

Orange Countywide Oversight Board

Agenda Item No. 7

Date: 4/21/2020

From: Successor Agency to the San Juan Capistrano Redevelopment Agency

Subject: Resolution of the Countywide Oversight Board Approving Assignment of Parking Structure Agreements

Recommended Action:

Adopt a Resolution (Attachment 1) approving an Assignment and Assumption Agreement (Attachment 2) to assign all rights and obligations associated with operation of the San Juan Capistrano downtown parking structure from the Successor Agency to the City

EXECUTIVE SUMMARY:

In 1989, the private owner of a downtown parking structure in the City of San Juan Capistrano entered into a joint parking and maintenance agreement with the former Community Redevelopment Agency of the City of San Juan Capistrano to provide public parking in the structure through 2045. Redevelopment law in effect at that time required that a city, not redevelopment agency, act as the participating public agency in agreements that govern ongoing facility operations. To remedy this administrative error, staff recommends that the various agreements associated with operations of the parking structure be transferred from the Successor Agency to the City. It should be noted that although the agreements improperly identified the former Community Redevelopment Agency as manager of the parking structure, since inception the City, not the former Community Redevelopment Agency, has actually performed all operational functions of the facility, as provided by state law.

DISCUSSION/ANALYSIS:

In 1989, the Franciscan Plaza Investment Group (Owner) entered into a joint parking and maintenance agreement with the former Community Redevelopment Agency (Agency) to operate a parking structure in downtown San Juan Capistrano that was constructed by the Owner. Rights and obligations associated with this agreement and related agreements included the following:

1. Owner to set aside a portion of the parking structure for commuter parking;
2. Sharing of parking fees and operating expenses between the Agency and the Owner; and,
3. Agency lease payments to the Owner for commuter-designated parking.

Since commencement of parking structure operations, the City, rather than the Agency, has exercised the rights and obligations of all agreements associated with parking structure operations, receiving all related revenues and paying all expenses associated with the Agency agreements. This was done in recognition that redevelopment law prohibited redevelopment agency involvement in the ongoing operations of public facilities. The City recently discovered that the original documents associated with the parking structure incorrectly referenced the Agency as the participating public agency, despite the City's lawful management of the public's interest in the operations of the parking structure since its opening in 1990.

Staff recommends that the Oversight Board approve assignment of the Successor Agency's interests in these agreements to the City, consistent with the operation of redevelopment law that was in effect when the documents were first executed. This will allow the City, rather than the Successor Agency, to continue to pay the operating expenses of the parking structure, net of related operational revenue, as required by California redevelopment law. The parking structure operates on essentially a break-even basis, with some years generating a small operating loss and some years a small operating gain (both gains and losses typically netting to less than \$5,000 per year).

If the assignment is approved by all required parties, the Successor Agency will be dissolved in 2036, corresponding with the end date of the former Community Redevelopment Agency. At that time, all remaining obligations of the Successor Agency will have been paid off and tax increment can then be distributed to the taxing entities with no further deduction for Successor Agency operating costs. If the parking structure agreements are not assigned to the City, the Successor Agency will be required to extend its life to the termination date of the parking structure agreements, which expire in 2045, resulting in additional expenditures of City and California Department of Finance (DOF) funds to deal with the reporting and administrative requirements of the Successor Agency over its extended life, as well as diminished residual distributions to the taxing entities.

Should the Countywide Oversight Board approve the assignment, this matter will be presented to the California Department of Finance for consideration.

Impact on Taxing Entities

Assignment will provide a significant financial benefit to all of the taxing entities by avoiding additional outlays of administrative expenditures to operate the Successor Agency for nine additional years (through 2045) beyond the scheduled Successor Agency end date of 2036.

Attachments

- Attachment 1 – Resolution to Approve Assignment and Assumption Agreement
- Attachment 2 – Assignment and Assumption Agreement

RESOLUTION NO. 20- _____

A RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD WITH OVERSIGHT OF THE SUCCESSOR AGENCY TO THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY APPROVING AND RATIFYING THE APPROVAL BY THE SUCCESSOR AGENCY OF AN ASSIGNMENT AND ASSUMPTION OF THOSE CERTAIN PARKING STRUCTURE AGREEMENTS (VERDUGO STREET/ALFA PLAZA STRUCTURE) TO THE CITY OF SAN JUAN CAPISTRANO

WHEREAS, prior to February 1, 2012, the Community Redevelopment of the City of San Juan Capistrano (“Agency”) was a community redevelopment agency duly organized and existing under the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) and was authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council of the City of San Juan Capistrano (“City”); and

WHEREAS, pursuant to AB x1 26, enacted in 2011, as subsequently amended (the “Dissolution Law”), all redevelopment agencies in California were dissolved and replaced by their respective successor agencies to wind down the affairs of the former agencies; and

WHEREAS, in accordance with the Dissolution Law, the Agency was dissolved and the City Council of the City now serves and acts as the Successor Agency to the San Juan Capistrano Community Redevelopment Agency (“Successor Agency”) for the purposes of administering the Agency’s remaining enforceable obligations and winding down the Agency’s affairs, subject to the review and approval of the Orange Countywide Oversight Board (“Oversight Board”); and

WHEREAS, in 1989, the private owner of a downtown parking structure (“Structure Operator”) in the City entered into a Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the Land, recorded in the Official Records of Orange County on December 15, 1989, as subsequently amended, with the former Agency (“Maintenance Agreement”) for the provision of public parking in, and maintenance of, a portion of the Verdugo Street/Alfa Plaza structure (“Structure”) through the year 2045, in accordance with that certain Owner Participation Agreement between the Structure Operator and the former Agency, recorded on December 22, 1987, as subsequently amended (“OPA”), which likewise relates to public parking operations of the Structure; and

WHEREAS, in 1990, the Structure Operator and the former Agency entered into that certain Lease Agreement, recorded on August 14, 1990, for the use of the Structure for the aforementioned purposes (“Lease Agreement”; collectively, the Lease Agreement, Maintenance Agreement, and OPA, shall hereinafter be referred to as the “Parking Structure Agreements”); and

WHEREAS, Redevelopment law in effect at the time that the Parking Structure Agreements were entered required that a city—and not a redevelopment agency—act as the participating public agency in agreements that govern ongoing facility operations; and

WHEREAS, in accordance with this State law, the City—and not the Agency—has continuously performed all operational functions and assumed all rights and obligations of the Structure since the Structure opened in 1990, and the City has only recently discovered that the Parking Structure Agreements erroneously identified the Agency—and not the City—as manager of the Structure; and

WHEREAS, following the Agency’s dissolution on February 1, 2012, in accordance with the Dissolution Law, the Agency’s interest in the Parking Structure Agreements were automatically transferred to the Successor Agency; and

WHEREAS, consistent with the City’s historic practice and with State law existing at the time the Parking Structure Agreements were entered, the Successor Agency has prepared and approved an Assignment and Assumption of the Parking Structure Agreements to the City (“Assignment”), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, by which all rights and obligations under the Parking Structure Agreements shall be assigned to and assumed by the City, in order to rectify the erroneous placement of the managerial and operational duties of the Structure with the Agency (instead of the City), as well as to facilitate the wind-down of the Agency; and

WHEREAS, in order for the Assignment to be fully effectuated, it is necessary for the Orange Countywide Oversight Board to approve the Assignment and for it to be presented to the State of California’s Department of Finance for consideration; and

WHEREAS, the approval of the Assignment is anticipated to have a significant fiscal benefit to the taxing entities as the Assignment would allow for the dissolution of the Successor Agency at its scheduled end date in 2036, thereby avoiding nine (9) years of additional outlays of administrative expenditures for the continued operation of the Successor Agency through the termination of the Parking Structure Agreements in 2045.

NOW, THEREFORE, THE ORANGE COUNTYWIDE OVERSIGHT BOARD DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Approval of Assignment of Parking Structure Agreements. The Orange Countywide Oversight Board approves the Assignment in substantially the form attached to this Resolution as Exhibit A.

Section 3. Implementation. The Orange Countywide Oversight Board hereby authorizes and directs the Successor Agency and Successor Agency staff to take any and all actions necessary and appropriate to effectuate the purposes of this Resolution in compliance with applicable law, including without limitation, transmittal of this Resolution to the

Department of Finance, County auditor-controller, and County Executive Officer, pursuant to Health & Safety Code Section 34179(h).

Section 4. CEQA. The approval of the Assignment through this Resolution does not commit the Orange Countywide Oversight Board to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

Section 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

Section 6. Certification. The Clerk of the Orange Countywide Oversight Board shall certify to the adoption of this Resolution.

Section 7. Effective Date. This Resolution shall become effective consistent with Health and Safety Code section 34179(h).

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Parking Structure Agreements)

[Attached behind this cover page]

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Agreement**"), dated and effective as of December 3, 2019, (the "**Assignment Date**"), is entered into by and among the Successor Agency of the City of San Juan Capistrano Community Redevelopment Agency, a public body, corporate, and politic ("**Assignor**"), as successor-in-interest to the San Juan Capistrano Community Redevelopment Agency ("**RDA**"), and the City of San Juan Capistrano, a municipal corporation ("**City**" or "**Assignee**"). Assignor and Assignee may each individually be referred to as a "Party," and collectively as the "Parties," to this Agreement.

RECITALS

1. Assignor, as successor-in-interest to the RDA, and the Alfa Plaza LLC ("**Owner**"), as successor-in-interest to Franciscan Plaza Investment Group ("**FPIG**"), are each parties to the following agreements related to the parking structure at Verdugo Street/Alfa Plaza ("**Structure**"):

(a) that certain Owner Participation Agreement by and among the RDA and FPIG, recorded in the official records of Orange County, California ("**Official Records**") on December 22, 1987, as Instrument No. 87-704662, a copy of which is attached hereto as Exhibit "A" ("**Original OPA Agreement**"), as subsequently amended by that certain First Amendment to the Original Agreement, dated October 17, 1989, a copy of which is attached hereto as Exhibit "B" ("**First OPA Amendment**"), and that certain Second Amendment to the Original Agreement, dated May 7, 2002, a copy of which is attached hereto as Exhibit "C" ("**Second OPA Amendment**," and collectively with the Original OPA Agreement and the First OPA Amendment, "**OPA**");

(b) that certain Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the Land by and between the RDA and FPIG, recorded in the Official Records on December 15, 1989, as Instrument No. 89-681025, a copy of which is attached hereto as Exhibit "D" ("**Original Maintenance Agreement**"), as amended by that certain First Amendment to Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the Land, dated May 7, 2002, a copy of which is attached hereto as Exhibit "E" ("**First Amendment to Maintenance Agreement**," and collectively with the Original Maintenance Agreement, "**Maintenance Agreement**"); and

(c) that certain Lease Agreement by and among the RDA and FPIG, recorded in the official records of Orange County, California on August 14, 1990, as Instrument No. 90-429893, a copy of which is attached hereto as Exhibit "F" ("**Lease Agreement**," and collectively with the OPA and the Maintenance Agreement, the "**Parking Structure Agreements**").

2. Assignor desires to assign to Assignee all of Assignor's rights and interests in and to the Parking Structure Agreements and to delegate to Assignee all of Assignor's duties and obligations under the Parking Structure Agreements. Assignee desires to accept the assignment of such rights and interests and assume such obligations thereunder.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and terms and conditions contained herein, the Parties hereto hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The "Exhibits" and "Recitals" of this Agreement constitute a material part of this Agreement and are incorporated by reference as though fully set forth herein.

2. Assignment and Acceptance of Rights and Interests in the Parking Structure Agreements. Assignor hereby assigns and transfers to Assignee all of Assignor's rights and interests in and to the Parking Structure Agreements, and Assignee hereby accepts from Assignor the assignment of any and all rights and interests of Assignor under the Parking Structure Agreements.

3. Delegation and Assumption of Obligations Under the Parking Structure Agreements. Assignor hereby delegates to Assignee all Assignor's obligations, covenants, and promises under the Parking Structure Agreements, to the maximum extent permissible by law, and Assignee hereby accepts the foregoing delegation of such obligations, covenants, and promises, and agrees to fully perform such obligations and fulfill such covenants and promises, all to the extent accruing or arising on or after the date hereof.

4. General Provisions.

(a) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

(b) Entire Agreement; Conflict. This Agreement, and the exhibits and documents reference herein, constitute the entire agreement between the Parties with respect to the assignment and assumption of the Parking Structure Agreements and supersedes all prior agreements and understandings between the Parties with respect thereto. In the event of a conflict between the terms of this Agreement and the terms of the Parking Structure Agreements, the terms of this Agreement shall control.

(c) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one in the same agreement.

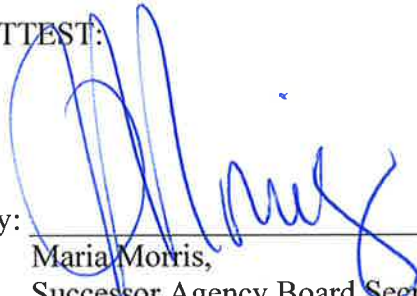
(d) Status of Parking Structure Agreements. All terms, conditions and covenants set forth in the Parking Structure Agreements shall remain in full force and effect, subject only to the terms and amendments set forth in this Agreement.

(e) Indemnification and Hold Harmless. Assignee agrees to defend, indemnify, protect and hold Assignor harmless from any and all claims, actions, judgments, losses, liabilities, damages, and costs (including, without limitation, reasonable attorney's fees) arising out of or in any way related to Assignee's performance after assignment of the Parking Structure Agreements.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.


“ASSIGNOR”

ATTEST:




By: _____
Maria Morris,
Successor Agency Board Secretary

SUCCESSOR AGENCY OF THE SAN JUAN
CAPISTRANO REDEVELOPMENT AGENCY,
a public body, corporate, and politic

By:  _____
Sergio Farias
Chairperson

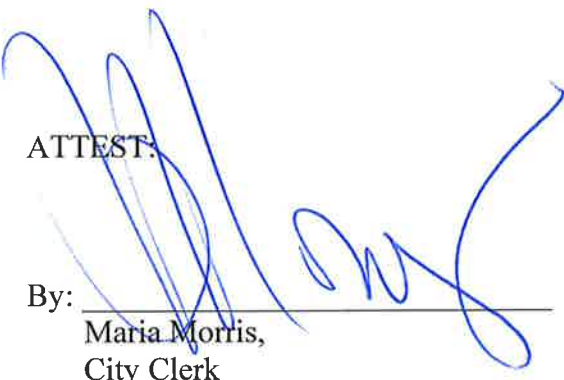
APPROVED AS TO FORM:



By: _____
Jeff Ballinger,
Successor Agency General Counsel


“ASSIGNEE”

ATTEST:

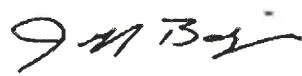


By: _____
Maria Morris,
City Clerk

CITY OF THE SAN JUAN CAPISTRANO,
a municipal corporation

By:  _____
Troy A. Bourne
Mayor

APPROVED AS TO FORM:



By: _____
Jeff Ballinger,
City Attorney

Recording requested by

City of San Juan Capistrano

When recorded mail to:

Agency Secretary

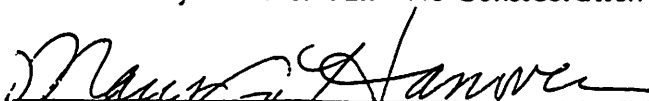
San Juan Capistrano Community

Redevelopment Agency

32400 Paseo Adelanto

San Juan Capistrano, CA 92675

Recording fee exempt due to Government Code 610
Documentary Transfer Tax - No Consideration



Mary Ann Hanover, City Clerk

City of San Juan Capistrano

87-704662

**EXEMPT
C8**

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA
-2:15 PM DEC 22'87
Lee A Branch COUNTY
RECORDER

OWNER PARTICIPATION AGREEMENT

by and among the

SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY,

AGENCY,

and

FRANCISCAN PLAZA INVESTMENT GROUP

PARTICIPANT,

TABLE OF CONTENTS

I.	[\$100]	SUBJECT OF AGREEMENT.
A.	[\$101]	Purpose of Agreement
B.	[\$102]	The Redevelopment Plan
C.	[\$103]	The Site
D.	[\$104]	The Property
E.	[\$105]	Parties to the Agreement
1.	[\$106]	The Agency
2.	[\$107]	The Participant
3.	[\$108]	Representations by Participant
4.	[\$109]	Prohibition Against Change in Ownership, Management and Control of Participant
5.	[\$110]	Relationship of Agency and Participant
II.	[\$200]	ASSEMBLY OF THE SITE
A.	[\$201]	Participant Assembly Obligations
B.	[\$202]	Indemnity
III.	[\$300]	DISPOSITION OF THE SITE
A.	[\$301]	Lease
B.	[\$302]	Conditions Precedent
C.	[\$303]	Escrow
D.	[\$304]	Conveyance of Leasehold Title
E.	[\$305]	Form of Documents
F.	[\$306]	Condition of Leasehold Title
G.	[\$307]	Recordation of Documents

- H. [\$308] Title Insurance
- I. [\$309] Condition of the Site
- J. [\$310] Preliminary Work and Grading
- IV. [\$400] DEVELOPMENT OF THE SITE
 - A. [\$401] Scope of Development
 - B. [\$402] Site Plan
 - C. [\$403] Construction Drawings and Related Documents
 - D. [\$404] City Approval of Plans, Drawings, and Related Documents
 - E. [\$405] Cost of Construction
 - F. [\$406] Construction Schedule
 - G. [\$407] Bodily Injury and Property Damage Insurance
 - H. [\$408] City and Other Governmental Agency Permits
 - I. [\$409] Rights of Access
 - J. [\$410] Local, State and Federal Laws
 - K. [\$411] Antidiscrimination During Construction
 - L. [\$413] Taxes, Assessments, Encumbrances and Liens
 - M. [\$414] Prohibition Against Transfer of the Site, the Buildings or Structures Thereon and Assignment of Agreement
 - N. [\$415] Mortgage, Deed of Trust, Sale and Lease-Back Financing; Rights of Holders
 - 1. [\$416] No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development

(ii)

- 2. [\$417] Holder Not Obligated to Construct Improvements
- 3. [\$418] Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure
- 4. [\$419] Failure of Holder to Complete Improvements
- 5. [\$420] Right of the Agency to Cure Mortgage or Deed of Trust Default
- O. [\$421] Right of the Agency to Satisfy Other Liens on the Site After Title Passes
- P. [\$422] Certificate of Completion
- V. [\$500] USE OF THE SITE
 - A. [\$501] Uses
 - B. [\$502] Maintenance and Operation of Facility
 - C. [\$503] Rights of Access
 - D. [\$504] Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction
- VI. [\$600] GENERAL PROVISIONS
 - A. [\$601] Notices, Demands and Communications Between the Parties
 - B. [\$602] Conflicts of Interest
 - C. [\$603] Enforced Delay; Extension of Times of Performance
 - D. [\$604] Nonliability of Officials and Employees of the Agency
- VII. [\$700] DEFAULTS AND REMEDIES
 - A. [\$701] Defaults -- General
 - B. [\$702] Legal Actions
 - 1. [\$703] Institution of Legal Actions

- 2. [\$704] Applicable Law
- 3. [\$705] Acceptance of Service of Process
- C. [\$706] Rights and Remedies Are Cumulative
- D. [\$707] Inaction Not a Waiver of Default
- E. [\$708] Remedies and Rights of Termination
 - 1. [\$709] Damages
 - 2. [\$710] Specific Performance
 - 3. [\$711] Termination by the Participant
 - 4. [\$712] Termination by the Agency
- VIII. [\$800] SPECIAL PROVISIONS
 - A. [\$801] Real Estate Commissions
 - B. [\$802] Successors in Interest
 - C. [\$803] Amendments to this Agreement
- IX. [\$900] ENTIRE AGREEMENT, WAIVERS
- X. [\$1000] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

ATTACHMENTS

Attachment No. 1	Site Map
Attachment No. 2	Legal Description
Attachment No. 3	Schedule of Performance
Attachment No. 4	Lease
Attachment No. 5	Deed of Trust
Attachment No. 6	Scope of Development
Attachment No. 7	Certificate of Completion
Attachment No. 8	Guaranty
Attachment No. 9	Non-Disturbance and Attornment Agreement

OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into by and among the SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY (the "Agency") and FRANCISCAN PLAZA INVESTMENT GROUP, a California limited partnership (the "Participant"). The Agency and the Participant, hereby agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose of Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan (as hereinafter defined) for the Central Redevelopment Project Area by providing for the disposition and development of certain property situated within the Project Area (the "Project Area") of the Project. That portion of the Project Area to be developed pursuant to this Agreement (the "Site") is depicted on the "Site Map", which is attached hereto as Attachment No. 1 and incorporated herein by reference. This Agreement is entered into for the purpose of developing the Site by the construction of a parking facility (the "Facility") and not for speculation in land holding. Completing the development on the Site pursuant to this Agreement and the acquisition by the Agency of that leasehold interest in certain real property to be conveyed by the Participant to the Agency is in the vital and best interest of the City of San Juan Capistrano, California (the "City") and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Project has been undertaken.

B. [§102] The Redevelopment Plan

The Redevelopment Plan was approved and adopted by the City Council of the City of San Juan Capistrano by Ordinance No. 488 as amended by Ordinance Nos. 509, 547 and 582; said ordinances and The Redevelopment as so approved (the "Redevelopment Plan") are incorporated herein by reference.

C. [§103] The Site

The Site is that portion of the Project Area designated on the Site Map (Attachment No. 1) and described in the "Legal Description", which is attached hereto as Attachment No. 2 and is incorporated herein by reference.

D. The Property [§104]

The Property is that portion of the Project Area so designated on the Site Map (Attachment No. 1). The Property is currently owned by the Participant. The Parking Facility and specified improvements to be constructed thereon in accordance with this Agreement, is sometimes hereinafter referred to as the "Project".

E. Parties to the Agreement [§105]

1. The Agency [§106]

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California. The principal office and mailing address of the Agency (for purposes of this Agreement) is located at 3240 Paseo Adelanto, San Juan Capistrano, California 02675.

"Agency", as used in this Agreement, includes the City of San Juan Capistrano Redevelopment Agency, and any assignee of or successor to its rights, powers and responsibilities.

2. The Participant [§107]

The Participant is FRANCISCAN PLAZA INVESTMENT GROUP, a California limited partnership. The general partner(s) of FRANCISCAN PLAZA INVESTMENT GROUP is Paul L. Farber and Associates, Inc., a California corporation. The principal office and mailing address of the Participant for the purposes of this Agreement is c/o Paul A. Farber & Associates, 26300 La Alameda, Suite 470, Mission Viejo, California 92691.

The Participant has represented to the Agency that the Participant has the experience and qualifications necessary to perform as Participant pursuant to this Agreement.

3. Representations by Participant [§108]

Participant represents and warrants to the Agency as follows:

A. The Participant is duly established and in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Participant in order to carry out, give

effect to, and consummate the transactions contemplated by this Agreement.

B. The Participant does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of the Participant to carry out its obligations hereunder.

C. There are no material pending or, so far as is known to the Participant, threatened, legal proceedings to which the Participant is or may be made a party or to which any of its property is or may become subject, which has not been fully disclosed in the material submitted to the Agency which could materially adversely affect the ability of the Participant to carry out its obligations hereunder.

D. There is no action or proceeding pending or, to the Participant's best knowledge, threatened, looking toward the dissolution or liquidation of the Participant, and there is no action or proceeding pending or, to the Participant's best knowledge, threatened by or against the Participant which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of the Participant to carry out its obligations hereunder.

E. The Participant has performed all of its obligations to be performed at or prior to this date in accordance with the Schedule of Performance and is not in default hereunder.

Each of the foregoing items A to E, inclusive shall be deemed to be an ongoing representation and warranty. The Participant shall advise the Agency in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items A to E, inclusive.

4. [\$109] Prohibition Against Change in
Ownership, Management and Control of
Participant

The qualifications and identity of the Participant are of particular concern to the City and the Agency. It is because of those qualifications and identity that the Agency has entered into this Agreement with the Participant. No voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Prior to issuance of a Certificate of Completion for all of the Public Improvements, the Participant shall not assign or transfer all or any part of this Agreement or the Site or any rights hereunder without the prior written approval of the Agency. The Agency shall not unreasonably withhold its

approval of an assignment or an expanded partnership or new partnership which includes (i) Paul L. Farber ("Farber") or (ii) an entity in which Farber retains an interest of greater than 50% of profits and losses or maintains complete operational and managerial control as a general partner, provided that: (1) the assignee partnership shall expressly assume the obligations of the Participant pursuant to this Agreement in writing reasonably satisfactory to the Agency; (2) the original Participant shall remain fully responsible for the performance and liable for the obligations of the Participant pursuant to this Agreement; and (3) the assignee (or expanded partnership) is financially capable, as reasonably determined by the Agency, of performing the duties and discharging the obligations it is assuming. The Participant shall promptly notify the Agency in writing of any and all changes whatsoever in the identity of the persons in control of the Participant and the degree thereof. In the event of death or incapacity of one or more of the partners or principals of the Participant, the Agency shall not unreasonably withhold its approval of an assignment satisfying criteria numbered (1) and (3), respectively, in the preceding sentence.

All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and the permitted successors and assigns of the Parties. Whenever the term "Participant" is used herein, such term shall include any other permitted successors and assigns as herein provided.

Section 109 shall be inapplicable following the issuance by the Agency of a Certificate of Completion for all of the Public Improvements.

5. [§110] Relationship of Agency and Participant

It is hereby acknowledged that the relationship between the Agency and the Participant is not that of a partnership nor joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other.

II. [§200] ASSEMBLY OF THE SITE

A. [§201] Participant Assembly Obligations

The Participant has acquired fee title to all portions of real property comprising the Site.

B. [§202] Indemnity

The Participant shall defend, indemnify, and hold harmless each of the Agency and the City from and against any claims, demands, suits, judgments or awards arising from or related in any manner to (i) the activities of the Participant, (ii) the prior acquisition of the Site by the Participant, (iii) the disposition of the Site pursuant to this Agreement (including without limitation the "Lease", which is attached hereto as Attachment No. 4, and is incorporated herein by reference, or (iv) relocation or removal of any occupants of the Site (whether effected by the Agency or the Participant). This indemnity shall not apply to the Agency's breach or default of any of the terms, conditions or covenants of the Lease (Attachment No. 4).

III. [§300] DISPOSITION OF THE SITE

A. [§301] Lease

1. The Participant shall lease the Parking Facility as depicted on the Site Map (Attachment No. 1) to the Agency pursuant to the Lease (Attachment No. 4). The transfer of leasehold estate pursuant to the Lease (Attachment No. 4) shall constitute the "Lease Transfer". The respective obligations of the parties, including without limitation the development of the Parking Facility and Public Improvements and the payment of rent, are set forth in the Lease (Attachment No. 4). The Participant and the Agency shall execute the Lease (Attachment No. 4) by the applicable time established therefor in the Schedule of Performance (Attachment No. 3); provided that the execution by the Agency of said Lease shall be subject to and conditioned upon the prior satisfaction by the Participant of the "Conditions Precedent", as set forth in Section 302 of this Agreement.

2. In addition to the consideration set forth in this Section 301, the Participant shall pay all of those costs, charges, fees and expenses as hereafter expressly provided to be paid by Participant pursuant to this Agreement and shall, at its cost, provide all of the improvements required by this Agreement to be provided by the Participant (the "Public Improvements"). The Public Improvements are described in the "Public Improvement Specifications" which is attached hereto as Attachment No. 8 and is incorporated herein by reference. Participant shall pay 100% of the cost of the Public Improvements (Attachment No. 8) with the exception that there shall be a limit of Thirty-Five Thousand Dollars (\$35,000.00) to Participant's expenditure for the railroad platform improvement and the landscaping associated with the railroad platform improvement.

The Agreement and the Lease (Attachment No. 4) provide substantial economic incentives to the Participant, based upon covenants by the Participant to dedicate the parking structure to public purposes. Public purposes shall be defined as "open and available to the public on an equal basis." This covenant of dedication to public purposes is permanent, shall run with the land and shall therefor continue beyond the term of the Lease (Attachment No. 4). Additional economic incentives are provided in that Parking Revenue generated from commuter parking or other paid parking, is to be divided between the Agency and the Participant on a 50/50 basis.

B. [§302] Conditions Precedent

As conditions precedent to the obligations to the Agency to commence the term of the Lease (Attachment No. 4), the Participant shall complete all of the following:

1. the Participant executes the Lease (Attachment No. 4);
2. the Participant provides proof satisfactory to the Agency that the Participant: (i) holds fee title to all of the Site; and (ii) has verified that the zoning of the Site is such as to permit development of the Public Improvements and the use, operation, and maintenance of such improvements;
3. the Participant executes (and obtains execution of all parties having any fee ownership interest in the Site) the Deed of Trust (Attachment No. 5);
4. the Participant provides proof satisfactory to the Agency that all real property taxes levied with respect to the Site have been paid, and that no such taxes are delinquent;
5. the condition of the leasehold title of the Agency upon recordation of the Lease (Attachment No. 4) would conform to Section 306 of this Agreement.

The foregoing conditions numbered 1 to 5, inclusive, shall collectively constitute the "Conditions Precedent".

C. [§303] Escrow

The Agency agrees to open an escrow (the "Escrow") with First American Title Insurance Company (or with another mutually agreeable escrow company) (the "Escrow Agent") by the

time established therefor in the Schedule of Performance (Attachment No. 3). The Escrow Agent shall accomplish the recordation of the Lease (Attachment No. 4) and the Deed of Trust (Attachment No. 5), all as more particularly set forth herein. This Agreement constitutes the joint basic escrow instructions of the Agency and the Participant for creation of a leasehold interest for the Agency pursuant to the Lease (Attachment No. 4), and an interest pursuant to the Deed of Trust (Attachment No. 5) and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. The Agency and the Participant shall provide such additional escrow instructions as shall be necessary for and consistent with this Agreement. The Escrow Agent is hereby empowered to act under this Agreement, and the Escrow Agent, upon indicating within five (5) days after the opening of the Escrow its acceptance of the provisions of this Section 303, in writing, delivered to the Agency and the Participant, shall carry out its duties as Escrow Agent hereunder.

Upon delivery of the Lease (Attachment No. 4), and the Deed of Trust (Attachment No. 5) to the Escrow Agent by the Agency, the Escrow Agent shall record such Lease and Deed of Trust, when leasehold title can be vested in the Agency and the interest of the Agency pursuant to the Deed of Trust (Attachment No. 5) shall similarly be vested in the Agency, all in accordance with the terms and provisions of this Agreement. Any insurance policies covering the Property or any parcel are not to be transferred.

The Participant shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Participant of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for closing the Escrow:

1. One-half (1/2) of the escrow fee;
2. Any State, County or City Documentary Stamps;
3. Any transfer tax;
4. Costs necessary to place title to the Property in the condition required by this Agreement prior to recordation of the Lease (Attachment No. 4) and the Deed of Trust (Attachment No. 5);
5. Recording fees;
6. Notary fees; and

7. The premium for the title insurance policy to be paid by the Participant as set forth in Section 308 of this Agreement.

The Agency shall pay to the Escrow Agent prior to closing one-half (1/2) of the escrow fee.

By the time established therefor in the Schedule of Performance (Attachment No. 3), the Participant shall execute and deposit with the Escrow Agent the Lease (Attachment No. 4) and the Deed of Trust (Attachment No. 5). Subject to Section 302 of this Agreement, the Agency shall execute such Lease and such Deed of Trust prior to the close of escrow.

The Escrow Agent is authorized to:

1. Pay, and charge the Participant and Agency for any fees, charges and costs payable under this Section 303 of this Agreement. Before such payments or charges are made, the Escrow Agent shall notify the Agency and the Participant of the fees, charges and costs necessary to clear title and close the Escrow.
2. Disburse funds and deliver the deed and other documents to the parties entitled thereto when the conditions of this Escrow have been fulfilled by the Agency and the Participant.
3. Record any instruments delivered through this Escrow, if necessary or proper, to vest leasehold title in the Agency in accordance with the terms and provisions of this Agreement.

All funds received in this Escrow shall be deposited by the Escrow Agent, with other escrow funds of the Escrow Agent in an interest earning general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments are to be made on the basis of a thirty (30) day month.

If this Escrow is not in condition to close on or before the time established therefor in Section 304 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of leasehold title may, in writing, demand from the Escrow Agent the return of its money, papers or documents deposited with the Escrow Agent. No demand for return shall be recognized until ten (10) days after

the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the ten (10) day period, in which event the Escrow Agent is authorized to hold all money, papers and documents with respect to the Property until instructed by a mutual agreement of the parties or by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible.

The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both the Agency and the Participant or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendment to these Escrow instructions shall be in writing and signed by both the Agency and the Participant. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the Agency or the Participant shall be directed to the addresses specified in Sections 105 and 106 of this Agreement and in the manner established in Section 601 of this Agreement for notices, demands and communications between the Agency and the Participant.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 303 to 308, both inclusive, of this Agreement.

Neither the Agency nor the Participant shall be liable for any real estate commissions or brokerage fees which may arise herefrom. The Agency and the Participant each represents that it has not engaged any broker, agent or finder in connection with this transaction.

D. [\$304] Conveyance of Leasehold Title

Subject to any extensions of time mutually agreed upon between the Agency and the Participant, the conveyance of leasehold title to the Agency pursuant to the Lease (Attachment No. 4) shall be completed on or prior to the date specified therefor in the Schedule of Performance (Attachment No. 3). Said Schedule of Performance (Attachment No. 3) is subject to revision from time to time as mutually agreed upon in writing between the Participant and the Agency. The Agency and the

Participant agree to perform all acts necessary to conveyance of leasehold title in sufficient time for leasehold title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Agency concurrently with the conveyance of leasehold title.

E. [§305] Form of Documents

The Participant shall convey to the Agency leasehold title to the Property in the condition provided in Section 306 of this Agreement by the Lease (Attachment No. 4). The Participant shall additionally cause the concurrent recordation of the Deed of Trust (Attachment No. 5).

F. [§306] Condition of Leasehold Title

The Participant shall convey to the Agency leasehold title to the Parking Facility free and clear of all recorded or unrecorded liens, encumbrances, covenants, assessments, easements, leases and taxes, except for liens, encumbrances, covenants, assessments, and easements of record which are hereafter approved in writing by the Agency (which shall act reasonably in evaluating any such encumbrances) and liens for construction or take-out financing for the Public Improvements; the interest of the Agency to be created upon recordation of the Deed of Trust (Attachment No. 5) shall be subject only to the same encumbrances. The Participant shall have the right to pledge any rent payable by the Agency pursuant to the Lease (Attachment No. 4). The Agency authorizes its Executive Director to execute such documents as may be necessary to subordinate its total interest in the Parking Facility including the Lease (Attachment No. 4) to deeds of trust in favor of lenders providing construction or take-out financing in connection with the Project, where the lender seeking subordination has executed a Non-Disturbance and Attornment Agreement substantially in the form of Attachment No. 9 which is attached hereto and incorporated herein by this reference.

G. [§307] Recordation of Documents

The Escrow Agent shall file first the Lease (Attachment No. 4) and the Deed of Trust (Attachment No. 5) for recordation among the land records in the Office of the County Recorder for Orange County, after delivery to the Agency of two title insurance policies, insuring leasehold title pursuant to the Lease (Attachment No. 4) and the interest of the Agency by virtue of the Deed of Trust (Attachment No. 5) in conformity with Section 308 of this Agreement. The Escrow Agent shall also record any applicable subordination and non-disturbance and attornment agreements.

H. [§308] Title Insurance

Concurrently with recordation of the Lease (Attachment No. 4) and the Deed of Trust (Attachment No. 5), First American Title Insurance Company (the "Title Company"), shall provide and deliver to the Agency a title insurance policy issued by the Title Company insuring that leasehold title to the Parking Facility (pursuant to the Lease [Attachment No. 4]) is vested in the Agency and that the interest to be held by the agency pursuant to the Deed of Trust (Attachment No. 5) all is reposed in the Agency in the condition required by Section 306 of this Agreement. The Title Company shall provide the Agency with a copy of the title insurance policies for its leasehold interest pursuant to the Lease (Attachment No. 4) (based upon the amount of Two Million and Five Hundred Thousand Dollars (\$2,500,000), and for its interest pursuant to the Deed of Trust (Attachment No. 5), which shall be an ALTA lender's policy for the amount of Two Million and Five Hundred Thousand Dollars (\$2,500,000). The Participant shall bear all costs for the foregoing title insurance policies.

In the event that the Title Company will insure the interest of the Agency as provided herein to the same extent as set forth in this Section 308 as an update to policy issued to the Participant, such a policy may be utilized; provided, however, that the Agency shall be a named insured pursuant to such insurance policy.

In the event the Participant seeks any title insurance policy for its benefit, all costs for such title insurance shall be borne solely by the Participant.

I. [§309] Condition of the Site

The Participant, at Participant's expense, shall perform any excavation, backfilling, demolition, removal of structures (including subsurface structures), and grading necessary for the Public Improvements. If the soil conditions of the Site are not in all respects entirely suitable for the use or uses to which the Site will be put, then it is the sole responsibility and obligations of Participant to take such action as may be necessary to place the Site in a condition entirely suitable for the development of the Site. After the close of escrow, Participant agrees to indemnify and defend the City and/or Agency for any claims which may be asserted against the City and/or the Agency under the Comprehensive Environmental Response and Compensation and Liability Act, as amended, (42 U.S.C. §9601 et. seq.) ("CERCLA"), and the Resource Conservation and Recovery Act, (42 U.S.C. §6901 et. seq.) which claims are based at least in part on the fact that the City and/or Agency held a leasehold interest in the Parking Facility.

J. [§310] Preliminary Work and Grading

The Participant assumes full responsibility to obtain any necessary consents of affected property owners and tenants at its expense prior to undertaking any work on the Site.

The Participant agrees to undertake such demolition, soil excavation, importation and compaction work as is necessary to prepare Site for the Public Improvements.

The Participant shall save and protect the Agency and the City against any claims resulting from all preliminary work, access or use of the Site undertaken pursuant to this Section 310. Copies of data, surveys and tests obtained or made by the Participant on the Site pursuant to this Section 310 shall be filed with the Agency within fifteen (15) days after receipt by the Participant. Any preliminary work by the Participant shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

IV. [§400] DEVELOPMENT OF THE SITE

A. [§401] Scope of Development

The Participant shall commence and complete construction of the Public Improvements by the respective times established therefor in the Schedule of Performance (Attachment No. 3). The Participant additionally assumes all responsibility to cause the timely commencement and completion of the "Site Grading", as hereinafter set forth in Section 310 of this Agreement.

The Parking Facility and Public Improvements shall be developed as provided in the "Attachment No. 6", which is attached hereto as the Scope of Development and is incorporated herein.

The development shall include any plans and specifications submitted to City and/or Agency for approval, and shall incorporate or show compliance with all applicable mitigation measures.

B. [§402] Site Plan

By the respective times set forth therefor in the Schedule of Performance (Attachment No. 3), the Participant shall prepare and submit to the Agency for its approval any modifications to the approved plans for development of the Site in sufficient detail to enable the Agency to evaluate the

proposal for conformity to the requirements of this Agreement. The Site shall be developed as established in this Agreement and such documents except as changes may be mutually agreed upon between the Participant and the Agency. Any such changes shall be within the limitations of the Scope of the Development (Attachment No. 6).

C. [§403] Construction Drawings and Related Documents

By the time set forth therefor in the Schedule of Performance (Attachment No. 3), the Participant shall prepare and submit to the City, construction drawings, landscape plan, and related documents for development of the Site for written approval. Approval of the drawings and specifications, as provided in the Schedule of Performance (Attachment No. 3), will be granted by the City if they conform to Site Plan theretofore approved. Any items so submitted and approved in writing by the City shall not be subject to subsequent disapproval.

During the preparation of all drawings and plans, staff of the Agency, City, and the Participant shall hold regular progress meetings to coordinate the preparation of, submission to, and review of drawings, plans and related documents by the Agency. The staff of Agency, City, and the Participant shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Agency or City can receive prompt and speedy consideration. The Participant shall be obligated to obtain all City approvals required for the construction of the Public Improvements.

D. [§404] City Approval of Plans, Drawings, and Related Documents

The City shall have the right of planning review of all plans and submissions including any changes therein.

Provided that the submissions by the Participant are made timely and are complete, the City shall approve or disapprove the plans, drawings and related documents referred to in Sections 403 and 404 of this Agreement within the times established in the Schedule of Performance (Attachment No. 3). Any disapproval shall state in writing the reasons for disapproval. The Participant, upon receipt of a disapproval based upon powers reserved by the City hereunder, shall revise such portions and resubmit to the City as soon as possible after receipt of the notice of disapproval as provided in the Schedule of Performance (Attachment No. 3).

The City shall advise the Participant within ten (10) days of any submittal of plans or drawings if the submittal is not complete or not in accordance with City/Agency procedures. If the City determines that such a submittal is not complete or not in accordance with procedures, such tender shall not be deemed to constitute a submittal for purposes of satisfying the Schedule of Performance (Attachment No. 3).

If the Participant desires to make any substantial changes in the construction plans after their approval by the City, the Participant shall submit the proposed change to the City for its approval. The City shall approve or reject the proposed change and notify the Participant in writing within 30 days after submission to the City.

E. [§405] Cost of Construction

All the costs of site preparation and developing the Public Improvements and developing the Site and constructing all improvements thereon shall be borne solely by the Participant.

F. [§406] Construction Schedule

The Participant shall promptly begin and thereafter diligently prosecute to completion the construction of the Public Improvements, with all construction commencing and being completed within the times specified therefor in the Schedule of Performance (Attachment No. 3).

G. [§407] Bodily Injury and Property Damage Insurance

The Participant shall defend, assume all responsibility for and hold the Agency, its officers and employees, harmless from, all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any of the Participant's activities under this Agreement, whether such activities or performance thereof be by the Participant or anyone directly or indirectly employed or contracted with by the Participant and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Participant shall take out and maintain throughout the period set forth in this Section 408, a comprehensive liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit policy, including contractual liability, as shall protect the Participant, City and Agency from claims for such damages.

The Participant shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and the Agency and their respective offices, agents, and employees as additional insureds under the policy. The certificate by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City and the Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Participant shall be primary insurance and not contributing with any insurance maintained by the Agency or City, and the policy shall contain such an endorsement. The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City and the Agency. The required certificate shall be furnished by the Participant at the time set forth therefor in the Schedule of Performance (Attachment No. 3).

The Participant shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

The obligations set forth in this Section 407 shall remain in effect only until the date of issuance of a final Certificate of Completion for the Parking Facility and all of the Public Improvements as hereafter provided in Section 422 of this Agreement.

H. [§408] City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other works of improvement upon the Site or within the Project Area, the Participant shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. It is understood that the Participant's obligation is to pay all necessary fees and to timely submit to the City final drawings with final corrections to obtain a building permit; the Agency will, without obligation to incur liability or expense therefor, use its best efforts to expedite issuance of building permits and certificates of occupancy for construction that meets the requirements of the City Code.

I. [§409] Rights of Access

For the purpose of assuring compliance with this Agreement, representatives of the Agency and the City shall have the right of access to all portions of the Site in which the Participant shall have an ownership interest, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements, so long as they comply with all safety rules. Such representatives of the Agency or of the City shall be those who are so identified in writing by the Executive Director of the Agency. The Agency shall indemnify, defend and hold the Participant harmless from and against any bodily injury or related damages arising out of the activities of the Agency and the City as referred to in this Section 409 including but not limited to, claims, causes of action, liability, loss, cost or expense (including reasonable attorneys' fees) in connection therewith.

The Participant and the Agency agree to cooperate in placing and maintaining on the Site one sign indicating the respective parts of the Participant and the Agency in the Project. The cost of the sign shall be borne solely by the Participant.

J. [§410] Local, State and Federal Laws

The Participant shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal immigration laws and federal and state labor standards, provided, however, Participant and its contractors, successors, assigns, transferees, and lessees are not waiving their rights to contest any such laws, rules or standards.

K. [§411] Antidiscrimination During Construction

The Participant, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

L. [§413] Taxes, Assessments, Encumbrances and Liens

The Participant shall pay when due all real estate taxes and assessments on the Site whether levied before or after the Lease Transfer. Prior to issuance of a Certificate

of Completion pursuant to Section 422, the Participant shall not place on the Site or any part thereof any mortgage, trust deed, encumbrance or lien other than as expressly allowed by this Agreement, including, without limitation, the Lease (Attachment No. 4). The Participant shall remove or have removed any levy or attachment made on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Participant from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Participant in respect thereto.

M. [§414] Prohibition Against Transfer of the Site, the Buildings or Structures Thereon and Assignment of Agreement

Prior to the issuance by the appropriate governmental authority of a Certificate of Completion (pursuant to Section 422 of this Agreement) as to any building or structure, the Participant shall not, except as permitted by this Agreement, without prior approval of the Agency, make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Site or of the buildings or structures on the Site. This prohibition shall not be deemed to prevent construction loans allowable pursuant to Section 416, the granting of temporary or permanent easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure for occupancy for a term commencing upon completion.

N. [§415] Mortgage, Deed of Trust, Sale and Lease-Back Financing; Rights of Holders

1. [§416] No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development

Mortgages, deeds of trust and sales and leases-back are to be permitted before completion of the construction of the improvements pursuant to this Section 416, but only for the purpose of securing loans of funds to be used for financing the construction of improvements on the Site, permanent financing, and any other purposes necessary and appropriate in connection with development under this Agreement. The Participant shall notify the Agency in advance of any mortgage, deed of trust or sale and lease-back financing, if the Participant proposes to enter into the same before completion of the construction of the improvements on

the Site. The words "mortgage" and "trust deed" as used hereinafter shall include sale and lease-back. The Participant shall not enter into any such conveyance for financing without the prior written approval of the Agency, which approval Agency agrees to give if any such conveyance for financing is given to a responsible lender.

2. [§417] Holder Not Obligated to Construct Improvements

The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

3. [§418] Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure

With respect to any mortgage or deed of trust granted by Participant as provided herein, whenever the Agency shall deliver any notice or demand to Participant with respect to any breach or default by the Participant in completion of construction of the improvements, the Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and pursue with due diligence any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Participant's obligations to the agency by written agreement satisfactory to the Agency. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 422 of this Agreement, to a Certificate of Completion (as therein defined).

4. [§419] Failure of Holder to Complete
Improvements

Subject to the provisions of Section 603 of this Agreement, in any case where, thirty (30) days after default by the Participant in completion of construction of improvements under this Agreement, the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the Agency may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Participant Parcel or any part thereof has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- b. All expenses with respect to foreclosure;
- c. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
- d. The costs of any improvements made by such holder;
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency; and
- f. Any customary prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Participant.

5. [§420] Right of the Agency to Cure Mortgage or Deed of Trust Default

In the event of a mortgage or deed of trust default or breach by the Participant prior to the completion of the construction of the improvements on the Site or any part thereof and the holder of any mortgage or deed of trust has not exercised its option to construct, the Agency may cure the default. In such event, the Agency shall be entitled to reimbursement from the Participant of all proper costs and expenses incurred by the Agency in curing such default. The Agency shall also be entitled to a lien upon the Site and the Site to the extent of such costs and disbursements. Any such lien shall be subject and subordinate to the construction financing mortgages or deeds of trust.

O. [§421] Right of the Agency to Satisfy Other Liens on the Site After Title Passes

After the conveyance of Leasehold interest to Agency and prior to the completion of construction, and after the Participant has had written notice and has failed after a reasonable time, but in any event not less than fifteen (15) days, to challenge, cure, adequately bond against, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, the Agency shall have the right but no obligation to satisfy any such liens or encumbrances.

P. [§422] Certificate of Completion

Promptly after completion of all construction and development required by this Agreement to be completed by the Participant upon the Site in conformity with this Agreement, the Agency shall furnish the Participant with a Certificate of Completion upon written request therefor by the Participant. Such Certificate shall be substantially in the form of Attachment No. 7 hereto. The Agency shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be a conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site and the Certificate of Completion shall so state. After recordation of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition), incur any obligation or liability under this Agreement except as provided in the Lease (Attachment No. 4) or other documents establishing covenants on the Site in accordance with the provisions of Section 401 of this Agreement, which shall be applicable according to its terms.

If the Agency refuses or fails to furnish a Certificate of Completion for the Public Improvements after written request from the Participant, the Agency shall, within thirty (30) days of written request therefor, provide the Participant with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain Agency's opinion of the actions of the Participant must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items of materials for landscaping, the Agency will issue its Certificate of Completion upon the posting of a bond or an unconditional letter of credit (in form and substance reasonably acceptable to the Agency and its legal counsel) by the Participant with the Agency in an amount representing a fair value of the work not yet completed. If the Agency shall have failed to provide such written statement within said thirty (30) day period, the Participant shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Participant to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not a notice of completion as referred to in the California Civil Code, Section 3093.

V. [§500] USE OF THE SITE

A. [§501] Uses

The Participant covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, that during construction and thereafter, the Participant, such successors and such assignees, shall devote the Site to the uses specified in the Redevelopment Plan, and this Agreement for the periods of time specified therein. No use other than the operation of a parking facility principally devoted to a combination of commuter and commercial parking shall be allowed on the Site without the prior written approval of the Agency (which approval the Agency may grant, deny, withhold, or grant subject to conditions, at its sole and absolute discretion). The number of commuter and commercial parking spaces shall be based upon a determination of the parking spaces necessary for the commercial uses as determined by the City of San Juan Capistrano Municipal Code (the "Code") with the remainder of the spaces allocated to commuter use. This proportion shall be readjusted if a change in use of the commercial space requires

a greater or lesser number of parking spaces under the Code. However, in no event shall the number of commuter spaces be less than one hundred (100). The parking must be used for public purposes and shall be considered to be used for public purposes as long as it is open and available to the public on an equal basis. The foregoing covenants shall run with the land.

The Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant itself or any person claiming under or through it 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 Site. The foregoing covenants shall run with the land.

The Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "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 person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself 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 in the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, age, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, 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, sublessees, subtenants or vendees in the premises herein leased."

3. In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself 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 premises."


Except for covenants against discrimination or segregation, which shall continue in effect in perpetuity, the covenants set forth in this Section 501 shall remain in effect until the termination date of the Redevelopment Plan. Each of the Participant shall be jointly and severally liable in the event of noncompliance with this Section 501.

B. [§502] Maintenance and Operation of Facility

Agency and Participant shall jointly select and enter into a Maintenance and Operation Agreement with a qualified management company for maintenance and operation of the structure by the time designated in the Schedule of Performance

(Attachment No. 3). The cost of the common area maintenance ("CAM") charges shall be allocated between the Agency and the Participant in proportion both to the ratio of commuter parking spaces and the commercial spaces and the commuter parking days of Monday through Friday and hours of 6:00 AM to 6:00 PM. The following equation expresses this ratio:

$$\frac{\text{Agency's portion of CAM charges}}{\text{Total CAM charges}} = \frac{(\# \text{ of Commuter Spaces}) (12 \text{ hrs})}{(\text{Total } \# \text{ of Spaces}) (17 \text{ hrs})} \frac{(\# \text{ of working days in month})}{(\# \text{ of days in month})}$$

The number of commuter parking spaces and commercial parking spaces shall be determined as specified in §501 of this Agreement. ~~The minimum parking charge for commuter parking shall be \$3.50/day.~~ Collection of fees shall be handled by the operator of the structure or as otherwise agreed between the parties and distributed, based on a 50/50 division, to the Participant and the Agency on a quarterly basis after the CAM charge has been satisfied. 

Issuance of a Certificate of Completion by the Agency shall not affect Participant's obligations under this section.

C. [§503] Rights of Access

The Agency, for itself and for the City and other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof which is owned or controlled by the Participant, at all reasonable times for the purpose of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to Participant, and Agency shall indemnify and hold Participant harmless from any costs, claims, damages or liabilities pertaining to any entry. This Section 503 shall not be deemed to diminish any rights the Agency, the City, or any other public agencies may have without reference to this Section 503.

D. [§504] Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction

The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this

Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Agency, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. The Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

After issuance of a Certificate of Completion for all grading and improvements to be completed by the Participant pursuant to this Agreement, all of the terms, covenants, agreements and conditions set forth in this Agreement relating to the Site shall cease and terminate as to that portion of the Site for which the Certificate of Completion is issued, excepting only the provisions listed below which shall survive as follows:

(a) Sections 409, 501, 502 and 503 relating to Uses, Maintenance and Access.

(b) Section 407 (relating to indemnification and insurance) shall remain in effect in accordance with the terms and conditions set forth therein.

(c) Sections 700 to 707 and 713 to 715 (relating to rights and remedies) shall remain in effect to the extent necessary to enforce other provisions of this Agreement.

(d) The Lease (Attachment No. 4) and Section 301 of this Agreement shall remain enforceable according to their terms.

VI. [§600] GENERAL PROVISIONS

A. [§601] Notices, Demands and Communications Between the Parties

Written notices, demands and communications between the Agency, the Participant shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency, the Participant. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 601. Notwithstanding the foregoing, notice by the Agency to either the Participant shall be deemed to constitute notice to both the Participant.

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the tenth day from the date it is postmarked if delivered by registered or certified mail.

B. [§602] Conflicts of Interest

No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. No member, official or employee of the Agency shall be personally liable to the Participant, or any successor in interest, in the event of any default or breach of the Agency, or for any amount which may become due to the Participant or successor or on any obligations under the terms of this Agreement.

Each of the Participant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

C. [§603] Enforced Delay; Extension of Times Performance

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement and the Attachments hereto shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure permits (if the inability to secure permits is not the fault of the participant), necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City of San Juan Capistrano or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of

the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Participant.

Notwithstanding the foregoing portion of this Section 603, the Participant is not entitled pursuant to this Section 603 to an extension of time to perform because of (i) past, present, or future difficulty in obtaining suitable temporary or permanent financing for the development of the Site.

D. [§604] Nonliability of Officials and Employees of the Agency

No member, official or employee of the Agency or the City shall be personally liable to the Participant, or any successor in interest, in the event of any default or breach by the Agency (or the City) or for any amount which may become due to the Participant or its successors, or on any obligations under the terms of this Agreement.

VII. [§700] DEFAULTS AND REMEDIES

A. [§701] Defaults -- General

Subject to the extensions of time set forth in Section 603, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence.

The injured party shall give written notice of default to the party in default, as well as other persons or entities entitled to notice hereunder, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice or, provided that the party is proceeding with diligence to cure, such greater time as may be necessary to cure given the nature of the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

B. [§702] Legal Actions

1. [§703] Institution of Legal Actions

In addition to any other rights or remedies and subject to the restrictions in Section 701, either party may institute legal action to cure, correct or remedy any default,

to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in that county, or in the Federal District Court in the Central District of California.

2. [§704] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§705] Acceptance of Service of Process

In the event that any legal action is commenced by the Participant against the Agency, service of process on the Agency shall be made by personal service upon the Director or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Participant, service of process on the Participant shall be made by personal service upon the general partner of the Participant and shall be valid whether made within or without the State of California or in such other manner as may be provided by law.

C. [§706] Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§707] Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

E. [§708] Remedies and Rights of Termination

1. [§709] Damages.

If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party

shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default (or within such other period as is set forth herein), the defaulting party shall be liable to the other party for any damages caused by such default.

2. [§710] Specific Performance

If either party defaults under any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days of service of the notice of default, or such other time limit as may be set forth herein with respect to such default, the non-defaulting party at its option may thereafter (but not before) commence an action for specific performance of terms of this Agreement.

3. [§711] Termination by the Participant

In the event that prior to the time established for the Lease Transfer in the Schedule of Performance (Attachment No. 3), the Participant is not in default of this Agreement and has satisfied all of the Conditions Precedent (as set forth in Section 302 of this Agreement), but the Agency nevertheless fails to execute the Lease (Attachment No. 4) by the time established therefor in the Schedule of Performance (Attachment No. 3) then this Agreement shall, at the option of the Participant, be terminated by written notice thereof to the Agency. A termination under this Section 711 shall not prevent the Participant from pursuing any claim for damages or specific performance to which it might otherwise be entitled.

4. [§712] Termination by the Agency

In the event that prior to the Leasehold Conveyance:

- (a) The Participant (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or
- (b) There is a change in the ownership of the Participant contrary to the provisions of Section 109 hereof; or

- (c) The Participant does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor any such default or failure shall not be cured within forty-five (45) days after the date of written demand therefor by the Agency; or
- (d) The Participant fails to satisfy all Conditions Precedent (as set forth in Section 302 of this Agreement) by the time established therefor in the Schedule of Performance (Attachment No. 3); or
- (e) The Participant fails to provide proof to the Agency by the date established for the Agency Conveyance by the Schedule of Performance (Attachment No. 3) that the Participant has obtained binding loan commitments for construction financing for all of the Public Improvements;

then this Agreement and any rights of the Participant or any assignee or transferee in the Agreement, or arising therefrom with respect to the Agency or the Site, shall, at the option of the Agency, be terminated by the Agency. A termination under this Section 712 shall not prevent the Agency from pursuing any claim for damages or specific performance to which it might otherwise be entitled.

VIII. [§800] SPECIAL PROVISIONS

A. [§801] Real Estate Commissions

Each of the Agency, the Participant represents to the other party that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisition of the Site, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

B. [§802] Successors In Interest

The terms, covenants, conditions and restrictions of this Agreement shall extend to and shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

Upon the termination of the restrictions imposed by Section 109 of this Agreement, which terminate upon the issuance by the Agency of a Certificate of Completion for all of the Public Improvements, all of the terms, covenants, conditions and restrictions of this Agreement which do not terminate upon the issuance by the Agency of the Certificate of Completion for the entire Site shall be deemed to be, and shall, constitute terms, covenants, conditions and restrictions running with the land.

C. [§803] Amendments to this Agreement

The Participant and the Agency agree to mutually consider reasonable requests for amendments to this Agreement which may be made by lenders, or Agency's counsel or financial consultants, provided said requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

IX. [§900] ENTIRE AGREEMENT, WAIVERS

This Agreement may be signed in counter-parts, and is executed in five (5) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 34 and Attachments 1 through 8, which constitutes the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency, the Participant, and all amendments hereto must be in writing by the appropriate authorities of the Agency, the Participant.

In any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

X. [§1000] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

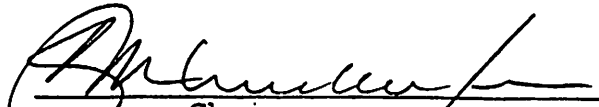
This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by Participant or this Agreement shall be void, except to the extent that the

Participant shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. The date of this Agreement shall be the date when it shall have been signed by the Agency.

IN WITNESS WHEREOF, the Agency and the Participant have signed this Agreement on the respective dates set forth below.

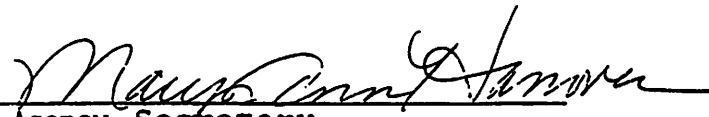
December 15, _____, 1987

SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY

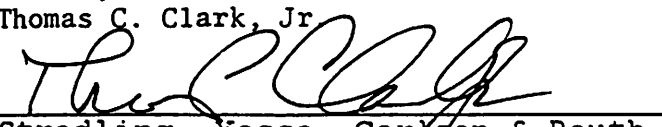
By: 
Chairman
Gary L. Hausdorfer

"AGENCY"

ATTEST:



Agency Secretary
Mary Ann Hanover

APPROVED AS TO FORM:

Thomas C. Clark, Jr.

Stradling, Yocca, Carlson & Rauth,
Special Counsel to the Agency

_____, Agency Counsel

FRANCISCAN PLAZA INVESTMENT GROUP


Paul Lloyd Farber

"PARTICIPANT"

FIRST AMENDMENT TO
OWNER PARTICIPATION AGREEMENT

COPY

This First Amendment to Owner Participation Agreement ("First Amendment") is entered into as of this 17th day of October, 1989, by and between the San Juan Capistrano Community Redevelopment Agency (the "Agency") and Franciscan Plaza Investment Group, a California corporation (the "Participant").

R E C I T A L S

WHEREAS, Agency and Participant have previously entered into an Owner Participation Agreement dated December 15, 1987, (the "OPA"); and

WHEREAS, the parties mutually desire to add certain provisions to the OPA, including without limitation Amendment of the Lease Agreement between the parties (Attachment No. 4 to the OPA) and provisions concerning reimbursement for costs incurred by the parties or to be incurred by the parties for archaeological studies.

NOW, THEREFORE, the Agency and the Participant agree to amend the OPA as follows:

Section 1. On page 22 of the OPA, in Section 501, entitled "Uses," amend the first full sentence on page 22 to read: "However, in no event shall the number of commuter spaces be less than one hundred thirty-one (131)."

Section 2. On page 22 of the OPA, preceding the first full paragraph add:

As set out in greater detail in that certain Joint Parking Agreement to be negotiated by and between Participant and the Agency (the "Joint Parking Agreement"), after completion of Phase II, in the event circumstances determine that not all of the spaces in the Parking Facility are needed for tenant parking, the Agency shall have the right to obtain and set aside additional commuter spaces upon payment to the Participant of \$5,446 per space. It is the intention of the parties that commuter parking will not affect the evening hours of operation of tenants as set forth in the Joint Parking Agreement.

The Agency shall have the right, upon reasonable notification to Participant, to use of the entire structure for general public parking with no controls or charges for special events and on special days, such as the annual

community celebration of Swallow's Day. Notwithstanding anything herein to the contrary, the number of special event days shall not exceed six (6) days per year, and Participant shall receive notice thirty (30) days prior to such special events. If so requested by the Agency, Participant shall provide space to house the employees and operations for proposed rail baggage service and ticket sales. In the event Agency requests such space in an area other than the office being built in the Parking Facility, or such office needs to be modified for this use, Agency shall make such modifications at its sole cost. If any modifications approved by both parties require a reduction in the number of parking spaces such loss shall result in an equal reduction in the one hundred and thirty-one (131) spaces available for commuters.

Commencing with the opening of the Parking Structure there shall be a minimum charge assessed for use of commuter parking spaces and fifty percent (50%) of said charge shall be payable to Participant.

Participant shall make the restrooms on the first floor of the project available for use by the general public. Signage indicating this shall be approved by both the Agency and Participant and shall be appropriately posted to adequately inform the public of the availability of the restrooms.

Section 3. On page 23 of the OPA, delete the first sentence of the first paragraph of Section B.502 and replace with the following:

* Agency shall have sole discretion in selecting the firm and/or method for managing the parking facility, including the charges for use and other terms of operations subject to providing the tenants of the Participant and the Provincial Building with the required parking spaces and ensuring the Participant receives 50% of the proceeds of all paid parking.

Section 4. On page 30 of the OPA, after Section 803, add new Sections 804, 805, 806, 807 and 808 to read as follows:

"D. [§804] Reimbursement for Archaeological Studies.

1. [§805] Agency Reimbursement for Archaeological Investigations

Participant at its sole cost and expense has caused the investigation for cultural resources on that portion of the Site identified as Assessor's Parcel Nos. 121-150-09, 121-150-10, 121-150-12, 121-150-20, 121-150-21, 121-150-22 (the "Parcels") at a cost of \$24,980. The Agency agrees to

reimburse the Participant for one-half of those costs actually incurred in an amount not to exceed \$12,490. Reimbursement will be made within thirty (30) days after the Participant has submitted a final accounting to the Agency with supporting documentation which evidences the costs actually incurred in the cultural resources investigation of the Parcels.

2. [\$806] Participant Reimbursement For Archaeological Investigations

Agency at its sole cost and expense has caused the further investigation of the Parcels for archaeological resources at a cost not to exceed \$141,188, under an agreement with the Chambers Group dated May 3, 1989 (the "Chambers Group Agreement"), and amended through subsequent authorized change orders. The Participant agrees to reimburse the Agency for a portion of the costs actually incurred under the Chambers Group Agreement in an amount of \$35,297. Reimbursement will be made within thirty (30) days of the completion of work under the Chambers Group Agreement.

In addition, Participant shall at its sole cost and expense has caused further archaeological investigation of the Parcels at a cost of \$212,897. The Agency agrees to reimburse the Participant for additional mitigation measures in an amount not to exceed \$158,984. Reimbursement will be made within thirty (30) days after the Participant has submitted a final accounting to the Agency with supporting documentation which evidences the costs actually incurred and paid in the cultural resources investigation of the Parcels.

The Agency's total obligations in Section 805 and 806 is \$277,365., of which \$74,899.53 has already been paid. The remainder shall be reimbursed according to the provisions set forth in Sections 805 and 806.

3. [\$807] Agency Ownership of Archaeological Finds

Participant agrees that in return for the reimbursement promised and the cost incurred by the Agency under Sections 805 and 806 that the Agency shall become the sole owner of any archaeologically significant materials, objects or other finds located on the Parcels. Participant shall have the right to display selected items from the archeological finds located on the Parcels provided they are properly displayed and adequately protected as required by Agency. Agency shall have the right to approve the specific items and period of display. In the event that the Agency determines to transfer the ownership interest in

any of said finds located on the Parcels, then the proceeds of said transfer shall be divided on a fifty percent (50%) basis between the Agency and the Participant.

4. [§808] Liability

Participant shall protect, defend, indemnify and hold harmless the City of San Juan Capistrano (the "City"), the Agency and their elective and appointive boards, officers, agents and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to, or death of, any person, and for injury to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the performance under Sections 805 or 806 of this Agreement by, or on behalf of Participant.

Participant shall comply with all of the provisions of the Worker's Compensation Insurance and Safety in Employment Laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto, and all similar state, federal, or local laws applicable; and shall indemnify and hold harmless the City and the Agency and their employees, officers and agents from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments of every nature and description, including attorney's fees, presented, brought or recovered against City or Agency, for or on account of any liability under any of said laws which may be incurred by reason of any work performed under Sections 805 or 806 of this Agreement by Participant or on its behalf.

Agency and City do not, and shall not, waive any rights against Participant which they may have by reason of this Section 808 because of the acceptance by City or Agency or the deposit with City or Agency by Participant of any insurance policies or certificates of insurance purporting to indemnify for the aforesaid losses. The aforesaid hold-harmless agreements by Participant shall apply to all liabilities, claims, expenses, and damages of every kind including, but not limited to, attorney fees, suffered or alleged to have been suffered, by reason of the aforesaid operations of Participant or any subcontractor or others performing on behalf of Participant, regardless of whether or not such insurance policies are applicable."

Section 5. On pages 3 and 4 of Attachment No. 4 to the OPA (the "Lease Agreement") amend Section 4(a) to read as follows:

"(a) **Rent.** For each of the periods (the "Rental Periods") commencing six (6) months from the date the City allows the occupancy of the Parking Facility through the issuance of the Certificate of Occupancy or a Temporary Certificate of Occupancy on the Parking Facility in conformity with the Agreement and continuing according to the schedule below for the first six (6) Rental Periods and thereafter on an annual basis, the Lessee agrees to pay to the Lessor as the Base Rent the sum of One Dollar (\$1.00). The Certificate of Occupancy or Temporary Certificate of Occupancy shall not be withheld due solely to a delay in the Participant's installation of the equipment necessary for commuter parking. In addition to the Base Rent, the Lessee agrees to pay to the Lessor Supplemental Rent for the first three (3) Rental Periods according to the following table:

<u>Rental Period</u>	<u>Ending In Month</u>	<u>Amount of Supplemental Rent</u>
1	6	\$312,540
2	18	281,271
3	36	250,024

At the end of the third operating year after the date of issuance of the certificate of completion for the Parking Facility, the Lessee and Lessor shall review the actual performance to determine the third year net cash flow after debt service and before distribution to the Participant as a percentage of equity. In making this calculation, equity shall be the difference between the construction lender(s)' or permanent lender(s) determination of project value for the purposes of making the construction loan and the amount of the loan. Using this percentage the Lessee shall pay an additional amount of Supplemental Rent for Rental Periods 4, 5 and 6, ending in months 48, 60 and 72 respectively, based on the following table:

<u>Cash Flow as % of Equity</u>	<u>Additional Amount of Supplemental Rent</u>
less than 0%	275,000
0% to 4.0%	200,000
4.0% to 8.0%	175,000
8.0% to 13.0%	150,000
13.0% to 17.0%	125,000
more than 17.0%	-0-

Section 6. Option to Purchase.

The Agency shall have the right to purchase the Parking Facility at its sole option. This option may not be exercised before two (2) years after the certificate of completion has

been issued on the entire project (Phase I and Phase II), and must be exercised no later than seven (7) years after the issuance of the certificate of completion for the entire project.

The Agency and the Participant shall begin negotiations to set the price at which the Agency may purchase the Parking Facility and the lease back costs within thirty (30) days of the execution of this First Amendment. At the time of negotiations, the Agency and the Participant shall agree in writing on all factors which shall be used to establish a value for the structure including, but not limited to, the following criteria:

1. The original construction cost of the Parking Facility including hard costs, soft costs and offsites.

2. The original cost of the land on which the Parking Facility is located.

3. Payments the Participant has made to the date of the purchase for financing fees, principal and interest on the portion of his financing dealing with the Parking Facility.

4. Compensation paid to date by the Agency to the Participant for the lease of the structure.

5. Such other factors as the Agency or the Participant may deem appropriate in establishing a value for the structure.

Unless otherwise modified by agreement between the Agency and the Participant, upon purchasing the Parking Facility the Agency and the Participant shall ensure the following:

1. Adequate parking shall be maintained for the tenants of Franciscan Plaza and the Provincial Building according to conditions set forth in the Joint Parking Agreement.

2. The Participant shall continue to: (i) receive its share of the compensation collected by the Agency for the paid parking and (ii) pay its share of the CAM charges.

In the event that the parties are unable to come to an agreement by October 1, 1990 as to the option purchase price this option shall be terminable by either party. In the event that this section is found to be unenforceable or invalid such unenforceability or invalidity shall not effect any other provision of this Agreement which shall remain in full force and effect.

Section 7. Each and every provision of the OPA remains in full force and effect and survives this Amendment. The OPA is incorporated herein by this reference.

SAN JUAN CAPISTRANO COMMUNITY
REDEVELOPMENT AGENCY

By: *Kenneth E. Friess*
Kenneth E. Friess, Chairman

ATTEST:

Mary A. Harvill
Agency Secretary

APPROVED AS TO FORM:

Dean C. Stradling
Stradling, Yocca, Carlson & Rauth
Agency Attorney

FRANCISCAN PLAZA INVESTMENT GROUP

By: *Paul Farber*
Paul Farber, President
General Partner

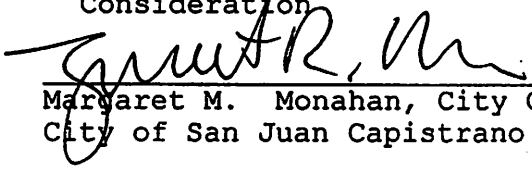
COPY

Recording Requested by:
City of San Juan Capistrano

Recording fees exempt due to Govt
Code 6103
Documentary Transfer Tax - No
Consideration

And when recorded, please mail to:

City of San Juan Capistrano
City Clerk's Department
32400 Paseo Adelanto
San Juan Capistrano, CA 92675


Margaret M. Monahan, City Clerk
City of San Juan Capistrano

Second Amendment to Owner Participation Agreement

This Second Amendment to Owner Participation Agreement ("Second Amendment") is entered into as of this 7th day of May, 2002, by and between the San Juan Capistrano Community Development Agency (the "Agency") and Busk Development, Inc. (hereinafter referred to as "Owner").

Recitals

Whereas, the Owner Participation Agreement was executed by the Agency and Franciscan Plaza Investment Group, the original developer of the Franciscan Plaza project (the "Participant"), on December 15, 1987; and,

Whereas, the First Amendment to the Owner Participation Agreement was executed by the Agency and the Participant on October 17, 1989; and,

Whereas, the current "Owner" and Agency desire to amend certain provisions of the Owner Participation Agreement and its First Amendment.

Now, therefore, the Agency and Owner agree to amend the Owner Participation Agreement and the First Amendment to the Owner Participation Agreement as follows:

Section A. Section 1 of the First Amendment to the Owner Participation Agreement and Section 501 of the Owner Participation Agreement shall be amended to provide for seventy-three (73) commuter parking spaces.

Section B. Except to the extent that the Owner Participation Agreement and the First Amendment to the Owner Participation

Land are modified by the First Amendment each and every provision of the Joint Parking and Maintenance Agreement remains in full force and effect and survives this Amendment. The Joint Parking and Maintenance Agreement is incorporated herein and by this reference. If any ambiguity exists between this First Amendment and the Joint Parking and Maintenance Agreement, this First Amendment shall control.


In Witness Whereof, the parties have executed this First Amendment as of the day and year above written.

Approve as to Form:



John Shaw, Agency Council

Attest:



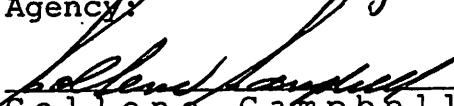
Margaret M. Monahan, Agency Secretary

Owner:



Kalma Busk, Busk
Development, Inc.

Franciscan Plaza, LLC
Agency:



Collene Campbell,
Chairperson

RECORDED IN OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA

89-681025

4:00 PM DEC 15 1989

Lee A. Branch Recorder

EXEMPT C14

Recording Requested by:
City of San Juan Capistrano

Recording fees exempt due to Govt Code 6103
Documentary Transfer Tax - No Consideration

And when recorded mail to:
City of San Juan Capistrano
City Clerk's Department
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Cheryl Johnson Deputy
Mary Ann Hanover, City Clerk
City of San Juan Capistrano

MAIL TO

JOINT PARKING AND MAINTENANCE AGREEMENT AND
DECLARATION OF COVENANTS
RUNNING WITH THE LAND

THIS JOINT PARKING AND MAINTENANCE AGREEMENT AND DECLARATION OF COVENANTS RUNNING WITH THE LAND (the "Agreement") is made and entered into on this 5th day of December, 1989, by and between Franciscan Plaza Investment Group, a California limited partnership, (hereinafter referred to as "Developer") and the San Juan Capistrano Community Redevelopment agency, a public body, corporate and politic (hereinafter referred to as "Agency").

RECITALS:

This Agreement is made and entered into on the basis of the following facts, understandings and intentions of the Parties:

A. On or about September 30, 1987, Developer and Robert L. Larasen and Dorothy Ngaire Larsen, Trustee of the Robert L. Larsen and Dorothy Ngaire Larsen 1984 Inter Vivos Trust, Dated December 6, 1984 ("Larsen" collectively herein) entered into a certain Easement Agreement (the "Developer/Larsen Easement Agreement") which was recorded December 18, 1989 as instrument number 87-700180 in Official Records of Orange County, California which provided for certain reciprocal easements appurtenant to the properties owned by Developer and Larsen, respectively, and which contains an agreement concerning parking in the Parking Facility hereinafter defined. The term "Larsen Parcel" as used herein shall mean those certain lands referred to as the Larsen Parcel in the Developer/Larsen Easement Agreement.

B. On or about December 15, 1987, Developer and Agency entered into a certain Owner Participation Agreement (the "OPA") which defined a certain Parking Facility and made provision for a

future lease between Developer and Agency for said Parking Facility as well as the potential subsequent acquisition of the fee interest in the Parking Facility by Agency from Developer. The Parking Facility is indicated on Attachment No. 1 attached hereto and is a structure built on a portion of those lands more fully described in Attachment No. 2 attached hereto. The potential subsequent acquisition of the fee interest in the Parking Facility is subject to Developer's compliance with the California Subdivision Map Act. All terms used in this Agreement are more fully defined in said OPA, said OPA being incorporated by reference herein.

C. Concurrently with the grant of an estate in the Parking Facility from Developer to Agency (defined as the "Lease Transfer" in the OPA), Developer and Agency desire to set forth certain covenants which will run with the Parking Facility and pertain to the operation and use of said Parking Facility as (1) an integral part of the contiguous real property fully defined in Exhibit A attached hereto (the "Shopping Center"), (2) an integral part of the contiguous real property fully defined in Exhibit B attached hereto (the "Larsen Parcel") pursuant to the terms of the Developer/Larsen Agreement, and (3) as a public facility used for paid commuter parking. The Shopping Center together with the Parking Facility shall be collectively referred to herein as the "Parcels".

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the Parties agree as follows:

1. DEFINITIONS. Each reference in this Agreement to any of the following terms shall mean:

1.1. Building Area. Those areas to be utilized for construction of the building and improvements intended for commercial or office use on the Shopping Center.

1.2. Common Area. All areas of the Parking Facility together with the "pedestrian promenade" and "pedestrian bridge", all as shown and indicated on Attachment No. 1 hereto together with the "Camino Capistrano driveway" shown and indicated on Attachment No. 2 hereto. Any enlargement of or addition to the Common Area as provided herein shall be included in the definition of Common Area for purposes of this Agreement.

1.4 Occupant. Any person or persons from time to time entitled to the use and occupancy of any portion of the Building Area in the Shopping Center or the Larsen Parcel under this Agreement or any lease, license or concession agreement, or other instrument or arrangement under which the Occupant acquires its

right to such use and occupancy. Occupant shall include the officers, directors, employees and agents of such persons.

1.5 Parking Area. That portion of the Common Area used for parking of motor vehicles, including without limitation, incidental and interior roadways, walkways, curbs and landscaping within the areas used for such parking, together with all improvements which at any time are erected thereon, but excluding parking equipment or space to house the employees and operations for proposed rail baggage service and ticket sales and for security personnel located in the Common Area. Any enlargement of or addition to the Parking Area shall be included in the definition of Parking Area for purposes of this Agreement.

1.6 Parties. Agency and Developer and their respective successors in interest to their respective interests in the Shopping Center and Parking Facility, as shown on the Official Records of Orange County, California.

1.7 Users. All persons granted permission to utilize the Common Area, including without limitation, Occupants, Parties, employees and service people, licensees, invitees, customers, owners, contractors, agents, lessees, sublessees, tenants and concessionaires.

1.8 Commuters. Members of the public who have paid a daily fee in the minimum amount of Two Dollars (\$2.00) per day for a license to park their vehicles in the Parking Facility.

2. GRANT OF RECIPROCAL EASEMENTS.

2.1 Common Area Easements. The Common Area on each Parcel shall be used only for the following purposes related to the business and activities conducted in the Shopping Center and in the Larsen Parcel and related to the use of the Parking Facility for paid Commuter parking:

a. Parking. Parking of motor vehicles in the Parking Facility. The number of spaces allocated without charge to the Users and Occupants of the Shopping Center shall be based upon a determination of the parking spaces necessary for the commercial uses as determined by the City of San Juan Municipal Code (the "Code"). Additionally, a certain number of spaces shall be allocated to Users and Occupants of the Larsen Parcel as set forth in Section 7.1.a. hereinafter. The remainder of the spaces shall be allocated to Commuters. This proportion shall be readjusted if a change in the use of the commercial space requires a greater or lesser number of parking spaces under the Code. Notwithstanding, (1) in no event shall the number of Commuter spaces be less than

one hundred thirty-one (131) and (2) in the event that, after completion of Phase II, circumstances determine that not all of the spaces in the Parking Facility are needed prior to 7 P.M. for parking by Users and Occupants of the Shopping Center, the Agency shall have the right to obtain and set aside additional Commuter spaces upon written agreement between the Parties and upon payment to the Developer of \$5,446.00 per space or more; it being agreed and understood that the sum of \$5,446.00 was arrived at based upon a projected cost of \$1,203,566.00 and a total of 221 spaces for the purposes of this Section 2.1.a.

Subject to the rights hereto granted by Developer to Users and Occupants of the Shopping Center, the Agency shall have the right, upon reasonable notification to Developer, to use all of the Parking Facility for public parking on Swallow's Day and up to five (5) additional "Special Days" per year upon reasonable notice to Developer. In such event, no fee shall be collected from persons parking in the Parking Facility. On such days, Users and Occupants shall continue to have the right to use the Parking Facility but such use will be on a "first come, first serve" basis.

The Agency may promulgate, and shall use their best efforts to enforce, rules and regulations pertaining to parking. Agency shall have sole discretion in selecting the firm and/or method for managing the parking facility, including the regulations, reasonable charges for Commuter parking use and other terms of operations subject to the terms of this Agreement. As of the date of this Agreement, however, Developer has been designated by Agency as the manager of the Parking Facility and, as manager, Developer will continue to receive a management fee from Agency, it being agreed and understood that the management fee is equal to the administrative fee included in common area maintenance charges described hereinbelow. Agency may at any time upon thirty (30) days written notice to Developer select an alternative management firm. The purpose of the rules and regulations shall be to ensure order and safety but shall not unreasonably interfere with the rights granted Developer hereunder. All fees collected by the Agency (or Developer if Developer is acting as manager of the Parking Facility) shall be distributed, on a 50/50 basis, between Developer and Agency on a quarterly basis. No offset shall be made for common area maintenance charges. Agency (or Developer if Developer is acting as manager of the Parking Facility) shall bill Developer (or Agency if Developer is acting as manager of the Parking Facility) quarterly for the other Party's share of common area maintenance charges attributable to the Parking Facility pursuant to Section 3.2 hereinafter and such charges shall be paid

within forty-five (45) days of billing.

b. Ingress and Egress. Ingress and egress by any Users and any motor vehicles of such Users to and from any portion of the Common Area and the public streets adjacent to the Common Area.

c. Public Utilities. Installation, maintenance and operation of public utilities and services for the Common Area or Building Area, together with and including, without limitation, vaults, manholes, meters, transformers, pipelines, valves, hydrants, sprinkler controls, conduits, sewage facilities, and all related facilities, all of which shall whenever and wherever reasonably feasible be located below the surface of the Common Area, or the surface of any other above ground improvements located thereon; provided, however, that in any event, all of the foregoing permitted public utilities and installations, which are located above the surface of the Common Area, shall be placed so as not to interfere with, restrict, or impede other uses of Common Area provided for herein.

d. Pedestrian Traffic. Pedestrian traffic by Users between business establishments in the Building Areas, between the Building Areas and the Common Area, and between the Building Areas and Common Area and the adjoining streets.

e. Comfort and Convenience. Minor comfort and convenience facilities for Users, such as mailboxes, public telephones, and benches, as each Party may from time to time deem appropriate to construct or permit to be constructed on the respective Parcels; provided, however, that no such minor inconvenience facilities shall interfere with, restrict or impede other uses of the Common Area provided herein.

f. Temporary Construction Activity. Construction, maintenance, repair, replacement, rearrangement and remodeling of buildings and improvements within Building Areas, and Common Areas, landscaping, pedestrian walkways and other improvements in the Common Area not substantially affecting or changing the Common Area except as permitted or required herein. All such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with use of the Common Area, shall be diligently prosecuted to completion, and shall otherwise be performed in compliance with the provisions of Section 2.5 hereof. In connection with work of construction performed with Building Areas; incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which are permitted hereunder so long as their use is kept within reasonable requirements of

construction work expeditiously pursued. Common Area may be utilized from ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any work provided for herein and temporary storage of materials and vehicles being utilized in connection with such construction, subject to all of the other terms of this Agreement.

g. Service and Delivery Vehicles. Ingress, egress, and temporary parking of delivery and service vehicles travelling to and from the Building Areas, or any portion thereof, and the public streets adjacent to the Shopping Center for the delivery of goods, wares, merchandise, furniture, fixtures, supplies and equipment, and the rendering of services to any Occupant.

h. Doors and Exits. The opening on to the Common Area of doors and other exits of portions of the building Areas contiguous to the Common Area.

i. Foundations, Footings, Overhangs and Canopies. Installation, repair, replacement and maintenance of: (i) building foundations and footings; (ii) building canopies and canopy support columns; and (iii) pilasters and other building columns or pillars extending from any portion of the Building Area of any Parcel, over, onto, under and into the Common Area; provided, however, that building foundations and footings shall not extend beyond a lateral distance of five feet (5') from the Building Area limit lines upon which the building is located; and provided, further, that any building canopies or building overhangs on any building on a Parcel shall not in any event extend beyond the vertical plane of the outside edge of a sidewalk in the Common Area located on the Parcel, adjoining the Building Area perimeter.

j. Encroachments. Minor encroachments of building overhangs, support columns, canopies, eaves and signs from a Building Area into the Common Area.

2.3 Grant of Easements by Parties. Each Party grants to the other Party non-exclusive easements over, across, in, under and through each Parcel and appurtenant to and for the benefit of the other Parcel, for the uses and purposes set forth in Section 2.1 and 2.2. Each Party further grants to the other Party a non-exclusive easement, appurtenant to and for the benefit of their respective Parcels, for ingress, egress and access to the Common Area located over, along, and under each Party's Parcel for the purpose of effectuating any necessary repairs, maintenance and replacement of the Common Area located on each Parcel as provided herein.

2.4 Use, Duration, and Termination of Easements.

a. Use and Duration. Each easements granted herein shall be used by the Parties as an appurtenance to and for the benefit of their respective Parcels, and solely for the purpose of developing and operating the Parcels pursuant to a common plan of beneficial use. Any such easement shall terminate with respect to the benefitted and burdened Parcels after the termination of this Agreement under Section 11.2 if the use thereof for the benefit of a Parcel is abandoned for a continuous period of two (2) years.

b. Procedure to Establish Termination. Abandonment and termination of an easement hereunder shall be presumed for the benefit of any Parcel burdened by such easement upon compliance with the following procedures by the then record owner of such Parcel. Such record owner shall record a notice and affidavit in the Office of the Recorder of the County of Orange which shall contain the following:

(i) Name. The name of the record owner of the burdened Parcel.

(ii) Statement of Abandonment. A statement concerning the basis upon which the easement is deemed abandoned.

(iii) Identification of Owner. An identification of the record owner of the Parcel benefitted by the abandoned easement and the identification of the record owner, if any, of any leasehold interest in such Parcel.

(iv) Parcel Description. A description of the Parcel burdened and the Parcel benefitted by the easement.

The foregoing notice and affidavit shall be duly verified and acknowledged and contain a certificate verifying that a copy thereof has been served upon the then record owner of the Parcel benefits by such easement that the then record owner, if any, of the leasehold interest in such benefitted Parcel by mailing such notice, certified mail, return receipt requested, postage prepaid to the address given for mailing tax statements in the office of the Tax Collector of Orange County. The notice and affidavit under subsection b. shall create a conclusive presumption binding upon all persons owning any interest in either the Parcel benefitted or the Parcel burdened by the easement claimed to be abandoned, unless the record owner of the fee interest in the Parcel benefitted by such easement or any record owner of any leasehold interest in such Parcel records, in the Office of the Recorder of Orange County, and concurrently serves on the then record owner of the Parcel burdened by such easement, a notice and affidavit setting forth the following information:

(i) Name. The name of the persons giving the notice and affidavit, identifying the basis upon which such person claims to have the requisite record interest in the benefitted Parcel;

(ii) Basis of Non-Abandonment. A statement setting forth the facts constituting the claim for non-abandonment of the easement;

(iii) Identification of Owner. An identification of the record owner of the Parcel burdened by the easement; and

(iv) Parcel Description. A description of the Parcel benefited and the Parcel burdened by the easement.

Such notice and affidavit shall be duly verified and acknowledged and contain a certificate verifying that a copy thereof has been served upon the then record owner of the Parcel burdened by the easement by mailing such notice, certified mail, return receipt requested, postage prepaid, to the Address given for mailing tax statements in the office of the Tax Collector of Orange County.

d. Relocations of Utilities. Upon termination of this Agreement, the rights of the then owners of the Parcels with respect to the easements for utilities under Section 2.2(c) shall be governed by the provisions of Section 2.5, to relocate any utilities serving any other Parcel, provided that such relocation is done at the sole cost and expense of the owner accomplishing such relocation and, provided, further, that such relocation does not interfere with or increase the cost of the provision of utility services to the parcel benefited by such utilities.

2.5 Utility Easements. The Parties shall cooperate with one another and permit installation of any necessary utility and service lines, sanitary or storm water drainage sewers, water lines, telephone conduits or lines, and all other public utilities jointly and mutually to serve the Parcels and Building Areas. Any such utilities shall not be located under any building located on any Building Area, shall be constructed as is reasonably possible so as not to interfere unduly with the overall development and operation of each Parcel by the Parties hereto, and shall otherwise conform to the applicable requirements of this Article 2. All such utilities shall be separately metered or separately assessed for the respective use of the Building Areas located on each Parcel.

2.6 Maintenance of Utility Facilities. All separate utility facilities installed by any Party pursuant to the easements granted under this Article 2 designed to serve exclusively the Building

Area on such Party's Parcel shall be installed, maintained, repaired and removed by such Party without cost or expense to the other Party; provided, however, that if the other Party connects into or utilizes such separate utility facilities pursuant to any easement granted under this Article 2, then each Party shall be responsible for the installation, maintenance, repair and removal in connection with its utilization of such separate utility facilities.

2.7 Indemnification by Parties. Each Party shall indemnify, defend and hold the other Party harmless of and from any and all loss, cost, damage, injury or expense (including without limitation reasonable attorneys' fees) arising by reason of injury to or death of persons, damage to property or claims of lien for work or labor performed, materials or supplies furnished arising out of or in connection with use by the indemnifying Party of the easements granted hereunder or the exercise by such Party of the rights granted to it in this Agreement. Any Party may contest any lien or claim of lien asserted against such Party or its Parcel; provided, however, that such Party shall pay and fully discharge any such claim of lien within five (5) days after entry of final judgment adverse to such Party in any action to enforce or foreclose the same, which judgment shall be deemed final when it can be enforced by execution or judicial sale and no such judgment shall be considered final for the purpose hereof during the pendency of a stay of execution in connection with an appeal, or during the time in which an appeal may be taken.

3. MAINTENANCE

3.1 Building Upkeep and Maintenance. Each Party shall, without cost or expense to the other Party, provide for appropriate upkeep and maintenance for the exterior of their buildings and improvements located in the Building Area of each Party's Parcel.

3.2 Maintenance of Common Area. Each party shall, without cost or expense to the other Party, provide for appropriate upkeep and maintenance for the Common Area located on such party's parcel. The Parties' obligations to maintain the Common Area shall include but not be limited to the following:

a. Paved Areas. Maintaining all paved surfaces and curbs of the Common Area in a smooth and evenly covered condition which maintenance work shall include, without limitation, cleaning, sweeping, restripping, repainting, repairing and resurfacing of the Parking Area, and curbs, using surfacing material of a quality equal or superior to the original surfacing material.

b. Debris and Refuse. Removal of all papers, debris,

filth, refuse, snow and ice, and sweeping the Common Area to the extent necessary to keep the Common Area in a first class, clean and orderly condition; provided, however, that each Party shall install, operate and properly maintain, or cause to be so installed, operated and maintained, on its Parcel, without cost or expense to the other Party and so as not to be visible to the general public doing business at the Shopping Center, sufficient trash compactors, or enclosed or lidded trash bins, for use in connection with storage or all trash, refuse and waste materials of the Occupants of such Party's Parcel and each Party shall take, or cause to be taken, all necessary measures to keep the Parcels free from all debris and rubbish caused by from such facilities.

c. Signals and Markers. Placing, keeping in repair, replacing and repainting any appropriate directional signs, markers and lines.

d. Parking Area Lighting. Operating, keeping in repair, cleaning and replacing when necessary such Common Area lighting facilities as may be reasonably required, including all exterior lights attached to buildings located on Building Areas which are intended to illuminate the Common Area.

e. Landscaped Areas. Cleaning and maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of buildings, repairing automatic sprinkler systems or water lines in the Common Area, weeding, pruning, fertilizing and making replacement of shrubs and other landscaping as necessary.

f. Utilities. Maintaining, cleaning and repairing any and all common storm drains, utility lines, sewers and other utility systems and services located in the Common Area which are necessary for the operation of the Common Area and the Building Area, and any buildings and improvements therein.

g. Insurance. The maintenance of the following policies of insurance:

(1) Insurance against loss or damage to the aboveground portion of the Parking Facility resulting from fire, earthquake, lightning, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage" and such other perils as Agency and Developer may agree should be insured against, if such insurance is available from reputable insurers. In the event that either party determines that the earthquake portion of the insurance required in this Section 3.g.(1) has become economically unreasonable to obtain, it may request relief from the other party for this requirement and the other party shall not unreasonably withhold its permission to modify this section if it

unreasonably withhold its permission to modify this section if it too determines that such a requirement has become an economically unreasonable burden. Such insurance shall be maintained in an amount not less than the full insurable value of the Parking Facility subject to a "deductible clause" in the amount of Ten Thousand Dollars (\$10,000.00) and shall contain an inflation guard endorsement. The term "full insurable value" as used in this Section shall mean the actual replacement cost "new";

(2) public liability insurance against claims for bodily injury or death, or damage to property occurring upon, in or about the Common Area, such insurance to afford protection to a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage with not greater than Ten Thousand Dollars (\$10,000.00) deductible;

(3) Worker's compensation insurance, if applicable, issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof, such worker's compensation insurance to cover all persons employed in connection with the Parking Facility and to cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death during or in connection with the Parking Facility or the business of the Developer and activities of the Agency with respect to the Parking Facility.

h. City, county, state or federal governmental impositions placed on or based upon the Common Area or revenues derived therefrom.

Notwithstanding the above, Agency shall select a qualified management company for the maintenance and operation of the Parking Facility. The Agency shall enter into an agreement with the selected management company and the cost of those common area maintenance charges for the Parking Facility as described in (a) through (h), inclusive, hereinabove together with an administrative fee equal to fifteen percent (15%) of the common area maintenance charges shall be allocated between the Agency and Developer in proportion to the ratio of Commuter parking spaces and spaces used by the Users and Occupants of the Shopping Center. This ratio shall be determined with regard to the hours of 6:00 A.M. to 6:00 P.M. Mondays through Fridays. The following equation expresses this ratio:

Agency's portion (# of Commuter (12 hrs)
of CAM charges Spaces)

=
Total CAM charges (Total # of (17 hrs)
Spaces)

The number of Commuter parking spaces and the number of parking spaces allocated to Users and Occupants of the Shopping Center and the Larsen Parcel shall be determined in accordance with Section 2.1.a. hereinabove. All common area maintenance charges, including the administrative fee, to be allocated between Agency and Developer shall be paid within forty five (45) days after billing.

4. RESTRICTIONS ON BUILDING AREA USE.

In the event Agency makes a good faith determination, subject to review by Developer, that the Parking Area is insufficient to meet the demand for parking by Users between the hours of 7 p.m. to 6 a.m., Agency will so notify Developer and Developer shall have sixty (60) days within which to designate, by way of notice to Agency, up to four thousand five hundred (4,500) square feet of Building Area with the Franciscan Plaza Project Phases I and II which Developer agrees will thereafter not be open to the public between the hours of 7 p.m. to 6 a.m. Developer, by way of notice to Agency, may at any time change the Building Areas so restricted provided that at all times at least four thousand five hundred (4,500) square feet of Building Area in the Project shall be so restricted.

5. RIGHTS ON DEFAULT.

5.1 Legal Rights on Default. Each Party shall have the right to prosecute any proceedings at law or in equity against the other Party, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, in order to prevent the violating or attempting to violate or defaulting upon the provisions of this Agreement and to recover damages for any such violation or default. The remedies available under this Section 5.1 shall include, by way of illustration but not limitation, ex parte applications and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of the Agreement.

6. ESTOPPEL CERTIFICATE. Any Party may, at any time and from time to time, in connection with the sale or transfer of the Party's Parcel, or in connection with the financing or refinancing of the Party's Parcel by mortgage, deed of trust or sale leaseback made in good faith and for value, deliver written notice to the other Party requesting such Party to certify in writing that to the best knowledge of the certifying Party, the requesting Party is not

in default in the performance of its obligations under this Agreement, or, any and all defaults. The Party receiving such request shall execute and return such certificate within thirty (30) days following the receipt thereof. Failure by a Party so to execute and return such certificate within the specified period shall be deemed an admission on such Party's part that the Party requesting the certificate is current and not in this Agreement. The parties acknowledge that such certificate may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback lessors.

7. TRANSFERS OF INTEREST, RIGHTS, POWERS AND OBLIGATIONS.

7.1 Limitations on Parties. In no event shall the rights, powers and obligations conferred upon the Parties hereto pursuant to this Agreement be at any time transferred or assigned by any of such Parties except through a transfer of their respective interests in their respective Parcels or except as specifically set forth to the contrary in this Subsection 7.1, and then only to the extent and in the manner hereinafter provided;

a. Rights of Larsen. Subject to Developer's obligations as contained in the Developer/Larsen Agreement, the Occupants and Users of the Larsen Parcel (as defined above) shall have the right to use, without any charge or fee, during the daytime from 8:00 A.M. to 7:00 P.M., the following number of parking spaces:

(i.) The number of parking spaces required by the City of San Juan Capistrano for the building located this date on the Larsen Parcel based upon its current square footage; and

(ii.) Such additional parking spaces as may be needed for up to, but not to exceed, an additional Six Thousand (6,000) square feet addition to the building on the Larsen Parcel, provided such additional square footage is for retail or office type of tenants and does not require more than one (1) parking space per 250 square feet of tenant space or a maximum of twenty-four (24) parking spaces.

Notwithstanding, Larsen is not a Party (as defined hereinabove) to this Agreement and Larsen shall have no rights, interests or liabilities under this Agreement except the parking rights conferred in this Subsection a.

b. Transfer of Entire Interest. In the event of the transfer, conveyance or termination of the whole of the interest of the Party in its Parcel (or any leasehold interest in a Parcel) without retaining any beneficial interest therein other than as a beneficiary under the terms of a deed of trust or mortgage or

without simultaneously acquiring a new interest by way of leasehold, life estate, or any other similar interest, than the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall be transferred and assigned with its interest.

c. Retention of Interest. In the event that (i) the whole of the interest of any party in its Parcel is transferred or conveyed, but a new interest is created in the transferring Party simultaneously with the conveyance of its previous interest, by way of leasehold, life estate, or any other similar interest, or (ii) the transferring Party shall convey its interest in its Parcel, or a portion thereof, by deed of trust, mortgage or other security instrument as security for the obligation or indebtedness of such Party, then none of the rights and powers conferred upon or obligations under this Agreement of the transferring Party shall be transferred or assigned with the transfer or conveyance of its interest, but all of the rights and powers conferred upon and obligations under this Agreement of the transferring Party shall remain in such Party as long as such Party retains, under (i) above, the new interest in and to its Parcel (other than as beneficiary under the terms of a deed or trust or mortgage), or so long as such Party remains under (ii) above, the beneficial owner of its Parcel. Upon the termination of the new interest created in the transferring Party as specified in this Subsection c., the rights and powers conferred upon, or the obligations of such Party shall vest in accordance with Subsection b. or d. hereof, whichever is applicable, as if the new interest created in such Party had never existed, subject only to the provisions of Article 11 of this Agreement.

d. Multiple Ownership. In the event that any Party shall transfer or convey its interest in its Parcel, or any portion of its Parcel or interest in its Parcel, in such manner as to vest ownership of the Parcel or interest therein in more than one person, then the persons owning all of such interest in such Parcel shall be jointly considered a single Party and such persons involved in the transaction creating the multiple interest shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Agreement. Any such designation shall be in writing, duly executed, verified and acknowledged by each such person, shall be served upon the other Party in accordance with the notice provision of this Agreement, shall contain a certificate that a copy thereof has been so served, and shall be recorded in the Office of the Recorder of the County of Orange. In the absence of such written designation, the acts of the Party whose interest is so divided with respect to the performance of the provisions of this Agreement shall be binding upon all of the persons owning any interest in such Party's Parcel,

until such time as the written designation is properly served and recorded as provided by this Subsection d. The exercise or performance of any rights, powers or obligations of a Party under this Agreement by the person designated to represent such Party shall be binding upon all persons having an interest or right in such parcel and/or upon all persons having an interest in such Party. So long as such designation remains in effect, all persons having an interest or right in the Parcel and/or all persons having an interest in such Party shall act only through such persons designated hereunder and the other Parties shall have the right to deal exclusively with and rely solely upon the act or omissions of such person in the performance or provision of this Agreement. Any person designated hereunder may be removed by the persons so designating, in accordance with any procedure agreed to between them, provided that written notice of such removal and designation of a new person to act as the Party on behalf of all such persons under this Agreement is given and made in the manner specified in this Subsection d., and in absence of any such written notice and designation, the previous designation shall continue in effect and the acts of the person previously designated with respect to the performance of the provisions of this Agreement shall be binding upon all such persons until such time as the written notice and designation is properly served as provided by this Subsection d.

Any person designated pursuant to the provisions of this Subsection d., shall be the agent of each of its principals, hereby irrevocably appointed for such purpose, upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Agreement may be made, and service upon such designated person shall constitute due and proper service of any such matters is also mailed to such principals at the principals' last addresses known to the sender. Notwithstanding anything to the contrary herein contained, the designation of a person to act on behalf of persons as a Party under this Subsection d. shall not for any purpose relieve any such persons from the obligations or liabilities created by or arising from this Agreement.

8. RELEASE UPON SALE OF INTEREST.

8.1 Sale by any Party. Upon the sale or transfer by any Party of its entire right, title and interest in its Parcel, that party shall be released from the obligations of this Agreement (other than those obligations arising from any default by such Party in the performance of any provision of this Agreement prior to such sale or transfer, including payment of any amounts which may then be due and owing under this Agreement); provided that such Party shall have given notice to the other Party of sale, transfer, conveyance or assignment of all of its right, title and interest in its parcel concurrently with the filing for record of the

9. EFFECT ON BREACH UPON PURCHASERS AND MORTGAGEES.

9.1 No Termination. The breach of this Agreement shall not eliminate any Party or person to cancel, rescind or otherwise terminate its obligations hereunder.

9.2 Mortgagee Protection. This Agreement, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Party and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but the covenants and restrictions, easements and conditions herein contained shall be binding upon and effective against any owner (including any mortgagee or beneficiary under a deed of trust) of any Parcel, or any portion thereof, who acquires title thereto by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

10. COVENANTS AND RECORDATION.

10.1 Covenants Run with the Land. All of the applicable provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon and insure to the benefit of the Parties hereto, their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons acquiring any Parcel, or any part thereof of any interest therein whether by operation of law or in any manner whatsoever, unless and until modified as herein provided. All of the provisions of this Agreement shall be covenants running with the land pursuant to the applicable law, including but not limited to Section 1468 of the Civil Code of the State of California. It is expressly acknowledged that each covenant to do refrain from doing some act on each Parcel hereunder (i) is for the benefit of each other Parcel and is a burden upon each other Parcel, (ii) runs with each Parcel and (iii) shall benefit or be binding upon each successive owner during its ownership of each Parcel, or any portion thereof, and each person having any interest therein derived in any manner through any owner of any Parcel, or any portion thereof.

11. RECORDATION. This Agreement shall become effective and binding upon the Parties and their respective successors in interest in accordance with the provisions of this Article 10 upon recordation of this Agreement in the office of the County Recorder of Orange County.

12. MISCELLANEOUS.

12.1 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

12.2 Termination and Amendment. Except as otherwise specified in this Agreement, this Agreement may be cancelled, changed, modified or amended in whole or in part only by written and recorded instrument executed by all of the Parties hereto and by all of the record owners of all of each Parcel in the event that any of such record owners are not then Parties hereto. Notwithstanding any other provisions of this Agreement to the contrary, all the provisions hereof shall terminate upon the 55th anniversary date of the recordation hereof.

12.3 Approvals. Unless otherwise herein provided, whenever approval or consent is required of any Party, it shall not be unreasonably withheld. Unless provision is made for a specific time period, approval or consent shall be deemed given in ninety (90) days of the receipt of the written request for approval or consent, and if a Party shall neither approve nor disapprove within such ninety (90) day period, or other time period as may be specified in this Agreement for approval or consent, that Party shall then be deemed to have given its approval or consent. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. The consent or approval by a party to or of any act or request by any other Party shall not be deemed to waive or render unnecessary consent or approval to or any similar or subsequent acts or requests.

12.4 Public Dedication. Developer and Agency covenant that the Parking Facility shall be dedicated to public purposes provided, however, that "public purposes" shall be defined as "open and available to the public on an equal basis". All parking, except for parking by Users and Occupants, shall be paid for by the users of the Parking Facility. In the event, however, that neither the Agency nor its successors in interest hold any interest (either leasehold or fee) in the Parking Facility, all paid parking proceeds shall belong to Developer.

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center, or of any other parcel, or portion thereof, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed and that

all property described herein, except for the Parking Facility, is and shall continue to be private property.

12.5 Excusable Delays. Whenever performance is required of any Party hereunder, that Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if delays are caused by civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of a Party (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of delay.

12.6 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

12.7 Notices. Any notice to any Party shall be in writing and given by delivering the same to such Party in person or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the Party's mailing address. The respective mailing addresses of the Parties hereto are, until changed as hereinafter provided, the following:

Agency: SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
Attention: Executive Director

and, in the event of a claim against the Agency, with a copy to:

SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
Attention: Agency Secretary

Developer: Franciscan Plaza Investment Group
31831 Camino Capistrano
San Juan Capistrano, CA 92675
Attention: Paul Farber

12.8 Change of Address. Any Party may change its mailing address at any time by giving written notice of such change to the other Party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

12.9 Entire Agreement. This written Agreement contains all the representations and the entire agreement between the Parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

12.10 Captions. The captions preceding the text of each Article, Section and Subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

12.11 References. All references herein to a given Article, Section or Subsection refer to the Article, Section or Subsection of this Agreement.

12.12 Minimization of Damages. In all situations arising out of this Agreement, all Parties shall attempt to avoid and minimize the damages resulting from the conduct of any other Party. Each Party shall take all necessary measures to effectuate the provisions of this Agreement.

12.13 Litigation Expenses. If any Party shall bring an action against the other Party by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement of any provision hereof or otherwise arising out of this Agreement, the prevailing Party in such suit shall be entitled to its costs of suit and reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 12.13 shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

12.14 Signature Pages. For convenience, the signatures of each of the Parties to this Agreement may be executed and acknowledged on separate pages which when attached to this Agreement shall constitute this as one complete Agreement.

12.15 Time. Time is of the essence of this Agreement and each and every provision hereof.

IN WITNESS WHEREOF, the Parties hereto have executed and acknowledged this Agreement as of the day and year first above written.

December 5, 1989, 19

SAN JUAN CAPISTRANO COMMUNITY
REDEVELOPMENT AGENCY

By: *Kenneth E. Friess*
Kenneth E. Friess Chairman

"AGENCY"

ATTEST:

Cheerl Johnson, Deputy
Agency Secretary

APPROVED AS TO FORM:

The Plaza

Stradling, Yocca, Carlson & Rauth,
Special Counsel to the Agency

Agency Counsel

FRANCISCAN PLAZA INVESTMENT GROUP

Paul Farber *Gen. Partner*

"Developer"

By Paul Farber, General Partner
20

STATE OF CALIFORNIA

COUNTY OF Orange

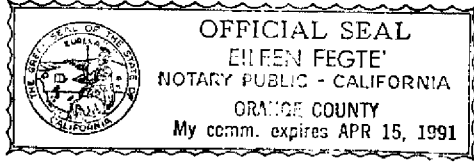
} ss.

On this 7th day of December, in the year 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared

Paul Farber

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of the Limited Partnership named therein, and acknowledged to me that the limited Partnership executed it.

WITNESS my hand and official seal.



Eileen Fegte
Notary Public in and for said State.

ACKNOWLEDGMENT—General or Limited Partnership—Wolcotts Form 236CA—Rev. 5-82 ©1982 WOLCOTTS, INC. (Price class B-2)

CORPORATE ACKNOWLEDGMENT

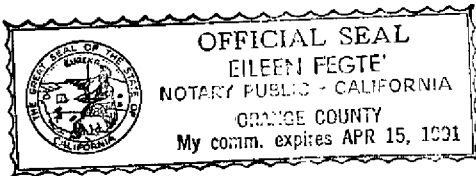
NO. 202

State of California
County of Orange } ss.

On this the 12 day of December 1989, before me, Eileen Fegte, the undersigned Notary Public, personally appeared

Kenneth E. Friess

personally known to me
 proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as Chairman or on behalf of the municipal corporation therein named, and acknowledged to me that the corporation executed it. WITNESS my hand and official seal.



Eileen Fegte
Notary's Signature

7120 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91365-4625

CORPORATE ACKNOWLEDGMENT

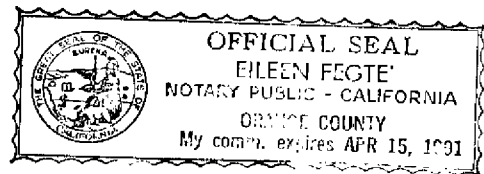
NO. 202

State of California
County of Orange } ss.

On this the 12 day of December 1989, before me, Eileen Fegte, the undersigned Notary Public, personally appeared

Cheryl A. Johnson

personally known to me
 proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as Deputy Agency Secretary or on behalf of the municipal corporation therein named, and acknowledged to me that the corporation executed it. WITNESS my hand and official seal.



Eileen Fegte
Notary's Signature

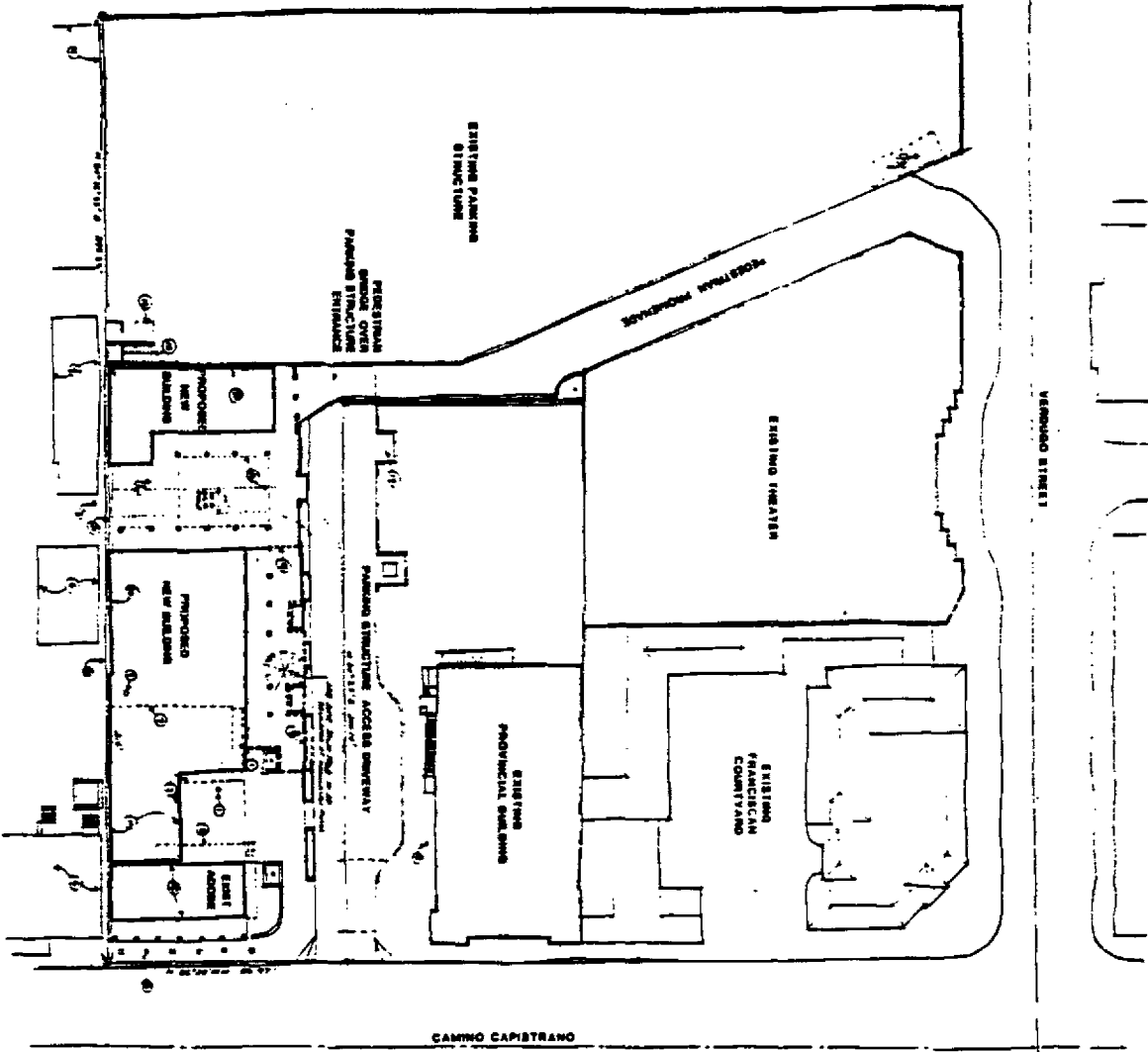
7120 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91365-4625

EXHIBIT D - Page 21 of 23

PRELIMINARY SITE DEVELOPMENT AND VICINITY PLAN

SCALE 1"=30'-0"



GENERAL INFORMATION

AREA OF PROJECT TO BE DEVELOPED	41 ACRES
PERMIT TYPE	CONTRACT
DATE OF PERMIT	1/15/2011
PROJECT NO.	11000
PROJECT NAME	SAN JUAN CAPISTRANO PROMENADE
PROJECT LOCATION	AVENIDA STREET AND CAMINO CAPISTRANO
PROJECT OWNER	FRANCISCAN COMMUNITY
PROJECT ARCHITECT	BLAIRBALLARD ASSOCIATES
PROJECT ENGINEER	BLAIRBALLARD ASSOCIATES
PROJECT CONTRACTOR	BLAIRBALLARD ASSOCIATES
PROJECT STATUS	PRELIMINARY

NOTES

1. EXISTING BUILDING, SEE PLAN.
2. EXISTING BUILDING, SEE PLAN.
3. EXISTING BUILDING, SEE PLAN.
4. EXISTING BUILDING, SEE PLAN.
5. EXISTING BUILDING, SEE PLAN.
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11. EXISTING BUILDING, SEE PLAN.
12. EXISTING BUILDING, SEE PLAN.
13. EXISTING BUILDING, SEE PLAN.
14. EXISTING BUILDING, SEE PLAN.
15. EXISTING BUILDING, SEE PLAN.
16. EXISTING BUILDING, SEE PLAN.
17. EXISTING BUILDING, SEE PLAN.
18. EXISTING BUILDING, SEE PLAN.
19. EXISTING BUILDING, SEE PLAN.
20. EXISTING BUILDING, SEE PLAN.

BLAIRBALLARD ASSOCIATES
ARCHITECTS
11000
SAN JUAN CAPISTRANO PROMENADE

SAN JUAN CAPISTRANO PROMENADE

BLAIRBALLARD ASSOCIATES
ARCHITECTS
11000
SAN JUAN CAPISTRANO PROMENADE

Recording Requested by:
City of San Juan Capistrano

Recording fees exempt due to Govt
Code 6103
Documentary Transfer Tax - No
Consideration

And when recorded, please mail to:

City of San Juan Capistrano
City Clerk's Department
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Margaret M. Monahan, City Clerk
City of San Juan Capistrano

**First Amendment to Joint Parking and Maintenance Agreement and
Declaration of Covenants Running with the Land.**

This First Amendment to Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the Land. ("First Amendment") is entered into as of this 7th day of May, 2002, by and between the San Juan Capistrano Community Development Agency (the "Agency") and Busk Development, Inc. (hereinafter referred to as "Owner").

Recitals

Whereas, the Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the Land was executed by the Agency and Franciscan Plaza Investment Group, the original developer of the Franciscan Plaza project, on December 5, 1989; and,

Whereas, the current "owner" and Agency desire to amend certain provisions of the Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the Land.

Now, therefore, the Agency and Owner agree to amend the Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the Land as follows:

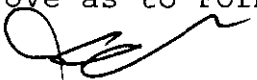
Section 1. On page 3, Section 2, entitled, "Grant of Reciprocal Easements". Subsection (a.), entitled, "Parking", the sixth sentence that reads: "Notwithstanding, (1) in no event shall the numbers of commuter spaces be less than 131...". Shall be amended to read: "Notwithstanding (1) in no event shall the number of Commuter spaces be less than seventy-three (73)...".

Section 2. Except to the extent that the Joint Parking and Maintenance Agreement and Declaration of Covenants Running with the

Land are modified by the First Amendment each and every provision of the Joint Parking and Maintenance Agreement remains in full force and effect and survives this Amendment. The Joint Parking and Maintenance Agreement is incorporated herein and by this reference. If any ambiguity exists between this First Amendment and the Joint Parking and Maintenance Agreement, this First Amendment shall control.


In Witness Whereof, the parties have executed this First Amendment as of the day and year above written.

Approve as to Form:



John Shaw, Agency Council

Owner:



~~Kalma Busk, Busk~~
~~Development, Inc.~~
Franciscan Plaza, LLC
Agency:

Attest:

Margaret M. Monahan, Agency Secretary

Collene Campbell,
Chairperson

COPY EXEMPT C10

dup

Cheyl Pearson Deputy City Clerk, City of San Juan Capistrano

Recording Requested By and When Recorded Mail To: San Juan Capistrano Community Redevelopment Agency Attention: City Clerk 32400 Paseo Adelanto San Juan Capistrano, CA 92675

RECORDED IN OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA 3:00 P.M. AUG 14 1990 Lee A. Branch RECORDER

(Space above for Recorder's use only)

LEASE

THIS LEASE AGREEMENT is dated as of June 5, 1990 by and between FRANCISCAN PLAZA INVESTMENT GROUP, a California limited partnership (the "Lessor") and the SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Lessee").

W I T N E S S E T H:

That for and in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

SECTION 1: Definitions.

Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Lease, have the meanings herein specified.

Agreement

"Agreement" means that owner participation agreement entered into between the Lessor and the Lessee for the disposition and development of various property (including without limitation that property described in Exhibit A to this Lease), dated December 15, 1987, together with, and as amended by the First Amendment to the owner participation agreement dated October 17, 1989. A copy of said Agreement, which is on file with the Lessee at its offices, is incorporated herein by reference.

Base Rent

"Base Rent" means that rent due for the Project as defined in Section 4(a) of this Lease.

City

"City" means the City of San Juan Capistrano, a municipal corporation.

Lessee or Agency

"Lessee" or "Agency" means the San Juan Capistrano Community Redevelopment Agency, a public body, corporate and politic.

Lessor or Participant

"Lessor" or "Participant" means Franciscan Plaza Investment Group, a California limited partnership. The Lessee shall be entitled to make payment to Franciscan Plaza Investment Group, which payment shall discharge its obligations for payment hereunder to the Lessor. Franciscan Plaza Investment Group shall be liable and responsible for all of the undertakings, duties and covenants of the Lessor set forth in this Lease or arising therefrom.

Public Improvements

"Public Improvements" means those improvements so described in the Agreement.

Parking Facility

"Parking Facility" means the structure to be completed on the Site as depicted on Attachment No. 1 to the Agreement.

Redevelopment Plan

"Redevelopment Plan" means the Redevelopment Plan which was approved, adopted and amended by the City Council of the City of San Juan Capistrano by Ordinance Nos. 509, 547 and 582.

Rental Period

"Rental Period" means the period with respect to which Rent is payable pursuant to Section 4(a) of this Lease.

Site

"Site" means that real property so described in the Agreement and the "Legal Description of the Site" which is attached hereto marked Exhibit "A" and incorporated herein by reference.

Term

"Term" means the period of fifty-five (55) years.

SECTION 2: Demised Premises, Ownership.

The Lessor hereby leases the Parking Facility, when the same is constructed according to the Agreement, to the Lessee, subject to the terms and conditions of this Lease.

SECTION 3: Term.

The Term of this Lease shall commence on the date of issuance of the Certificate of Completion for the Parking Facility. This Lease shall terminate at the end of the Term. This Lease, and any provisions hereof, shall not be extended without the express written approval of the Lessee which approval the Lessee may grant, withhold, or deny at its sole and absolute discretion.

SECTION 4: Rent.

The Lessee shall pay rent to the Lessor in the amounts, at the times and in the manner set forth herein, said amounts constituting in the aggregate the total of the annual rents payable under this Lease as follows:

(a) Rent. For each of the periods (the "Rental Periods") commencing six (6) months from the date the City allows the occupancy of the Parking Facility through the issuance of the Certificate of Occupancy or a Temporary Certificate of Occupancy on the Parking Facility in conformity with the Agreement and continuing according to the schedule below for the first six (6) Rental Periods and thereafter on an annual basis, the Lessee agrees to pay to the Lessor as the Base Rent the sum of One Dollar (\$1.00). The Certificate of Occupancy or Temporary Certificate of Occupancy shall not be withheld due solely to a delay in the Participant's installation of the equipment necessary for commuter parking. In addition to the Base Rent, the Lessee agrees to pay to the Lessor Supplemental Rent for the first three (3) Rental Periods according to the following table:

<u>Rental Period</u>	<u>Ending In Month</u>	<u>Amount of Supplemental Rent</u>
1	6	\$312,540
2	18	281,271
3	36	250,024

At the end of the third operating year after the date of issuance of the certificate of completion for the Parking Facility, the Lessee and Lessor shall review the actual performance to determine the third year net cash flow after debt service and before distribution to the Participant as a percentage of equity. In making this calculation, equity shall be the difference between the construction lender(s)' or permanent lender(s) determination of project value for the purposes of making the construction loan and the amount of the loan. Using this percentage the Lessee shall pay an additional amount of Supplemental Rent for Rental Periods 4, 5 and 6, ending in months 48, 60 and 72 respectively, based on the following table:

<u>Cash Flow as % of Equity</u>	<u>Additional Amount of Supplemental Rent</u>
less than 0%	275,000
0% to 4.0%	200,000
4.0% to 8.0%	175,000
8.0% to 13.0%	150,000
13.0% to 17.0%	125,000
more than 17.0%	-0-

(b) Payment. Payments of Rent shall be made in lawful money of the United States of America, by warrant or check drawn against funds of the Lessee.

(c) Consideration. The payments of Base Rent and, if applicable, Supplemental Rent, hereunder for each Rental Period for the term of this Lease, shall constitute the total rental for said Rental Period and shall be paid by the Lessee at the conclusion of said Rental Period. In addition to the rental, the parties agree as specified in the Agreement that Parking Revenue generated from commuter or other paid parking shall be divided between the Participant and the Agency.

SECTION 5: Construction of Project, Maintenance and Operation.

No duties, other than those set out in the Agreement, with respect to the construction of any improvements on the Site or the maintenance of the Site or any improvements thereon, or to provide insurance or indemnities with respect to the use of the Site shall be deemed to be imposed upon the Lessee by virtue of this Lease. Lessor and Lessee shall enter into a maintenance and operation agreement with a qualified management company (the "Operator"). The cost of the common area maintenance ("CAM") charges shall be allocated between the Agency and the Participant in proportion to a ratio which considers the number of commuter parking spaces and commuter hours and days of operation compared to the total operational use of the

structure. Specifically the Agency portion of monthly CAM charges may be determined by utilizing the following formula:

$$\frac{\text{Agency's portion of CAM charges}}{\text{Total CAM charges}} = \frac{(\# \text{ of Commuter Spaces}) \times (12 \text{ hrs}) \times (\# \text{ of working days in month})}{(\text{Total } \# \text{ of Spaces}) \times (\cancel{12} \text{ hrs}) \times (\# \text{ of days in month})}$$

17⁰ - 17
19⁹

SECTION 6: Use.

During the term of this Lease, subject to obtaining consent by lenders of record with encumbrances senior to the Agency's rights pursuant to this Lease and subject to the terms of the maintenance and operation agreement as described in Section 5 of this Lease, the Lessee shall have the right to use the Site, and to assign its rights hereon or enter into a sublease to any public or nonprofit entity as it deems appropriate, in its sole discretion. Both parties acknowledge that the Parking Facility is burdened with a covenant which shall run with the land to provide for public use of the facility as defined in the Agreement. The proportion of commuter and commercial parking shall be as specified in §501 of the Agreement.

SECTION 7: Insurance.

Throughout the Term, the Lessor shall maintain or cause to be maintained at its cost the following policies of insurance:

(1) insurance against loss or damage to the aboveground portion of the Facilities resulting from fire, earthquake, lightning, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage" and such other perils as the Lessor and the Lessee may agree should be insured against, if such insurance is available from reputable insurers. In the event that Lessor determines that the earthquake portion of the insurance required in this Section 7 has become economically unreasonable to obtain, it may request relief from the Agency for this requirement and the Agency shall not unreasonably withhold its permission to modify this section if it determines in its sole discretion that such a requirement has become an economically unreasonable burden. Such insurance shall be maintained in an amount not less than the full insurable value of the Facilities subject to a "deductible clause" in the amount of Ten Thousand Dollars (\$10,000.00) and shall contain an inflation guard endorsement. The term "full insurable value" as used in this Section shall mean the actual replacement cost "new";

(2) public liability insurance against claims for bodily injury or death, or damage to property occurring upon, in or about the Project, such insurance to afford protection to

a limit of not less than Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage with not greater than Ten Thousand Dollars (\$10,000) deductible;

(3) worker's compensation insurance, if applicable, issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof, such worker's compensation insurance to cover all persons employed in connection with the Parking Facility and to cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death during or in connection with the Parking Facility or the business of the Lessor and activities of the Lessee with respect to the Parking Facility.

All insurance herein provided for shall be effected under policies issued by insurers of recognized responsibility, licensed or admitted to do business in the State of California. All policies or certificates shall name the Lessee, the City and the Lessor as named insureds, and shall ← include waivers of subrogation.

All policies or certificates issued by the respective insurers for insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least 30 days' prior written notice to the Lessee, and shall carry loss payable endorsements in favor of the Lessee where applicable. Certified copies of such policies (or other evidence of coverage reasonably satisfactory to the Lessee) shall be deposited with the Lessee, together with appropriate evidence of payment of the premiums therefor; and, at least 10 days prior to the expiration dates of expiring policies or certificates, certified copies of renewal or new policies or certificates (or other evidence of coverage reasonably satisfactory to the Lessee) shall be deposited with the Lessee.

In the event the Lessor fails to maintain the insurance required to be maintained hereunder, the Lessee following ten (10) days' written notice to Lessor shall have the right to procure and maintain such insurance and deduct such cost from the Rent otherwise payable pursuant to Section 4 of this Lease; provided that if all such Rent has been paid, the Lessor shall, within ten (10) days of receipt of notice by the Lessee, refund to the Lessee all such costs incurred by the Lessee, together with interest at the maximum rate allowable by law accruing from the expiration of the aforesaid ten (10) day notice period until the Lessee has been fully reimbursed with interest.

04/02/90
8599n/2299/30

SECTION 8: Damage by Casualty

It is expressly understood and agreed that the rentals hereunder are in consideration of the right to occupy and use the Leased Premises throughout the entire Term, and, except as herein provided, it is the responsibility of the Lessor to provide such right at all times.

In the event of destruction or damage to the Leased Premises by an insured casualty or events, where said insurance meets the criteria specified in Section 7 of this Lease, so that they become wholly or partly unusable, the Lessor shall rebuild and repair the Leased Premises so that they shall be restored to use, and this Lease shall remain in full force and effect.

SECTION 9: Eminent Domain.

If the whole of the Leased Premises, or so much thereof as to render the remainder unusable for the purposes for which the same was constructed, shall be taken under the power of eminent domain then this Lease shall terminate as to only the portion of the Site so taken. If the remainder is usable for the Project purposes, then this Lease shall continue in full force and effect and shall not be terminated by virtue of such taking (and the parties waive the benefit of any law to the contrary). The Lessor shall be entitled to receive any and all proceeds of such condemnation award or settlement.

SECTION 10: Liens.

In the event the Lessee subleases or assigns its interest in this Lease, the Lessee shall take reasonable steps to assure that liens do not attach to the Property by virtue of the activities of the Lessee or that any such liens are reasonably removed.

SECTION 11: Taxes.

It is understood between the parties that that portion of the Parking Facility which is dedicated to public commuter parking use and leased by the Agency should be exempt from the imposition of property tax and that therefore such taxes as are imposed should represent only the value of the commercial use of the Parking Facility. If it is determined that that portion of the Parking Facility which is dedicated to public commuter use is exempt from property tax, then the Lessor agrees to pay any property taxes assessed on the Leased Premises. If there is no such exemption the property taxes shall be included as part of the CAM charges and assessed against the Lessor and the Lessee according to the CAM charge allocation set out in Section 5 of this Lease.

SECTION 12: Quiet Enjoyment.

The parties hereto mutually covenant and agree that the Lessee, by keeping and performing the covenants and agreements herein contained, shall at all times during the term, peaceably and quietly, have, hold and enjoy the Leased Premises.

SECTION 13: Lessor Covenants.

In addition to those undertakings and covenants elsewhere set forth in this Lease by the Lessor, the Lessor covenants that Lessor shall cause the completion of the Public Improvements by the time established therefor in the Agreement.

Section 14. Option to Purchase.

The Lessee shall have the right to purchase the Parking Facility at its sole option. This option may not be exercised before two (2) years after the certificate of completion has been issued on the entire project (Phase I and Phase II), and must be exercised no later than seven (7) years after the issuance of the certificate of completion for the entire project.

The Lessee and the Lessor shall begin negotiations to set the price at which the Lessee may purchase the Parking Facility and the lease back costs within thirty (30) days of the execution of the First Amendment to the owner participation agreement dated October 17, 1989. At the time of negotiations, the Lessee and the Lessor shall agree in writing on all factors which shall be used to establish a value for the structure including, but not limited to, the following criteria:

1. The original construction cost of the Parking Facility including hard costs, soft costs and offsites.
2. The original cost of the land on which the Parking Facility is located.
3. Payments the Lessor has made to the date of the purchase for financing fees, principal and interest on the portion of his financing dealing with the Parking Facility.
4. Compensation paid to date by the Lessee to the Lessor for the lease of the structure.
5. Such other factors as the Lessee or the Lessor may deem appropriate in establishing a value for the structure.

Unless otherwise modified by agreement between the Lessee and the Lessor, upon purchasing the Parking Facility the Lessee and the Lessor shall ensure the following:

1. Adequate parking shall be maintained for the tenants of Franciscan Plaza and the Provincial Building according to conditions set forth in the Joint Parking Agreement.

2. The Lessor shall continue to: (i) receive its share of the compensation collected by the Lessee for the paid parking and (ii) pay its share of the CAM charges.

In the event that the parties are unable to come to an agreement by October 1, 1990 as to the option purchase price this option shall be terminable by either party. In the event that this section is found to be unenforceable or invalid such unenforcibility or invalidity shall not effect any other provision of this Agreement which shall remain in full force and effect.

SECTION 15: Law Governing.

This Lease is made in the State of California under the Constitution and laws of such State and is to be so construed.

SECTION 16: Notices.

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

Lessor - Franciscan Plaza Investment Group
c/o Paul L. Farber and Associates
HKL ~~26300 La Alameda, Suite 470~~ 31781 CAMINO CAPISTRANO # 303
~~Mission Viejo, California 92691~~ SAN JUAN CAPISTRANO, CA. 92675

Lessee - San Juan Capistrano Community Redevelopment Agency
Attention: Executive Director
32400 Paseo Adelanto
San Juan Capistrano, California 92675

SECTION 17: Default by Lessee; Termination.

If the Lessee shall fail to pay any rental payable hereunder within sixty (60) days from the date such rental is payable, then the Lessee shall be deemed to be in default hereunder.

If the Lessee should, after notice of default, fail to commence to remedy any default with all reasonable dispatch and shall thereafter fail to diligently prosecute the cure to completion, the Lessor after sixty (60) days' notice may

re-enter, cure such breach and charge the Lessee therefor with interest thereof at the maximum rate permitted by law, and eject all parties in possession thereof therefrom.

SECTION 18: Assignment.

The rights of the Lessee herein shall be for the benefit of the Lessee or a successor in interest to the Lessee or assignee which attorns to the Lessor. The Lessor shall accept such successor or assignee as a tenant hereunder on terms identical to those set forth in this Lease. Unless the Lessor expressly agrees to the contrary, the Lessee shall remain liable as a principal for payment of the Rent hereunder notwithstanding such assignment.

SECTION 19: Execution.

This Lease may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Lease, and it is also understood and agreed that separate counterparts of this Lease may be separately executed by the Lessor and the Lessee, all with the same full force and effect as though the same counterpart had been executed simultaneously by both the Lessor and the Lessee.

SECTION 20: Validity.

If any one or more of the terms, provisions, promises, covenants or conditions of this Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 21: Headings.

Any headings preceding the texts of the several Sections hereof shall be solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

SECTION 22: Non-discrimination.

The Lessee covenants by and for itself, its successors and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national

origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the Lessee itself, or any person claiming under or through it, 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, sublessees, subtenants or vendees in the premises herein leased.

SECTION 23: Subordination

Lessee agrees to subordinate its rights under this Lease only to deeds of trust in favor of lenders providing construction or take out financing in connection with the Project, where said lender has executed a non-disturbance and attornment agreement in accordance with §306 of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, all as of the day and year first above written.

SAN JUAN CAPISTRANO COMMUNITY
REDEVELOPMENT AGENCY

By: *Kenneth E. Friess*
Chairman, Ken Friess

"LESSEE"

ATTEST:

Jeffrey C. Farber
Secretary

(SEAL)

FRANCISCAN PLAZA INVESTMENT GROUP

By: *Paul Farber*
President, Paul Farber
Paul Farber

"LESSOR"

CORPORATE ACKNOWLEDGMENT

NO. 202

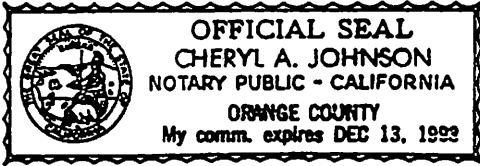
State of California
County of Orange } ss.

On this the 14th day of June 1990, before me,

Cheryl A. Johnson
the undersigned Notary Public, personally appeared

Jeffrey C. Parker

personally known to me
 proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
Agency Secretary or on behalf of the ^{public} corporation therein
named, and acknowledged to me that the ^{public} corporation executed it.
WITNESS my hand and official seal.



Cheryl A. Johnson
Notary's Signature

7120 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4625 • Woodland Hills, CA 91365-4625

STATE OF CALIFORNIA)
)
) ss.
COUNTY OF ORANGE)

On this 12TH OF JUN^E, 1990, before me, a Notary Public, State of California, duly commissioned and sworn, personally appeared KENNETH E. FRIESS and ~~and~~ ~~SECRETARY, respectively,~~ known to me to be the Chairman ~~and~~ ~~Secretary, respectively,~~ of the SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY, a public corporation, that executed the within instrument on behalf of said public corporation therein named, and acknowledged to me that such public corporation executed the within instrument pursuant to a resolution of the Members of said public corporation.

WITNESS my hand and official seal.

Eileen Fegte

(SEAL)



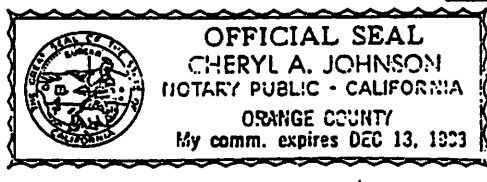
STATE OF CALIFORNIA)
)
) ss.
COUNTY OF ORANGE)

On June 8, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared PAUL FARBER personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the ^{General Partner} ~~President~~ of FRANCISCAN PLAZA INVESTMENT GROUP, a California limited partnership, that executed the within instrument and acknowledged to me that such partnership executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

Cheryl A Johnson

(SEAL)



04/02/90
8599n/2299/30

EXHIBIT "A"

LEGAL DESCRIPTION OF THE SITE

(121-150-20)

LOT 40 OF TRACT NO. 103 AS SHOWN ON A MAP RECORDED IN BOOK 11, PAGES 29 THROUGH 33 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE WESTERLY 13.00 FEET OF SAID LOT, BEING A STRIP OF LAND 13.00 FEET IN WIDTH LYING EASTERLY AND CONTIGUOUS TO THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS DESCRIBED IN DEED RECORDED FEBRUARY 27, 1936 IN BOOK 807 PAGE 286 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE NORTHERLY LINE OF LOT 42 OF SAID TRACT NO. 103, SAID POINT BEING SOUTH 84 DEGREES 07 MINUTES 30 SECONDS WEST 202.60 FEET FROM THE NORTHEAST CORNER OF SAID LOT 42; THENCE SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 135.66 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 42, SAID POINT BEING SOUTH 84 DEGREES 28 MINUTES 00 SECONDS WEST 201.44 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 42; THENCE CONTINUING SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 84.18 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 41 OF SAID TRACT NO. 103; THENCE SOUTH 84 DEGREES 27 MINUTES WEST ALONG SAID SOUTHERLY LINE 15.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 9.50 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHERLY 9.50 FEET FROM THE NORTHERLY LINE OF SAID LOT 40; THENCE WESTERLY PARALLEL WITH AND DISTANT SOUTHERLY 9.50 FEET FROM SAID NORTHERLY LINE TO A POINT IN THE WESTERLY LINE OF SAID LOT 40; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE NORTHWEST CORNER OF SAID LOT 40; THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 40 TO THE TRUE POINT OF BEGINNING.

(121-150-21)

LOT 43, AS SHOWN ON A LICENSED SURVEYOR'S MAP, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2, PAGES 31 TO 38 INCLUSIVE, RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE WESTERLY 12 FEET.

04/02/90
8599n/2299/30

EXHIBIT "A"
Page 1 of 3

(121-150-22)

THAT PORTION OF LOT 40 OF TRACT NO. 103, IN THE CITY OF SAN JUAN CAPISTRANO, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGES 29 THROUGH 33 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE NORTHERLY LINE OF LOT 42 OF SAID TRACT NO. 103, SAID POINT BEING SOUTH 84 DEGREES 07 MINUTES 30 SECONDS WEST 202.60 FEET FROM THE NORTHEAST CORNER OF SAID LOT 42; THENCE SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 135.66 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 42, SAID POINT BEING SOUTH 84 DEGREES 28 MINUTES 00 SECONDS WEST 201.44 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 42; THENCE CONTINUING SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 84.18 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 41 OF SAID TRACT 103; THENCE SOUTH 84 DEGREES 27 MINUTES WEST ALONG SAID SOUTHERLY LINE 15.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 9.50 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHERLY 9.50 FEET FROM THE NORTHERLY LINE OF SAID LOT 40; THENCE LINE TO A POINT IN THE WESTERLY LINE OF SAID LOT 40; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE NORTHWEST CORNER OF SAID LOT 40; THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 40 TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WESTERLY 13.00 FEET OF SAID LOT, BEING A STRIP OF LAND 13.00 FEET IN WIDTH LYING EASTERLY OF AND CONTIGUOUS TO THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS DESCRIBED IN DEED RECORDED FEBRUARY 27, 1936 IN BOOK 807 PAGE 286 OF OFFICIAL RECORDS.

(121-150-09)

LOT 42 OF TRACT NO. 103, IN THE CITY OF SAN JUAN CAPISTRANO, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGES 29 TO 30 INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID LOT 42, SAID CORNER BEING ON THE WESTERLY PROPERTY LINE OF THE CALIFORNIA STATE HIGHWAY: THENCE NORTH 5 DEGREES 23 MINUTES 00 SECONDS WEST ALONG THE ABOVE MENTIONED PROPERTY LINE 136.88 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF GARDEN STREET: THENCE SOUTH 84 DEGREES 07 MINUTES 30 SECONDS WEST ALONG THE SOUTHERLY LINE OF GARDEN STREET 202.60 FEET TO A POINT: THENCE SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 135.66 FEET TO A POINT ON THE SOUTHERLY LINE OF THE ABOVE MENTIONED LOT 42; THENCE NORTH 84 DEGREES 28 MINUTES 00 SECONDS EAST ALONG THE SOUTHERLY LINE OF LOT 42, 201.44 FEET TO THE POINT OF BEGINNING.

04/02/90
8599n/2299/30

EXHIBIT "A"
Page 2 of 3

(121-150-12)

THAT PORTION OF LOT 41 OF TRACT NO. 103, IN THE CITY OF SAN JUAN CAPISTRANO, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGES 29 THROUGH 33 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 41; RUNNING THENCE NORTH 9 DEGREES 40 MINUTES WEST 84.41 FEET ALONG THE WEST LINE OF SAID LOT 41 TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 84 DEGREES 28 MINUTES EAST 41.13 FEET ALONG THE NORTHERLY LINE OF SAID LOT 41 TO A POINT WHICH IS LOCATED 201.44 FEET SOUTH 84 DEGREES 28 MINUTES WEST FROM THE SOUTHEAST CORNER OF LOT 42 OF SAID TRACT NO. 103; THENCE SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 84.18 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 41; THENCE SOUTH 84 DEGREES 27 MINUTES WEST 35.55 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 41 TO THE POINT OF BEGINNING.

(121-150-10)

THAT PORTION OF LOT 42 OF TRACT NO. 103, IN THE CITY OF SAN JUAN CAPISTRANO, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGES 29 TO 33, INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING TO THE MOST EASTERLY CORNER OF SAID LOT, SAID CORNER BEING IN THE WESTERLY PROPERTY LINE OF THE CALIFORNIA STATE HIGHWAY; THENCE NORTH 5 DEGREES 23 MINUTES 00 SECONDS WEST ALONG THE ABOVE MENTIONED PROPERTY LINE 136.88 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF GARDEN STREET; THENCE SOUTH 84 DEGREES 07 MINUTES 30 SECONDS WEST, ALONG THE SOUTHERLY LINE OF GARDEN STREET, 202.60 FEET TO A POINT; THENCE SOUTH 5 DEGREES 52 MINUTES 30 SECONDS EAST 135.66 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID LOT 42; THENCE NORTH 84 DEGREES 28 MINUTES 00 SECONDS EAST, ALONG THE SOUTHERLY LINE OF SAID LOT, 201.44 FEET TO THE POINT OF BEGINNING.

END

04/02/90
8599n/2299/30

EXHIBIT "A"
Page 3 of 3

Certified

RESOLUTION NO. CRA 90-8-7-1

ACCEPTING LEASE - FRANCISCAN PLAZA PARKING STRUCTURE

A RESOLUTION OF THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY, ACCEPTING THE LEASE AGREEMENT BETWEEN THE FRANCISCAN PLAZA INVESTMENT GROUP AS LESSOR AND THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY AS LESSEE FOR SPACES IN THE FRANCISCAN PLAZA PARKING STRUCTURE

WHEREAS, in December, 1987, the Community Redevelopment Agency of the City of San Juan Capistrano entered into an Owner Participation Agreement with the Franciscan Plaza Investment Group which called for the execution of a Lease Agreement. In October, 1989, the San Juan Capistrano Community Redevelopment Agency amended this Owner Participation Agreement which modified the Lease Agreement; and,

WHEREAS, this modified Lease Agreement was executed on June 5, 1990; and,

WHEREAS, the County Recorder's Office has requested that a Resolution of Acceptance of this Lease Agreement be executed under their interpretation of Government Code Section 27281.

NOW, THEREFORE, BE IT RESOLVED, that the San Juan Capistrano Community Redevelopment Agency, City of San Juan Capistrano, California, does hereby accept the Lease Agreement executed by the San Juan Capistrano Community Redevelopment Agency and Franciscan Plaza Investment Group on June 5, 1990.

PASSED, APPROVED, AND ADOPTED this 7th day of August, 1990.

Kenneth E. Friess

KENNETH E. FRIESS, CHAIRMAN

ATTEST:


Jeffrey C. Parker

AGENCY SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN JUAN CAPISTRANO)

I, CHERYL JOHNSON, City Clerk of the City of San Juan Capistrano, California, DO HEREBY CERTIFY that the attached is a true and correct copy of Resolution No. CRA 90-8-7-1, adopted by the San Juan Capistrano Community Redevelopment Agency at a regular meeting thereof held on the 7th day of August, 1990.

(SEAL)



Cheryl Johnson, City Clerk
San Juan Capistrano, California

DATED: THIS 9th day of August, 1990.

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF SAN JUAN CAPISTRANO)

I, JEFFREY C. PARKER, Acting Secretary of the San Juan Capistrano Community Redevelopment Agency, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. CRA 90-8-7-1 adopted by the Board of Directors of the San Juan Capistrano Community Redevelopment Agency, at a regular meeting thereof held on the 7th day of August, 1990, by the following vote:

AYES: Directors Schwartz, Hausdorfer, Buchheim, Bland
and Chairman Friess

NOES: None

ABSENT: None

(SEAL)



JEFFREY C. PARKER, ACTING AGENCY SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss. AFFIDAVIT OF POSTING
CITY OF SAN JUAN CAPISTRANO)

JEFFREY C. PARKER, being first duly sworn, deposes and says:

That he is the duly appointed and qualified Acting Secretary of the San Juan Capistrano Community Redevelopment Agency;

That in compliance with State laws of the State of California and in further compliance with City Resolution No. CRA 83-12-20-1 and on the 9th day of August, 1990, she caused to be posted:

RESOLUTION NO. CRA 90-8-7-1 , being:

ACCEPTING LEASE - FRANCISCAN PLAZA PARKING STRUCTURE

A RESOLUTION OF THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY, ACCEPTING THE LEASE AGREEMENT BETWEEN THE FRANCISCAN PLAZA INVESTMENT GROUP AS LESSOR AND THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY AS LESSEE FOR SPACES IN THE FRANCISCAN PLAZA PARKING STRUCTURE

in three (3) public places in the City of San Juan Capistrano, to wit: City Hall; Old Fire Station Recreation Complex; Orange County Public Library.



JEFFREY C. PARKER, Acting Agency Secretary
San Juan Capistrano Community
Redevelopment Agency