

Oversight Board Regular Meeting Agenda for the Successor Agency to the Redevelopment Agency of the City of Fresno

September 4, 2014, 1:00 PM
City Hall Meeting Room A (2165)

I. Call to Order

1. Roll Call
2. Pledge of Allegiance
3. Member Comments

II. Administer Oath of Office

III. Approval of Minutes of July 7, 2014

IV. Consider Adoption of:

1. A Resolution of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno Approving the Sale of Approximately 2.25 Acres at 5025 E. Dakota Avenue (APN 493-020-29ST) to Fresno Moose Family Center 445
2. A Resolution of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno Approving the Sale of Approximately 0.24 Acres at 731 E. California Avenue (APN 467-246-01T) to Boos Development West, LLC
3. A Resolution of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno Approving the Sale of Approximately 1.37 Acres at 4007 Ventura, 4017 Ventura, 4025 Ventura, 4061 Ventura, and 4071 Ventura (APNs 461-272-16T, 461-272-17T, 461-272-11T, 461-272-10T, and 461-272-09T) to FD Partners, LLC
4. A Resolution of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno Approving the Sale of Approximately 0.51 Acres at 730 Van Ness and 736 Van Ness (APNs 468-253-15T and 486-253-11T) to Bitwise Industries, LLC

5. A Resolution of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno Approving the Sale of Approximately 0.09 Acres (APN 467-071-05T) to DFP Ltd LP
- V. Approval of Property Disposition Guidelines of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno
- VI. Legal Opinion Requested by the Oversight Board Regarding the Kearney Palms Police Substation Lease Agreement and the Kearney Palms LLC Public Parking Lease and Reciprocal Easement Agreement
- A. Consider Adoption of a Resolution of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno Ratifying the Kearney Palms Police Substation Agreement
- VII. Public Comment
Members of the Public are invited to speak on any item that does not appear on the Agenda and that is within the subject matter jurisdiction of the Oversight Board. Speakers may be limited to no more than three (3) minutes at the discretion of the Chair.
- VIII. Adjournment

*All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the Oversight Board will be available for public inspection at the Office of the City Clerk at Fresno City Hall, 2600 Fresno Street, 2nd Floor, Fresno, CA 93721
To request an accommodation or alternative format for an Oversight Board meeting or printed materials, please call (559) 621-7650 as soon as possible, but at least 3 business days prior to the meeting.*

**Meeting of the
Oversight Board for the Successor Agency
To the Redevelopment Agency of the
City of Fresno**

**Meeting Minutes
July 7, 2014**

The Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Fresno met at 1:30 p.m. in Meeting Room 2165 (Meeting Room A), Fresno City Hall on July 7, 2014.

Present were:

Terry Bradley, appointed by Fresno County Superintendent of Schools

Michael Lima, appointed by the Mayor of Fresno

Debbie Poochigan, appointed by Fresno County Board of Supervisors

Doug Vagim, appointed by Fresno County Board of Supervisors

Bob Van Wyk, appointed by Metropolitan Flood Control District (Special District)

Larry Westerlund, appointed by the Mayor of Fresno

Larry Hodges, appointed by State Center Community College District

- I. Call to Order
 - a. Roll Call – all present
 - b. Pledge of Allegiance
 - c. Member Comments

The meeting was called to order by Mr. Bradley at 9:03 a.m. Roll call was taken and the Pledge of Allegiance was conducted.

Member Comments - Mr. Van Wyk announced he is retiring as of this Friday and today will be his last meeting with the Oversight Board. Mr. Van Wyk stated that he has been with the Metropolitan Flood Control District for 40 years and 10 months. He has enjoyed working with staff and the Oversight Board. He also stated that he appreciates the staff for all of their hard work. Mr. Bradley thanked Mr. Van Wyk for his service.

- II. Approval of Minutes of February 27, 2014. Mr. Vagim made a motion to approve the minutes of February 27, 2014. Mr. Van Wyk seconded the motion. The motion passed on a vote of 7-0.
- III. A resolution of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Fresno Approving a Long Range Property Management Plan prepared pursuant to the Health and Safety Code Section 34191.5 for the disposition of real property assets of the former Fresno Redevelopment Agency and approve specific proposed actions for the Sale of Certain Parcels.

Upon question by Mr. Bradley, Ms. Murphey and staff described the process noting that the Long Range Property Management Plan has to be prepared by the Successor Agency and approved by the Oversight Board and the Department of Finance before any properties can be sold. The trigger for the LRPMP process is the finding of completion which the Successor Agency received on June 2, 2014 and from which time the Successor Agency has six months for approval from the Oversight Board and the DOF. The DOF is estimating about three months however, it is taking longer.

Mr. Bradley stated that the resolution is doing two things: 1) to approve the long range property management plan; and, 2) to approve disposal of five assets that include many different parcels. He suggested first discussing the Long Range Property Management Plan, the process the Successor Agency adopted and whether any members have any issues before discussing the actual disposal of properties. Ms. Poochigian asked about disposition guidelines that the Successor Agency adopted and whether the Oversight Board had approved guidelines. Ms. Murphey reported that in June and July of 2012 staff brought proposed Oversight Board disposition guidelines forward. The Oversight Board unanimously tabled the proposed disposition guidelines indefinitely. The reasoning was AB 1484's impact. Upon request, the adopted Successor Agency guidelines were redistributed. Ms. Murphey noted that she would be pointing out guidelines inherent to the LRPMP during the presentation of the Plan.

Ms. Murphey introduced and presented the Long Range Property Management Plan. She and staff answered questions regarding specific items.

After discussion Mr. Westerlund made a motion to amend the long range property management plan and direct the Executive Director of the Successor Agency to dispose of parcels on lines 1, 3-7 that were determined to have little or no value, a broker's opinion to determine value is unnecessary. Staff was directed to negotiate disposition of such properties to nearby property owners at a minimal cost to the Successor Agency with the understanding that the Successor Agency may not receive payment for such properties.

Mr. Vagim made an amendment to the motion that included sending a letter to the County Assessor's Office advising them of the proposed transfer of parcels in lines 1 and 3-7. Mr. Hodges seconded Mr. Vagim's amendment. A roll call vote was taken and the motion carried on a vote of 4-3 with Mr. Bradley, Mr. Lima, and Mr. Westerlund voting no.

The original motion made by Mr. Westerlund was voted on with a vote of 7-0.

Since it was agreed upon that parcel in line 2 had value, Mr. Van Wyk made a motion that the value of parcel in line 2 shall be determined by broker's opinion. The motion was seconded by Mr. Lima. The motion passed on a vote of 7-0.

There was a lengthy discussion regarding the disposition of properties including RFP's and auctions on properties described on lines 8-58 and 61. Mr. Hodges made a motion to direct Successor Agency staff to add on the spreadsheet for "RFP" or "Auction" and that the parcels described in lines 8-58 and 61 shall be marketed through an RFP process or sold by an auction and that the Oversight Board will work with the Successor Agency staff and legal counsel to develop guidelines for the disposition of properties in the future. The motion included the Oversight Board approving the Long Range Property Management Plan as a report submitted to the Oversight Board and authorizes the Successor Agency to transmit the Plan as a report to the Department of Finance for approval. The motion was seconded by Mr. Lima. The motion passed on a vote of 7-0.

- IV. Public Comment - Mr. Bradley called for any members of the public to speak. No one came forward.
- V. Adjournment – the meeting adjourned at 12:06 P.M.

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

2344 Tulare Street, Suite 200 / 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
Terry Bradley

Members
Larry Hodges
Alan Hofmann
Michael Lima
Debbie Poochigian
Doug Vagim
Larry Westerlund

AGENCY BRIEFING REPORT

Date: September 4, 2014
To: Oversight Board Members
From: Andrew Sanchez
Through: Marlene Murphey
Subject: Purchase and Sale Agreements and Summary Appraisals

Please find attached the Purchase and Sale Agreements and summary appraisals for the following properties:

1. 5025 E. Dakota, APN 493-020-29
2. 731 E. California, APN 467-246-01
3. 4007 – 4071 E. Ventura, APN 461-272-09, 10, 11, 16, & 17
4. 730 & 738 Van Ness Avenue, APN 467-253-11 & 15
5. 'G' Street, APN 467-071-05

**Attachments: Purchase and Sale Agreements
Summary Appraisals**

**AGREEMENT FOR DISPOSAL AND SALE OF PROPERTY
AND ESCROW INSTRUCTIONS
Palm Lakes Property, Fresno, California**

Fresno Moose Family Center 445, a non-profit organization hereinafter called the "Buyer," without regard to number or gender, hereby offers to purchase from the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, hereinafter called the "Agency" or "Seller," the hereinafter described property which is being purchased in fee simple on the following terms and conditions:

1. Buyer shall purchase, and Seller shall sell, all that real property which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "Property," situated in the City of Fresno, State of California, more particularly described as Assessors' Parcel Number 493-020-29ST (2.25 acres, 5025 E. Dakota Avenue. The Property is more fully described in Exhibit "A" and made part of this Agreement.

2. The purchase price for the Property shall be the sum of TWO HUNDRED SIXTY FIVE THOUSAND AND 00/100 DOLLARS (\$265,000.00). The purchase price, subject to any adjustments provided in this Agreement, will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.

3. The sale of the Property is contingent upon the approval of the Seller, the Successor Agency Board, the Oversight Board to the Successor Agency ("Oversight Board"), and approval of the Property Management Plan by the Successor Agency, Oversight Board, and State of California Department of Finance, as well as compliance with all applicable laws and ordinances.

4. It is understood that, while the Buyer may have a conceptual idea for a project to be built on the Property, all such plans are speculative in nature and the sale of the Property is not contingent upon construction or development of any specific project or element of a project. All permits, variances, zoning or other entitlements shall be obtained and any conditions of issuance shall be the sole responsibility of Buyer and performed at the sole cost and expense of Buyer. Nothing in this Agreement shall be deemed to imply that Agency or the City of Fresno ("City") has agreed or bound itself to

approve any entitlement for use of the Property by Buyer, and the City shall retain its full governmental discretion to consider Buyer's land use applications on their merits. Any legally proper denial of a permit or entitlement by the City shall not be considered a breach of this Agreement and shall not result in any damage accruing to Buyer hereunder.

5. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 8050 N. Palm Avenue, Suite 110, Fresno, Ca, 93711, attention Bernadette Watson. Within ten (10) business days after the execution of this Agreement by both parties, escrow shall be opened upon the following terms and conditions, and the Buyer and Seller by their signature to this Agreement make this paragraph their escrow instructions:

- a. Upon opening escrow, Buyer shall deposit the sum of FOURTEEN THOUSAND FIFTY DOLLARS (\$14,050.00) (the "Deposit") to be placed in an interest bearing account. The Deposit shall be applied as part of the Purchase Price.
- b. Buyer and Seller shall deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies of (ii) the Title Company may require that are consistent with the terms and purpose of this Agreement, and necessary to closing. Within thirty (30) days after the Oversight Board and the Successor Agency approve this Agreement, Seller will deposit into escrow with Title Company, 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.
- c. Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, except those agreed to in writing by Buyer.

- d. Escrow and title fees to be paid as customary. Seller shall provide and pay for a CLTA insurance policy. Buyer has the option to pay for an ALTA policy. Recording fees to be paid for as customary.
- e. The escrow will be considered closed on the date that the Title Company records the grant deed. The escrow will be in condition to close when any 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 mutual consent of the parties, the escrow shall close within ninety (90) days of the escrow being in a condition to close. If it does not close within ninety (90) days, escrow shall terminate unless otherwise extended pursuant to this paragraph. Upon termination of the escrow, the Title Company will return all funds, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided. Notwithstanding the foregoing, Buyer shall have the right to extend the outside date for closing for up to two extension periods of forty-five days each by providing written notice to the Seller along with making an additional deposit of \$2,500.00 for each extension, such additional deposits to be applicable to the purchase price but refunded only in the event of a Seller Default.
- f. At closing, Title Company shall disburse the purchase price less Seller's cost to clear title, prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in subsection b., above.
- g. It is understood that Buyer shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Property from the date escrow closes.
- h. Seller shall conduct a Phase I on the parcel at Seller's cost, prior to the close of escrow. Nevertheless, Buyer fully understands the purchase of the Property is an "as is" transaction. The sale of the Property is also

contingent on approval by the Buyer of the physical condition of the Property, including subsurface soil, including the approval of any inspection reports and sampling the soil for contamination within 15 days of transmittal of a Phase 1. Buyer has the option of performing an environmental or any other inspection of the Property and subsurface at Buyer's cost. Buyer has the option of making any necessary repairs or alterations at Buyer's expense.

- i. At closing, the Title Company will prorate the following, between Seller and Buyer, based on a 30-day month: real property taxes, special assessments, and rents, if any.
- j. Any loss or damage to the Property or any improvements on it before closing is at Seller's risk.
- k. Each party represents and warrants that it has not engaged a broker or real estate agent for this transaction, and no commissions are payable concerning this purchase and sale.
- l. Seller shall deliver possession at closing.
- m. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

6. Remedies for Default.

a. REMEDIES FOR BUYER'S DEFAULT. IF THE CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT UNDER THE TERMS OF THIS AGREEMENT, BUYER WILL BE RESPONSIBLE FOR ALL CANCELLATION CHARGES REQUIRED TO BE PAID TO ESCROW HOLDER AND ANY ESCROW CHARGES. IN ADDITION, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES WILL TERMINATE AND A PORTION OF THE DEPOSIT IN THE AMOUNT OF ONE THOUSAND FOUR HUNDRED-FIVE DOLLARS

AND 00/100 (\$1,405.00) (THE "LIQUIDATED DAMAGES SUM") WILL BE IMMEDIATELY DELIVERED BY ESCROW HOLDER TO SELLER ON SELLER'S REQUEST. THE LIQUIDATED DAMAGES SUM WILL BE DEEMED LIQUIDATED DAMAGES FOR BUYER'S NONPERFORMANCE AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER (INCLUDING, WITHOUT LIMITATION, SELLER'S RIGHT TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT AND TO RECEIVE DAMAGES) FOR BUYER'S FAILURE TO PURCHASE THE PROPERTY, WHICH SUMS WILL BE PRESUMED TO BE A REASONABLE ESTIMATE OF THE AMOUNT OF ACTUAL DAMAGES SUSTAINED BY CITY BECAUSE OF BUYER'S BREACH OF ITS OBLIGATION TO PURCHASE THE PROPERTY. FROM THE NATURE OF THIS TRANSACTION, IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES THAT SELLER WOULD SUSTAIN IF BUYER BREACHES SUCH OBLIGATION. THE IMPRACTICABILITY AND DIFFICULTY OF FIXING ACTUAL DAMAGES IS CAUSED BY, WITHOUT LIMITATION, THE FACT THAT THE PROPERTY IS UNIQUE. GIVEN THE FOREGOING FACTS, AMONG OTHERS, BUYER AND SELLER AGREE THAT LIQUIDATED DAMAGES ARE PARTICULARLY APPROPRIATE FOR THIS TRANSACTION AND AGREE THAT SAID LIQUIDATED DAMAGES MUST BE PAID IN THE EVENT OF BUYER'S BREACH OF ITS OBLIGATION TO PURCHASE THE PROPERTY, DESPITE ANY WORDS OR CHARACTERIZATIONS PREVIOUSLY USED OR CONTAINED IN THIS AGREEMENT IMPLYING CONTRARY INTENT. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE § 3275 OR § 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER UNDER CALIFORNIA CIVIL CODE §§ 1671, 1676, AND 1677.

WE ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION:

BUYER: 

SELLER: 

b. **Seller's Default.** Seller will be deemed to be in default under this Agreement: (a) if Seller fails, for any reason other than Buyer's default under this Agreement or the failure of a condition precedent to Seller's obligation to perform under this Agreement, to meet, comply with, or perform any covenant, agreement, or obligation required on its part within the time limits and in the manner required in this Agreement, or (b) if a material breach of any representation or warranty (made by Seller) has occurred because of Seller's actual fraud or intentional misrepresentation; provided, however, that no such default will be deemed to have occurred unless and until Buyer has given Seller written notice of the default, describing its nature, and Seller has failed to cure such default within ten (10) days after receipt of such notice (but in any event before the Closing Date, unless such default occurs after Closing).

c. **Remedies for Seller's Default.** If Seller defaults in its obligations under this Agreement to sell the Property to Buyer on the Closing Date through no fault of Buyer, then Buyer at its option may have the right to specific performance of this Agreement or the right to all of its general and specific damages.

7. **Miscellaneous Provisions:**

a. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

b. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.

- c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the Buyer and the Seller.

8. Release. Buyer releases and hereby agrees to indemnify Seller from any and all claims Buyer or any other party may have against Seller, of whatever kind or nature, resulting from, or in any way connected with, the environmental condition of the Property due to conditions caused solely by Buyer, Buyer is not obligated to defend Seller for Contamination that was not caused by Buyer including any and all claims Buyer may have against Seller under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) or any other federal, state or local law, whether statutory or common law, ordinance or regulation, pertaining to the release of hazardous substances into the environment from or at the Property. This indemnity is not intended to restrict or limit any right or action Buyer may have against Seller in the event Buyer is subject to any federal, state or local governmental regulatory enforcement action related to release, response, removal, remedy or remedial action of hazardous material as defined within CERCLA or any other environmental laws wherein said regulatory agency is requiring Buyer to either remediate or remedy part or all of any hazardous waste at the Property

Buyer expressly waives the benefits of Civil Code Section 1542, which provides as follows:

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

Buyer's obligations under this indemnity and release shall survive the recordation of the Deed.

9. Time is of the essence of each and every term, condition, and covenant hereof.

10. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Successor Agency, Oversight Board, and State of California Department of Finance. Upon its duly authorized execution within said time by the Agency, this Agreement shall become a contract for the sale and purchase of the Property binding upon Buyer and Seller, their heirs, executors, administrators, successors in interest, and assigns.

SIGNATURES APPEAR ON NEXT PAGE

This Agreement is executed by the Seller by and through the Executive Director pursuant to authority granted by the Agency on March 6, 2014.

Seller:

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

By:

Marlene Murphey
Marlene Murphey, Executive Director

Buyer:

Fresno Moose Family Center 445, a non-profit organization

By:

Gail Marlatt
Gail Marlatt, Moose Lodge
Administrator

By:

Chris Olson
Chris Olson, Moose Lodge
Chairman

Address of:

Successor Agency
Attention: Executive Director
2344 Tulare, Suite 200
Fresno, CA 93721-3623

Address of Buyer:

5025 E. Dakota Ave
FRESNO CA

APPROVED AS TO FORM:

DOUGLAS T. SLOAN

Ex Officio Attorney

By:

[Signature]
Deputy

ATTEST:

YVONNE SPENCE, CMC

Ex Officio Clerk

By:

Cindy Bruer 3/6/14
Deputy

Exhibit A: Legal Description of Property

EXHIBIT A
LEGAL DESCRIPTION

Parcel 2

Parcel "E" of Parcel Map No. 84-33, according to the map thereof recorded October 30, 1984, in Book 42 of Parcel Maps at Page 57, Fresno County Records.

EXCEPTING THEREFROM all oils, gas and other hydrocarbons and minerals therein and thereunder as reserved in the Deed from Bank of America National Trust and Savings Association, dated March 26, 1941 and recorded April 12, 1941 in book 1877 at Page 308, Official Records of Fresno County, as Document No. 13437.

By Quitclaim Deed recorded April 3, 1959 in book 4202 at Page 428, Official records of Fresno County, as Document no. 24675, Capital Company released and surrendered easements and rights reserved in conjunction with said minerals on the above described land from the surface and for a distance of not more than 500 feet below said surface

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "Successor Agency"), and Boos Development West, LLC., a Florida Limited Liability Corporation, ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. 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 properties purchased by the former redevelopment agency with tax increment funds expeditiously and in a manner aimed at maximizing value.
- B. The Seller owns certain real property within the Project Area, and the City of Fresno, commonly known as (APN 467-246-01T) Fresno, California 93706, and more particularly described in Exhibit A, attached, (the "Property").
- C. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

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.** Seller's obligation to proceed to Closing shall be conditioned upon Buyer's performance of all of obligations in this Agreement and satisfaction of the conditions listed in Sections 2.1, 2.2, 2.3, and 2.4 provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.

2.1 Compliance with CEQA. The applicable lead agency shall have complied with the California Environmental Quality Act with respect to this

Agreement, as applicable. The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA) upon satisfaction of certain conditions listed in Sec 2.5.

- 2.2 **Environmental Assessment.** The property is being sold in an "As is" condition. The Buyer may perform a Phase I Environmental Site Assessment (Phase 1 EA) at Buyer's cost.
- 2.3 **Development Conditions.** Buyer shall provide assurance to Seller that upon the Close of Escrow, it will comply with Development Conditions as follows: a) construct an retail facility consisting of a minimum of 12,000 square feet (which may be accomplished through multiple buildings and an assemblage of property) with an enhanced exterior façade, mutually acceptable to Buyer and Seller, to be built in accordance with the approved site plan, building plans and permit requirements issued by the City of Fresno and the State of California; and, b) provide landscaping on all portions of the Property as mutually agreed by Buyer and Seller and set forth on site plan. These Development Conditions shall be deemed remade as of the date of Closing and shall survive the Closing.
- 2.4 **Concurrent Acquisition:** As a further condition of closing, Buyer shall concurrently acquire the 14 properties recorded as APN#s - 467-245-03T, 467-245-04T, 467-245-05T, 467-245-06T, 467-245-07T, 467-245-08T, 467-245-09T, 467-245-10T, 467-245-11T, 467-245-12T, 467-262-01T, 467-262-02T, 467-262-03T, 467-262-04T, Fresno, CA.
- 2.5 **Planning and Zoning Conditions:** This agreement is conditioned upon meeting general plan and zoning requirements prior to closing.
- 3 **Purchase Price.** The purchase price for the Property is TWENTY FIVE THOUSAND TWO HUNDRED THIRTY FOUR DOLLARS (\$25,234.00). The Purchase Price, subject to adjustments provided in this Agreement, will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.
- 4 **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, encroachments from the Property onto adjacent properties, and any rights of way, other than those disclosed by the public record except for a lease agreement with Infinity Outdoor Inc. which shall become responsibility of Buyer; (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 hazardous materials or substances (as now or hereafter defined in any law, regulation, or rule) stored, discharged, or otherwise present in, on, or affecting the Property; (e) Seller has no knowledge of any material defects in the Property; (f) Property has one vacant and unoccupied structure; (g) Property has an Outdoor Advertising Structure at the south east portion of the parcel pursuant to lease agreement with Infinity Outdoor Inc. which shall become responsibility of Buyer.

Seller's authority to sell the property may be subject to approval of the Oversight Board of the Successor Agency and/or the California State Department of Finance and subject to the timelines set forth in California Health and Safety Code sections(s) 34170-34191.

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.

- 5 Opening Escrow/Escrow Deposit.** Within ten (10) business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with First American Title Company, Attention: Bryan Berney, 644 Pollasky, Suite 200, Clovis, CA 93612 ("Title Company"), or such other title insurance company as designated by Buyer, and Buyer shall deposit into Escrow the sum of ONE THOUSAND TWO HUNDRED SIXTY TWO DOLLARS (\$1,262.00) to be placed in an interest bearing account.

5.1 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.

5.2 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 (30) days after the Oversight Board and the Successor Agency Board approves this Agreement, Seller will deposit into the escrow with the Title Company, or will conditionally deliver to Buyer, a recordable grant deed, substantially in the form attached as Exhibit "B", 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.

- 5.3 **Title.** Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, or agreements, except those agreed to in writing by Buyer.
- 5.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 5.3, above. Buyer will pay all other closing costs including but not limited to 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, broker's commissions, etc.
- 5.5 **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 any 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 two hundred and seventy (270) days following final execution of this Agreement (including attestation by the Clerk) (the "Outside Closing Date"). Upon termination of the escrow, the Title Company will return all funds, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided. Buyer shall have the right to extend the Outside Closing Date for three (3) additional periods of thirty (30) days each by providing written notice to the Seller along with making an additional deposit of \$2,500 for each extension, such additional deposits to be applicable to the Purchase Price but refundable only in the event of a Seller Default.
- 5.6 **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 and all other documents necessary to the Closing.
- 5.7 **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 5.3), 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 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 5.9 **Broker.** Any commission owed as a result of the transaction contemplated by

this Agreement is the sole responsibility of Buyer. Buyer holds Seller harmless and shall indemnify and defend Seller against any claims for commission.

- 6 **Delivery of Possession.** Seller shall deliver possession at Closing, subject to Buyer's responsibilities if any, under applicable law to relocate any occupants.
- 7 **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession. In the event Buyer determines that it is not in Buyer's best interest to consummate the transaction contemplated by this Agreement for any reason or for no reason, Buyer may cancel this Agreement by delivering notice of such election to Seller at or prior to the expiration of one hundred twenty (120) days after the full execution of this Agreement (the "Inspection Period"), in which event the Deposit held by Escrow Agent shall be immediately returned to Buyer together with any interest accrued thereon.
- 8 **Damage, Destruction, Condemnation.** If the improvements on the Property are destroyed or materially damaged or if condemnation proceedings are commenced against the Property between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Property, all proceeds of insurance or condemnation awards payable to Seller by reason of the destruction, damage, or condemnation shall be paid or assigned to Buyer; Seller shall also pay to Buyer the amount of any deductible and coinsurance under any policy. In the event of nonmaterial damage to the Property, which damage Seller is unwilling to repair prior to Closing, Buyer shall have the right either to terminate this Agreement or accept the Property in its then existing condition, in which case Buyer shall be entitled to a reduction in the Purchase Price to the extent of the cost of repairing the damage. If Buyer elects to terminate this Agreement pursuant to this Section, escrow shall terminate and neither party shall have any further duties or responsibilities under this Agreement.
- 9 **Miscellaneous Provisions.**
 - 9.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
 - 9.2 **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, or (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.

To Seller:

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

Attention: Marlene Murphey, Executive Director
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:

BOOS DEVELOPMENT WEST, LLC.
Attention: David Morse
2651 McCormick Drive Clearwater, FL 33759
Phone No.: (727) 669-2900
Fax No.: (727) 669-2915

- 9.3 **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.
- 9.4 **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.
- 9.5 **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.
- 9.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.7 **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.

- 9.8 **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.
- 9.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.10 **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.
- 9.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.12 **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.
- 9.13 **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.
- 9.14 **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.
- 9.15 **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.
- 9.16 **Billboard Lease.** Seller shall not enter into any new leases on the Property or extend or renew any current leases on the Property, including but not limited to, any billboard leases.

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

[Signatures on following page.]

BUYER:

Boos Development West, LLC.

By: Robert L. Brown

Dated: 1-27-14, 2014

By: _____

Dated: _____, 2014

SELLER:

Successor Agency to the Redevelopment
Agency of the City of Fresno, a public body
corporate and politic

By: Marlene Murphey
Marlene Murphey, Executive Director

Dated: Jan. 8, 2014

The City of Fresno In Its Capacity as Successor Agency to the Redevelopment Agency of the
City of Fresno has signed this Agreement pursuant to authority granted on October 18, 2012.

ATTEST:

YVONNE SPENCE, CMC
Ex-officio City Clerk

By: Sherrie L. Badeloch
Deputy

Dated: March 13, 2014

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
Ex-officio Attorney

By: [Signature]
Deputy

Dated: 3/13, 2014

Attachments:

Exhibit A: Legal Description

Exhibit B: Grant Deed

Exhibit C: Preliminary Title Report

EXHIBIT "A"

LEGAL DESCRIPTION

Assessor Parcel Number 467-246-01

All of Block 5 of Kearney Boulevard Heights, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 5 Page 59 of record of Surveys, Fresno County Records.

EXHIBIT "B"

Recording Requested By:

The Successor Agency of the
Redevelopment Agency of the City of Fresno
No Fee-Gov't. Code Sections
6103 and 27383

When Recorded, Mail To:

Boos Development West, LLC
Attention: David Morse
2651 McCormick Drive
Clearwater FL 33759

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 467-246-01

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic, GRANTOR, hereby GRANTS to BOOS DEVELOPMENT WEST, LLC, a Florida Limited Liability Corporation, GRANTEE, all that certain real property situated in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

All of Block 5 of Kearney Boulevard Heights, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 5 Page 59 of record of Surveys, Fresno County Records.

THE SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

By: _____ Dated: _____
Marlene Murphey, Executive Director

EXHIBIT "C"

[Preliminary Title Report]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "Successor Agency"), and FD PARTNERS, LLC a California limited liability company, ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Southeast Fresno Revitalization Redevelopment Project (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.
- B. 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 properties purchased by the former redevelopment agency with tax increment funds expeditiously and in a manner aimed at maximizing value.
- C. The Seller owns certain real properties within the Project Area, and the City of Fresno commonly known as (APN 461-272-16T, 461-272-17T, 461-272-11T, 461-272-10T, and 461-272-09T) Fresno, California 93702, and more particularly described in Exhibit A, attached, (the "Properties").
- D. Successor Agency solicited a Request for Proposals from potential developers of the Properties. Buyer submitted a proposal to construct an approximately 8,000 square foot commercial building with associated landscaping and parking on the Properties. Buyer was selected due to the value to the community provided by Buyer's proposed project, and Buyer's ability to perform.
- E. The sale of the Properties is contingent upon the approval of the Property Management Plan by the Successor Agency, Oversight Board and Department of Finance.

- F. The Buyer desires to purchase the Properties on the terms and conditions set forth in this Agreement.

AGREEMENT

- 1 **Purchase and Sale.** Seller will sell the Properties to Buyer, and Buyer will purchase the Properties from Seller on the terms and conditions set forth in this Agreement. Sale of these Properties 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 and satisfaction of the conditions listed in Sections 2.1, 2.2, 2.3, and 2.4, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.
 - 2.1 **Compliance with CEQA.** The applicable lead agency shall have complied with the California Environmental Quality Act with respect to this Agreement, as applicable. The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA).
 - 2.2 **Environmental Assessment.** The properties are being sold in an "As is" condition. The Buyer may perform a Phase 1 Environmental Site Assessment (Phase EA) at Buyer's cost. Seller shall provide Buyer with any copies of environmental reports pertaining to the Properties in Seller's possession without any warranty as to their accuracy.
 - 2.3 Approval of this Agreement and the Property Management Plan by Successor Agency, Oversight Board, and Department of Finance.
 - 2.4 Relocation of tenants.
3. **Purchase Price.** The purchase price for the Properties is THREE HUNDRED SIXTY EIGHT THOUSAND DOLLARS (\$368,000.00) ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement, will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.
4. **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Properties, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Properties from adjacent properties, encroachments from the Properties onto adjacent properties, and any rights of way, other than those disclosed by the public record except for a lease agreement with CBS Outdoor, Inc. and a month to

month verbal lease agreement with Condoors Security Wrought Iron Works; (b) Seller has no knowledge of any pending litigation involving the Properties; (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 Properties; (d) Seller has no knowledge of any hazardous materials or substances (as now or hereafter defined in any law, regulation, or rule) stored, discharged, or otherwise present in, on, or affecting the Properties; (e) Seller has no knowledge of any material defects in the Properties; (f) Three of the of the five Properties are vacant APN#461-272-16T, 11T, and 10T, a fourth has a billboard located on the site APN#461-272-17T, and the fifth Property has a structure that is occupied by Condoors Security Wrought Iron Works. The Seller will remove the last structure before the close of escrow, and relocate the tenant pursuant to California Government Code section 7262et.seq. Seller will not remove the billboard without Buyer's approval in writing. Buyer assumes all rights and obligations associated with this billboard.

Seller's authority to sell the property may be subject to approval of the Oversight Board of the Successor Agency and/or the California State Department of Finance and subject to the timelines set forth in California Health and Safety Code section(s) 34170-34191.

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.

5. **Opening Escrow/Escrow Deposit.** Within ten (10) business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with Fidelity National Title Company at 8050 N. Palm Avenue Suite 110, Fresno California ("Title Company"), Attention: Bernadette Watson, and Buyer shall deposit into Escrow the sum of TWO THOUSAND FIVE HUNDRED DOLLARS \$2,500.00 ("Deposit") to be placed in an interest bearing account.

5.1 **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.

5.2 **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 (30) days after the Oversight Board and the Successor Agency Board approves this Agreement, Seller will deposit into the escrow with Title Company, or will conditionally deliver to Buyer, a recordable grant deed, substantially in the form attached as Exhibit "B," 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.

- 5.3 **Title.** Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, except those agreed to in writing by Buyer.
- 5.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 5.3, above Buyer will pay all other closing costs including but not limited to 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. Broker's commissions shall be paid as set forth in Section 5.9.
- 5.5 **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 one hundred and eighty (180) 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, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided. Notwithstanding the foregoing, Buyer shall have the right to extend the Outside Closing Date for up to two (2) extension periods of forty-five days each by providing written notice to the Seller along with making an additional deposit of \$2,500.00 for each extension, such additional deposits to be applicable to the Purchase Price but refundable only in the event of a Seller Default.
- 5.6 **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.

- 5.7 **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 5.3), 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 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Risk of loss.** Any loss or damage, to the Properties or any improvements on it, before Closing is at Seller's risk.
- 5.9 **Broker.** Buyer and Seller each agree to pay a commission of 3% of the purchase price to John Lee of Retail California at Closing.
- 6 **Delivery of Possession.** Seller shall deliver exclusive possession of the Properties at Closing.
- 7 **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.
- 8 **Damage, Destruction, Condemnation.** If the improvements on the Properties are destroyed or materially damaged or if condemnation proceedings are commenced against the Properties between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Properties, all proceeds of insurance or condemnation awards payable to Seller by reason of the destruction, damage, or condemnation shall be paid or assigned to Buyer; Seller shall also pay to Buyer the amount of any deductible and coinsurance under any policy. In the event of nonmaterial damage to the Properties, which damage Seller is unwilling to repair prior to Closing, Buyer shall have the right either to terminate this Agreement or accept the Properties in its then existing condition, in which case Buyer shall be entitled to a reduction in the Purchase Price to the extent of the cost of repairing the damage. If Buyer elects to terminate this Agreement pursuant to this Section, escrow shall terminate and neither party shall have any further duties or responsibilities under this Agreement.
- 9 **Miscellaneous Provisions.**
- 9.1 **Development Conditions.** Within one hundred eighty (180) days from the Close of Escrow (but subject to Force Majeure), Buyer shall comply with Development Conditions as follows: (a) commencing construction of a retail/commercial

facility consisting of approximately 8,000 square feet with an enhanced exterior façade, mutually acceptable to Buyer and Seller, to be built in accordance with the approved site plan, building plans and permit requirements issued by the City of Fresno and the State of California; and, (b) provide landscaping on all portions of the Property as mutually agreed by Buyer and Seller and set forth on site plan. Buyer shall diligently pursue completion of such construction. Said Development Conditions are a material term of this Agreement, and are considered to be a portion of the consideration paid for the Property. Buyer shall be entitled to request two (2) thirty day (30) extensions, without additional consideration. Said extension shall be requested in writing, no later than 30 days prior to the expiration of the one hundred eight day period. Seller must approve any extension in writing, and shall do so within twenty-one days of the written request. Seller's approval shall not be unreasonably withheld. These Development Conditions shall survive the Closing.

9.2 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.

9.3 **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, or (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.

To Seller:

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

Attention: Director
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:

FD Partners, LLC
1000 N. Western Ave. Ste. 200
San Pedro, CA 90732
Attn: Managing Member

With a copy to:

CORFIELD FELD LLP
Attention: Richard Feld
30320 Rancho Viejo Rd. Suite 101
San Juan Capistrano, CA 92675
Phone No.: (949) 218-7812
Fax No.: (949) 218-7815

- 9.4 **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.
- 9.5 **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.
- 9.6 **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.
- 9.7 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.8 **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.

- 9.9 **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.
- 9.10 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.11 **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.
- 9.12 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.13 **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.
- 9.14 **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.
- 9.15 **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.
- 9.16 **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.
- 9.17 **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 (5) 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 (5)

business days of its receipt of such written notice.

- 9.18 **Buyer's Default and Seller's Remedies.** SELLER AND BUYER AGREE THAT IF BUYER BREACHES ITS OBLIGATIONS HEREUNDER, EXCEPT FOR ITS OBLIGATIONS UNDER SECTION 9.1, AND SHALL NOT CURE ANY SUCH BREACH WITHIN TEN (10) DAYS AFTER NOTICE, SELLER MAY TERMINATE THIS AGREEMENT AND SHALL BE ENTITLED TO, AS SELLER'S SOLE AND EXCLUSIVE REMEDY, THE AMOUNTS DEPOSITED WITH ESCROW HOLDER PURSUANT TO THIS AGREEMENT, TOGETHER WITH ANY ACCRUED INTEREST THEREON AS OF THE TIME OF DEFAULT AS LIQUIDATED DAMAGES; IT BEING AGREED THAT UNDER ALL THE CIRCUMSTANCES EXISTING AT THE TIME OF THIS AGREEMENT, THIS PROVISION LIQUIDATING DAMAGES IN THE EVENT OF THE BUYER'S DEFAULT IS REASONABLE, THE DAMAGES RESULTING TO SELLER BY REASON OF SUCH BREACH ARE NOW AND THEN WOULD BE DIFFICULT AND IMPRACTICAL TO DETERMINE AND THAT THE BEST ESTIMATE, BASED ON ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, OF THE TOTAL DAMAGES THAT SELLER WOULD SUFFER IS AND SHALL BE AN AMOUNT EQUAL TO THE SUMS DEPOSITED BY BUYER WITH ESCROW HOLDER AS OF THE TIME OF DEFAULT. IN PLACING THEIR INITIALS IN THE SPACES PROVIDED BELOW, THE PARTIES CONFIRM THAT THEY HAVE READ, UNDERSTAND AND AGREE TO THIS PROVISION.


BUYER

Managing Member, FD Partners, LLC


SELLER

Marlene Murphey, Executive Director

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

[Signatures on following page.]

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"

Recording Requested By:

The City of Fresno In Its Capacity as
Successor Agency to the Redevelopment
Agency of the City of Fresno
No Fee-Government Code Sections
6103 and 27383

When Recorded Mail to:

The City of Fresno In Its Capacity as
Successor Agency to the Redevelopment
Agency of the City of Fresno
2344 Tulare Street, 2nd Floor
Fresno, CA 93721

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

BUYER:

FD Partners, LLC.

By: _____

Managing Member

Dated: 6-10, 2014

SELLER:

Successor Agency to the Redevelopment
Agency of the City of Fresno, a public body
corporate and politic

By: _____

Marlene Murphey, Director

Dated: June 20, 2014

The City of Fresno In Its Capacity as Successor Agency to the Redevelopment Agency of the
City of Fresno has signed this Agreement pursuant to authority granted on 12/13, 2012

ATTEST:

YVONNE SPENCE, CMC
Ex-officio Clerk

By: _____

Deputy

Dated: June 20, 2014

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
Ex-officio Attorney

By: _____

Deputy

Dated: 6/20, 2014

Attachments:

Exhibit A: Legal Description

Exhibit B: Grant Deed

Exhibit C: Preliminary Title Report

EXHIBIT "C"

[Preliminary Title Report]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "Successor Agency"), and Bitwise Industries LLC, a California Limited Liability Company, ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Convention Center 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.
- B. 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.
- C. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as 730 & 738 Van Ness Avenue, APNs 468-253-11T & 468-253-15T, Fresno, California, and more particularly described in Exhibit A, attached, (the "Property").
- D. Buyer operates an adjacent business in need of parking. The Property will provide the business with desired parking. The Buyer has agreed to purchase the property for fair market value at the purchase price set forth herein.
- E. The sale of the Property is contingent upon the approval of the Property Management Plan by the Successor Agency, Oversight Board and Department of Finance.
- F. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

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 these 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 and satisfaction of the conditions listed in Sections 2.1, 2.2, and 2.3, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.
 - 2.1 **Compliance with CEQA.** The applicable lead agency shall have complied with the California Environmental Quality Act with respect to this Agreement, as applicable. The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA).
 - 2.2 **Environmental Assessment.** The Property is being sold in an "As is" condition. The Buyer may perform a Phase 1 Environmental Site Assessment at Buyer's cost. Seller shall provide Buyer with any copies of environmental reports pertaining to the Property in Seller's possession without any warranty as to their accuracy.
 - 2.3 Approval of this Agreement and the Property Management Plan by Successor Agency, Oversight Board, and Department of Finance.
3. **Purchase Price.** The purchase price for the Property is ONE HUNDRED AND EIGHTY THOUSAND DOLLARS (\$180,000.00) ("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.
4. **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 hazardous materials or substances (as now or hereafter defined in any law, regulation, or rule) stored, discharged, or otherwise present in, on, or affecting the

Property; (e) Seller has no knowledge of any material defects in the Property; (f) the Property is currently vacant.

Seller's authority to sell the property may be subject to approval of the Oversight Board of the Successor Agency and/or the California State Department of Finance and subject to the timelines set forth in California Health and Safety Code section(s) 34170-34191.

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.

- 5. Opening Escrow/Escrow Deposit.** Within ten (10) business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with Fidelity National Title Company at 8050 N. Palm Avenue Suite 110, Fresno California ("Title Company"), Attention: Bernadette Watson, and Buyer shall deposit into Escrow the sum of EIGHTEEN THOUSAND DOLLARS (\$18,000.00) ("Deposit") to be placed in an interest bearing account.

5.1 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.

5.2 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 (30) days after the Oversight Board and the Successor Agency Board approve this Agreement, Seller will deposit into the escrow with Title Company, 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.

5.3 Title. Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, except those agreed to in writing by Buyer.

5.4 Title and Closing Costs. Seller will pay any costs of clearing and conveying title

in the condition described in Section 5.3. 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.

- 5.5 **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 one hundred and eighty (180) 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, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided. Notwithstanding the foregoing, Buyer shall have the right to extend the Outside Closing Date for up to two (2) extension periods of forty-five days each by providing written notice to the Seller along with making an additional deposit of \$2,500.00 for each extension, such additional deposits to be applicable to the Purchase Price but refundable only in the event of a Seller Default.
- 5.6 **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.
- 5.7 **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 5.3), 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 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 5.9 **Broker.** Neither party engaged a broker for this transaction.

- 6 **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.
- 7 **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.
- 8 **Damage, Destruction, Condemnation.** If the improvements on the Property are destroyed or materially damaged or if condemnation proceedings are commenced against the Property between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Property, all proceeds of insurance or condemnation awards payable to Seller by reason of the destruction, damage, or condemnation shall be paid or assigned to Buyer; Seller shall also pay to Buyer the amount of any deductible and coinsurance under any policy. In the event of nonmaterial damage to the Property, which damage Seller is unwilling to repair prior to Closing, Buyer shall have the right either to terminate this Agreement or accept the Property in its then existing condition, in which case Buyer shall be entitled to a reduction in the Purchase Price to the extent of the cost of repairing the damage. If Buyer elects to terminate this Agreement pursuant to this Section, escrow shall terminate and neither party shall have any further duties or responsibilities under this Agreement.
- 9 **Miscellaneous Provisions.**
- 9.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
- 9.2 **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
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:

Bitwise Industries LLC
Attn: Jake A. Soberal, CEO
2210 San Joaquin Street
Fresno, CA 93721
Phone No.: 559.618.1279

- 9.3 **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.
- 9.4 **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.
- 9.5 **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.
- 9.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.7 **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.

- 9.8 **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.
- 9.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.10 **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.
- 9.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.12 **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.
- 9.13 **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.
- 9.14 **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.
- 9.15 **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.
- 9.16 **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 (5) 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 (5)

business days of its receipt of such written notice.

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

BUYER:

Bitwise Industries LLC, a California
Limited Liability Company

By: _____

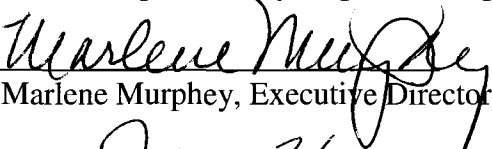

Jake A. Soberal, CEO

Dated: June 24, 2014

SELLER:

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

By: _____


Marlene Murphey, Executive Director

Dated: _____

June 26, 2014

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on 6/26, 2014

ATTEST:

YVONNE SPENCE, CMC
Ex-officio Clerk

By: _____

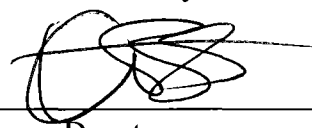

Deputy

Dated: June 27, 2014

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
Ex-officio Attorney

By: _____


Deputy

Dated: 6/26, 2014

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "Successor Agency"), and DFP Ltd LP, a California Limited Partnership, ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Chinatown Expanded 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.
- B. 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.
- C. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as 941 G. Street, APN 467-071-05T, Fresno, California, and more particularly described in Exhibit A, attached, (the "Property").
- D. Buyer operates an adjacent business, the parking lot of which was acquired by the California High Speed Rail Authority. The Property will provide the business with substitute parking. The Buyer has agreed to purchase the property for fair market value at the purchase price set forth herein.
- E. The sale of the Property is contingent upon the approval of the Property Management Plan by the Successor Agency, Oversight Board and Department of Finance.
- F. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

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 these 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 and satisfaction of the conditions listed in Sections 2.1, 2.2, and 2.3, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.
 - 2.1 **Compliance with CEQA.** The applicable lead agency shall have complied with the California Environmental Quality Act with respect to this Agreement, as applicable. The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA).
 - 2.2 **Environmental Assessment.** The Property is being sold in an "As is" condition. The Buyer may perform a Phase 1 Environmental Site Assessment at Buyer's cost. Seller shall provide Buyer with any copies of environmental reports pertaining to the Property in Seller's possession without any warranty as to their accuracy.
 - 2.3 Approval of this Agreement and the Property Management Plan by Successor Agency, Oversight Board, and Department of Finance.
3. **Purchase Price.** The purchase price for the Property is TWENTY ONE THOUSAND TWO HUNDRED FORTY FOUR DOLLARS (\$21,244.00) ("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.
4. **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 hazardous materials or substances (as now or hereafter defined in any law, regulation, or rule) stored, discharged, or otherwise present in, on, or affecting the

Property; (e) Seller has no knowledge of any material defects in the Property; (f) the Property is currently vacant.

Seller's authority to sell the property may be subject to approval of the Oversight Board of the Successor Agency and/or the California State Department of Finance and subject to the timelines set forth in California Health and Safety Code section(s) 34170-34191.

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.

5. **Opening Escrow/Escrow Deposit.** Within ten (10) business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with Fidelity National Title Company at 8050 N. Palm Avenue Suite 110, Fresno California ("Title Company"), Attention: Bernadette Watson, and Buyer shall deposit into Escrow the sum of TWO THOUSAND ONE HUNDRED DOLLARS (\$2,100.00) ("Deposit") to be placed in an interest bearing account.

- 5.1 **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.
- 5.2 **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 (30) days after the Oversight Board and the Successor Agency Board approve this Agreement, Seller will deposit into the escrow with Title Company, 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.
- 5.3 **Title.** Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, except those agreed to in writing by Buyer.
- 5.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title

in the condition described in Section 5.3. 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.

- 5.5 **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 one hundred and eighty (180) 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, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided. Notwithstanding the foregoing, Buyer shall have the right to extend the Outside Closing Date for up to two (2) extension periods of forty-five days each by providing written notice to the Seller along with making an additional deposit of \$2,500.00 for each extension, such additional deposits to be applicable to the Purchase Price but refundable only in the event of a Seller Default.
- 5.6 **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.
- 5.7 **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 5.3), 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 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 5.9 **Broker.** Neither party engaged a broker for this transaction.

- 6 **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.
- 7 **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.
- 8 **Damage, Destruction, Condemnation.** If the improvements on the Property are destroyed or materially damaged or if condemnation proceedings are commenced against the Property between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Property, all proceeds of insurance or condemnation awards payable to Seller by reason of the destruction, damage, or condemnation shall be paid or assigned to Buyer; Seller shall also pay to Buyer the amount of any deductible and coinsurance under any policy. In the event of nonmaterial damage to the Property, which damage Seller is unwilling to repair prior to Closing, Buyer shall have the right either to terminate this Agreement or accept the Property in its then existing condition, in which case Buyer shall be entitled to a reduction in the Purchase Price to the extent of the cost of repairing the damage. If Buyer elects to terminate this Agreement pursuant to this Section, escrow shall terminate and neither party shall have any further duties or responsibilities under this Agreement.
- 9 **Miscellaneous Provisions.**
- 9.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
- 9.2 **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
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:

DFP Ltd LP
Attn: James Doizaki
401 S. Central Avenue
Los Angeles, CA 90013
Phone No.: 213.620.6219
Fax No.: 213.620.6245

- 9.3 **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.
- 9.4 **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.
- 9.5 **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.
- 9.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.7 **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.
- 9.8 **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.

- 9.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.10 **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.
- 9.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.12 **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.
- 9.13 **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.
- 9.14 **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.
- 9.15 **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.
- 9.16 **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 (5) 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 (5) business days of its receipt of such written notice.

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

BUYER:

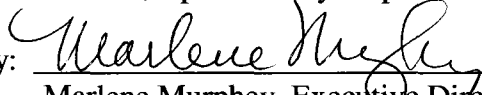
DFP Ltd LP, a California Limited Partnership

By: 
James Doizaki, general partner

Dated: JUNE 13, 2014

SELLER:

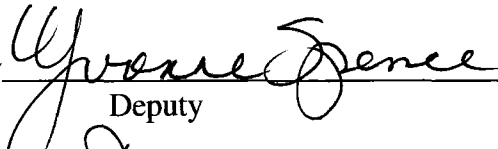
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic

By: 
Marlene Murphey, Executive Director

Dated: JUNE 20, 2014

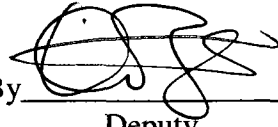
The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on 6/19, 2014

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

By: 
Deputy

Dated: JUNE 20, 2014

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
Ex-officio Attorney

By: 
Deputy

Dated: 6/20, 2014

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"

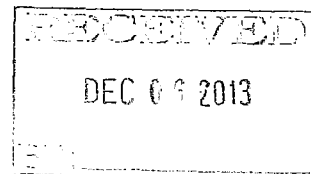
LEGAL DESCRIPTION

**LIMITED APPRAISAL REPORT
OF
PARCEL E, 2.25 ACRES
FORMER PALM LAKES GOLF COURSE
5025 EAST DAKOTA
FRESNO, CALIFORNIA**

**PREPARED FOR
MS. LUPE PEREZ
PROJECT MANAGER
SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY**

**PREPARED BY
JAMES G. PALMER, MAI
JAMES G. PALMER APPRAISALS, INC.**

**EFFECTIVE DATE OF VALUE
NOVEMBER 18, 2013
EFFECTIVE DATE OF APPRAISAL
NOVEMBER 18, 2013**





JAMES G. PALMER
APPRAISALS INC.

November 18, 2013

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

Ms. Lupe Perez
Project Manager
Successory Agency to the Redevelopment Agency
2344 Tulare Street, Suite 200
Fresno, CA 93721

Re: Market Valuation
Parcel E, 2.25 Acres
Fresno, CA

Dear Ms. Perez:

In accordance with your request, I have appraised the above-mentioned real property, more particularly described in the enclosed summary appraisal report. The value opinion reported is qualified by certain definitions, limiting conditions, and certifications set forth in the enclosed report.

The purpose of the appraisal was to arrive at an opinion of the market value of the fee simple title, the value to be used for establishing a selling price. The effective date of valuation is as of November 18, 2013.

It is the opinion of the undersigned, the market value of the real property was as follows:

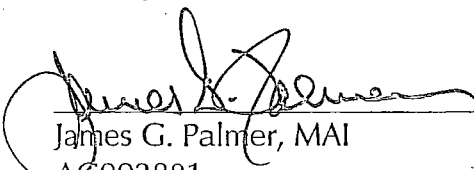
Parcel E, 2.25 Acres

\$ 281,000

The undersigned appraiser hereby certifies that he has 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. This letter must remain attached to the report in order for the value opinion set forth to be considered valid.

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 appraisers, the right to photocopy all or part of this appraisal is strictly prohibited.

Thank you for this opportunity of serving you. Sincerely,


James G. Palmer, MAI
AG002881

JP/dlt/WP:8248B

MEMO TO: Terry Cox
Fresno Redevelopment Agency
2344 Tulare St. #200.
Fresno, CA 93721

DATE: June 22, 2012

COPIES TO:

Services

AG006636

2011

FROM: Wayne A. Carstens
Carstens' Appraisal

Gen. Cert.:

State/Exp: CA/April,

PHONE: (559) 237-1211

SUBJECT: LIMITED APPRAISAL; SUMMARY REPORT

NOTE:

The SUMMARY APPRAISAL REPORT is intended to comply with the reporting requirements as set forth under standards rule 2-2 of USPAP. It contains summary discussion of the data, reasoning, and analyses that were used to develop the opinion of value. It also includes summary descriptions of the subject property, the property's locale, the market for the property type, and the appraiser's opinion of highest and best use. Any data, reasoning, and analyses not discussed in Summary Report are retained in the appraiser's work file. The appraiser is not responsible for the unauthorized use of the report.

DISCLAIMER

THIS REPORT IS PREPARED FOR THE SOLE USE AND BENEFIT OF "FRESNO REDEVELOPMENT AGENCY" AND IS BASED, IN PART, UPON DOCUMENTS, WRITINGS, AND INFORMATION OWNED AND POSSESSED BY "FRESNO REDEVELOPMENT AGENCY". NEITHER THIS REPORT, NOR ANY OF THE INFORMATION CONTAINED HEREIN SHALL BE USED OR RELIED UPON FOR ANY PURPOSE BY ANY PERSON OR ENTITY OTHER THAN "FRESNO REDEVELOPMENT AGENCY".

SALEINT FACTS

CLIENT

Fresno Redevelopment Agency

PROPERTIES APPRAISED:

Hypothetical Parcel	APN	Zoning	Site Diminsions	Site Area SqFt	Site Area Acres
Kern, Waterman, & California Aves.	None	Commercial & Residenital	Irregular Estimate	177,789 Estimate	4.08 Estimate

T.B. MAP PAGE/GRID:

1352/G2, Central Valley Cities

FUNCTION OF THE APPRAISAL:

Exclusive use for assisting the client in a potential purchase.

INTENDED USE OF THE APPRAISAL:

To Estimate Fair Market Value

PROPERTY RIGHTS APPRAISED:

Fee simple

APPRAISAL PREMISE(S):

"As Is" Value

DATE OF VALUE:

June 11, 2012

DATE OF REPORT:

June 22, 2012

HIGHEST and BEST USE:

As if vacant:

The hypothetical use of the hypothetical parcel would be a commercial/Retail

As improved:

Present Use, All parcels are being valued as vacant there for their Highest and Best use as improved would be to remain vacant until such as time that iot would become financially feasible to improve the parcels.

VALUE CONCLUSION:

Hypothetical site is valued on an "as if vacant" basis and then discounted for demolition costs.

Commercial Properties \$2.20/SqFt						
Parcel #	APN	Zoning	Site Dimensions	Site Area	Indicated Value/Acre	Total Indicated Value
Hypothetical Parcel	None	Commercial	Irregular	177,789	\$95,832	\$391,136
		Assumed	Estimate	Estimate		
Demolition Cost						(\$20,000)
Total Indicated Value					\$90,932	\$371,136
Rounded					\$90,654	\$370,000

EXPOSURE PERIOD ESTIMATE:

12 to 18 Months

MARKETING PERIOD ESTIMATE:

12 to 18 Months

Based on "days on market" of comparable properties used in this report as well as personal files, knowledge of the market, and conversations with other commercial/residential brokers.

HYPOTHETICAL ASSUMPTIONS:

1. That the indicated parcel is legally created.
2. Streets and alleys abandoned and included in hypothetical parcel.
3. All liens cleared on the subject property. Property should be free and clear from encumbrances including deed restrictions..
4. Regulatory clearance of any environmental contamination.
5. All structures and debris is cleared from the proposed site.
6. Site is construction ready.
7. Site to be values as if vacant.

**APPRAISAL REPORT
OF
1.37 ACRES
4007 - 4071 E. VENTURA AVENUE
FRESNO, CALIFORNIA 93702**

**PREPARED FOR
THE CITY OF FRESNO
2344 TULARE STREET #200
FRESNO, CALIFORNIA 93721**

**PREPARED BY
GREGG J. PALMER, MAI
JAMES G. PALMER APPRAISALS, INC.**

**EFFECTIVE DATE OF VALUE
FEBRUARY 15, 2013
EFFECTIVE DATE OF APPRAISAL
MARCH 1, 2013**



JAMES G. PALMER
APPRAISALS INC.

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

March 1, 2013

Ms. Lupe Perez
City of Fresno
2344 Tulare Street #200
Fresno, California 93721

Re: Market Valuation
1.37 Acres
4007 - 4071 E. Ventura Avenue
Fresno, California 93702

Dear Ms. Perez:

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 current edition of USPAP states that under Standards Rules 2-2 and 8-2 each written real property appraisal report must be prepared under one of the following three formats: Self Contained Appraisal Report [Standards Rules 2-2(a) and 8-2(a)], Summary Appraisal Report [Standards Rules 2-2(b) and 8-2(b)] or Restricted Use Appraisal Report [Standards Rules 2-2(c), 8-2(c) and 10-2(b)]. In the case of this report, the appraisal is being communicated in a *Summary* format.

The property consists of five adjoining parcels of land. The purpose of the appraisal was to arrive at an opinion of value of the fee simple estate, the value to be used for evaluation for asset evaluation. A single value will be reported. The effective date of valuation is as of February 15, 2013. The following value is subject to the value definitions, extraordinary assumptions and hypothetical conditions and limiting conditions as set forth in this report.

In the opinion of the undersigned, the values are as follows:

VALUE ASSUMING VACANT

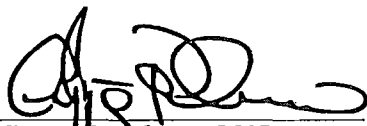
\$358,000.00

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.

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,

A handwritten signature in black ink, appearing to read 'Gregg J. Palmer', written over a horizontal line.

Gregg J. Palmer, MAI
Certified General Real Estate Appraiser
California License AG002880
Expiration: April 24, 2014

Executive Summary

PROPERTY DESCRIPTION

Property Name	RDA Land
Address	4007 - 4071 E. Ventura Avenue
City, State, Zip	Fresno, California 93702
County	Fresno
MSA	Fresno
Property Type	Vacant Commercial Land
Site Description	
Site Area	1.37 Acres
Road Frontage (LF)	400' NS Ventura Ave./ 150' WS Eleventh St./ 150' ES Tenth St.
Orientation	Corner
Shape	Rectangular
Zoning	C-6
Description	Heavy Commercial
Flood Zone	Zone X - FEMA #06019C2110H

Improvement Description

Building Area	Vacant Land
Year Built	N/A
Quality	N/A
Condition	N/A
Market Class	N/A
Construction Type	N/A

Real Estate Tax Data

Assessor Parcel Number(s)	461-272-09, 10, 11, 16 & 17
Total Assessed Value	\$0.00
Real Estate Taxes	\$0.00

MARKET BOUNDARIES

North	Tulare Street
South	Butler Avenue
East	Cedar Avenue
West	Highway 41

HIGHEST & BEST USE

Land as Vacant	Hold for future commercial development
Property as Improved	N/A

PROPERTY VALUATION

Valuation Type	Fee Simple
Sales Comparison Approach	\$358,000
Cost Approach	N/A
Income Capitalization Approach	N/A
Final Value Opinion	\$358,000

APPRAISAL DATES

Inspection Date	February 15, 2013
Report Date	March 1, 2013
Date of Valuation	February 15, 2013
Exposure Time	12 Months

APPRAISAL REPORT OF:

VACANT PARKING LOT
730 & 738 Van Ness Avenue
Fresno, California 93721

EFFECTIVE VALUE DATE:

May 05, 2014

FOR:

Mr. Enrique Mendez
Project Coordinator
Successor Agency to the
Redevelopment Agency of the City of Fresno
2344 Tulare Street Suite #200
Fresno, California 93721

PREPARED BY:

DAVID P. HAMILTON, MAI

HAMILTON ASSOCIATES
REAL ESTATE APPRAISERS AND CONSULTANTS
7638 NORTH INGRAM AVENUE, SUITE 201
FRESNO, CALIFORNIA 93711

HAMILTON ASSOCIATES

REAL ESTATE APPRAISERS & CONSULTANTS

7638 North Ingram Avenue, Suite 201, Fresno, California 93711
(559) 435-7420 • (559) 435-6340 FAX

May 9, 2014

Mr. Enrique Mendez
Project Coordinator
Successor Agency to the
Redevelopment Agency of the City of Fresno
2344 Tulare Street Suite #200
Fresno, California 93721

Re: 730 & 738 Van Ness Avenue
Fresno, California 93721

Dear Mr. Mendez

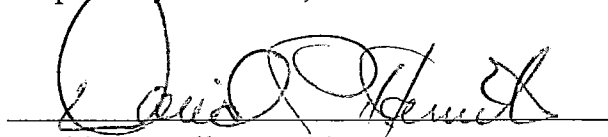
At your request, we have observed the above subject property, gathered necessary data, and made certain analyses. These efforts enabled us to form one or more opinions about the market value for a 100% ownership interest in the subject's fee simple estate. This valuation assumes no adverse leases, liens, or encumbrances other than normal covenants and restrictions of record.

The attached an appraisal report appraisal report sets forth the identification of the property appraised, assumptions and limiting conditions, pertinent facts about the area and subject property, comparable data, results of our investigations and analyses, and the reasoning leading to our conclusions. Based on all of our efforts, we have formed the following market value opinions for the subject real estate as of May 05, 2014.

"As Is" Market Value:	\$180,000
-----------------------	-----------

Thank you for your business. Let us know how we may further serve you.

Respectfully submitted,



David P. Hamilton, MAI
Certified General Real Estate Appraiser
California License AG007721
License Expiration Date: 6/3/2015

DPH:ts



Overview

Salient Information											
<i>Property Type</i>	Vacant Parking Lot										
<i>Real Estate Appraised</i>	730 & 738 Van Ness Avenue Fresno, California 93721										
<i>County</i>	Fresno										
<i>MSA</i>	Fresno										
<i>Estate Valued</i>	100% of the Fee Simple Estate										
<i>Census Tract</i>	06.00.04										
<i>Assessor's Parcel No.</i>	468-253-11T & 15T										
<i>Thomas Bros. No.</i>	1302.-J-7										
<i>Zoning Classification</i>	C-4 (Central Trading)										
<i>Flood Zone</i>	X; Community Panel #06019C 2110H; Effective Date: 2/18/09										
<i>Estate Valued</i>	100% of the Fee Simple Estate										
<i>Client</i>	Successor Agency to the Redevelopment Agency of the City of Fresno										
<i>Client File Number</i>	None										
<i>Most Likely Buyer</i>	Builder-Developer										
<i>Effective Value Date</i>	May 05, 2014										
<i>Report Preparation Date</i>	May 09, 2014										
<i>Value Indications</i>	<table border="1"> <tr> <td colspan="2" style="text-align: right;">"As Is" Value:</td></tr> <tr> <td>Land Value:</td><td style="text-align: right;">\$180,000</td></tr> <tr> <td>Cost Approach:</td><td style="text-align: right;">N/A</td></tr> <tr> <td>Sales Comparison Approach:</td><td style="text-align: right;">N/A</td></tr> <tr> <td>Income Approach</td><td style="text-align: right;">N/A</td></tr> </table>	"As Is" Value:		Land Value:	\$180,000	Cost Approach:	N/A	Sales Comparison Approach:	N/A	Income Approach	N/A
"As Is" Value:											
Land Value:	\$180,000										
Cost Approach:	N/A										
Sales Comparison Approach:	N/A										
Income Approach	N/A										
<i>Final Value Conclusion(s)</i>	<table border="1"> <tr> <td>"As Is" Market Value:</td><td style="text-align: right;">\$180,000</td></tr> </table>	"As Is" Market Value:	\$180,000								
"As Is" Market Value:	\$180,000										

APPRAISAL OF
CITY OF FRESNO & SUCCESSOR TO THE
REDEVELOPMENT AGENCY CITY OF FRESNO PROPERTIES
"G" STREET
FRESNO, CALIFORNIA

File #1513-1

as of

March 24, 2014

For

Mr. James Doizaki
401 S. Central Avenue
Los Angeles, California 90013

By

Thomas J. Wilkins, MAI, SRA
1429 Suite "B" Motel Drive
Merced California 95340

The Thomas Wilkins Company

Services in Real Estate Appraisal and Consultation

Thomas Wilkins MAI, SRA
Bill Spriggs

1429 Suite "B" Motel Dr.
Merced CA 95340
(209) 722-9600
Fax (209) 722-0916
Thomaswilkinsco@aol.com

March 27, 2014

Mr. James Doizaki
401 S. Central Avenue
Los Angeles, California 90013

Dear Mr. Doizaki:

Pursuant to your request, this office has provided an opinion of the current market value of the City of Fresno and successor of the Redevelopment Agency City of Fresno properties in an "as is" condition, as of March 24, 2014. The subject property consists of an industrial vacant property located on "G" Street, Fresno, California, being Fresno County APN's 467-071-04, 467-071-04, and 467-071-05. The appraisal will be utilized by the client and owner as part of the negotiation in the proposed acquisition of the subject properties. The legal description of the properties and the definition of Market Value are found herein.

Sales of competing properties, as well as factors and trends influencing value, have been investigated to arrive at the conclusion of Market Value of the subject properties given herein. Our estimate of the subject parcel's Market Values is on a cash basis condition. Our analysis, conclusions and supporting data are herewith submitted. This is a **SUMMARY** narrative appraisal report.

This appraisal is in conformance with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation.

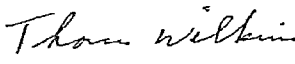
Under conditions discussed herein, in my opinion the market value of the subject property is, as of March 24, 2014:

City of Fresno
APN 467-071-04 (03)
467-071-04

Fifty Six Thousand Two Hundred Fifty Dollars
\$56,250

Successor to the Redevelopment Agency City of Fresno
467-071-05
Eighteen Thousand Seven Hundred Fifty Dollars
\$18,750

Respectfully Submitted,


Thomas J. Wilkins, MAI, SRA

OVERSIGHT BOARD RESOLUTION NO. ____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO APPROVING THE
SALE OF APPROXIMATELY 2.25 ACRES AT 5025 E.
DAKOTA AVENUE (APN 493-020-29ST) TO FRESNO
MOOSE FAMILY CENTER 445**

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Act"); and

WHEREAS, pursuant to the Dissolution Act, all non-housing assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA have been transferred to the control of the Successor Agency; and

WHEREAS, pursuant to Section 34191.5(b) of the Dissolution Act, the Successor Agency prepared a long-range property management plan (the "Plan") which addresses the disposition and use of the real properties of the Former RDA, and the Plan was adopted by the Oversight Board on July 7, 2014, and submitted to the State Department of Finance ("DOF") for approval on July __, 2014, and is still under review by DOF; and

WHEREAS, Fresno Moose Family Center 445, wishes to purchase 2.25 acres of real property which is identified in the Plan as Line #32, APN 493-020-29ST (the "Property") for a total price of \$265,000.00 cash at close of escrow, pursuant to the terms of the Purchase and Sale Agreement attached hereto as Exhibit A; and

WHEREAS, the proposed disposition was approved by the Successor Agency on ____, 2014; and

WHEREAS, the Oversight Board desires to authorize execution of the Purchase and Sale Agreement and to direct staff to submit the Oversight Board action to the DOF for approval; and

WHEREAS, the Purchase and Sale Agreement is effective upon approval by the Oversight Board, the Successor Agency, and the DOF.

NOW THEREFORE BE IT RESOLVED BY OVERSIGHT BOARD AS FOLLOWS:

Section 1. The Oversight Board hereby approves the Purchase and Sale Agreement, substantially in the form attached hereto as Exhibit A, and directs the Executive Director to execute the Purchase and Sale Agreement on behalf of the Successor Agency, and to take all such actions as may be required to close escrow and convey the Property pursuant to the Purchase and Sale Agreement.

Section 2. Pursuant to Health and Safety Code Section 34180(j), staff of the Successor Agency is hereby authorized and directed to transmit the Purchase and Sale Agreement to the County Administrative Officer, the County Auditor-Controller, and DOF.

Section 3. The Executive Director is hereby authorized and directed to do any and all things which may be necessary or advisable to effectuate this Resolution and any such actions previously taken are hereby ratified.

Section 4. This Resolution shall be effective in accordance with CRL section 34179(h).

ADOPTED by the Oversight Board this _____ day of August, 2014.

TERRY BRADLEY
Chair of the Board

I, YVONNE SPENCE, City Clerk/Clerk of the Oversight Board hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the Oversight Board for the City of Fresno as Successor Agency to the Redevelopment Agency of the City of Fresno at its meeting held on the _____ day of August, 2014, by the following vote, to wit:

AYES :
NOES :
ABSENT :
ABSTAIN :

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Fresno, California, this _____ day of August, 2014.

Yvonne Spence
City Clerk/Clerk of the Oversight Board

KBD:elb [65461elb/kbd]

OVERSIGHT BOARD RESOLUTION NO. ____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO APPROVING THE
SALE OF APPROXIMATELY 0.24 ACRES AT 731 E.
CALIFORNIA AVENUE (APN 467-246-01T) TO BOOS
DEVELOPMENT WEST, LLC**

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Act"); and

WHEREAS, pursuant to the Dissolution Act, all non-housing assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA have been transferred to the control of the Successor Agency; and

WHEREAS, pursuant to Section 34191.5(b) of the Dissolution Act, the Successor Agency prepared a long-range property management plan (the "Plan") which addresses the disposition and use of the real properties of the Former RDA, and the Plan was adopted by the Oversight Board on July 7, 2014, and submitted to the State Department of Finance ("DOF") for approval on July 9, 2014, and is still under review by DOF; and

WHEREAS, Boos Development West, LLC, wishes to purchase 0.24 acres of real property which is identified in the Plan as Line #42, APN 467-246-01T (the "Property") for a total price of \$25,234.00 cash at close of escrow (appraised value), pursuant to the terms of the Purchase and Sale Agreement attached hereto as Exhibit A; and

WHEREAS, the proposed disposition was approved by the Successor Agency on October 18, 2012; and

WHEREAS, the Oversight Board desires to authorize execution of the Purchase and Sale Agreement and to direct staff to submit the Oversight Board action to the DOF for approval; and

WHEREAS, the Purchase and Sale Agreement is effective upon approval by the Oversight Board, the Successor Agency, and the DOF.

NOW THEREFORE BE IT RESOLVED BY OVERSIGHT BOARD AS FOLLOWS:

Section 1. The Oversight Board hereby approves the Purchase and Sale Agreement, substantially in the form attached hereto as Exhibit A, and directs the Executive Director to execute the Purchase and Sale Agreement on behalf of the Successor Agency, and to take all such actions as may be required to close escrow and convey the Property pursuant to the Purchase and Sale Agreement.

Section 2. Pursuant to Health and Safety Code Section 34180(j), staff of the Successor Agency is hereby authorized and directed to transmit the Purchase and Sale Agreement to the County Administrative Officer, the County Auditor-Controller, and DOF.

Section 3. The Executive Director is hereby authorized and directed to do any and all things which may be necessary or advisable to effectuate this Resolution and any such actions previously taken are hereby ratified.

Section 4. This Resolution shall be effective in accordance with CRL section 34179(h).

ADOPTED by the Oversight Board this _____ day of August, 2014.

TERRY BRADLEY
Chair of the Board

I, YVONNE SPENCE, City Clerk/Clerk of the Oversight Board hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the Oversight Board for the City of Fresno as Successor Agency to the Redevelopment Agency of the City of Fresno at its meeting held on the _____ day of August, 2014, by the following vote, to wit:

AYES :
NOES :
ABSENT :
ABSTAIN :

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Fresno, California, this _____ day of August, 2014.

Yvonne Spence
City Clerk/Clerk of the Oversight Board

KBD:elb [65458elb/kbd]

OVERSIGHT BOARD RESOLUTION NO. ____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO APPROVING THE
SALE OF APPROXIMATELY 1.37 ACRES AT 4007
VENTURA, 4017 VENTURA, 4025 VENTURA, 4061
VENTURA, AND 4071 VENTURA (APNS 461-272-16T,
461-272-17T, 461-272-11T, 461-272-10T, AND 461-272-
09T) TO FD PARTNERS, LLC**

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Act"); and

WHEREAS, pursuant to the Dissolution Act, all non-housing assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA have been transferred to the control of the Successor Agency; and

WHEREAS, pursuant to Section 34191.5(b) of the Dissolution Act, the Successor Agency prepared a long-range property management plan (the "Plan") which addresses the disposition and use of the real properties of the Former RDA, and the Plan was adopted by the Oversight Board on July 7, 2014, and submitted to the State Department of Finance ("DOF") for approval on July 9, 2014, and is still under review by DOF; and

WHEREAS, FD Partners, LLC, wishes to purchase 1.37 acres of real property which is identified in the Plan as Lines #43-47, APNs 461-272-16T, 461-272-17T, 461-272-11T, 461-272-10T, and 461-272-09T (the "Property") for a total price of \$368,000.00 cash at close of escrow (appraised value), pursuant to the terms of the Purchase and Sale Agreement attached hereto as Exhibit A; and

WHEREAS, the proposed disposition was approved by the Successor Agency on December 13, 2012; and

WHEREAS, the Oversight Board desires to authorize execution of the Purchase and Sale Agreement and to direct staff to submit the Oversight Board action to the DOF for approval; and

WHEREAS, the Purchase and Sale Agreement is effective upon approval by the Oversight Board, the Successor Agency, and the DOF.

NOW THEREFORE BE IT RESOLVED BY OVERSIGHT BOARD AS FOLLOWS:

Section 1. The Oversight Board hereby approves the Purchase and Sale Agreement, substantially in the form attached hereto as Exhibit A, and directs the Executive Director to execute the Purchase and Sale Agreement on behalf of the Successor Agency, and to take all such actions as may be required to close escrow and convey the Property pursuant to the Purchase and Sale Agreement.

Section 2. Pursuant to Health and Safety Code Section 34180(j), staff of the Successor Agency is hereby authorized and directed to transmit the Purchase and Sale Agreement to the County Administrative Officer, the County Auditor-Controller, and DOF.

Section 3. The Executive Director is hereby authorized and directed to do any and all things which may be necessary or advisable to effectuate this Resolution and any such actions previously taken are hereby ratified.

Section 4. This Resolution shall be effective in accordance with CRL section 34179(h).

ADOPTED by the Oversight Board this _____ day of August, 2014.

TERRY BRADLEY
Chair of the Board

I, YVONNE SPENCE, City Clerk/Clerk of the Oversight Board hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the Oversight Board for the City of Fresno as Successor Agency to the Redevelopment Agency of the City of Fresno at its meeting held on the _____ day of August, 2014, by the following vote, to wit:

AYES :
NOES :
ABSENT :
ABSTAIN :

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Fresno, California, this _____ day of August, 2014.

Yvonne Spence
City Clerk/Clerk of the Oversight Board

KBD:elb [65460elb/kbd]

OVERSIGHT BOARD RESOLUTION NO. ____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO APPROVING THE
SALE OF APPROXIMATELY 0.51 ACRES AT 730 VAN
NESS AND 736 VAN NESS (APNS 468-253-15T AND 468-
253-11T) TO BITWISE INDUSTRIES, LLC**

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Act"); and

WHEREAS, pursuant to the Dissolution Act, all non-housing assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA have been transferred to the control of the Successor Agency; and

WHEREAS, pursuant to Section 34191.5(b) of the Dissolution Act, the Successor Agency prepared a long-range property management plan (the "Plan") which addresses the disposition and use of the real properties of the Former RDA, and the Plan was adopted by the Oversight Board on July 7, 2014, and submitted to the State Department of Finance ("DOF") for approval on July 9, 2014, and is still under review by DOF; and

WHEREAS, Bitwise Industries, LLC, wishes to purchase 0.51 acres of real property which is identified in the Plan as Lines #48-49, APNS 468-253-15T and 468-253-11T (the "Property") for a total price of \$180,000.00 cash at close of escrow (appraised value), pursuant to the terms of the Purchase and Sale Agreement attached hereto as Exhibit A; and

WHEREAS, the proposed disposition was approved by the Successor Agency on June 26, 2014; and

WHEREAS, the Oversight Board desires to authorize execution of the Purchase and Sale Agreement and to direct staff to submit the Oversight Board action to the DOF for approval; and

WHEREAS, the Purchase and Sale Agreement is effective upon approval by the Oversight Board, the Successor Agency, and the DOF.

NOW THEREFORE BE IT RESOLVED BY OVERSIGHT BOARD AS FOLLOWS:

Section 1. The Oversight Board hereby approves the Purchase and Sale Agreement, substantially in the form attached hereto as Exhibit A, and directs the Executive Director to execute the Purchase and Sale Agreement on behalf of the Successor Agency, and to take all such actions as may be required to close escrow and convey the Property pursuant to the Purchase and Sale Agreement.

Section 2. Pursuant to Health and Safety Code Section 34180(j), staff of the Successor Agency is hereby authorized and directed to transmit the Purchase and Sale Agreement to the County Administrative Officer, the County Auditor-Controller, and DOF.

Section 3. The Executive Director is hereby authorized and directed to do any and all things which may be necessary or advisable to effectuate this Resolution and any such actions previously taken are hereby ratified.

Section 4. This Resolution shall be effective in accordance with CRL section 34179(h).

ADOPTED by the Oversight Board this _____ day of August, 2014.

TERRY BRADLEY
Chair of the Board

I, YVONNE SPENCE, City Clerk/Clerk of the Oversight Board hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the Oversight Board for the City of Fresno as Successor Agency to the Redevelopment Agency of the City of Fresno at its meeting held on the _____ day of August, 2014, by the following vote, to wit:

AYES :
NOES :
ABSENT :
ABSTAIN :

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Fresno, California, this _____ day of August, 2014.

Yvonne Spence
City Clerk/Clerk of the Oversight Board

KBD:elb [65093elb/kbd]

OVERSIGHT BOARD RESOLUTION NO. ____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO APPROVING THE
SALE OF APPROXIMATELY 0.09 ACRES (APN 467-071-
05T) TO DFP LTD LP**

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Act"); and

WHEREAS, pursuant to the Dissolution Act, all non-housing assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA have been transferred to the control of the Successor Agency; and

WHEREAS, pursuant to Section 34191.5(b) of the Dissolution Act, the Successor Agency prepared a long-range property management plan (the "Plan") which addresses the disposition and use of the real properties of the Former RDA, and the Plan was adopted by the Oversight Board on July 7, 2014, and submitted to the State Department of Finance ("DOF") for approval on July 9, 2014, and is still under review by DOF; and

WHEREAS, DFP Ltd LP wishes to purchase 0.09 acres of real property which is identified in the Plan as Line #50, APN 467-071-05T (the "Property") for a total price of \$21,244.00 cash at close of escrow (\$2,494.00 over appraised value), pursuant to the terms of the Purchase and Sale Agreement attached hereto as Exhibit A; and

WHEREAS, the proposed disposition was approved by the Successor Agency on June 19, 2014; and

WHEREAS, the Oversight Board desires to authorize execution of the Purchase and Sale Agreement and to direct staff to submit the Oversight Board action to the DOF for approval; and

WHEREAS, the Purchase and Sale Agreement is effective upon approval by the Oversight Board, the Successor Agency, and the DOF.

NOW THEREFORE BE IT RESOLVED BY OVERSIGHT BOARD AS FOLLOWS:

Section 1. The Oversight Board hereby approves the Purchase and Sale Agreement, substantially in the form attached hereto as Exhibit A, and directs the Executive Director to execute the Purchase and Sale Agreement on behalf of the Successor Agency, and to take all such actions as may be required to close escrow and convey the Property pursuant to the Purchase and Sale Agreement.

Section 2. Pursuant to Health and Safety Code Section 34180(j), staff of the Successor Agency is hereby authorized and directed to transmit the Purchase and Sale Agreement to the County Administrative Officer, the County Auditor-Controller, and DOF.

Section 3. The Executive Director is hereby authorized and directed to do any and all things which may be necessary or advisable to effectuate this Resolution and any such actions previously taken are hereby ratified.

Section 4. This Resolution shall be effective in accordance with CRL section 34179(h).

ADOPTED by the Oversight Board this _____ day of August, 2014.

TERRY BRADLEY
Chair of the Board

I, YVONNE SPENCE, City Clerk/Clerk of the Oversight Board hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the Oversight Board for the City of Fresno as Successor Agency to the Redevelopment Agency of the City of Fresno at its meeting held on the _____ day of August, 2014, by the following vote, to wit:

AYES :
NOES :
ABSENT :
ABSTAIN :

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Fresno, California, this _____ day of August, 2014.

Yvonne Spence
City Clerk/Clerk of the Oversight Board

KBD:elb [65459elb/kbd]

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

2344 Tulare Street, Suite 200 / 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
Terry Bradley

Members
Larry Hodges
Alan Hofmann
Michael Lima
Debbie Poochigian
Doug Vagim
Larry Westerlund

AGENCY BRIEFING REPORT

Date: September 4, 2014
To: Oversight Board Members
From: Andrew Sanchez
Through: Marlene Murphey
Subject: Property Disposition Guidelines

Please find attached draft Disposition Guidelines for consideration. Also attached is a sample RFP.

Attachments: Property Disposition Guidelines
Sample RFP

PROPERTY DISPOSITION GUIDELINES

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

INTRODUCTION

On February 1, 2012, pursuant to AB x1 26 (Dissolution Act), the City of Fresno determined that it would serve as the Successor Agency (SA) to the former Redevelopment Agency of the City of Fresno. As part of the wind-down of former redevelopment activities, the Successor Agency and Oversight Board are required to dispose of certain property assets pursuant to AB 26 and AB 1484.

Under Section 34177(e) of the Dissolution Act, the Successor Agency is to dispose of assets and properties "expeditiously and in a manner aimed at maximizing value." Given the large number of properties in the Long Range Property Management Plan (LRPMP), it is important that the sale of properties occurs in an orderly and strategic manner centered on objectives to maximize value and prevent the re-establishment of blight. Based on these objectives, guidelines have been developed to establish general policies and procedures in a manner to allow for flexibility in strategic, orderly property disposition. Of the four permissible use categories outlined in AB 1484 (i.e. government use, enforceable obligation, future development and for sale) the guidelines address For Sale properties as identified in the in the LRPMP. Several disposition methods are set forth for consideration and use on a case-by-case basis.

DISPOSITION GUIDELINES FOR SALE PROPERTIES

I. PROPERTY PREPARATION

Preliminary Title Reports: Preliminary title reports will be obtained to identify issues that may affect the condition or marketability of title, such as easements, covenants, conditions and restrictions, and outstanding liens.

Appraisals: Third-party appraisals will be obtained for properties except where size is less than .10 and value estimated to be less than \$10,000. Multiple parcels may be valued together within a single appraisal to increase value, improve marketability and streamline resale. A professional broker's opinion may be obtained on parcels less than .10 of an acre and \$10,000 in value.

Parcel Consolidation: In some instances, the Agency owns an area of contiguous land comprised of multiple parcels that gain development feasibility and economic value by being marketed together. In some cases, the individual Agency owned parcels are smaller than the minimum lot size required for development and would benefit by consolidation with adjacent Agency owned parcels. On a case-by-case basis, staff will evaluate the inventory and where appropriate package parcels (the Property) for solicitation to improve marketability, increase value and streamline the resale of the properties.

Environmental Reports: Preliminary environmental reports will be obtained to identify environmental conditions that may affect the reuse or marketability of the property.

II. REMNANT PROPERTIES

In some instances there are isolated remnant parcels that have little or no marketable value due to their size, location, condition and/or configuration that are costly to maintain and are not acceptable to a government entity. These parcels will be offered to the adjacent owners on terms that seek to maximize the consideration for transfer while incentivizing the adjacent owners to receive such conveyance to avoid costs of maintenance, liability etc.

III. RIGHT OF FIRST REFUSAL

The City shall have a right of first refusal in connection with the purchase of certain property indicated in the LRPMP. Such right of first refusal may be exercised by means of the City: (i) notifying the Oversight Board of the City's intention to acquire the property for monetary consideration in an amount not less than appraised value and equal to or greater than offers received through solicitation process; and (ii) obtaining approval of such purchase by the Oversight Board. It is understood that such purchases may be subject to compensation agreements with other taxing entities as required under Health and Safety Code Section 34180.

IV. DISPOSITION METHODS

A. OPEN MARKET SOLICITATION (Request for Offer to Purchase)

DESCRIPTION: Successor Agency will prepare written solicitation for sale of property which may include a single parcel or group of parcels (the Property). Such written solicitation may include but shall not be limited to: APN(s); Location; Zoning; Size; and Listing price.

TERMS: The listing price for the Property shall be not less than fair market value established by an appraisal. Purchase price shall be all cash at closing, no seller financing

REQUIREMENTS Submittal requirements may include but not be limited to: written offers; all buyers listed and identified; and, type/sources of financing.

MARKETING: Successor staff will market the property in one or more of the following ways:

Prepare written solicitation in a format to accommodate posting on electronic listing sites and as hard copy flyer;

Place the Properties on multiple listing services including Loopnet, CoStar and the Successor Agency website;

Place the properties in a newspaper(s) of general circulation including a local paper;

Provide E-mail notifications to brokers, interested parties and solicitation lists.

Utilize property posting, flyers and targeted marketing as appropriate etc.

SELECTION: Highest purchase price shall guide selection. Where there are two or more offers Agency may request a highest and best offer. Offers presented for approval will generally be in the form of a written purchase and sale agreement (or similar instrument). Nothing in the Disposition Guidelines shall obligate the Successor Agency or Oversight Board to select an offer. The Agency and Oversight Board may, in the exercise of their discretion, accept, conditionally accept or reject any or all offers submitted.

B. REQUEST FOR OFFER TO PURCHASE INCLUDING PROPOSED DEVELOPMENT

This method is the same as above except that respondents must submit within a specified time period and describe the intended development and/or rehabilitation and end use of the property with an estimated value and timeframe. The selection will be based on the greatest value and benefit including purchase price. If two respondents offer a price that is equal to or greater than appraised value the selection will consider the additional value created from the development/rehabilitation/use etc.

DESCRIPTION: Successor Agency will prepare written solicitation for sale of property which may include a single parcel or group of parcels (the Property). Such written solicitation may include but shall not be limited to: APN(s); Location; Zoning; Size; and Listing price.

TERMS: The listing price for the Property shall be not less than fair market value established by an appraisal. Purchase price shall be all cash at closing, no seller financing

REQUIREMENTS Submittal requirements may include but not be limited to: written offers; all buyers listed and identified; description of proposed development, rehabilitation or reuse; estimated added value and economic benefit to property and area; funding source; timetable and, type/sources of financing.

MARKETING: Successor staff will market the property in one or more of the following ways:

Prepare written solicitation in a format to accommodate posting on electronic listing sites and as hard copy flyer;

Place the Properties on multiple listing services including Loopnet, CoStar and the Successor Agency website;

Provide E-mail notifications to brokers, interested parties and solicitation lists;

Place the properties in a newspaper(s) of general circulation including a local paper;

Utilize property posting, flyers and targeted marketing as appropriate etc.

SELECTION: Highest value including purchase price shall guide selection. Where there are two or more responses the Agency may request a highest and best offer. All costs associated with submitting an offer/proposal shall be borne solely by the party submitting such document(s). Offers presented for approval will generally be in the form of a written purchase

and sale agreement (or similar instrument). Nothing in the Disposition Guidelines shall obligate the Successor Agency or Oversight Board to select an offer or proposal. The Agency and Oversight Board may, in the exercise of their discretion, accept, conditionally accept or reject any or all offers submitted.

*Adjacent Development: Where the for sale property is adjacent to a parcel(s) held by a developer or owner of an existing or planned development project, the owner or developer may submit facts to demonstrate added value through purchase of the for sale property in conjunction with their property.

C. AUCTION

If property has not received an offer or proposal and/or the Successor Agency determines that it is infeasible to market and dispose of property via the aforementioned disposition methods, the Agency may auction such property pursuant to guidelines within this section.

DESCRIPTION: Successor Agency will prepare written solicitation for sale of property which may include a single parcel or group of parcels (the Property). Such written solicitation may include but shall not be limited to: APN(s); Location; Zoning; Size; and Reserve price.

TERMS: The reserve (minimum bid) price for the Property shall be not less than fair market value established by an appraisal. Purchase price shall be all cash at closing, no seller financing.

MARKETING:

NOTE: In addition to the following, marketing will have been done under one of the prior disposition methods.

The properties shall be posted in a local newspaper(s) of general circulation no less than once a week for six successive weeks prior to auction that includes notice of bid submission time and place and time and place of auction.

In addition the property may be marketed in one or more of the following ways:

Prepare written solicitation in a format to accommodate posting on electronic listing sites and as hard copy flyer;

Place the Properties on multiple listing services including Loopnet, CoStar and the Successor Agency website;

Provide E-mail notifications to brokers, interested parties and solicitation lists;

Utilize property posting, flyers and targeted marketing as appropriate etc.

GENERAL PROCEDURES

Written bids will be submitted to the City Clerk's Office no later than 5 pm one business day

prior to the auction in a sealed envelope labeled with the Assessor Parcel Number(s) number with a certified or cashier's check in the sum of 5% of the reserve price payable to the Successor Agency.

Upon opening the bids, the City Clerk will call for oral bids. All oral bidders who have not made a deposit must present a certified or cashier's check in the sum of 5% of the reserve price prior to making a bid. The starting oral bid must be at least 5% over the highest written bid accepted. All unsuccessful bidders will have checks returned by the City Clerk at completion of bidding.

The deposit by the successful bidder is nonrefundable. The successful bidder will pay the entire remaining balance of the purchase amount within 15 days after acceptance of the highest bid. In the event the successful bidder cannot meet the requirements and deadlines of the sale, the bidder forfeits the deposit.

All costs associated with submitting a bid shall be borne solely by the party submitting such bid. Nothing in the Disposition Guidelines shall obligate the Successor Agency or Oversight Board to select a bid. The Agency and Oversight Board may, in the exercise of their discretion, accept, conditionally accept or reject any or all bids submitted.

Request for Proposals to Purchase 730 & 738 Van Ness Avenue Fresno, CA 93721



June 6, 2014

**REQUEST FOR PROPOSALS TO PURCHASE
730 & 738 VAN NESS AVENUE FRESNO, CA 93721**

I. OBJECTIVE

The Successor Agency to the Redevelopment Agency of the City of Fresno is offering an opportunity to submit proposals to purchase a rectangular, non-corner property constituting 22,500 square feet. The subject property consists of adjoining parcels 468-253-11T & 468-253-15T totaling approximately 0.51 acres. It is improved with a parking lot and striped for approximately 58 parking spaces. It is currently operated as a permit only parking lot. The site is located north of Ventura on the east side of Van Ness Avenue between Mono and Inyo Streets in Downtown Fresno. It is situated within a major transportation hub bounded by and proximate to Freeways 41, 180 to the north and 99 to the west as well as major rail lines including Amtrak to the north and the Southern Pacific line and future High Speed Rail (HSR) and Station to the northwest.

The outcome of the RFP would ideally fulfill objectives to:

Be a use that stimulates on-going activity and adds community and economic value to the property and surrounding area;

Be a purchase offer of no less than the appraised value with terms for all cash due at the close of escrow. Current value by a third party appraiser has been determined to be \$180,000 per appraisal dated May 5, 2014.

Responses from qualified candidates shall include but shall not be limited to the following information:

- Written narrative that describes: the proposed type of use and relationship to surrounding uses.
- Terms of the purchase offer;
- Financial capacity to purchase and maintain the property.

II. BACKGROUND

The City of Fresno

Fresno is the fifth largest city within the State of California, and is one of the fastest growing, with a population of approximately 500,121 and countywide population of 940,220. It is centrally located in the San Joaquin Valley, mid-way between San Francisco and Los Angeles, and is the business and cultural capital of Central California.

Project Area

Located near the Project Site are multiple venues that host concerts, plays, live entertainment, cultural and sporting events. Among these venues are the Fresno Convention Center, the Exhibit Hall, Saroyan Theatre, the Fulton Mall, and Chukchansi

Park, a multi-purpose stadium and home to the Fresno Grizzlies Triple-A Baseball Team.

Major proximate employers in the general area include the City and County of Fresno, the Internal Revenue Service, Fresno Unified School District, Community Medical Center, Pacific Gas & Electric Company, the Federal Court, and the State Appellate Court. Recent downtown employment has been further stimulated by the future High Speed Rail line and station.

The City's draft Downtown Neighborhoods Community and Fulton Corridor Specific Plan Area and accompanying form-based Downtown Development Code are currently undergoing environmental review. The Community Plan is intended to provide a vision and policies for development, and coordinate and guide investments in infrastructure, over time in Downtown Fresno. The Downtown Development Code is an integral part of the Downtown planning program, a new zoning code that defines clearer design outcomes while simplifying the process for entitling uses.

Chapter 5 of the draft Specific Plan identifies priority development projects to help achieve the Plan's vision for revitalization. One of the high-priority developments is the bus rapid transit corridors that are planned throughout Fresno, more specifically along Ventura which is near the Project Site, and is envisioned to add value to the downtown area.

Project Site

The Project Site is owned by the Successor Agency, and consists of two (2) parcels totaling approximately 0.51 acres. The Project Site is shown in the attached map and is described in the following:

730 Van Ness – Assessor's Parcel Number 468-253-15T: The parcel is zoned C-4 (Central Trading) with a land use designation of Commercial Mixed Use Level 2. It consists of 0.17 acres of land (50' of frontage and 150' of depth).

738 Van Ness – Assessor's Parcel Number 468-253-11T: The parcel is zoned C-4 (Central Trading) with a land use designation of Commercial Mixed Use Level 2. It consists of 0.34 acres of land (100' of frontage and 150' of depth).

III. SUPPLEMENTAL INFORMATION

Utilities and Easements Water and sewer lines for the Project Site are located in the adjacent street and alley right-of-ways and are not anticipated to pose any significant problems for future service. As directed in the draft Specific Plan, the City is in the process of planning and building a new downtown water tank and distribution mains which will bolster water service for forthcoming downtown development.

Street and Alley Right-of-Ways

All street right-of-ways around the Project Site are improved City streets.

Zoning and Development Standards

The Project Site is zoned C-4 and has a land use designation of Commercial Mixed Use Level 2.

Plan Goals

The Proposal shall be consistent with the goals of the Central Area Community Plan, Convention Center Redevelopment Project Area Plan, and any other relevant Plans that may be impacted by the proposed development, including goals relating to Community and Economic Development, Urban Design and Planning, and Transportation, and Public Services.

As described above, the draft Downtown Neighborhoods Community Plan Area and the Fulton Corridor Specific Plan are expected to be adopted in late 2014. A draft of these documents is available at <http://fresnodowntownplans.com/resources/fcsp>.

IV. SUBMISSION REQUIREMENTS

Proposal Format/Contents

For the purposes of this proposal, submit proposed purchase offer, description of use, and financing plan. The following list describes the elements of the proposal:

Cover Letter

Include a cover letter indicating the nature of the Proposer/Buyer (joint venture, corporate developer, limited liability corporation, franchisee, etc.). The letter must include the company name, address, email, name, telephone, and fax number(s) of the person(s) authorized to represent the Proposer.

Table of Contents

A Table of Contents for the material contained in the response.

Proposer/Buyer

Describe the ownership structure of the Proposer/Buyer. The description should include principals, other LLC partners or members, etc.

Description of Use

Describe the elements of the proposed use such as, parking, office or retail. Provide as much detail as possible including estimated timeframe for construction if applicable as well as a conceptual plan or rendering if available. Describe how the proposed use relates to the adjacent uses and surrounding area.

Purchase Proposal

A primary objective is to sell the property at a value equal to or greater than appraised value with cash at close of escrow.

- Describe financing of the purchase price.

Response Requirements

The total response package should not exceed ten (10) typewritten pages for each component, excluding maps, brochures, and other exhibits which may be included with the package. The extra materials, provided they are not part of the submission package, do not count against the response page limit. Proposals shall be submitted in 8½" X 11" inch format.

Due Date

All proposals are due at the offices of the Successor Agency to the Redevelopment Agency of the City of Fresno by 5:00 p.m. on June 20, 2014. Postmarks will not be accepted. **Proposals received after this deadline will not be considered.**

Submissions

One (1) unbound original and five (5) copies of the proposal must be submitted. Proposals must be complete and sealed. Facsimile and electronic mails copies are not acceptable and will not be considered. Proposals must be mailed or hand-delivered to:

Enrique Mendez, Project Coordinator
Successor Agency to the Redevelopment
Agency of the City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721

The Agency hereby notifies all Proposers that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law.

Submissions are Final

No corrections or modifications to the proposal may be made after the due date.

Confidentiality of Submissions

While the Agency shall endeavor to keep any confidential information private, it reserves the right to release the name of all Proposers, as well as a summary of their proposals, to the media, the public, or any party that requests it.

Inquiries

Questions pertaining to the RFP should be directed to Enrique Mendez, in writing at the above address or via email at:
Enrique.Mendez@fresno.gov

Conflict of Interest

The Successor Agency to the Redevelopment Agency of the City of Fresno is attempting to avoid conflict of interest or any appearance of conflict of interest. Therefore, all Proposers and their sub-consultants are required to submit a Disclosure of Conflict of Interest (see City Forms below) with the Proposal. Provide a Disclosure of Conflict of Interest for you, your firm, and/or other key staff involved in the Project. The statement should include actual conflicts and any working relationships that may be perceived by disinterested parties as conflicts. If no potential conflicts of interest exist, state so in your proposal. Complete and return Attachment C – Disclosure of Conflict of Interest as part of the RFP for the Proposer and each sub-consultant.

V. REVIEW AND SELECTION PROCEDURE

Processing of the RFP responses will be handled in the following manner:

Evaluation Process

All responses to the RFP will be evaluated by a Review Committee comprised of representatives from the Agency and may include other relevant entities.

Following the evaluation of the responses, the Review Committee may elect to interview some or all of the respondents or may otherwise seek additional information or clarification of the material submitted or may reject all proposals. The committee will make its recommendation to the Agency.

Right to Reject all Proposals

The Review Committee reserves the right to reject all proposals or to waive minor irregularities. The Agency has no obligation to enter into an agreement with any party with respect to purchase of the site as a result of their response to this offering.

The RFP package contains descriptions of the site and other matters that are deemed accurate. However, the Agency makes no representations with respect to any factors affecting the development of the site. Prior to entering into an agreement with the Agency, it is assumed that the prospective buyer will complete its own due diligence. The cost of preparing any response to this RFP shall be borne by the respondents and shall not be reimbursed by the Agency.

Agreement to Purchase the Property

The Agency anticipates that it will utilize a Purchase/Sale Agreement. The Agreement is expected to contain the price and terms of purchase.

Upon the Review Committee's recommendation of a proposal and negotiation of an Agreement, the successful Proposer will be required to execute and return the Agreement in a timely manner. Should the successful Proposer fail or refuse to execute the Agreement, the Agency reserves the right to withdraw the recommendation/acceptance of the Proposer and, at its discretion, accept the proposal of another Proposer.

Other Provisions

Sale of the Property is subject to successful Proposer's ability to close escrow before January 2015. It is understood that the selection of a proposal and timeframe are subject to California Redevelopment Law including AB X 1 26 and 1484.

The Agency hereby notifies all Proposers that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

Non Discrimination Agency Requirement

By submission of this proposal, the applicant represents that it and any subsidiary substantially owned by it, does not and will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliation or opinion, age or medical condition. This requirement will be part of the contract.

VI. ADDITIONAL INFORMATION

Public Records

The proposals received shall become the property of the Agency and are subject to public disclosure. Those parts of a proposal which are defined by the Proposer as business or trade secrets as that term is defined in California Evidence Code Section 3426.1, and are reasonably marked "Trade Secrets," "Confidential," or "Proprietary" and placed in a separate envelope shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most or all of their proposal as exempt from disclosure may be deemed non-responsive. Proposals, excluding confidential information, will be available for review after posting of staff recommendation.

Regulated Communication in City Procurement Process Ordinance

The Regulated Communications in City Procurement Process Ordinance (Article 6, Chapter 4 of the Fresno Municipal Code) became effective May 7, 2004. With certain specified exceptions, the Ordinance provides that no Respondent, Bidder, Proposer (as the case may be) shall initiate, engage in, or continue any communication to or with any City elected official concerning or touching upon any matter which is the subject of this competitive procurement process.

Any Respondent, Bidder, Proposer or elected official (as the case may be) who initiates, engages in, continues in, or receives any regulated communication shall file the written disclosure required by the Regulated Communications in City Procurement Process Ordinance and the Redevelopment Improvement Act.

Any Respondent, Bidder, or Proposer violating the Regulated Communications in City Procurement Process Ordinance may be disqualified from participating in this procurement process and/or determined to be non-responsible. Additionally, the Agencies may set aside the award of a contract, prior to its execution, to a party found to have violated the Ordinance.

Note: The full text of Fresno Municipal Code Chapter 4, Article 6 may be obtained by logging on to the City's website at <http://www.fresno.gov>. Under "Related Online Resources" on the bottom right portion of the home page click on "Fresno Municipal Code." Or view Fresno Municipal Code at <http://www.municode.com/Resources/gateway.asp?pid=14478&sid=5>.

Debarment

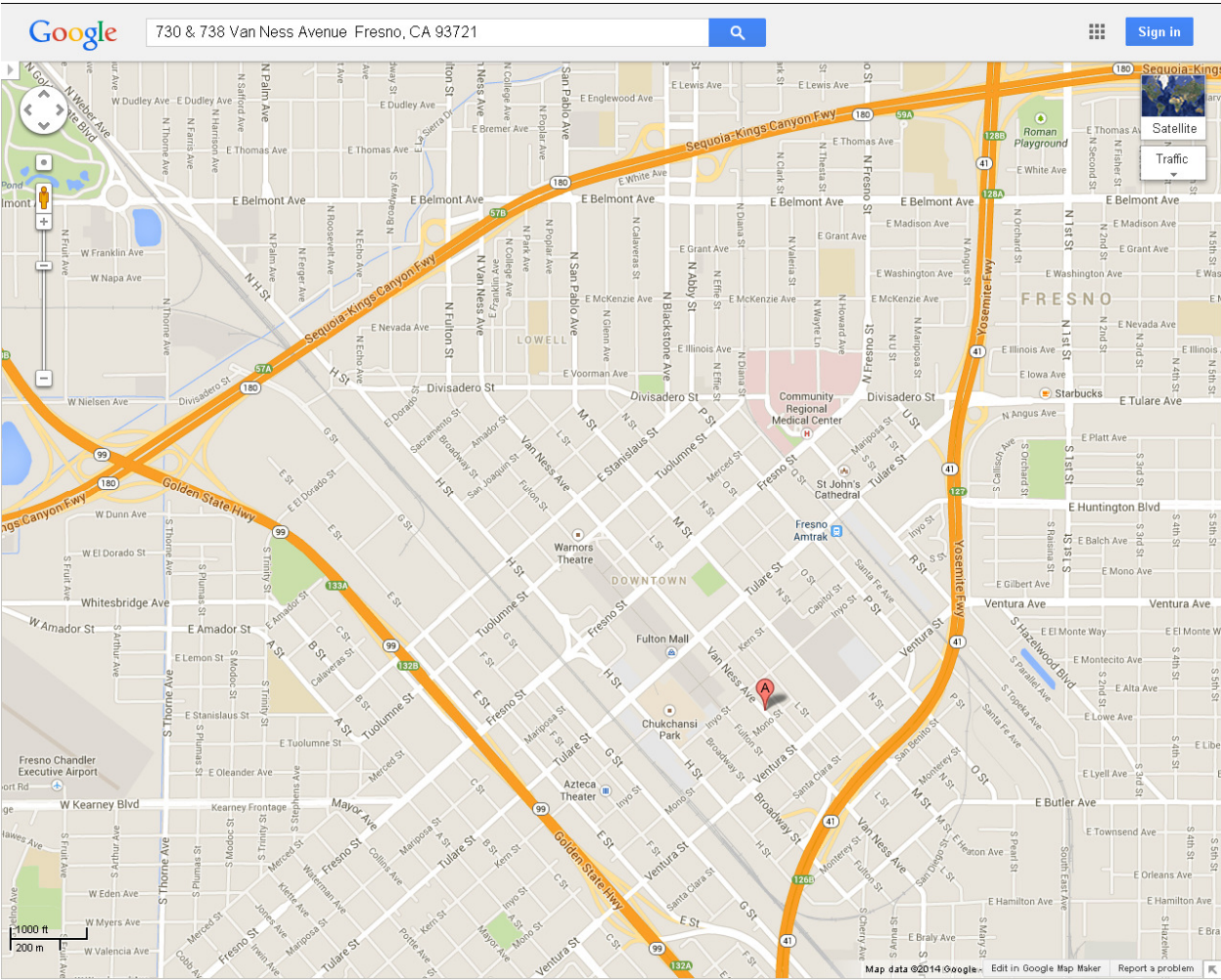
A Proposer who has been determined by the Successor Agency, and the Council to be non-responsible may be debarred from bidding or proposing upon or being awarded any contract with the City or its Successor Agencies, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures in Resolution No. 2003-130 adopted by Council on April 29, 2003. The initial period of any such debarment shall not be less than one year or more than three years. A Proposer may request a hearing, in accordance with Resolution No. 2003-130. A copy of the Resolution may be obtained from the City Clerk's Office, 2600 Fresno Street, Fresno, California 93721.

ATTACHMENTS:

Attachment A	Location Map
Attachment B	Aerial Map
Attachment C	Disclosure of Conflict of Interest
Attachment D	Bibliography

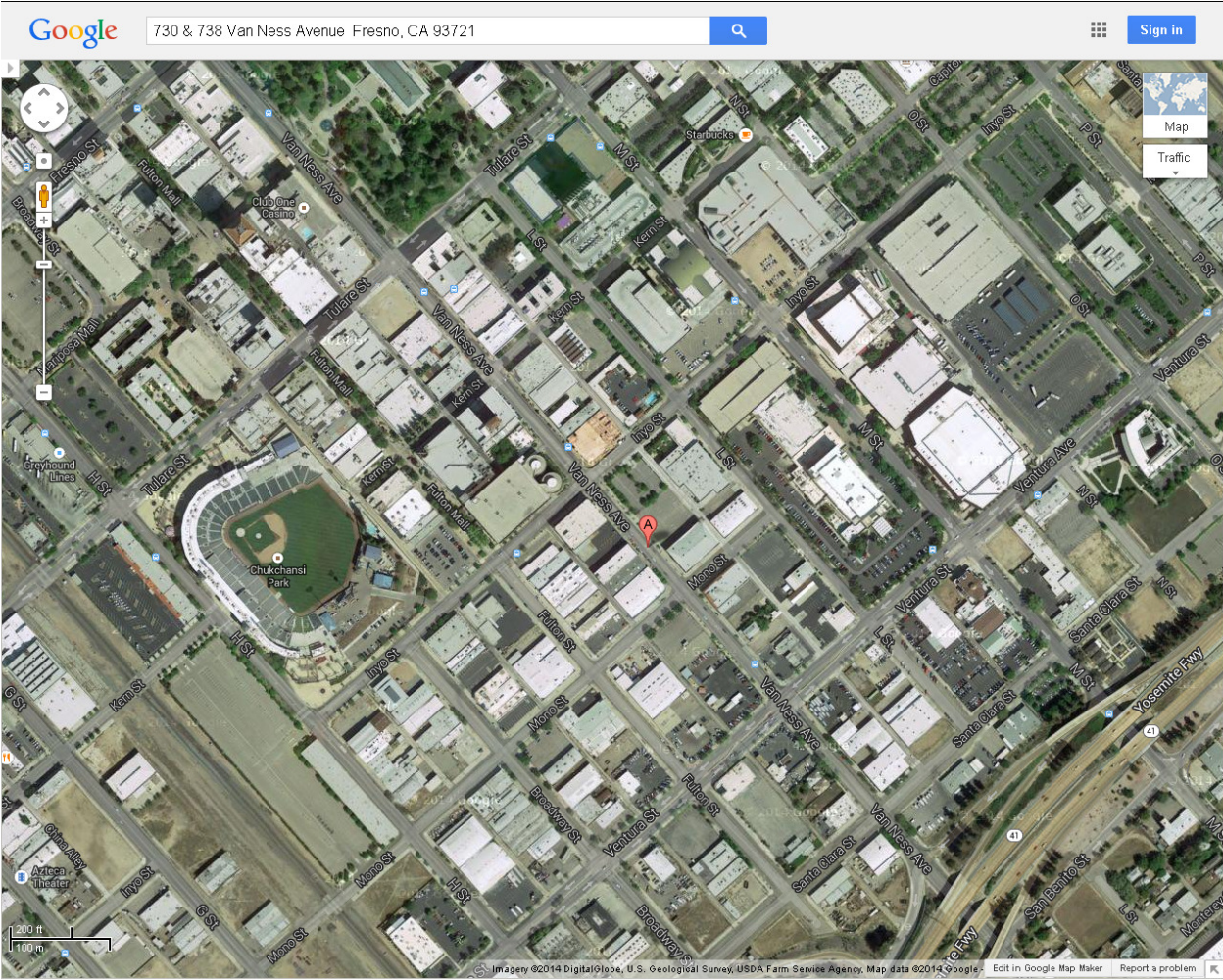
ATTACHMENT A

LOCATION MAP



ATTACHMENT B

AERIAL MAP



ATTACHMENT C

DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
<p>* If the answer to any question is yes, please explain in full below.</p>			

Explanation: _____

Additional page(s) attached.

Signature

(name)

(company)

(address)

(city state zip)

ATTACHMENT D

BIBLIOGRAPHY

The following reference documents are available for review online and/or at the City of Fresno, 2600 Fresno Street, Fresno, California 93721.

2025 Fresno General Plan, City of Fresno, Adopted November 19, 2002

<http://www.fresno.gov/Government/DepartmentDirectory/PlanningandDevelopment/Planning/2025FresnoGeneralPlan.htm> including: Exhibit A – Community Plan Changes Consistent with the 2025 Fresno General Plan, Fresno City Council Resolution Number 2002-379, November 19, 2002

Zoning Ordinance and related Variety Packs, City of Fresno

<http://www.fresno.gov/Government/DepartmentDirectory/PlanningandDevelopment/Planning/ZoningOrdinance.htm>

Fresno Municipal Code (FMC)

<http://www.municode.com/Resources/gateway.asp?pid=14478&sid=5>

City of Fresno Fulton Corridor Specific Plan (currently being processed)

<http://fresnodowntownplans.com/resources/fcsp>



7404 N. Spalding Avenue, Fresno, California 93720-3370
Telephone: (559) 431-5600 Fax: (559) 261-9366

MEMORANDUM

DATE: August 20, 2014
TO: Oversight Board
FROM: Jerome Behrens
Laurie Avedisian-Favini
RE: Redevelopment Agency Agreements

CLIENT/MATTER:
1864-01

I. INTRODUCTION

The Oversight Board has requested counsel to review two agreements relating to the Kearney Palms Shopping Center in the City of Fresno.

II. SUMMARY OF AGREEMENTS

A. Kearney Palms Police Substation Lease Agreement

The Kearney Palms Police Substation Lease Agreement ("Substation Agreement" or "Lease") was entered into on November 28, 2000 and had a term of 20 years. The rent under the Lease was to be paid quarterly to the City of Fresno Redevelopment Agency "in an amount equal to the sales taxes generated from the Site and allocated/payable to the City." (Lease, section 6.1) The Lease also provided for a transfer of Parcel D of the Kearney Palms Shopping Center to the City for \$1.00 at the end of the Lease term.

B. Kearney Palms LLC Public Parking Lease and Reciprocal Easement Agreement

This agreement ("Parking Agreement") leased Parcel A to Kearney Palms LLC for use as a parking lot for 45 years and granted reciprocal easements for parking, ingress and egress, and utility systems. The Parking Agreement, entered into in 1998 and amended in 2000, also provides that Kearney Palms LLC has an option to purchase Parcel A for a period of 45 years at a price of \$1,270,915.00 or the market value of Parcel A, whichever is greater. The Parking Agreement requires Kearney Palms LLC to pay a Monthly Parking Fee of \$1.00 per month.

III. ANALYSIS

A. The Substation Agreement

Health and Safety Code section 34178(a) of AB 1X 26 (the “Act”) provides that on the effective date, February 1, 2012, agreements, such as lease agreements, between the entity that created a redevelopment agency and the redevelopment agency are invalid unless a successor agency, with approval from an oversight board, reenters into (ratifies) the same agreement.

Health and Safety Code section 34181(a) authorizes an oversight board to direct a successor agency to transfer the ownership of assets “. . . that were constructed and used for a governmental purpose” to the “appropriate public jurisdiction”, here, the City of Fresno, but “. . . pursuant to any existing agreements relating to the construction or use of such an asset.” Any “compensation”, here rent and payment of \$1.00, “. . . to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset.” Section 34181(a) directs that “[d]isposal shall be done expeditiously and in a manner aimed at maximizing value.” Value does not necessarily mean fair market value but rather value in the use of the property or for the community such as a governmental purpose use.

The Kearney Palms Police Substation is clearly dedicated to a “governmental purpose.” The Substation and related improvements consist of an approximately 8,400 square foot building and have been continuously used as a police substation. Accordingly, such property may be transferred to the City, if the Oversight Board so directs, by resolution as described below. Health and Safety Code, § 34181(a). The terms of the Substation Agreement provide that the transfer is conditioned on the City paying the regular rent for a period of 20 years after which time the property is transferred to the City for the consideration of \$1.00.

Given that the property is clearly used for a governmental purpose, it would appear appropriate for the Oversight Board to direct transfer of the ownership of the Substation to the City, provided it is pursuant to the Substation Agreement and after payment of the quarterly rent for a total of 80 quarters (20 years) to the successor agency.

Since the Substation Agreement was rendered invalid as of February 1, 2012, any resolution of the Oversight Board would be (1) approval of the successor agency reentering into (“ratifying”) the Substation Agreement pursuant to section 34178(a) and (2) directing the successor agency to transfer the Substation assets, for the “governmental purpose” of a police substation, to the City pursuant to the terms of the Substation Agreement, including payment of the quarterly rent for a total of 80 quarters (20 years) to the successor agency, in accordance with 34181(a).

B. The Parking Agreement

The Parking Agreement, on the other hand, is not rendered invalid by section 34178(a), since it was an agreement between the Redevelopment Agency and a private party.

However, pursuant to Health and Safety Code section 34181, the Oversight Board can direct the Successor Agency to:

“[d]etermine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.” Health and Safety Code, § 34181(e).

Under this provision, the Oversight Board can direct the Successor Agency to determine whether the Parking Agreement should be terminated or renegotiated, if doing so would increase net revenues or reduce liabilities. The Oversight Board cannot unilaterally impose amendments, or early termination, without the consent of Kearney Palms LLC. If the Oversight Board were to give such direction, in order to increase net revenues, it would appear prudent to determine if the Kearney Palms LLC is willing to negotiate any amendments or early termination in order to increase net revenues to the taxing entities pursuant to section 34181(e).

**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: 

Deputy

Dated: November 28th, 2000

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

By: 

Assistant/Deputy

Dated: Nov 27, 2000

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

Exhibits:

Exhibit A: Grant Deed
Exhibit B: Memorandum of Lease

COPY

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 (~~City~~ "City"), 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

EXHIBIT A

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

Grant Deed

Grantor: Redevelopment Agency of the City of Fresno

Grantee: City of Fresno, a municipal corporation

Page 6

LEGAL DESCRIPTION

Exhibit A

EX

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: 11/21/00

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 MONTOY
Ex Officio Attorney

By: _____

Assistant/Deputy

Dated: _____

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

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

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

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.

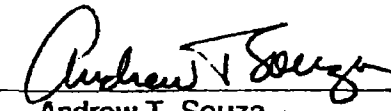
This Memorandum is executed on the dates in the year 2000, as set forth below.

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

By: 
Daniel R. Fitzpatrick,
Executive Director

Dated: 11/21/00

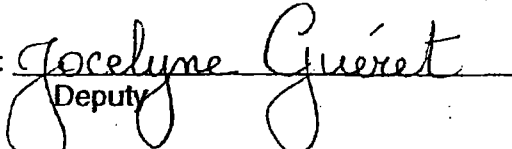
TENANT:
CITY OF FRESNO,
a municipal corporation

By: 
Andrew T. Souza,
Interim City Manager

Dated: 11/28/00

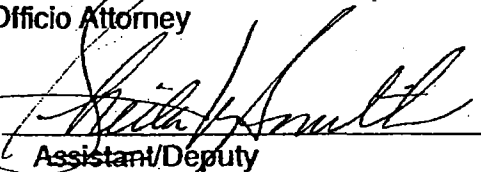
Landlord and Tenant to sign before a notary public, and notary to attach acknowledgment.

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

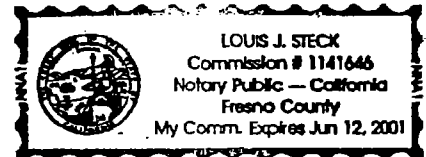
Notary Acknowledgment

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.

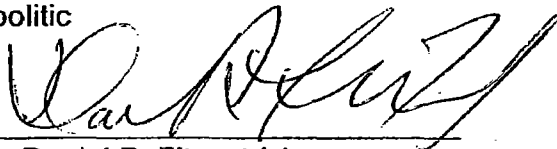
Agreement

- 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.

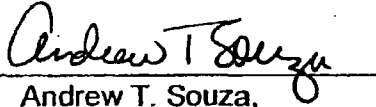
This Amendment is executed on the dates in the year 2001, as set forth below.

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

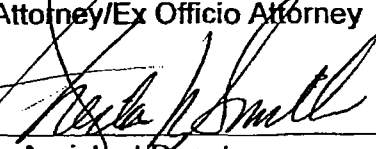
Landlord and Tenant to sign before a notary public, and notary to attach acknowledgment.

ATTEST:
REBECCA KLISCH
City Clerk/Ex Officio Clerk

By: 
Deputy

Dated: March 27th, 2001

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

By: 
Assistant/Deputy

Dated: March 14, 2001

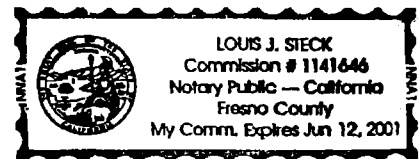
Notary Acknowledgment

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 _____

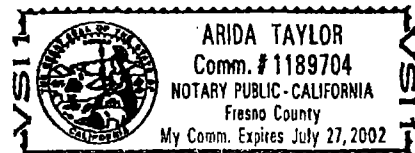
Notary Acknowledgment

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 _____

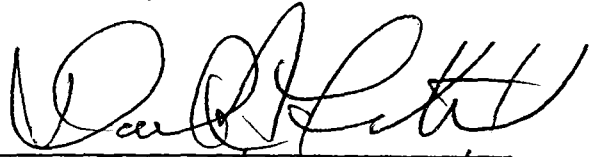
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Redevelopment Agency of
the City of Fresno
c/o City Attorney's Office
2600 Fresno Street, Room 2031
Fresno, CA 93721-3602
Attention: Executive Director

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

This Parking Agreement is recorded at the request of and for the
Redevelopment Agency of the City of Fresno, and is exempt from the payment of a
recording fee pursuant to Government Code Section 6103.

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

By: 
Its: Executive Director
Dated: 4/27/99

**COVENANTS FOR PUBLIC PARKING,
LEASE, OPERATION, AND MAINTENANCE FOR PUBLIC PARKING
RECIPROCAL EASEMENTS
AND OPTION TO PURCHASE**

REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO,
a Public Body, Corporate and Politic

and

KEARNEY PALMS LLC,
a California Limited Liability Company

RECITALS	1	
AGREEMENT	3	
1	DECLARATION AND COVENANTS RUNNING WITH LAND	3
1.1	Developer's Declaration and Covenants	3
1.2	Agency's Declaration and Covenants	3
1.3	Covenants Running with the Land	3
2	DEFINITIONS	3
2.1	"Agency"	4
2.2	"Available Funds"	4
2.3	"City"	4
2.4	"City Clerk"	4
2.5	"Agency Parking Policies"	4
2.6	"Applicable Rate"	4
2.7	"Developer"	4
2.8	"Developer Affiliate"	4
2.9	"Developer Obligations"	4
2.10	"Effective Date"	4
2.11	"Executive Director"	4
2.12	"Guarantor"	4
2.13	"Guaranty"	5
2.14	"Major"	5

2.15	"Monthly Parking Fee"	5
2.16	"Mortgage"	5
2.17	"Mortgagee"	5
2.18	"Parcel Map"	5
2.19	"Parking Improvements"	5
2.20	"Party"	5
2.21	"Public Parking Lot"	5
2.22	"Public Parking Parcel"	5
2.23	"Release of Construction Covenants"	5
2.24	"Release of Parking Construction Covenants"	6
2.25	"Separate Parking Agreement"	6
3	CONDITIONS PRECEDENT FOR AGENCY AND TO RECORDING. . .	6
3.1	Funding.	6
3.2	DDA.	6
3.3	DDA Conditions	6
3.4	Guaranty	6
4	CONDITIONS PRECEDENT FOR DEVELOPER.	6
5	AGENCY TO CONSTRUCT PARKING IMPROVEMENTS	7
6	LEASE OF PUBLIC PARKING LOT	7
6.1	Original Term	7
6.2	Right to Negotiate Extension.	7
6.2.1	Determining Fee During Extended Term	8

6.3	Holding Over.	8
6.4	Surrender	8
6.5	Monthly Parking Fee	8
6.5.1	Late Charges and Interest.	8
6.5.2	Failure to Pay Fee	9
6.6	Real Property Taxes	9
6.7	Operation and Maintenance of the Public Parking Lot	9
6.7.1	Use as Public Parking	9
6.7.2	Public Parking Operation.	10
6.7.3	Maintenance, Repair, and Replacement	10
6.7.4	Agency's Obligation for Replacement.	10
6.7.5	Temporary Restrictions Only for Public Safety.	10
6.7.6	Parking Stalls and Hours	11
6.7.7	Agency Parking Regulations	11
6.7.8	Liens	11
6.8	Agency Access	11
6.9	Compliance With Law.	12
6.10	Insurance and Indemnity	12
6.10.1	Developer's Insurance Obligations	12
6.10.2	Agency's Right to Procure Insurance	13
6.10.3	Increase in Insurance.	14

6.10.4	Insurance Proceeds.	14
6.10.5	Indemnification	14
6.11	Agency's Right to Perform Developer Obligations	15
6.12	Agency's Right to Lien Property After Performing Developer Obligations	15
6.12.1	Effective Date	15
6.12.2	Content of Notice.	15
6.12.3	Release.	16
6.12.4	Enforcement	16
6.13	Rights of Others to Assume Developer Obligations	16
6.14	Mortgagee Protections	16
6.14.1	Duplicate Notices.	16
6.14.2	Right to Cure Developer Default.	16
6.14.3	Effect of Developer Default	17
6.14.4	Developer Obligations at Foreclosure	17
6.15	Utilities	17
6.16	Default and Remedies, and General Provisions.	17
7	COVENANT OF CONTINUED EXISTENCE	17
8	NONASSIGNABLE OPTION TO PURCHASE	18
8.1	Grant of Option	18
8.2	Term of Option	18
8.3	Purchase Price	18

8.4	Purchase Agreement.	18
8.5	Form of Appraisals	18
8.6	Exercise of Option.	18
8.7	Preliminary Title Report	18
8.8	Termination	19
8.8.1	Automatic Termination	19
8.8.2	Termination for Default	19
8.8.3	Agency Termination of the Option for Developer Default	20
8.8.4	Recording Notice of Termination	20
8.9	Procedure for Sale.	20
8.10	Instructions to Title Company.	20
8.11	Closing	21
8.12	Continuation of Parking Use	21
8.13	Improvements	21
8.14	Separate Parking Agreements with Tenants	21
8.15	Reservation of Rights.	21
8.16	Assessments	22
8.17	Limitation on Assignment.	22
9	Covenant to Ensure Continued Payments	22
9.1	For deeds:	22
9.2	For leases	22

10	DEVELOPER'S OPERATION, MAINTENANCE AND REPLACEMENT OBLIGATIONS FOR THE RETAIL PARCELS AND THE FAST FOOD PARCEL	23
10.1	Obligation and Standard	23
10.2	Maintenance of Parcels	23
10.3	Removal of Liens	23
10.4	Signage	23
10.5	Agency's Right to Perform Developer Obligation	23
11	RESTRICTIONS ON TRANSFER	23
12	RECIPROCAL EASEMENTS AGREEMENT	24
12.1	Reciprocal Easement Agreement.	24
12.1.1	Parking	24
12.1.2	Ingress and Egress	24
12.1.3	Utilities Systems.	24
12.2	Nature of Easements	24
12.3	Relocation and Maintenance of Utility Systems	25
12.4	Duration of Easements	25
12.5	Temporary Encroachments	25
12.6	Access Between Parcels.	25
12.7	Default and Remedies, and General Provisions	25
13	DEFAULTS, REMEDIES AND TERMINATION.	26
13.1	Default	26

13.2	Action to Remedy	26
13.3	Service of Process	26
13.4	Cumulative Remedies.	26
13.5	Damages	27
14	GENERAL PROVISIONS.	27
14.1	Attorneys' Fees	27
14.2	Notices	27
14.3	Covenants Running with the Land.	28
14.4	Severability.	28
14.5	Force Majeure	28
14.6	Approvals and Consents	29
14.7	Nonmerger	29
14.8	Section Titles.	29
14.9	Time of Essence.	29
14.10	Construction of Agreement.	29
14.11	Exhibits	29
14.12	Relationship of Parties	29
14.13	Entire Agreement.	29
14.14	Interest on Monetary Obligations.	30
14.15	Governing Law and Venue	30
14.16	Conflict of Interests	30
14.17	Non-Liability of Officials, Employees and Agents	30

14.18 Waiver, Amendment	30
14.19 Attorneys' Fees	30
14.20 Modifications	31
14.21 Agency Approvals and Actions	31
14.22 Cooperation and Further Assurances	31
14.23 Legal Advice	31
14.24 Counterparts	31

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Redevelopment Agency of
the City of Fresno
c/o City Attorney's Office
2600 Fresno Street, Room 2031
Fresno, CA 93721-3602
Attention: Executive Director

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

ATTENTION PURCHASERS: EVERY PURCHASER OF THE PROPERTY AFFECTED BY THIS INSTRUMENT TAKES SUBJECT TO THE PROVISIONS OF THIS INSTRUMENT. THIS INSTRUMENT PERMITS A LIEN ON THE PROPERTY TO SECURE CERTAIN OBLIGATIONS. THIS INSTRUMENT ALSO IMPOSES COVENANTS AFFECTING THE USE, TRANSFER AND MAINTENANCE OF THE PROPERTY. (PLEASE READ THIS INSTRUMENT.)

**COVENANTS FOR PUBLIC PARKING,
LEASE, OPERATION, AND MAINTENANCE FOR PUBLIC PARKING
RECIPROCAL EASEMENTS
AND OPTION TO PURCHASE**

The REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic ("**Agency**"), and KEARNEY PALMS LLC, a California limited liability company ("**Developer**"), enter this COVENANTS FOR PUBLIC PARKING, LEASE OPERATION, AND MAINTENANCE FOR PUBLIC PARKING, RECIPROCAL EASEMENTS, AND OPTION TO PURCHASE ("**Agreement**"), notwithstanding the date of execution, as of the "Effective Date."

RECITALS:

- A. Concurrently with signing this Agreement, Agency and Developer entered a Disposition and Development Agreement ("**DDA**") for the acquisition, disposition, and development of certain real property. The DDA will be recorded in the Official

Records of Fresno County, and a copy of the DDA is available for public review at the City Clerk's Office.

- B. The development is a neighborhood shopping center and a police substation, which may be known as Kearney Palms Shopping Center ("**Center**"). The Center will cover approximately 12 acres in the City of Fresno generally bounded by Fresno Street, "B" Street, Tuolumne Street, and Highway 99 (the "**Site**").
- C. The Center development (the "**Project**") furthers the Urban Renewal Plan for the Southwest Fresno General Neighborhood Renewal Area Project, as amended (the "**Plan**"). The Council of the City of Fresno (the "**Council**") adopted the Plan on January 14, 1969, by Ordinance No. 69-13. The Council amended the Plan on August 17, 1972 by Ordinance No. 72-126, on March 1, 1983 by Ordinance No. 83-32, on December 16, 1986 by Ordinance No. 86-203, and on September 27, 1994 by Ordinance 94-93. The Plan and subsequent amendments, excluding Ordinance 86-203, are recorded in the Official Records of Fresno County. Ordinance 86-203 is available for inspection at the City Clerk's office.
- D. The Site is being subdivided, under Parcel Map PM-97-16 ("**Parcel Map**"), into 10 parcels. A copy of the Parcel Map is attached as Exhibit A.
- E. This Agreement affects all parcels created under the Parcel Map, excluding the Police Substation Parcel.
- F. Under the DDA, Developer is to own Parcels B, C, E, F, H, and I ("**Retail Parcels**"), the Agency is to own Parcels A and D ("**Agency Parcels**"), and Developer is to own and sell to a fast-food franchisor Parcel G ("**Fast Food Parcel**"), all as shown on the Parcel Map.
- G. Under the DDA, the Agency is to develop the two Agency Parcels, subject to the terms in the DDA. It is to develop Parcel A as public parking available to the Center on a nonexclusive basis ("**Public Parking Parcel**"). It is to develop Parcel D as a substation for the City of Fresno's police department ("**Police Substation Parcel**").
- H. The Agency is to construct improvements on the Public Parking Parcel and thereafter to own and lease the Public Parking Lot to Developer, with an option to purchase, all in furtherance of the Plan.
- I. The DDA requires the parties to enter and record this Agreement by the close of the first escrow in which the Agency conveys a Retail Parcel or the Fast Food Parcel to the Developer. This Agreement, among other things, is to: (1) to record a public parking covenant against the Public Parking Parcel, (2) to lease the Public Parking Lot to Developer for a Monthly Parking Fee, and Developer's agreement to operate

it as public parking, and to maintain, repair, and replace the Parking Improvements, (3) provide a reciprocal easements agreement between the parties, (4) provide for a lien to secure repayment of the Agency should the Agency perform any Developer Obligations as permitted herein, (5) limit the use and transfer of the Public Parking Lot, (6) subject the Retail Parcels, the Fast Food Parcel, and the Public Parking Parcel to the other covenants and conditions herein, (7) set forth rights and obligations regarding the Public Parking Lot, and (8) grant Developer an option to purchase the Public Parking Lot.

AGREEMENT:

1 DECLARATION AND COVENANTS RUNNING WITH LAND.

- 1.1 Developer's Declaration and Covenants.** Developer declares and covenants, for itself and its successors in interest, whether any deed, lease, or other instrument to any successor so provides, that the Retail Parcels, the Fast Food Parcel, and the Public Parking Parcel are subject to the covenants and conditions set forth in this Agreement.
- 1.2 Agency's Declaration and Covenants.** Agency declares and covenants, for itself its successors in interest, whether any deed, lease, or other instrument to the successor in interest so provides, that the Retail Parcels, the Fast Food Parcel, and the Public Parking Parcel are subject to the covenants and conditions set forth in this Agreement.
- 1.3 Covenants Running with the Land.** The covenants, restrictions, conditions, and provisions the parties make in this Agreement, whether affirmative or negative, (1) are for the direct, mutual, and reciprocal benefit of each Retail Parcel, the Fast Food Parcel, and the Public Parking Parcel, (2) are enforceable mutual equitable servitudes on each Parcel, (3) are covenants running with the land, (4) will bind every person having any fee, leasehold, or other interest in any subject parcel, and (5) subject to any limitations on sale or assignment, will inure to the benefit of the parties and their respective successors and assigns.

- 2 DEFINITIONS.** Any capitalized terms used but not defined in this Agreement will have the meaning set forth in the DDA. The following terms, when used in this Agreement, have the meanings set forth in this Section:

- 2.1 **"Agency"** means the Redevelopment Agency of the City of Fresno, a public body, corporate and politic, and its successors or assigns.
- 2.2 **"Available Funds"** means money available for particular expenditures according to all applicable laws and the policies and procedures of the Agency, as determined in the sole discretion of the Agency Board.
- 2.3 **"City"** means the City of Fresno, a municipal corporation.
- 2.4 **"City Clerk"** means the Clerk of the City of Fresno.
- 2.5 **"Agency Parking Policies"** means the Agency's, and if the Agency has none, then any City rules, policies and controls, if any (but not fees and charges), governing the use and operation of publicly-owned parking facilities in the City of Fresno, as revised from time to time. The Agency Parking Policies will not materially affect the Developer's rights or obligations to operate and maintain the Public Parking Lot under this Agreement.
- 2.6 **"Applicable Rate"** means 10 percent per annum or the maximum rate permitted by law, whichever is less.
- 2.7 **"Developer"** means KEARNEY PALMS LLC, a California limited liability company, and its successors and assignees authorized and approved pursuant to this Agreement.
- 2.8 **"Developer Affiliate"** means any partnership, corporation or other person in which Developer or Guarantor is responsible, directly or indirectly, for management and control.
- 2.9 **"Developer Obligations"** means the Developer's obligations under this Agreement including, without limitation, the obligation to pay the Monthly Parking Fee, to maintain the Public Parking Lot, to comply with the License provisions, and to reimburse the Agency any costs it incurs to perform any Developer Obligations.
- 2.10 **"Effective Date"** means the date that the Agency owns all or substantially all of the Site, or the date that the Agency conveys any part of the Site to Developer, whichever occurs first.
- 2.11 **"Executive Director"** means the Executive Director of the Agency.
- 2.12 **"Guarantor"** means Thomas W. Beggs and his spouse.

- 2.13 **"Guaranty"** means a continuing guaranty substantially in the form attached to this Agreement as Exhibit C.
- 2.14 **"Major"** means an experienced retailer that operates multiple retail sites and occupies at least 15,000 square feet of gross leasable area in the Project.
- 2.15 **"Monthly Parking Fee"** has the meaning set forth in Section 6.5 of this Agreement.
- 2.16 **"Mortgage"** means any mortgage, deed of trust, sale and leaseback or other encumbrance for financing placed on any Retail Parcel including, without limitation, construction and permanent take-out loans, and refinancings thereof.
- 2.17 **"Mortgagee"** means the record holder of any Mortgage.
- 2.18 **"Parcel Map"** means Parcel Map PM-97-16.
- 2.19 **"Parking Improvements"** means, before leasing the Public Parking Lot to Developer, the improvements built on the Public Parking Parcel by the Agency. After the Agency leases the Public Parking Lot to Developer, "Parking Improvements" means the Agency's improvements and any other improvements made to the Public Parking Parcel by Developer, the Agency, or others.
- 2.20 **"Party"** means the Agency or the Developer, or both, as the context requires, but does not include the Guarantor. The term need not be capitalized and, whether singular or plural, will retain the same meaning.
- 2.21 **"Public Parking Lot"** means Parcel A, with all the Parking Improvements thereon.
- 2.22 **"Public Parking Parcel"** means Parcel A, as shown on the Parcel Map.
- 2.23 **"Release of Construction Covenants"** means the recordable certificate issued by the Agency after Developer satisfactorily completes the Developer Improvements on the Retail Parcels, and when Developer or its successor satisfactorily completes improvements on the Fast Food Parcel, all according to the DDA. When recorded in the Official Records of Fresno County, the release evidences the Agency's conclusive determination that Developer has satisfied its construction obligations under the DDA for the parcel or parcels described therein

2.24 **"Release of Parking Construction Covenants"** means the recordable certificate issued by the Developer to the Agency after the Agency satisfactorily completes the Parking Improvements on the Public Parking Parcel according to the DDA. When recorded in the Official Records of Fresno County, the release evidences the Developer's conclusive determination that the Agency has satisfied its obligations under the DDA and this Agreement to construct Parking Improvements.

2.25 **"Separate Parking Agreement"** means a separate written agreement between the Agency and any tenant or tenants of any parcel, which gives a tenant the right to receive notice and an opportunity to cure Developer's failure to perform under this Agreement and, by that, to preserve parking rights hereunder by performing a prorata share of Developer Obligations. Tenant payments or performance of Developer Obligations under a Separate Parking Agreement will not reduce or be a novation of the Developer Obligations.

3 **CONDITIONS PRECEDENT FOR AGENCY AND TO RECORDING.** The following are conditions precedent to the Agency's obligations to perform under this agreement, and to the recording of this Agreement. Unless the conditions are satisfied, or the Agency waives the conditions in writing, this Agreement is not effective against the Agency and neither party may record this Agreement. The recording of a grant deed under which the Agency conveys any subject parcel to the Developer will be conclusive evidence to third parties that the conditions have been satisfied.

3.1 **Funding.** The Agency has identified and appropriated Available Funds sufficient to complete its obligations under this Agreement.

3.2 **DDA.** The City of Fresno's Council ("Council") has approved and the Agency and Developer have entered the DDA.

3.3 **DDA Conditions.** The parties have either satisfied or waived in writing all of the conditions precedent which the parties must satisfy or waive before the Agency is obligated under the DDA to convey any of the Site to Developer.

3.4 **Guaranty.** Guarantor has signed the Guaranty and delivered it to the Agency.

4 **CONDITIONS PRECEDENT FOR DEVELOPER.** The conditions precedent set forth above in subsections 3.2, 3.3, and 3.5 are also conditions precedent to the Developer's obligations to perform under this Agreement. Unless the conditions are

satisfied, or Developer waives the conditions in writing, then the conditions shall be effective against the Developer. The recording of a grant by the Agency conveys any subject parcel to the Developer with the understanding that to third parties that the conditions have been satisfied.

- 5 **AGENCY TO CONSTRUCT PARKING IMPROVEMENTS.** Agency, as subject to the conditions and restrictions set forth herein and in the DDA, shall complete the Parking Improvements, as set forth in the DDA. If the Agency fails to complete the Public Parking Lot then, without limiting any other rights or remedies of Developer, Developer payment obligations will abate during the failure. When the Agency completes the Public Parking Lot, Developer will furnish the Agency with a recordable Release of Parking Construction Covenants, substantially in the form of Exhibit D, attached. The parties will record the Release as evidence that the Agency has completed the Parking Improvements.
- 6 **LEASE OF PUBLIC PARKING LOT.** When the parties have recorded the Release of Parking Construction Covenants, the Agency will lease the Public Parking Lot to Developer, subject to the terms of this Agreement. The lease shall be a "triple net" lease under which the Developer assumes responsibility for payment of all taxes and costs of maintenance, repairs, replacement, and insurance. Developer, for itself, and its successors in interest acknowledges that: (a) the Agency's obligation to construct Parking Improvements is dependent on Developer's obligation to develop and use the Retail Parcels, and Developer's obligation to bind the purchaser of the Fast Food Parcel to develop and use that Parcel for the operation of retail businesses in a first-class neighborhood shopping center. Though a public parking facility, the Public Parking Lot is primarily to benefit the general public using the Retail Parcels.
- 6.1 **Original Term.** The term of the lease will be forty-five years, beginning on the date that the parties record the Release of Parking Construction Covenants and continuing until the forty-fifth anniversary of that date, unless earlier terminated as provided herein.
- 6.2 **Right to Negotiate Extension.** Developer may negotiate with the Agency for an extension of this lease, if: (a) Developer has fully and faithfully performed all the terms, covenants, and conditions of this lease during the original term, (b) Developer has given the Agency notice of its election to negotiate an extension of the term of this lease at least six months before the original term expires. The Agency may increase the Monthly Payment Fee during the extended term to the then fair market rental value of the Public Parking Lot, determined as set forth below.

- 6.2.1 **Determining Fee During Extended Term.** At least 120 days but not more than six months before the original term expires, Agency and Developer may select an appraiser to determine the fair market rental value of the Public Parking Lot, as a parking lot, and without regarding the Developer's ownership of adjacent parcels. If the parties cannot agree on a single appraiser, each may select one appraiser. Agency and Developer will share the appraisal costs equally for a single appraiser, and will pay their respective appraisers if each selects its own appraiser.
- 6.3 **Holding Over.** If Developer holds over and continues to occupy and use the Public Parking Lot after termination or expiration of this lease, including any extended term, Developer's continued occupancy will become a tenancy from month to month. Developer will pay the Agency a Monthly Payment Fee equal to the then fair market rental value of the Public Parking Lot, plus 15 percent. The tenancy will be subject to all the terms and conditions, herein including the provisions for rental adjustment, but excluding the option to purchase granted elsewhere in this Agreement.
- 6.4 **Surrender.** When this lease expires or otherwise terminates, Developer will surrender the Public Parking Lot, in as good a condition as Developer received it from the Agency, reasonable wear and tear excepted.
- 6.5 **Monthly Parking Fee.** Developer will pay Agency a monthly fee of \$1.00 (the "Monthly Parking Fee"), in advance, beginning on the 1st day of the month following the later to occur of the following: (i) the first date that the Agency records a Release of Construction Covenants as to any Retail Parcel, or (ii) the first date that the City issues a Certificate of Occupancy for a business structure on a Retail Parcel, or (iii) the date the Agency substantially completes the Public Parking Lot and records a Release of Parking Construction Covenants. The Monthly Parking Fee will be prorated for any partial month. Developer will pay the Monthly Parking Fee to the Agency at the Agency's address herein for notices, or at any other address the Agency may designate in writing.
- 6.5.1 **Late Charges and Interest.** Developer will pay a late charge for each delinquent Monthly Parking Fee. The Monthly Parking Fee will be delinquent when not paid within 10 days after its due date. If a Monthly Parking Fee is delinquent, the Agency may recover all of the following from the Developer: (a) reasonable costs it incurs in collecting the delinquent fee, including reasonable attorneys' fees, (b) a late charge not exceeding 5 percent of the delinquent assessment, (c) interest on the foregoing sums at the Applicable Rate, beginning

30 days after the payment becomes due. The Agency will charge the late charge only once for each delinquent payment.

6.5.2 Failure to Pay Fee. If the Developer fails to pay any fee within ten days after the due date, the Agency may give a notice to Developer, to each Mortgagee, and each tenant who is party to a Separate Parking Agreement. The notice will state the amount delinquent, and that Developer's failure to pay it within 30 days after the notice's date may result in the loss of Developer's rights to use and operate the Public Parking Lot. If the Agency does not receive the payment within the 30 days after the notice date, then, without limiting any of Agency's other rights and remedies, Agency may retake possession of the Public Parking Lot, and begin charging a parking fee to each individual user.

6.6 Real Property Taxes. Developer will pay all real property taxes and assessments against the Public Parking Lot. California Health and Safety Code Section 33673 provides that, whenever the Agency redevelops property and leases it to any person, the property will be assessed and taxed in the same manner as privately owned property, and at the assessed value of the entire property, not merely the lessee's leasehold interest.

6.7 Operation and Maintenance of the Public Parking Lot. As additional consideration for the lease and use of the Public Parking Lot, Developer, throughout the term, at its sole cost and expense, will operate, maintain, repair, replace, and reconstruct the Public Parking Lot as provided herein. The standards and practices applicable shall be those for any Agency-owned or City-owned surface parking lot or for a parking lot adjacent to a first-class neighborhood shopping center in the San Joaquin Valley, whichever is stricter.

6.7.1 Use as Public Parking. Developer will use the Public Parking Lot solely as a short-term public parking lot, without charging for its use. Developer, the customers, tenants and occupants of the Project will have the nonexclusive right and license, with the public generally, to park free in the Public Parking Lot for up to four hours on a first-come, first-served basis, except that a longer free parking period may be permitted for persons employed at retail establishments within the Project. Developer will not permit uses of the Public Parking Lot or any part of it that would unduly restrict the availability of adequate parking for the Project. Developer will not use or permit uses on the Retail Parcels or Fast Food Parcel that will encroach on or interfere with the use of the Public Parking Lot as public parking or will cause

the parking to be inadequate for the Project. Developer will not use or permit others to use any hazardous or toxic substances or materials, or store or dispose of any such substances or materials on the Public Parking Lot.

6.7.2 Public Parking Operation. Developer will operate the Public Parking Lot according to any Agency Parking Policies, and all legal requirements including, without limitation, those applicable to publicly funded public parking lots. Developer will patrol the Public Parking Lot during normal business hours and other hours as is prudent for the safety and security of the permitted users. It will enforce any Agency Parking Policies and any "Parking Regulations" established as provided herein.

6.7.3 Maintenance, Repair, and Replacement. Developer will repair and replace the Parking Improvements, as needed, including, without limitation, as needed for aesthetics, for safety, or for other reasons. Developer's obligations include, without limitation, the following: (i) to maintain, repair, and replace, the surface of the Public Parking Lot and all sidewalks level, smooth and evenly covered with the type of surfacing material originally installed thereon, or with a substitute material equal thereto in quality, appearance and durability; (ii) to remove all papers, debris, filth and refuse from the Public Parking Lot and wash or thoroughly sweep paved areas as required; (iii) to maintain, repair, and replace appropriate entrance, exit, and directional signs, markers and lights; (iv) to clean and replace lighting fixtures and signs and relamp and reballast as needed; (v) to repaint striping, markers, directional signs, etc., as necessary to maintain in first-class condition, and to repair or replace as needed; (vi) to maintain and replace landscaping as necessary in a first-class, thriving condition; and (vii) to clean, repair, replace and maintain all utility systems that are part of the Public Parking Lot. Developer's replacement obligations include capping the Public Parking Lot, but do not include removal and replacement of the asphalt, as described below.

6.7.4 Agency's Obligation for Replacement. Notwithstanding the foregoing, if damage or excessive wear to the surfacing of the Public Parking Lot is such that removal and replacement of the asphalt is necessary, the Agency will bear the cost, subject to Available Funds.

6.7.5 Temporary Restrictions Only for Public Safety. Developer will not grant any exclusive parking rights, or exclude the public from

using any parking space except temporarily for safety purposes. Temporary restrictions for safety may include, but are not limited to, the following: (a) restricting access to parking near the loading docks of retail stores during the loading and unloading of supplies, equipment, or inventory, or (b) restricting access to not more than 40 parking spaces during night time hours, (c) for construction, replacement, or maintenance of the Public Parking Lot or improvements in the Project. Developer may not temporarily close the Public Parking Lot for any other purpose without first obtaining a valid City permit for that purpose and providing proof of insurance satisfactory to the City's Risk Manager.

6.7.6 Parking Stalls and Hours. Developer will maintain approximately 500 public parking spaces. The Public Parking Lot will be open to the public every day of the year, at least during the hours of 7:00 a.m. to 12:00 a.m. Sundays through Thursdays, and 7:00 a.m. through 2:00 a.m. Fridays and Saturdays. In all events, Developer will keep the Public Parking Lot open at least one hour before the first store in the Center opens for business until one hour after the last store closes for business.

6.7.7 Agency Parking Regulations. The Agency may establish and Developer will maintain general policies, rules and regulations for the maintenance, management, use, and operation of the Public Parking Lot ("**Parking Regulations**") consistent with the provisions of this Agreement, the DDA and any Agency Parking Policies.

6.7.8 Liens. Developer will keep the Public Parking Lot free and clear of any and all mechanics, materialmen's, and other liens arising out of any work done, or materials furnished in connection with its operation of the Public Parking Lot or with any alteration, improvement, repair, replacement or addition that Developer makes or permits, on or about the Public Parking Lot, or for any obligations of any kind that Developer incurs. Developer will pay promptly any claim on which any lien could be based. Developer will save, defend, and hold Agency and the Public Parking Lot free and harmless from any lien and claim of lien, and any suits or other proceedings pertaining thereto.

6.8 Agency Access. Agency's authorized agents may inspect the Public Parking Lot at all reasonable times to determine whether Developer is complying with the terms and conditions of this lease, to perform any other

acts this lease authorizes the Agency to perform, and to protect the Agency's rights under this lease and Agreement.

- 6.9 **Compliance With Law.** Developer will perform its obligations at all times in compliance with local, state, and federal laws and ordinances including, without limitation, environmental laws. Developer will not use or permit others to use the Public Parking Lot in violation of any law or ordinance, including, without limitation, environmental laws. Developer will comply with: (a) all laws, ordinances, rules, and regulations applicable to the Public Parking Lot, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Public Parking Lot, and (b) this Agreement and all recorded restrictions governing the Public Parking Lot and the adjacent parcels.

6.10 **Insurance and Indemnity.**

- 6.10.1 **Developer's Insurance Obligations.** By the Effective Date, and continuing for as long as the Agency owns the Public Parking Lot, the Developer will maintain the following insurance in effect, and cause any successor to maintain, on the Retail and Fast Food Parcels and the improvements thereon, and on the Public Parking Lot, with one or more insurance companies either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the Agency's or City's Risk Manager.

- 6.10.1.1 **Commercial General Liability Insurance.** Commercial general liability insurance which will include contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$3,000,000 per occurrence.

- 6.10.1.2 **Fire and Extended Coverage Insurance.** Fire and extended coverage insurance for at least the full replacement cost of the improvements on the Retail, Fast Food, and the Public Parking Parcels, excluding foundations, footings and excavations and tenant improvements, fixtures and personal property.

6.10.1.3 **Worker's Compensation Insurance.** Workers' compensation insurance as required under the California Labor Code.

The above described policies of insurance will be endorsed to provide an unrestricted 30-day written notice in favor of the Agency, of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy which will provide a 10-day written notice of cancellation, change or reduction of coverage. **Developer will provide a new certificate evidencing renewal of each policy at least 15 days before the expiration date of the policy.** Whenever an insurer, broker, or agent issues a notice of cancellation, change or reduction in coverage, the Developer will file a certified copy of a new or renewal policy and certificates with the Agency.

The General Liability and Fire and Extended Coverage insurance policies will be written on an occurrence form and will name the Agency and the City, and their respective officers, officials, agents, employees and volunteers, and any Mortgagee as an additional insured. Each policy will be endorsed so the Developer's insurance is primary and does not require the Agency or the City to contribute. **The Developer will furnish insurance certificates and applicable endorsements to the Agency for ALL required policies by the Effective Date of this Agreement.** The Developer will furnish copies of policies to the Agency when the Agency's or City's Risk Manager so requests.

If Developer fails to maintain the required insurance in effect, the Agency may terminate this Agreement or, at its sole option, may obtain the required insurance and recover the cost from the Developer on demand.

6.10.2 **Agency's Right to Procure Insurance.** If Developer does not procure and maintain insurance required by this Agreement, Agency, after not less than a 30-day written notice to Developer, may procure and maintain the insurance. The Developer will repay the premiums to the Agency. The Agency will add the premiums cost to the next regular Monthly Parking Fee following the date on which it paid the premiums. Agency will give prompt notice of its premium payments, stating the amounts paid, the name of the insureds, and the terms and conditions agreed to. The Agency's rights under this paragraph will be subject to the prior right of any

Mortgagee, with notice to the Agency, to obtain such insurance.

- 6.10.3 **Increase in Insurance.** The Agency's Risk Manager may periodically review the adequacy of the liability limits of the Developer's public liability, property damage, or products liability insurance. If the Risk Manager determines that the limits of any policy then carried by Developer, are materially less than the amount or type typically carried by owners or tenants of comparable properties located in Fresno County, Agency may require Developer to increase the amount or to change the type of policy carried, or both. Agency will notify Developer in writing of any required change and Developer will comply within 30 days of the notice date.
- 6.10.4 **Insurance Proceeds.** Subject to the rights of any Mortgagee, all insurance proceeds for loss or damage to the improvements on the parcels will be payable, under the policy, to Developer. If the proceeds are for damage or loss to the Parking Improvements, Developer shall use the proceeds solely for the repair and replacement of the Parking Improvements.
- 6.10.5 **Indemnification.** The Developer will indemnify, hold harmless and defend the Agency and each of its officers, officials, employees, agents and volunteers from any liability arising, directly or indirectly, out of the performance of this Agreement: (a) any loss, liability, fine, penalty, forfeiture, cost and damages (whether in contract, tort or strict liability, including, without limitation, personal injury, death at any time and property damage) the Agency, the Developer or any other person incurs, and (b) any claims, demands, and actions in law or equity (including attorneys' fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The Developer's obligations under the preceding sentence apply whether the Agency or any of its officers, officials, employees, agents or volunteers are actively or passively negligent. However, the Developer's obligations hereunder do not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the Agency or any of its officers, officials, employees, agents or volunteers.

6.11 **Agency's Right to Perform Developer Obligations.** If the Developer does not perform any obligation hereunder including, without limitation, respecting the operation, repair, replacement or maintenance of the Public Parking Lot, or the payment of taxes, the Agency may perform the obligations for Developer after giving the Developer a thirty 30-day written notice of default, and may place a lien on the Retail Parcels as provided in Section 6.12 if Developer fails to reimburse the Agency for the costs it incurs, with interest thereon at the Applicable Rate, plus a 15% administrative charge within 10 days after the Agency's written demand to Developer.

6.12 **Agency's Right to Lien Property After Performing Developer Obligations.** Agency may lien or assess the Retail Parcels for costs it incurs in performing Developer Obligations under this Agreement including, without limitation, costs the Agency incurs to protect, maintain, and preserve the Public Parking Lot. The lien or assessment will include a 15 percent administrative charge, and will be created in the manner used by the City in the abatement of public nuisances. The notice and opportunity to cure provided for herein will substitute for the noticing, hearing, and nuisance abatement order used by the City.

6.12.1 **Effective Date.** The lien will become effective when the Agency records a "**Notice of Lien**" in the Official Records of Fresno County in the form set forth in the following subsection. The lien will be superior to any liens except the following: (a) taxes, bonds, assessments and other levies which, by law, are superior to it, and (b) any Mortgages made in good faith and for fair value before the Agency files a Notice of Lien. The Agency will record the notice in the Official Records of the Fresno County.

6.12.2 **Content of Notice.** The Notice of Lien, among other things, will state the delinquent amounts. Delinquent amounts may include, without limitation, other authorized charges and interest, including the cost to record the notice. The notice will also include a description of the Retail Parcel or Parcels and the names of the record owners. The Executive Director will sign the notice for the Agency. For any person relying on it in good faith and without notice of any error in it, the notice, as to the debt owed on the notice date, will be conclusive against the Agency and the purchaser at any foreclosure of the lien.

6.12.3 **Release.** When the Agency receives payment of the delinquent sums, the Executive Director will sign a statement of satisfaction and release and the Agency will record it in the Official Records of Fresno County. Any purchaser or encumbrancer acting in good faith and for value, may rely upon the statement of satisfaction and release.

6.12.4 **Enforcement.** The Agency may foreclose the lien by court action or any other manner then provided by law. The Developer will pay all costs and expenses thereof including, without limitation, attorneys' fees as the court may determine. A foreclosure will not affect the Agency's right to create a lien for any future amounts owing hereunder. Neither the Agency's enforcement of its rights nor the existence of Agency's rights herein will prevent the Agency from pursuing any other remedy or right available to it. The Agency may still proceed directly against Developer or Guarantor pursuant to the other provisions hereof, or as provided by law.

6.13 **Rights of Others to Assume Developer Obligations.** A person who takes title to the Retail Parcels upon foreclosure or otherwise from a foreclosing Mortgagee, may preserve parking rights by assuming the Developer Obligations under this lease. Any tenant who is a party to a Separate Parking Agreement may preserve free parking (validated or otherwise as the Agency may decide) for its customers by assuming Developer Obligations under this lease on a prorata basis. A tenant's "share" of the Developer Obligations will be based on a fraction, the numerator of which is the gross leasable area that the tenant occupies, and the denominator of which is the total gross leasable area on the Retail Parcels.

6.14 **Mortgagee Protections.**

6.14.1 **Duplicate Notices.** When the Agency delivers any notice or demand to Developer under this Agreement, the Agency will also deliver to each Mortgagee (if the Developer or Mortgagee has given the Agency a name and address and a request for notice) a copy of the notice or demand.

6.14.2 **Right to Cure Developer Default.** Each Mortgagee, at its option, may cure or remedy any default of Developer and add the cost to the secured debt.

6.14.3 **Effect of Developer Default.** Developer's breach will not defeat or invalidate any Mortgage made in good faith and for value. However, unless otherwise provided herein, this Agreement will be binding on any Mortgagee or owner of any Retail Parcel who acquires title by foreclosure, trustee's sale, or otherwise.

6.14.4 **Developer Obligations at Foreclosure.** Any Mortgagee or other person who takes title to Retail Parcel(s) upon foreclosure or in lieu of foreclosure (other than Developer or any Developer Affiliate) will take the Retail Parcels free and clear of any unpaid Developer Obligations under this lease which came due before the person takes title, except for any senior liens of record through a recorded Notice of Lien. The Mortgagee or other person, however, will be responsible for paying its prorata share of the Developer Obligations under this lease that become due and payable after the date the person acquires title to a Retail Parcel. Nothing in this subsection will defeat, limit or otherwise alter the obligations of the Developer or a successor in interest to Developer.

6.15 **Utilities.** Developer will pay all charges for the furnishing of gas, electricity, water, telephone service, garbage or refuse service, and other public utilities to the Public Parking Lot during the term. It will make all payments directly to the service provider before delinquency.

6.16 **Default and Remedies, and General Provisions.** Except as specifically set forth in this Section 6, the Default, Remedies and the Termination provisions of this Agreement apply to this lease. Similarly, the general and other provisions of this Agreement apply to this lease if the context so permits and the provision does not conflict with the lease provisions.

7 **COVENANT OF CONTINUED EXISTENCE.** Each party covenants, for itself, its successors and assigns, that the Public Parking Lot will be available for public parking on a first-come, first-served basis for the tenants, occupants and customers of the Project and the general public for as long as the following occurs: (a) the Project exists and the Retail and Fast Food Parcels are used and maintained according to the DDA and this Agreement as a neighborhood shopping center, and (b) Developer is not in default of the Developer Obligations. Agency will use its best efforts to carry out its obligations hereunder, subject to Available Funds, the discretionary actions of the Council and the Agency Board, and all applicable law.

8 **NONASSIGNABLE OPTION TO PURCHASE.** Developer wants the exclusive right to purchase, without becoming obligated to purchase, the Public Parking Parcel and the Parking Improvements at the price and on the terms set forth herein.

- 8.1 **Grant of Option.** Agency grants the Developer the exclusive right to purchase the Public Parking Parcel for the price and within the time limitations specified below (the "Option"), provided Developer is not in default of this Agreement or the DDA when Developer exercises the Option.
- 8.2 **Term of Option.** The term of this Option is 45 years from the Effective Date of this Agreement.
- 8.3 **Purchase Price.** The purchase price for the Public Parking Lot will be \$1,270,915.00 or market value, determined by appraisal, whichever is greater.
- 8.4 **Purchase Agreement.** The parties will enter a purchase agreement, with provisions comparable to those in the DDA concerning the Agency's conveyance of other property to Developer, and other terms as the parties may agree. The agreement will be subject to Agency Board approval.
- 8.5 **Form of Appraisals.** The Agency will obtain an appraisal. The appraiser will consider the parking covenant placed on the parcel, and the reciprocal easements of this Agreement. The appraiser will prepare a written appraisal, in duplicate. The appraiser will deliver a copy of the appraisal to each party and to the Title Company within 30 days after being appointed.
- 8.6 **Exercise of Option.** Developer's full compliance with this Agreement and the DDA is a condition precedent to Developer's exercise of the Option. Developer must exercise the Option by written notice to the Agency on or before the expiration of the term, with a preliminary title report and approval or disapproval of the title condition. If Developer is then in default of this Agreement or the DDA, Developer's exercise of the Option will be ineffective against the Agency.
- 8.7 **Preliminary Title Report.** Developer, at its expense, will obtain and deliver to the Agency, with its written notice exercising the Option, a preliminary title report issued by the Title Company covering the Public Parking Parcel. Developer must notify the Agency before or when exercising the Option of Developer's approval or disapproval of title. If Developer fails to give this notice, it will be a waiver of its right to object to any title exception or condition.

8.8 Termination.

8.8.1 Automatic Termination. If Developer fails to meet any deadline for exercising the Option, appointing an appraiser, completing the appraisal, or meeting the terms of sale then this Option and the Developer's rights will automatically and immediately terminate without notice. After that, Developer must properly execute, acknowledge, and deliver to Agency within ten days of written request therefor, a release, quitclaim deed, or other document which Agency or a title company may require to verify the termination of this Option.

8.8.2 Termination for Default. Each of the following events will be an event of default for which the Agency may terminate this Option upon notice to the Developer:

8.8.2.1 Developer fails to perform any of the covenants or agreements of this Agreement.

8.8.2.2 Developer fails to perform any of the covenants or agreements of the DDA.

8.8.2.3 Developer fails to perform under the purchase agreement after opening escrow.

8.8.2.4 A petition is filed by or against Developer in any court, whether pursuant to any statute of the United States or of any state, in any bankruptcy, reorganization, composition, extension, arrangement, or insolvency proceedings, and either of the following applies: (a) Developer is adjudicated bankrupt, or (b) the court approves the petition, or (c) the court assumes jurisdiction of the subject matter, or (d) the court does not dismiss the proceedings within 30 days after the institution of them.

8.8.2.5 A receiver or trustee is appointed for any parcel which Developer owns, and the receivership or trusteeship is not vacated within 30 days after the appointment of the receiver or trustee.

8.8.2.6 Developer assigns any assets or property for the benefit of its creditors.

8.8.2.7 Developer dissolves according to the provisions of California's Corporations Code.

8.8.3 Agency Termination of the Option for Developer Default. If Developer defaults under subsection 8.8.2, Agency, at its election, at any time while the event of default continues, may terminate the Option. To terminate the Option, the Agency will give Developer notice that on a specified date, not less than 10 days after the date on the notice, Developer's rights under this Option will terminate. When the 10 days expires, the Developer's rights under this Option terminate unless either of the following occurs: (a) Developer cures the default within the 10 days, or (b) if the default is one that the Developer cannot reasonably cure within 10 days, the Developer begins to cure within the 10-day period and diligently prosecutes the cure to completion.

8.8.4 Recording Notice of Termination. If Developer fails to exercise the Option within the option term in the required manner, or if Agency terminates Developer's option rights, Developer must promptly sign and deliver, to Agency, a recordable document relinquishing Developer's option rights. The document will be in a form satisfactory to the Agency.

8.9 Procedure for Sale. If Developer exercises the Option, the procedure for sale will be as follows: Within five days after the Agency Board approves the purchase agreement and the Agency signs it, the parties will open an escrow with a mutually acceptable title company ("**Title Company**"). The Agency will deposit a grant deed with the Title Company. The grant deed will be substantially in the form attached as Exhibit C. By close of escrow, Developer must deposit the cash purchase price and estimated escrow fees with the Title Company.

8.10 Instructions to Title Company. The parties will instruct the title company within the five days to do the following:

8.10.1 Close the escrow when it is prepared to issue its standard coverage policy of title insurance for the purchase price, insuring the interests of both parties, as these interests may appear, subject only to the following:

8.10.1.1 The exceptions applicable to the parcel when the Agency purchased the parcel;

- 8.10.1.2 The customary exceptions in the Title Company's printed form, standard coverage, title insurance policy;
 - 8.10.1.3 The reservations or covenants in the grant deed; and
 - 8.10.1.4 The exceptions created by or pursuant to the DDA and this Agreement.
- 8.10.2 Record the Grant Deed in the Official Records of Fresno County, California, and deliver it to Developer.
- 8.11 **Closing.** At close of escrow, Agency will pay the purchase price, the recording fees, the cost of any documentary transfer taxes, the premium for a standard CLTA owner's policy of title insurance, and one-half of the escrow fee. Developer will pay one-half of the escrow fee. Developer will pay all property taxes.
- 8.12 **Continuation of Parking Use.** After acquiring the Public Parking Parcel, Developer will continue using the Parcel as a parking lot. The grant deed will include this use covenant and it will run with the land. The grant deed will include all other covenants and conditions required under the California Redevelopment Law
- 8.13 **Improvements.** The sale and purchase will include the Parking Improvements. Agency will have no obligation to remove any improvements.
- 8.14 **Separate Parking Agreements with Tenants.** Agency from time to time may enter Separate Parking Agreements with tenants of the Center as provided in this Agreement.
- 8.15 **Reservation of Rights.** Agency may reserve the following rights in the grant deed:
 - 8.15.1 The reciprocal easements described in this Agreement; and
 - 8.15.2 Any public utility or other public easements.

However, the Developer may relocate any easement if: (a) if the relocation gives substantially similar access, (b) the relocation, including the relocation of utilities, is at the sole expense of the Developer or persons other than the Agency, and (c) the relocation occurs only with Agency's written consent, which consent must not be unreasonably withheld.

8.16 **Assessments.** As provided herein, Developer is responsible for all taxes and assessments on the Public Parking Parcel and the Parking Improvements under this Agreement and that responsibility will continue following any exercise of the Option.

8.17 **Limitation on Assignment.** The grant deed will incorporate or restate, and the Public Parking Lot will be subject to, the continuing covenants and transfer limitations of the DDA, if then in effect. Developer may not assign this Option or any right accruing under it without the prior written consent of the Agency.

9 **Covenant to Ensure Continued Payments.** Developer, for itself and for its successors in interest, covenants to comply with this Agreement and pay the Developer Obligations, except as expressly provided for herein. Developer will reference this Agreement in each deed or lease or conveyance document affecting any Retail or Fast Food Parcel.

To assure compliance with this provision, the Developer will keep the Agency informed of any sale or lease of the Fast Food or any Retail Parcel. The requirements of this Section 9 are in addition to the restrictions on transfer in this Agreement and the DDA. At least 30 days before escrow closes for any Retail or Fast Food Parcel, and at least 30 days before entering a lease for a Retail Parcel, Developer will deliver a written notice to the Agency specifying the following:

9.1 **For deeds:** (a) That Developer intends to sell a parcel in fee, (b) the legal description and common address of the parcel, (c) the name and address of the purchaser, (d) the name and address of the escrow agent for the sale (where applicable), (e) the expected date for closing escrow or recording the conveyancing instrument, (f) the status of this Agreement, including whether Developer owes any money to the Agency, and (g) a copy of the proposed deed.

9.2 **For leases:** (a) That Developer intends to enter a lease for a parcel, (b) the legal description and common address of the parcel, (c) the name and address of the tenant, (d) the expected date of signing, and (e) the proposed commencement date and lease term, (f) the status of this Agreement, including whether Developer owes any money to the Agency, and a copy of the lease.

10 **DEVELOPER'S OPERATION, MAINTENANCE AND REPLACEMENT OBLIGATIONS FOR THE RETAIL PARCELS AND THE FAST FOOD PARCEL.**

- 10.1 **Obligation and Standard.** The value of the Public Parking Lot is dependent in part on the upkeep of the Center. Developer, at its cost, covenants to operate, maintain and replace the improvements on the Retail and Fast Food Parcels, all to the standards of first class neighborhood shopping centers in the San Joaquin Valley.
- 10.2 **Maintenance of Parcels.** Developer will maintain the Retail and Fast Food Parcels in good order, condition, and repair. It will make all necessary repairs and replacements, and will reconstruct improvements as needed. Developer's maintenance and replacement obligations will include, without limitation, the following: (i) removing all papers, debris, filth and refuse, (ii) washing or sweeping public walkways as required, (iii) maintaining and replacing entrance, exit and directional signs, and lighting as required for safety, (iv) cleaning lighting fixtures and signs as needed, (v) repainting structures, restriping parking spaces, and resurfacing parking spaces as necessary, (vi) maintaining landscaping in first-class, thriving, condition, and replacing landscaping as necessary (vii) maintain and keep any public restrooms in a clean and sanitary condition; (viii) cleaning, repairing, maintaining, and replacing all utility systems that are part of the parcels.
- 10.3 **Removal of Liens.** Developer will remove any levy or attachment on the Retail or Fast Food Parcels, or will assure the satisfaction of it within a reasonable time but in any event before a sale thereunder.
- 10.4 **Signage.** Developer will not erect or permit any tenant of a Retail or Fast Food Parcel to erect a sign on any part of the Public Parking Parcel without the prior written consent of the Agency Board and entering a sign license agreement with the Agency which the Board has approved.
- 10.5 **Agency's Right to Perform Developer Obligation.** If Developer does not perform its obligations hereunder, the Agency, after not less than a 30-days written notice to Developer, each Mortgagee, and each Major, may perform the obligations for Developer if a Mortgagee or Major has not done so. The Developer will reimburse the Agency all reasonable expenses the Agency incurs in performing Developer's obligations, with interest at the Applicable Rate. Developer will pay the Agency's expenses within ten days after the Agency makes a written demand for payment.

11 **RESTRICTIONS ON TRANSFER.** The restrictions on Developer's right to transfer the Retail and Fast Food Parcels, as set forth in the DDA and in the grant deed(s)

under which Agency conveyed the parcels to Developer, are incorporated into and made a part of this Agreement. The same provisions apply hereunder to Developer's transfer of any interest in the Public Parking Lot, this Agreement, and to any change in ownership or control of Developer. Developer's default under the DDA transfer restrictions will be a default under this Agreement. Notwithstanding the duration of the restrictions in the DDA or said grant deeds, the restrictions will apply hereunder to the Public Parking Lot and to this Agreement until Developer exercises its Option and purchases the Public Parking Lot.

12 **RECIPROCAL EASEMENTS AGREEMENT.**

12.1 **Reciprocal Easement Agreement.** Developer, as owner of the Retail and Fast Food Parcels grants to the Agency, and Agency, as the owner of the Public Parking Parcel, grants to Developer, the following nonexclusive easements over, across, in, under, and through the described areas of the Retail Parcels and the Fast Food Parcel, and through the Public Parking Lot:

12.1.1 **Parking.** For parking motor vehicles in designated parking areas of the Retail and Fast Food Parcels, and in the Public Parking Lot.

12.1.2 **Ingress and Egress.** For ingress and egress over, across, in, and through the vehicular and pedestrian traffic areas of the Retail and Fast Food Parcels and the Public Parking Lot.

12.1.3 **Utilities Systems.** For the installation, maintenance, removal, and replacement of water mains, telephone lines, gas mains, sewers, electrical systems or conduits, water drainage systems or structures, and other public utilities and services (collectively the "Utility Systems"). All Utility Systems, where feasible, will be underground. Any Utility System that must be above ground will be placed so as not to interfere with the intended use of the parking areas or the vehicular and pedestrian traffic areas of the Retail and Fast Food Parcels or the Public Parking Lot.

12.2 **Nature of Easements.** The parcels benefitted by each easement are the dominant estates, and the parcels burdened by each easement are the servient estates. The easements will benefit and burden the successors, heirs, assigns, occupants, and users of the parcels. Each easement will be appurtenant to and for the benefit of each parcel.

- 12.3 **Relocation and Maintenance of Utility Systems.** The grantee of any Utility Systems easement will maintain and repair the Systems. The grantee will maintain, repair, and replace the Systems without interfering with, or obstructing ingress and egress for, the business on the burdened parcel(s). The owner of any parcel may relocate utility drains, mains, lines, sewers, and related equipment on its parcel, if it satisfies the following conditions: (1) pays the costs and expenses of the relocation, (2) performs the relocation only after a 30-day written notice to the grantee of the easement in question, (3) the relocation does not reduce or unreasonably impair the usefulness or function of the Utility Systems, (4) the relocation does not interrupt the Utility services to the grantee, and (5) the relocation does not interfere with the grantee's business operations or the business operations of any tenant of the grantee.
- 12.4 **Duration of Easements.** Each easement will continue in effect for the benefitted and burdened parcels until the use of the easement for the particular parcel is abandoned for at least two years.
- 12.5 **Temporary Encroachments.** During the construction of improvements on the Retail and Fast Food Parcels and the Public Parking Lot, minor and temporary encroachments on the Public Parking Lot may occur due to the use of equipment (such as ladders, scaffolds, and barricades) for construction. These temporary encroachments are permitted for a limited time and only to the extent necessary for the construction involved. For the same purpose and limited time, the common areas on each parcel may be used for ingress and egress by construction-related vehicles and personnel and for the temporary storage of construction materials and equipment.
- 12.6 **Access Between Parcels.** Except as otherwise provided herein or shown on the Parcel Map or Site Plan, no person may place or construct a hedge, fence, wall, or similar barrier on a parcel if it will interfere with access between that parcel and any other parcel.
- 12.7 **Default and Remedies, and General Provisions.** Except as specifically set forth in this Section 12, the Default, Remedies and the Termination provisions of this Agreement apply to this reciprocal easements agreement. Similarly, the general and other provisions of this Agreement apply to this reciprocal easements agreement if the context so permits and the provision does not conflict with the specific provisions of this Section 12.

13 **DEFAULTS, REMEDIES AND TERMINATION.**

- 13.1 **Default.** Subject to the extensions of time available herein, a party's failure or delay in performing any provision of this Agreement or under the DDA is a default of this Agreement. Except for a default in the payment of money, and except as otherwise provided herein, if the defaulting party begins to cure the default within 30 days after receiving a notice specifying default, and diligently prosecutes the cure to completion, then the party will not be in default. The nondefaulting party will give written notice of default to the defaulting party, specifying the default. The nondefaulting party may not begin proceedings against the defaulting party for a nonmonetary default until the 30 days have expired. Failure or delay in giving a notice will neither be a waiver of any default, nor change the time of default. Agency will send copies of any default notice to such persons and entities as Developer may designate. If a party fails to or delays in asserting any right or remedy, the failure or delay will not: (a) be a waiver of the default or any right or remedy, or (b) deprive a party of its right to begin and maintain any action or proceeding which it may deem necessary to protect or enforce any right or remedy.
- 13.2 **Action to Remedy.** Subject to the provisions of subsection 14.1 above, either party may bring a legal or equitable action (including, without limitation, an action for specific performance) to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. A party must bring any action in the Superior Court of the County of Fresno, California, or in the United States District Court in Fresno, California.
- 13.3 **Service of Process.** If the Developer begins any legal or equitable action against the Agency, Developer will serve process on the Executive Director by personal service, or in any other manner provided by law. If the Agency begins any legal or equitable action against the Developer, it will serve process on the Developer by personal service on its President or in any other manner provided by law.
- 13.4 **Cumulative Remedies.** Except as otherwise expressly stated in this Agreement, the parties' rights and remedies are cumulative. A party's exercise of any right or remedy will not preclude its exercise, at any time, of any other right or remedy for the same default or any other default.

- 13.5 **Damages.** If either party is in default after notice and opportunity to cure, the defaulting party will be liable to the other party for any damages caused by the default.

14 **GENERAL PROVISIONS.**

- 14.1 **Attorneys' Fees.** If a party brings any action to enforce, modify, or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs (including but not limited to the reasonable value of City Attorney time) it incurs in connection with such action.
- 14.2 **Notices.** Notices and demands given under this Agreement will be sufficiently given if delivered personally, sent via facsimile, dispatched by registered or certified mail, postage prepaid, return receipt requested, or sent by overnight courier or delivery service as follows:

To Agency:

Redevelopment Agency
Attention: Executive Director
2344 Tulare Street, Suite 200
Fresno, CA 93721
Fax: (209) 498-1870

With copy to:

City Attorney as Ex-Officio Attorney
For the Redevelopment Agency
2600 Fresno Street, Room 2031
Fresno, CA 93721-3602
Fax: (209) 488-1084

To Developer:

Kearney Palms LLC
Attention: Thomas W. Beggs
C/O Fortune Associates
1195 West Shaw Avenue, Suite C
Fresno, CA 93711
Fax: (209) 228-2720

With copy to:

Motschneider, Michelides & Wishon, LLP
Attention James McKelvey, Esq.
1690 West Shaw Avenue, Suite 200
Fresno, CA 93711
Fax: (209) 439-5654

A party may change its address for written notices, demand, and communications by giving notice in the same manner as provided in this subsection.

- 14.3 Covenants Running with the Land.** All covenants, and conditions in this Agreement will run with the land and, without regard to technical classification or designation, to the fullest extent permitted by law and equity. The covenants and conditions herein benefit only the Agency and Developer, and their respective successors and assigns. No third party or member of the public will have standing to enforce the provisions hereof, including the lien permitted and covenants created hereby. Each party's covenants without regard to technical classification or designation will be binding for the benefit of the other party, and such covenants will run in favor of the other party while the covenants are in effect, and while the other party remains an owner of any land or interest therein to which the covenants relate. Each party, if the other party breaches any covenant or condition, may exercise all its rights and remedies, and may maintain any action at law or suit in equity or other proper proceedings to enforce the covenant or condition.
- 14.4 Severability.** The provisions of this Instrument are independent and severable. The invalidity or partial invalidity or unenforceability of any provision will not affect the validity or enforceability of any other provisions.
- 14.5 Force Majeure.** A party hereto will not be in default where delays or defaults are due to any of the following: War, insurrection, strikes, lock-outs, labor disputes, riots, volcanos, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation (including, without limitation, litigation challenging the validity of this transaction or any element of it), severe weather; inability to secure necessary labor, materials or tools; unavoidable delays of any contractor, subcontractor, or supplier; acts of the other party; acts or failure to act of any public or governmental agency or entity; or any other cause beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause will be for the duration of

the cause. The parties may extend times for performance under this Agreement for any reason in a writing signed by the Agency's Executive Director and the Developer.

- 14.6 **Approvals and Consents.** Unless this Agreement specifically authorizes a party to grant consent or take an action in its sole discretion, a party will not act unreasonably in withholding any approval or consent required hereunder. Each party will give approval or disapproval within the times set forth in this Agreement or, if no time is given, within 30 days after request therefor. Any disapproval will be in writing and will state the reasons for disapproval.
- 14.7 **Nonmerger.** None of the provisions of this Agreement will merge because of any grant deed for the Retail Parcels, the Fast Food Parcel, or the Public Parking Parcel, and no grant deed will impair the provisions and covenants of this Agreement.
- 14.8 **Section Titles.** The paragraph and section titles herein are for reference only and will be disregarded in construing or interpreting this Agreement.
- 14.9 **Time of Essence.** Time is of the essence of this Agreement. All time periods referred to herein include Saturdays, Sundays, and legal holidays in the State of California, except that if the last day of any period falls on any Saturday, Sunday or holiday, the period will be extended to include the next day which is not a Saturday, Sunday or holiday.
- 14.10 **Construction of Agreement.** In construing this Agreement, if the context so requires, the singular pronoun will include the plural, the plural will include the singular, the masculine will include the feminine and the neuter, etcetera. The word "including" will be construed as followed by the words, "without limitation" or "but not limited to." This Agreement in its final form is the result of the combined efforts of the parties and, if any provision of this Agreement is found ambiguous, the ambiguity will be resolved by construing the terms of this Agreement according to their generally accepted meaning.
- 14.11 **Exhibits.** All exhibits to this Agreement are made a part hereof and incorporated herein by this reference.
- 14.12 **Relationship of Parties.** This Agreement does not create a principal-agent relationship, a partnership, or a joint venture among or between the parties.
- 14.13 **Entire Agreement.** This Agreement, including the exhibits, is the entire agreement of the parties related to the operation and maintenance of the

Public Parking Lot, reciprocal easements, and the Option to purchase the Parking Lot. It supersedes all negotiations or previous agreements between the parties or their predecessors in interest regarding the subject matter hereof.

- 14.14 **Interest on Monetary Obligations.** If either party does not pay a sum due hereunder to the other within five days of the date due, the sum will bear interest at the Applicable Rate.
- 14.15 **Governing Law and Venue.** The laws of the State of California will govern the interpretation and enforcement of this Agreement. Venue for purposes of the filing of any action to enforce or interpret this Agreement and any rights and duties hereunder will be Fresno, California.
- 14.16 **Conflict of Interests.** No member, official, officer or employee of the Agency shall have any direct or indirect interest in this Agreement, or participate in any decision relating to this Agreement where the law prohibits such interest or participation. No officer, employee, or agent of the Agency who exercises any function or responsibility in planning and carrying out the Project, or any other person who exercises any function or responsibility concerning any aspect of this Agreement or the Project, shall have any personal financial interest, direct or indirect, in this Agreement or the Project.
- 14.17 **Non-Liability of Officials, Employees and Agents.** No member, official, officer, employee or agent of the Agency or the City will be personally liable to the Developer, or any successor in interest, for any default by the Agency or for any amount or obligation which may become due to the Developer or its successor under this Agreement.
- 14.18 **Waiver, Amendment.** If either party waives a default by the other of any provision of this Agreement, it will not be a continuing waiver, and will not be a waiver of a subsequent breach of the same or a different provision. No party may waive any provision of this Agreement except in a writing signed by the party. All amendments to this Agreement must be in writing and signed by the appropriate authorities of the Agency and Developer.
- 14.19 **Attorneys' Fees.** If any party to this Agreement must initiate or defend litigation or any proceeding to enforce the terms of this Agreement, the prevailing party in such proceeding, in addition to any other relief which may be granted, will be entitled to reasonable costs and expenses including, without limitation, litigation costs and attorneys' fees. Attorneys' fees will include attorneys' fees on any appeal. A party entitled to attorneys' fees will be entitled to all other reasonable costs for investigating such action,

retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to such litigation or proceeding. All such fees will accrue on commencement of the action and will be recoverable whether or not the action is prosecuted to judgment.

14.20 Modifications. The parties will not modify this Agreement except by written instrument signed by the parties and duly approved as required by law.

14.21 Agency Approvals and Actions. Whenever this Agreement requires action or approval by the Agency, the Executive Director of the Agency or his or her designee is authorized to act for the Agency unless specifically provided otherwise or the context reasonably requires otherwise.

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

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

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

IN WITNESS WHEREOF, Agency and Developer have executed this Agreement as of the Effective Date.

**REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO**

By: _____

Daniel R. Fitzpatrick,
Executive Director

Dated: _____

11/13/98

KEARNEY PALMS LLC,
a California limited liability company

Thomas W. Beggs, Managing Member

Dated: _____

11/5/98

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

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

By: Cecilia Lopez
Deputy

Dated: November 13, 1998

APPROVED AS TO FORM:
HILDA CANTÚ MONTOY
Ex Officio Attorney
Redevelopment Agency of the
City of Fresno

By: Hilda Cantú Montoy
Assistant/Deputy

Dated: November 13, 1998

APPROVED AS TO FORM:
Motschiedler, Michaelides & Wishon, LLP

By: James A. McKelvey
James McKelvey, Esq.
Attorneys for Developer

Dated: NOVEMBER 13, 1998

j:\data\rdal\swf-ctr11313sms8#4a-final.wpd

Attachments:

Exhibit A - Parcel Map

Exhibit B - Grant Deed

Exhibit C - Continuing Guaranty

Exhibit D - Release of Parking Construction Covenants

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

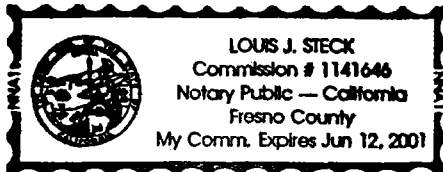
State of California

County of Fresno

On 5 November, 1998 before me, Louis J. Steck, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Thomas W. Beggs
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Louis J. Steck
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

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

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

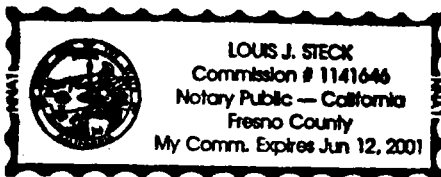
State of CALIFORNIA

County of FRESNO

On 13 Nov 1998 before me, LOUIS J. STECK, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared DANIEL R. FITZPATRICK
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Louis J. Steck
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

PARCEL MAP

Exhibit A

PARCEL MAP No. 97-16

IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA

CONSISTING OF ONE SHEET

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THIS SUBDIVISION, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP.

I, MARK I. WILLIAMSON, DEPUTY CITY ENGINEER OF THE CITY OF FRESNO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP, THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES APPLICABLE HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THE MAP IS TECHNICALLY CORRECT.

CITY ENGINEER OF THE CITY OF FRESNO

STATE OF _____
COUNTY OF _____

ON _____ BEFORE ME, _____ PERSONALLY

APPEARED
PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.
WITNESS MY HAND AND OFFICIAL SEAL.

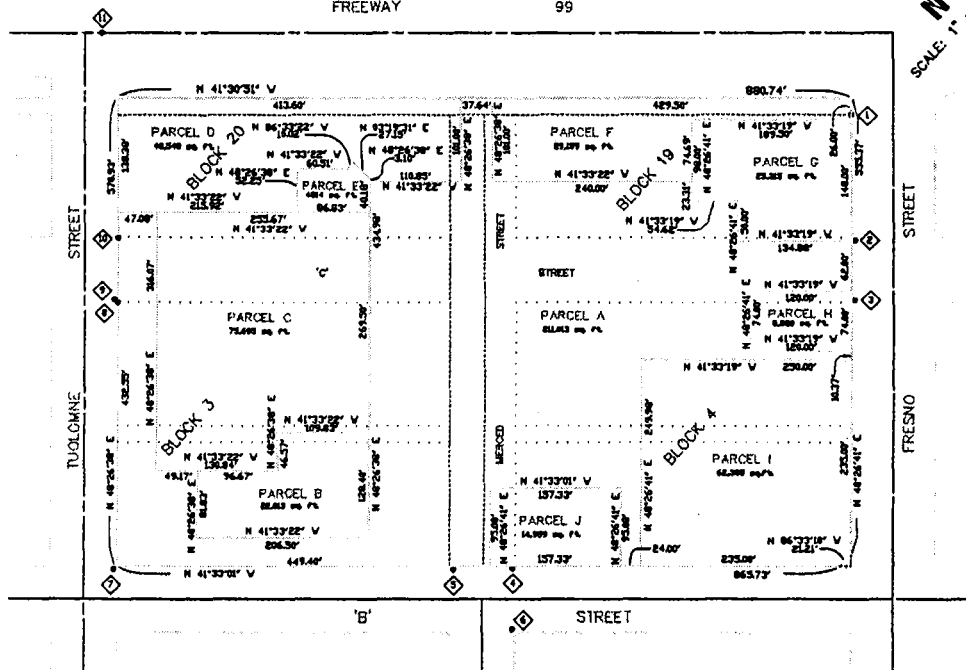
NAME _____
SIGNATURE _____

MY COMMISSION EXPIRES _____
COUNTY OF _____

- MONUMENT FOUND AND ACCEPTED AS NOTED
- SET 3/4" IRON PIPE, 30" LONG, 8" DOWN, TAGGED R.C.E. 26996 OR AS NOTED

BLUE BORDER INDICATES THE LIMITS OF THIS SUBDIVISION

FREEWAY 99



- ◇ 1" IRON PIPE, FLUSH, NOT TAGGED, AS BEING THE MOST EASTERLY CORNER ON BLOCK 19
- ◇ CHISELED "X" IN CONCRETE AS BEING 3.00' FROM THE SOUTHEASTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 19 AND 4.00' FROM THE SOUTHWESTERLY PRODUCTION OF THE SOUTHEASTERLY LINE OF BLOCK 19
- ◇ CHISELED "X" IN CONCRETE AS BEING 3.00' FROM THE SOUTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 4 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE SOUTHEASTERLY LINE OF BLOCK 4
- ◇ CHISELED "X" IN CONCRETE AS BEING 3.00' FROM THE NORTHEASTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 4 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 4
- ◇ CHISELED "X" IN CONCRETE AS BEING 4.00' FROM THE SOUTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 3 AND 4.00' FROM THE SOUTHWESTERLY PRODUCTION OF THE SOUTHEASTERLY LINE OF BLOCK 3
- ◇ CHISELED "X" IN CONCRETE AS BEING 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 295 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 295
- ◇ CHISELED "X" IN CONCRETE AS BEING 4.00' FROM THE SOUTHWESTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 3 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 3
- ◇ CHISELED "X" IN CONCRETE AS BEING THE MOST NORTHERLY CORNER OF BLOCK 3
- ◇ CHISELED "X" IN CONCRETE AS BEING 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 3 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 3
- ◇ 3/4" IRON PIPE, 8" DOWN, NOT TAGGED, AS BEING THE MOST WESTERLY CORNER OF BLOCK 20
- ◇ DIVISION OF HIGHWAYS BRASS CAP FLUSH IN SIDEWALK AS BEING THE FREEWAY CENTERLINE MONUMENT 190.17' FROM THE NORTHEASTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF THE 20' ALLEY IN BLOCKS 19 AND 20 AS SHOWN ON THE STATE HIGHWAY MAPS

ALL GRADING EROSION AND SEDIMENTATION CONTROL SHALL BE AS PROVIDED BY SECTION 12-1210 OF THE FRESNO MUNICIPAL CODE.

DATE _____ MARK I. WILLIAMSON, R.C.E. 27385
DEPUTY CITY ENGINEER

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED ON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE, AT THE REQUEST OF DON PICKETT ON JUNE 25, 1997. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP. THE MONUMENTS ARE OF THE CHARACTER AND IN THE LOCATIONS SHOWN HEREON AND SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATE _____ GARY GIANNETTA, R.C.E. 26996
EXP. 3/31/01

THIS MAP HAS BEEN EXAMINED FOR CONFORMANCE WITH REQUIREMENTS OF THE SUBDIVISION MAP ACT AND CHAPTER 12, ARTICLE 12 OF THE FRESNO MUNICIPAL CODE.

DATE _____ DIRECTOR OF DEVELOPMENT DEPARTMENT

I, HEREBY CERTIFY THAT THE DIRECTOR OF THE DEVELOPMENT DEPARTMENT, APPROVED THE WITHIN MAP AND ACCEPTED ON BEHALF OF THE PUBLIC ALL PARCELS OF LAND AND EASEMENTS OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION.

REBECCA E. KUSCH
CITY CLERK

DATE _____

DOCUMENT NO. _____
FILED THIS _____ DAY OF _____ 199____
AT _____ M. BOOK _____ OF PARCEL MAPS, AT PAGE _____
AT THE REQUEST OF GARY GIANNETTA
FEE \$ _____

DEPUTY
WILLIAM C. GREENWOOD, COUNTY RECORDER

BY: _____ DEPUTY

GARY G. GIANNETTA
1119 S STREET
FRESNO, CALIFORNIA 93721
(208) 284-3580

Exhibit "A"

GRANT DEED

[Four Pages]

Exhibit B

RECORDING REQUESTED BY:

Redevelopment Agency of the City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721
Attn: Executive Director

AND WHEN RECORDED MAIL TO:

Kearney Palms LLC
C/O Thomas W. Beggs, General Manager
1195 West Shaw Avenue, Suite C
Fresno, CA 93728

MAIL TAX STATEMENTS TO:

Kearney Palms LLC
C/O Thomas W. Beggs, General Manager
1195 West Shaw Avenue, Suite C
Fresno, CA 93728

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 (the "Redevelopment Plan") under the Community Redevelopment Law of the State of California (the "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, [described as follows, or described in Exhibit A] (the "Property"):

[insert legal or attach legal as 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 _____, 1998, and recorded _____, 1998 as

Exhibit B

Document No. _____, 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 4.2 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, 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 _____, 1998.

KEARNEY PALMS LLC
a California limited liability company

By _____
Thomas W. Beggs, General Manager

REDEVELOPMENT AGENCY OF
THE CITY OF FRESNO

By _____
Daniel R. Fitzpatrick, Executive Director

THE ABOVE PERSONS TO SIGN BEFORE A NOTARY PUBLIC AND ATTACH THE NOTARY ACKNOWLEDGMENT.

APPROVED AS TO FORM:

HILDA CANTU MONTTOY
Attorney, Ex-Officio for the
Redevelopment Agency of the
City of Fresno

By _____

J:\data\rda\swf-ctr\1361sms8PkgDEED.Rev1.wpd

ATTEST:

REBECCA E. KNISCH
Clerk, Ex-Officio

By _____

CONTINUING GUARANTY

[Six Pages]

Exhibit C

CONTINUING GUARANTY OF PUBLIC PARKING AGREEMENT

This Continuing Guaranty of Public Parking and Operation Agreement ("Guaranty") is entered as of the date (the "Effective Date") signed by THOMAS W. BEGGS and MICHELE BEGGS, his wife ("Guarantor") in favor of The Redevelopment Agency of the City of Fresno, a body corporate and politic (the "Agency").

RECITALS

- A. Agency and Kearney Palms LLC, a California limited liability company ("Developer") are entering or have entered a Public Parking and Operation Agreement with Option to Purchase dated on or about the date hereof ("Agreement"). A copy of the Agreement is attached as Exhibit A.
- B. Under the Agreement the Agency will develop public parking on Parcel A of Parcel Map PM-97-16, and will deliver possession of the Public Parking Lot to Developer, subject to the terms of the Agreement.
- C. Developer will operate, maintain, repair, and replace the improvements on the Public Parking Parcel under the terms of the Agreement, including paying a Monthly Parking Fee to the Agency.
- D. As a condition to entering the Agreement, the Agency is requiring the Guarantor to guaranty the Developer's obligations under the Agreement by signing and delivering this Guaranty to the Agency.

CONTINUING GUARANTY

In consideration of the Agency entering the Agreement with Developer, Guarantor covenants and agrees as follows:

1. **GUARANTY.** Guarantor absolutely and unconditionally guarantees to Agency the following: (a) the timely payment of Developer's monetary obligations under the Agreement, or any extensions, renewals, or modifications of it, and (b) Developer's full, faithful, and timely performance of all other provisions of the Agreement, or any extensions, renewals, or modifications of it. If Developer defaults in the payment of any monetary obligation, or in the performance of any other covenant or obligation under the Agreement, then Guarantor, at Guarantor's expense, and on

demand by Agency, will fully and promptly pay all such monetary obligations and will perform all such other covenants and obligations. Guarantor will also pay the Agency, on demand, any sum due to Agency because of the Developer's default including, without limitation, all interest on past due obligations, costs advanced by Agency, damages, and all expenses (including, without limitation, court costs and reasonable attorneys' fees).

2. **WAIVERS.** Guarantor authorizes Agency, without notice or demand and without affecting Guarantor's liability under this Guaranty, to: (a) consent to any extensions, accelerations, or other changes in payment due dates, (b) consent to any other alteration of any covenant, term, or condition in any respect, (c) consent to any assignment, or reassignment of the Agreement; (d) take and hold security for any payment provided for in, or for the performance of any covenant, term, or condition of, the Agreement, or (e) the exchange, waiver, or release any security; and (f) apply security and direct the order or manner of its sale as Agency may determine.
3. **CONTINUANCE OF GUARANTEE.** Notwithstanding any termination, renewal, extension or holding over under the Agreement, this Guaranty will continue until all of the covenants and obligations of Developer under the Agreement are fully and completely performed by Developer, its successors and assigns. Guarantor will not be released of any obligation or liability under this Guaranty while any claim against Developer arising out of the Agreement has not been settled or discharged.
4. **INDEPENDENT OBLIGATIONS.** The obligations of Guarantor under this Guaranty are independent of, and may exceed, the obligations of Developer. Agency, at its option, may bring a separate action against Guarantor, whether or not it brings an action against Developer at any time or joins Developer in any action. The Agency may join Guarantor in any action or proceeding against Developer that arises out of this Agreement. Guarantor waives any right to (a) require Agency to proceed against Developer or any other person or entity or to pursue any other remedy in Agency's power; (b) complain of the Agency's delay in enforcing its rights hereunder; or (c) require Agency to proceed against or exhaust any security held from Developer or Guarantor. Guarantor waives any defense it may have because of any disability or other defense available to Developer or because any cause for liability against Developer has ceased. Guarantor waives all demands upon and notices to Developer and to Guarantor, including, without limitation, demands for performance, notices of nonperformance, notices of nonpayment, and notices of acceptance of this Guaranty.
5. **DEFINITION OF DEVELOPER.** "Developer" will include any licensee, franchisee, assignee, subtenant, or other person directly or indirectly occupying the Public Parking Lot under the Agreement.

6. **No Reporting Duty.** Guarantor assumes full responsibility for staying informed of Developer's financial condition and all other circumstances affecting Developer's ability to perform Developer's obligations under the Agreement. Agency will have no duty to report any information to Guarantor that Agency receives about Developer's financial condition or any circumstances bearing on Developer's ability to perform such obligations.
7. **Continuing Guaranty.** This Guaranty will remain in effect notwithstanding any of the following: (a) the appointment of a receiver for any of Developer's assets, or (b) Developer's assignment for the benefit of creditors, or (c) any action taken or suffered by Developer under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or (d) the disaffirmance of the Agreement in any action or otherwise.
8. **Joint and Several Obligations.** If more than one person signs this Guaranty or if more than one person otherwise guarantees Developer's obligations, their obligations are joint and several, and the release or limitation of liability of any guarantor will not release or limit any other guarantor's liability.
9. **Successors and Assigns.** This Guaranty will be binding upon Guarantor and their heirs, administrators, personal and legal representatives, successors, and assigns. Its provisions will inure to the Agency's benefit and the benefit of the Agency's successors and assigns. Agency may, without notice, assign this Guaranty, the Agreement, or the rents and other sums payable under the Agreement, in whole or in part.
10. **Guaranty of Costs and Fees.** Guarantor will also pay reasonable attorneys' fees, and all other costs and expenses the Agency incurs in enforcing this Guaranty or in any action or proceeding arising out of this Guaranty.
11. **Governing Law, Waiver, and Modification.** California law in all respects will govern this Guaranty, including without limitation, matters of construction, validity, and performance. The parties may not waive, alter, modify, or amend the terms and provisions of this Guaranty except in a writing signed by authorized officers of Agency and Guarantor.
12. **Severance.** If a court of competent jurisdiction or other tribunal holds any provision of this Guaranty invalid, it will construe this Guaranty as if it did not contain those provisions, and will enforce the rights and obligations of the parties accordingly.
13. **Counterparts.** The parties may sign this Guaranty in counterparts, each of which

will be a valid and binding original, but all of which together will constitute the same instrument.

Guarantor has executed this Guaranty as of the date set next to the Guarantor's signatures.

THOMAS W. BEGGS

Dated: _____

MICHELLE BEGGS, Wife of
Thomas W. Beggs

Dated: _____

Exhibit A: Public Parking and Operation Agreement, Reciprocal Easements, and
Option to Purchase

j:\data\rda\swf-ctr\1363sms8.wpd

**RELEASE OF PARKING
CONSTRUCTION COVENANTS**

[Two Pages]

Exhibit D

RELEASE OF PARKING CONSTRUCTION COVENANTS

Recitals:

- A. The FRESNO REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and KEARNEY PALMS LLC, a California limited liability company ("Developer") entered two agreements dated on or about _____, 1998 (the "Agreements"). Both agreements were recorded in the Official Records of Fresno County. One agreement is a Disposition and Development Agreement (the "DDA"). The other is a Lease and Covenants for Public Parking, Operation, and Maintenance and Option to Purchase ("Parking Agreement").
- B. Pursuant to the Agreements the Agency has constructed the Parking Improvements on the real property legally described in Exhibit "A" hereto (the "Property") according to the terms and conditions of the Agreements.
- C. The parties are to record this Release, under the terms of the Parking Agreement, after Agency completes the Parking Improvements on the real property described as follows (the "Property"):
- D. The Developer's issuance of this Release is conclusive evidence that the Agency has complied with the construction terms of the Agreements that pertain to the Property.

NOW THEREFORE: Developer certifies that the Agency has completed the Parking Improvements on the Property as required of the Agency in the Agreements.

KEARNEY PALMS LLC,
a California limited liability company

Thomas W. Beggs, Managing Member

Dated: _____

THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic, the owner of record of the Property, now consents to recording this Release against the Property.

Dated: _____

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

COPY

_____, Executive Director

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

j:\data\rdal\swf-ctr\1365sms8.wpd

COPY

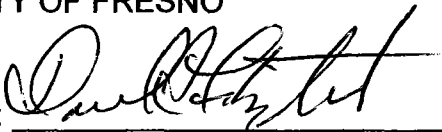
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Redevelopment Agency of
the City of Fresno
2600 Fresno Street, Room 2031
Fresno, CA 93721-3602
Attention: Executive Director

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

This First Amendment to Parking Agreement is recorded at the request of and
for the Redevelopment Agency of the City of Fresno, and is exempt from the payment
of a recording fee pursuant to Government Code Section 6103.

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

By: 
Its: Exec. Dir.

Dated: 4/12/00

**FIRST AMENDMENT TO
COVENANTS FOR PUBLIC PARKING,
LEASE, OPERATION, AND MAINTENANCE FOR PUBLIC PARKING
RECIPROCAL EASEMENTS
AND OPTION TO PURCHASE**

REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO,
a Public Body, Corporate and Politic

and

KEARNEY PALMS LLC,
a California Limited Liability Company

The REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic ("**Agency**"), and KEARNEY PALMS LLC, a California limited liability company ("**Developer**"), enter this First Amendment to the "Covenants for Public Parking, Lease Operation, and Maintenance for Public Parking, Reciprocal Easements, and Option to Purchase" agreement ("**Amendment**"), notwithstanding the date of execution, as of the "Effective Date."

Recitals:

- A. The Agency and Developer executed an instrument entitled, "Covenants for Public Parking, Lease, Operation, and Maintenance for Public Parking, Reciprocal Easements and Option to Purchase (the "**Parking Agreement**") on or about November 13, 1998. The Parking Agreement was recorded in the Official Records of Fresno County, as Document 1999-0074946, May 18, 1999.
- B. February 23, 2000, a Release of Construction Covenants, substantially in the form attached to the Parking Agreement as Exhibit D, was recorded in the real property records of Fresno County as Document Number 00-0021047, confirming the Agency's completion of the Public Parking Lot improvements.
- C. The Parking Agreement, at Section 8, grants the Developer an exclusive and nonassignable option to purchase ("**Option**"). Developer wants to amend the Option to permit assignment in certain instances.

OPTION AMENDMENT:

- 1. **Effective date.** "Effective date," as used in this Amendment, means the date that the Amendment is recorded in the Official Records of Fresno County after the Agency Board approves it and the authorized representatives of Developer and the Agency sign it.
- 2. **Option amendments.**
 - 2.1 **Section 8, lead paragraph.** The lead paragraph of Section 8 is amended entirely to read as follows:

OPTION TO PURCHASE. Developer wants the right to purchase, without becoming obligated to purchase, the Public Parking Parcel and the Parking Improvements at the price and on the terms set forth herein.

- 2.2 **Section 8.1, Grant of option.** Section 8.1 is amended entirely to read as follows:

Grant of Option. Agency grants the Developer the right to purchase the Public Parking Parcel for the price and within the time limitations specified below (the "Option"), provided Developer is not in default of this Agreement or the DDA when Developer exercises the Option.

- 2.3 **Added Section 8.1A, assignment of option.** The Option is amended to add the following as a new Section 8.1A, immediately following Section 8.1:

Assignment of Option. Developer may not assign or encumber its rights in this Option, except as follows: Developer may assign its rights under this Option to a Mortgagee for security purposes. The assignment, if any, shall incorporate this Agreement by reference, and shall be subject to it. Only a Mortgagee may hold rights in this Option. Only a record owner may exercise this Option. Thus, a Mortgagee holding rights in this Option, or a purchaser who acquires rights in this Option at foreclosure of a Mortgage, may exercise it only after acquiring record title to a Retail Parcel.

Developer shall notify the Agency of any assignment and deliver a copy of the assignment to the Agency, evidencing the incorporation of this Agreement. The notice shall include the address of the assignee.

- 2.4 **Section 8.12, continuation of parking use.** Section 8.12 is amended entirely to read as follows:

Continuation of Public Parking Use, Operation, and Maintenance. The grant deed, conveying the Public Parking Lot from the Agency to the Developer, will confirm through recitation, incorporation, or otherwise, that the Public Parking Lot is subject to the covenants and conditions set forth in this Agreement. The grant deed will specifically incorporate by reference, the covenants to use the Public Parking Lot as set forth in Section 6.7.1, Section 7, and Section 12.1.1, to operate and maintain the Public Parking Lot as set forth in Sections 6.7, 6.7.2, 6.7.3, 6.7.5, 6.7.6, and 6.9, and the nonmerger provisions of Section 14.7. The grant deed will also include any other covenants and conditions required under the California Community Redevelopment Law.

- 2.5 **Section 8.15, reservation of rights.** Section 8.15 is amended entirely to read as follows:

Reservation of Rights. The grant deed shall not affect the reciprocal easements or other covenants, restrictions, conditions, and provisions in this Agreement declared to be covenants running with the land. However, Developer may relocate any easement, subject to all of the following: (a) the relocation gives substantially similar access, (b) the relocation, including any relocation of utilities, is at the sole expense of the Developer or persons other than the Agency and (c) the Agency's prior written consent, which consent must not be unreasonably withheld.

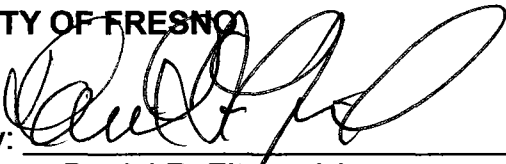
- 2.6 **Section 8.17, limitation on assignment.** Section 8.17 is amended entirely to read as follows:

Incorporations into Grant Deed. The grant deed will incorporate or restate, and the Public Parking Lot will be subject to, the continuing covenants and transfer limitations of the DDA, as provided in Section 11 of this Agreement. .

3. **Effect of this Amendment.** Except as expressly modified in this Amendment, the Parking Agreement and the Option continue in effect.

IN WITNESS WHEREOF, Agency and Developer have executed this Agreement as of the Effective Date.

**REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO**

By: 
Daniel R. Fitzpatrick,
Executive Director

KEARNEY PALMS LLC,
a California limited liability company


Thomas W. Beggs, Managing Member

Dated: 4/11/00

Dated: 4/11/00

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

ATTEST:

APPROVED AS TO FORM:

ATTEST:

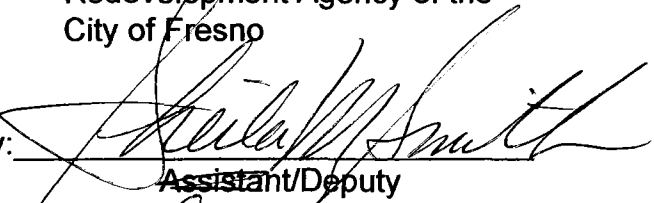
REBECCA KLISCH
Ex Officio Clerk
Redevelopment Agency of the
City of Fresno

By: 
Deputy

Dated: 4/13/2000

APPROVED AS TO FORM:

HILDA CANTÚ MONTÓY
Ex Officio Attorney
Redevelopment Agency of the
City of Fresno

By: 
Assistant/Deputy

Dated: April 12, 2000

APPROVED AS TO FORM:

Motschiedler, Michaelides & Wishon, LLP

By: 
James McKelvey, Esq.
Attorneys for Developer

Dated: 4-11-00

10416sms14 04-04-00 PkingAmend.wpd

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

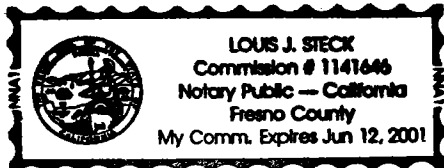
State of CALIFORNIA

County of FRESNO

On 11 April, 2000 before me, LOUIS J. STECK, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Thomas W. Beggs and Daniel R. Fitzpatrick
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Louis J. Steck
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

OVERSIGHT BOARD RESOLUTION NO. ____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO RATIFYING THE
KEARNEY PALMS POLICE SUBSTATION AGREEMENT**

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Law"); and

WHEREAS, prior to the Former RDA's dissolution, the Former RDA entered into the Kearney Palms Police Substation Agreement dated November 28, 2008 ("Substation Agreement"); and

WHEREAS, section 34178(a) of the Dissolution Law provides that the Substation Agreement became inoperative on February 1, 2012; and

WHEREAS, the Oversight Board desires to approve the Successor Agency's re-entry and ratification of the Substation Agreement in accordance with section 34178(a); and

WHEREAS, lease payments under the Substation Agreement have been distributed to the taxing entities and will continue to be for the term of the lease; and

WHEREAS, the Substation Agreement is an enforceable obligation that will result in the transfer of the substation assets to the City for a government purpose at the end of the lease term.

NOW THEREFORE BE IT RESOLVED BY OVERSIGHT BOARD AS FOLLOWS:

Section 1. In accord with section 34178(a), the Board approves the Successor Agency's re-entry into and ratification of the Substation Agreement.

Section 2. The Successor Agency is directed to transfer the substation assets, for the governmental purpose of a police substation, to the City pursuant to the terms of the Substation Agreement, following payment of the quarterly rent for a total of 80 quarters (20 years), in accordance with section 34181(a).

Section 3. This Resolution shall be effective in accordance with CRL section 34179(h).

ADOPTED by the Oversight Board this _____ day of August, 2014.

TERRY BRADLEY
Chair of the Board

I, YVONNE SPENCE, City Clerk/Clerk of the Oversight Board hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the Oversight Board for the City of Fresno as Successor Agency to the Redevelopment Agency of the City of Fresno at its meeting held on the _____ day of August, 2014, by the following vote, to wit:

AYES :
NOES :
ABSENT :
ABSTAIN :

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Fresno, California, this _____ day of August, 2014.

Yvonne Spence
City Clerk/Clerk of the Oversight Board

KBD:elb [65462elb/kbd]