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AND WHEN RECORDED RETURN TO:

Redevelopment Agency  
of the City of Fresno  
2600 Fresno Street, Room 2031  
Fresno, California 93721-3602  
Attention: City Attorney



Fresno County Recorder  
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This 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: [Signature]  
Its: Executive Dir  
Dated: 4/27/99

**DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between

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

and

KEARNEY PALMS LLC,  
a California Limited Liability Company

**SOUTHWEST FRESNO**

**GENERAL NEIGHBORHOOD RENEWAL AREA PROJECT  
URBAN RENEWAL PLAN**

**DISPOSITION AND DEVELOPMENT AGREEMENT**

BETWEEN

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a Public Body, Corporate and Politic

and

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**SOUTHWEST FRESNO  
GENERAL NEIGHBORHOOD RENEWAL AREA PROJECT  
URBAN RENEWAL PLAN**

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- 2 Exhibit B: Legal Description of the Property
- 3 Exhibit C: Release of Construction Covenants
- 4 Exhibit D: Schedule of Performance
- 5 Exhibit E: Scope of Development
- 6 Exhibit F: Grant Deed
- 7 Exhibit G: Guaranty
- 8 Exhibit H: NONE
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- 12 Exhibit L: Shareholder's List and Percentage Ownership
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## DISPOSITION AND DEVELOPMENT AGREEMENT

The REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (the "Agency"), and KEARNEY PALMS LLC, a California limited liability company (the "Developer"), and THOMAS W BEGGS and MICHELE BEGGS, husband and wife ("Guarantor"), enter this DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") as of the Effective Date (defined in this Agreement).

### RECITALS.

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

- A. By authority granted under California Redevelopment Law (the "Law"), the Agency is responsible for carrying out the Urban Renewal Plan for the Southwest Fresno General Neighborhood Renewal Area Project, as amended (the "Plan").
- B. The Council of the City of Fresno (the "Council") adopted the Plan January 14, 1969, by Ordinance No. 69-13. The Council amended the plan August 17, 1972, by Ordinance No. 72-126, March 1, 1983 by Ordinance No. 83-32, December 16, 1986 by Ordinance No. 86-203, and 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.
- C. The Plan affects and controls real property development and use within that area of the City of Fresno, California, described in the Plan (the "Project Area").
- D. The Developer proposes that the Agency acquire certain real property in the Project Area, convey part of the property to the Developer, and provide development incentives or assistance as provided in this Agreement.
- E. As shown in the Site Plan, the subject real property, is generally bounded by Fresno Street, "B" Street, Tuolumne Street, and Highway 99 (the "Site"), and legally described in Exhibit B.
- F. The Site includes former service station properties shown as Parcel I on the Parcel Map. When Council originally approved this Agreement, Currie Bros., Inc., a debtor in possession, under a Chapter 11 bankruptcy proceeding, Case No. 94-13541-A-11, owned the three parcels comprising Parcel I, the "Currie Bros. Property
- G. June 30, 1998, Central Cities Properties, Inc. purchased two of the Currie Bros. parcels, APNs 467-151-06 and 08, and under the Developer's Operating Agreement, is contributing the properties to Developer as part of its capital contribution. Central Cities Properties, Inc. has the third Currie Bros. property, APN 467-151- 07 under a purchase contract and in escrow. It is also assigning this contract to the Developer as part of its capital contribution.

- H. Parcel I is environmentally contaminated. The State of California has approved allocating state funds to remediate the contamination, and has approved Currie Bros.' clean up plan, which is underway
- I. The City of Fresno, a municipal corporation (the "City") owns part of the Site.
- J. The Developer proposes that the Site, excluding the Police Substation Parcel and the Public Parking Parcel, except to the extent that the Public Parking Parcel will be available for public parking, be developed as an integrated neighborhood shopping center, with related facilities, as more fully described in the Scope of Development, attached as Exhibit "E." The proposed name of the Site, after development, is "Kearney Palms Shopping Center." The Developer further proposes that the Agency and City, in cooperation, develop a Police Substation on the Police Substation Parcel.
- K. The Airport Land Use Commission reviewed the Rezone No. 97-31 on February 2, 1998, to determine consistency with the Fresno-Chandler Airport Environs Specific Plan. It took no action and made no recommendation.
- L. The Planning Commission reviewed the Mitigated Negative Declaration for Environmental Assessment No. R-97-31/C-97-275/V-97-59/PM-97-16 (the "Environmental Assessment") and reviewed the Rezone No. 97-31 ("Rezone") on March 4, 1998. The Planning Commission voted to recommend that Council approve the Environmental Assessment and the Rezone.
- M. The Housing and Community Development Commission reviewed the Project and this Agreement on March 25, 1998, and recommended that Council approve it.
- N. The Agency has determined that THOMAS W BEGGS, the Developer's managing member, has the necessary expertise, skill, and ability to develop its portion of the Project under the terms of this Agreement.
- O. The City has environmentally assessed the Project under Environmental Assessment No. 97-014, and under the Environmental Assessment (above), resulting in the issuance, under the California Environmental Quality Act ("CEQA"), of a Mitigated Negative Declaration for Environmental Assessment (E.A.) No. R-97-31/C97-975/V-97-59/PM-97-16.
- P. The Council, in a joint hearing held March 31, 1998, (i) certified the Environmental Assessments, (ii) by Council Resolution No. 98-103 and RDA Resolution No. 1468 approved this Agreement and the Parking Agreement between the Agency and Central Cities Properties, Inc., as the Developer, substantially in the form presented to Council and the Agency, (iii) made certain findings and (iv) Approved and adopted the Relocation and Replacement Housing Plan for the Kearney Palms Shopping Center Project.

- Q. The Agency further determined that this Agreement is in the best interests of, and will materially contribute to, Plan implementation. Further, the Agency has found that the Project: (a) will have a positive influence on the Site, the Project Area, and surrounding environs, (b) is in the vital and best interests of the Agency, the City, and the health, safety, and welfare of City residents, (c) complies with applicable federal, state, and local laws and requirements, (d) will help eliminate blight, (e) will put underutilized land to economically viable use, (f) will alleviate depreciated and stagnant property values and impaired investments, (g) will attract a variety of commercial facilities and services to the Project Area and the community, and (h) will expand employment opportunities for jobless, underemployed, and low-income persons and other City residents.
- R. July 28, 1998, by joint Resolution No. 98-232 and 1492, the Council and Agency Board approved the change in developer from Central Cities Properties, Inc. to Kearney Palms LLC, and authorized modifications to this Agreement, and to the Parking Agreement, as needed to: (i) recognize the change in contracting entity (the Developer) and its membership, and (ii) acknowledge facts and agreement regarding the purchase and sale of APN 's 467-151-06, 07, And 08 (Currie bros. Property), regarding the change and regarding the Equity Investor

## AGREEMENT

1 **PARTIES, FACTS AND DEFINITIONS.** The following terms, when used in this Agreement, have the meanings set forth in this Section unless expressly provided to the contrary:

1.1 **"Acquisition Parcels"** means the parcels of land, within the Site, that neither the City nor the Agency owns on the Effective Date.

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

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

1.4 **"Agency Improvements"** means the offsite and onsite improvements the Agency is to construct, all as more particularly described in Exhibits I and J, the Agency's Site Work Schedule, and the Agency's Off Site Work Schedule.

1.5 **"Agency's Site Work Schedule"** means the site work schedule that is attached to this Agreement as Exhibit I, that, among other things, includes a list of the fees for which the Agency will be responsible.



1.6 **"Agency's Off Site Work Schedule"** means the offsite work schedule that is attached to this Agreement as Exhibit J, that, among other things, may include a list of fees for which the Agency will be responsible.

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

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

1.9 **"City Parcels"** means the parcels within the Site which the City owns at the Effective Date.

1.10 **"Closing"** means the closing of each escrow opened to bring about the purchase and transfer of each Retail and Fast Food Parcel from the Agency to the Developer, as evidenced by a recorded Grant Deed.

1.11 **"Construction Costs"** means, within the definition of Developer's Equity Requirement, Developer's aggregate estimated costs to complete the Developer Improvements, as shown in Exhibit K.

1.12 **"Cooperation Agreement"** means the agreement between the Agency and the City to cooperate on official actions such as rezoning, processing a parcel map, vacating and removing streets and other public ways, locating or relocating easements or other public facilities, approving and installing road and signalization, entering the Police Substation agreement, and other public action as needed to complete the Project as contemplated in this Agreement.

1.13 **"Council"** means the City Council of the City of Fresno, sitting as the Agency or as the Council, whichever the context requires.

1.14 **"Currie Bros. Property"** means the three parcels of real property (APNs 467-151-06, 07, and 08) that are included in the Acquisition Parcels, and will substantially comprise Parcel I, as shown on the Parcel Map.

1.15 **"Default"** means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.16 **"Developer"** KEARNEY PALMS LLC, a California limited liability company, with offices at 1195 West Shaw Avenue, Suite C, Fresno, California 93711, and any successors and assignees authorized and approved pursuant to this Agreement. "Developer" will also mean a redeveloper under the Law

1.17 **"Developer Improvements"** means the new improvements the Developer is to construct on the Retail Parcels, the improvements that Developer's successor is required by this Agreement, a sale agreement, and deed covenants, to construct on the Fast Food Parcel, and all approvals and permits required for Developer or its successor to complete the improvements, all as more particular described in this Agreement and in the Scope of Development.

1.18 **"Developer's Site Work Schedule"** means the schedule of site work attached to this Agreement as Exhibit K, that, among other things, includes a list of the fees for which Developer will be responsible.

1.19 **"Equity Requirement"** means the sum, shown in Exhibit K, that is equal to 10 percent of the estimated Construction Costs, that Developer must have on hand and irrevocably committed to the Project.

1.20 **"Equity Investor"** means Table Mountain Rancheria Tribal Development Corporation, Inc., a subordinate intra-tribal economic organization owned and chartered by and synonymous with the Table Mountain Rancheria of California, a federally recognized Indian tribe, and the member in Developer who's capital contribution to Developer will provide the cash for Developer to meet the Equity Requirement.

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

1.22 **"Escrow"** means each escrow opened with Escrow Holder to convey one or more Retail Parcels and the Fast Food Parcel to Developer

1.23 **"Escrow Holder"** means Central Title Company, Attention: Ron Hobbs, 1155 West Shaw Avenue, Fresno, California 93711, or another title company mutually satisfactory to both parties.

1.24 **"Effective Date"** means the date that the Agency Executive Director signs this Agreement after the Agency Board approves the Agreement and Developer has met any conditions to the Director's signing.

1.25 **"Fast Food Parcel"** means Parcel G on the Parcel Map.

1.26 **"Financing Plan"** means (a) loan commitments, which Developer has accepted in writing, from qualified conventional commercial lenders for construction and permanent (take-out) financing sufficient to complete Developer's construction obligations hereunder, (b) evidence that Developer has its Equity Requirement on hand and irrevocably committed to the Project, (c) a pro forma construction budget,

and pro forma operating financials for a five-year period, (d) Developer's construction contract with a general contractor licensed to do business in California, and (e) any other financial data requested by the Agency

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

1.28 **"Guarantor"** means THOMAS W BEGGS and his wife, MICHELE.

1.29 **"Guaranty"** means a Continuing Completion Guaranty, substantially in the form of Exhibit "G, attached to this Agreement, signed by Guarantor, and guaranteeing Developer's performance of the construction obligations under this Agreement.

1.30 **"Hazardous Materials"** means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated byphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*, or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*)

1.31 **"Law"** means the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000, *et seq.*).

1.32 **"Material Change"** means a change, modification, revision or alteration to plans, drawings, or other documents, plans, Financing Plan, or requirements that substantially deviates from those previously approved by the Agency

1.33 **"Outside Date"** means December 31, 1999.

1.34 **"Parcel Map"** means the Parcel Map PM-97-16, dividing the Site into ten parcels.

1.35 **"Party"** means the Agency or the Developer, and when plural means both. The term does not include the Guarantor unless the context so requires. The meaning applies whether or not the term is capitalized.

1.36 **"Plan"** means the Southwest Fresno General Neighborhood Renewal Area Project, as now or hereafter amended.

1.37 **"Police Substation"** means a substation for the City of Fresno Police Department, to be constructed on the Police Substation Parcel. The construction will be covered under a separate agreement between the Agency and the City

1.38 **"Police Substation Parcel"** means Parcel D as shown on the Parcel Map.

1.39 **"Project"** means the on-site and off-site improvements which the Agency and Developer are to construct under this Agreement to benefit, in whole or in part, the Site and related uses. "Project" includes, but is not limited to, retail commercial building space of approximately 102,000 square feet, with surface parking for approximately 520 vehicles, related landscaping improvements, pedestrian and vehicular circulation facilities, and other ancillary improvements. "Project" does not include the Police Substation or the Police Substation Parcel.

1.40 **"Project Area"** means the boundaries of the land area included within the Southwest Fresno General Neighborhood Renewal Area, as amended.

1.41 **"Public Parking Agreement"** means an agreement between the Agency and Developer for the lease, use, operation, maintenance and replacement of the public parking and other improvements within the Public Parking Parcel. The agreement will include an option for Developer to purchase the Public Parking Parcel.

1.42 **"Public Parking Parcel"** means Parcel A as shown on the Parcel Map.

1.43 **"Release of Construction Covenants"** means the document, substantially in the form of Exhibit C, attached, which evidences the Developer's satisfactory completion of the Developer Improvements.

1.44 **"Retail Parcels"** means Parcels B, C, E, F, H, I, and J as shown on the Parcel Map (does not include the Fast Food Parcel, the Public Parking Parcel, or the Police Substation Parcel).

1.45 **"Schedule of Performance"** means the schedule attached as Exhibit "D," setting forth the dates and times by which the parties must accomplish certain

obligations under this Agreement. It is subject to revision from time to time on mutual written agreement of the Developer and the Agency's Executive Director, and the Executive Director is authorized to make revisions as he or she deems necessary

1.46 **"Scope of Development"** means the scope, amount, and quality of Developer Improvements and the Agency Improvements which each is to construct pursuant to this Agreement, all as more fully described herein and in Exhibit E attached.

1.47 **"Security Financing Interest"** means a security interest which Developer grants in a Retail Parcel before the Agency issues and records a Release of Construction Covenants, and the proceeds of which are used in the construction of Developer Improvements.

1.48 **"Site"** means that real property generally bounded by Tuolumne Street, Fresno Street, Highway 99, and "B" Street, as depicted on the Site Plan, attached as Exhibit A.

1.49 **"Site Plan"** means the drawing attached as Exhibit A, showing the parcel designations from the Parcel Map, and showing the location of the proposed improvements.

1.50 **"Toxics Reports"** has the meaning set forth in Section 4.2.

**2 CONDITIONS PRECEDENT TO AGENCY OBLIGATIONS.** The following are conditions precedent to the effectiveness of this Agreement against the Agency. Until the conditions are satisfied, the Agency is not obligated to take any action under this Agreement. These conditions must be satisfied by the time stated or, if no time is stated, then within 45 days after Council approves and the Director signs this Agreement. The Agency, in writing, may waive any condition or agree in writing to extend the time for satisfaction. It may terminate this Agreement as provided herein for the failure of a condition.

2.1 **Funding.** Agency will have identified potentially Available Funds of at least \$3,000,000, and contingency funds of at least \$2,000,000 for its costs related to the Project.

2.2 **Existence and Authority of Developer** On or before signing this Agreement, Developer will deliver the following to the Agency: (a) a copy of the articles of organization with a certification or other evidence from the Secretary of State showing that the articles have been filed and Developer is a legal entity; (b) a certified copy of Developer's operating agreement, signed by all members, (i) confirming that the purpose of the entity is to construct and operate the Project, (ii) authorizing Developer to enter into and perform this Agreement, (ii) naming Guarantor as the Managing Member of Developer, (iii) authorizing Guarantor as the Managing Member of Developer to execute this Agreement and any and all

documents necessary to carry out the purposes of this Agreement, (iv) setting forth the members of Developer and their ownership interest, and establishing that Guarantor owns at least 68 percent of Developer; (c) a tax identification number for Developer, (d) a letter or other evidence from Developer's construction and permanent lender that the borrower, for the loan and loan commitment is Developer, and (e) evidence that Developer is adequately capitalized.

**2.3 Guaranty.** THOMAS W BEGGS and his wife will sign and deliver the Guaranty to the Agency with this Agreement.

**2.4 Equity Requirement.** On or before signing this Agreement, Developer will provide evidence, in form acceptable at the sole discretion of the Agency Board, that Developer has met its Equity Requirement and that the funds are on hand in immediately available funds, irrevocably committed to the Developer Improvements. Developer may evidence this commitment by depositing the funds with, and granting control over the funds, and disbursement discretion to, Developer's construction lender or other third party holder. If the Developer so deposits funds, it will make the deposit under instructions signed by Developer and approved as to form by the Agency. The instructions will be to the lender or third party holder and cover the use and disbursement of the funds for Developer Improvements.

**2.5 Loan Commitments.** On or before signing this Agreement, Developer will provide construction and permanent loan commitments from qualified conventional commercial lenders in sufficient amounts for Developer to complete the Developer Improvements. Any conditions to the loan commitments must be acceptable to the Agency Board, in its sole discretion. The commitments must be signed by the lenders and accepted in writing by Developer. The construction loan must, in the aggregate, be not less than \$4,700,000, the permanent loan must not result in liens aggregating more than \$6,000,000.

**2.6 Leases from Major Tenants.** On or before signing this Agreement, Developer will provide signed lease agreements acceptable to the Agency Board as follows: (a) a lease with Fleming Companies, Inc., an Oklahoma corporation, doing business as Food-4-Less, or a lease with another established, chain grocery, to occupy approximately 49,950 gross leasable square feet, and (b) a lease with Thrifty Payless, Inc., doing business as Rite Aid, or another established chain drug store, to occupy approximately 16,700 gross leasable square feet. Both tenants will be major tenants as typically found in a first class neighborhood shopping center in the San Joaquin Valley.

**2.7 Fast Food Parcel.** On or before signing this Agreement, Developer will provide the Agency with a signed purchase agreement with Burger King, or another purchaser approved by the Agency Board, for the Developer's sale of the Fast Food Parcel to the purchaser at market value. The agreement must be acceptable to the Agency Board.

As required by the Law, this Agreement must impose development obligations and covenants running with the land on the Fast Food Parcel, as land purchased with tax increment money. Therefore, Developer's conveyance to the purchaser will be subject to the same covenants and conditions contained in this Agreement and in the Grant Deed. As a successor in interest to Developer, the purchaser of the Parcel will be, and must agree to be bound by, the terms of this Agreement and, to the extent it is applicable, to the Parking Agreement. Notwithstanding that Developer's requirements relate to the Retail Parcels, and whether or not a covenant specifically refers to the Fast Food Parcel, this Agreement shall apply to the Fast Food Parcel. This includes, without limitation, the requirement, subject to subsection 19.4, to begin construction within 45 days after Closing, to complete development of the property by December 31, 1999, and to obtain a Release of Construction Covenants.

**2.8 Waiver and Covenant of Equity Investor.** Developer has represented to the Agency that it will fund its Equity Requirement with the capital contribution of Equity Investor. As assurance to the Agency only, and not to the LLC or any other third party, the Equity Investor will provide the Agency with a certified resolution, in the form attached as Exhibit N, upon which the Agency alone may rely in entering this Agreement, and acquiring and clearing the Site.

**2.9 Agreement for Police Substation.** Agency and City have entered an agreement for the financing and construction of a Police Substation on the Police Substation Parcel.

**2.10 Cooperation Agreement.** Agency and City have entered the Cooperation Agreement.

**2.11 Public Parking Agreement.** Developer and Agency, concurrently with this Agreement, have entered the Public Parking Agreement.

**2.12 Reciprocal Easements Agreement.** Developer and Agency have entered a reciprocal easements agreement. This agreement may be included as part of the Parking Agreement.

**2.13 Credit Reports and Financial Statements.** On or before Council approves this Agreement, Developer will provide credit reports, financial statements, and financial data, satisfactory to the Agency Board or its designee, evidencing Developer's financial ability to complete the Developer Improvements.

**3 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS.** The conditions precedent set forth above in subsections 2.1, 2.6, 2.7, 2.8, 2.9, 2.10, and 2.11 are also conditions precedent to the effectiveness of this Agreement against the Developer. Until the conditions are satisfied, or Developer has waived the condition in writing, the Developer is not obligated to purchase the Retail or Fast Food Parcels or to construct the Developer Improvements. These conditions must be satisfied by the time stated or, if no time is stated, then within 45 days after Council approves this Agreement.

Developer may waive any condition or agree to extend the time for satisfaction in writing. It may terminate this Agreement as provided herein for failure of a condition.

**4 CONDITIONS PRECEDENT TO THE AGENCY'S OBLIGATIONS TO ACQUIRE ANY PART OF THE SITE.** The following are conditions precedent to the Agency's obligations to acquire any Acquisition or City Parcel. The party named must satisfy the condition by the time set forth unless the party benefitting waives the condition, or agrees in writing to an extension. The party to benefit from the condition may terminate this Agreement as provided herein for failure of any of the following conditions:

**4.1 Satisfaction of Conditions in Section 2.** Developer and Agency have satisfied or Agency has waived the conditions in Section 2.

**4.2 Toxics Reports.** Developer, by signing this Agreement, has accepted all conditions of the Site that are revealed in the Toxics Reports. The Agency obtained and delivered the following to Developer by February 15, 1998: (a) A Phase I environmental assessment on the Site, (b) and a Phase 2 environmental assessment on property commonly known as 1330 C Street, (c) a "no action letter," dated April 22, 1996, from the California Regional Water Quality Control Board, Central Valley Region ("RWQCB"), to Robert Freitas of Currie Brothers, Inc. regarding underground tank closure at former Exxon, 1147 Fresno Street, and (d) and a RWQCB intraoffice "case closure memorandum," dated April 22, 1996, from Russ Walls to John Noonan, recommending that a standard closure letter be mailed to Currie Brothers, Inc. (collectively the "Toxics Reports"). Developer has had an opportunity and obligation to notify the Agency of any objections to any environmental condition disclosed in the Toxics Reports.

**4.3 No Action Letter and/or other Assurances.** For Parcel I, and any other parcel comprising the Site which is contaminated, the Agency will receive a "no further action" letter from the Health Department of the County of Fresno and from the RWQCB, as applicable. The letters will assure the Agency that neither agency requires further remedial environmental action on the parcel before it may be developed as provided in this Agreement.

**4.4 Financing Plan.** Developer has submitted its Financing Plan to the Agency, and Agency, through its Executive Director, has approved the Financing Plan. Within 30 business days after receiving the Financing Plan, the Agency, through its Executive Director, will review the plan and approve it or disapprove it. If the Agency disapproves the plan, it will specify the reason for disapproval and ask Developer to provide any additional information the Agency may need to approve the plan.

Until the Agency issues and records the Release of Construction Covenants, Developer will submit any Material Change to the approved Financing Plan to the Agency for review and approval. Until the Agency approves the Material Change, the Developer will comply with the previously approved Financing Plan. If Developer seeks to make a Material Change to Developer's Equity Requirement



or minimum loan commitments or maximum liens, the modification will require approval by the Agency Board or its designee.

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

**4.5 Condition of Title.** Agency and Developer will have approved the condition of title of any Acquisition Parcel. Agency will obtain and deliver a copy of a standard preliminary title report (the "Report") to Developer for each parcel, with, as Developer may request, copies of the documents underlying the exceptions to title ("Exceptions"). Developer, within 15 business days of receiving the Report, will deliver notice of any objections to Exceptions. Developer may not object to those Exceptions relating to the Plan or to the public utility pipeline easements that divide the Site, and over which structural development may not occur. Developer's failure to so object within the 15 days will be deemed approval of title at Agency acquisition.

If Developer objects to any Exception in the Report, the parties will confer to resolve the title issue. The parties may not terminate this Agreement for the inability to remove, or the delay in removing, an Exception unless the Exception will substantially interfere with the Project as proposed or the Exception will impair marketable title.

**5 AGENCY PREDISPOSITION ACTIVITIES.** After the parties have satisfied or have given written waivers for the conditions precedent in Sections 2, 3 and 4, the Agency will begin or complete the following predisposition activities.

**5.1 Acquisition Parcels.** Agency will use its best efforts to acquire the Acquisition and City Parcels and, after completing the Parcel Map process, will convey the Retail and Fast Food Parcels to Developer. The Agency may acquire property through negotiated purchase, gift, or other means provided by law. Agency has the sole discretion in determining whether to hold hearings or to adopt a resolution of necessity authorizing it to acquire property by its power of eminent domain. Nothing in this Agreement obligates the Agency to adopt a resolution of necessity with respect to any Acquisition Parcel. Developer will sell to the Agency for reconveyance to Developer, as provided in this Agreement, the two Currie Bros. parcels (APNs 467-151-06 and 08) for its purchase costs of \$80,177.03, with the Agency paying the closing and title costs. The purchase agreement will be the Agency's customary purchase agreement, and will include an environmental indemnity from the Developer.

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

**5.3 Site Preparation.** Agency, at its expense, will demolish improvements on, and prepare the Site for, the Project, all as set forth in the Agency's Site and Off Site Work Schedules. Such work includes, without limitation, soil compaction to engineering specifications reasonably approved by Developer's engineer.

**5.4 Environmental Remediation.** Agency has completed or will complete the soil remediation at 1330 C Street, as recommended by the Limited Phase 2 Environmental Site Assessment Report, dated January 21, 1998. Should Agency, during its site preparation activities discover any Hazardous Materials or environmental conditions requiring additional remediation, the Agency will promptly notify the Developer. The parties will have 30 days thereafter to reach a written agreement regarding the allocation of any remediation costs. If the parties cannot reach an agreement within the 30 days, either party may thereafter terminate this Agreement by 30 days' notice to the other. Any remediation will be pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction. The work will be performed according to applicable Environmental Laws and any governmental requirements.

**5.5 Parcel Map.** Agency will pay the costs, incurred after the Effective Date, to finalize and record the Parcel Map.

## **6 DEVELOPER'S PREDISPOSITION ACTIVITIES AND DUE DILIGENCE.**

**6.1 Reason for, and Timing of, Due Diligence Inspection.** Because the Agency will convey the Retail and Fast Food Parcels to Developer "AS IS," with all faults, Developer will complete its due diligence inspection of the Site within 30 days after the Effective Date for that part of the Site owned by the City or the Agency at the Effective Date of this Agreement, and within 30 days after the Agency acquires title or possession to any other part of the Site after the Effective Date.

**6.2 Developer's Inspection.** The Developer will be solely responsible, at its expense, to investigate and determine all soil, seismic and other surface and subsurface conditions of the Site that will be part of a Retail or Fast Food Parcel, and the suitability thereof for development as provided hereunder. Developer's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Developer will promptly provide the Agency with a copy of all reports and test results. Developer will indemnify, defend, and hold Agency harmless from any damages or claims arising out of Developer's inspections.

**6.3 Access to Retail and Fast Food Parcels.** After the Agency acquires ownership or possession of the parcels comprising the Retail and Fast Food Parcels, Agency will grant Developer access to the parcels at reasonable times. Developer and its designated representatives may enter the parcels upon 24 hours' notice. To permit Developer access to the parcels at the earliest possible times, Agency will use best efforts, when negotiating purchase agreements for Acquisition

Parcels, to help Developer in obtaining the seller's permission for Developer to enter the property for inspection. Developer may also obtain consent for access directly from any property owner

**6.4 Environmental Remediation.** Should Developer's inspection reveal any Hazardous Materials or environmental conditions requiring remediation, the Developer will promptly notify the Agency. The parties will have 30 days thereafter to reach a written agreement regarding the allocation of any remediation costs. If the parties cannot reach an agreement within the 30 days, either party may thereafter terminate this Agreement by 30 days' notice to the other. Any remediation will be pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction. The work will be performed according to applicable Environmental Laws and any governmental requirements.

**6.5 Parcel Map and Application Fees.** Developer, at its sole cost, will prepare the preliminary Parcel Map, and pay all Parcel Map related costs incurred on or before the Effective Date. Developer will pay all application fees for Rezone No. R-97-31, CUP No. C-97-275, and Variance No. V-97-59.

**7 CONDITIONS PRECEDENT TO THE AGENCY'S OBLIGATIONS TO CONVEY OR DELIVER POSSESSION OF PARCELS.** The following are conditions precedent to the Agency's obligations to convey or deliver possession of the Retail and Fast Food Parcels to Developer. The party named must satisfy the condition by the time set forth unless the benefitting party waives the condition, or agrees in writing to an extension. The Agency may terminate this Agreement as provided herein for failure of any of the following conditions.

**7.1 Conditions in Sections 2, 3 and 4.** Developer and Agency, respectively, have satisfied or waived the conditions in Sections 2, 3, and 4.

**7.2 Predisposition Activities.** Agency and Developer have completed their predisposition activities as set forth in Sections 5 and 6.

**7.3 Agency Rights to Site.** The Agency has obtained irrevocable rights to acquire or possess the Acquisition and City Parcels, whether by negotiated purchase, gift, or other means provided by law. If the Agency is unable to acquire title or possession to any parcel in time to close Escrow or deliver possession by the Outside Date, Agency and Developer may by written agreement or amendment to this Agreement: (a) extend the Outside Date for Closing, (b) sever any unacquired parcel from the Site and proceed with the Project on the remainder of the Site, or (c) terminate this Agreement. If the property to which the Agency has acquired irrevocable rights is reasonably sufficient to proceed with the Project, but Developer elects to terminate this Agreement, Developer will indemnify, defend, and hold the Agency harmless from any claim for precondemnation or inverse condemnation damages arising out of the Agency's acquisition efforts. If the Developer fails to make an election within 30 days after the Agency notifies it of the

Agency's inability to acquire a parcel, Developer will be deemed to have elected to sever the unacquired parcel and to proceed with the Project.

**7.4 Loan Closing.** Developer's construction lender has opened an escrow for the construction loan that will close concurrently with the Closing for the first Escrow in which the Agency is to convey any Retail or Fast Food Parcel to Developer

**7.5 Governmental Actions.** The following matters, requiring governmental action, have been completed or approved. Governmental action may be legislative, quasi-judicial or otherwise discretionary in nature. Neither the Agency nor the City can take action before the environmental assessment of the Project under CEQA is completed. The Agency and the City cannot commit in advance to approve any matter. Neither the Agency nor any other public or governmental entity will be liable to the Developer if it fails to grant any discretionary approval.

**7.5.1 Rezone Application.** Planning Commission and Council approval of Rezone No. R-97-31, to rezone certain parcels from R-2 and C-6 to C-2.

**7.5.2 Parcel Map.** The final Parcel Map has been approved and recorded to create the Retail, Fast Food, Parking, and Police Substation Parcels.

**7.5.3 Conditional Use Permit (CUP).** Approval of CUP No. C-97-275, authorizing uses typically found in a neighborhood shopping center including, without limitation, a grocery with alcoholic beverage sales, a fast-food restaurant with a drive-up window, a drugstore with drive-up window and alcoholic beverage sales, a financial institution with drive-up window, and an automobile parts store. The CUP will also authorize the Police Substation and, pursuant to Section 12-407.5, modification of the property development standards for a unified commercial project.

**7.5.4 Variance Application.** Approval of Variance Application No. V-97-59, authorizing the construction of an over-height fence in the required front yard landscape and building setback along Tuolumne Street, "B" Street, and the easterly property line, and gates across the Police Substation and the rear of the proposed supermarket.

**7.5.5 Vacations/Abandonments.** Abandonment or vacation of those portions of the Site that lie within Merced and C Streets, or within any public alley or other right of way, as needed for the Project.

**7.5.6 Easements.** Modification or abandonment of easements as needed to develop the Project as contemplated in this Agreement.

**7.5.7 CEQA Review.** Completion and adoption of an environmental assessment under the California Environmental Quality Act.

**7.5.8 Environmental Clearances.** Environmental clearances from regulating agencies for any property within the Site that is found to be contaminated. This includes, without limitation, the second of two service station parcels on the northwest side of Fresno Street between B and C Streets. The owner, Currie Brothers, Inc., has received a no further action letter, dated April 22, 1996, for one service station site at 1147 Fresno Street.

**7.6 Notice of Readiness to Convey and Certificate of Readiness to Proceed.** Agency will notify the Developer when it is prepared to convey or deliver possession of any Retail Parcel or Fast Food Parcel to the Developer. Developer will certify to Agency in writing that Developer is ready to close escrow, and to construct the Developer Improvements on the parcels which the Agency is prepared to convey or for which the Agency is prepared to deliver possession. Developer's certification will affirm that: (a) no financial or other event has occurred that would impair Developer's ability to complete the Developer Improvements, (b) Developer is ready, willing and able to meet its obligations under this Agreement, and (c) that all conditions precedent to Developer's performance are satisfied.

**7.7 Performance and Payment Bonds.** Developer has delivered labor and material bonds and performance bonds, issued by an insurance company meeting the criteria for Developer's insurance hereunder. The bonds will each contain a penal sum at least equal to 100% of Developer's estimated construction costs shown in the Developer's Site Work Schedule. The bonds will name the Agency as co-obligee. Agency may, instead of performance and payment bonds, consider other evidence, satisfactory to the Agency, of the Developer's ability to complete the Developer Improvements.

**7.8 Completion Guarantee.** The Developer will deliver, to the Agency, a Contractor's Completion Guarantee from the construction contractor or an acceptable issuer, substantially in the form attached as Exhibit M.

**7.9 Evidence of Insurance.** Certificates of insurance for all insurance which this Agreement requires Developer to maintain.

**7.10 No Default.** Developer is not then in Default of this Agreement, and all representations and warranties herein of Developer and Guarantor are true and correct in all material respects.

**7.11 Contracts in Effect.** The lease agreements with Fleming Foods and Thrifty Payless (or with another Agency-approved grocery and drug store), and the purchase agreement with Burger King (or with another Agency-approved purchaser of the Fast Food Parcel) are in effect and Developer has provided estoppel certificates from the three contracting parties.

**7 12 Joint Instructions for Sale Proceeds of Fast Food Parcel and the Currie Bros. Parcels APNs 467-151-06 and 08.** Regarding the double escrow on the Fast Food Parcel, and APNs 467-151-06 and 08, the following has occurred: (a) The construction lender has agreed to, and Developer has established with the lender or other third-party holder, a controlled-access account solely for deposit and disbursement of the sale proceeds from the Fast Food Parcel, and the two Currie Bros. parcels, (b) Agency, Developer, and the construction lender have signed instructions to the Escrow Holder regarding the deposit, use, and disbursement of the net sale proceeds. Developer will use the net sale proceeds solely for hard construction costs, and will draw against the funds only on a verified cost and reimbursement basis. The net sale proceeds for the Fast Food Parcel are in addition to, and will not reduce Developer's Equity Requirement. Developer may use the deposit of net proceeds from the two Currie Bros. parcels toward meeting its Equity Requirement. The Equity Requirement is a separate and distinct obligation of Developer

**7 13 Currie Bros. Parcel APNs 467-151-07.** If Developer closes escrow on the Currie Bros. Parcel APN No. 467-151-07 before the Agency is ready to convey the balance of the Site, and the all environmental clearances on the parcel are in order, the Agency will purchase the parcel from Developer at its purchase costs, and the proceeds will be deposited into the controlled disbursement account, as provided in subsection 7 12, above. If Developer has not closed escrow on the parcel, but all environmental clearances are in order, the Developer will complete the purchase, and the Agency and Developer will accomplish a double escrow, as provided in subsection 7 12, above. In either event, the Developer and Agency will sign the Agency's customary purchase agreement that includes an environmental indemnity from the Developer

## **8 DISPOSITION OF RETAIL AND FAST FOOD PARCELS.**

**8.1 Sale and Purchase.** After the parties have satisfied or waived all the conditions precedent set forth above and have completed the predisposition activities, and subject to satisfying the requirements of the Law in selling property acquired with tax increment funds, the Agency will sell, and the Developer will purchase, the Retail and Fast Food Parcels according to this Section 8.

**8.2 Purchase Price.** The purchase price of each Retail and Fast Food Parcel will be \$1.00 or the lowest purchase price permitted by Law. The purchase price represents the reuse value of each Retail and Fast Food Parcel, at the use and with the covenants, conditions, and development costs set forth in this Agreement. The Developer will pay the purchase price for each Parcel in cash or certified check, deposited with the Escrow Holder, within ten business days after receiving notice from the Agency that the Agency is prepared to convey the Parcel or Parcels.

### 8.3 Escrow

**8.3.1 Opening Escrow.** After acquiring the Site or so much of it as the parties may agree, and within five business days after receiving Developer's notice that it is prepared to close Escrow and proceed, the parties will establish an Escrow with the Escrow Holder to accomplish the sale and purchase of the Retail and Fast Food Parcels.

**8.3.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of Developer and Agency. The parties will take all actions necessary to close the Escrow(s) in the shortest possible time. The Agency will not transfer any fire or casualty insurance policies and will cancel its own policies or delete the property from its policies after each Closing. The Escrow Holder may deposit all funds received in the Escrow(s) with other escrow funds in a general escrow account, and may transfer the funds to any other escrow trust account in any State or National Bank doing business in California.

If necessary to accomplish Closing, the parties may sign supplemental escrow instructions. If any inconsistency between the supplemental escrow instructions and this Agreement exists, the provisions of this Agreement will control. The parties will sign such other and further documents as necessary or appropriate to carry out this Agreement.

**8.3.3 Prorations.** The Escrow Holder will prorate all ad valorem taxes and assessments, if any, as of Closing, between the Agency and the Developer. If the parties cannot ascertain then-current taxes and assessments, the Escrow Holder will apportion the taxes and assessments based on the amount of the most recent statement of taxes and assessments. Escrow Holder will adjust the proration, if necessary, within 30 days after finding out the actual amount of taxes and assessments.

**8.3.4 Escrow Costs.** Agency will pay all escrow fees, title insurance, recording fees, and documentary stamp taxes to convey the Retail Parcels to Developer. Developer will pay any title policy costs for any insurance or endorsements in excess of the standard CLTA owner's policy that Developer may request. Agency and Developer will pay any other costs associated with the Escrow according to the custom and practice in Fresno County. Developer will be solely responsible for any costs associated with obtaining and closing the construction and permanent loans to Developer under its Financing Plan.

**8.3.5 Close of Escrow and Contingencies to Close.** The Escrows must close by the Outside Date, unless the parties mutually agree to extend the time for Closing. Escrow Holder will close each Escrow and the Agency will convey each Retail and Fast Food Parcel to Developer when and only when the following have occurred:

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

**8.3.5.2 Concurrent Close of Construction Financing or Estoppel Certificate.** The concurrent close of Developer's construction financing with the Closing of the first Escrow in which the Agency conveys a Retail or Fast Food Parcel to Developer. As a condition precedent to each subsequent Closing, Developer will deliver an estoppel certificate from its construction lender that Developer is performing under the loan agreements, is not in default of the Agreements, and that the loan continues in effect.

**8.3.5.3 Concurrent Close on Fast Food Parcel.** The concurrent close of Escrow for the sale of the Fast Food Parcel from the Agency to Developer, and the escrow for the sale of the same Parcel from the Developer to Burger King or another Agency-approved purchaser ("Fast Food Parcel Escrow"), and the instructions, signed by the construction lender or other third party holder, Developer, and Agency, regarding the deposit of the net sale proceeds from the Fast Food Parcel Escrow into a controlled disbursement account with the construction lender or third party holder

**8.3.5.4 Concurrent Close on Agency Purchase and Sale of APNs 467-151-06 and 08.** The concurrent close of Escrow for the Agency's purchase of the two Currie Bros. parcels from, and the Agency's concurrent sale of the parcels to Developer, and the instructions, signed by the construction lender or other third party holder, Developer, and Agency, to deposit the net sale proceeds into a controlled disbursement account with the construction lender or other third party holder

**8.3.5.5 Recording this Agreement.** Escrow Holder is prepared to record this Agreement or, at the Agency's sole option, to record a memorandum of it at the close of the first Escrow in which the Agency conveys a Retail or Fast Food Parcel to Developer.

**8.3.5.6 Recording Public Parking Agreement.** Escrow Holder is prepared to record the Public Parking Agreement or, at the Agency's sole option, a memorandum of it at the close of the first Escrow in which the Agency conveys a Retail or Fast Food Parcel to Developer



**8.3.5.7 Recording Reciprocal Easements Agreement.** Escrow Holder is prepared to record a reciprocal easements agreement as described in or as a part of the Public Parking Agreement.

**8.3.5.8 Grant Deed.** Escrow Holder is prepared to record a Grant Deed, for the conveyance of each Retail and Fast Food Parcel, substantially in the form set forth in Exhibit "F," attached.

**8.3.5.9 Title Policy.** Escrow Holder is prepared to issue a CLTA standard coverage title insurance policy to Developer insuring Developer's title to the subject parcel with exceptions as provided in subsection 8.3.8. The Escrow Holder will provide the Agency with a duplicate copy of the policy it issues.

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

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

**8.3.8 Condition of Title.** At Closing, title to each Retail and Fast Food Parcel will be free and clear of title exceptions, except easements of record, current taxes and assessments, if any, and those Exceptions agreed to by Developer when the Agency acquired the subject property. The Escrow Holder will deliver a Report to Agency and Developer for the subject parcel with, as Agency or Developer may request, copies of any documents underlying the Exceptions. Developer, within 15 business days of receiving the Report, will deliver notice of any objections to Exceptions dated subsequent to the date the Agency acquired the parcel. Developer may not object to any Exceptions agreed to when the Agency acquired the parcel. Developer's failure to so object within the 15 days will be deemed approval of title.

If Developer objects to any new Exception in the Report, the parties will confer to resolve the title issue. The parties may not terminate this Agreement for the inability to remove, or the delay in removing, any Exception unless the Exception will substantially interfere with the Project as proposed or the Exception will impair marketable title.

**8.3.9 Title Insurance.** Agency will pay the premium for a CLTA standard coverage title insurance policy, issued by Escrow Holder, insuring Developer's title to each Retail and Fast Food Parcel in the condition specified in subsection 8.3.8. Developer may request, and pay the difference in costs for, an ALTA owner's policy and any endorsements to the policy

**8.3.10 Closing Statements.** After Closing, Escrow Holder will deliver separate closing statements to Developer and Agency in which the Escrow Holder accounts for all funds it receives and disburses for each party, and copies of documents signed and recorded or filed, with the recording and filing date information endorsed thereon.

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

**8.4.1 Exclusive Possession.** Agency delivers exclusive possession of the property by a written lease, deed, or other document which the parties approve to carry out the purposes of this Agreement.

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

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

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

Agency will provide all indemnities and other assurances that Escrow Holder may reasonably require to insure Agency's conveyance of title to the Developer after the court issues any order for prejudgment possession.

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

8.6 **Sale "AS IS;" No Warranty of Property Condition.** When the Agency conveys or delivers possession of any Retail or Fast Food Parcel, it will be in "AS IS" condition. The Agency makes no representation or warranty, express or implied, on the condition, possession, or title of any Retail or Fast Food Parcel or the Site. "Condition" includes, without limitation, the condition of soil, geology, known or unknown seismic faults, the presence of Hazardous Materials, or the presence of any known or unknown faults on or below the surface of any Retail or Fast Food Parcel. The Agency has no obligation or liability to the Developer for the suitability of any Retail or Fast Food Parcel for the development contemplated and makes no warranty of suitability

The "AS IS" condition of the Site includes the following conditions. (a) those conditions that any Toxics Reports disclose, and (b) those conditions which the files of the regulators such as, but not limited to, the Fresno County Health Department, and the California Regional Water Quality Control Board disclose.

8.7 **Environmental Indemnification.** From and after Closing, Developer shall defend, indemnify, and hold Agency, and its representatives, employees, consultants, officers, and volunteers harmless from any claims, liabilities, damages, remediation costs, and judgements which may result from the presence, removal, and storage of any Hazardous Materials on any parcel the Agency conveys to Developer. The Developer will be obligated under this subsection whether the Agency or any of its respective officers, officials, employees, agents, boards, or volunteers are actively or passively negligent. But, Developer will not be obligated for 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 respective officers, officials, employees, agents, boards or volunteers acting within the scope of their authority

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

9.1 **Conveyance of Retail and Fast Food Parcels.** Agency has conveyed possession or title of the Retail and Fast Food Parcels to Developer

**9.2 Agency Review and Approval.** Solely to assure the Agency that Developer Improvements, will further the redevelopment goals, requirements, and expectations of the Plan, the Law and this Agreement, the Developer will submit certain development-related items to the Agency for review and approval. If Developer must submit the document to the City, Developer will at the same time deliver a copy to the Agency. The Agency will approve or disapprove the items in writing within 30 days of receipt. These items include, but are not limited to, building permits, conditional use permits, site plans, building plans, reciprocal easements, reciprocal parking agreements, if needed, basic concept drawings, elevation and other drawings showing architectural style, design and features, landscaping plans (prepared by a professional landscape architect), finish grading plans (prepared by a licensed civil engineer), schematic plans, preliminary plans, and final construction plans.

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

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

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

**9.4 City and Other Governmental Approvals.** Developer has obtained any City or other governmental permits or approvals necessary for Developer to complete the Developer Improvements. Developer will cooperate with the Agency as needed to obtain any other governmental permits or approvals necessary to the Project, and the Police Substation. The Agency's signature to this Agreement,

however, is not approval by the City and in no way limits the discretion of the City in the permit and approval process including, without limitation, the City's detailed review and approval of Developer's final construction plans and specifications. The Agency will help the Developer as needed in obtaining any necessary City and other governmental permits or approvals.

**9.5 Construction Contract.** The Developer's construction contracts with reputable contractors are in effect and the contractor will complete construction for some fixed or specified maximum amounts pursuant to the approved final construction plans and the Financing Plan.

Within 15 business days after the City issues a building permit for construction on a Retail Parcel, Developer will submit a copy of the construction contract to the Agency's Executive Director or a designee, for the sole and limited purposes of determining: (a) that the costs of work have been clearly fixed and is consistent with the approved Financing Plan, (b) that the contract contains no Material Changes for which the Agency has not received notice and given approval, and (c) that the contract contains the required equal opportunity covenants.

## **10 DEVELOPER'S CONSTRUCTION OBLIGATIONS.**

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

**10.2 Developer's Construction Obligations.** Developer will complete the Developer Improvements and site work as set forth in Developer's Site Work Schedule, including:

**10.2.1 Construction Pursuant to Plans and Scope of Development.** Developer will begin construction on each Retail Parcel: (a) within 45 days after the Closing in which the Agency conveys the Parcel to Developer, or Agency delivers exclusive possession to Developer under a prejudgment order of possession, or (b) if later, then within 30 days after the City issues a building permit. Developer may request an extension, and the Agency in its sole discretion may grant the extension. Developer will diligently complete the commercial retail improvements on each Retail Parcel according to the Scope of Development, the approved final construction plans, all City permits and approvals, and all Agency approvals.

**10.2.2 Construction Completion Deadline** The Agency is conveying the Retail and Fast Food Parcels to the Developer for redevelopment pursuant to this Agreement, the Plan and the Law, and not for land speculation. Therefore, Developer will diligently pursue construction to completion within the times shown in the Schedule, and complete all its

construction obligations not later than December 31, 1999 (or another date as the parties may agree in a writing approved by the Agency Board).

**10.2.3 Developer's Construction Costs.** Except for the obligations and fees expressly assumed by Agency in this Agreement and shown in the Agency's Site and Off Site Work Schedules, Developer will be responsible for all costs and fees associated with developing the Retail and Fast Food Parcels including, without limitation, the fees set forth in Developer's Site Work Schedule.

**10.2.4 Liens and Stop Notices.** Developer will not allow any lien or stop notice to be placed on the Retail or Fast Food Parcels, or any part of the Site, from Developer's actions or omissions. If a claim of lien or stop notice is given or recorded, the Developer will take the following actions within 30 days after recording or service of the lien or notice:

10.2.4.1 Pay or discharge the lien or notice; or

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

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

**10.3 Extension of Time for Completion.** The Agency may extend the Developer's construction completion deadline in writing for a period reasonably necessary to overcome any delay if the delay is due to a cause that is beyond the Developer's reasonable control. A cause is beyond the Developer's reasonable control if Developer, with reasonable diligence, could not have foreseen and avoided the cause. Such causes include, but are not limited to, acts of God, unusually severe weather or flood, war, riot or act of the public enemy, labor dispute, unavoidable inability to secure labor, materials, supplies, tools or transportation, or acts or omissions of any governmental authority having jurisdiction (other than Agency acts contemplated by this Agreement), and other than Developer's lack of funds or inability to obtain construction financing. As a condition precedent to any extension of time, the Developer will give the Agency notice within 10 days after any cause for delay develops. The notice will set forth the cause of the delay, the extension Developer expects is necessary to overcome the cause, and a request that the Agency approve the extension. The parties will confirm any approved extension in writing as a modification to the Schedule of Performance.

**10.4 Progress Reports.** Until Developer completes the Developer Improvements, and the Agency issues a Release of Construction Covenants, the

Developer will provide monthly written reports to the Agency of its construction progress. The reports will be in such form and detail as the Agency may require.

**10.5 Compliance With Laws.** Developer shall comply with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction including, but not limited to, applicable federal and state labor standards and environmental laws and regulations.

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

**10.6 Rights of Access.** Agency's representatives will have the right to enter the Retail and Fast Food Parcels during construction, without charge or fee, during normal construction hours to assure compliance with this Agreement. Entry by Agency representatives will not interfere with the construction of Developer Improvements.

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

**10.8 Release of Construction Covenants.** Promptly after Developer satisfactorily completes construction on a Retail Parcel or Parcels according to this Agreement, and asks the Agency in writing to issue the certificate, the Agency will give a recordable Release of Construction Covenants. Developer or its successor will provide the following with the request: (a) a certificate of occupancy, (b) a certificate from Developer's architect that construction on the Retail Parcel is complete, (c) evidence that any recorded mechanics' or materialman's liens have been released or bonded against. This Release, when recorded in the Official Records of Fresno County, is a conclusive determination that Developer has satisfied its construction obligations for the parcel or parcels described therein.

This Release will not be evidence that Developer has complied with or satisfied any obligation to a mortgagee holding a deed of trust securing money lent to finance the construction. The Release will not terminate Developer's obligations hereunder that, by their nature, are intended to survive Developer's completion of construction.

Agency will issue the Release within 30 days after receiving Developer's written request, or will give Developer its reasons for not issuing it, and the actions that Developer must take before the Agency will issue the Release.

**10.9 Effect of Recording Release of Construction Covenants.** After the Release of Construction Covenants is recorded, any party then owning or afterwards purchasing, leasing, or acquiring any interest in the parcel described in the Release will not incur any construction obligation or liability under this Agreement.

**11 AGENCY'S IMPROVEMENTS AND PROJECT OBLIGATIONS:** Subject to all the conditions precedent and any other applicable express provisions of this Agreement, the Agency's obligations are as follows:

**11.1 Site Assembly and Clearance.** Agency will use best efforts to acquire the Acquisition and City Parcels and to assemble the Site as provided in this Agreement. Agency will be responsible for preparing the parcels for the Project as set forth in this Agreement and the Agency's Site Work Schedule.

**11.2 Creation and Conveyance of Parcels.** Agency will pay for the costs of the Parcel Map which are incurred after the Effective Date of this Agreement. Agency will convey the Retail and the Fast Food Parcels to Developer as provided in this Agreement.

**11.3 Land Entitlements.** Developer has paid the application fees for land entitlements. These fees, and any other costs paid by Developer before the Effective Date, will be Developer's costs. The Agency will pay any costs incurred after the Effective Date for, and will assist in completing the rezoning under, Application No. C-97-275.

**11.4 On-sites.** Agency, at its expense, will cooperate with the City and other public and private entities to complete the on-site work set forth in the Agency's Site Work Schedule, including the following:

**11.4.1 Utilities.** Agency will complete utilities to the property line of each Retail Parcel, the Fast Food Parcel, and the Police Substation Parcel. "Utilities" include storm drains, sewer, and water. The Agency will notify and cooperate with other utility providers to complete utilities as may be further described in the Agency's Site Work Schedule.



11.4.2 **Curbs, Gutters, and Sidewalks.** Agency will complete the curbs, gutters, and sidewalks for the Project, as defined in the Site Work Schedule.

11.4.3 **Public Parking Lot.** Agency will develop the Public Parking Parcel into a public parking lot, and lease the parking lot to Developer under the Public Parking Agreement. The public parking improvements will be those shown in the Agency's Site Work Schedule.

11.4.4 **Fees.** The payment of fees set forth in the Agency's Site Work Schedules.

11.5 **Off-sites.** Agency will fund and use its best efforts, in cooperation with other governmental agencies, to relocate and install off-site public improvements as set forth in the Agency's Off Site Work Schedule, including the following:

11.5.1 **Streetscape.** Install Streetscape improvements along Fresno, B, and Tuolumne Streets, immediately adjacent to the Site.

11.5.2 **Traffic Signal.** Relocate traffic signals as required by the Public Works Department of the City

11.6 **Vacation of Streets and Alleys.** Agency will cooperate with the City and assist Developer to vacate streets and alleys, as needed, to create the Site.

11.7 **Police Substation.** Agency will use its best efforts, subject to Available Funds, to perform its obligations as set forth in a separate agreement with the City for the construction of a Police Substation on the Police Substation Parcel

## 12 DEVELOPER'S CONTINUING OBLIGATIONS.

12.1 **Agency Review and Approval of Leases.** As long as the Agency owns the Public Parking Parcel, and while Developer is obligated to pay the Agency a part of excess rents under Section 12.3, Developer will submit all leases for the Retail Parcels and Developer Improvements, and any sale of the Fast Food Parcel to the Agency for review and approval before the lease or sale becomes effective. The Agency's review is for the sole purposes set forth in this Agreement.

12.2 **Return of Agency Funds.** Agency is providing economic assistance hereunder in substantial part because the Project would not be economically feasible for the Developer without Agency assistance. To prevent excess profits to Developer, and as a means to recover some of Agency's costs, Developer will comply with the payment requirements to the Agency as set forth in subsections 12.3 and 12.4 below

**12.3 Percentage of Excess Rents Over Base.** Developer will annually, by January 31, pay the Agency 60 percent of all rents for Parcel C (the chain grocery) that exceed the rental base established in this subsection 12.3 ("excess rents"). Annually, Developer will calculate and pay the excess rents for the lease year ending immediately before the January due date. Except as noted below, the term "lease year" means a calendar year beginning on January 1 and ending on December 31. Notwithstanding the foregoing, the first lease year will begin on the lease's commencement date and end on the immediately following December 31, and the last lease year will end on the termination date of the lease.

**12.3.1 Rent.** Developer's initial lease rents for Parcel C are for below market. Developer will hereafter use best efforts to lease Parcel C with improvements at market rents. When the lease includes percentage rents or rents based on "gross sales," the lease will do the following: (a) clearly define the term "gross sales" (or any similar alternative term) related to rent, (b) describe all transactions or amounts that "gross sales" will include or exclude, (c) require the tenant to maintain accurate books and records of its gross sales on the premises, (d) require the tenant to give the Developer statements of its gross sales periodically, and (e) provide Developer access to tenant's books and records.

**12.3.2 Termination of Obligation.** The Developer's obligations to pay excess rents to the Agency will terminate when the Developer exercises its option, under the Parking Agreement, and purchases the Public Parking Parcel. This subsection 12.3 will not apply to the holder of a Security Financing Interest who takes title to any Retail Parcel through foreclosure or deed in lieu of foreclosure. This provision, however, will apply to any other person, including without limitation those persons who take title from the holder of a Security Financing Interest after foreclosure or deed in lieu of foreclosure, unless or until the obligation is terminated by purchase of the Public Parking Parcel.

**12.3.3 Rental Base.** The monthly rental base for Parcel C and improvements thereon is 38 cents per leasable square foot.

**12.3.4 Statements with Annual Payment.** With the annual payment of excess rents, Developer will submit an itemized written statement to the Agency for the preceding lease year showing the rents for Parcel C, and Developer's calculation of the excess rents due the Agency (the "Annual Statement") Developer or Developer's duly authorized officer or agent will certify that the Statement is true and accurate, and Developer's certified public accountant will also certify the Statement. Concurrently with the delivery of the Annual Statement to the Agency, Developer will pay Agency the percentage of excess rents calculated for the lease year just ending.

**12.3.5 Books and Records.** For the purposes of this subsection 12.3, Developer will keep and maintain accurate books and

records of account, according to generally accepted accounting principles for all leases affecting Parcel C Developer will also keep all supporting documentation it receives from Parcel tenants regarding gross sales. Developer will keep and maintain these books, records, and supporting documentation for each lease year at least four years after the report and payment, if any, to the Agency Notwithstanding the foregoing, if any of Developer's books, records, or supporting documentation is the subject of an audit by the Agency or an unresolved controversy involving the Agency, Developer will keep and maintain them until the Agency completes the audit or the parties resolve the controversy

**12.3.6 Agency's Inspection.** The Agency's accountants or representatives may examine or audit the books and records of Developer with at least three business days' advance notice to Developer However, the Agency may not audit Developer's books more often than once each year If an audit shows that the actual excess rents generated for the period in question are greater than excess rents previously reported by Developer, Developer will pay the excess amount to Agency The Agency will treat any information it obtains while conducting an audit of Developer's books and records as confidential to the extent permitted under the Public Records Act, except in any dispute, litigation, or proceeding between Developer and Agency Agency may also reveal information from an audit pursuant to any judicial proceeding or subpoena or as needed in any dispute between the Agency and Developer

**12.4 Sale of Any Retail Parcel or the Developer's Portion of the Site.** Subject to the requirements herein for Developer to obtain the Agency's consent to any transfer or conveyance, Developer will pay the Agency 20 percent of the net proceeds of any refinancing or sale of any Retail Parcel up to a maximum aggregate repayment to the Agency of \$1,270,915.00. In a refinancing, "net proceeds" means the sum remaining after the payment of loan fees and costs, and the payment of preexisting liens the proceeds of which were used to construct permanent improvements on the parcels securing the liens. In a sale, "net proceeds" mean the purchase price, less the following: (a) the payment of loans secured by deeds of trusts, the proceeds of which Developer used to construct permanent improvements on the Retail or Fast Food Parcels securing the lien, (b) reasonable costs of sale, and (c) repayment to Developer of its Equity Requirement, but only if Developer has not recovered its Equity Requirement through a draw against a loan secured by the parcels and only to the extent Developer invested the funds directly into permanent improvements on the parcels. Costs of refinancing or sale will not include any broker's or agency fee to THOMAS W. BEGGS, or to any person or entity in which he is a principal or from whom or which he will receive economic benefit. "Refinancing" as used in this subsection 12.4 means any financing that Developer secure with any portion of the Site after the Agency issues the Release of Construction Covenants. "Refinancing" will not mean or include, however, any financing, the proceeds of which Developer uses for capital or other permanent improvements to the Site.

12.4.1 **Due at Closing.** Developer will pay the Agency the 20 percent of net proceeds at the close of escrow for any sale, and at the loan closing (recording of the deed of trust) for any refinancing. Developer will deliver the payment with an accounting, in form and content satisfactory to Agency's controller, and with a closing statement, showing how Developer calculated the payment. Developer or a duly qualified officer of Developer will certify that the accounting is true and correct.

12.4.2 **Termination of Obligation.** Developer's obligations under this subsection 12.4 will continue until Developer or a successor to Developer purchases the Public Parking Parcel. This obligation will not apply to a holder of a Security Financing Interest who takes title in a foreclosure or by deed in lieu of foreclosure, but will apply to any person taking from the holder

12.5 **Taxes and Assessments.** Developer will pay before delinquency all ad valorem real estate taxes and assessments on the parcels conveyed to it, and on the Public Parking Parcel, subject to a right to contest the taxes in good faith. Developer will remove any levy or attachment made on the Retail or Public Parking Parcels, or assure the satisfaction thereof within a reasonable time. Developer acknowledges that under Health and Safety Code Section 33673, while it holds a leasehold or comparable interest in the Public Parking Parcel, Developer will be responsible for paying property taxes assessed on the value of the entire Parcel, not merely the value of its leasehold interest. Developer will not apply for or receive any exemption from property taxes or assessments on any interest in the Parcels or the Improvements.

13 **CONTINUING COVENANTS.** The following conditions and covenants shall be set forth in each Grant Deed from the Agency to Developer for any part of the Site:

13.1 **Covenants Continuing Until Recording of the Release of Construction Covenants.** The following covenants will run with the land until recording of the Release of Construction Covenants.

13.1.1 **Construction Covenants.** All the covenants and obligations herein requiring Developer to complete the Developer Improvements.

13.1.2 **Hazardous Materials Covenants.** Developer covenants that, from and after Closing, and until Developer has completed the Developer Improvements and a Release of Construction Covenants is recorded as provided herein, Developer, as to each parcel conveyed to it:

13.1.2.1 **No Hazardous Materials Activities.** Will not cause or permit any improvements thereon to be used for the

generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

13.1.2.2 **Environmental Laws.** Will comply and cause the improvements and any tenants thereon to comply with all Environmental Laws.

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

13.1.2.4 **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about any parcel, will immediately take, at Developer's sole expense, all remedial action required by any Environmental Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

13.1.3 **Inspection by Agency** Upon prior notice to Developer, the Agency, its employees and agents, without obligation to do so, may enter any parcel to learn the existence, location, nature, and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the parcels.

This subsection 13.1 1 is intended as Agency's written request to Developer for information concerning the environmental condition of the parcels as required by California Code of Civil Procedure section 726.5. Agency and Developer intend each covenant in this subsection (with any indemnity applicable to a breach of any such covenant) with respect to the environmental condition of each parcel to be an "environmental provision" for purposes of California Code of Civil Procedure section 736

13 1 4 **Post-Closing Environmental Indemnity** Developer will defend, indemnify, and hold the Agency, and its respective boards, commissions, councils, officers, officials, officers, employees, agents, and volunteers ("indemnitees") harmless from any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs,

and penalties that any indemnitee may sustain because of a breach of any agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or because of any use, generation, manufacture, storage, release, disposal or presence (whether or not Developer knew of it) of any Hazardous Materials occurring in, on, or about any Retail or Fast Food Parcel after the Closing. Indemnified costs include, but are not limited to, all costs of legal proceedings and attorneys' fees. Although the covenants regarding Hazardous Materials expire when the Release of Construction Covenants is recorded, this indemnity will survive the recording. This indemnification is in addition to, and without limitation on, the other indemnity provisions in this Agreement.

**13.2 Covenants Continuing Until the Agency Land Use Controls Expire.** The following covenants will remain in effect and run with the land until the land use controls of the Plan expire.

**13.2.1 Applicability** Developer acknowledges that the generation of additional sales and property tax revenues to the City and the Agency are a material consideration for Agency's entering this Agreement. The use and the maintenance of the Site are essential to its assessable value and to the goals of the Plan. Accordingly, Developer covenants for itself, its successors and assigns, and all successors in interest that the covenants in this Section 13.2 shall run with the land until the land use controls under the Plan, as amended, expire.

**13.2.2 Use of the Parcels.** The use of the Retail and Fast Food Parcels is restricted to a commercial retail shopping center and related purposes, and the Public Parking Parcel is restricted to public parking, consistent with the Public Parking Agreement, the Plan, the building permit, final construction plans, and all other plans and permits approved for the Project, as may be amended. Developer may not use or permit any other use of the parcels without review and approval by the Agency. If the Agency approves a different use, the parties will amend this Agreement and record the amendment.

Subject to this use limitation, nothing in this Agreement imposes upon Developer or any tenant, lessee, or other occupant of the Site, an obligation to remain open or operating, or an obligation as to merchandise or any other aspect of the occupant's operations.

**13.2.3 Maintenance.** Developer will maintain or cause the occupants to maintain all improvements on the Retail, Fast Food, and Public Parking Parcels, including facade improvements, in first class condition and repair (and, as to landscaping, if any, in a healthy condition), all according to the approved plans and the Public Parking Agreement, as amended from time to time. Subject to Developer's right to contest same, Developer will maintain all improvements according to all other applicable laws, rules,

ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Developer will keep the parcels free from graffiti, and free from any accumulation of debris or waste material. Developer will keep the improvements in first class condition, will promptly make repairs and replacements, will promptly eliminate all graffiti, and promptly replace dead and diseased plants and landscaping with comparable materials.

Agency will provide notice to Developer of any breach of this maintenance covenant. Agency and Developer will promptly after that meet and confer, and agree to the corrective actions and a schedule of performance. Developer must cure the default within the agreed schedule, or within (a) 10 days after the Agency's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance, or within (b) 30 days after Agency's notice for any default involving building improvements. If Developer does not cure the default within those times, the Agency, without obligation to, may enter the Site, cure the default, and protect, maintain, and preserve the Site improvements and landscaping.

Agency may lien the subject parcel, or assess the parcel, for the Agency's expenses in protecting, maintaining, and preserving the improvements and aesthetics of the parcel, including a 15 percent administrative charge 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. Developer will promptly pay all such amounts to the Agency upon demand.

**13.3 Covenants Running Until Expiration of the Plan.** As required under the Plan, the provisions of the Plan regarding land uses, zoning, requirements, property development standards and restrictions are incorporated into this Agreement as covenants running with the land.

**13.4 Nondiscrimination Covenants Running in Perpetuity** The following covenants shall run with the land in perpetuity:

**13.4.1 Nondiscrimination Provisions in Deeds.** Each Grant Deed by which the Agency conveys any part of the Site to Developer will contain the following provision as a covenant running with the land in perpetuity:

"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status,

national origin, age, physical or mental disability, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the property herein conveyed. The foregoing covenants shall run with the land.”

**13.4.2 Mandatory Language in All Subsequent Deeds, Leases, and Contracts.** All deeds, or contracts for the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Retail or Fast Food Parcels including, but not limited to, those entered between Developer and any third party will each contain express nondiscrimination provisions in substantially the same form as set forth in 13.4 1, above. Developer will submit each document first to the Agency for review to determine that its nondiscrimination clauses comply with Section 33436 of the Law

**13.5 Effect and Priority of Covenants.** Agency is a beneficiary of these covenants running with the land, in its own right and for protecting the interests of the community and other parties, public or private, intended to benefit from the covenants. The covenants will run without regard to whether Agency has been, remains, or is an owner of any land or interest therein in the Retail, Fast Food, or Public Parking Parcels or the Project Area. Agency will have the right, if any covenant is breached, to exercise all rights and remedies, after expiration of any applicable notice and cure periods.

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

## **14 DEVELOPER, GUARANTOR, ASSIGNMENT.**

**14 1 Representations and Warranties of Developer and Guarantor**  
The following representations and warranties shall survive the recording of all Grant Deeds. The Agency may rely on them throughout the life of this Agreement unless Developer notifies the Agency of any substantial change affecting the representations and warranties. Developer and each person executing this Agreement for Developer represent and warrant, and Guarantor represents and warrants that:



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

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

14.1.3 Developer has all power and authority to carry out its business as conducted, and to enter and perform its obligations under this Agreement.

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

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

14.1.6 Neither Developer nor Guarantor has engaged any broker or finder with respect to this Agreement or any part of the Site.

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

14.1.8 Developer's Equity Requirement is on hand and irrevocably committed to the construction of Developer Improvements.

14.1.9 Developer has or, subject to the satisfaction of any conditions precedent to construction loan disbursements, will have sufficient funds available to complete the Developer Improvements and to pay all costs assumed by Developer hereunder

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

14.1.11 Developer's principal place of business is at Fortune Associates, 1195 West Shaw Avenue, Suite C, Fresno, California 93711

14.1.12 As shown in the list attached as Exhibit L, Guarantor and his wife, Michelle, and the Tribe are the only members of Developer,

holding respectively 68 percent and 32 percent of the equity in Developer

14.1.13 Neither Developer, nor any of its members, nor Guarantor is the subject of a bankruptcy proceeding.

14.1.14 Neither Guarantor's execution nor performance of this Agreement or the Guaranty violates any provision of any other agreement to which Guarantor is a party

14.1.15 This Agreement, as it relates to the Guaranty and to Guarantor's obligations, and the Guaranty, are valid, binding and enforceable against Guarantor according to their respective terms.

**14.2 Prohibition Against Developer's Transfer of the Retail or Fast Food Parcels or Assignment of Agreement.** The Developer's qualifications and identity are of concern to the Agency. The Agency enters this Agreement in primary part because of Developer's qualifications. The purpose of this subsection 14.2 is to maintain an experienced shopping center operator, to prevent land speculation, and to assure that Developer complies with subsections 12.3 and 12.4. Developer will not sell, transfer, convey, assign or lease, any parcel, or any improvements thereon, or Developer's rights and obligations under this Agreement, without the prior written consent of the Agency. The Agency may condition its consent to any sale, or lease on the proposed transferee affirmatively agreeing in writing to be bound by the continuing provisions of this Agreement. Developer's covenants and restrictions under this subsection will continue until the later to occur of the following: (a) Release of Construction Covenants is recorded, or (b) Developer's obligations under subsections 12.3 and 12.4 terminate as provided herein.

14.2.1 **Permitted Transfers.** Notwithstanding the foregoing, the following events ("Permitted Transfers") will not be a transfer requiring the Agency's consent:

14.2.1.1 Creation of any Security Financing Interest, subject to consideration and approval of the Agency as provided herein; or

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

14.2.1.3 Conveying or dedicating any part of the Retail or Fast Food Parcels to the City or other governmental agency, or granting easements or permits to facilitate the Project; or

14.2.1.4 The grant of temporary easements or permits to facilitate the Project; or

14.2.1.5 The Developer's sale of the Fast Food Parcel to a fast food franchisor or other Agency-approved purchaser according to this Agreement; or

14.2.1.6 Any transfer to an entity in which Developer retains a minimum of 51 percent of the ownership and over which Developer has management and control.

Developer nevertheless will give the Agency a notice of any Permitted Transfer at least 30 days before such assignment or transfer, with evidence satisfactory to the Agency, that the assignee assumes the obligations under this Agreement jointly with Developer

**14.2.2 Changes in Ownership of Developer.** The qualifications, experience and expertise of THOMAS W BEGGS ("Mr Beggs"), the managing member of Developer, are of particular concern to the Agency. It is because of the Mr. Beggs' qualifications, experience and expertise that the Agency has entered this Agreement. As of the Effective Date of this Agreement, Mr Beggs and his wife, Michele, own 68 percent of Developer. Any voluntary or involuntary change in ownership including, without limitation, any Permitted Transfer and any transfer which would result in persons other than Mr and Mrs. Beggs owning 68 percent of Developer, or in any persons other than Developer owning any part of the Retail Parcels, whether as a partner, shareholder, or otherwise, will be considered a transfer for the purposes of subsection 14.2, and will require consent of the Agency. Notwithstanding the foregoing, the following changes in ownership will be Permitted Transfers unless the transfer will result in Mr and Mrs. Beggs owning less than 51% of Developer or result in a person or entity other than Mr Beggs having management and control of Developer:

14.2.2.1 Transfers of ownership interests resulting from the death of Mr or Mrs. Beggs; or

14.2.2.2 Transferring or assigning ownership interests in trust for the benefit of a spouse, children, grandchildren, or other immediate family members.

**14.2.3 Agency Consideration of Requested Transfer** If Developer submits a proposed transfer to the Agency for review and consideration, the Agency will approve the transfer of the Retail Parcel or an assignment of this Agreement only if the following conditions are met:

**14.2.3.1 Transferee Qualifications.** The proposed transferee demonstrates to the Agency that, in the Agency's sole judgment, the proposed transferee demonstrates sufficient financial strength and business experience in planning, financing,

development, ownership, and operation of similar projects to complete Developer's construction requirements and/or to provide first class management for the shopping center

**14.2.3.2 Assignment and Assumption Agreement.**

Any transferee must sign a recordable assignment and assumption agreement, in form and substance satisfactory to the Agency's legal counsel. The transferee, for itself and its successors and assigns, will expressly accept the transfer and assume all the unfulfilled or ongoing obligations of the Developer under this Agreement. The Developer will submit to the Agency for review all documents proposed to effect any such transfer. Except as specifically required in Section 15, this paragraph will not apply to a Security Financing Interest taking title to Parcels at foreclosure or by a deed in lieu of foreclosure.

Developer will deliver to Agency all information the Agency may request to decide whether it will approve the proposed assignment or transfer. Agency will approve, conditionally approve, or disapprove a request for assignment or transfer as soon as possible. Developer will reimburse Agency for its actual, reasonable, out-of-pocket expenses (including attorneys' fees for in-house or outside counsel) incurred in investigating a proposed assignee's or transferee's qualifications.

In the absence of specific written agreement by the Agency to do so, the Agency's approval of a transfer, assignment, or sale under this subsection will not relieve the Developer or any other party from any unfulfilled or ongoing obligations of Developer under this Agreement.

**14.2.4 Construction of this Subsection 14.2.** The provisions of this subsection 14.2 shall be liberally interpreted to accomplish the purposes set forth in subsection 14.2 above.

**15 SECURITY FINANCING AND RIGHTS OF HOLDERS.**

**15.1 Encumbrances Only for Development Purposes.** Notwithstanding any other provision of this Agreement, Developer may not grant a security interest in the Retail or Fast Food Parcels before the Agency issues and records a Release of Construction Covenants. This prohibition does not apply to a Security Financing Interest securing the construction and permanent financing set forth in the approved Financing Plan or to secure construction or permanent financing for business improvements on the Fast Food Parcel.

Before Developer begins construction on any Retail or Fast Food Parcel, Developer will notify the Agency of any proposed Security Financing

Interest, and will give the Agency copies of the documentation for the financing. The words "mortgage" and "deeds of trust," as used herein, include all other methods of financing real estate acquisition, construction and development.

**15.2 Holder Not Obligated to Construct.** The holder of any Security Financing Interest is not obligated to perform Developer's construction obligations, or to guarantee construction of Developer Improvements, whether under this Agreement or any Grant Deed. However, any holder of a Security Financing may not devote the Retail or Fast Food Parcels to any use, and may not construct any improvements on the Parcels, except as authorized by this Agreement.

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

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

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

**15.5 Right of Agency to Cure.** If (a) the Developer defaults under a Security Financing Interest before completing the Developer Improvements, and (b) the holder does not assume Developer's construction obligations, then the Agency may cure the default before foreclosure. If the Agency cures the default, Developer will reimburse the Agency on demand for all costs and expenses it incurs to cure the default. The Agency may lien the Retail and Fast Food Parcels to the extent of such costs and expenses. Any lien will be subordinate to any Security Financing Interest created for the sole purpose of obtaining funds to purchase and develop the Retail and Fast Food Parcels, as authorized in this Agreement.

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

**15.7 Holder to be Notified of Provisions.** Before Developer grants any Security Financing Interest in any parcel, Developer will cause the holder of a Security Financing Interest to insert or incorporate the provisions of this Section 15 into the documents evidencing the Security Financing Interest, or to acknowledge the provisions in writing

## **16 INSURANCE, BONDS, AND INDEMNIFICATION.**

**16.1 Performance and Payment Bond.** See requirements set forth in subsection 7.7 hereof

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

**16.2.1 Commercial General Liability** insurance, including contractual, products and completed operations coverages, owner's and contractor's protective, and explosion, collapse, underground hazard coverage, and bodily injury and property damage, with combined single limits of not less than \$3,000,000 per occurrence.

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

**16.2.3 Workers' compensation** insurance as required under the California Labor Code.

The above described policies of insurance will be endorsed to provide an unrestricted 30-day notice in favor of the Agency, of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy which will provide a ten-day notice of cancellation, change, or reduction of coverage. **If any policies are due to expire during the term of this Agreement, the Developer will provide a new certificate evidencing renewal of the policy not less than 15 days prior to the expiration date of the expiring policy.** When an insurer, broker, or agent issues a notice of cancellation, change, or reduction in coverage, the Developer will file a certified copy of the new or renewal policy and certificates for such policy with the Agency

The General Liability and Fire and Extended Coverage insurance policies will be written on an occurrence basis and will name the Agency, and its respective officers, officials, agents, boards, employees and volunteers as additional insureds. Such policies will be endorsed so the Developer's insurance will be primary and the Agency will not be required to contribute. The Developer will furnish copies of policies to the Agency if the Agency's Risk Manager so requests.

If the Developer fails to maintain the required insurance in effect, Developer will immediately stop all construction work on the Developer Improvements, Agency may declare a default and avail itself of all rights and remedies provided under this Agreement, at law or in equity

If Developer subcontracts all or any portion of its obligations under this Agreement, the Developer will require each subcontractor to provide insurance protection in favor of the Agency, and its respective officers, officials, employees, agents, boards and volunteers as required above, except that the subcontractors' certificates and endorsements will be on file with the Developer and Agency before the subcontractor begins any work.

### **16.3 Indemnification.**

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

the willful misconduct of the Agency or any of its respective officers, officials, employees, agents, boards or volunteers.

The foregoing indemnity shall apply, but is not limited to the following: (i) any act, error or omission of the Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Agreement, Developer Improvements, the Project or the Site; (ii) any use of the Site, the Project, or the Retail or Fast Food Parcels by the Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives; (iii) the design, construction, operation or maintenance of the Retail or Fast Food Parcels or Developer Improvements, or any portion thereof, or related improvements; or (iv) failure by Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives, to comply with any Federal, State or local law, code, ordinance or regulation applicable to this Agreement, the Developer Improvements, or the Project.

**16.3.2 Indemnification by Contractors or Subcontractors.** If the Developer subcontracts any work to be performed under this Agreement, the Developer shall require each subcontractor to indemnify, hold harmless, and defend the Agency and each of its officers, officials, employees, agents, boards, and volunteers according to the terms of the preceding paragraph.

**16.3.3 Physical Condition of Property** Developer shall indemnify, defend, protect, and hold Agency, and its officers, officials, employees, agents, boards, consultants and representatives, harmless from and against any liability, loss, damage, cost, and expenses (including attorneys' fees and court costs) arising from or related to any action, suit, claim, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities, and expenses, which concern or in any way relate to the physical condition of the Retail or Fast Food Parcels existing on or after the Closing. However, the foregoing indemnity obligations shall not cover any claims to the extent caused solely by the active negligence or willful misconduct of Agency or its respective officers, officials, employees, agents, and representatives.

**16.3.4 Action Arising Out of Approval of This Agreement.** Developer will indemnify, defend, and hold Agency harmless from any judicial action, filed against the Agency by any third party, arising out of Agency's approval of this Agreement. Agency will promptly notify Developer of the action. Within 15 days after receipt of the notice, Developer shall notify Agency either that Developer has elected to terminate this Agreement (in which event no party shall have any further rights or obligations hereunder), or that Developer has elected to indemnify, defend, protect, and hold Agency harmless with respect to such action. If Developer elects to indemnify, defend, protect, and hold Agency harmless, Agency shall



cooperate with Developer in the defense of the action (at no cost to Agency). While Developer is not in default hereunder, Agency shall not compromise the defense of such action or permit a default judgment to be taken against Agency without Developer's prior written approval. Developer's failure to timely notify Agency of Developer's election under this subsection shall be deemed an election to terminate this Agreement.

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

## **17 AGENCY ECONOMIC ASSISTANCE**

**17.1 Availability of Funds.** The Agency's performance hereunder is contingent on Available Funds, and on the Council's authorization for the Agency to use the funds for the purposes stated herein. If the Agency is unable to appropriate funds to fulfill its obligations and it has not conveyed the Retail and Fast Food Parcels to Developer, the parties may terminate this Agreement. After that the Agency will not be obligated to provide the assistance. If funds are initially appropriated, but are after that stopped or withheld, the Agency will not be obligated to continue to perform. If the Agency has conveyed the Retail and Fast Food Parcels to Developer, and funds are made unavailable without the fault of the parties, the unavoidable delay provisions of this Agreement will apply, and the parties will meet and confer to resolve the matter

**17.2 Books and Records.** Developer will establish and maintain, for five-years after the Agency issues the Release of Construction Covenants, records and accounts on the affected parcels, and their development, according to generally accepted accounting principles and applicable laws, rules, and regulations. The Agency at its cost, has the right with 24 hours' notice to inspect and copy Developer's records, books, and documents related to the developer's obligations hereunder. Not more frequently than annually, the Agency at its cost has the right, but not the obligation, to audit the Developer's books and records regarding construction costs, and the proceeds from any sale or refinancing.

## **18 DEFAULTS AND REMEDIES.**

**18.1 Default.** Subject to extensions of time permitted herein, either party's failure to perform within the time allotted, following notice and failure to cure, will constitute a "Default" under this Agreement. Except as otherwise provided herein, the party who claims a default will give notice of default to the other party specifying the default. The Claimant may not institute any proceeding against the other party, and the other party will not be in Default if the other party cures the default within the cure period.

**18.2 Termination Before Conveyance of the Retail and Fast Food Parcels.** The following events will permit either party who is not then in Default of this Agreement to terminate this Agreement, without the fault of the other party, if the Agency has not conveyed any Parcels to Developer:

18.2.1 Developer, despite good faith efforts, is unable to obtain the loan commitments and financing within the time permitted; or

18.2.2 The Agency, despite good faith efforts, is unable to acquire the Acquisition and City Parcels or so many thereof as the parties may agree are necessary to proceed with the Project; or

18.2.3 The Agency, despite good faith efforts, is unable to appropriate funds for the Agency Improvements and obligations under this Agreement; or

18.2.4 Either party, despite good faith efforts, is unable to satisfy any of the conditions precedent to conveyance.

Upon the happening of any of the above-described events, and the notice and cure period, either party may terminate this Agreement by five days' notice to the other party, and this Agreement will terminate following the expiration of the five days.

**18.3 Termination by the Developer Before Closing.** The Developer may elect to terminate this Agreement before Closing by giving the Agency a five day notice if the Developer is not then in Default and any of the following occur: (a) the Agency does not tender title to or possession of the Retail and Fast Food Parcels as provided herein, (b) any condition precedent to Closing which benefits Developer is not satisfied, the failure is not caused by the Developer, and Developer does not waive the condition, (c) a Default of the Agency before Closing.

Upon the expiration of the five days, this Agreement will terminate and the parties will have no further rights or obligations hereunder except to pursue any remedies they may have. The following events, without limitation, after Developer has given the Agency notice and opportunity to cure, will be a Default by the Agency permitting the Developer to terminate this Agreement before Closing:

18.3.1 The Agency fails to convey the Retail or Fast Food Parcels after the Agency acquires the agreed parcels for the Project, the Parcel Map is recorded and the parties have satisfied all conditions to conveyance or the benefitting party waives the conditions in writing; or

18.3.2 The Agency fails to give the Developer timely approval or disapproval of the Financing Plan, or other documents necessary to Developer's performance; or

18.3.3 The Agency breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the Developer will notify the Agency of the default. The Agency will have 30 days after receiving the notice to cure the default. If the Agency does not cure the default within the 30 days, or if the default cannot be cured within the 30 days, and the Agency fails to begin to cure within the 30 days and after that complete the cure, the Developer will be entitled to any rights or remedies available to it. The parties do not intend this provision to modify or extend any other notice or time to cure specifically provided for in this Agreement.

**18.4 Termination by the Agency Before Issuing the Release of Construction Covenants.** If the Agency is not then in Default, the Agency may elect to terminate this Agreement before issuing the Release of Construction Covenants by giving the Developer a five-day notice, if any of the following occur: (a) the Developer assigns or attempts to assign this Agreement or any rights herein or in the Retail or Fast Food Parcels in violation of this Agreement, (b) any condition precedent benefitting the Agency before Closing is not satisfied or is not waived in writing by the Agency within the time for satisfaction and the failure is not caused by the Agency, (c) Developer is in Default of this Agreement. Upon the expiration of the five days, this Agreement will terminate and the parties will have no further rights or obligations hereunder except to pursue any remedies they may have. The following events, without limitation, after the Agency has given the Developer notice and opportunity to cure, will be a Default by the Developer permitting the Agency to terminate this Agreement before it has issued the Release of Construction Covenants:

18.4.1 The Developer, despite good faith efforts by the Agency and Developer, is unable to obtain approval of its preliminary or final construction plans within the time provided in the Schedule of Performance; or

18.4.2 The Developer, despite good faith efforts, is unable to obtain the permits and approvals necessary to begin or complete its construction obligations in substantial compliance with the approved final construction plans; or

18.4.3 The Developer fails to submit preliminary plans or final construction plans or similar documents to the Agency and to obtain the Agency's approval as set forth in this Agreement and the Schedule of Performance;

18.4.4 The Developer fails to submit to the Agency, or to obtain Agency approval of, any of the following as set forth herein: (a) the Financing Plan, (b) the evidence of Developer's Equity Requirements, (c)

the construction contract(s), (d) the performance and payment bonds, (e) or the certificate of readiness and completion guarantee; or

18.4.5 The Developer refuses for any reason (including, but not limited to, lack of funds) to accept conveyance of the Retail or Fast Food Parcels from the Agency; or

18.4.6 The Developer does not attempt in good faith to timely procure a building permit or any other permits or approvals for its construction obligations, or if Developer abandons any further attempts when reasonable likelihood exists that the relevant agency would otherwise timely issue the permit or approval; or

18.4.7 The Developer fails to begin or complete construction as set forth in this Agreement; or

18.4.8 The Developer abandons or suspends construction for 30 days without Agency consent; or

18.4.9 The Developer voluntarily or involuntarily assigns, or transfers rights or obligations under this Agreement, or in any Retail or Fast Food Parcels, except as permitted by this Agreement, or attempts to do so; or

18.4.10 A change occurs in the ownership of, or in the parties controlling, the Developer, or Developer's assignees or successors without the Agency's approval as required herein; or

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

18.4.12 The Developer defaults under the Public Parking Agreement.

Upon the happening of any of the above-described events, the Agency will notify the Developer of the breach. Developer will have 30 days after receiving the notice to cure the breach or failure. Developer must cure the default within the 30 days or, if the default cannot be cured within 30 days, the Developer must begin the cure within that time and after that timely complete the cure. If the Developer does not timely cure the default, the Agency may pursue any rights or remedies available to it. The parties do not intend this provision to extend or modify any other notice or cure period specifically provided for in this Agreement.

**18.5 Application of Remedies.** Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties are cumulative, and the

exercise by a party of one or more of its rights or remedies will not preclude the exercise of any other right or remedy

**18.6 Recovery of Costs.** If the Agency acquires the Retail and Fast Food Parcels and offers to convey, but through any fault of Developer, Developer does not take title to and develop the parcels, Developer will reimburse the Agency for its preconstruction and eminent domain costs for the parcels.

**18.7 Institution of Legal Actions.** In addition to any other rights or remedies, either party may bring an action at law or in equity to seek specific performance under this Agreement, or to cure or remedy any Default, or to recover any damages for Default, or to obtain any other remedy consistent with the purpose of this Agreement. Any legal action will be brought in Fresno County, in the appropriate state or federal court.

**18.8 Right of Reverter (Power of Termination).** If either party terminates this Agreement after Closing, or if the Developer or any successor in interest to Developer shall do any of the following after Closing and before the Agency issues the Release of Construction Covenants for the Retail and Fast Food Parcels, the Agency may re-enter and take possession of one or more of the Retail or Fast Food Parcels with all improvements thereon, and revert in the Agency the estate it conveyed to the Developer:

18.8.1 Fails to start construction of the Developer Improvements as required by this Agreement for 30 days after the Agency gives notice of the failure;

18.8.2 Abandons or substantially suspends construction of the Developer Improvements for 30 days after the Agency gives notice thereof;

18.8.3 Transfers or suffers any involuntary transfer of any parcel in violation of this Agreement.

The Developer will cooperate with the Agency in such reentry, possession, termination and reversion. The Agency is conveying the Retail and Fast Food Parcels to Developer at a nominal or discounted price for redevelopment only, and not for land speculation. The Agency's rights of reverter in this Section 18.8 are to be interpreted considering that fact.

The Grant Deed will contain a reference and provision giving effect to the Agency's right of reverter

**18.8.4 Effect on Security Financing Interests.** The rights granted in this subsection 18.8 are subject to and will not defeat, or limit the following:

18.8.4.1 Any Security Financing Interest permitted by this Agreement; or

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

18.8.5 **Resale of Site.** Upon regaining title to any parcels, the Agency will use its best efforts to resell the parcels, with or without the Public Parking Parcel, to a qualified and responsible party, as determined by the Agency. The party will assume Developer's obligations hereunder and agree to use the property as specified in the Plan and as the Agency agree.

18.8.6 **Distribution of Proceeds of Resale.** Upon such resale of the Retail or Fast Food Parcels or any portion thereof the Agency will apply the sales proceeds as follows.

18.8.6.1 **Proceeds to Agency.** First to reimburse the Agency all costs and expenses it incurred in connection with the Project. Such reimbursable costs will include, without limitation, the following: (a) its preconstruction costs for the Project, (b) if the sale includes the Public Parking Parcel, the Agency's costs to construct the improvements thereon, and any net profit attributable to the Public Parking Parcel, (c) salaries and legal fees incurred in recapturing, managing, and reselling the parcels and, if applicable, the Public Parking Parcel, less any net income the Agency derives from its management of the property, (d) all taxes and assessments payable before the resale, (e) any payments the Agency makes to discharge encumbrances on the property when it retakes title, or to discharge or prevent any subsequent encumbrances arising from Developer's obligations, defaults, or acts, (f) any expenditures the Agency may incur to complete the Project, but excluding the Police Substation and the Police Substation Parcel, and (g) any amounts that Developer otherwise owes the Agency

18.8.6.2 **Damages to Agency.** Second, to reimburse the Agency for damages to which it is entitled under this Agreement because of the Developer's Default.

18.8.6.3 **Site Acquisition.** Third, to the Agency and/or the City for costs of acquiring the parcel.

18.8.6.4 **To Developer.** Fourth, to reimburse the Developer up to the amount equal to:

(a) The payment made to the Agency for the parcel retaken and sold; plus

(b) the lesser of the costs incurred to develop the parcel and improvements then existing on it or the fair market value of the parcel and the improvements Developer has placed on it; less

(c) Any gains or income Developer has withdrawn or made from the parcel, or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection 18.8.6.4 will not exceed the fair market value of the parcels or applicable portion thereof, and the improvements thereon as of the date of the Default which led to the Agency's exercise of the right of reverter

18.8.6.5 The Agency will retain, as its property, any balance remaining after such reimbursements.

**18.9 Option to Repurchase, Reenter and Repossess.** The Agency will have the additional right, at its option, to cease acquiring Acquisition Parcels and conveying Retail and Fast Food Parcels to Developer, and to repurchase, reenter and take possession the parcels, with all improvements thereon, if after Closing and before the Agency issues the Release of Construction Covenants for the Parcels, the Developer

18.9.1 **Failure to proceed.** Fails to begin or continue constructing the improvements according to the Schedule of Performance, and the failure continues for 30 days after the Agency gives notice of the failure to Developer; or

18.9.2 **Abandonment or suspension of construction.** Abandons or substantially suspends construction of the improvements, once begun, and fails to restart construction within 30 days after the Agency gives notice; or

18.9.3 **Failure to Meet Schedule.** Substantially fails to meet the time requirements in the Schedule of Performance, and fails to cure within 30 days after the Agency gives notice; or

18.9.4 **Transfer Without Agency Consent.** Transfers or suffers any involuntary transfer (including one in bankruptcy) of any parcel in violation of this Agreement.

The Agency's right to repurchase, reenter and repossess, is subject to and will not defeat or limit the following:

- (a) Any Security Financing Interest permitted by this Agreement;  
or
- (b) Any rights or interest in this Agreement to protect the holder of Security Financing Interests.

To exercise its right to repurchase, reenter and take possession of parcels, the Agency will pay cash to the Developer in an amount equal to: (a) The purchase price paid by Developer to the Agency for the parcels, and (b) the fair market value of the improvements existing on the parcels at the time of the repurchase, reentry and repossession, less (c) any gains or income withdrawn or made by the Developer from the parcels or the improvements thereon, less (d) the value of any liens or encumbrances on the parcels which the Agency assumes or takes subject to.

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

**19 MISCELLANEOUS PROVISIONS.**

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

**AGENCY:**

Redevelopment Agency of the City of Fresno  
2344 Tulare Street, Suite 200  
Fresno CA 93721  
Attention: Executive Director  
Facsimile No. (209) 498-1870



**WITH COPIES TO:**

City Attorney as Ex-Officio Attorney  
for the Redevelopment Agency  
2600 Fresno Street, Room 2031  
Fresno CA 93721-3602  
Facsimile No.: (209) 488-1084

**DEVELOPER:**

KEARNEY PALMS, LLC  
Attention: Thomas W Beggs  
C/o Fortune Associates  
1195 West Shaw Avenue, Suite C  
Fresno, California 93711  
Facsimile No. (209) 228-2720

**WITH COPIES TO:**

Motschneider, Michaelides & Wishon, LLP  
1690 West Shaw Avenue, Suite 200  
Fresno, CA 93711  
Attention: James McKelvey, Esq.  
Facsimile No.: (209) 439-5654

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

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

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

**19.4 Unavoidable Delay** No party will be in default where delays or defaults are due to war, insurrection, strikes, lock outs, riots, floods, earthquakes, fires, freight embargoes, court order, or any other similar causes beyond the control

and without the fault of the party claiming an extension of time to perform. A party claiming an unavoidable delay must give notice to the other party within 10 days after the cause for delay begins. After that, the parties may extend the time for performance by a writing signed by both parties. This provision does not apply to delays in Developer's construction obligations which this Agreement specifically covers elsewhere.

**19.5 Provision Not Merged with Deeds.** The parties do not intend for any provisions of this Agreement to, and none of its provisions will, merge into the Grant Deeds upon recording.

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

**19.7 Waiver.** 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.

**19.8 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.

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

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

**19.11 Binding Upon Successors.** Subject to the limitations on Developer's transfer of this Agreement and the parcels, this Agreement is binding upon and inures to the benefit of the heirs, administrators, executors, successors in interest

and assigns of each party Any reference in this Agreement to a specifically named party applies to any successor, heir, administrator, executor, or assign of that party who acquires an interest according to the terms of this Agreement or under law

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

**19.13 Nature of the Developer's Obligations.** Developer's obligation hereunder to complete the Developer Improvements is a private undertaking. After the Agency conveys title or possession of the Retail or Fast Food Parcels to Developer, the Developer will have exclusive control over the parcels, subject to the terms of this Agreement, the Plan, the Law and all other applicable Federal, State and local laws, ordinances, codes, regulations, standards and policies. By entering and performing this Agreement, the Agency does not approve or endorse the Project except to carry out the redevelopment purposes, goals, policies and objectives of the Plan and the Law

**19.14 Entire Understanding of the Parties.** This Agreement, includes the exhibits and attachments referenced herein and the Grant Deeds. It is the entire understanding and agreement of the parties regarding the subject matter in this Agreement, except for matters covering the Public Parking Parcel, which are covered in the Parking Agreement. This Agreement supersedes all prior discussions, understandings and agreements, oral or written. Each party enters this Agreement solely on the representations herein and on its own independent investigation of the facts each deems material.

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

**19.16 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 would require otherwise.

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

**19.18 Not a Public Dedication.** Nothing herein contained is a gift or dedication of the Site, or any part of it to the public, for the public, or for any public uses at all. The use of the Public Parking Parcel is governed by the Parking Agreement. Developer has the right to prevent or prohibit the use of the Retail or Fast Food Parcels or parts of them, including common areas, buildings and improvements thereon, by any person for any purpose consistent with applicable laws.

**19.19 Good Faith and Fair Dealing.** Nothing in this Agreement limits a party's right to exercise its judgment or to act subjectively when this Agreement specifically grants the right to act in its sole discretion or sole judgment, whether or not such exercise is "objectively" reasonable under the circumstances. Such exercise will be consistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this Agreement.

**19.20 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.

**19.21 Terminology** The words "including," "such as," or similar words follow a general term, statement or matter, the words do not limit the statement, term, or matter to specific items or matters, whether words of nonlimitation, such as "without limitation" or "but not limited to," follow or accompany the words. Instead these words will refer to all other items or matters that could fall within the broadest possible scope of the statement, term, or matter

**19.22 Third Party Beneficiaries.** The parties do not intend anything in this Agreement to create any third party beneficiaries to this Agreement. No person or entity, other than the Agency and Developer, and their permitted successors and assigns, will be authorized to enforce the provisions of this Agreement.

**19.23 Governing Law and Venue.** California laws will govern this Agreement and its construction or enforcement. 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.

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

**19.25 Interpretation.** The parties acknowledge that 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, such ambiguity will be resolved by construing the terms of this Agreement according to their generally accepted meaning. Masculine, feminine or neuter gender terms and singular or plural numbers will include others when the context so indicates. The word "including" will be construed as followed by the words "without limitation" or "but not limited to." If the content or term of any exhibit made a part of this Agreement, is inconsistent with the provisions of this Agreement, the provisions of this Agreement will prevail over the inconsistent exhibit.

**19.26 Time of Essence.** The parties expressly make time of the essence respecting each party's respective performance under this Agreement.


**19.27 Computation of Time.** The parties will compute the time within which a party is complete an act by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday, Saturday, or Sunday, in which case the parties will also exclude the last day

**19.28 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 Parking Agreement and all related agreements or documents.

**19.29 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.

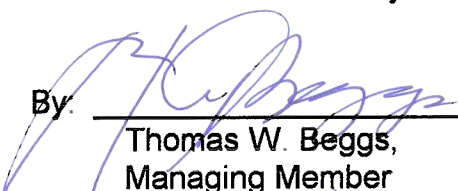
WHEREFORE, the parties have signed this Agreement on or as of the dates set forth below.

**REDEVELOPMENT AGENCY OF THE  
CITY OF FRESNO**

By:   
\_\_\_\_\_  
Daniel R. Fitzpatrick,  
Executive Director

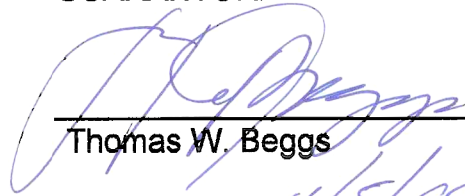
Dated: 11/13/98

**KEARNEY PALMS, LLC,**  
a California limited liability company

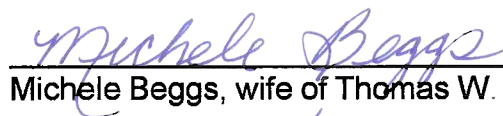
By:   
\_\_\_\_\_  
Thomas W. Beggs,  
Managing Member

Dated: 11/5/98

GUARANTOR.

  
\_\_\_\_\_  
Thomas W. Beggs

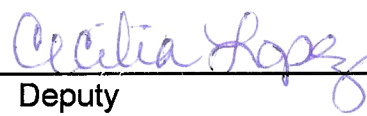
Dated: 11/5/98

  
\_\_\_\_\_  
Michele Beggs, wife of Thomas W. Beggs

Dated: 11/5/98

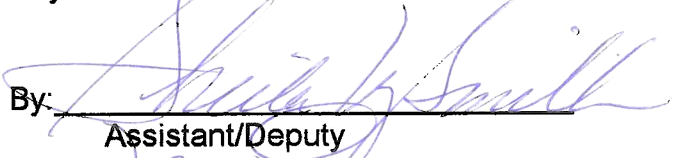
**THE ABOVE PARTIES ARE TO SIGN THIS AGREEMENT BEFORE A NOTARY PUBLIC.  
NOTARY ACKNOWLEDGMENTS ARE ATTACHED FOR CONVENIENCE.**

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

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

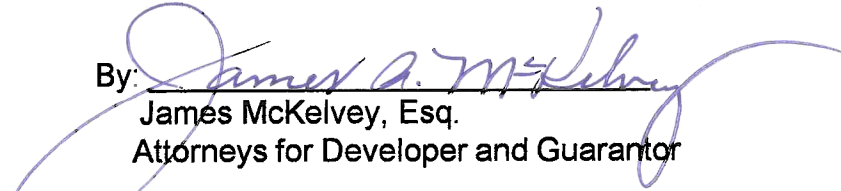
Dated: November 13, 1998

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

By:   
\_\_\_\_\_  
Assistant/Deputy

Dated: November 13, 1998

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

By:   
\_\_\_\_\_  
James McKelvey, Esq.  
Attorneys for Developer and Guarantor

Dated: NOVEMBER 13, 1998

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of CALIFORNIA

County of FRESNO

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

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

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



WITNESS my hand and official seal.

*Louis J. Steck*  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

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

**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: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

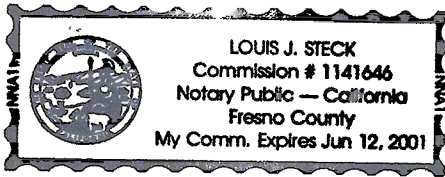
State of California

County of Fresno

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

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

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



WITNESS my hand and official seal.

Louis J. Steck  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

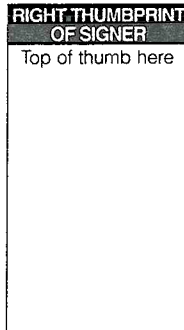
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

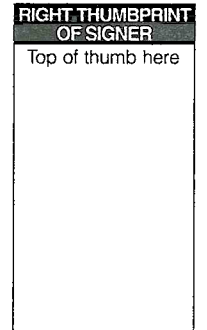
- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_



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# SITE PLAN

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[3 Pages]

Exhibit "A"





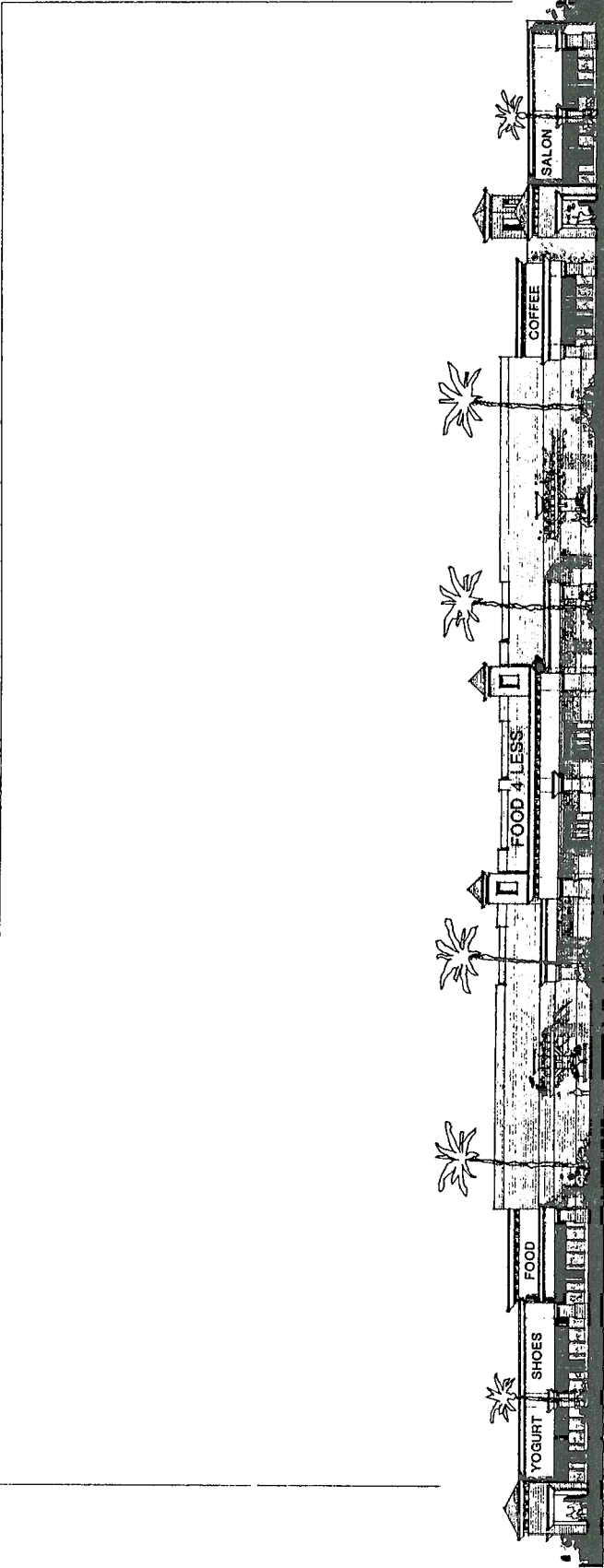
**S I A**  
**ARCHITECTS**  
 1010 10TH AVENUE  
 SUITE 1000  
 DENVER, COLORADO 80202  
 (303) 733-1000  
 FAX (303) 733-1001

**PROJECT**  
**KEARNEY PALMS SHOPPING CENTER**

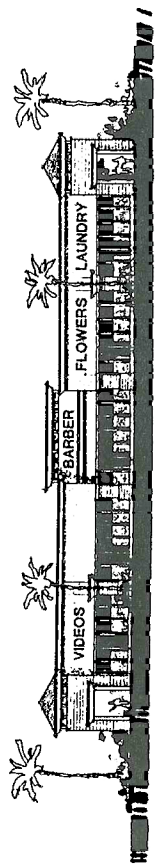
1010 WEST CLAYTON  
 DENVER, CO 80202

FOO - CENTRAL CITY  
 CO - 10TH AVENUE  
 DENVER, CO 80202

DATE: 10/11/00  
 DRAWN BY: J. L. ...  
 CHECKED BY: ...



**SOUTH ELEVATION**



**BUILDING 1 WEST ELEVATION**  
**KEARNEY PALMS SHOPPING CENTER**

**Exhibit "A"**  
**Page 3 of 3**

**ELEVATIONS**

SCALE: AS SHOWN	DATE: 10/11/00
PROJECT: KEARNEY PALMS SHOPPING CENTER	DRAWN BY: J. L. ...
CHECKED BY: ...	DATE: 10/11/00
<b>A2</b>	

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## LEGAL DESCRIPTION OF PROPERTY

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Parcels A through J, inclusive of Parcel Map No. 97-16, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book \_\_\_ at page \_\_\_\_ of Parcel Maps, Fresno County Records.

### ASSESSOR'S PARCEL NUMBERS:

465-136-01, 02, 03, 04, 05, 06, 07, 08, 09, 10 & 11

465-173-01

467-104-01, 02, 03, 04, 05, 06, 07, 08, 09, 10 & 11

467-151-01, 04, 05, 06, 07, 08, 09, 10, 11, 12, 15, 16, 17, & 18

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

Fresno Redevelopment Agency  
2600 Fresno Street, Room 2031  
Fresno, California 93721-3602  
Attention: City Attorney

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This **Release of Construction Covenants** is recorded at the request and for the benefit of the Fresno Redevelopment Agency and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

FRESNO REDEVELOPMENT AGENCY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

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## Release of Construction Covenants

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### Recitals:

- A. By a Disposition and Development Agreement (the "Agreement") dated \_\_\_\_\_, 1998, between the FRESNO REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and KEARNEY PALMS LLC, a California limited liability company ("Developer"), Developer agreed to redevelop the real property legally described in Exhibit "A" hereto (the "Property") according to the terms and conditions of the Agreement.
- B. The Agreement or a memorandum of it was recorded on \_\_\_\_\_, 1998, as Instrument No. \_\_\_\_\_ in the Official Records of Fresno County
- C. Under the terms of the Agreement, after Developer completes all construction work on the Property, Developer may ask the Agency to record a Release of Construction Covenants.
- D. Developer has asked Agency to furnish Developer with a recordable Release of Construction Covenants.
- E. The Agency's issuance of this Release is conclusive evidence that Developer has complied with the construction terms of the Agreement that pertaining to the Property

### NOW THEREFORE

1 Agency certifies that Developer has completed the redevelopment construction on the Property, and has done so in full compliance with the Agreement.

2 This Release of Construction Covenants is not evidence of Developer's compliance with, or satisfaction of, any obligation to any mortgage holder, or any mortgage insurer, securing money lent to finance construction work on the Property, or any part of it. Nothing contained herein modifies any provision of the Agreement.

IN WITNESS WHEREOF, Agency has executed this Certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

FRESNO REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Executive Director

KEARNEY PALMS LLC, a California limited liability company, the owner of record of the Property, now consents to recording this Release of Construction Covenants against the Property described herein.

Dated: \_\_\_\_\_

KEARNEY PALMS LLC,  
a California limited liability company

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

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



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## SCHEDULE OF PERFORMANCE

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[4 Pages]

Exhibit "D"

## SCHEDULE OF PERFORMANCE

### Conditions Precedent to Agency Obligations.

1. Submission-Evidence of Certain Documents.

The Developer shall submit to the Agency necessary documents and evidence of the Existence and Authority of Developer, signed Guaranty, have met Equity Requirements, Loan Commitments, Leases from Major Tenants, Fast Food Parcel Sales/Purchase Agreement, Credit Reports and Financial Statements; and Developer and Agency have entered into the Parking Agreement.

1. Within 45 days after Council approves the DDA, or by the time stated.

### Conditions Precedent to Developer's Obligations.

2. Submission-Prior to Executing DDA.

Agency has identified and appropriated Available Funds sufficient to complete its obligations; Agency and City have entered into an Agreement for Police Substation and Cooperation Agreement; and Developer and Agency have entered into the Parking Agreement.

2. Within 45 days after Council approves the DDA, or by the time stated.

3. Condition of Title.

Agency and Developer shall review a standard preliminary title report and shall approve the condition of title of any Acquisition Parcel. Developer, within 15 business days of receiving the Report, shall deliver notice to any objections to Exceptions.

3. Developer to object within 15 days from receipt of the Report to object to any Exceptions

### Conditions Precedent to the Agency's Obligations to Acquire Any Part of the Site.

4. Satisfaction of Conditions in Section 2.

The Developer and Agency shall satisfy or Agency may waive the conditions in Section 2 of the DDA.

4. Within 45 days after Council approves the DDA, or by the time stated.

5. Financing Plan.

Developer has submitted its Financing Plan to the Agency, and Agency's Executive Director shall approve or disapprove the Plan solely to confirm that Developer has or will have the financial resources to complete the Developer Improvements.

5. Agency review within 30 business days after receiving the Financing Plan.

## SCHEDULE OF PERFORMANCE

### Developer's Predisposition Activities and Due Diligence.

6. Developer's Inspection and Access to Retail Parcels.

Before the Agency conveys the Retail Parcels, AS IS, to Developer, the Developer shall be solely responsible, at its expense to complete its due diligence on the Retail Parcels.

6. Within 30 days after the Effective Date of this Agreement or within 30 days after the Agency acquires title or possession to any Retail Parcel, whichever is earlier.

### Conditions Precedent to the Agency's Obligation to Convey or Deliver Possession of Parcels.

7. Satisfaction of Conditions Prior to Conveyance.

The Agency has obtained irrevocable rights to acquire or possess the Acquisition or City Parcels; Developer's construction Lender has opened an escrow that will close concurrently with the Closing for the first Escrow; the final Parcel Map is approved and recorded to create the Retail, Fast Food, Parking and Police Substation Parcels.

7 Before the Agency is obligated to convey or deliver possession of the Retail and Fast Food Parcels to Developer.

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

Agency shall notify Developer and Developer shall certify that no financial or other event has occurred that would impair conveyance and is ready, willing and able to meet its obligations under the DDA.

8 Prior to or concurrently with the close of the escrow(s).

9. Performance and Payment Bonds; Completion Guarantee; Evidence of Insurance.

Developer shall deliver labor and material bonds and performance bonds issued by an insurance company equal to at 100% of Developer's estimated construction costs shown in the Developer's Site Work Schedule and deliver a Contractor's Completion Guarantee and submit Evidence of Insurances.

9. Prior to or concurrently with the close of the escrow(s).

## SCHEDULE OF PERFORMANCE

10. Joint Instructions for Sale Proceeds of Fast Food Parcels and the Currie Bros. Parcels.  
Agency and Developer shall sign joint instructions to the lender/Escrow Holder regarding the deposit, use and disbursement of the net sale proceeds.

### Disposition of Retail and Fast Food Parcels.

11. Opening Escrow.  
After the Agency acquires the Site or so much of it as the parties may agree, and within five business days after receiving Developer's notice to proceed, the parties shall establish an Escrow to accomplish the sale and purchase of the Retail and Fast Food Parcels.

12. Close of Escrow.  
The Agency shall convey title to the Retail and Fast Food Parcels to the developer when the conditions to close are satisfied or waived, and the developer shall accept such conveyance and pay the purchase price therefor.

### Conditions Precedent to Construction

13. Submission of Developer's related Improvement Construction Drawings.  
The Developer shall prepare and submit to the Agency and City, the Developer's development related items as outlined in Section 9.2 of this DDA, for review and approval.

14. Approval of Developer's development related Construction items.  
Agency shall approve or disapprove the Developer's development related construction items in writing.

15. City and Other Governmental Approvals.  
Developer shall obtain any City or other governmental permits or approvals necessary for Developer to complete the Developer Improvements.

10. At the opening of Escrow, or upon Developer receiving final construction loan approval, whichever occurs first.

11. After Agency has acquired the Site or so much of it as the parties may agree, and within five business days after receiving Developer's notice to proceed with the sale and purchase of the Retail and Fast Food Parcels.

12. December 31, 1999, or sooner if Developer is ready to receive transfer of each Retail and Fast Food Parcel.

13. Within 30 days from the close of escrow for any one of the Retail and/or Fast Food Parcels.

14. Agency review within 30 days of receipt of the Developer's development related construction drawing and plans, et. al.

15. Within 30 days of close of escrow for Developer's purchase of any Retail or Fast Food Parcel.

## SCHEDULE OF PERFORMANCE

### Developer's Construction Obligations.

16. Construction Pursuant to Plans and Scope of Development.

Developer shall begin construction of each Retail Parcel as set forth in Developer's Site Work Schedule.

17. Complete Construction of Food 4 Less and Rite Aid, Burger King (Fast Food Parcel), and other Retail Parcels, Certificate of Completion, Food 4 Less Opens for Business, Completion Deadline.

Developer shall diligently pursue the construction to completion of the Retail and Fast Food Parcels as set forth in the Developer's Site Work Schedule appurtenant thereto and open for business.

16. Developer shall begin construction on each Retail Parcel (a) within 45 days after the Closing for conveyance or the Agency delivers possession of any one Retail Parcel to Developer; or (b) within 30 days after the City issues a building permit.

17 Developer shall complete all its construction obligations not later than December 31, 1999.

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## **SCOPE OF DEVELOPMENT**

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The proposed project is a unified planned neighborhood shopping center known as the “Kearney Palms Shopping Center”, bounded by Fresno Street on the south, “B” Street on the west, Tuolumne Street on the north, and Highway 99 on the east. The site consists of 34 parcels containing an area of approximately 12 acres.

The proposed shopping center will contain approximately 108,000 square feet of building area. The Developer will construct the proposed site pads (8 pads) of the center which will include a 49,950 square-foot grocery store; a 16,700 square-foot drug store with drive-up window; a 3,820 square-foot fast-food restaurant with drive-up window; and the remaining square footage shall contain commercial and/or retail uses typically found in a neighborhood shopping center project.

The Redevelopment of the City of Fresno (the “Agency”) will use best efforts to acquire the parcels and sell part of the site to Kearney Palms LLC (“Developer”) pursuant to the Disposition and Development Agreement (“DDA”). The Agency will after that relocate the tenants or owners as required by law, will clear and grade the parcels for development, and provide on and off-sites, all pursuant to the DDA. In addition, the Agency will construct a public parking lot.

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**GRANT DEED**

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[Six Pages]

Exhibit "F"

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

G R A N T D E E D

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 Disposition and Development Agreement ("DDA") between Grantor and Grantee, dated \_\_\_\_\_, 1998, and recorded concurrently with this Grant Deed, in the

Exhibit F



official records of Fresno County (the DDA and any subsequent amendments are collectively called the "Agreement" in this deed), and by this reference incorporated into this deed; and

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 Promptly begin redevelopment of the Property within, and diligently prosecute the redevelopment to completion by, the times provided in the Agreement. The redevelopment consists generally of a neighborhood shopping center and more specifically consists of the Developer Improvements described in the Agreement. The Developer Improvements are called the "Improvements" in this Deed.

After Grantee completes the Improvements as the Agreement requires, and asks for recordable evidence of the completion, Grantor will furnish Grantee with a recordable Release of Construction Covenants ("Release"), substantially in the form attached to the Agreement as an exhibit. Recording this Release in the Official Records of Fresno County will be a conclusive determination that Grantee has satisfied its obligations, under this Grant Deed and the Agreement, to construct the Improvements. The Release will not be evidence that Grantee has complied with or satisfied any obligations it has to any holder of a mortgage, or any insurer of a mortgage, securing money lent to finance the Improvements, or any part thereof.

3.2 Comply with those conditions, covenants, and restrictions set forth in the Agreement including, without limitation, Sections 12 and 13 of the Agreement. The conditions, covenants, and restrictions shall run with the land for the times and subject to the terms set forth in the Agreement.

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

3.4 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:

3.4.1 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."

#### 3.4.2 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."

#### 3.4.3 In contracts:

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

This Section 3.4 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. Grantee represents that it is purchasing the Property for redevelopment purposes as set forth in the Agreement, and not for land speculation. The Grantee understands that Grantee's qualifications are of particular concern to the community and to the Grantor because of the following:

4.1 The importance of the Property redevelopment to other properties in the Redevelopment Plan, and to the general welfare of the community, particularly to the community objective of eliminating blight and providing additional jobs through effective redevelopment; and

4.2 The discounted purchase price to Grantee and the other public assistance necessary to make the such redevelopment possible; and

4.3 The Grantor's reliance on Grantee's unique qualifications to be a catalyst for developing the Property, and on Grantee's interest in the Property, as assurance that the Property will be redeveloped, used, operated, and maintained with the quality deemed critical by the Grantor; and

4.4 A change in the ownership or control of the Grantee, or a substantial part of Grantee, or an act or transaction that will result in a significant change in ownership of, or the identity of, the persons in control of the Grantee, is a transfer or disposition of the Property and is subject to the limitations set forth in the Agreement; and

4.5 The importance to the Grantor and the community that the redevelopment conforms to the standards of development, use, operation and maintenance of the Property.

It is because of such qualifications and identity that the Grantor has entered the Agreement and signed this conveyance to the Grantee.

**For the above reasons, the Grantee covenants, for itself, its successors and assigns, and anyone claiming by or through them, not to sell, transfer, assign, convey, lease, pledge or encumber the Agreement, the Property, the Improvements, or any part thereof, or to permit a change in its ownership, control, or members in violation of the Agreement. No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this deed or the Agreement, except as expressly set forth in this deed and the Agreement.**

5 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.

6 The covenants in this deed 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 and in 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.

7 If the Agreement is terminated before the Grantor issues the Release of Construction Covenants, the Grantor, at its option, under Section 18.8 of the Agreement, may reenter and take

possession of the Property, or under Section 18.9 repurchase the Property, with all improvements thereon, and to revest title in the Grantor.

The Grantor may institute any action or proceeding it deems desirable to carry out the purposes of this Section 7. Any action includes, without limitation, signing and recording, in the Official Records of Fresno County, a written declaration that Grantee's rights and title, and any rights and title of its successors in interest and assigns, in any part of the Property are terminated, and the title thereto revested in the Grantor. Grantor's delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Section will not result in or do any of the following: (a) waive Grantor's rights, or (b) deprive Grantor of, or limit Grantor's rights in any way. It is the intent of this provision that the doctrines of waiver, laches, or other similar legal principle will not impair or limit Grantor's rights. No waiver by the Grantor with respect to any particular default, will affect Grantor's rights in a subsequent default, or under this deed except to the extent specifically waived.

8 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.

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

IN WITNESS WHEREOF the parties hereto have signed this Grant Deed the \_\_\_\_\_ day of \_\_\_\_\_, 1998.

KEARNEY PALMS LLC,  
a California limited liability company

REDEVELOPMENT AGENCY OF  
THE CITY OF FRESNO

By \_\_\_\_\_  
Thomas W. Beggs, General Manager

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. KLISCH  
Clerk, Ex-Officio

By \_\_\_\_\_

J:\data\rda\swf-ctr\1359sms8DDADEED.Rev1.wpd [October 23, 1998]

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**CONTINUING COMPLETION GUARANTY**

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[Six Pages]

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**CONTINUING COMPLETION GUARANTY**

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TO: REDEVELOPMENT AGENCY OF THE CITY OF FRESNO,  
a public body corporate and politic (the "Agency")

THOMAS W. BEGGS ("Guarantor") guarantees to Agency, or order, on demand, all the obligations of KEARNEY PALMS LLC, a California limited liability company ("Developer"), under that certain Disposition and Development Agreement ("DDA") between Agency and Developer, dated concurrently herewith, and related documents including, without limitation, the Parking Agreement and the Grant Deed. This Guaranty, notwithstanding the date of execution, is effective as of \_\_\_\_\_ 1998.

**RECITALS**

A. Pursuant to the terms of the DDA, the Agency has agreed to assemble, subdivide, and convey to Developer, certain real property as described in the DDA (the "Retail Parcels"). Developer has agreed to construct certain improvements ("Improvements") described in the plans and specifications required by the DDA ("Final Construction Plans") on the Retail Parcels.

B. As a condition to the DDA, the Agency requires Guarantor, as the member of Developer holding that majority equity interest, to guarantee, unconditionally and irrevocably, Developer's completion of the Improvements.

THEREFORE, to induce Agency to enter the DDA, and in consideration of it, Guarantor unconditionally guarantees and agrees as follows:

1 **Guaranty** Guarantor unconditionally guarantees Developer's obligations under the DDA to construct the Improvements. The guaranteed obligations include, without limitation, the following: (a) beginning and completing construction within the time limits set forth in the DDA, (b) constructing the Improvements according to the Final Construction Plans and the provisions of the DDA, without substantial deviation, unless approved by Agency in writing, (c) constructing and completing the Improvements free and clear of mechanic's liens, materialman's liens, and equitable liens; (d) paying all construction costs for the Improvements when due, and (e) keeping the Retail Parcels and Improvements free and clear of all stop notices.

2. **Lien Free Completion.** To evidence Developer's completion of the Improvements, free and clear of liens, Developer shall furnish Agency: (a) (i) a written statement or certificate, signed by Developer's architect, as shown on the Final Construction Plans, certifying, without qualification or exception, that the Improvements are completed, and (ii) a certificate of occupancy, issued by the City of Fresno, for the Improvements, and (iii) either the expiration of the statutory period(s) within which persons may serve and record valid mechanic's liens, materialman's liens, and stop notices, or delivery of valid, unconditional releases of liens and notices from all persons entitled to record the liens or serve the stop notices to Agency; or (b) Agency's receipt of other evidence of lien-free completion as Agency deems satisfactory in its sole discretion.

3. **Obligations of Guarantor Upon Default by Developer** If the Developer does not begin and complete the Improvements as required by the DDA, or if the Developer is otherwise in default of his redevelopment obligations under the DDA, Guarantor will promptly upon demand of Agency do the following: (a) diligently complete construction of the Improvements at Guarantor's sole cost and expense, (b) pay and discharge all claims for labor, material and services furnished in constructing the Improvements, (c) release and discharge all claims of stop notices, mechanic's liens, materialman's liens and equitable liens that may arise concerning the construction of the Improvements, (d) pay when due all interest accrued and principal due on any financing for the construction of the Improvements, (e) pay the Agency the amount of any loss or damage it incurred because of any delay in completing the Improvements; and (f) pay the Agency's reasonable expenses concerning Developer's default including, without limitation, attorneys' fees incurred in enforcing any rights under this Guaranty or in defending or satisfying any claims of third parties arising from delay or disruption in completing the Improvements.

4. **Remedies.** If Guarantor fails to promptly discharge its obligations under this Guaranty, Agency will have the following remedies.

(a) At its option, the Agency may complete any or all of Guarantor's obligations under this Guaranty. Guarantor, upon demand, will pay to the Agency all sums the Agency expends in performing Guarantor's obligations, with interest, at the highest rate permitted by law, from the date Agency pays or performs.

(b) Agency may bring an action to compel Guarantor to perform its obligations under this Guaranty, and to collect compensation for all losses it sustained, with interest at the highest rate permitted by law. Agency may bring an action against Guarantor without first requiring the Developer to perform, or first exhausting any other remedies available to it.

5. **Rights of Agency** Guarantor authorizes Agency, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor,



to: (a) approve modifications to the Final Construction Plans, (b) change the terms or conditions of the DDA, or (c) assign this Guaranty in whole or in part.

**6. Guarantor's Waivers.** Guarantor waives the following defenses to this Guaranty: (a) any defense based on any legal disability or other defense of Developer, any other guarantor, or other person, (b) any defense based on nonliability or limited liability of the Developer, unless nonliability is due to Developer full performance; (c) any defense based on any lack of authority of the officers, directors, partners, members, or agents acting or purporting to act for Developer, (d) any defense based on a defect in the formation of Developer; (e) any defense based on Developer's use of loan or financing proceeds for purposes other than intended by the DDA, or the financing; (f) any defense based on Agency's election of any remedy against Guarantor or Developer or both (see further discussion below), (g) any defense based on Agency's failure to disclose to Guarantor any information concerning Developer's financial condition, or any circumstances bearing on Developer's financial condition, or any other circumstances bearing on Developer's ability to discharge its obligations under any financing arrangement, (h) any defense based on any statute or rule of the law that Guarantor's obligation cannot be greater in amount or more burdensome than the Developer's obligation, (i) any defense based upon Agency's election, in any proceeding begun under the Federal Bankruptcy Code, to apply Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute, (j) any defense based on borrowing money or granting a security interest under Section 364 of the Federal Bankruptcy Code, (k) any right of subrogation, any right to enforce any remedy that Agency may have against Developer, and any right to participate in, or benefit from, any security now or hereafter held by Agency, (l) presentment, demand, protest and notice of any kind, and (m) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement hereof. Guarantor makes the following waiver without limiting the generality of the foregoing waivers, and without limiting any other provision of this Guaranty: Guarantor expressly waives any benefits otherwise available to Guarantor under California Civil Code sections 2809, 2810, 2819, 2839, 2845, 2850, 2899 and 3433, or under California Code of Civil Procedure sections 580a, 580b, 580d and 726.

The defenses waived include, without limitation, the so-called "Grady" defense that, absent this waiver, Guarantor may have if Agency elected to conduct a non-judicial foreclosure sale. Guarantor understands that a nonjudicial foreclosure sale can destroy any right (by operation of California Civil Code sec. 580(d)) to a deficiency judgment against the Developer and, consequently, destroy Guarantor's right of subrogation, reimbursement and/or contribution against the Developer.

**7 Guarantor's Warranties.** Guarantor warrants and acknowledges that: (a) Agency would not enter the DDA but for this Guaranty, (b) Guarantor has reviewed all of the terms and provisions of the DDA and will review the Final Construction Plans and the other appropriate documents, (c) Guarantor has established adequate means of obtaining from sources other than Agency, financial and other information about Developer's

performance of its obligations under the DDA, and Agency has made no representation to Guarantor as to any such matters, (d) the most recent financial statements which Guarantor has delivered to Agency (i) are true and correct, (ii) were prepared according to generally accepted accounting principles consistently applied (or other principles acceptable to Agency), (iii) fairly present the financial condition of Guarantor as of the statement dates, and (iv) no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof; and (e) Guarantor will not, without the prior written consent of Agency, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein, other than in the ordinary course.

**8. Subordination.** Guarantor subordinates all existing and future indebtedness, from Developer to Guarantor, to Developer's obligations to the Agency under the DDA. Guarantor assigns all such indebtedness to Agency as security for, and subject to, this Guaranty. Guarantor agrees to make no claim against the Developer for such indebtedness without first giving the Agency notice. Guarantor will, If the Agency so requests: (a) endorse and deliver all instruments to the Agency that evidence Developer's indebtedness to Guarantor; (b) assign and deliver all security for the indebtedness to the Agency; (c) enforce and collect the indebtedness and hold the proceeds, as trustee for Agency, and pay the proceeds over to Agency, under the DDA, but without reducing or affecting the liability of Guarantor under this Guaranty, and (d) Guarantor will execute, file and record such documents and instruments and take such action as Agency deems necessary or appropriate to perfect, preserve and enforce Agency's rights in and to such indebtedness and any security therefor. If Guarantor fails to take such action, Guarantor authorizes Agency, as attorney-in-fact for Guarantor, to do so in the name of Guarantor. This power of attorney is coupled with an interest and Guarantor cannot revoke the power.

**9. Bankruptcy of Developer.** If Developer files bankruptcy, or any other proceeding, Guarantor will file all such claims in the proceeding that the law requires Guarantor to file to protect Guarantor's interests. Guarantor will then assign all Guarantor's rights under the claim to Agency. If Guarantor does not file any such claim, Guarantor authorizes Agency, as attorney-in-fact for Guarantor, to (a) file the claim in the name of Guarantor; or (b) assign the claim to a nominee and cause the nominee to file the proof of claim in the nominee's name. This power of attorney is coupled with an interest and Guarantor cannot revoke the power. Agency, or its nominee, has the right to accept or reject any plan proposed in the proceeding, and to take any other action that a party filing a claim is entitled to do. Always, the person(s) authorized to pay the claim will pay it to Agency. To that purpose, Guarantor here assigns to Agency all of Guarantor's rights to any such payments or distributions. Nonetheless, Guarantor's obligations under this Guaranty will be satisfied only by cash payments or distributions to the Agency. If Agency receives anything hereunder other than cash, the Agency will hold the same as collateral for amounts due under this Guaranty. Guarantor's obligations under this Guaranty will continue or be reinstated if Developer, Guarantor, or any trustee recovers any payment

or performance from the Agency under the Bankruptcy Code or other similar laws. This will be the case although (a) Guarantor revokes this Guaranty by notice to the Agency before the avoidance or recovery, and (b) Developer or Guarantor has fulfilled all Developer's obligations under the DDA.

**10. Additional, Independent and Unsecured Obligations.** Guarantor's obligations under this Guaranty are in addition to, and do not limit or affect, Guarantor's obligations under any other existing or future guaranties. This Guaranty is independent of the obligations of Developer under the DDA. Agency may bring an action against Guarantor to enforce the provisions of this Guaranty without first taking action against Developer, or against any other party, and without joining Developer or any other party. Except as otherwise provided in this Guaranty, Guarantor has not secured Guarantor's obligations under this Guaranty. No court or other body will deem this Guaranty secured by any security instrument unless the security instrument expressly recites that it secures this Guaranty.

**11 Attorneys' Fees; Enforcement.** Guarantor will pay on demand any legal expenses the Agency incurs to enforce or defend this Guaranty or the DDA, whether or not the Agency files a legal action or proceeding. Guarantor will pay the Agency's fees and costs (including but not limited to attorneys' fees), with interest at the highest rate of interest permitted by law.

**12. Rules of Construction.** The word "Developer" includes the named Developer, and any other person who assumes or otherwise becomes primarily liable for all or any part of Developer's obligations under the DDA. The term "person" includes any individual, company, trust or other legal entity of any kind at all. When the context and construction so require, singular words will include the plural and vice versa. All headings appearing in this Guaranty are for convenience only and will be disregarded in construing this Guaranty.

**13. Governing Law.** The laws of the State of California will govern this Guaranty and its construction, except where preempted by federal laws. Guarantor consents to the jurisdiction of the Fresno County Courts, with proper venue, and consents to service of process by any means authorized by law.

**14. Miscellaneous.** The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assignees of Guarantor and Agency. The liability of all persons and entities obligated hereunder will be joint and several. If a court finds any provision of this Guaranty invalid or unenforceable, that provision will be severed from this Guaranty, and the remaining provisions remain effective.

15. **Additional Provisions.** Additional terms, covenants, and conditions may be set forth in an exhibit signed by Guarantor and attached to this Guaranty. All exhibits referenced in this Guaranty are by the reference incorporated into this Guaranty.

IN WITNESS WHEREOF, Guarantor has signed this Guaranty as of the date appearing on the first page of this Guaranty.

"Guarantor"

\_\_\_\_\_  
Thomas W. Beggs

Date: \_\_\_\_\_

### CONSENT TO CONTINUING COMPLETION GUARANTY

The undersigned is the spouse of Thomas W. Beggs. She acknowledges that she has read the foregoing Continuing Completion Guaranty ("Guaranty"), and the Disposition and Development Agreement ("DDA") it references. She has had the opportunity to consult legal counsel. She understands that, according to the terms of the Guaranty marital assets in which she has a community interest are at risk if the Developer defaults under the DDA. She also understands that any community property interest she may have in Kearney Palms LLC, or in the company's ownership or other rights in real estate within the Kearney Palms Shopping Center, is subject to the Agency's reversionary rights, and the Agency's rights to repurchase the property if the Developer or any successor in interest defaults under the DDA. She agrees to the Guaranty and to the DDA. Specifically she agrees to the Agency's reversionary and repurchase rights in the DDA, including any community rights that she may have in the property, and to the enforcement of this Guaranty against her community property. She agrees to be bound by the provisions of this Guaranty and the DDA, including, but not limited to, the sale or transfer of real property interests. She agrees not to devise whatever community property interest she may have in the real property in violation of the DDA. She agrees that her spouse, Thomas W. Beggs, is operating or managing the business of Kearney Palms LLC, and that he has the primary management and control of the development described in the DDA.

Executed on \_\_\_\_\_ 1998, at Fresno, California.

\_\_\_\_\_  
Michelle Beggs

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**NONE**

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## AGENCY'S SITE WORK SCHEDULE

<b>CITY/AGENCY PUBLIC PARKING LOT IMPROVEMENTS: ESTIMATES</b>				
Description: Public parking lot, landscaping, sidewalks, lighting, utilities, infrastructure up to site pads. (Approximately 11.43 acres)				
Description	Quantity	Unit Cost	Sub-Total	Total
<b>Testing/Survey Work</b>				
Testing On-Site (acres)	11.43	1,000	11,430	
Survey On-Site (acres)	11.43	1,500	17,145	28,575
<b>Rough Grading On Site</b>				
Rough Grading (sq.ft.)	396,891	0.25	99,223	99,223
<b>Fine Grade &amp; Pave</b>				
Paving (Light) (square feet)	206,459	1.00	206,459	
Paving (Heavy)	94,815	1.35	128,000	
Site Concrete			61,726	396,185
<b>Sewer</b>				
Demolition (linear feet)	880	6.00	5,280	
6" Pipe (linear feet)	1,100	10.00	11,000	
Clean-outs	8	250	2,000	
Manholes	2	1,200	2,400	20,680
<b>Water</b>				
Demolition (linear feet)	1,760	6.00	10,560	
2" Pipe (linear feet)	1,965	4.00	7,860	
3" Pipe (linear feet)	170	8.00	1,360	
4" Pipe (linear feet)	385	8.00	3,080	
6" Pipe (linear feet)	150	10.00	1,500	
8" Pipe (linear feet)	80	12.00	960	
10" Pipe (linear feet)	950	20.00	19,000	
4" Gate Valve	5	490	2,450	
6" Gate Valve	5	575	2,875	
8" Gate Valve	1	675	675	
2" RPBF	8	1,000	8,000	
3" RPBF	1	2,750	2,750	
6" Detector Check	1	3,200	3,200	
10" Detector Check	2	5,000	10,000	
FDC	9	900	8,100	
PIV	9	900	8,100	
Fire Hydrants	3	1,800	5,400	95,870
<b>Storm Drain</b>				
F.M.Flood Control Fee			34,500	
18" Pipe (linear feet)	215	22	4,730	
20" Pipe (linear feet)	315	24	7,560	
24" Pipe (linear feet)	815	27	22,005	
30" Pipe (linear feet)	70	32	2,240	
Type "D" Inlet	9	1,500	13,500	
Manholes	2	1,200	2,400	86,935
<b>Electrical</b>				
Power Distribution	1	85,188	85,188	
Telephone Distribution	1	52,267	52,267	
Cable T.V Distribution	1	8,441	8,441	
Site Lighting	1	101,792	101,792	247,688
<b>Landscaping &amp; Irrigation</b>				
Landscaping & Irrigation (Sq.ft.)	49,795	2.50	124,488	
Trash Enclosures	8	5,000	40,000	164,488
<b>Total Estimated Costs:</b>				<b>\$ 1,139,644</b>
Prevailing Wage/O & P		15%		170,947
<b>TOTAL ESTIMATED ON SITE COSTS:</b>				<b>\$ 1,310,590</b>
Acquisition, Relocation & Site Clearance:				\$ 2.6 million

Exhibit "I"

## AGENCY'S OFF SITE WORK SCHEDULE

<b>CITY/AGENCY OFF SITE PUBLIC IMPROVEMENTS COSTS: ESTIMATES</b>				
Description. Fresno Street; "C" Street; Tuolumne Public Improvements; includes street paving; landscaping; sidewalks, traffic signals, & utilities.				
<b>Description</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Sub-Total</b>	<b>Total</b>
<b>Testing</b>				
Off-site (Lump sum)	1.00	\$ 10,000	\$ 10,000	\$ 10,000
<b>Survey</b>				
Off-site (Lump sum)	1.00	10,000	10,000	10,000
<b>Off Site Rough Grading</b>				
Rough Grading (sq.ft)	40,900	1.00	40,900	40,900
<b>Fine Grade Base &amp; Pave</b>				
Paving (Heavy) (sq.ft)	20,450	3.00	61,350	61,350
<b>Off Site Concrete</b>				
Curb & Gutter (l.f.)	2,045	12.00	24,540	
Approaches	8	2,500	20,000	
Public Sidewalk (sq.ft)	20,450	1.75	35,788	80,328
<b>Water</b>				
8" Main (l.f.)	620	16.00	9,920	
12" Main (l.f.)	1,480	24.00	35,520	
Wet ties	4	1,500	6,000	
Wet ties 10" to Main	2	3,000	6,000	
Fire Hydrants	4	1,800	7,200	
Trench Patch (l.f.)	2,100	15.00	31,500	96,140
<b>Storm Drain</b>				
F.M. Flood Control Fee			34,500	
Curb Inlet	8	2,000	16,000	50,500
<b>Electrical</b>				
Off-site PG&E	1	0.00	-	
Off-site Telephone	1	0.00	-	
Street Lights	7	3,500	24,500	
Traffic Signal	1	150,000	150,000	174,500
<b>Landscape &amp; Irrigation (s.f)</b>	0	2.50	-	-
<b>Property Line Fence</b>				
Wrought Iron (l.f.)	1,815	30.00	54,450	
Temporary Fencing (Lump sum)	1	2,200	2,200	56,650
<b>Total Estimated Costs:</b>				<b>\$ 580,368</b>
Prevailing Wage/O & P		15%		87,055
<b>TOTAL ESTIMATED OFF SITE COSTS:</b>				<b>\$ 667,423</b>

## DEVELOPER'S SITE WORK SCHEDULE

<b>DEVELOPER'S COSTS &amp; RESPONSIBILITIES:</b>				
Description: Developer shall finance and cause the construction of all On-Site Anchor/Major/Pad Tenant Buildings.				
<b>BUILDING CONSTRUCTION COSTS:</b>				
Tenants	Square Feet	\$/Sq.ft.	Sub-Total	Total
Fleming Food 4 Less	49,950	\$ 38.00	\$ 1,898,100	
Rite Aid Drugs	16,708	53.00	885,524	
Shops Bldg. 1	9,510	45.00	427,950	
Shops Bldg. 2	3,120	45.00	140,400	
Shops Bldg. 3	6,600	45.00	297,000	
Shops Bldg. 4	7,440	45.00	334,800	
Pad B	4,400	50.00	220,000	
<b>Total Sq.Ft./Building Cost:</b>	<b>97,728</b>			<b>\$ 4,203,774</b>
Pad A (Sold) <sup>1</sup>	3,820		-	
Police Substation <sup>2</sup>	6,000			
<b>Total: (Square Feet)</b>	<b>107,548</b>			
<b>Land Acquisition Costs for 8 Parcels:</b>		<b>8</b>	<b>\$1.00</b>	<b>\$8.00</b>
<b>INDIRECT COSTS:</b>				
Architectural & Struct. Eng.	97,728	1.65	\$ 161,251	
Civil Engineer	97,728	0.10	9,773	
Permits & Fees	97,728	0.77	75,251	
Temporary Power	97,728	0.08	7,818	
Pylon Signs	Allowance	1.02	100,000	
Tenant TI's	26,670	5.00	133,350	
Fleming Contribution	Allowance	7.00	350,000	
Fleming Reimburseables	Allowance	1.84	92,187	
<b>Leasing Fees:</b>				
Supermarket	49,950		-	
Rite Aid Drugs	16,708	\$	-	
Shops 1-4	26,670	\$	4.00	106,680
Pad A	(sold)	\$	-	
Pad B	4,400	\$	4.00	17,600
Legal/Title	97,728	\$	0.10	9,773
Liability Insurances	97,728	\$	0.10	9,773
Cost of Const. Ins.	\$4,203,774		0.0015	6,306
Advertising/Promotion	97,728		0.15	14,659
Construction Security	Allowance			30,000
<b>Subtotal Indirect Costs:</b>				<b>\$ 1,124,420</b>
<b>Building/Indirect Cost Total:</b>				<b>\$ 5,328,202</b>
Lender's Required Contingency:		7%		372,974
<b>TOTAL PROJECT COSTS:</b>				<b>\$ 5,701,176</b>
Less: Sale of Pad A				(400,000)
<b>Subtotal:</b>				<b>5,301,176</b>
Less: Developer's Required Equity		10%		(530,118)
<b>DEVELOPER'S ESTIMATED CONSTRUCTION COSTS:</b>				<b>4,771,059</b>

<sup>1</sup>Note: Cost to construct Parcel A is upon buyer

<sup>2</sup>Note: Cost to construct Police Substation under separate development agreement with/City.



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**MEMBER LIST AND  
PERCENTAGE OWNERSHIP  
KEARNEY PALMS LLC**

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<b>Name</b>	<b>% Ownership</b>	<b>Capital Contribution</b>
Thomas and Michele Beggs	68 Percent	Contract rights, leases, permits, licenses, plans, drawings, entitlements, and related soft costs associated with the Kearney Palms Shopping Center project.
Table Mountain Rancheria Tribal Development Corporation, Inc.	32 Percent	\$600,000

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**CONTRACTOR'S COMPLETION GUARANTY**

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**[Five Pages]**

**Exhibit M**

# CONTRACTOR'S COMPLETION GUARANTY

**Developer:** Central Cities Properties, Inc.  
Attention: Thomas W. Beggs, President  
1195 West Shaw Avenue, Suite C  
Fresno, CA 93728

**Agency:** Redevelopment Agency  
2344 Tulare Street, Suite 200  
Fresno, CA 93721

**Guarantor:** \_\_\_\_\_ (Contractor)

**THIS COMPLETION GUARANTY ("Guaranty") is made as of \_\_\_\_\_, 199\_\_, by \_\_\_\_\_ ("Guarantor") for the benefit of the Redevelopment Agency of the City of Fresno, a public body, corporate and politic ("Agency").**

**1 DEFINITIONS.** The following words, as used herein, will have the following meanings:

**1.1 Agency.** "Agency" means the Redevelopment Agency of the City of Fresno, a public body, corporate and politic.

**1.2 Developer.** "Developer" means Central Cities Properties, Inc., a California corporation.

**1.3 Disposition and Development Agreement.** "Disposition and Development Agreement" or "DDA" means the agreement, dated \_\_\_\_\_ 1998, between the Developer and the Agency, as it may be amended, to develop a neighborhood shopping center on approximately 12 acres of certain real property in the City of Fresno generally bounded by Fresno Street, "B" Street, Tuolumne Street, and Highway 99 (the "Site").

**1.4 Guarantor.** "Guarantor" means \_\_\_\_\_.

**1.5 Guaranty.** "Guaranty" means this Contractor's Completion Guaranty

**1.6 Improvements.** "Improvements" mean the improvements, as described in the DDA, and more particularly set forth in the Plans and Specifications, which Developer is to construct on the Property. Generally, the Improvements consist of commercial retail structures and related improvements for use in a neighborhood shopping

**1.7 Plans and Specifications.** "Plans and Specifications" mean the Agency-approved plans and specifications for the Improvements, with any Agency-approved changes and additions.

**1.8 Project.** "Project" the development of the neighborhood shopping center, related public parking, and other improvements on the Site.

**1.9 Property.** "Property" means that portion of the Site to be shown as Parcels B, C, E, F, H, I, and J on Parcel Map PM-97-16, and Parcel G, to the extent that Guarantor's contract with Developer may include Parcel G.

**2 THE ECONOMIC ASSISTANCE.** Developer is receiving economic assistance from the Agency under the terms of the DDA. Developer has asked Guarantor to sign and deliver this Guaranty, as a condition to beginning construction. This is to guarantee the lien-free completion of the Improvements within the Project and performance under the construction contract, all of which are material to the Agency and its provision of economic assistance.

**3 GUARANTY.** Guarantor unconditionally warrants and guarantees to Agency that: (a) it will begin construction of the Improvements and substantially complete the improvements within the time limits set

forth in the DDA, (b) it will construct and complete the Improvements according to the DDA and the Plans and Specifications, excepting any modifications or changes approved by Agency in writing, (c) it will construct and complete the Improvements free and clear of all liens and encumbrances including, without limitation, all mechanics' liens, materialmen's liens, and equitable liens, excepting the Developer-created lien securing Developer's construction financing, and (d) it will pay all costs of constructing the Improvements when due.

**4 OBLIGATIONS OF GUARANTOR UPON EVENT OF DEFAULT.** Should Developer default under the DDA or if the Improvements are not completed as set forth above, Guarantor will: (a) diligently work to cure the default and complete the Improvements at Guarantor's sole cost and expense; (b) fully pay and discharge all claims for labor performed and material and services furnished in the construction of the Improvements; and (c) pay any amounts necessary to release and discharge all claims of stop notices, mechanics' liens, materialmen's liens, and equitable liens, if any, resulting from construction of the Improvements.

**5 NATURE OF GUARANTY.** This Guaranty is an independent obligation of Guarantor, separate and distinct from Developer's obligations to Agency. The obligations of Guarantor to Agency hereunder are direct and primary, and not affected by the validity or enforceability of the DDA. This Guaranty is for the benefit of Agency, and is not for the benefit of any third party. This Guaranty will continue until (a) the Improvements are completed, free and clear of all liens and encumbrances as provided herein, and (b) Guaranty has fulfilled its obligations to the Agency to develop the Property (until the Agency files its Release of Construction Covenants under the DDA).

**6 GUARANTOR'S AUTHORIZATION TO AGENCY.** Guarantor authorizes Agency, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (a) to make or approve changes to the Plans and Specifications, (b) to make modifications to the DDA and the structure of the economic assistance, (c) to modify, accelerate, or otherwise change the time for payment or any other terms of the economic assistance, (d) to take and hold security for Developer's obligations under the DDA, and exchange, enforce, waive, and release any such security, with or without the substitution of new security, (e) to release, substitute, agree not to sue, or deal with one or more of Developer's sureties, endorsers, or other guarantors on any terms or in any manner Agency may choose, (f) to apply any security and direct the order or manner of sale of it including, without limitation, any nonjudicial sale permitted by the terms of any deed of trust or security agreement, as Agency in its discretion determines, and (g) to assign or transfer this Guaranty in whole or in part.

**7 GUARANTOR'S REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to Agency that: (a) Guarantor has not received representations or agreements of any kind from others which will limit or qualify the terms of this Guaranty; (b) Guarantor is signing this Guaranty at Developer's request and not at the request of Agency, to induce Agency to permit construction to begin and provide the economic assistance under the DDA, (c) Guarantor will not, without prior written 90-day notice to Agency, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein, (d) Guarantor's signing and delivery of this Guaranty and compliance with it will not conflict with or result in the breach of any law or statute, or constitute a breach or default under any agreement or instrument to which Guarantor is a party; and (e) Guarantor has established adequate means of obtaining information from Developer regarding Developer's financial condition. Guarantor agrees to keep adequately informed from such means and of any facts, events, or circumstances that may affect Guarantor's risks under this Guaranty.

**8 GUARANTOR'S WAIVERS.** Except as prohibited by law, Guarantor waives any right to require Agency to (a) make any presentment, protest, demand, or notice of any kind including, without limitation, notice of any change in or amendment of the DDA and Developer's obligations, Developer's default, any other guarantor or surety's default, any action or nonaction of Developer, Agency, or any other guarantor or surety, (b) go against any person, including Developer, before acting against Guarantor, (c) go against any collateral for the Guarantor's obligations, including Developer's collateral, before acting against Guarantor; (d) apply any payments or proceeds received against the Guarantor's obligations under the DDA in any order, (e) give notice of any sale of the collateral pursuant to the Uniform Commercial Code or any other law governing such sale, (f) disclose, without

a written request from Guarantor, any information about the DDA, the Developer, any collateral, or any other guarantor or surety, or about any action or nonaction of Agency; or (g) pursue any remedy or course of action in Agency's power.

Guarantor waives all rights or defenses arising from (h) any disability or other defense of Developer, any other guarantor or surety or any other person, (i) termination of Developer's construction obligations from any cause other than completion of construction; (j) any Agency act or omission that contributes to the discharge of Developer or any other guarantor or surety, or to the loss or release of any collateral, (k) any statute of limitations in any action under this Guaranty or on the DDA, or (l) any modification or change in the DDA terms including, without limitation, the renewal, extension, acceleration, or other change in the DDA or Developer's obligations under it.

Agency does not have a deed of trust securing Developer's obligations under the DDA. Nonetheless, the Agency does have a power of termination or right of reverter. To the extent that any court may construe this right or power as comparable to a real property security interest, Guarantor waives all rights and defenses arising out of the Agency's election of remedies, though the remedy selected, such as a nonjudicial foreclosure destroys, or a right of reverter or power of termination may destroy or affect, Guarantor's rights, under Section 580d of the California Code of Civil Procedure, or otherwise, to subrogation and reimbursement against Developer.

This waiver includes, without limitation, Guarantor's loss of any rights it may have because of Developer's rights or protections under any laws including, without limitation, antideficiency or other laws limiting or discharging the Developer's obligations (including, without limitation, Section 726, 580a, 580b, and 580d of the California Code of Civil Procedure). Guarantor waives all rights and protections of any kind which Guarantor may have for any reason, which would affect or limit the amount Agency may recover from Guarantor following the Agency's exercise of the right of reverter or power of termination, or after a nonjudicial sale or judicial foreclosure of any real or personal property securing the Developer's obligations including, but not limited to, the right to any fair market value hearing pursuant to California Code of Civil Procedure Section 580a.

The foregoing waivers are waivers of substantive rights and defenses to which Guarantor might otherwise be entitled under state and federal law. The rights and defenses waived include, without limitation, those provided by California laws of suretyship and guaranty, antideficiency laws, and the Uniform Commercial Code. Guarantor has provided these waivers of rights and defenses with the understanding that the Agency is relying thereon. Until the Improvements are constructed and Agency issues a Release of Construction Covenants, Guarantor waives any right to enforce any remedy Agency may have against Developer or any other guarantor, surety, or other person, and further, waives any right to participate in any collateral for the Developer's obligations or comparable rights that the Agency now or hereafter holds.

**9 GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS.** Guarantor makes each waiver set forth above with full knowledge of the significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If a court or other body determines a waiver to be contrary to any applicable law or public policy, the waiver will be effective only to the extent permitted by law.

**10 RIGHTS AND REMEDIES.** If Guarantor fails to promptly perform under this Guaranty, Agency will have the following rights and remedies:

**10.1 Perform Work.** Agency, at its option, without any obligation to do so, may perform for Guarantor any work on the Improvements and to pay any costs incurred concerning the work. Guarantor, upon Agency's demand, will promptly reimburse the Agency for all sums it expends, with interest thereon at the highest rate permitted by law

**10.2 Cure Defaults.** Agency, at its option, but without any obligation to do so, may cure any

defaults including, without limitation, paying any unpaid bills and liens, including without limitation those for construction, labor, and materials. Guarantor, upon Agency's demand, will promptly reimburse Agency all such sums expended, with interest thereon at the highest rate permitted by law

10.3 **Specific Performance.** Without first requiring Developer's performance, and without first exhausting any security it may hold, the Agency may require Guarantor specifically to perform its obligations under this Guaranty, by action at law or in equity or both, and may collect in any such action compensation for all losses, costs, damages, injuries and expenses it incurs as a direct or indirect consequence of such breach, with interest thereon at the highest rate permitted by law.

10.4 **Other Rights and Remedies.** In addition, Agency has and may exercise all rights and remedies available to it at law, in equity, or otherwise.

11 **SUBORDINATION OF DEVELOPER'S DEBTS TO GUARANTOR.** Developer's obligations to the Agency under the DDA are prior to any claim that Guarantor may have against Developer, whether or not Developer becomes insolvent. Guarantor subordinates any claim Guarantor may have against Developer, on any account, to any claim that Agency has or may have against Developer. If Developer becomes insolvent and liquidates assets, Developer's assets available to pay Agency's and Guarantor's claims will be paid to Agency to the extent of the Developer's then unperformed construction obligations. Guarantor assigns all claims it may have against Developer, or against any assignee or trustee in bankruptcy of Developer, to Agency; provided however, that such assignment is effective solely to assure Agency that the Improvements will be completed without cost to the Agency. Any notes or credit agreements evidencing any debt or obligation of Developer to Guarantor will be marked with a legend that the same are subject to this Guaranty. Guarantor authorizes the Agency, in the Guarantor's name, to sign any documents and to take any actions as the Agency deems appropriate to perfect, preserve, and enforce its rights under this Guaranty

## 12 MISCELLANEOUS PROVISIONS.

12.1 **Amendments.** This Guaranty is the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No modification to this Guaranty will be effective unless given in writing and signed by the party or parties sought to be bound by the modification.

12.2 **Applicable Law.** Guarantor consents to the jurisdiction of the courts of Fresno County, State of California. The laws of California will govern the construction of this Guaranty

12.3 **Attorneys' Fees, Expenses.** Guarantor will pay on demand all Agency's costs and expenses, including attorneys' fees and legal expenses, related to enforcing this Guaranty. Agency may pay someone else to help enforce this Guaranty, and Guarantor will pay the Agency's costs and expenses of enforcement. Costs and expenses include, without limitation, Agency's attorneys' fees and legal expenses, whether or not a lawsuit is instituted. Attorneys' fees and legal expenses include, without limitation, costs of in house counsel, bankruptcy proceedings (including efforts to modify or vacate automatic stay or injunction), appeals, and any anticipated post judgment collection services. Guarantor will pay all court costs and any additional fees directed by the court.

12.4 **Notices.** The parties will give any notices, under this Guaranty, in writing. Parties may send notices by facsimile (unless otherwise required by law). Notices will be effective when delivered, when deposited with a nationally recognized overnight courier, or when deposited in the United States mail, first class postage prepaid, addressed to the noticed party, at the address shown above or to such other addresses as either party may designate to the other in writing. For notice purposes, Guarantor agrees to keep Agency informed of Guarantor's current address.

12.5 **Interpretation.** If more than one Developer or Guarantor signs this Guaranty, then all singular words herein are deemed plural where the context and construction so require. The words

“Developer” and “Guarantor” respectively will mean any one or more of them, as the context requires. Caption headings in this Guaranty are for convenience only and not for interpreting the provisions of this Guaranty. If a court of competent jurisdiction finds any provision of this Guaranty invalid or unenforceable, the finding will not render that provision invalid or unenforceable, and all other provisions of this Guaranty will remain valid and enforceable. If any Developer or Guarantor is a corporation or partnership, the Agency need not ask about the powers of Developer or Guarantor or its officers, directors, partners, or agents acting or purporting to act for it.

12.6 **Waiver.** Any waiver by the Agency must be in writing to be effective. No delay or omission by Agency in exercising any right will operate as a waiver of that right or any other. The Agency’s waiver of any provision of this Guaranty will not prejudice or be a waiver of Agency’s right otherwise to demand strict compliance with that or any other provision of this Guaranty. No prior waiver by Agency, or any course of dealing between Agency and Guarantor, will be a waiver of Agency’s rights or Guarantor’s obligations as to any future transactions. The Agency’s consent, in any instance required, will not be a continuing consent to subsequent instances requiring the Agency’s consent.

THIS GUARANTY IS EFFECTIVE, NOTWITHSTANDING THE DATE SIGNED, ON THE EFFECTIVE DATE OF THE DDA, WHICH IS \_\_\_\_\_, 1998. THE AGENCY’S FORMAL ACCEPTANCE IS NOT NECESSARY TO MAKE THIS GUARANTY EFFECTIVE.

GUARANTOR.

\_\_\_\_\_ [Print Contractor’s Name]

X \_\_\_\_\_  
\_\_\_\_\_  
[print name and title]

X \_\_\_\_\_  
\_\_\_\_\_  
[print name and title]

1319SMS5.agt [October 6, 1998]

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## TABLE MOUNTAIN RANCHERIA RESOLUTION

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**[4 Pages]**



# TABLE MOUNTAIN RANCHERIA

## SECRETARY/TREASURERS CERTIFICATE

### RESOLUTION NO. \_\_\_\_\_

**WHEREAS**, Table Mountain Rancheria of California (“the Tribe”) is a federally recognized Indian tribe; and

**WHEREAS**, the Tribal Council of Table Mountain Rancheria is the Tribe’s governing body; and

**WHEREAS**, the Redevelopment Agency of the City of Fresno (“Agency”), and Kearney Palms LLC, a California limited liability company (“LLC”), are entering a Disposition and Development Agreement (“DDA”) for a shopping center in the Southwest Fresno GNRA Redevelopment Project Area (the “Project”), and

**WHEREAS**, the LLC will be the Project developer; and

**WHEREAS**, under the DDA, the LLC must irrevocably commit not less than \$530,118 to the Project as the developer’s “Equity Requirement;” and

**WHEREAS**, the Tribe, through Table Mountain Rancheria Development Corporation (the “Corporation”), a subordinate intra-tribal economic organization owned and chartered by and the Tribe (the Tribe and the Corporation being synonymously referred to in this Resolution as the “Tribe”), is acquiring a membership interest in the LLC according to the terms of an Operating Agreement in the form attached to this Resolution as **Exhibit A** (the “Operating Agreement”), and

**WHEREAS**, the Tribe understands that the LLC will use the Tribe’s capital contribution to the LLC to meet the LLC’s developer Equity Requirement under the DDA and that upon making of its capital contribution in the total amount of \$600,000, the Tribe will acquire and own a 32% membership interest in the LLC; and

**WHEREAS,** the Agency is a public entity which will be investing approximately Five Million Dollars (\$5,000,000) of taxpayer monies in the Project as described in the DDA, which will only be executed by the Agency and the LLC (i.e. no direct contractual or other relationship between the Agency and Tribe whatsoever); and

**WHEREAS,** the Agency is responsible for protecting its investment of taxpayer monies, including obtaining assurances that sufficient private funds are available to meet the developer's Equity Requirement as part of the Project funding; and

**WHEREAS,** the board of directors of the Agency (the "City Council") has conditioned the Agency's execution of the DDA on assurances that the developer's Equity Requirement is irrevocably committed to the Project; and

**WHEREAS,** the Tribe is willing to provide assurances to the Agency that once the LLC irrevocably commits the Equity Requirement to the Project by a method acceptable to the Tribe (e.g., by depositing the Equity Requirement with the construction lender under joint instructions signed by the Agency and the LLC which have been approved by the Tribe), that the Tribe will not attach, withdraw, or otherwise seek to recover the funds or make the funds unavailable to the project, provided, however, that the Tribe may seek to recover its investment if (a) the Agency does not execute the DDA and the related lease/parking agreement ("Parking Lease") after the LLC has executed the same, or (b) the LLC or the Agency fails to satisfy all of the conditions precedent to the effectiveness of the DDA, or to the Agency's obligations to begin purchasing and clearing the Project site;

**NOW THEREFORE BE IT RESOLVED THAT:**

1 The form, terms, and provisions of the Operating Agreement for the LLC in the form attached hereto as **Exhibit A** have been reviewed and are approved by the Tribal Council; and

2. Vern Castro, Tribal Chairman, acting alone, is authorized on behalf of the Tribe and to invest on its behalf the sum of \$60,000 to acquire a 32% membership interest in the LLC and to execute any and all documents necessary to evidence and define the terms of such investment required to be executed by Tribe or the Corporation, including, but not limited to, the Operating Agreement in the form attached hereto as **Exhibit A** as approved by the Tribal Council, and to do all other acts necessary to consummate and perform the covenants and transactions

contemplated by such documents, including, but not limited to, contributing the sum of \$600,000 to the capital of the LLC as required by the Operating Agreement and approving the joint instructions governing the deposit of the Equity Requirement (the "Joint Instructions"), and

3. To the extent it might otherwise apply or be available, the Tribe hereby expressly waives its sovereign immunity for the benefit of the Agency only for the sole and express purpose of conferring jurisdiction on any court of otherwise competent jurisdiction to enforce the DDA, the Parking Lease or the Joint Instructions (or other written document irrevocably committing the Equity Requirement to the Project) between the LLC and the Agency, and agrees that it will not attach, withdraw, or otherwise seek to recover the Equity Requirement or make the Equity Requirement unavailable to the Project; provided, however, that nothing in these Resolutions is intended to modify, limit or modify any legal rights, remedies or defenses otherwise available to the Tribe other than sovereign immunity and provided specifically that the Tribe may seek to recover its capital contribution, including the portion to be used by the LLC to meet the Equity Requirement, if: (a) the Agency does not execute the DDA and the Parking Lease after the LLC has executed the same, or (b) the LLC or the Agency fails to satisfy all of the conditions precedent to the effectiveness of the DDA or to the Agency's obligations to begin purchasing and clearing Project site; and

4 This limited waiver by the Tribe shall not create any rights in and does not apply to any third party or to any suit other than the enforcement of the DDA and the Parking Lease between the LLC and the Agency

5. The Tribe grants the waiver and covenant regarding its sovereign immunity to the Agency as set forth above solely for the benefit of the Agency to protect the Agency's investment of taxpayer money in the Project; and

6. The benefit of this limited waiver and covenant does not extend to any third party or constitute a waiver for any other purpose and is strictly limited to an assurance to the Agency that, before the Agency invests public funds on the Project, developer's Equity Requirement is available for construction of the Project; and

7 This Resolution shall remain in effect, and may be relied upon by the Agency until it is modified, rescinded or revoked by the Tribal Council; but no modification, rescission, or revocation shall be effective for any

document executed or action taken in reliance on said Resolution and no modification, rescission, or revocation shall be effective until written notice thereof is delivered to the Agency

**CERTIFICATION**

I, the undersigned, RaeAnn Barnes-Rodriguez, Secretary/Treasurer of the Tribe, certify the following:

1 The foregoing Resolution was duly adopted by the Tribal Council of the Tribe by a vote of \_\_\_\_ for, \_\_\_\_ against, and \_\_\_\_ abstentions, at a duly called meeting of the Tribal Council, at which a quorum was present, on the \_\_\_\_ of September, 1998. This Resolution has not been revoked, modified, amended, or rescinded and is still in effect.

2. As of the date of this Certificate, Vern Castro is the duly elected and qualified Tribal Chairman of the Tribe, who is authorized by the Tribal Council to execute Operating Agreement in the form of **Exhibit A** on behalf of the Tribe, and the signature set forth below is the genuine signature of Vern Castro, Tribal Chairman

\_\_\_\_\_  
*/S/*  
Vern Castro, Tribal Chairman

**In Witness Whereof**, I have signed this Certificate on September \_\_\_\_, 1998.

\_\_\_\_\_  
RaeAnn Barnes-Rodriguez  
Secretary/Treasurer

120

**CLARIFICATION PAGE**

**I CERTIFY UNDER PENALTY OF PERJURY THAT THIS  
"CLARIFICATION PAGE" IS A TRUE AND CORRECT  
COPY OF THE PAGE BEING CLARIFIED.**

DATE 5-18-99

SIGNATURE

FINANCIAL Title Stephen M. King

OWNER'S STATEMENT:

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THIS SUBDIVISION, HEREBY CONSENT THE PREPARATION AND RECORDATION OF THIS MAP AND OFFER FOR PUBLIC USE THE PARCELS AND EASEMENTS SPECIFIED ON SAID MAP AS INTENDED FOR PUBLIC USE FOR THE PURPOSES STATED HEREIN TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, A PUBLIC BODY CORPORATE AND POLITICAL

Daniel R. Fitzpatrick

Executive J

NOTARY'S ACKNOWLEDGMENT:

STATE OF California }  
COUNTY OF Fresno }

ON 5 MAY, 1999, BEFORE ME, Louis J. Steck, Notary Public PERSONALLY APPEARED Daniel R. Fitzpatrick PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH PERSON(S) ACTED, EXECUTED THE INSTRUMENT.  
WITNESS MY HAND AND OFFICIAL SEAL.

NAME Louis J. Steck  
SIGNATURE Louis J. Steck

MY COMMISSION EXPIRES 12 June 2001  
COUNTY OF Fresno

CORNER NOTES

# PARCEL MAP

A PLANNED DEVELOPMENT  
IN THE CITY OF FRESNO, COUNTY

CONSISTING OF

LEGAL DESCRIPTION:

BLOCKS 3, 4, 19 AND 20 OF THE TOWN OF  
IN VOLUME 1, PAGE 2 OF PLATS, FRESNO COUNTY  
ALLEYS WITHIN SAID BLOCKS 3, 4, 19 AND 20  
STREET ADJACENT TO SAID BLOCKS 3, 4, 19 AND 20  
RESOLUTION NO. 98-188. RECORDED \_\_\_\_\_

EXCEPTING THEREFROM THAT PORTION OF  
NORTHEAST OF THE SOUTHWEST LINE OF

BASIS OF BEARINGS:

THE NORTHEASTERLY RIGHT-OF-WAY  
LINE OF BLOCK 3 OF THE TOWN OF FRESNO  
PAGE 2 OF PLATS, FRESNO COUNTY RECORD \_\_\_\_\_

LEGEND:

- PUE PUBLIC UTILITY EASEMENT NOW OFFERED
- MONUMENT FOUND AND ACCEPTED
- SET 3/4" IRON PIPE, 30" LONG, OR AS NOTED
- ( ) RECORD DATA AS PER THE TOWN OF FRESNO  
PAGE 2 OF PLATS, FRESNO COUNTY RECORD \_\_\_\_\_
- PUER PUBLIC UTILITY EASEMENT RESERVED  
COUNCIL RESOLUTION NO 98-188 RECORD \_\_\_\_\_
- ▲ PREVIOUSLY DEDICATED FOR PUBLIC USE  
DEPARTMENT OF THE CITY OF FRESNO  
MARCH 21, 1991 AS DOCUMENT N \_\_\_\_\_
- △ AREA NOW OFFERED FOR DEDICATION  
PURPOSES
- \_\_\_\_\_ BLUE BORDER INDICATES THE LIMITS

# P No. 97-16

## DEVELOPMENT OF FRESNO, STATE OF CALIFORNIA ONE SHEET

CITY E

I, MARK  
FRESNO  
SUBDIV  
APPROV  
THAT A  
ORDINA  
MAP H  
IS TECH

OF FRESNO, ACCORDING TO THE MAP THEREOF RECORDED  
O COUNTY RECORDS, TOGETHER WITH THE 20 FOOT WIDE  
ND 20 AND THOSE PORTIONS OF C STREET AND MERCED  
4, 19 AND 20 ALL VACATED BY FRESNO CITY COUNCIL  
\_\_\_\_\_, \_\_\_\_\_ AS DOCUMENT NO. \_\_\_\_\_, O.R.F.C.

OF SAID BLOCKS 19 AND 20 AND MERCED STREET, LYING  
F THE FREEWAY 99 RIGHT-OF-WAY

LINE OF "B" STREET SAID LINE ALSO BEING THE SOUTHWESTERLY  
FRESNO, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 1  
CORDS. ASSUMED TO BE NORTH 41° 32' 10" WEST

FERED FOR DEDICATION FOR PUBLIC USE.

AS NOTED

6" DOWN, TAGGED R.C.E. 26996

OF FRESNO, RECORDED IN VOLUME 1,  
TY RECORDS

VED FOR PUBLIC USE AS PART OF THE VACATION BY  
ECORDED \_\_\_\_\_, \_\_\_\_\_ AS DOCUMENT NO. \_\_\_\_\_ O.R.F.C.

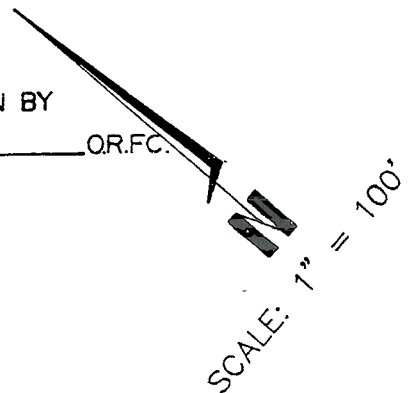
STREET PURPOSES TO THE FIRE  
ESNO PER EASEMENT RECORDED  
O. 91032598, O.R.F.C.

TION FOR PUBLIC STREET EASEMENT

ITS OF THIS SUBDIVISION

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ENGINEER'S CERTIFICATE:

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

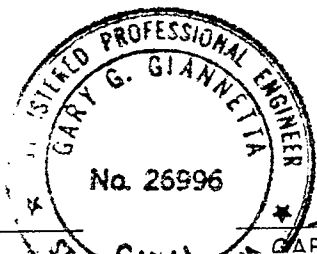
CITY ENGINEER OF THE CITY OF FRESNO

DATE

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

ENGINEER'S STATEMENT:

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 THE REDEVELOPMENT AGENCY ON OCTOBER 31, 1998. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP. THE MONUMENTS ARE OF THE CHARACTER AND LOCATIONS SHOWN HEREON AND SAID MONUMENTS ARE SUFFICIENT TO PREVENT THE SURVEY TO BE RETRACED. ALL INTERIOR MONUMENTS SHOWN ON THIS MAP WILL BE SET WITHIN (1) YEAR FROM THE DATE OF RECORDATION OR TO OCCUPANCY OF ANY STRUCTURE HEREON, WHICHEVER OCCURS FIRST.



1/99

DATE

*Gary Giannetta*  
GARY GIANNETTA, R.C.E. 26996

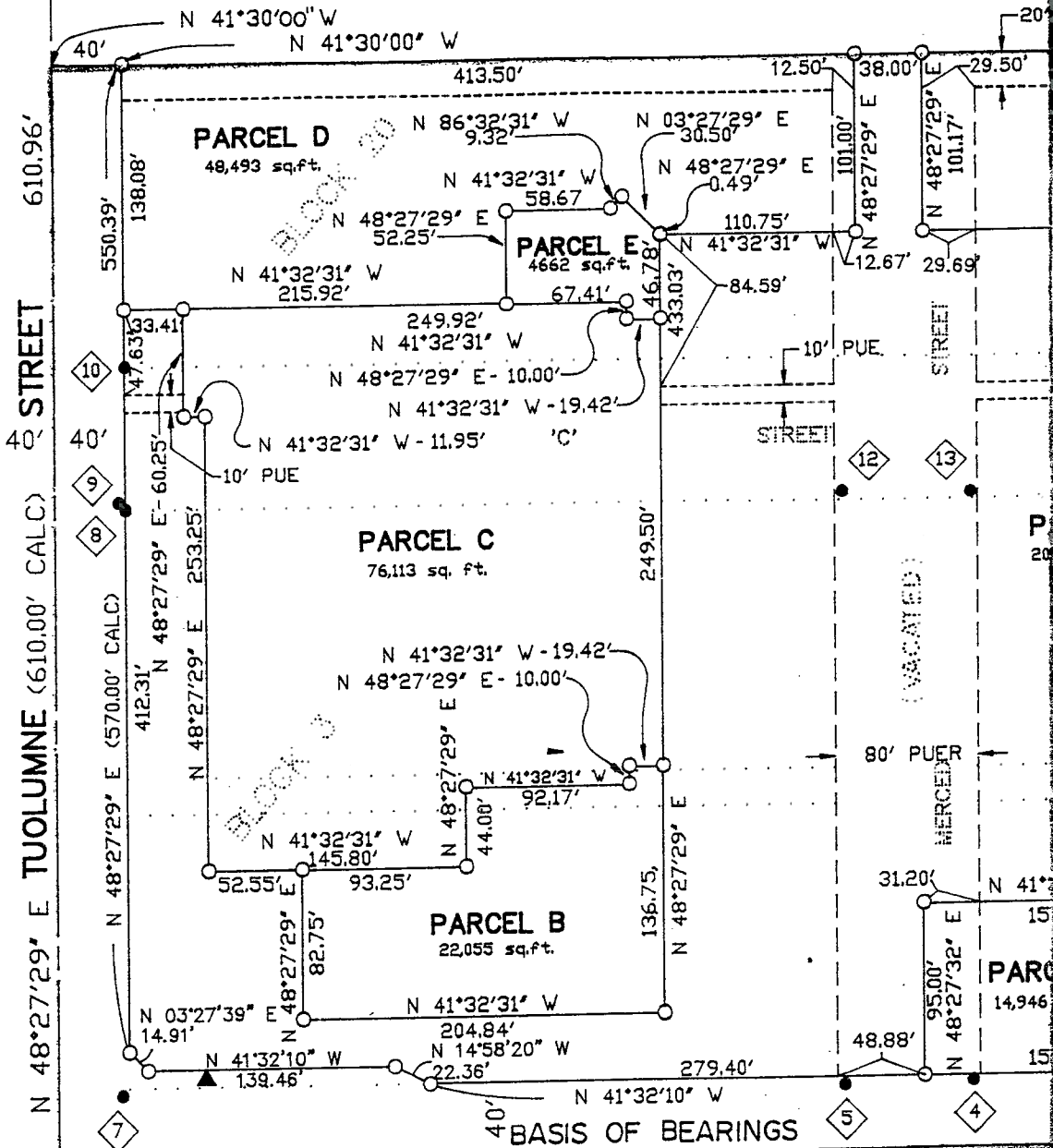
- ① 1" IRON PIPE, FLUSH, NOT TAGGED, AS BEING THE MOST EASTERLY CORNER ON BLOCK 19
- ② CHISELED "+" IN CONCRETE AS BEING 3.00' FROM THE SOUTHEASTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF BLOCK 19 AND 4.00' FROM THE SOUTHWESTERLY PRODUCTION OF THE SOUTHEASTERLY LINE OF BLOCK 19
- ③ CHISELED "+" IN 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 295 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHWESTERLY LINE OF BLOCK 295
- 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 4.05' 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 190.17' FROM THE NORTHWESTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF THE 20' ALLEY IN BLOCKS 19 AND 20 AS SHOWN ON THE STATE HIGHWAY MAPS
- ⑫ CHISELED "+" IN CONCRETE AS BEING 4.00' FROM THE SOUTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 3 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE SOUTHEASTERLY LINE OF BLOCK 3
- ⑬ CHISELED "+" IN CONCRETE AS BEING 3.00' FROM THE NORTHWESTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF BLOCK 4 AND 4.00' FROM THE NORTHEASTERLY PRODUCTION OF THE NORTHWESTERLY LINE OF BLOCK 4

NOTE:

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

**FREEWAY 99**

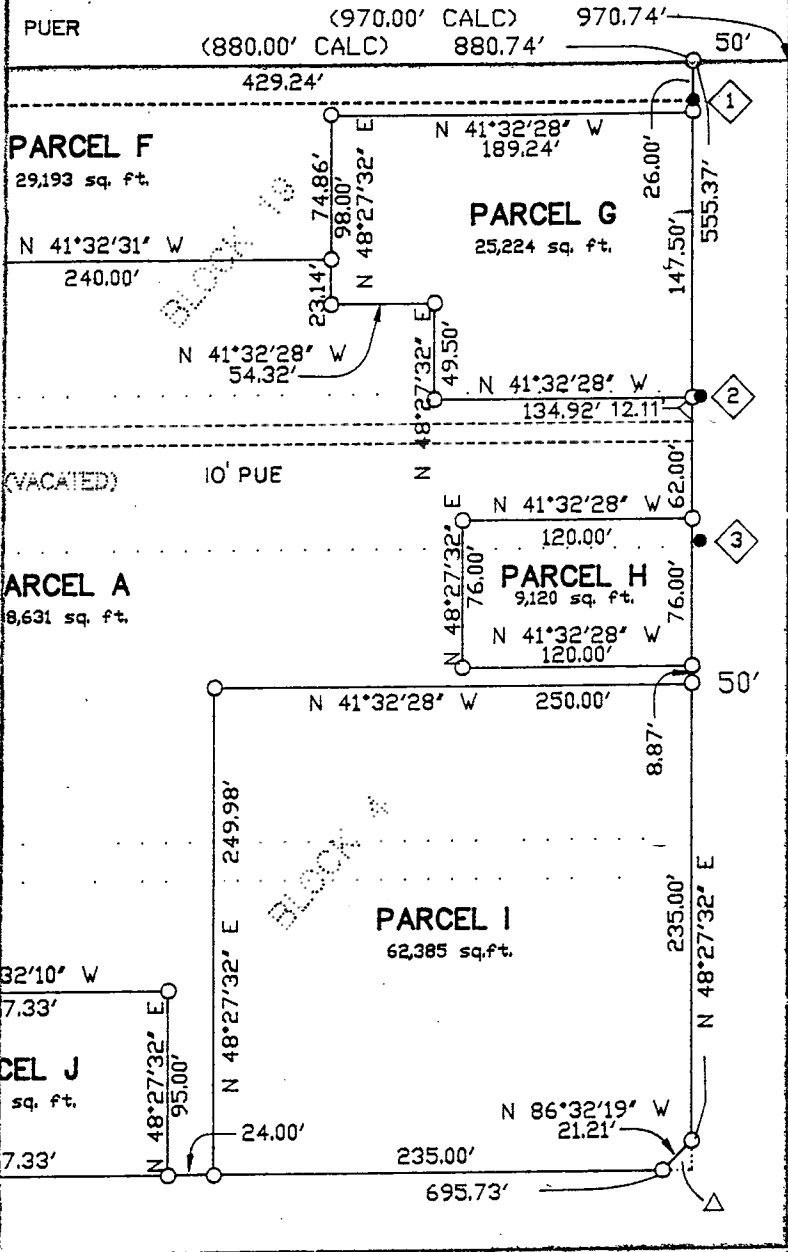
FREEWAY 99 SURVEY CENTERLINE AS PER VOLUME  
OF STATE HIGHWAY MONUMENT MAPS, FRES



BLOCK 288

TOWN OF FRESNO  
VOLUME 4, PAGES 2 OF PLATS,

E 2, DRAWER 123, PAGE 50  
 NO COUNTY RECORDS



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PREPARED BY

GARY G. GIANN  
 1119 S STREET  
 FRESNO, CALIF  
 (559) 264-359

F.C.R.

BLOCK 285



EXP. 3/31/01

DIRECTOR OF THE DEVELOPMENT DEPARTMENT CERTIFICATE:

MAP HAS BEEN EXAMINED FOR CONFORMANCE WITH REQUIREMENTS OF  
DIVISION MAP ACT AND CHAPTER 12, ARTICLE 12 OF THE FRESNO  
LOCAL CODE.

\_\_\_\_\_  
DATE DIRECTOR OF THE DEVELOPMENT DEPARTMENT

CLERK'S CERTIFICATE:

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

REBECCA E. KLISCH  
CITY CLERK

\_\_\_\_\_  
DATE DEPUTY

RECORDER'S CERTIFICATE:

INSTRUMENT NO. \_\_\_\_\_  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1999,  
\_\_\_\_\_ M. BOOK \_\_\_\_\_ OF PARCEL MAPS, AT PAGE \_\_\_\_\_  
REQUEST OF GARY GIANNETTA  
BY: \_\_\_\_\_

DEPUTY  
WILLIAM C. GREENWOOD, COUNTY RECORDER

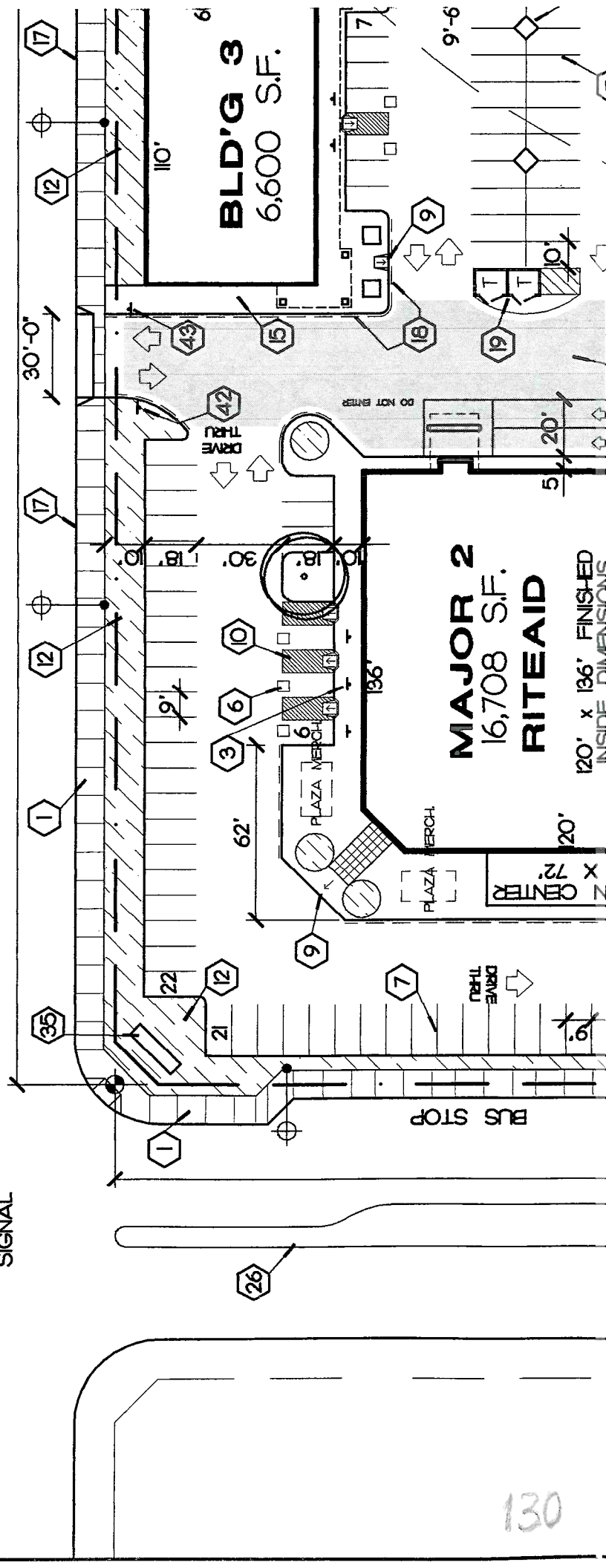
BY: \_\_\_\_\_  
DEPUTY

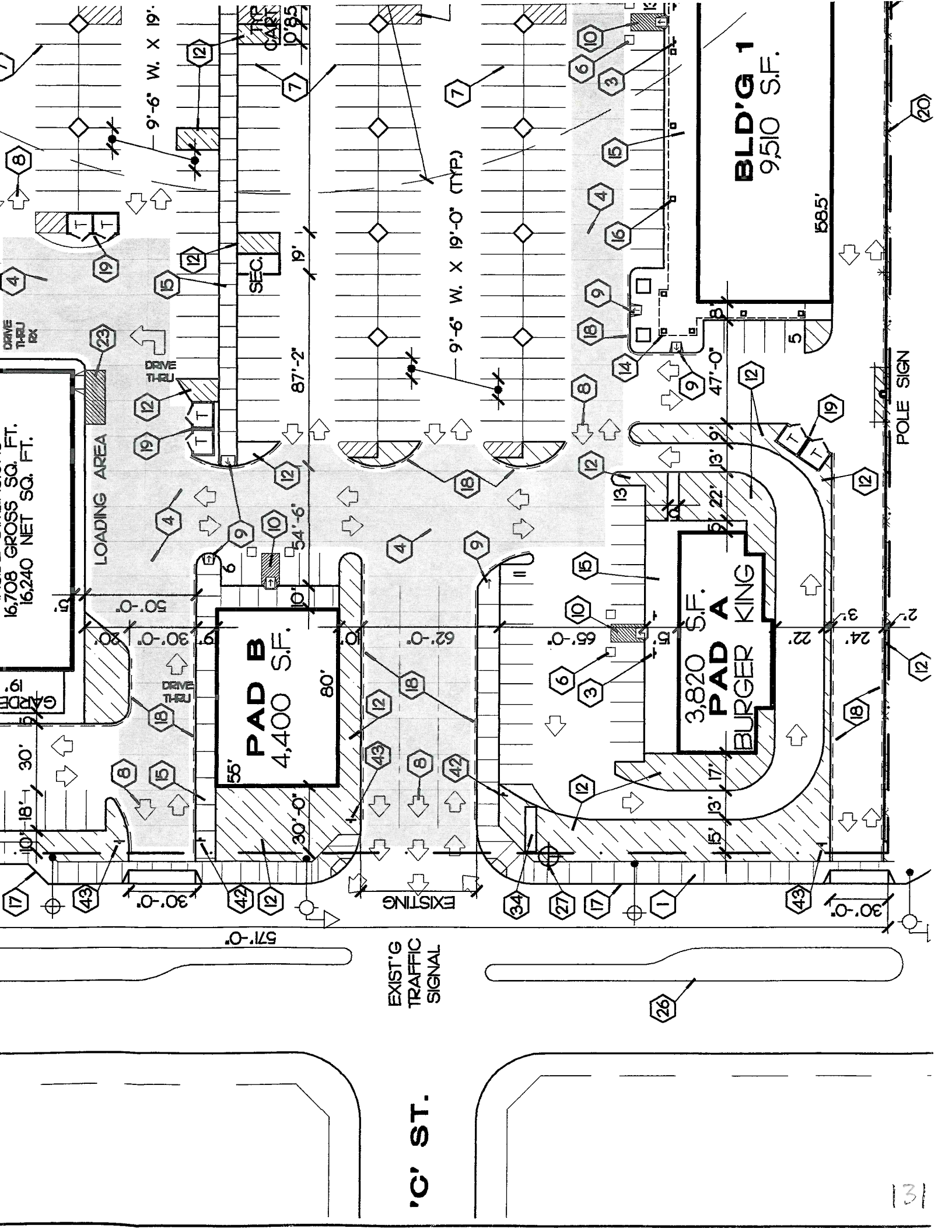
TA  
NIA 93721

FRESNO STREET

PROPOSED  
TRAFFIC  
SIGNAL

'B' STREET





16,708 GROSS SQ. FT.  
16,240 NET SQ. FT.

LOADING AREA

**PAD B**  
4,400 S.F.

3,820 S.F.  
**PAD A**  
BURGER KING

**BLD'G 1**  
9,510 S.F.

EXIST'G  
TRAFFIC  
SIGNAL

'C' ST.

POLE SIGN

9'-6" W. X 19'

9'-6" W. X 19'-0" (TYP)

57'-0"

585'

SEC.

87'-2"

54'-6"

80'

55'

30'-0"

62'-0"

43'

EXISTING

65'-0"

11'

34'

13'-0"

13'

27'

15'

13'-17'

17'

22'

13'-9'

1'

24'

47'-0"

1'

3'-0"

12'

43'

2'-0"

19'

12'

2'-0"

12'

12'

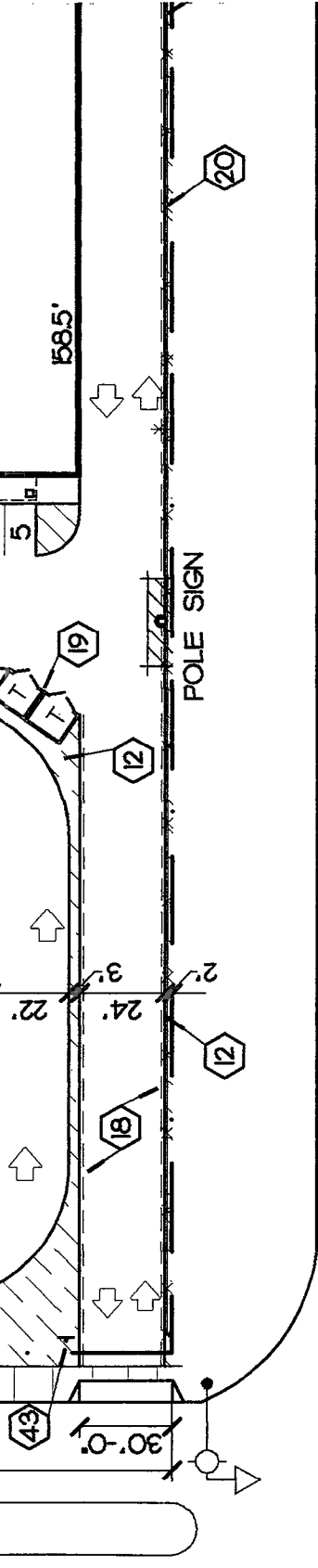
2'-0"

12'

12'

13

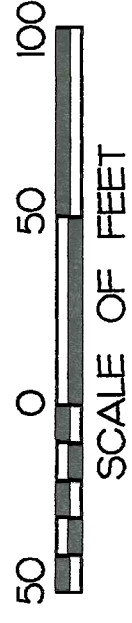
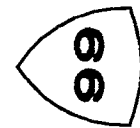
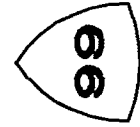




EXIST'G  
TRAFFIC  
SIGNAL

OFF RAMP EXIT

FRESNO STREET

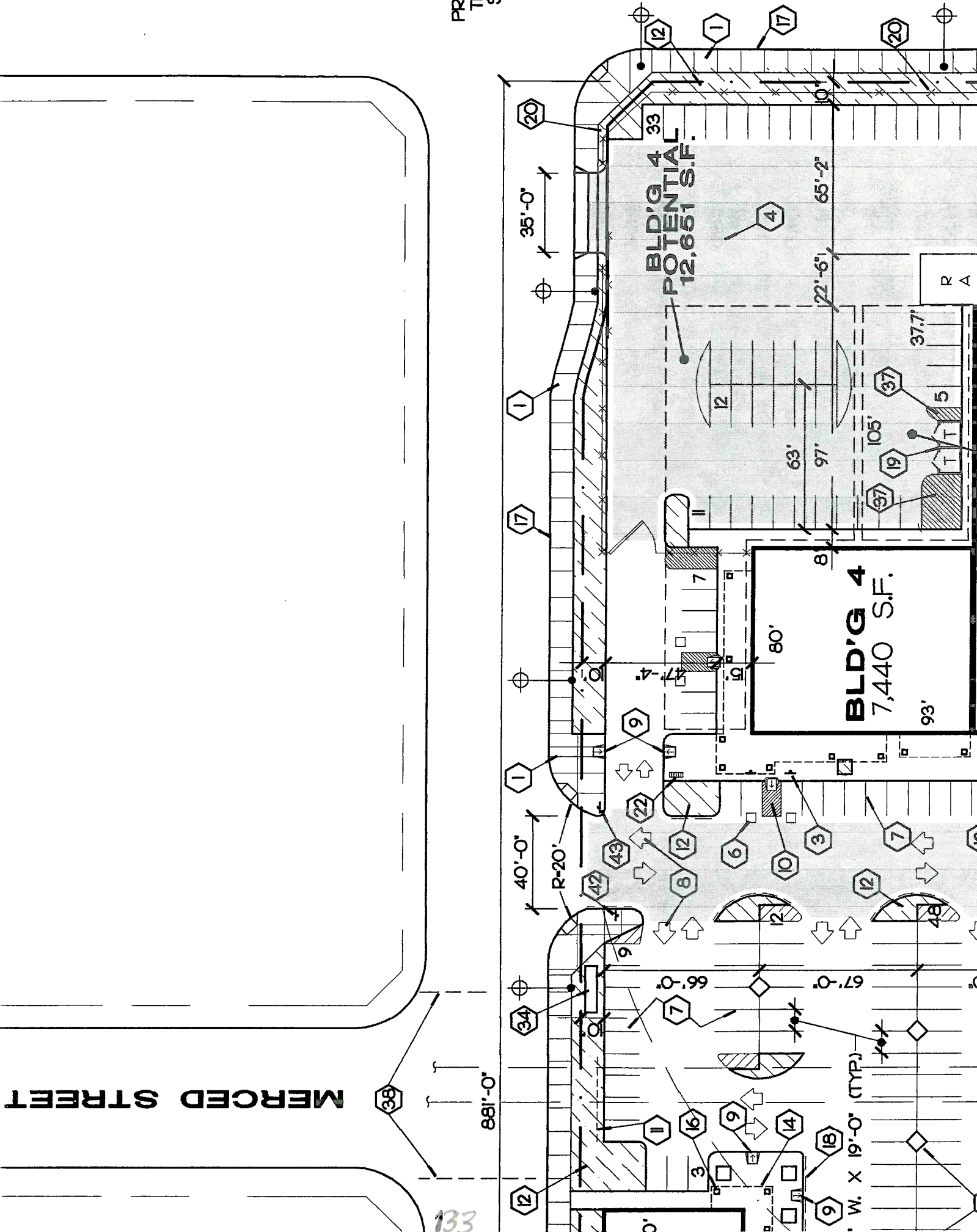




MERCED STREET

TUOLUMNE STREET

PROPOS  
TRAFFIC  
SIGNAL



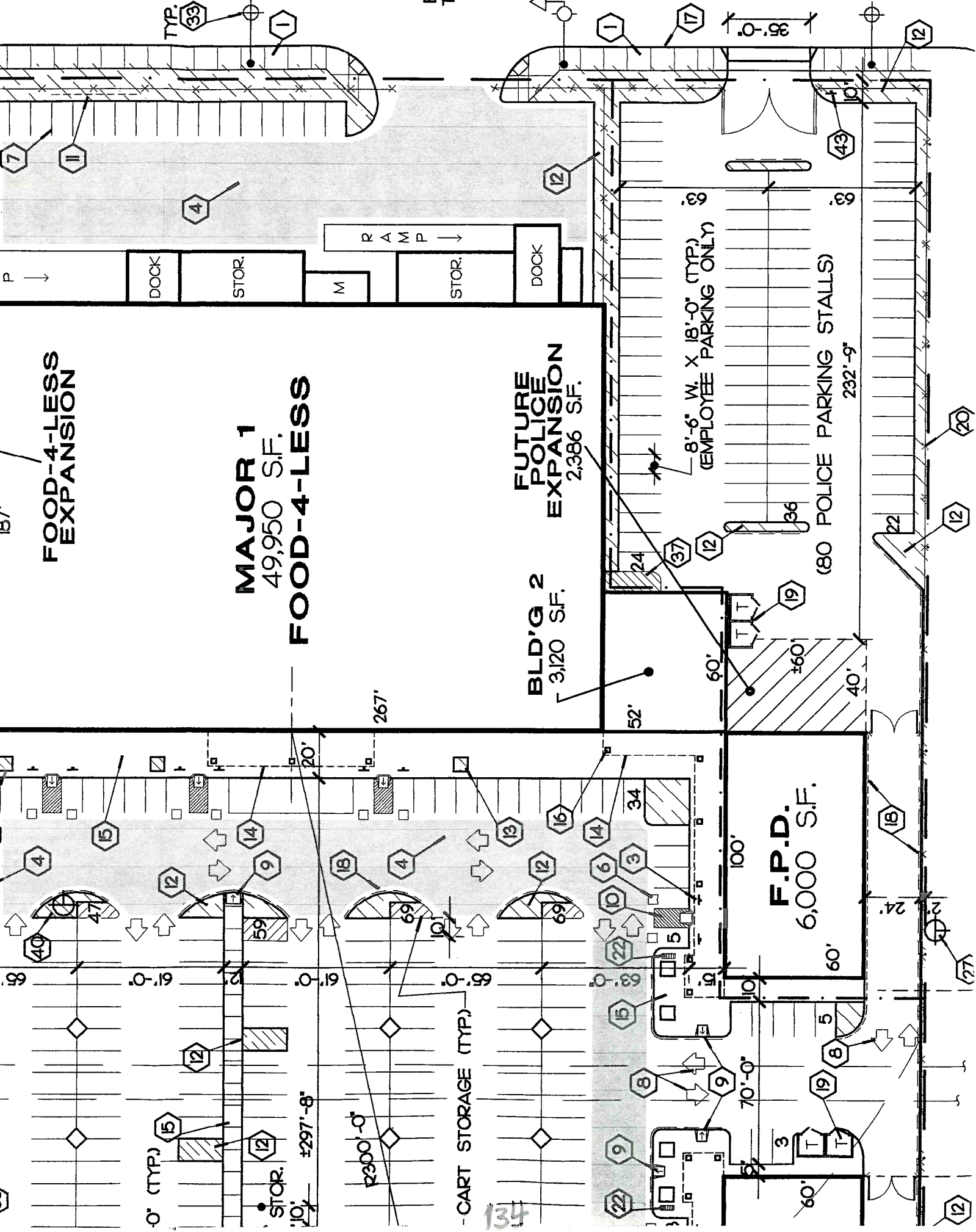
133

W. X 19'-0" (TYP.)

R A M

ONE WAY →

EXISTING TRAFFIC SIGNAL



FOOD-4-LESS EXPANSION

MAJOR 1  
49,950 S.F.  
FOOD-4-LESS

FUTURE POLICE EXPANSION  
2,386 S.F.

BLD'G 2  
3,120 S.F.

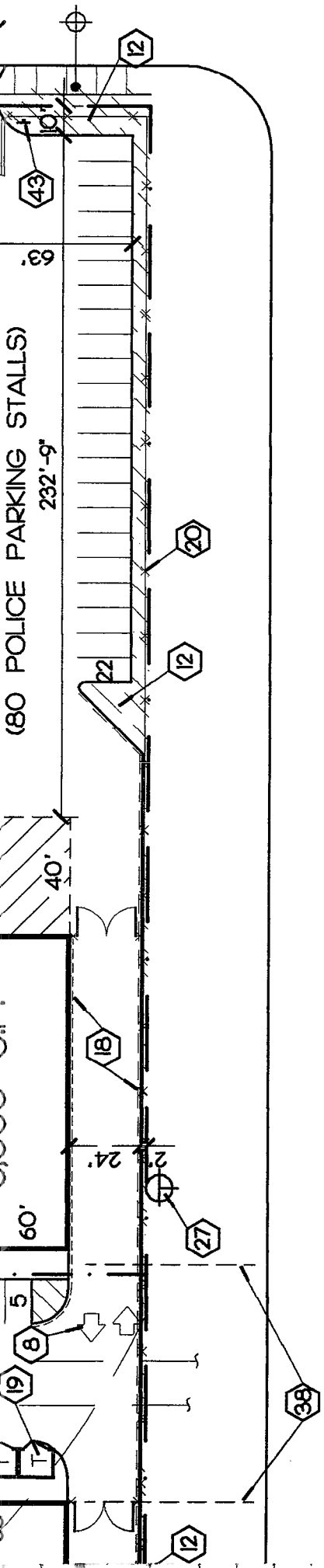
8'-6" W. X 18'-0" (TYP.)  
(EMPLOYEE PARKING ONLY)

(80 POLICE PARKING STALLS)  
232'-9"

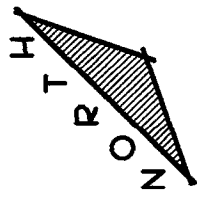
F.P.D.  
6,000 S.F.

CART STORAGE (TYP.)

134



TUOLUMNE STREET



SCALE: 1" = 50'-0"

# SCHEMATIC SITE PLAN

# KEYNOTES

1. CONSTRUCT 10'-0" NEW SIDEWALKS PER CITY OF FRESNO PUBLIC WORKS STANDARDS
2. INDICATES DEDICATION OF STREET EASEMENT REQ. FOR WHEELCHAIR RAMPS
3. MOUNT ON A SINGLE 7'-0" HIGH POLE A SIGN WITH THE INTERNATIONAL HANDICAP SYMBOL, (TYP. AT EA. H.C. STALL) PLACE A MIN. OF 3' BEHIND CURB
4. SHADING INDICATES ASPHALT TRUCK PAVEMENT. SEE GRADING PLAN FOR LOCATION AND PAVING SECTION PER PUBLIC WORKS STANDARDS, P-34
5. ASPHALT AUTOMOBILE PAVEMENT, SEE GRADING PLAN FOR LOCATION AND PAVING SECTION PER PUBLIC WORKS STANDARDS, P-34
6. BLUE PAINTED SYMBOL OF ACCESSIBILITY (4'-0" SQ.)
7. 4" WIDE PAINTED WHITE STRIPES AT EA. STALL TYP.
8. PAINTED WHITE DIRECTION ARROW, TYP.
9. HCAP ACCESS RAMP, SEE GRADING PLAN PER P.W. STD P-28 (TYP.)
10. HCAP LOADING AREA, PAINTED WHITE STRIPES AT 3' O.C.
11. BUMPER OVERHANG, 3'-0" TYP. (NOT SHOWN)
12. LANDSCAPED AREA, SEE LANDSCAPE SITE PLAN
13. 6'-0" X 6'-0" SURFACE PLANTER
14. ROOF OVERHANG, TYPICAL
15. CONCRETE SIDEWALK
16. CANOPY COLUMNS - TYP.
17. EXISTING CONCRETE CURB AND GUTTER
18. DOTTED LINE INDICATES CURB PAINTED RED W/ 3" WHITE LETTERS STATING 'FIRE LANE'
19. TRASH ENCLOSURE W/ RECYCLE AREA
20. INDICATES 6' HIGH FENCE
21. 6" HIGH CONCRETE CURB TYP.
22. BIKE RACK 10 SPACES
23. 12'x40' LOADING ZONE, PAINTED 4" WIDE WHITE STRIPES AT 3' O.C.
24. BACKFLOW PREVENTION DEVICE, SEE PLUMB. PLAN
25. CONCRETE APRON

PROPOSED MEDIAN ISLAND

A R  
 7910  
 SUITE  
 FRESI  
 209  
 FAX 2

PROJECT:

## KEARI PALMI SHOPPI CENTE

NORTHWEST QL  
 HIGHWAY 99 A  
 FRESNO, CA.

CENTRAL



22. BIKE RACK 10 SPACES
23. 12'x40' LOADING ZONE, PAINTED 4" WIDE WHITE STRIPES AT 3' O.C.
24. BACKFLOW PREVENTION DEVICE, SEE PLUMB. PLAN
25. CONCRETE APRON
26. PROPOSED MEDIAN ISLAND
27. EXISTING FIRE HYDRANT (TO REMAIN)
28. WATER METER PER CITY OF FRESNO REQUIREMENTS SEE PLUMBING PLAN (D.A.L.D.)
29. STUB-OUT WATER FOR LANDSCAPE IRRIGATION (D.A.L.D.)
30. SEE PLUMBING PLAN FOR CONT. OF WASTE LINE (D.A.L.D.)
31. OPEN
32. OPEN
33. STREET LIGHT
34. PYLON SIGN (NOT APP. AS A PART OF THIS REVIEW) MASTER SIGN PROGRAM REQUIRED
35. MONUMENT SIGN (NOT A PART OF THIS REVIEW) MASTER SIGN PROGRAM REQUIRED
36. 6'-0" X 6'-0" TREE WELL WITH 6' CONCRETE CURB
37. 4" WIDE WHITE STRIPES - NO PARKING AREA
38. STORM DRAIN EASEMENT
39. PROPOSED TRANSFORMER - SUBJECT TO PG&E REQUIREMENTS
40. INSTALL NEW PRIVATE FIRE-HYDRANT
41. OPEN
42. H/C ENTRANCE SIGNAGE
43. INSTALL 30" STATE STANDARD STOP SIGN AT ALL LOCATIONS SHOWN. SIGN SHALL BE MOUNTED ON A 2" GALVANIZED STEEL POST W/ THE BOT. OF THE SIGN 7'-0" ABOVE THE GROUND, LOCATED 2'-0" BEHIND CURB AND IMMEDIATELY BEHIND MAJOR STREET SIDEWALK. RIGHT TURN ONLY SIGN ALSO REQ'D AT SAME LOCATION. INSTALL A 30" STATE STANDARD SIGN IMMEDIATELY BELOW THE STOP SIGN ON SAME POST.

'C'  
ST.

**CENTRAL CITY  
PROPERTIES**  
c/o TOM BEGG  
1195 W. SHAW, SUITE  
FRESNO, CALIFORNIA  
209-226-2500

JOHN H. SMITH, A.I.A. C15885  
DAVID M. IWANAGA, A.I.A. C17199  
JOHN W. MILHOUS, A.I.A. C15494

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**PROJECT DEVELOPMENT**

DATE	ISSUED FOR

D.A.L.D. = DETERMINE AT LATER DATE

**LEGAL DESCRIPTION**

BLOCKS 3, 4, 19, & 20 OF THE TOWN OF FRESNO ACCORDING TO THE MAP THERE OF RECORDED IN BOOK 1 PAGE 2 OF PLATS, FRESNO COUNTY RECORDS.

**SITE DATA**

**RETAIL AREA**

- LAND USE ZONE - C2
- SITE AREA - #10.45 A.C./ 456,051 SF.
- BUILDING AREA - 101,548 SF.
- COVERAGE RATIO - 22%
- ON-SITE PARKING PROVIDED - 523 SPACES / 1000 SF.

**POLICE AREA**

- LAND USE ZONE - C2
- SITE AREA - #107 A.C./ 47,000 SF.
- BUILDING AREA - 6,000 SF.
- ON-SITE PARKING PROVIDED - 82 SPACES / 1000 SF.

**REVISIONS**

NO.	DATE	DESCRIPTION

**SHEET DESCRIPTION**

**PRELIMINARY  
SITE PLAN**

PROJECT COORDINATOR	JHS	SHEET NO.	
PROJECT NO.	9504	DATE	2/27/98
SCALE	1" = 50'-0"		



ARCHITECTS

7910 NORTH INGRAM  
SUITE 102  
FRESNO, CALIFORNIA 93711  
209 448 8400  
FAX 209 448 8467

PROJECT:

**KEARNEY  
PALMS  
SHOPPING  
CENTER**

NORTHWEST QUADRANT  
HIGHWAY 99 AND FRESNO ST.  
FRESNO, CA.

**CENTRAL CITIES  
PROPERTIES**

**c/o TOM BEGGS**

1195 W. SHAW, SUITE C  
FRESNO, CALIFORNIA 93711  
209-226-2500

PP. AS A PART OF THIS REVIEW)  
 2AM REQUIRED

IT A PART OF THIS REVIEW)  
 2AM REQUIRED

WELL WITH 6" CONCRETE CURB  
 PES - NO PARKING AREA  
 VENT  
 RMER - SUBJECT TO PG&E

E FIRE-HYDRANT

AGE

STANDARD STOP SIGN AT ALL  
 SIGN SHALL BE MOUNTED ON A  
 3L POST W/ THE BOT. OF THE SIGN  
 ROUNO, LOCATED 2'-0" BEHIND CURB  
 EHIND MAJOR STREET SIDEWALK.  
 SIGN ALSO REQ'D AT SAME  
 A 30" STATE STANDARD SIGN  
 THE STOP SIGN ON SAME POST.

WINE AT LATER DATE

**OPTION**

= THE TOWN OF FRESNO ACCORDING  
 RECORDED IN BOOK 1 PAGE 2 OF  
 RECORDS.

- C2
- ±10.45 A.C./ 456,051 S.F.
- 101,548 S.F.
- 22%
- 523 SPACES  
 5.2 SPACES / 1000 S.F.

ED

JOHN H. SMITH, A.I.A. CI5885

DAVID M. IWANAGA, A.I.A. CI7199

JOHN W. MILHOUS, A.I.A. CI5494

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PROJECT DEVELOPMENT

DATE	ISSUED FOR

REVISIONS

NO.	DATE	DESCRIPTION

SHEET DESCRIPTION

# PRELIMINARY SITE PLAN

PROJECT COORDINATOR  
 JHS

SHEET NO.

140



SIGN SHALL BE MOUNTED ON A  
 POST W/ THE BOT. OF THE SIGN  
 FOUND, LOCATED 2'-0" BEHIND CURB  
 BEHIND MAJOR STREET SIDEWALK.  
 SIGN ALSO REQ'D AT SAME  
 30" STATE STANDARD SIGN  
 THE STOP SIGN ON SAME POST.

LINE AT LATER DATE

**NOTATION**

THE TOWN OF FRESNO ACCORDING  
 RECORDED IN BOOK 1 PAGE 2 OF  
 RECORDS.

- C2
- ±10.45 A.C./ 456,051 S.F.
- 101,548 S.F.
- 22%
- 523 SPACES  
 5.2 SPACES / 1000 S.F.

- C2
- ±1.07 A.C./ 47,000 S.F.
- 6,000 S.F.
- 82 SPACES  
 13.6 SPACES / 1000 S.F.

PROJECT DEVELOPMENT

DATE	ISSUED FOR

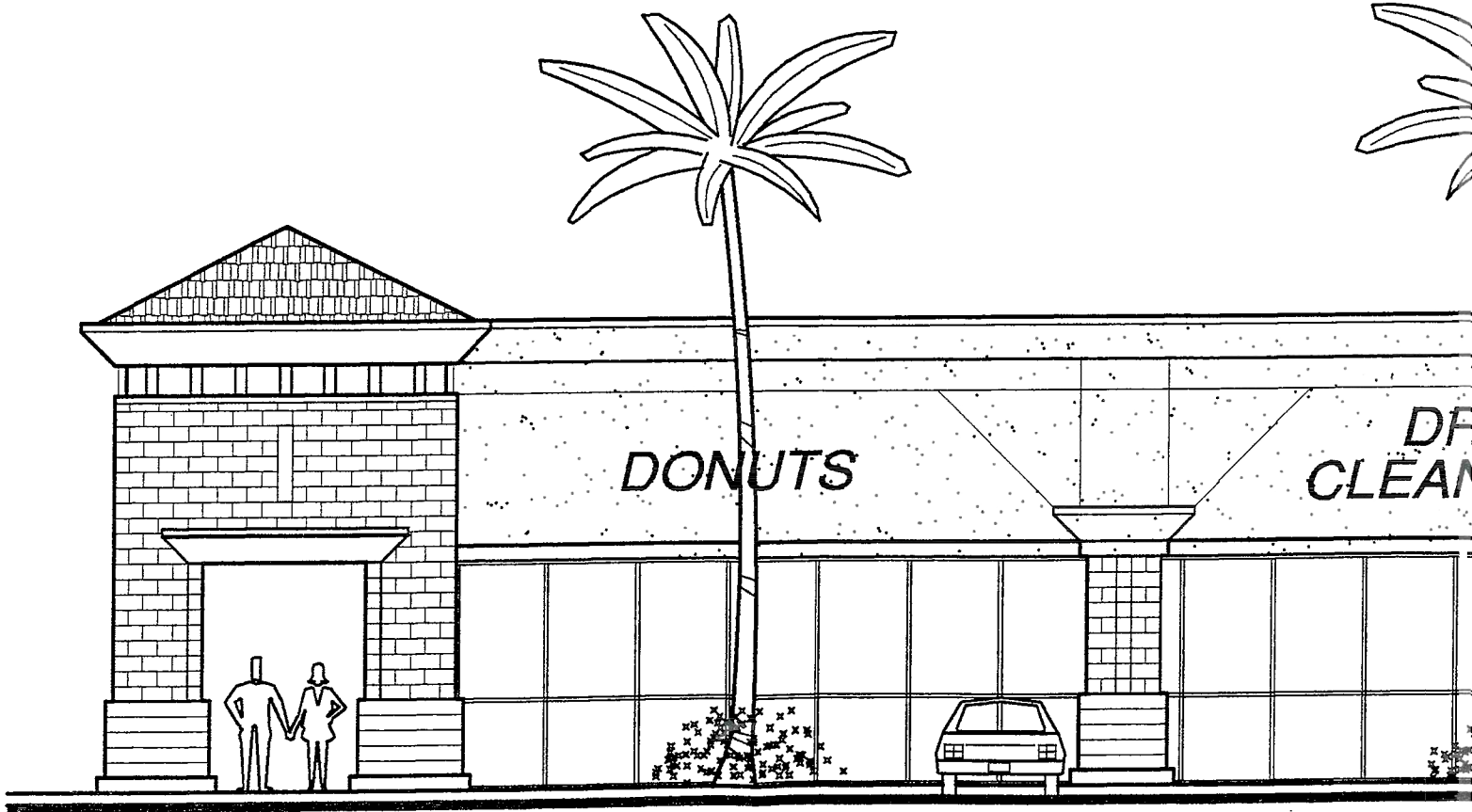
REVISIONS

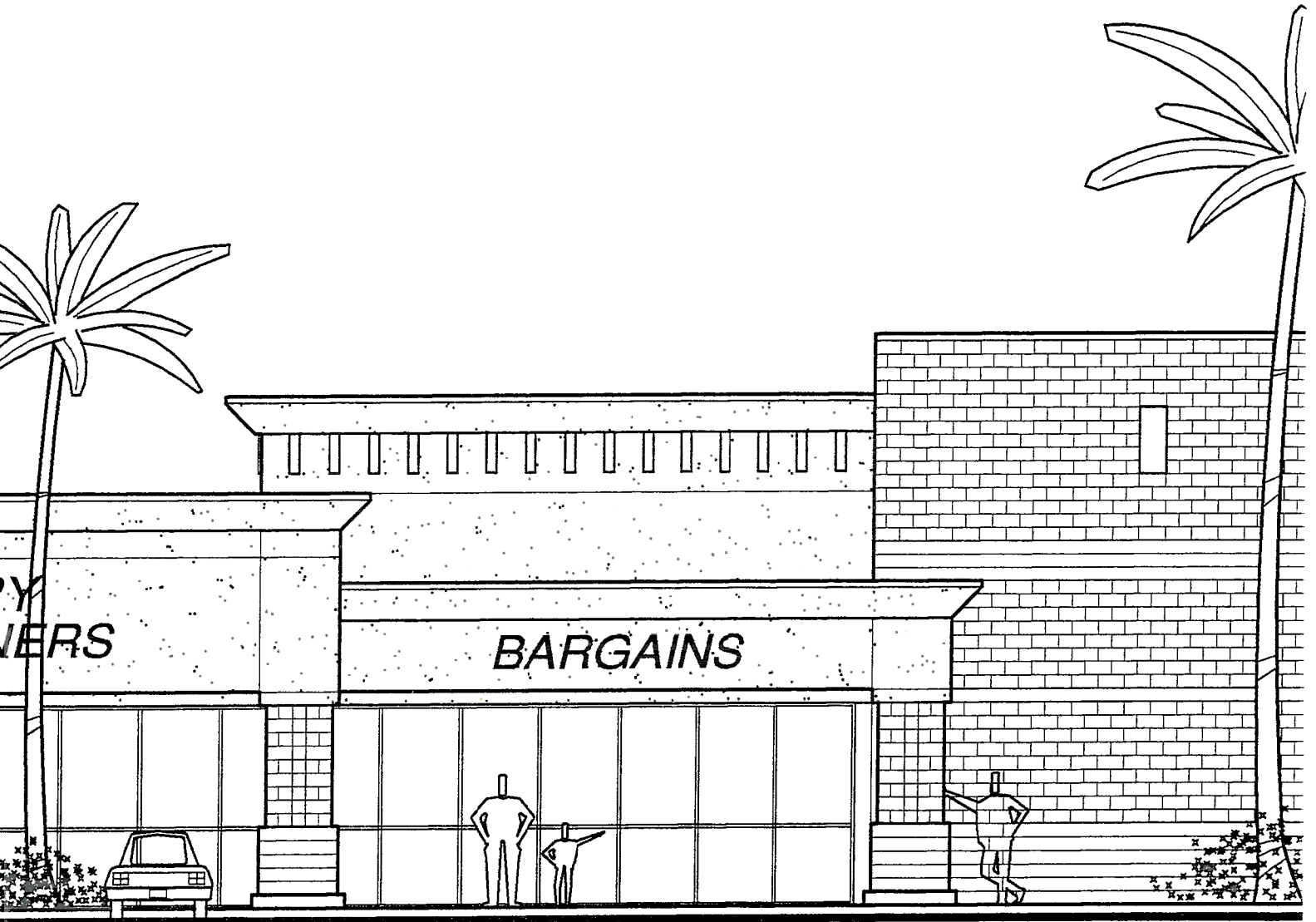
NO.	DATE	DESCRIPTION

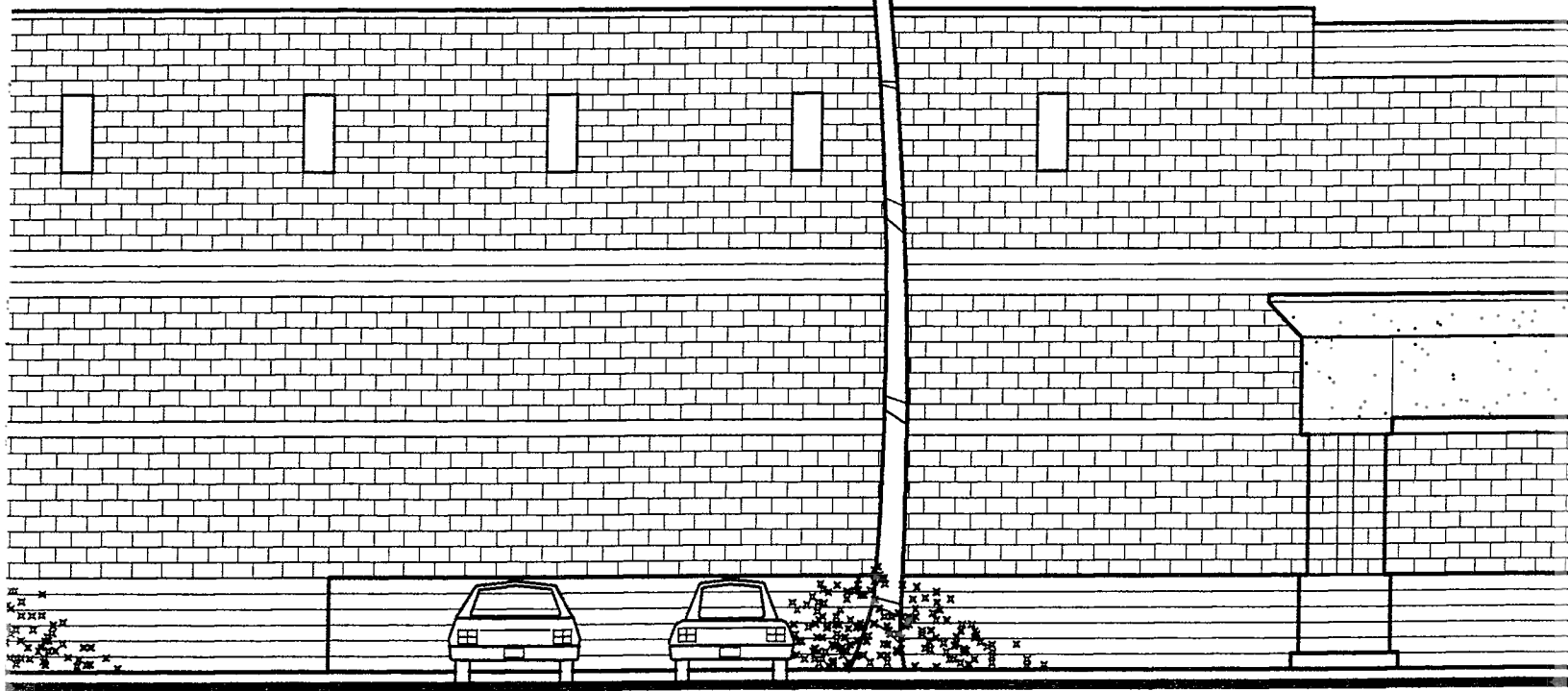
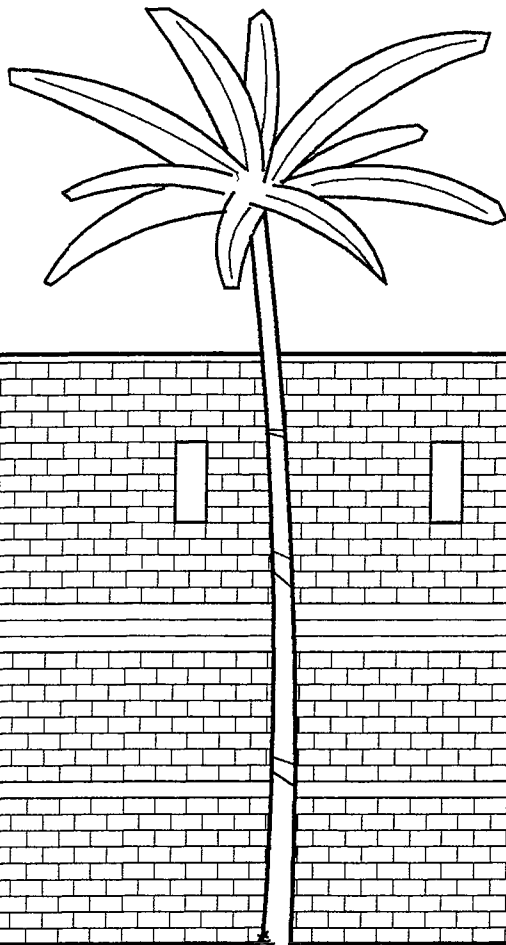
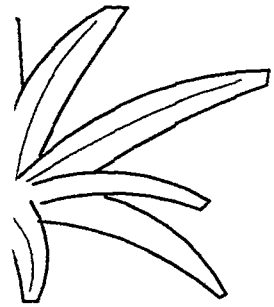
SHEET DESCRIPTION

**PRELIMINARY  
 SITE PLAN**

PROJECT COORDINATOR <b>JHS</b>	SHEET NO.  <b>A1</b>
PROJECT NO. <b>9504</b>	
DATE <b>2/27/98</b>	
SCALE <b>1" = 50'-0"</b>	







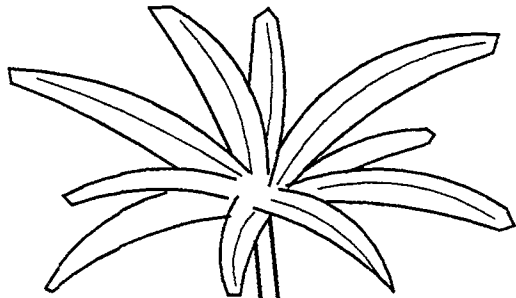
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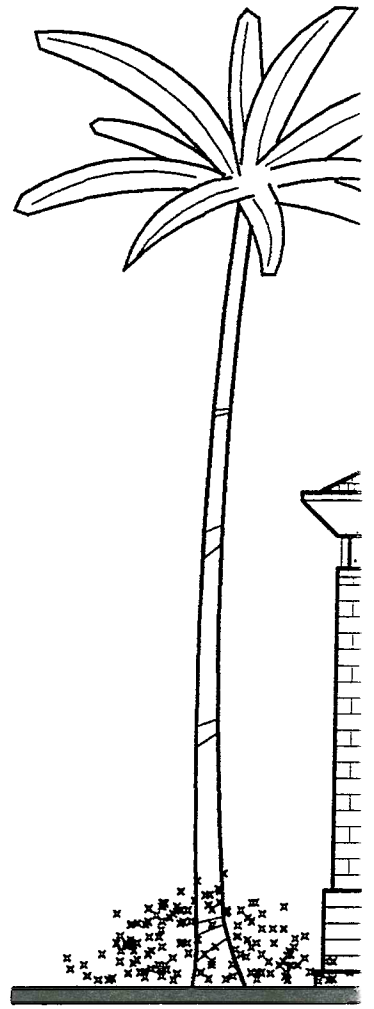
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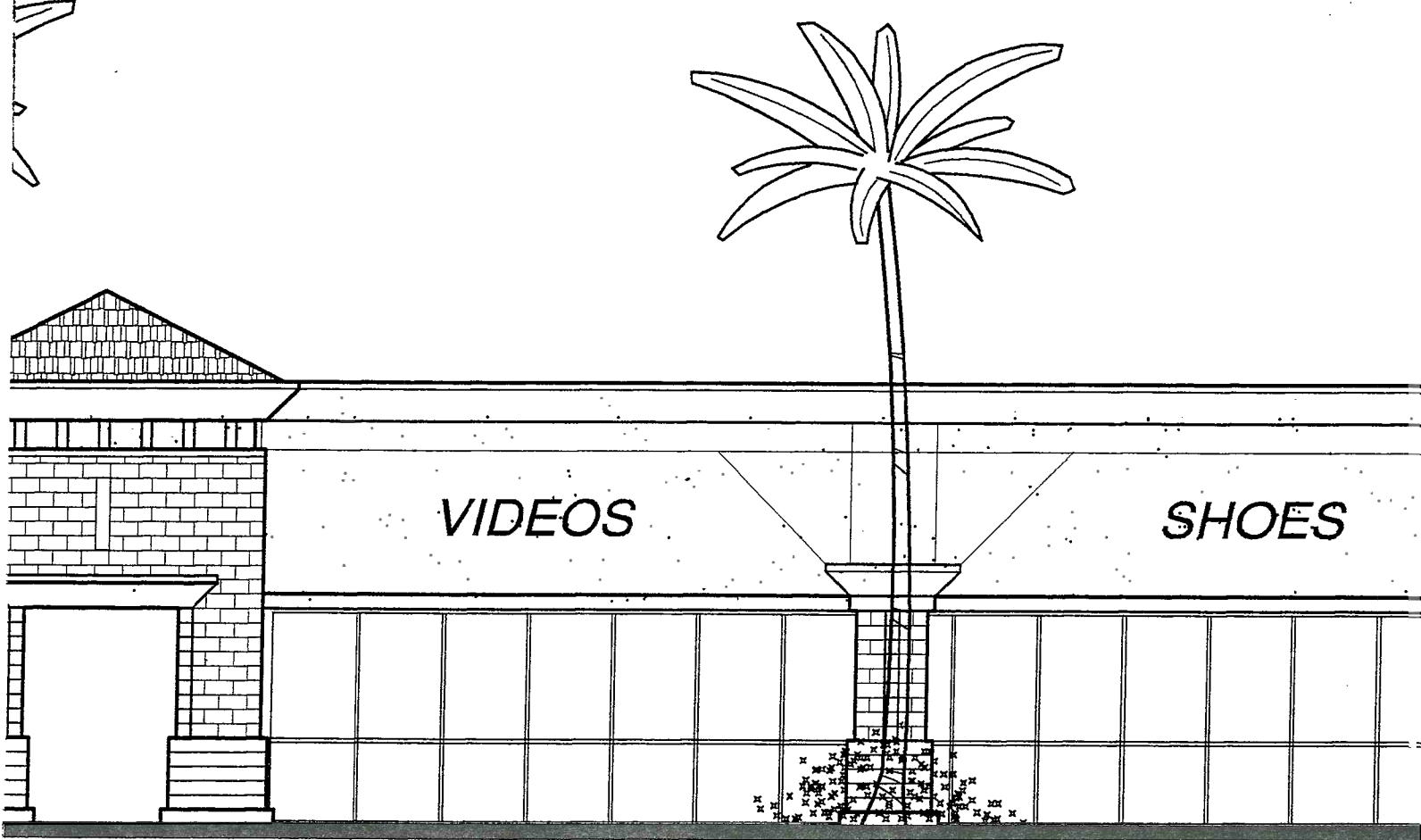
SOUTH ELEVATION





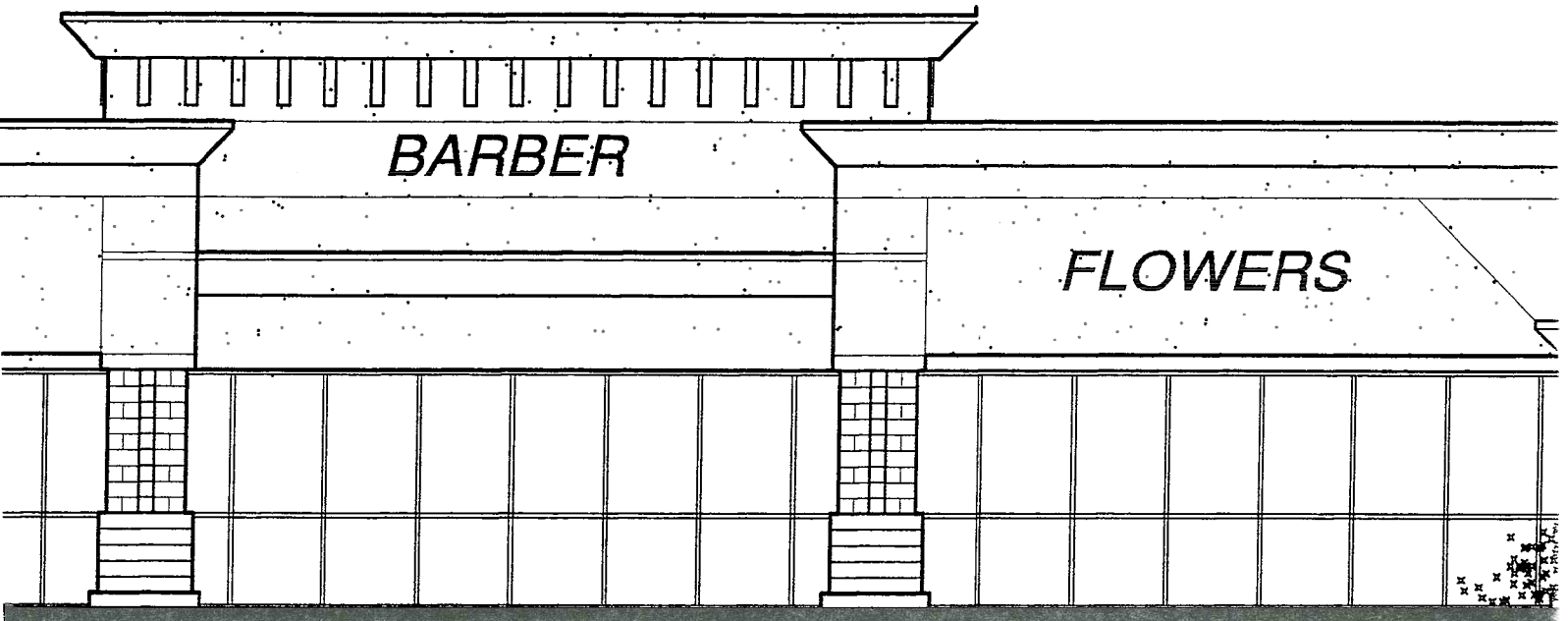






BUILDING

KEARNEY PARK



NG 1 WEST ELEVATION

ALMS SHOPPING



G CENTER



ARCHITECTS

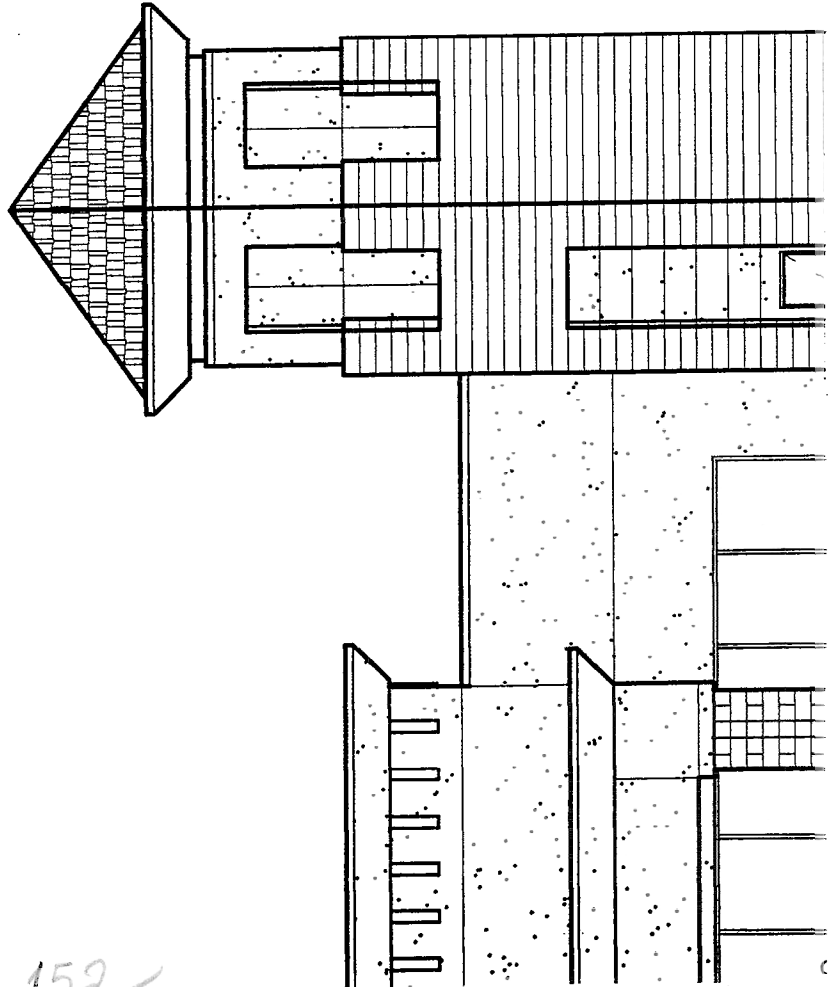
7910 NORTH INGRAM  
 SUITE 102  
 FRESNO, CALIFORNIA 93711  
 209.448.8400  
 FAX 209.448.8467

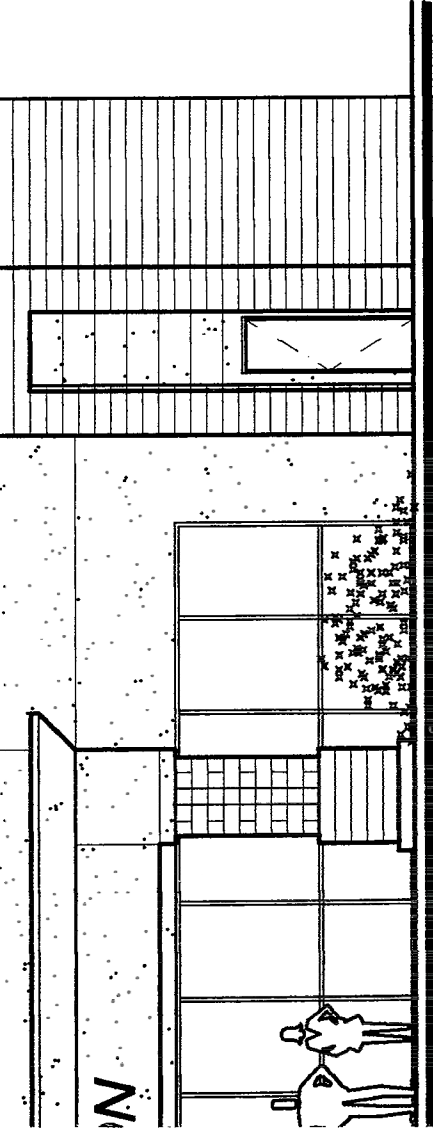
PROJECT:

# KEARNEY PALMS SHOPPING CENTER

NORTHWEST QUADRANT  
 HIGHWAY 99 AND FRESNO ST.  
 FRESNO, CA.

## CENTRAL CITIES





# CENTRAL CITIES PROPERTIES

**C/O TOM BEGGS**

1195 W. SHAW, SUITE C

FRESNO, CALIFORNIA 93711

209-226-2500

JOHN H. SMITH, A.I.A. C15885

DAVID M. IWANAGA, A.I.A. C17199

JOHN W. MILHOUS, A.I.A. C15494

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## PROJECT DEVELOPMENT

DATE	ISSUED FOR

REVISIONS

NO.	DATE	DESCRIPTION

SHEET DESCRIPTION

# ELEVATIONS

SHEET NO.

PROJECT COORDINATOR

JHS

PROJECT NO.

9504

DATE

2/27/98

SCALE

1" = 50'-0"

# A2