. City will promptly pay and fully discharge any claim on which any lien may be based. City will indemnify, defend, and hold the Agency and the Premises harmless from all liens and claims of liens and suits or other proceedings pertaining thereto.

8 Use of Premises.

8.1 Permitted and prohibited use of Premises. City shall use the Premises for operating a City of Fresno Police Department Substation, and related uses, and for no other purpose without the prior written consent of Agency. The Agency shall not unreasonably withhold consent. The City shall not do

the following on the Premises: (a) use or cause any hazardous or toxic substances or materials to be used on the Premises, (b) store or dispose of any such substances or materials on the Premises, except in the usual and ordinary course of police operations, and in accordance with all requirements of local, state, and federal law, rules, and regulations governing hazardous or toxic substances or materials.

8.2 **Compliance with law.** The City will comply with the Plan, and with all laws applicable to the Premises, and the use and occupancy of the Premises including, without limitation, environmental laws. City shall not use or permit the Premises to be used in violation of any law or ordinance.

8.3 **Nondiscrimination Covenant.** The City covenants for itself, its successors and assigns, and all persons claiming through City 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 Premises, and (b) neither the City nor any person claiming under or through City, 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 Premises.

8.4 **Signs.** City may erect and maintain signs on the Premises relating to its Police Department Substation use, if the signs meet the following requirements:

8.4.1 Are aesthetically consistent with the architecture and sign requirements of the Center;

8.4.2 If City does not take title to the Premises, the City removes the signs at its sole cost, without damage to any building on the Premises, on expiration or sooner termination of this Lease; and

8.4.3 Comply with all sign laws and ordinances applicable to the Premises.

9 **Insurance.**

9.1 **Agency/City insurance.** The City shall maintain insurance coverage in the amounts and for the coverage listed below. Currently, City and Agency are self insured and co-insureds with commercial coverage, with at least the insurance coverage listed below. On or before receiving possession of the Premises, the City will deliver to Risk Management a description of the Premises and related assets to be included in the insurance as covered

property. If, after the Agency delivers possession of the Premises to the City, the City and Agency acquire insurance coverage independent of the other, the City will maintain throughout its tenancy, the insurance coverage described below. Insurance coverage shall be at City's cost and expense during City's tenancy.

9.1.1 Fire Insurance. Insure all buildings, improvements, and other structures on the Premises for full replacement cost, against loss or destruction by fire and the perils, including vandalism and malicious mischief, commonly covered under the standard extended coverage endorsement in Fresno County, California. The City will use any insurance proceeds from a loss payable under any insurance described in this section to repair or replace the damaged building or improvement.

9.1.2 Commercial General Liability Insurance. Commercial general liability insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.

The Agency and City will increase the liability limits when needed to maintain the insurance limits at not less than the amount or type of insurance typically carried on properties in the City of Fresno improved and operated for similar purposes as the Premises.

9.1.3 City's Personal Property. Insure personal property, including trade fixtures and equipment, at the Premises, against loss or damage by fire and by any peril included within fire and extended coverage insurance.

9.1.4 Workers' Compensation Insurance. Workers' Compensation insurance according to the laws of California.

10 Destruction of Premises. If any improvements on the Premises are damaged or destroyed during the lease term, the City shall repair, restore, and rebuild the improvements and the Premises to substantially the same condition as existed before the damage or destruction. The City waives any right under Civil Code Sections 1931 through 1933 to terminate this Lease for damage or destruction to the Premises.

10.1 Time for Construction. The City will begin any reconstruction or restoration and repairs within a reasonable time after the damage or destruction occurs. After beginning the work, the City shall diligently pursue

the work to completion within a reasonable time after the loss.

10.2 Rent abatement during construction. Rent shall be abated, as provided above in this Lease, only for the time and to the extent City is prevented from occupying the Premises for the uses authorized in this Lease. The term of this Lease shall be extended for a comparable time and extent so that the City pays rent for 80 full quarters before the Agency is required to convey title to the City.

10.3 Use of Insurance Proceeds. Except as otherwise provided in this Lease, City shall use all insurance proceeds payable for any damage to the Premises from a peril covered by insurance to make the necessary repairs and to reconstruct the Premises.

11 Termination of Lease.

11.1 Termination for non-appropriation. Should the Council fail to identify and appropriate funds during the annual budget process to meet City's estimated obligations under this Lease for the fiscal year under consideration, the City may terminate this Lease and vacate the Premises as of the end of the prior fiscal year. City shall use best efforts to give the Agency 60 days advance written notice of such termination. "Fiscal year" shall mean the City's twelve month fiscal period that begins July 1 and ends June 30 each year.

11.2 Termination for damage or destruction. City may terminate this Lease under any of the following circumstances:

11.2.1 If the Premises are damaged or destroyed from any cause whatever, insured or uninsured, and the laws then in existence do not permit repair or restoration of the Premises; or

11.2.2 If the Premises are destroyed from any cause whatever, insured or uninsured, during the last two years of the Lease.

Termination shall be by action of the terminating party's governing body within 30 days after the event occurs that leads to the right to terminate. Termination shall be effective on the date that the Council or Agency Board approves the termination. Upon termination, any insurance proceeds for the damage or destruction to the Premises or improvements shall be deposited with the Agency for redevelopment purposes, excluding any proceeds attributable to City's personal property and trade fixtures. Rent payments and other sums payable by City to Agency under this Lease shall be prorated as of the termination date.

11.3 Termination for default. The Agency may terminate this Lease under the following circumstances, among any others permitted by this Lease or by law: (a) the City's failure to cure any default in lease payments for 15 days after written notice, or (c) the City's failure to cure any other default within 30 days after written notice. The City may terminate this Lease if the Agency fails to deliver possession within six months after the parties execute this Lease, or (b) the Agency fails to cure any breach or default within 30 days after written notice and the breach or default is a material breach.

12 Condemnation.

12.1 Total Condemnation Defined. The term "total condemnation" as used in this Section 12 shall mean the taking by eminent domain ("condemnation") by a public or quasi-public agency or entity having the power of eminent domain ("condemnor") of either:

12.1.1 More than 35 percent of the ground area of the Premises; or

12.1.2 Less than 35 percent of the ground area of the Premises if the remaining improvements on the Premises cannot reasonably be restored to a condition suitable for City's occupancy for the uses permitted within 90 eight-hour work days under laws and regulations then applicable; or

12.1.3 Less than 35 percent of the ground area of the Premises such that City is substantially prevented from using the remaining Premises for the use permitted under this Lease.

12.2 Partial Condemnation Defined. The term "partial condemnation" as used in this Section shall mean any condemnation of part of the Premises that is not a total condemnation.

12.3 Termination for Total Condemnation. If the Premises are totally condemned during the lease term, this Lease shall terminate without further notice as of 12:01 A.M. on the date the condemnor takes physical possession of the condemned property. All rent payable under this Lease shall be prorated as of 12:01 A.M. on that date and the City will promptly pay the rent to the termination date. Agency and City will perform all obligations accruing before the termination.

12.4 Effect of Partial Condemnation. If the Premises are partially condemned during the lease term, this Lease shall terminate as to that part of the Premises taken on the date the condemnor takes physical possession, but the Lease shall remain in full force and effect as to the remainder of the

Premises. City shall promptly after the condemnor takes physical possession that part condemned, restore the improvements on the remainder of the Premises to a condition permitting the City to use the Premises for the uses permitted by this Lease. The rent payable under this Lease shall be abated while, and to the extent, the work of restoration prevents the City from occupying the remainder of the Premises. Upon restoration, the rent shall continue as provided in the rent provision, without reduction.

12.5 Power to Sell in Lieu of Condemnation. Agency and City, without affecting the continuation of this Lease, may agree to sell or convey to the condemnor that part of the Premises that the condemnor wants free from Agency and City rights, without first requiring that the condemnor institute or try an action or proceeding for condemnation.

12.6 Condemnation Award. Except as otherwise provided in this Section 12, all compensation and damages awarded or paid for condemning the Premises or any part of it, or for any sale in lieu of condemnation, shall be the sole property of Agency. City assigns to Agency any claim City might have against Agency, the leased Premises, or condemnor for diminution in the leasehold estate value, or the unexpired lease term value. Provided, however, that City is entitled to seek to recover from the condemnor, but not from Agency for the following:

12.6.1 The cost of removing any trade fixtures, furniture, or equipment from that part of the Premises taken by condemnation;

12.6.2 The value of any improvements installed by City on that part of the Premises taken by condemnation that City has a right to remove under this Lease but that City elects not to remove; and

12.6.3 The then amortized value of all improvements made by City on that part the Premises taken by condemnation that City, on expiration of this Lease, could not remove, either because of provisions of this Lease or because the improvements would have no economic value on removal from the Premises.

13 Indemnification.

13.1 City's hold harmless and indemnity. The City shall indemnify, defend, and hold the Agency and the property of Agency, including the Premises, harmless from all liability, claims, loss, damages, or expenses, including counsel fees and costs, arising from the death or injury of any person including, without limitation, any person who is an employee or agent of City,

or due to damage to or destruction of any property including, without limitation, property owned by City or any person who is an employee or agent of City, caused or allegedly caused by the following: (1) any cause while the person or property is in or on the Premises or in any way connected with the Premises or any improvements or personal property on the Premises, (2) some condition of the Premises or any improvement or personal property on the Premises; (3) some act or omission on the Premises of any person in, on, or about the Premises; or (4) any matter connected with City's occupation and use of the Premises.

- 13.2 Agency's hold harmless and indemnity.** Notwithstanding the provisions of Paragraph 13.1 of this Lease, City shall be under no duty to indemnify, defend, and hold Agency harmless from any liability, claims, or damages arising from the sole negligence or willful acts of any Agency agent or employee, acting in the course and scope of his or her agency or employment. Agency agrees to indemnify, defend, and hold City free and harmless from and against any liability, claims, or damages arising from the sole negligence or willful acts by any person who is an agent or employee of Agency acting in the course and scope of his or her agency or employment.

14 Default and Remedies.

- 14.1 Defaults generally.** Failure or delay of either party to perform any term or provision of this Lease is a default under this Lease.
- 14.2 Default by City.** All covenants and provisions in this Lease are conditions to this Lease and to the lease term. The following events constitute a default and material breach of this Lease by City:
- 14.2.1** Any failure to pay rent when due when the failure continues for 15 days after the City serves written notice to pay rent or surrender possession of the Premises; or
- 14.2.2** Any failure to perform any other covenant, condition, or provision contained in this Lease when the City does not cure the failure within 30 days after the Agency gives the City written notice of the specific failure.
- 14.2.3** The City abandons or vacates the Premises (for purposes of this Lease, this shall mean City's failure to occupy and operate the Premises for at least 30 consecutive days). Not occupying or operating the Premises for 30 consecutive days after an event of destruction, if the City is diligently restoring or reconstructing the

improvements on the Premises, shall not be abandonment or vacation.

- 14.3 **Agency default.** If Agency defaults under this Lease, the City shall give the Agency written notice, and the Agency shall have the same cure periods as provided above for a City default.
- 14.4 **Waivers.** If either party waives a breach of this Lease by the other party, the waiver will not be effective unless in writing and signed by authorized representatives. A written waiver shall not be a continuing waiver or a waiver of any subsequent default or breach either of the same or a different provision of this Lease.
- 14.5 **Remedies.** Either party may seek any remedy available to it at law or in equity for the other party's breach of this Lease. Any specific remedies described in this Lease are cumulative and not exclusive. Either party's exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy. Any termination of this Lease for a default before the Agency conveys title of the Premises to the City shall terminate the City's right to take title.
- 15 **Force Majeure.** Neither the City nor the Agency will be in default of this Lease where delays or defaults are due to war, insurrection, strikes, lock outs, riots, acts of God, fires, litigation, unusually severe weather, acts of the other party, or any other causes beyond the control or without the fault of the party seeking to extend the time for performance. If a delaying event occurs, the delayed party will notify the other party in writing, seeking an extension and explaining the cause for delay. Any extension must be in writing, signed by the City and the Agency.
- 16 **Holding Over.** If City continues to possess the Premises after expiration or termination of this Lease, without taking title to the Premises, the City's continued occupancy shall be deemed a tenancy from month to month, and City will pay monthly rent, as holdover rent, equal to the average monthly rent that City paid during the preceding year. The month to month tenancy shall be subject to all the terms and conditions of this Lease, including the provisions for additional rent contained in this Lease.
- 17 **Miscellaneous.**
- 17.1 **Agency's right of inspection.** Agency may enter the Premises at any reasonable time during the term of this Lease and any holdover period, to learn whether City is complying with the terms and conditions of this Lease, or to do any other acts that this Lease authorizes the Agency to do or which are necessary to protect Agency's rights under this Lease.

- 17.2 Surrender of premises.** On expiration or earlier termination of this Lease without taking title, City shall promptly surrender possession of the Premises to Agency in as good condition as the Premises are on the date of this Lease, reasonable wear and tear excepted.
- 17.3 Conflict of interests.** No Agency or City official, consultant, agent, or employee shall have any direct or indirect financial or property interest in this Lease or the Substation. Any Agency or City official, consultant, agent, or employee who has any direct or indirect financial or property interest in this Lease or the Substation shall not participate in any discussions, negotiations, or decisions concerning this Lease or the Substation.
- 17.4 No personal liability.** No City or Agency official or employee will be personally liable to the other party or to any third party or successor in interest, for any breach or default by its public agency.
- 17.5 Assignment and Subletting.** The City shall not encumber, assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises without first obtaining the written consent of Agency. City shall not sublet the Premises or any part of the Premises or improvements nor allow any other person, other than City's agents, servants, and employees, to occupy the Premises or any part of it without first obtaining the Agency's written consent. Any encumbrance, assignment, transfer, or subletting without the Agency's prior written consent is void.
- 17.6 Utilities.** City shall pay all charges for gas, electricity, water, telephone service, garbage or refuse service, and other public utilities furnished to the Premises during the lease term. It shall make all payments directly to the service provider before delinquency.
- 17.7 Notices.** Except as the law may otherwise require, any notice given under this Lease will be in writing. The notice shall be deemed duly given if personally delivered to the party's representative named below or, instead of personal service, when deposited in the United States mail, first-class postage prepaid, and addressed to the appropriate party, or delivered by facsimile using a fax machine that prints a confirmation of delivery, to the following address/fax:

City:
Attention: City Manager
City of Fresno
2600 Fresno Street, Room 2064
Fresno, California 93721-3601
Fax: (559) 488-1015

Agency:

Attention: Executive Director
Redevelopment Agency
2344 Tulare Street, Suite 200
Fresno, CA 93721
Fax: (559) 498-1870

With copy to:

City Attorney/Ex-officio Attorney to Agency
2600 Fresno Street, Room 2031
Fresno, CA 93721-3602

Each party may change its address for notices by notifying the other party of the change as provided in this paragraph.

- 17.8 **Attorneys' Fees.** If any litigation, including arbitration proceedings, is begun between the parties concerning the Premises or this Lease, each party will pay its own attorneys' fees and court costs, no matter the outcome.
- 17.9 **Applicable law.** The laws of the State of California shall govern the interpretation and enforcement of this Lease.
- 17.10 **Partial invalidity/severability.** If any provision of this Lease is invalid, illegal, or unenforceable, the provision will be severed from the Lease and will not affect the validity, legality or enforceability of the remaining provisions.
- 17.11 **Binding on Heirs and Successors.** Subject to the limitations on assignment contained in this Lease, this Lease shall be binding on and shall inure to the benefit of the successors, and assigns of each party.
- 17.12 **Time of Essence.** Time is expressly declared to be of the essence in this lease.
- 17.13 **Sole and only agreement.** The Exhibits referenced in this Lease are by the references incorporated into and made a part of this Lease. This instrument is the sole and only agreement between Agency and City respecting the Premises. It supersedes all negotiations and prior agreements between the parties regarding the lease of the Premises, whether oral or written. The terms of this Lease correctly set forth the Agency and City obligations each to the other as of its date (the date that the last party representative signs the Lease). Any agreements or representations respecting the lease of the Premises to City not expressly set forth in this instrument are void.

The parties have signed three duplicate originals of this Lease, each of which is deemed an original. This Lease has 16 pages, including the signature page, and two Exhibits lettered A and B.

The parties have executed this Lease in the year and on the dates set forth below.

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

By: 

Daniel R. Fitzpatrick,
Executive Director

Dated: 11/21/00

**CITY OF FRESNO,
a municipal corporation**

By: 

Andrew T. Souza,
Interim City Manager

Dated: 11/28/00

**ATTEST:
REBECCA KLISCH
City Clerk/Ex Officio Clerk**

By: 

Jocelyne Guéret
Deputy

Dated: November 28th, 2000

**APPROVED AS TO FORM:
HILDA CANTÚ MONTÓY
Ex Officio Attorney**

By: 

Hilda Cantú Montóy
Assistant/Deputy

Dated: Nov 22, 2000

12881sms15 Lease draft 00-11-09 w TOC.wpd

Exhibits:

Exhibit A: Grant Deed
Exhibit B: Memorandum of Lease

COPY

EXHIBIT "A"

Recording Requested By:
City of Fresno

When Recorded, Mail To:
City of Fresno
Attention: City Clerk
2600 Fresno Street, Room 2133
Fresno, CA. 93721-3603

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PUBLIC AGENCY RECORDING - NO FEES DUE

GRANT DEED

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, as amended (the **"Plan"**) for the Southwest Fresno Redevelopment Project (the **"Project Area"**), under the California Community Redevelopment Law (the **"Law"**), grants to the City of Fresno, a municipal corporation, (**"Grantee"**), all that real property in the County of Fresno, State of California, described as follows:

(SEE ATTACHED EXHIBIT A,

which by this reference is incorporated herein) (the **"Property"**), subject to the following: (a) all matters of record affecting the title and use of the Property including, without limitation, easements and rights of way, encumbrances, and (b) [add if then in effect: the Plan], (c) all matters affecting the property which are discoverable by inspection or survey, and (d) the following covenants.

1. **Covenants.** Grantee covenants, as follows, for itself, its successors and assigns, and all persons claiming under or through it:

1.1 **Use.** After Grantee completes the Project, Grantee will do the following: (a) use the Property for a police substation, and reasonably related activities, and (b) use the Property in conformity with all laws including, without limitation, local laws and ordinances, the Plan, and the Community Redevelopment Law of California (Health and Safety Code Sections

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Grant Deed

Grantor: Redevelopment Agency of the City of Fresno

Grantee: City of Fresno, a municipal corporation

Page 2

33000 *et. seq.*) (the "Law").

1.2 Maintenance. To maintain all improvements on the Property, including facade improvements, in first class condition and repair (and, as to landscaping, if any, in a healthy condition) and in accordance with approved plans (including any landscape and signage plans), as amended from time to time. Grantee shall maintain the Property and all Property improvements in accordance with all other applicable laws, rules, ordinances, orders, and regulations, whether federal, state, county, municipal, or issuing from other governmental agencies and bodies having or claiming jurisdiction, and their respective departments, bureaus, and officials. Grantee shall keep the Property free from all graffiti and any accumulation of debris or waste material. Grantee shall repair and replace improvements and fixtures as necessary to keep the Property in first class condition. Grantee shall promptly remove all graffiti, and shall replace landscaping with approved plants and materials as needed to keep the landscaping in first class condition.

1.3 Nondiscrimination. Not to discriminate against or segregate any person or group of persons because 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 Property; and not to establish or permit any practice of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees.

Each deed, lease, or contract involving the Property shall contain express provisions in substantially the following form:

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,

ENCLOSURE

Grant Deed

Grantor: Redevelopment Agency of the City of Fresno

Grantee: City of Fresno, a municipal corporation

Page 3

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."

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."

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 subsection 1.3 shall run with the land in perpetuity, binding Grantee,

Grant Deed

Grantor: Redevelopment Agency of the City of Fresno

Grantee: City of Fresno, a municipal corporation

Page 4

Grantee's successors and assigns, and any party contracting or subcontracting with Grantee.

2. **Effect and Priority of Covenants.** The covenants in this Deed, without regard to technical classification or designation, legal or otherwise, except as specifically provided, are covenants running with the land. The covenants in subsections 1.1 and 1.2 shall terminate when the Plan terminates. The covenant in subsection 1.3 shall run in perpetuity. The covenants benefit, and are enforceable by, the Grantor, its successor and assigns, the City of Fresno, its successors and assigns, and persons owning or occupying property within the Project Area. The covenants are enforceable against the Grantee, its successors and assigns.

3. **Modification of Covenants.** Only the Grantor, and its successors holding a fee title interest, and the Grantee and its successors and assigns may modify or terminate any covenant in this Deed. For this paragraph, Grantee's successors and assigns do not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person holding less than a fee interest in the Property.

The parties hereto have executed this Grant Deed the _____ day of _____, 2000.

Grantor and Grantee to sign before a notary public, and notary to attach acknowledgment.

GRANTEE:
CITY OF FRESNO,
a municipal corporation

By _____
Andrew T. Souza,
Interim City Manager

Dated: _____

GRANTOR:
**REDEVELOPMENT AGENCY OF
THE CITY OF FRESNO**

By _____
Daniel P. Fitzpatrick
Executive Director

Dated: _____

Grant Deed

Grantor: Redevelopment Agency of the City of Fresno

Grantee: City of Fresno, a municipal corporation

Page 5

ATTEST:

REBECCA E. KLISCH

City Clerk/Ex-officio Clerk

APPROVED AS TO FORM:

HILDA CANTÚ MONTÓY

City Attorney/Ex-officio Attorney

By _____

By _____
Deputy

Grant Deed .wpd November 9, 2000

CHIEF A

Grant Deed

Grantor: Redevelopment Agency of the City of Fresno

Grantee: City of Fresno, a municipal corporation

Page 6

LEGAL DESCRIPTION

Exhibit A

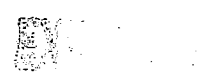


EXHIBIT "B"

Recording Requested by and
When Recorded Return To:

City of Fresno
Attention: City Clerk
2600 Fresno Street, Room 2133
Fresno, CA 93721-3603

(Space above this line for recorder's use.)

MEMORANDUM OF LEASE

This Memorandum of Lease and right to take title to property ("**Memorandum**"), is entered, as of the Effective Date (defined below) between the Redevelopment Agency of the City of Fresno, a body corporate and politic ("**Agency**"/"**Landlord**") and the City of Fresno, a municipal corporation ("**City**"/"**Tenant**").

Recitals

A. Concurrently with this Memorandum, Landlord and Tenant entered a "Lease Agreement (With Right to Acquire) - Kearney Palms Police Substation (Triple Net)" ("**Lease**"), pursuant to which Landlord leased to Tenant, and Tenant leased from Landlord, that real property shown as Parcel D of Parcel Map PM-97-16 ("**Parcel Map**"). The Parcel Map was recorded in the Official Records of Fresno County May 18, 1999, as Document No. 990074944, in Book 59 of Parcel Maps at Page 54. Agency has improved Parcel D with the police substation and related improvements (the "**Substation**"). The Substation includes, without limitation, an approximately 8,400 square foot building, not less than 75 segregated and fenced parking stalls, trash enclosure, and related improvements. Parcel D and the Substation comprise the leased premises (the "**Premises**").

B. As more particularly set forth in the Lease, Landlord granted to Tenant a right to acquire title of the Premises for a nominal price after paying rent for a full 80 quarters.

C. Landlord and Tenant desire to execute this Memorandum to provide constructive notice to all third parties of the Tenant's rights under the Lease, particularly Tenant's rights to acquire title for a nominal price, subject to performance as described in the Lease.

D. A copy of the Lease is on file with the City Clerk, 2600 Fresno Street, Room 2133, Fresno, CA 93721-3603.

Agreement

1 **Term.** Landlord leases the Premises to Tenant for a term of 20 years, beginning at 12:01 a.m. of the day after the last to occur of the following: (a) the date on which

November 9, 2000

MEMORANDUM OF LEASE

EXHIBIT B

the Agency or City files the Notice of Completion, or (b) the date on which the Agency or City files the Certificate of Occupancy; and ending at 12:01 a.m. twenty years after that (on or about January 1, 2021), unless the term is extended or sooner terminated as provided in the Lease.

2 Lease Terms. The Lease is incorporated in this Memorandum by reference. The Lease includes, among other terms:

2.1 Title Conveyance to City. Upon the expiration of the lease term, if the City is not then in default, and has paid quarterly rent payments when due for 80 full quarters, the Agency will convey title of the Premises to the City, and City will accept title, under a grant deed, substantially in the form attached as Exhibit A to the Lease (the "Grant Deed").

2.2 Assignment and Subletting. The City shall not encumber, assign, or otherwise transfer the Lease, any right or interest in the Lease, or any right or interest in the Premises without first obtaining the written consent of the Agency. City shall not sublet the Premises or any part of the Premises or improvements nor allow any other person, other than City's agents, servants, and employees, to occupy the Premises or any part of it without first obtaining the Agency's written consent. Any encumbrance, assignment, transfer, or subletting without the Agency's prior written consent is void.

2.3 Successors and Assigns. Subject to the limitation on assignment, the Lease is binding on and shall inure to the benefit of the successors, and assigns of each party.


2.4 Nondiscrimination Covenant. The City covenants for itself, its successors and assigns, and all persons claiming through City 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 Premises, and (b) neither the City nor any person claiming under or through City, 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 Premises.

3 Effective Date. "Effective Date" means the date that the last party signs this Memorandum.

4 Governing Law. This Memorandum and the Lease are governed by California law.

This Memorandum is executed on the dates in the year 2000, as set forth below.

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

By: 
Daniel R. Fitzpatrick,
Executive Director

Dated: 4/21/00

TENANT:
CITY OF FRESNO,
a municipal corporation

By: _____
Andrew T. Souza,
Interim City Manager

Dated: _____

Landlord and Tenant to sign before a notary public, and notary to attach acknowledgment.

ATTEST:
REBECCA KLISCH
City Clerk/Ex Officio Clerk

By: _____
Deputy

Dated: _____

APPROVED AS TO FORM:
HILDA CANTÚ MONTÓY
Ex Officio Attorney

By: _____
Assistant/Deputy

Dated: _____

12882sms15 Mem of Lease 11-09-00.wpd

EXHIBIT B

Recording Requested by and
When Recorded Return To:

City of Fresno
Attention: City Clerk
2600 Fresno Street, Room 2133
Fresno, CA 93721-3603

COPY

(Space above this line for recorder's use.)

MEMORANDUM OF LEASE

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Agreement

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November 9, 2000

MEMORANDUM OF LEASE

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3 Effective Date. "Effective Date" means the date that the last party signs this Memorandum.

4 Governing Law. This Memorandum and the Lease are governed by California law.

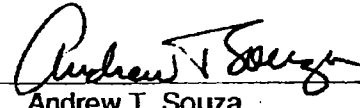
This Memorandum is executed on the dates in the year 2000, as set forth below.

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

By: 
Daniel R. Fitzpatrick,
Executive Director

Dated: 11/21/00


TENANT:
CITY OF FRESNO,
a municipal corporation

By: 
Andrew T. Souza,
Interim City Manager

Dated: 11/28/00

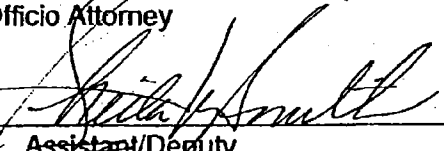
Landlord and Tenant to sign before a notary public, and notary to attach acknowledgment.

ATTEST:
REBECCA KLISCH
City Clerk/Ex Officio Clerk

By: 
Deputy

Dated: November 28th, 2000

APPROVED AS TO FORM:
HILDA CANTU-MONTOY
Ex Officio Attorney

By: 
Assistant/Deputy

Dated: Nov 22, 2000

12882sms15 Mem of Lease 11-09-00.wpd

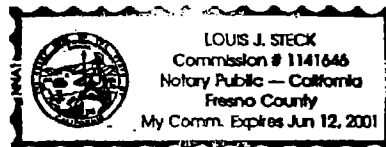
Notary Acknowledgment

State of California)
County of Fresno)

On 21 November '00 (date), before me, the undersigned, a notary public for the state, personally appeared **Daniel R. Fitzpatrick**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature, on the instrument the entity upon behalf of he acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Louis J. Steck* (Seal)



Optional Information

Title or type of document: Memorandum of Lease. Date of document: _____
Number of pages 4 including this
page

Notary Acknowledgment

State of California)
County of Fresno)

On 11-28-00 (date), before me, the undersigned, a notary public for the state, personally appeared **Andrew T. Souza**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature, on the instrument the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Arida Taylor* (Seal)



Optional Information

Title or type of document: Memorandum of Lease. Date of document: _____
Number of pages 4 including
this page

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

On November 28th 2000, before me, **Jocelyne Gueret**, Deputy, personally appeared **Andrew T. Souza, Interim City Manager**, known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) 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(s) the person(s), or the entity upon behalf of the City of Fresno of which the person(s) acted, executed the instrument.

WITNESS my hand and official City Seal.

REBECCA E. KLISCH
City Clerk

BY:

Jocelyne Gueret
Deputy

**CONFORMED
COPY**

Recording Requested by and
When Recorded Return To:

City of Fresno
Attention: City Clerk
2600 Fresno Street, Room 2133
Fresno, CA 93721-3603

04/04/2001, 20010045103

(Space above this line for recorder's use.)

**AMENDMENT NO. 1 TO
LEASE AGREEMENT
(With Right to Acquire)
AND MEMORANDUM OF AMENDMENT NO. 1
Kearney Palms Police Substation**

This Amendment No. 1 to Lease Agreement (With Right to Acquire) and Memorandum of Amendment No. 1 ("Amendment"), is entered, as of the Effective Date (defined below) between the Redevelopment Agency of the City of Fresno, a body corporate and politic ("Agency"/"Landlord") and the City of Fresno, a municipal corporation ("City"/"Tenant").

Recitals

- A. November 2000, Landlord and Tenant entered a Lease Agreement (With Right to Acquire) (the "Lease"), pursuant to which Landlord leased to Tenant, and Tenant leased from Landlord, that real property shown as Parcel D of Parcel Map PM-97-16 ("Parcel Map"). The Parcel Map was recorded May 18, 1999, in the Official Records of Fresno County, as Document No. 990074944, in Book 59 of Parcel Maps at Page 54. Concurrently Landlord and Tenant entered, and recorded in the Official Records of Fresno County, a Memorandum of the Lease.
- B. Agency has improved Parcel D with the police substation and related improvements (the "Substation"). The Substation includes, without limitation, an approximately 8,400 square foot building, not less than 75 segregated and fenced parking stalls, trash enclosure, and related improvements. Parcel D and the Substation comprise the leased premises (the "Premises").
- C. Landlord and Tenant want to amend the Lease to begin the lease term as of December 11, 2000, the date that Tenant took possession of the Premises to install furniture and the telephone system.
- D. The purpose of this Amendment is to memorialize Landlord and Tenant's

January 2, 2001

Amendment No. 1 to Lease Agreement and
Memorandum of Amendment No. 1

agreement to the earlier lease commencement date.

Agreement

- 1 **Effective Date.** "Effective Date" means the date that the last party signs this Amendment.
- 2 **Term.** Section 4 of the Lease is amended to read as follows:

Term. The lease term shall be 20 years, beginning at 12:01 a.m. December 11, 2000, and ending at 11:59 a.m. December 10, 2021, unless the term is extended or sooner terminated as provided herein.
- 3 **Effect of Amendment.** The Lease, with the term modified as provided herein, remains in full force and effect.

This Amendment is executed on the dates in the year 2001, as set forth below.

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

By: 

Daniel R. Fitzpatrick,
Executive Director

Dated: 14 MARCH, 2001

TENANT:
CITY OF FRESNO,
a municipal corporation

By: 

Andrew T. Souza,
Interim City Manager

Dated: 3-26-01

Landlord and Tenant to sign before a notary public, and notary to attach acknowledgment.

ATTEST:
REBECCA KLISCH
City Clerk/Ex Officio Clerk

By: 

Deputy

Dated: March 27th, 2001

APPROVED AS TO FORM:
HILDA CANTU MONTTOY
City Attorney/Ex Officio Attorney

By: 

Assistant/Deputy

Dated: March 14, 2001

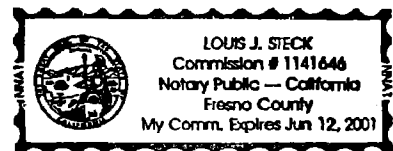
Notary Acknowledgment

State of California)
County of Fresno)

On 14 MARCH, 2001 (date), before me, the undersigned, a notary public for the state, personally appeared **Daniel R. Fitzpatrick**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity; and that by his signature on the instrument, the entity upon the behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Louis J. Steck* (Seal)



Optional Information

Title or type of document: Amendment No. 1 to Lease Agreement and Memorandum of Amendment No. 1. Date of document: _____ Number of pages _____

Notary Acknowledgment

State of California)
County of Fresno)

On March 26, 2001 (date), before me, the undersigned, a notary public for the state, personally appeared **Andrew T. Souza**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity; and that by his signature on the instrument, the entity upon the behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Arida Taylor* (Seal)



Optional Information

Title or type of document: Amendment No. 1 to Lease Agreement and Memorandum of Amendment No. 1. Date of document: _____ Number of pages _____

January 2, 2001