AGENDA ITEM VIII

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

RECEIVED
2016 OCT 17 PM 3 48
CITY CLERK, FRESNO CA

(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, th effective against the Developer. The recording of a grant Agency conveys any subject parcel to the Developer will h to third parties that the conditions have been satisfied.

5 **AGENCY TO CONSTRUCT PARKING IMPROVEMENTS.** Agency, a subject to the conditions and restrictions set forth herein and in the DDA, 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 within10 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 Ag
the late charge only once for each delinquent pay

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. <u>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</u>.

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) ro 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' 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 the10-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:

Motscheidler, 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: Sheila G. Smith
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\rda\swf-ctr\1313sms8f4a-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 (Date) before me, Louis J. Steck, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

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

XX 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.

LOUIS J. STECK
Commission # 1141646
Notary Public — California
Fresno County
My Comm. Expires Jun 12, 2001

WITNESS my hand and official seal.

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:

_____

© 1994 National Notary Association • 8236 Remmel Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184 Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of FRESNO

On 13 Nov 1998 (Date) before me, LOUIS J. STECK, NOTARY PUBLIC (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.

LOUIS J. STECK
Commission # 1141646
Notary Public — California
Fresno County
My Comm. Expires Jun 12, 2001

WITNESS my hand and official seal.

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

© 1994 National Notary Association • 8236 Remmet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184 Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

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.

_____ _____

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 _____

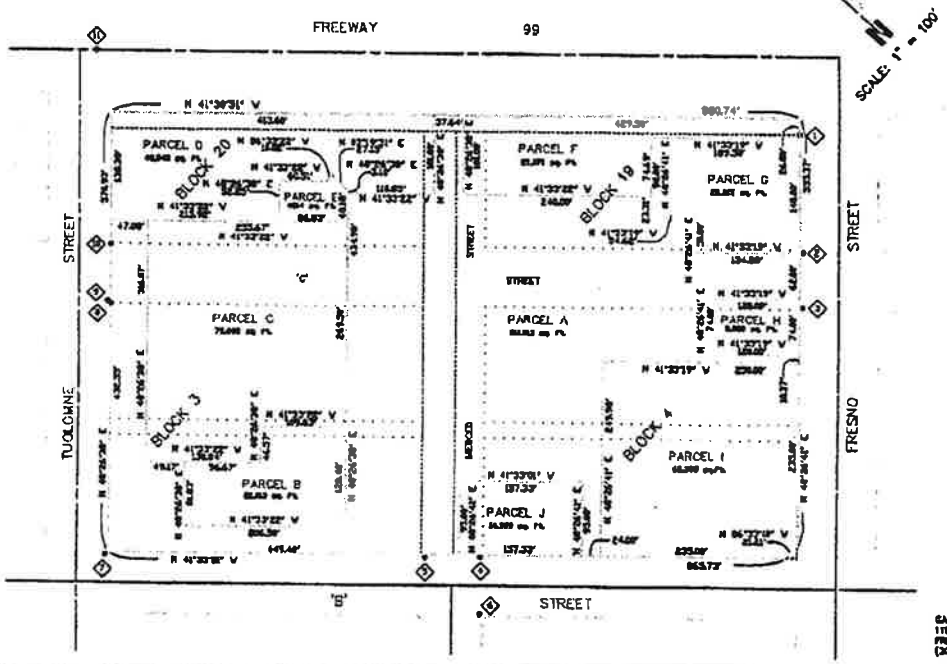
MY COMMISSION EXPIRES _____
COUNTY OF _____

◆ 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



1. 1" IRON PIPE, FLUSH, NOT TAGGED, AS BEING THE MOST EASTERLY CORNER ON BLOCK 19
2. CHISELED "+" 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
3. CHISELED "+" 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
4. CHISELED "+" IN CONCRETE AS BEING 3.00' FROM THE NORTHWESTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 4 AND 4.00' FROM THE NORTHWESTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 4
5. CHISELED "+" IN CONCRETE AS BEING 4.00' FROM THE SOUTHEASTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 3 AND 4.00' FROM THE SOUTHWESTERLY PRODUCTION OF THE SOUTHEASTERLY LINE OF BLOCK 3
6. CHISELED "+" IN CONCRETE AS BEING 4.00' FROM THE NORTHWESTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 293 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHWESTERLY LINE OF BLOCK 293
7. CHISELED "+" IN CONCRETE AS BEING 4.00' FROM THE SOUTHWESTERLY PRODUCTION OF THE NORTHWESTERLY LINE OF BLOCK 3 AND 4.00' FROM THE NORTHWESTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 3
8. CHISELED "+" IN CONCRETE AS BEING THE MOST NORTHERLY CORNER OF BLOCK 3
9. CHISELED "+" IN CONCRETE AS BEING 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHWESTERLY LINE OF BLOCK 3 AND 4.00' FROM THE NORTHWESTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 3
10. 3/4" IRON PIPE, 8" DOWN, NOT TAGGED, AS BEING THE MOST WESTERLY CORNER OF BLOCK 20
11. DIVISION OF HIGHWAYS BRASS CAP FLUSH IN SIDEWALK AS BEING THE FREEWAY CENTERLINE MONUMENT 180.17' FROM THE NORTHWESTERLY PRODUCTION OF THE NORTHEASTERLY 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.

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

_____ _____
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 23, 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 $ _____ BY: _____
DEPUTY
WILLIAM C. GREENWOOD, COUNTY RECORDER

BY: _____
DEPUTY

GARY G. GIANNETTA
1119 S STREET
FRESNO, CALIFORNIA 93721
(209) 264-3960

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

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 CANTÚ MONTOY
Attorney, Ex-Officio for the
Redevelopment Agency of the
City of Fresno

By_____

ATTEST:

REBECCA E. KNISCH
Clerk, Ex-Officio

By_____

COPY

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

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	MICHELLE BEGGS, Wife of Thomas W. Beggs
Dated: _____	Dated: _____

COPY

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

COPY

_____
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\rda\swf-ctr\1365sms8.wpd

04/14/2000,20000044875

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

Dated: 4/11/00

KEARNEY PALMS LLC,
a California limited liability company

_____
Thomas W. Beggs, Managing Member

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: Cecilia Lopez
Deputy

Dated: 4/13/2000

APPROVED AS TO FORM:

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

By: Sheila M. Smith
Assistant/Deputy

Dated: April 12, 2000

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

By: James A. McKelvey
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 (Date) before me, LOUIS J. STECK, NOTARY PUBLIC (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.

LOUIS J. STECK
Commission # 1141646
Notary Public — California
Fresno County
My Comm. Expires Jun 12, 2001

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:

_____

© 1994 National Notary Association • 8236 Remmet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184 Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827