

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 1-2002**

A RESOLUTION DESIGNATING AGENCY MEMBER CONRAD TO SERVE AS VICE CHAIRPERSON FOR THE ENSUING YEAR PURSUANT TO SECTION 30.1 OF THE BYLAWS FOR THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO.

BE IT RESOLVED by the Redevelopment Agency that Agency Member Conrad is hereby designated to serve as Vice Chairperson for the ensuing year pursuant to Section 30.1 of the Bylaws for the Modesto Redevelopment Agency.

The foregoing resolution was introduced at a regular meeting of the Modesto Redevelopment Agency held on the 8th day of January, 2002, by Agency Member Frohman who moved its adoption, which motion being duly seconded by Agency Chair Sabatino , was upon roll call carried and the resolution adopted by the following vote:

AYES: Agency Members: Conrad, Fisher, Friedman, Frohman, Serpa, Smith,
Mayor Sabatino

NOES: Agency Members: None

ABSENT: Agency Members: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, General Counsel

Resolution Number 2-2002

Was Not Used

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 3-2002**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO APPROVING A PARKING AGREEMENT BY AND BETWEEN THE CITY OF MODESTO ("CITY"), THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO ("RDA") AND BRADLEY L. HAWN, NANCY HAWN, JACK P. DELIDDO, AND CARLA DELIDDO ("LICENSEES") AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT.

WHEREAS, in 1987, the City entered into a lease with Licensees to lease the underground floor of a two-story parking area located at the southwest corner of 11th and K Streets. The purpose of said lease was to provide parking for Licensee's building across 11th Street (now the "Pacific Center"), and

WHEREAS, the City entered into said five-year lease with a five-year option and Licensees paid rent for thirty-three (33) spaces in said underground lot, and

WHEREAS, in July 1997 Tenth Street Place was under construction and the parking area at 11th and K Streets, which was the subject of said parking lease, needed to be demolished to make way for the new parking garage, and

WHEREAS, Licensee's parking lease was terminated as part of the Tenth Street Place project and City agreed to allow Licensee's tenants to relocate their parking spaces in the Modesto Centre Plaza at-grade parking lot at the corner of 11th and K Streets during the construction period, and

WHEREAS, other than relocating the parking spaces, all terms, conditions and payments remained in effect from the 1987 agreement, and

WHEREAS, Licensees have re-evaluated their needs for tenant parking and have requested a Parking License Agreement for a total of fifty-five (55) parking spaces in proximity

to Licensee's building which is attached hereto as "Exhibit A" and made a part hereof by this reference, and

WHEREAS, CITY and RDA have reviewed the previous agreements and the intent of said agreements as they relate to the current parking needs of both Owners and the other users of Tenth Street Place, and

WHEREAS, CITY and RDA have determined that said Parking License Agreement for thirty-three (33) spaces in the Tenth Street Place garage and for twenty-two (22) spaces in the Eleventh Street Garage would provide adequate spaces for Licensee's tenants and would continue to allow a reasonable inventory of parking spaces for all other users of Tenth Street Place, and

WHEREAS, said Parking License Agreement was reviewed by the Council's Community Development and Housing Committee on May 13, 2002, which Committee recommended the approval of said Agreement to the Council.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto hereby approves said Parking License Agreement by and between the City of Modesto, the Redevelopment Agency of the City of Modesto and Bradley L. Hawn, Nancy Hawn, Jack P. Deliddo, and Carla Deliddo.

BE IT FURTHER RESOLVED by the Council of the City of Modesto that the City Manager is hereby authorized to execute all documents required to complete said Parking License Agreement.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto, held on the 11th day of June, 2002, by Councilmember Fisher, who moved its adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Chair Sabatino

NOES: Councilmembers None

ABSENT: Councilmembers None

ATTEST Jean Zahr
Jean Zahr, City Clerk

APPROVED AS TO FORM:

By Michael D. Milich
Michael D. Milich, City Attorney

PARKING LICENSE AGREEMENT

This License Agreement, made and entered into in the City of Modesto, County of Stanislaus, State of California, as of this _____ day of _____, 2002, by and between the CITY OF MODESTO, a municipal corporation of the State of California hereinafter called "CITY" and the REDEVELOPMENT AGENCY OF THE CITY OF MODESTO, a public body, corporate and politic, hereinafter called "RDA", and BRADLEY L. HAWN, NANCY HAWN, JACK P. DELIDDO, and CARLA DELIDDO, owners of Pacific Center, hereinafter called "LICENSEES".

THE PARTIES HERETO AGREE AS FOLLOWS:

1. LICENSEES. The RDA shall provide LICENSEES with thirty-three (33) monthly parking passes (or equivalent) (hereinafter called "Tenth Street spaces") for use by LICENSEES' office tenants from the Pacific Center, which is located at 1012 11th Street, in the Tenth Street Place parking garage. In addition, the CITY shall provide LICENSEES with twenty-two (22) monthly parking passes (or equivalent) (hereinafter called "Eleventh Street spaces") for use by LICENSEES' office tenants from the Pacific Center, which is located at 1012 11th Street, in the Eleventh Street Place parking garage. Said passes shall be provided on the same basis as the City of Modesto's regular parking pass program, which neither guarantees nor reserves parking spaces. The RDA and the CITY shall initially provide the passes for use at the Tenth Street and Eleventh Street parking garages. However, the RDA and the CITY reserve the right, subject to ninety (90) calendar days advance written notice to LICENSEES, and subject to the mutual agreement of the parties, to relocate these spaces to another location within blocks 66, 68, 84, 86, 91, 92 or 93. In the event that the parking is provided on one of these adjacent blocks instead of the said parking garages, LICENSEES shall be entitled to a reduction in the parking payments made to the RDA and/or the CITY. The extent of the reduction shall be as negotiated between the RDA and/or the CITY and LICENSEES.

The RDA, CITY and LICENSEES recognize that from time to time, in order to accommodate the parking needs of special events, it may be necessary to temporarily move monthly pass parking from said garages to another location downtown. LICENSEES agree to such temporary moves provided they apply equally to all other licensees and leasees within said garages.

No leasehold, or other interest in RDA's real property of any type, is intended to be created by this Agreement, which the parties intend only to create bare license to use RDA's property as herein described.

2. TERM. LICENSEES shall be entitled to the use of the spaces for a five (5) year term commencing on _____, 2002, and ending on _____, 2007.

LICENSEES shall have the option to extend the term of this License for one (1) additional five (5) year term upon the same terms and conditions as set forth in this License and two (2) additional five (5) year terms on terms to be mutually agreed upon between the parties. LICENSEES must give RDA and/or CITY ninety (90) days written notice of their intent to exercise their option. The last two (2) additional five (5) year terms will be conditioned on the availability of parking at the time the options are exercised.

3. LICENSE FEE.

a. Rental for the use of the spaces shall be in the amounts hereinafter set forth payable each month in advance commencing on _____, 2002, payable in lawful money of the United States to the City of Modesto's Director of Finance, P. O. Box 642, Modesto, CA 95353.

b. The monthly rental for the Tenth Street Parking Structure shall be based upon the monthly rental in effect for one parking space ("Single Space Rent") as it may be adjusted from time to time by the City Council in RDA's multi-level parking facility located in the Tenth Street Parking Structure multiplied by thirty-three (33)

c. The monthly rental for the Eleventh Street Parking Structure shall be based upon the monthly rental in effect for one parking space ("Single Space Rent") as it may be

adjusted from time to time by the City Council in CITY's multi-level parking facility located in the Eleventh Street Parking Structure multiplied by twenty-two (22).

4. TAXES. LICENSEES recognize and understand that this License Agreement may create a possessory interest subject to property taxation and that LICENSEES may be subject to the payment of property taxes on such interest. LICENSEES further agree to pay, without the right to deduct from rental fees provided herein, any and all property taxes, if any, assessed during the term of this License Agreement against LICENSEES' possessory interest in the licensed premises.

5. ASSIGNMENT BY LICENSEES. LICENSEES shall not assign this License Agreement nor any right hereunder, nor any part thereof, whether through direct assignment, merger, sale of stock or business assets, or otherwise, without the prior written consent of RDA's Executive Director and/or CITY's City Manager first had and obtained, and a consent to one assignment, shall not be deemed to be a consent to any subsequent assignment. Any such assignment, without such consent shall be void, and shall at the option of RDA's Executive Director and/or CITY's City Manager, terminate this License Agreement. This License Agreement shall not, nor shall any interest therein, be assignable, as to the interest of LICENSEES by operation of law, without the prior written consent of RDA and/or the CITY

6. INDEMNIFICATION. LICENSEES shall hold RDA, the City of Modesto, their agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of LICENSEES, whether or not the act or omission arises from the sole negligence or other liability of RDA, the City of Modesto, their agents, officers, employees, and volunteers; relating to or during the performance of their obligations under this License Agreement.

7. LIABILITY INSURANCE. LICENSEES shall provide at their own expense and maintain at all times the following insurance with insurance companies licensed in the State of

California and shall provide evidence of such insurance to RDA and CITY as may be required by the Risk Manager of the City of Modesto. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City of Modesto by registered mail, return receipt requested, for all of the following stated insurance policies.

General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall indicate on the Certificate of Insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; products and completed operations; and/or professional liability.

If at any time any of said policies shall be unsatisfactory to the Risk Manager of the City of Modesto, as to form or substance or if a company issuing such policy shall be unsatisfactory to the Risk Manager of the City of Modesto, LICENSEES shall promptly obtain a new policy, submit the same to the Risk Manager of the City of Modesto for approval and submit a certificate thereof as hereinabove provided. Upon failure of LICENSEES to furnish, deliver or maintain such insurance and certificates as above provided, this License Agreement, at the election of RDA, may be forthwith declared suspended, or terminated. Failure of LICENSEES to obtain and/or maintain any required insurance shall not relieve LICENSEES from any liability under this Licenses Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of LICENSEES concerning indemnification. The RDA and the City of Modesto, their agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against RDA, the City of Modesto, their agents, officers, employees, and volunteers for losses arising from work performed by LICENSEES for RDA. LICENSEES' insurance policy(ies) shall include a provision that the coverage is primary as respects the RDA and the City of Modesto; shall include no special

limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager of the City of Modesto.

8. NATURE OF LICENSE; TERMINATION BY RDA PRIOR TO EXPIRATION.

The license granted under this License Agreement is irrevocable for the term or any extension of this Agreement. The RDA's Executive Director and/or the CITY's City Manager shall have the right to immediately terminate this License Agreement, in whole or in part, solely on the occurrence of any of the following events:

a. Filing by or the final adjudication of LICENSEES of any petition in bankruptcy or the making of any transfer of general assignment for the benefit of creditors which has not been previously authorized by the RDA and/or the CITY.

b. The failure of LICENSEES to perform substantially or keep or observe any of the terms, covenants, and conditions which they are obligated to perform, keep or observe under this License Agreement after the expiration of a ninety (90) day period of a written warning or ultimatum given by RDA's Executive Director or CITY's City Manager to LICENSEES to correct any such deficiency or default.

c. Except for assignments as provided in this Agreement, the discontinuance by LICENSEES of their business operations as the owner and lessor of Pacific Center. Should this occur, the RDA or the CITY shall not be responsible for the custodial protection of merchandise, fixtures, or equipment abandoned, even though it is necessary for the RDA or the CITY to remove same from the garage structure for storage or disposal.

9. NOTICES: Any notice to or other communication to RDA, CITY or LICENSEES pursuant hereto shall be deemed validly given, served, or delivered upon deposit in the United States mail, registered and with proper postage and registration fee prepaid, addressed as follows:

To CITY: City Manager
 City of Modesto
 P. O. Box 642
 Modesto, CA 95353

To RDA: Executive Director
Redevelopment Agency of the City of Modesto
P. O. Box 642
Modesto, CA 95353

To LICENSEES: Pacific Center
Attn: Brad Hawn
1012 11th Street, Suite 1000
Modesto, CA 95354

or to such other address as RDA, CITY or LICENSEES may designate by written notice to the other party delivered in accordance with the provisions of this paragraph.

10. COMPLIANCE WITH LAWS. LICENSEES shall not do or suffer to be done on or about the garage structures anything that would or does violate or conflict with any applicable law, ordinance, rule or regulation which is now in force or effect or which may hereafter be enacted or adopted by federal, state, county or municipal authority.

11. EXTINGUISHMENT. LICENSEES agree their license to use the garage structures is extinguished immediately upon termination of this License Agreement.

12. NONWAIVER. Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising their rights for any succeeding breach of either the same or other condition or covenant.

13. COPARTNERSHIP DISCLAIMER. It is mutually understood and agreed that nothing in this License Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting LICENSEES as agents or representatives of the RDA or the City of Modesto for any purpose or in any manner whatsoever.

14. ATTORNEY'S FEES. In the event that either party hereto shall commence any legal action or proceeding against the other by reason of the alleged failure of the other to perform any term, covenant, or condition of this License Agreement by them to be performed or

kept, the party prevailing in said action or proceeding shall be entitled to recover a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fee on appeal if any. As used herein, "the party prevailing" means the party in whose favor final judgment is rendered, and "legal action or proceeding" shall include arbitration.

15. TIME OF ESSENCE, BINDING UPON HEIRS, ETC. Time is of the essence of each and all the terms and provisions of this License Agreement and the terms and provisions of this License Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

16. NUMBER AND GENDER. All words used herein in the singular number shall include the plural and the present tense shall include the future and the masculine gender shall include the feminine and neuter.

17. ENTIRE AGREEMENT. This License Agreement contains the sole and only agreement of the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this License Agreement are of no force or effect.

18. LANGUAGE CONSTRUCTION. The language of each and all paragraphs, terms, and/or provisions of this License Agreement shall, in all cases and for any and all purposes, and any and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

19. GOVERNING LAW. This License Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

20. VENUE. Venue for any action brought by either party to this License Agreement against the other to enforce the terms and conditions thereof shall be maintained in Stanislaus County, California, in the proper court having jurisdiction.

21. INVALID TERMS. If any terms, provision, covenant, or condition of this License Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the

rest of this License Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

22. AMENDMENT. This License Agreement, including any exhibits hereto, shall not be amended, except in writing signed by the parties. Any amendment or addendum to this License Agreement shall expressly refer to this License Agreement.

23. EXERCISE OF DISCRETION. Where the terms of this License Agreement require approval, consent, written consent, or the exercise of discretion by LICENSEES or by the RDA or the City of Modesto or their agents, employees, or officers, discretion shall not be exercised in an unreasonable, arbitrary, or capricious manner, and shall not be unreasonably withheld.

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IN WITNESS WHEREOF, the City of Modesto and the Redevelopment Agency of the City of Modesto have authorized the execution of this License Agreement in duplicate by its City Manager and Executive Director, respectively and attestation by its Clerk and Secretary, respectively under authority of Resolution No. _____, adopted by the Redevelopment Agency of the City of Modesto on the _____ day of _____, 2002, and under authority of Resolution No. _____, adopted by the City Council of the City of Modesto on the _____ day of _____, 2002 and LICENSEES have caused this License Agreement to be executed.

"CITY" and "RDA"

"LICENSEES"

CITY OF MODESTO and
REDEVELOPMENT AGENCY OF THE
CITY OF MODESTO

BRADLEY L. HAWN

By _____
Jack C. Crist
City Manager/Executive Director

NANCY HAWN

ATTEST:

By _____
JEAN ZAHR
City Clerk/Secretary

JACK P. DELIDDO

CARLA DELIDDO

APPROVED AS TO FORM:

By _____
MICHAEL D. MILICH
City Attorney/General Counsel

(SEAL)

APPROVED AS TO FORM:

By _____
DONALD NORRIS
Risk Manager

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 4- 2002**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO AUTHORIZING AND APPROVING AN EXCLUSIVE
NEGOTIATING AGREEMENT WITH CENTERRA CAPITAL AND RICHARD
RAND AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID
AGREEMENT.**

WHEREAS, as a continuation of the overall downtown renovation, the Modesto Redevelopment Agency ("Agency") has set forth as a key objective the pursuit of opportunities to increase the housing inventory in the downtown area, and,

WHEREAS, the Agency is carrying out the Redevelopment Plan ("Plan") for the Modesto Redevelopment Project ("Project"), and

WHEREAS, the Agency has received a proposed Exclusive Negotiating Agreement ("ENA") from Paul Draper, President of Centerra Capital, and Richard Rand, an individual, ("Developer"), providing for the development of a site ("Site"), as yet undetermined, within the Project area for a multi-story housing development, consisting of parking, ground floor retail and/or office uses, and multi-story housing located above the parking, together with appurtenant landscaping improvements ("Housing Project"), and

WHEREAS, the Site will be coordinated and negotiated by the Developer with assistance from the Agency, and

WHEREAS, the ENA provides for, among other things, (a) site assemblage; (b) the development of said Housing Project as more particularly described in the ENA, and

WHEREAS, the City Council's Financial Policy Committee reviewed said ENA on May 23, 2002 and recommended approval to the Redevelopment Agency.

NOW, THEREFORE, BE IT RESOLVED by the Modesto Redevelopment Agency, as follows:

Section 1. By execution of this ENA, the Agency is not committing itself to or agreeing to undertake: (a) Any disposition of land to the Developer; or (b) Any other acts or activities requiring the subsequent independent exercise of discretion by the Agency, the City or any agency or department thereof.

Section 2. This ENA does not constitute a disposition of property or exercise of control over property by the Agency or the City and does not require a public hearing.

Section 3. Execution of this ENA by the Agency is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the Agency as to any Disposition and Development Agreement and all proceedings and decisions in connection therewith.

Section 4. The Agency hereby approves the ENA in substantially the form on file with the Secretary of the Agency.

Section 5. The Executive Director and Secretary of the Agency are hereby authorized and directed to execute the ENA on behalf of the Agency, subject to any minor conforming, technical or clarifying changes approved by the Agency Counsel. The Executive Director and Secretary are hereby further authorized and directed to take such further actions and execute such documents as are necessary to carry out the ENA on behalf of the Agency. The Executive Director is further authorized and directed to cooperate with the Developer in the negotiations between the Agency and Developer as provided under this ENA.

Section 6. This action by the Agency does not require supporting environmental analysis or documentation under the California Environmental Quality Act (CEQA) because the Agency is not committing itself to a project.

The foregoing resolution was introduced at a special meeting of the Modesto Redevelopment Agency held on the 6th day of June, 2002, by Agency Member Jackman, who moved its adoption, which motion being duly seconded by Agency Member Conrad, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agency Members: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Chairman Sabatino

NOES: Agency Members: None

ABSENT: Agency Members: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

APPROVED AS TO FORM:

By Michael D. Milich

MICHAEL D. MILICH, General Counsel

**REDEVELOPMENT AGENCY
RESOLUTION NO.5- 2002**

**A RESOLUTION ADOPTING THE ANNUAL REDEVELOPMENT BUDGET
FOR THE FISCAL YEAR ENDING JUNE 30, 2003**

WHEREAS, pursuant to the Charter of the City of Modesto, a proposed budget for the 2002-03 Fiscal Year has been submitted to the Redevelopment Agency by the City Manager and the Redevelopment Agency has made such revisions as it has deemed advisable, and

WHEREAS, in accordance with the City Charter, a public hearing has been held upon the adoption of the proposed budget, and

WHEREAS, copies of the proposed budget have been and are available for inspection by the public at the office of the City Clerk,

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that the Fiscal Year 2002-2003 Annual Budget is hereby adopted.

BE IT FURTHER RESOLVED that the Treasurer is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a special meeting of the Redevelopment Agency of the City of Modesto held on the 25th day of June, 2002, by Agencymember Jackman, who moved its adoption, which motion being duly seconded by Agencymember Frohman, was upon roll call carried and the resolution adopted by the following votes:

AYES: Agencymembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Chair Sabatino

NOES: Agencymembers: None

ABSENT: Agencymembers: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

(seal)

APPROVED AS TO FORM:

By: Mike Milich
MIKE MILICH, General Counsel

**REDEVELOPMENT AGENCY
RESOLUTION NO. 6- 2002**

**A RESOLUTION ADOPTING THE ANNUAL REDEVELOPMENT BUDGET
FOR THE FISCAL YEAR ENDING JUNE 30, 2003**

WHEREAS, pursuant to the Charter of the City of Modesto, a proposed budget for the 2002-03 Fiscal Year has been submitted to the Redevelopment Agency by the City Manager and the Redevelopment Agency has made such revisions as it has deemed advisable, and

WHEREAS, in accordance with the City Charter, a public hearing has been held upon the adoption of the proposed budget, and

WHEREAS, copies of the proposed budget have been and are available for inspection by the public at the office of the City Clerk,

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that the Fiscal Year 2002-2003 Annual Budget is hereby adopted.

BE IT FURTHER RESOLVED that the Treasurer is hereby authorized to take the necessary steps to implement the provisions of this resolution.

The foregoing resolution was introduced at a special meeting of the Redevelopment Agency of the City of Modesto held on the 25th day of June, 2002, by Agencymember Jackman, who moved its adoption, which motion being duly seconded by Agencymember Frohman, was upon roll call carried and the resolution adopted by the following votes:

AYES: Agencymembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Chair Sabatino

NOES: Agencymembers: None

ABSENT: Agencymembers: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

(seal)

APPROVED AS TO FORM:

By: Mike Milich
MIKE MILICH, General Counsel

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 7-2002**

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO AUTHORIZING THE EXECUTIVE DIRECTOR TO SOLICIT FORMAL REQUESTS FOR PROPOSALS (RFPs) FOR: (1) A DOWNTOWN 10TH AND J STREET – STREETScape CONSTRUCTION PLAN, AND (2) A DOWNTOWN WAY-FINDING SIGNAGE DESIGN AND CONSTRUCTION PLAN AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE ALL RELATED DOCUMENTS.

WHEREAS, the Agency's Redevelopment Master Plan details a desired strategy of beautifying and improving the "J Street" arts, entertainment and retail district and office core, and

WHEREAS, the Agency finds that streetscape improvements are of benefit to the project area, and

WHEREAS, the Agency finds that no other reasonable means of financing streetscape improvements are available to the community, and

WHEREAS, the Agency finds that the payment of funds for streetscape improvements will assist in the elimination of one or more blighting conditions inside the project area, and

WHEREAS, the Agency finds that streetscape improvements are consistent with the Agency's adopted implementation plan,

BE IT HEREBY RESOLVED by the Redevelopment Agency of the City of Modesto as follows:

SECTION 1. The Redevelopment Agency of the City of Modesto does hereby authorize the distribution of formal Requests for Proposals for the purpose of producing (1) A DOWNTOWN 10th AND J STREET – STREETScape CONSTRUCTION PLAN, and (2) A DOWNTOWN WAY-FINDING SIGNAGE DESIGN AND CONSTRUCTION PLAN.

SECTION 2. The Redevelopment Agency of the City of Modesto does hereby authorize the Executive Director to execute all documents which may be necessary for the completion of said Requests for Proposals, and to give notice inviting such sealed bids in the time, form, and manner provided by law.

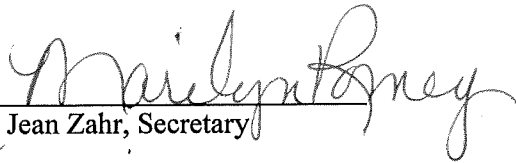
SECTION 3. After bids are opened, they shall be analyzed and tabulated and a report submitted to the Redevelopment Agency at its next regular meeting.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto held on the 8th day of August, 2002, by Agency Member Conrad, who moved its adoption, which motion being duly seconded by Agency Member Frohman, was upon roll call carried and the resolution adopted by the following vote:

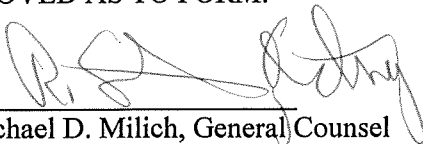
AYES: Agency Members: Conrad, Fisher, Frohman, Jackman, Chairman Sabatino

NOES: Agency Members: Keating, O'Bryant

ABSENT: Agency Members: None

ATTEST 
for Jean Zahr, Secretary

APPROVED AS TO FORM:

By 
Michael D. Milich, General Counsel

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 8-2002**

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO TERMINATING THE DISPOSITION AND DEVELOPMENT
AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF
THE CITY OF MODESTO AND WESTLAND DEVELOPMENT COMPANY,
LLC**

WHEREAS, the Redevelopment Agency of the City of Modesto (the “Agency”) is carrying out the Redevelopment Plan (the “Redevelopment Plan”) for the Modesto Redevelopment Project (the “Redevelopment Project”); and

WHEREAS, the Agency on August 8, 2000, approved a Disposition and Development Agreement (the “DDA”) with Westland Development Company, LLC, a California limited liability company whose members are Craig A. Mangano, an individual, and SHP Development Co., a general partnership (the “Developer”), providing for the acquisition and sale of certain property located within the Redevelopment Project Area (the “Site”), and development of the Site with a multi-story professional office building with possible retail uses designated for the first floor (the “Office Project”);

WHEREAS, since the DDA was approved, the Developer has been working with potential tenants to ensure a reasonable level of occupancy in the Office Project prior to starting construction and, during this time, Stanislaus County (the “County”) approached the Developer about the possibility of the County purchasing the Office Project and the Site and constructing a larger building (the “Revised Office Project”), and

WHEREAS, the Agency has received several reports on the Revised Office Project outlining the following construction designs:

1. The County will purchase the Site at the southeast corner of 12th and I Streets from the City of Modesto
2. The County will construct the Revised Office Project consisting of six (6) floors with approximately fifteen thousand (15,000) square feet per floor for a total of approximately ninety-thousand (90,000) square feet for the building
3. The Developer will purchase from the County two (2) floors subdivided as an airspace condominium
4. Parking for the Revised Office Project will be provided in a separate public parking garage (the “Parking Garage”) to be constructed by the County on adjacent property currently owned by the County pursuant to a separate license agreement (the “Parking Agreement”) entered into

between the Developer and the County under which a portion of the parking spaces to be developed within the Parking Garage will be available for use by the tenants and users of the Office Project as well as by County employees and the general public, and

WHEREAS, the Agency agrees that said Revised Office Project meets the objectives of the Redevelopment Plan, and

WHEREAS, the Agency and the Developer mutually agree that the DDA should be terminated and a subsequent Owner Participation Agreement should be entered into by and between the Agency and Developer to provide Agency's financial assistance to the Developer in conjunction with the Revised Office Project.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO that the Disposition and Development Agreement with Westland Development Company, LLC, a California limited liability company whose members are Craig A. Mangano, an individual, and SHP Development Co., a general partnership is hereby terminated.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto held on the 8th day of October, 2002, by Agencymember Fisher, who moved its adoption, which motion being duly seconded by Agencymember Frohman, was upon roll call carried and the resolution adopted by the following vote:

AYES:	Agencymember	Conrad, Fisher, Frohman, Keating, O'Bryant
NOES:	Agencymember:	None
ABSENT:	Agencymember:	Jackman, Chairman Sabatino

ATTEST: _____
JEAN ZAHR, Secretary

(SEAL)
APPROVED AS TO FORM:

By _____
MICHAEL D. MILICH, General Counsel

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 9-2002**

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO APPROVING THE OWNER PARTICIPATION AGREEMENT
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO
("AGENCY") AND WESTLAND DEVELOPMENT COMPANY, LLC, A
CALIFORNIA LIMITED LIABILITY COMPANY ("DEVELOPER")**

WHEREAS, the Agency is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Modesto Redevelopment Project (the "Redevelopment Project"), and

WHEREAS, the Agency on October 8, 2002, reviewed an Owner Participation Agreement (the "OPA") with Westland Development Company, LLC, a California limited liability company whose members are Craig A. Mangano, an individual, and SHP Development Co., a general partnership, providing for the development of that certain property located within the Redevelopment Project Area (the "Site"), with a multi-story professional office building with possible retail uses designated for the first floor (the "Office Project"), and

WHEREAS, parking for the Office Project will be provided in a separate public parking garage (the "Parking Garage") to be constructed by the County of Stanislaus (the "County") on adjacent property currently owned by the County pursuant to a separate license agreement (the "Parking Agreement") entered into between the Developer and the County, and attached as **Exhibit A** to this Resolution, under which a portion of the parking spaces to be developed within the Parking Garage will be available for use by the tenants and users of the Office Project, and

WHEREAS, the OPA provides for, among other things: (a) the sale of the Site to the County pursuant to a Site Purchase Agreement which is attached hereto and made a part hereof by this reference; and (b) the development of the Office Project by the County

as a six-story office building with three separate owners which owners are the County, the Developer and the Stanislaus County Employees Retirement Association (StanCERA); and (c) the construction by the County of the adjacent Parking Garage pursuant to the Parking Agreement, and (d) the Developer's purchase of two (2) floors of the Office Project as an airspace condominium, and

WHEREAS, the OPA further provides that the Agency will pay to the Developer a portion towards the Developer's share of the cost of the Parking Agreement (collectively, the "Agency's Parking Contribution") as follows:

- a. Payment in the amount of \$13,200 per year for years 1 through 5 and \$6,600 per year for years 6 through 15, paid from annual tax increment revenue received from properties within the Redevelopment Target Area
- b. Rebate of the Net Tax Increment from the Site (the "Project TI") for so long as the Agency receives tax increment revenues from the Site, and

WHEREAS, no portion of the Agency's Parking Contribution shall be due until such time as the Project TI is received by the Agency, and

WHEREAS, pursuant to Section 33445 of the Community Redevelopment Law, the Agency is authorized to pay all or part of the value of the cost of the installation and construction of any building, facility, structure or other improvement which is publicly owned either within or without the Project Area upon a determination by the City Council that such building, facility, structure or other improvement is of benefit to the Project Area; and

WHEREAS, the Agency has found and determined that the payment by the Agency of costs for the Agency's Parking Contribution is necessary to effectuate the purposes of the Redevelopment Plan. The Agency found and determined that the construction of the Parking Garage is of primary benefit to the Project Area and the immediate neighborhood in which the project is located, that no other reasonable means

of financing the Agency's Parking Contribution are available to the community, and that the payment of funds for the Agency's Parking Contribution will assist in the elimination of one or more blighting conditions inside the Redevelopment Project Area and is consistent with the Five-Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490.

NOW, THEREFORE, THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Agency authorizes Agency's Parking Contribution for construction of the Developer's parking spaces located within the county-owned parking structure.

Section 2. The Agency's Parking Contribution will be used by the Developer to pay Developer's fair-share of the debt service payments allocated to capital construction costs under the Parking License Agreement.

Section 3. The Agency's Parking Contribution will include the following:

- a. Payment in the amount of \$13,200 per year for years 1 through 5 and \$6,600 per year for years 6 through 15, paid from annual tax increment revenue received from properties within the Redevelopment Target Area
- b. Rebate of the Net Tax Increment from the Site (the "Project TI") for so long as the Agency receives tax increment revenues from the Site. For purposes of this Agreement, the term "Net Tax Increments from the Site" means the amount of tax increments generated from the Site which are allocated and paid to the Agency, less any amounts which the Agency is required to be set aside in the Agency's Low and Moderate Income Housing Fund, and less Pass-Throughs to other public agencies

Section 4. The Agency's Parking Contribution commences upon issuance of the Certificate of Completion as set forth in Section 321 of the OPA, and continues until expiration of the Amended Redevelopment Project Area adopted in 1991

EXHIBIT A

DRAFT

OWNER PARTICIPATION AGREEMENT

By and Between

**REDEVELOPMENT AGENCY OF
THE CITY OF MODESTO**

and

WESTLAND DEVELOPMENT COMPANY, LLC

Modesto Redevelopment Project

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Attachments

Attachment No. 1	Map of the Site
Attachment No. 2	Legal Description of the Site
Attachment No. 3	Agreement to be Recorded Affecting Real Property

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (this "Agreement") is entered into as of the _____ day of _____, 2002, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MODESTO (the "Agency") and WESTLAND DEVELOPMENT COMPANY, LLC (the "Participant"). The Agency and the Participant agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose of this Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan (the "Redevelopment Plan") for the Modesto Redevelopment Project (the "Redevelopment Project") by providing for the development of certain real property (the "Site") included within the boundaries of the Redevelopment Project (the "Redevelopment Project Area").

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Modesto, California (the "City"), and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. [§102] The Redevelopment Plan

This Agreement is subject to the provisions of the Redevelopment Plan which was approved and adopted on July 12, 1983, by the City Council of the City of Modesto, by Ordinance No. 2203-C.S, as amended on June 19, 1984, by Ordinance No. 2269-C.S. and as further amended on November 19, 1991, by Ordinance No. 2793-C.S. The Redevelopment Plan, as it now exists and as it may be subsequently amended pursuant to Section 701, is incorporated herein by reference and made a part hereof as though fully set forth herein.

C. [§103] The Redevelopment Project Area

The Redevelopment Project Area is located in the City of Modesto, California, and the exact boundaries thereof are specifically described in the Redevelopment Plan.

D. [§104] The Property; The Site

The Property is that portion of the Redevelopment Project Area shown on the Map of the Site (Attachment No. 1). The Site is comprised of two adjacent parcels of property, including (a) approximately _____ square feet of real property (the

"County Parcel") which is currently owned by the County of Stanislaus (the "County"), and (b) approximately 14,000 square feet of real property (the "City Parcel"), which is currently owned by the City and will be acquired by the County as referenced in Section 201 hereof.

The Site consists of an airspace parcel, consisting of two (2) floors and approximately 30,000 square feet of building space located within the Office Building to be constructed by the County as set forth in Section 201 hereof. The Participant will acquire the Site from the County as set forth in Section 201 hereof, and develop the Participant's Improvements on the Site as set forth herein. Following acquisition of the Site by the Participant, a legal description of the airspace parcel constituting the Site shall be attached hereto as Attachment No. 2 and thereafter shall be deemed incorporated herein by reference.

E. [\$105] Parties to this Agreement

1. [\$106] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.). The office of the Agency is located at 1010 – 10th Street, Modesto, California 95354. "Agency," as used in this Agreement, includes the Redevelopment Agency of the City of Modesto and any assignee of or successor to its rights, powers and responsibilities.

2. [\$107] The Participant

The Participant is Westland Development Company, LLC, a California limited liability company, whose members are Craig A. Mangano, an individual, and SHP Development Co., a California general partnership. The principal office of the Participant is 1001 N. Demaree, Visalia, California 93291. Wherever the term "Participant" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Participant are of particular concern to the City and the Agency, and it is because of such 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. This Agreement may be terminated by the Agency pursuant to Section 511 hereof if there is any significant change (voluntary or involuntary) in the membership, management or control of the Participant prior to the completion of the development of the Site as evidenced by the issuance of a Certificate of Completion therefor.

Notwithstanding the foregoing, the Agency agrees that the Participant may join and associate with other entities in joint ventures, partnerships

(including limited partnership) or otherwise for the purpose of acquiring and developing the Site; provided Craig Mangano shall maintain management and control under such entities and remains fully responsible to the Agency as provided in this Agreement with respect to the Site; and provided, further, that the Participant shall notify the Agency in writing promptly upon the creation or joinder of any such new entities and shall provide the Agency with the identity of the other parties who have joined in with the Participant in such new entities.

The Participant shall not assign all or any part of this Agreement without the prior written approval of the Agency.

II. [§200] COUNTY OFFICE PROJECT; AGENCY ASSISTANCE

A. [§201] County Office Project 1. The City entered into a Purchase and Sale Agreement (the "City/County Purchase Agreement") pursuant to which the City will sell the City Parcel to the County, and the County will purchase the City Parcel from the City for purposes of development of a 6-story office building consisting of approximately 90,000 square feet of office space (the "Office Building").

In conjunction with the construction and development of the Office Building, the County will construct a parking garage, including approximately 650 to 700 parking spaces (the "Parking Garage"), on the County Parcel. The Office Building and Parking Garage are collectively referred to herein as the "County Office Project".

The City Parcel is currently improved with a surface parking lot containing approximately 44 public parking spaces. As partial consideration and incentive for the City to sell the City Parcel to the County, the City/County Purchase Agreement provides that 44 of the parking spaces to be developed in the Parking Garage shall be dedicated by the County and made available to the general public, as replacement parking for the 44 public parking spaces currently located on the City Parcel (the "City Parking Spaces").

Pursuant to that certain Purchase and Sale Agreement between the County and Participant (the "County/Westland Agreement") the County has agreed to construct the County Office Project and sell to the Participant an airspace parcel consisting of the building shell improvements located on and within the and floors of the Office Building, including approximately 30,000 square feet of space, which airspace parcel constitutes the Site hereunder. The Participant shall acquire the Site from the County pursuant to the County/Westland Agreement, and shall thereafter diligently work to complete construction of the Site, including all tenant improvements, for office and retail uses, (collectively, the "Participant's Improvements") as more fully set forth herein. The Participant will cooperate with the County to ensure that construction of the Parking Garage and the Participant's Improvements will proceed in a coordinated manner, as necessary, and that the Parking Garage will be completed prior to or concurrently with the scheduled completion of construction of the Participant's

Improvements on the Site.

The Participant and County will also enter into a Parking License Agreement (the "County/Westland Parking Agreement"), in form and content acceptable to the Participant and County and approved by the Agency, which shall provide that approximately 110 of the parking spaces to be developed within the Parking Garage shall be available for use by Participant and the tenants, lessees and other users of the Participant's Improvements during the daytime hours each Monday through Friday (the "Participant's Parking Spaces"). The Participant's Parking Spaces shall be available to the general public during the evening hours, and all day on Saturdays, Sundays and holidays. The Participant shall make annual/monthly license fee payments to the County for such use of the Parking Garage in the amount mutually agreeable to the County and Participant.

B. [\$202] Agency Assistance

1. Subject to the conditions set forth below, the Agency agrees to provide financial assistance to the Participant as follows (the "Agency's Assistance"):

a. The Agency will contribute the Net Tax Increments from the Site (as defined below), commencing upon issuance of the Certificate of Completion as set forth in Section 316 of this Agreement, and continuing thereafter for a period of Twenty-Nine (29) years, or until termination of the Redevelopment Plan, whichever occurs first. For purposes of this Agreement, the term "Net Tax Increments from the Site" means the amount of tax increments generated from the Site which are allocated and actually paid to the Agency, less any amounts which the Agency is required to be set aside in the Agency's Low and Moderate Income Housing Fund.

b. In addition to the Net Tax Increment from the Site provided for in subsection a, above, the Agency will contribute a portion of the Tax Increments from the Redevelopment Project Area (as defined below) in an amount not to exceed:

1) Thirteen Thousand Two Hundred Dollars (\$13,200) per year for the first five (5) years following issuance of the Certificate of Completion as set forth in Section 316 of this Agreement; and

2) Six Thousand Six Hundred Dollars (\$6,600) per year for years six (6) through fifteen (15) following issuance of the Certificate of Completion as set forth in Section 316 of this Agreement.

For purposes of this Agreement, the term "Tax Increments from the

Redevelopment Project Area” means the tax increments generated from the entire Redevelopment Project Area which are allocated and paid to the Agency, less any amounts required to be paid by the Agency to affected taxing agencies, and less any amounts required to be set aside in the Agency’s Low and Moderate Income Housing Fund.

2. The Agency Assistance to be provided pursuant to subsection 1, above, shall be subject to and conditioned upon all of the following:

a. The City/County Purchase Agreement, and County/Westland Agreement and the County/Westland Parking Agreement, all referenced in Section 201, above, shall be in full force and effect;

b. The County Office Project, including the Office Building and Parking Garage, shall have been constructed by the County in accordance with the City/County Purchase Agreement and the County/Westland Agreement;

c. The Participant shall have acquired the Site from the County, and shall have completed construction of the Participant’s Improvements on the Site in accordance with the terms and conditions set forth in this Agreement, as evidenced by the issuance by the Agency of a Certificate of Completion for the Participant’s Improvements pursuant to Section 316 of this Agreement;

d. The Participant shall not be in default under this Agreement, the County/Westland Agreement or the County Westland Parking Agreement. The Participant acknowledges and agrees that the amount of Net Tax Increments from the Site to be paid by the Agency pursuant to subsection 202.1.a. is based upon, and contingent upon, the completion of the Participant’s Improvements and payment by the Participant of all taxes applicable to the Participant’s Improvements.

e. The Agency Assistance shall be used by the Participant to pay a portion of the annual license fee payments due by the Participant to the County under the County/Westland Parking Agreement;

f. Following any sale or transfer of all or any portion of Participant’s interest in the Site to a governmental entity, the Agency’s obligations to pay the Agency Assistance hereunder shall terminate, and thereafter neither the Participant nor Agency shall have no further rights or obligations under this Agreement.

g. Following any sale or transfer of all or any portion of Participant’s interest in the Site to a person or persons or privately-owned

entity, any such purchaser or transferee shall thereafter be entitled to receipt of the Agency Assistance hereunder in accordance with the terms and conditions set forth in this Agreement.

III. [§300] DEVELOPMENT OF THE SITE

A. [§301] Development of the Site by the Participant

1. [§302] Scope of Development

The Participant shall develop the Site with approximately 30,000 square feet of office and retail space, which improvements (the "Participant's Improvements") shall be located on two (2) floors of the Office Building to be constructed by the County pursuant to the County/Westland Agreement as set forth in Section 201 of this Agreement. The Participant's Improvements shall include completion of the interior improvements within the building shell space to be constructed by the County as part of the Office Building. Parking for the Participant's Improvements shall be provided in the Parking Garage to be constructed by the County on the adjacent County Parcel as set forth in Section 201. The Participant shall coordinate, as necessary, with the County to ensure that the Parking Garage is completed prior to or concurrently with the completion of the Participant's Improvements to be constructed on the Site. The Participant's Improvements shall be constructed in accordance with the Uniform Building Code (with City modifications) and the City's Municipal Code.

2. [§303] Project Plans

The Agency shall have the right to review and approve all plans, documents and related documents related to the construction and development of the Participant's Improvements, which approvals shall not be unreasonably withheld provided such plans, documents and related documents are consistent with and conform to the provisions of this Agreement, and the County's approved plans for the construction of the Office Building.

The Site shall be developed as established in the project plans and related documents except as changes may be mutually agreed upon between the Participant and the Agency.

If any revisions or corrections of project plans approved by the Agency shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Participant and the Agency shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

If the Participant desires to make any substantial change in the

project plans after their approval by the Agency, the Participant shall submit the proposed change to the Agency for its approval. If the project plans, as modified by the proposed change, conform to the requirements of this Agreement and the approvals previously granted by the Agency under this Agreement, the Agency shall approve the proposed change and notify the Participant in writing within thirty (30) days after submission to the Agency.

The Agency's Executive Director is authorized to act on behalf of the Agency to approve or disapprove the project plans and related documents pursuant to this Section 303.

3. [\$304] Cost of Construction

The full cost of acquiring and developing the Site and constructing all improvements thereon shall be borne by the Participant. The Agency and the Participant shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

The acquisition of the City Parcel and construction of the Office Building (except for the Participant's Improvements") and Parking Garage shall be financed by the County of Stanislaus (the "County"), subject to the future license fee payments to be paid by the Participant under the County/Westland Parking Agreement to be entered into as set forth in Section 201 hereof, and subject further to the Agency Assistance to be paid to and used by the Participant to pay a portion of such license fee payments owed by the Participant. As set forth in Section 202 hereof.

4. [\$305] Construction Schedule

Following its acquisition of the Site, the Participant shall promptly begin and thereafter diligently prosecute to completion the construction of the Participant's Improvements and the development of the Site. Notwithstanding the foregoing, the parties acknowledge and agree that Participant's construction schedule is dependent, in part, on the County's construction schedule for the construction of the County Office Project. The Participant shall cooperate and take all reasonable actions as necessary to ensure that construction of the improvements on the Site are coordinated with the construction of the Parking Garage.

5. [\$306] Bodily Injury, Property Damage and Workers' Compensation Insurance

Prior to the commencement of construction on the Site or any portion thereof, the Participant shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of commercial general liability insurance in the amount of at least \$1,000,000 combined single limit for bodily injury and property damage and \$5,000,000 general aggregate limit, naming the Agency and the City as additional insureds. The Participant shall also furnish or cause to be furnished to the

Agency evidence satisfactory to the Agency that the Participant and any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section 306 shall remain in effect only until a final Certificate of Completion has been issued covering the entire Site as hereinafter provided in Section 321 hereof.

6. [\$307] City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon the Site, 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. The Agency shall provide all assistance deemed appropriate by the Agency to the Participant in securing these permits.

7. [\$308] Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the Agency and the City shall have the reasonable right of access to the Site without charges or fees and 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 Participant's Improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency. The Agency and City shall indemnify the Participant and hold it harmless from any damage caused or liability arising out of this right to access.

8. [\$309] Local, State and Federal Laws

The Participant shall carry out the construction of the Participant's Improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

9. [\$310] 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, sex, marital status, physical handicap, sexual orientation, ancestry or national origin. The Participant shall also comply with all requirements of the Americans with Disabilities Act.

B. [\$311] Taxes, Assessments, Encumbrances and Liens

The Participant shall pay when due all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title to or

delivery of possession of the Site. 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; provided, however, that any such contest by the Participant shall not be deemed to preclude or permit delay of payment of the amount of any tax, assessment, encumbrance or lien when due, and Participant shall pay or post a bond for any such amount when due and thereafter may in good faith contest the validity or amount thereof so paid.

C. [§312] Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement

After acquisition of the Site by the Participant and prior to the issuance by the Agency of a Certificate of Completion pursuant to Section ____, the Participant shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign or lease the whole or any part of the Site or the buildings or improvements thereon without the prior written approval of the Agency. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion for the Site. This prohibition shall not be deemed to prevent the granting of 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 when said improvements are completed.

In the absence of specific written agreement by the Agency, no such transfer, assignment or approval by the Agency shall be deemed to relieve the Participant or any other party from any obligations under this Agreement until completion of development as evidenced by the issuance of a Certificate of Completion therefor.

D. [§313] Security Financing; Rights of Holders

1. [§314] Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Participant's 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.

2. [§315] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Agency shall deliver any notice or demand to the 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 a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the Agency therefor. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. 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 improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency.

E. [§316] Certificate of Completion

Promptly after completion of all construction and development to be completed by the Participant upon the Site, the Agency shall furnish the Participant with a Certificate of Completion upon written request therefor by the Participant. Such Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Stanislaus County.

A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site and of full compliance with the terms hereof. After issuance of such Certificate of Completion, the respective rights and obligations of the parties with reference to the Site shall be limited to those set forth in the Agreement to be Recorded Affecting Real Property as described in Section ___ of this Agreement..

The Agency shall not unreasonably withhold or delay any Certificate of Completion. If the Agency refuses or fails to furnish a Certificate of Completion for the Site after written request from the Participant, the Agency shall, within ten (10) days of the next regularly scheduled Agency meeting after such written request, 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 the Agency's opinion of the action the Participant must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the Agency will issue its Certificate of Completion upon the posting of a bond 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 ten (10) day period after such Agency meeting, 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 a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

F. [\$317] Agreement to be Recorded Affecting Real Property

Concurrently with this Agreement, the Participant and the Agency have executed an "Agreement to be Recorded Affecting Real Property," attached hereto as Attachment No. _____ and incorporated herein by reference, which provides for certain covenant and agreements on the part of the Participant and the Agency consistent with the terms and purpose of this Agreement. The Agency is authorized to, and shall, record the Agreement to be Recorded Affecting Real Property after issuance of the Certificate of Completion pertaining to the Site.

IV. [\$400] USE AND MAINTENANCE OF THE SITE

A. [\$401] Uses

The Participant covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Participant, its successors and assignees shall devote the Site to the uses specified in the Redevelopment Plan and this Agreement for the periods of time the Redevelopment Plan is in force and effect. The foregoing covenant shall run with the land.

B. [\$402] Obligation to Refrain From Discrimination

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, physical handicap, sexual orientation, ancestry or national origin 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 Participant further covenants by and for itself and any successors in interest that it shall comply with all requirements of the Americans with Disabilities Act, as may be amended from time to time. The foregoing covenants shall run with the land.

C. [\$403] Form of Nondiscrimination and Nonsegregation Clauses

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, physical handicap, sexual orientation, ancestry or national origin 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, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises 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 premises herein conveyed. Grantee further covenants by and for itself and any successors in interest that it shall comply with all applicable requirements of the Americans with Disabilities Act. 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:

"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, physical handicap, sexual orientation, national origin or ancestry, 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, subtenants, sublessees or vendees in the premises herein leased. Grantee further covenants by and for itself and any successors in interest that it shall comply with all applicable requirements of the Americans with Disabilities Act. "

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, physical handicap, sexual

orientation, national origin or ancestry 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 land. Grantee further covenants by and for itself and any successors in interest that it shall comply with all applicable requirements of the Americans with Disabilities Act. "

D. [\$404] Maintenance of the Site

The Participant and all successors in interest agree to maintain the improvements and landscaping on the Site in a clean and orderly condition and in good condition and repair and keep the site free from accumulation of debris and waste materials. The Agency shall have the right to conduct an annual inspection of the Site to ensure compliance with this Section 404; provided the Agency shall give the Participant not less than 72 hours notice of any such inspection and a representative of Participant shall accompany the representative of the Agency during such inspection tours.

E. [\$405] Effect and Duration of Covenants

Except as otherwise provided, the covenants contained in this Agreement and the Agreement Affecting Real Property shall remain in effect until November 5, 2031 (the termination date of the Redevelopment Plan). The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Agreement and the grant deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, the City and any successor in interest to the Site or any part thereof.

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. This 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, any parcel or subparcel, or in the Project Area. The Agency shall have the right, if this Agreement or the 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 the covenants may be entitled.

V. [\$500] DEFAULTS, REMEDIES AND TERMINATION

A. [\$501] Defaults -- General

Subject to the extensions of time set forth in Section 604, 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 reasonable diligence and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 507 and 508 of this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive 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.

B. [\$502] Legal Actions

1. [\$503] Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or 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 Stanislaus, State of California, in an appropriate municipal court in that County or in the appropriate Federal District Court in the State of California.

2. [\$504] Applicable Law

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

3. [\$505] 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 Executive Director of the Agency, or other officer or employee of the Agency authorized to accept such service on behalf of the Agency, 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, the Participant hereby agrees that service shall be made by certified mail, return receipt requested, upon the Participant at the address set forth in Section 107 of this Agreement, or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. [§506] 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 any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§507] Damages

If the Participant or the Agency defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or the cure is not being diligently prosecuted to completion by the defaulting party within forty-five (45) days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default. Such damages shall not include future property taxes which the proposed development would have generated.

E. [§508] Specific Performance

If the Participant or the Agency defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within forty-five (45) days of service of the notice of default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

VI. [§600] GENERAL PROVISIONS

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

Formal notices, demands and communications between the Agency and the Participant shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and the Participant as set forth in Section 105 hereof. 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.

B. [\$602] Conflicts of Interest

No member, official or employee of the Agency or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

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

C. [\$603] Nonliability of Agency Officials and Employees

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

D. [\$604] Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; 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 necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Agency 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. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Agency and the Participant.

E. [\$605] Inspection of Books and Records

The Agency has the right, upon not less than seventy-two (72) hours notice, at all reasonable times during normal business hours, to inspect the books and records of the Participant pertaining to the Site as pertinent to the purposes of this Agreement. The Agency covenants and agrees to keep confidential any proprietary information of the Participant (identified in writing by the Participant as confidential), delivered to or inspected by the Agency pursuant to the terms of this Agreement. Such

information which the Participant has identified in writing as confidential or proprietary shall not be disclosed by the Agency except as may be required by law, except to its authorized officers, agents and employees on a confidential basis, to the extent necessary in connection with any approval required under this Agreement.

The Participant also has the right, upon not less than seventy-two (72) hours notice, at all reasonable times during normal business hours, to inspect the books and records of the Agency pertaining to the Site as pertinent to the purposes of this Agreement.

G. [\$607] Approvals and Consents by the Parties

Except as otherwise provided for herein to the contrary, neither the Agency nor the Participant shall unreasonably withhold or delay any approvals or consents required to be given or otherwise provided for herein.

H. [\$608] Attorneys' Fees

In the event that suit is brought for the enforcement of this Agreement or any provision contained herein or as the result of any alleged breach thereof, the prevailing party to such suit shall be entitled to be paid reasonable attorneys' fees by the losing party.

I. [\$609] Representations of the Parties

The Agency and Participant each represents to the other that (i) it has the authority to enter into this Agreement, (ii) it has taken all necessary actions for the valid execution and delivery of this Agreement, and (iii) this Agreement is legally binding on the representative party.

VII. [\$700] SPECIAL PROVISIONS

A. [\$701] Amendment of Redevelopment Plan

Pursuant to provisions of the Redevelopment Plan for modification or amendment thereof, the Agency agrees that no amendment which changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site or otherwise directly affect the use of the Site shall be made or become effective without the prior written consent of the Participant. Amendments to the Redevelopment Plan applying to other property in the Project Area shall not require the consent of the Participant.

B. [\$702] Submission of Documents to the Agency for Approval

Whenever this Agreement requires the Participant to submit plans,

drawings or other documents to the Agency for approval, which shall be deemed approved if not acted on by the Agency within a specified time, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the Agency within the stated time. If there is no time specified herein for such Agency action, the Participant may submit a letter requiring Agency approval or rejection of documents within thirty (30) days after submission to the Agency or such documents shall be deemed approved.

C. [\$703] 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 any of the parties hereto, lending institutions, or bond counsel or financial consultants to the Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. Any requests made pursuant to this Section 703 shall be made in writing.

VIII. [\$800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through _____, inclusive, and Attachment Nos. 1 through _____, attached hereto and incorporated herein by reference, all of which constitute 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 with respect to all or any part of the subject matter hereof.

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

IX. [\$900] 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 within forty-five (45) days after the date of signature by the Participant or this Agreement shall be void, except to the extent that the Participant shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

, 2000

REDEVELOPMENT AGENCY OF THE
CITY OF MODESTO

By
Executive Director

"AGENCY"

ATTEST:

By
Secretary

APPROVED AS TO FORM:

By
Michael Milich
General Counsel

, 2000

WESTLAND DEVELOPMENT COMPANY,
LLC, a California limited liability company

By
Craig Mangano, President

"PARTICIPANT"

ACKNOWLEDGEMENTS

ATTACHMENT NO. 1

MAP OF THE SITE

[TO BE INSERTED – to include map showing
the City Parcel and County Parcel]

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

[TO BE INSERTED following acquisition of the Site by the Participant. The Site consists of the airspace parcel To be acquired by the Participant within the Office Building to be constructed by the County.]

ATTACHMENT NO. 3

recorded at the request of
and when recorded return to:

AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY

THIS AGREEMENT is entered into this ___ day of _____, 200___, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MODESTO, a public body, corporate and politic (hereinafter referred to as the "Agency"), and WESTLAND DEVELOPMENT COMPANY, LLC, a California limited liability company (hereinafter referred to as the "Participant") with reference to the following:

A. The Agency and Participant entered into an Owner Participation Agreement dated as of _____, 200___, the "Owner Participation Agreement"), relating to the development of certain improvements (the "Participant's Improvements") within an airspace parcel (the "Site") acquired by the Participant from the County of Modesto (the "County"). The Site consists of two floors of a 6-story office building (the "Office Building") to be constructed by the County on certain land located within the City of Modesto. A legal description of the Site is attached hereto as Exhibit A and incorporated herein by reference.

B. The Site is located within the Modesto Redevelopment Project (the "Project") in the City of Modesto and is subject to the provisions of the Redevelopment Plan for the Project adopted by the City Council of the City of Modesto. The Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein.

C. Pursuant to the Owner Participation Agreement, the Agency has agreed to provide certain financial assistance to the Participant (the "Agency Assistance") to be used by the Participant to pay a portion of the annual license fee payments due by the Participant to the County for parking for the uses to be developed on the Site.

D. Recordation of this Agreement at the Agency's request is conclusive evidence that the Participant has constructed the improvements on the Site and has otherwise developed the Site in accordance with the Redevelopment Plan and pursuant to the terms and provisions of a certain "Owner Participation Agreement" entered into

between the Agency and the Participant on _____, 200__.

NOW, THEREFORE, THE AGENCY AND THE PARTICIPANT HEREBY AGREE AS FOLLOWS:

1. The Agency hereby acknowledges that the Participant has constructed the Participant's Improvements on the Site and has otherwise developed the Site in accordance with the Redevelopment Plan and pursuant to the terms and provisions of the Owner Participation Agreement. The Agency hereby agrees that the terms and provisions of the Owner Participation Agreement with respect to the construction and development of the Participant's Improvements have been fully and satisfactorily performed by the Participant and that the Owner Participation Agreement shall be of no further force and effect with respect to the such construction and development.

2. Subject to the conditions set forth in Section 3, below, and in Section 202 of the Owner Participation Agreement, the Agency agrees to provide financial assistance to the Participant as follows (the "Agency Assistance"):

a. The Agency will contribute the Net Tax Increments from the Site (as defined below), commencing upon issuance of the Certificate of Completion as set forth in Section 316 of the Owner Participation Agreement, and continuing thereafter for a period of Twenty-Nine (29) years, or until termination of the Redevelopment Plan, whichever occurs first. For purposes of this Agreement, the term "Net Tax Increments from the Site" means the amount of tax increments generated from the Site which are allocated and paid to and actually received by the Agency, less any amounts which the Agency is required to be set aside in the Agency's Low and Moderate Income Housing Fund.

b. In addition to the Net Tax Increment from the Site provided for in subsection a, above, the Agency will contribute a portion of the Tax Increments from the Redevelopment Project Area (as defined below) in an amount not to exceed:

1) Thirteen Thousand Two Hundred Dollars (\$13,200) per year for the first five (5) years following issuance of the Certificate of Completion as set forth in Section 316 of this Agreement; and

2) Six Thousand Six Hundred Dollars (\$6,600) per year for years six (6) through fifteen (15) following issuance of the Certificate of Completion as set forth in Section 316 of this Agreement.

For purposes of this Agreement, the term "Tax Increments from the Redevelopment Project Area" means the tax increments generated from

the entire Redevelopment Project Area which are allocated and paid to the Agency, less any amounts required to be paid by the Agency to affected taxing agencies, and less any amounts required to be set aside in the Agency's Low and Moderate Income Housing Fund.

The Participant acknowledges and agrees that the Agency receives tax increments twice a year pursuant to the provisions of the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.). Payment of the Agency Assistance shall be made each year in two installments to coincide with the Agency's receipt of tax increments. Each installment shall be equal to the Net Tax Increments from the Site actually received by the Agency (pursuant to subsection 2.a, above), together with one-half (1/2) of the Tax Increments from the Redevelopment Project Area (to be paid pursuant to subsection 2.b, above). Each installment shall be paid to the Participant within thirty (30) days following receipt by the Agency of tax increments from the Site.

3. The Agency Assistance to be provided pursuant to Section 2, above, and Section 202 of the Owner Participation Agreement, shall be subject to and conditioned upon all of the following:

a. The City/County Purchase Agreement, and County/Westland Agreement and the County/Westland Parking Agreement, all referenced in Section 201 of the Owner Participation Agreement, shall be in full force and effect;

b. The County Office Project, including the Office Building and Parking Garage, shall have been constructed by the County in accordance with the City/County Purchase Agreement and the County/Westland Agreement;

c. The Participant shall have acquired the Site from the County, and shall have completed construction of the Participant's Improvements on the Site in accordance with the terms and conditions set forth in the Owner Participation Agreement, as evidenced by the issuance by the Agency of a Certificate of Completion for the Participant's Improvements pursuant to Section 316 of the Owner Participation Agreement;

d. The Participant shall not be in default under the Owner Participation Agreement, the County/Westland Agreement or the County/Westland Parking Agreement. The Participant acknowledges and agrees that the amount of Net Tax Increments from the Site to be paid by the Agency pursuant to subsection 202.1.a. is based upon, and contingent upon, the completion of the Participant's Improvements and payment by the Participant of all taxes applicable to the Participant's Improvements.

e. The Agency Assistance shall be used by the Participant to pay a portion of the annual license fee payments due by the Participant to the County under the County/Westland Parking Agreement;

f. Following any sale or transfer of all or any portion of Participant's interest in the Site to a governmental entity, the Agency's obligations to pay the Agency Assistance hereunder shall terminate, and thereafter neither the Participant nor Agency shall have no further rights or obligations under this Agreement or the Owner Participation Agreement.

g. Following any sale or transfer of all or any portion of Participant's interest in the Site to a person or persons or privately-owned entity, any such purchaser or transferee shall thereafter be entitled to receipt of the Agency Assistance hereunder in accordance with the terms and conditions set forth in this Agreement and the Owner Participation Agreement.

4. The Participant, on behalf of itself and its successors, assigns and each successor in interest to the Site or any part thereof hereby covenants and agrees:

a. To use, devote and maintain the Site and each part thereof for the uses specified in the Redevelopment Plan.

b. To maintain the improvements and landscaping on the Site in a clean and orderly condition and in good condition and repair and to keep the Site free from any accumulation of debris and waste materials.

c. Not to discriminate upon the basis of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer or rental or in the use, occupancy, tenure or enjoyment of the Site or any improvements thereon. Each and every deed, lease and contract entered into with respect to the Site 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, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection,

location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees 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:

“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, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself, 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 land 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, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, 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 land.”

5. 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, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall the Participant, its successors, assigns or successors in interest to the Site, or any part thereof, or any person claiming under or through them, 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 or any part thereof.

6. The covenants and agreements established in this Agreement shall, without regard to technical classification and designation, be binding on the Participant

and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the Agency and its successors and assigns and the City of _____. The covenants contained in Sections 1, 4.a and 4.b of this Agreement shall remain in effect until the termination date of the Redevelopment Plan. The covenants against discrimination (contained in Sections 4.c and 5 of this Agreement) shall remain in perpetuity.

IN WITNESS WHEREOF, the Agency and the Participant have executed this Agreement as of the date first above written.

, 2002 REDEVELOPMENT AGENCY OF THE CITY OF MODESTO

By Executive Director "AGENCY"

ATTEST:

By Secretary

APPROVED AS TO FORM:

By Michael Milich General Counsel

, 2002 WESTLAND DEVELOPMENT COMPANY, LLC, a California limited liability company

By Craig Mangano, President "PARTICIPANT"

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

[TO BE INSERTED]

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 10-2002**

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO FINDING THAT THE PROJECT LOCATED AT 12TH AND I STREETS IN MODESTO, CALIFORNIA ALSO KNOWN AS THE "RENAISSANCE PROJECT" IS CONSISTENT WITH THE REDEVELOPMENT PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH NO. 90021233)

WHEREAS, the Redevelopment Agency of the City of Modesto (the "Agency") has adopted the Redevelopment Plan Program Environmental Impact Report ("EIR") (State Clearing House No. 90021233) as being complete and adequate pursuant to Section 15090 of the California Environmental Quality Act ("CEQA") Guidelines and

WHEREAS, on September 27, 2000 the City's Community Development Department reviewed the project to determine if said project might have a significant effect on the environment other than those effects identified in the EIR, and

WHEREAS, by the Initial Study, attached hereto as "**Exhibit A**", findings have been made that the proposed project is within the scope of the Redevelopment Plan Program (SCH 90021233)

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that the Agency has completed the Initial Study for the Westland Office Project and the Agency hereby makes the following findings:

1. There are no substantial changes proposed in the project that will require major revisions of the Redevelopment Plan Program EIR.
2. There are no substantial changes occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the Redevelopment Plan Program WIR.
3. No new information, which was not known and could not have been known at the time the Redevelopment Plan Program EIR was certified as complete, has become available.
4. This initial study provides substantial evidence to support findings 1, 2, and 3 above.
5. Said Project is in substantial conformance with the Redevelopment Agency Plan Program EIR

A copy of said Initial Study is attached hereto as **Exhibit "A"**, and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto held on the 8th day of October, 2002, by Agencymember Fisher, who moved its adoption, which motion being duly seconded by

EXHIBIT A

City of Modesto Initial Study

ADOPT OWNER PARTICIPATION AGREEMENT AND RELATED ACTIONS FOR THE PROPOSED WESTLAND OFFICE BUILDING – 12TH & I STREETS

EAVCED 2002-56
October 1, 2002

I. **PURPOSE**

On November 5, 1991, the Modesto Redevelopment Agency certified a Final Program Environmental Impact Report for the Modesto Redevelopment Plan (SCH# 90021233). This Program EIR analyzed the impacts of build-out of the Modesto Redevelopment Plan, which includes the area in which this project is proposed.

Section 15180 (b) of the CEQA Guidelines indicates that an EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

Use of a Program EIR with later activities is set forth in Section 15168 (c) of the CEQA Guidelines and applies to this proposed project. The Guidelines indicate that a subsequent activity ("project") must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared. If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

Section 15162 of the CEQA Guidelines states that when an EIR has been certified for a project no subsequent EIR shall be prepared for that project, unless the lead agency finds one or more of the following:

- A. Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- B. Substantial changes are occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- C. New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

This Initial Study analyzes whether this project may cause any new significant effects on the environment or require new mitigation measures that were not previously examined in the Redevelopment Plan Program EIR. This Initial Study also provides documentation that the project is within the scope of the Redevelopment Plan Program EIR.

Stanislaus County, pursuant to Public Resources Code Section 21002.1, will be the lead agency responsible for considering the effects of the activities involved in the project. Stanislaus County will approve and carry out the development plans for the project and thus will exercise control over the adoption of, and any changes or alterations to, project plans to mitigate any effects deemed significant in light of the attached Impacts and Mitigation Summary from the adopted Final EIR for the Modesto Redevelopment Project (Exhibit B). Such changes or alterations to the proposed development project would be within the responsibility and jurisdiction of Stanislaus County and not the Modesto Redevelopment Agency.

Following Modesto Redevelopment Agency adoption of the Owner Participation Agreement and related actions, Stanislaus County would approve and carry out a proposed development project for construction of a six (6) story office building for a maximum of 90,000 square feet, and a seven (7)-level parking garage for up to 700 parking spaces adjacent to the office building (Westland Office Building).

II. PROJECT DESCRIPTION

- A. **Project Title:** Adopt an Owner Participation Agreement and related actions for the proposed Westland Office Building, 12th and I Streets
- B. **Lead agency name and address:**
Pursuant to Public Resources Code Section 21002.1 (d) , the lead agency is Stanislaus County, 1010 Tenth Street Su 6800, Modesto, CA, 95354 and the Modesto Redevelopment Agency, 1010 Tenth Street, Suite 3300, Modesto, CA, 95354, is a Responsible Agency
- C. **Contact person and phone number:**
Brad Kilger, Director, City of Modesto Community and Economic Development Department, (209) 577-5218
- D. **Project Location:**
Downtown Modesto at 12th and I Streets (see Exhibit A, location map)
- E. **Project Sponsor:**
Modesto Redevelopment Agency, 1010 Tenth Street, Modesto, CA 95354
- F. **General Plan Designation:**
RPD – Redevelopment Planning District
- G. **Current Zoning:**
Project site is zoned C-2, General Commercial
- H. **Description of Proposed Project:**
The project is adoption of an Owner Participation Agreement and related actions by the Modesto Redevelopment Agency for the proposed Westland Office building project. The Owner Participation Agreement (OPA) includes: Stanislaus County purchasing the site parcel and owning approximately 50% of the proposed office building (3 floors). Westland would own approximately 33% as an airspace condominium office/retail parcel (2 floors). StanCERA (Stanislaus County Employee Retirement Association) would own and occupy approximately 17% of the building (1 floor).

The Owner Participation Agreement and its related actions includes:

1. Termination of the existing Disposition and Development Agreement with Westland Development Company for the Renaissance project.
2. Approval of the Owners Participation Agreement between the Modesto Redevelopment Agency, Westland Development Company and Stanislaus County.
3. Approval of the Site Purchase Agreement between the City of Modesto and County of Stanislaus.
4. Approval of the Parking Covenant to provide 44 spaces.

The above documents can be obtained by contacting the Modesto Redevelopment Agency at the Modesto Community and Economic Development Department office 1010 Tenth Street, Su. 3300, Modesto, CA.

The site property is currently used as a 44-space, at-grade municipal parking lot owned by the City of Modesto. The Agreement covers the sale of the property, approximately 0.32 acre APN No. 105-24-09, by the City of Modesto to Stanislaus County, who will be the lead agency and approve and carry out the office building development project.

I. Surrounding land uses:

The subject property is surrounded by existing developed downtown uses including Stanislaus County Courthouse and jail facilities, U.S. Post Office, and various commercial uses.

J. Other public agencies whose approval is required:

Stanislaus County

III. ANALYSIS OF CONFORMANCE WITH SECTION 15162 FINDINGS

A. No substantial changes are proposed in the project which will require major revisions of the environmental impact report

There are ten subject areas in the Final Program EIR for the Amended Preliminary Plan for the Modesto Redevelopment Project. Following is an analysis of how the proposed project conforms with the analysis in the Modesto Redevelopment Project EIR:

1. Land Use and Planning

Land Use and Planning impacts are discussed on pages 3.1-1 through 3.1-7 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement and related actions by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Land Use and Planning impacts or require new mitigation, and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Land uses permitted in the project area are defined by Section IV B of the Redevelopment Plan for the Modesto Redevelopment Project. Stanislaus County as lead agency exercising control over the physical design of the office development project would review,

evaluate and apply mitigation measures or changes or alterations to the office development project for Land Use and Planning impacts per mitigation contained in Section 3.1 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

2. Visual/Aesthetics

Visual/Aesthetics impacts are discussed on pages 3.2-1 through 3.2-10 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement and its related actions by the Modesto Redevelopment Agency is basically an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Visual/Aesthetics impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Visual/Aesthetics impacts per mitigation contained in Section 3.2 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

3. Traffic and Circulation

Traffic and Circulation impacts are discussed on pages 3.3-1 through 3.3-17 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement and related actions by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Traffic and Circulation Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Traffic and Circulation impacts per mitigation contained in Section 3.3 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

4. Air Quality

Air Quality impacts are discussed on pages 3.4-1 through 3.4-12 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement and related actions by the Modesto Redevelopment Agency is basically an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Air Quality Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Air Quality impacts per mitigation measures contained in Section 3.4 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

5. Noise

Noise impacts are discussed on pages 3.5-1 through 3.5-8 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement and related actions by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Noise Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Noise impacts per mitigation measures contained in Section 3.5 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

6. Ecology/Biology

Ecology/Biology impacts are discussed on pages 3.6-1 through 3.6-5 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Noise Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Noise impacts per mitigation measures contained in Section 3.6 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

7. Geology

Geology impacts are discussed on pages 3.7-1 through 3.7-5 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement and related actions by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Geology Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Geology impacts per mitigation measures contained in Section 3.7 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

8. Drainage/Hydrology/Water Quality

Drainage/Hydrology/Water Quality impacts are discussed on pages 3.8-1 through 3.8-5 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement and related actions by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the

environment would result, and thus would not result in new Noise Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Noise impacts per mitigation measures contained in Section 3.8 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

9. Public Services/Utilities/Fiscal Conditions

Public Services/Utilities/Fiscal impacts are discussed on pages 3.9-1 through 3.9-10 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Noise Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Noise impacts per mitigation measures contained in Section 3.9 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

10. Cultural Resources

Cultural Resources impacts are discussed on pages 3.10-1 through 3.10-4 of the Redevelopment Project EIR. Adoption of the Owner Participation Agreement by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Cultural Resources Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for Cultural Resources impacts per mitigation measures contained in Section 3.10 of the attached Exhibit B, Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program, where applicable.

11. Cumulative Impacts

Cumulative impacts are analyzed on page 9-1 of the Program EIR. The proposed Owner Participation Agreement and its related actions is essentially an administrative action where clearly no physical effect on the environment would result, and thus is consistent with and proposes no major revisions to the Modesto Redevelopment Plan. Therefore, the cumulative impacts of this project are consistent with the analysis presented in the Modesto Redevelopment Project Program EIR.

12. Growth Inducing Impacts

Growth inducing impacts are analyzed by the Program EIR on pages 5-1 and 5-2. The proposed Owner Participation Agreement and related actions proposed is essentially an administrative action where clearly no physical effect on the environment would result, and thus is consistent with and proposes no major revisions to the Modesto Redevelopment Plan. Therefore, the growth-inducing impacts of this project are consistent with the analysis presented in the Modesto Redevelopment Project Program EIR.

IV DISCUSSION OF SECTION 15162 FINDINGS

Following is an analysis of how the proposed project is within the scope of the project covered by the Modesto Redevelopment Project Program EIR:

- A. No substantial changes are proposed in the project which will require major revisions of the environmental impact report.

The Modesto Redevelopment Project Program EIR was certified by the Modesto Redevelopment Agency on November 5, 1991. Adoption of the Owner Participation Agreement by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for impacts per mitigation measures contained in the attached Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program where applicable. Therefore, there are no substantial changes proposed in this project which will require major revisions in the Redevelopment Plan Program EIR.

- B. No substantial changes are occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report

The Modesto Redevelopment Project Program EIR was certified by the Modesto Redevelopment Agency on November 5, 1991. Adoption of the Owner Participation Agreement by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for impacts per mitigation measures contained in the attached Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program where applicable.

Therefore, there have been no substantial changes with respect to the circumstances under which this project is being undertaken which will require major revisions in the Modesto Redevelopment Project Program EIR.

- C. No new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available

The Modesto Redevelopment Project Program EIR was certified by the Modesto City Council on November 5, 1991. Adoption of the Owner Participation Agreement by the Modesto Redevelopment Agency is essentially an administrative action where clearly no physical effect on the environment would result, and thus would not result in new Impacts or require new mitigation and is therefore consistent with and proposes no major revisions to the Modesto Redevelopment Project EIR. Stanislaus County, as lead agency exercising control over the physical design of the office development project would review, evaluate and apply mitigation or changes or alterations to the office development project for impacts per mitigation measures contained in the attached Summary of Impacts, Mitigation Measures and Mitigation Monitoring Program where applicable. Therefore, there is no new information, which was not known at the time the Program EIR was certified, that has become available, that would change the conclusions of the EIR.

V. CONCLUSIONS/DETERMINATIONS OF FINDINGS

- A. The proposed project is within the scope of the Modesto Redevelopment Project Program EIR (SCH# 90021233).
- B. There are no substantial changes proposed in the project which will require major revisions of the Modesto Redevelopment Project Program EIR.
- C. There are no substantial changes occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the Modesto Redevelopment Project Program EIR.
- D. No new information, which was not known and could not have been known at the time the Modesto Redevelopment Project Program EIR, was certified as complete, has become available.
- E. This initial study provides substantial evidence to support findings A, B, C and D above.

Signature:


Brad Kilger
Director, Community & Economic Development

Date:

10/1/02

Exhibit A

Site Location Map

Site Location

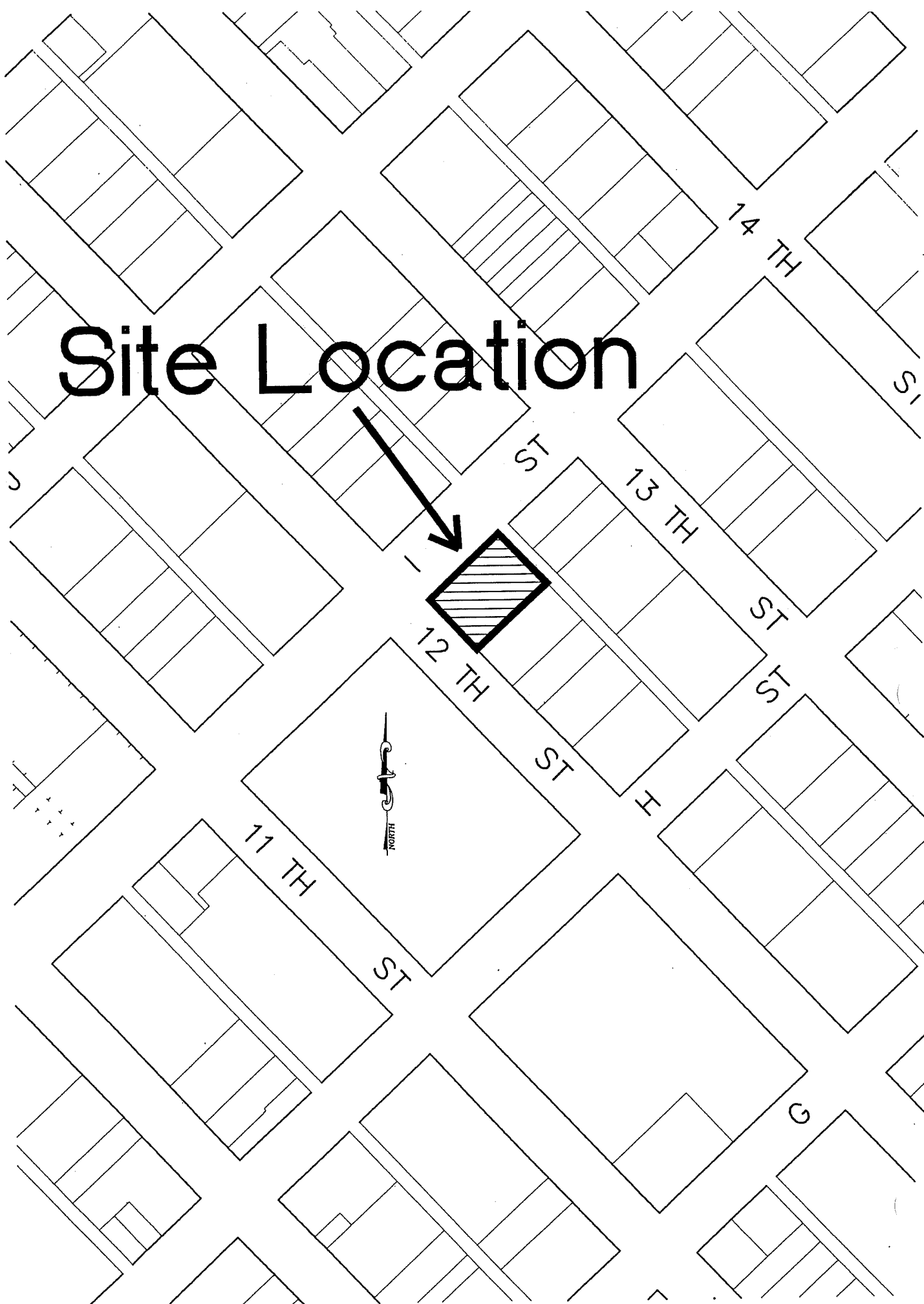


Exhibit B

**Revised Summary of Impacts, Mitigation Measures
and Mitigation Monitoring Program**

**Final Environmental Impact Report
for the Amended Preliminary Plan
for the Modesto Redevelopment Project**

5. REVISED SUMMARY TABLE

The major project impacts are summarized in Table 5-1. The significance of each impact is noted along with the required or recommended mitigation measures. The significance of each impact with and without mitigation is also noted. This table has been revised upon receiving and responding to comments on the Draft EIR. Added lines are highlighted. The following impact categories are used in Table 5-1: (B) beneficial impact; (NS) not significant impact; (PS) potentially or possibly significant impact; and (S) significant adverse impact.

TABLE 5-1. REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
<u>3.1 LAND USE</u>		
Some displacement of existing buildings and houses will be necessary to construct some of the planned improvements, which may be compensable in accordance with state law. (PS)	The Redevelopment Agency should design and locate roadway, parking, and public service projects to minimize the need for acquiring private property. Compensation for such property will be provided as required by state law. The location of redevelopment projects should also minimize potential adverse impacts to surrounding property values. (NS)	The City of Modesto's Office of Planning and Community Development shall monitor all recommended mitigation measures pertaining to land use impacts.
Plan implementation may result in the displacement of affordable housing. (PS)	The Redevelopment Agency should develop and implement a relocation assistance program if redevelopment projects directly result in relocation of low to moderate income residents. (NS)	
Secondary development which occurs as a result of the redevelopment project should remain within General Plan policies and land use regulations, in order to avoid significant impacts. (PS)	Land use regulations and General Plan policies should be enforced to mitigate potential adverse impacts from secondary development caused by redevelopment. Specific measures to mitigate land use impacts which may occur as a result of secondary development should be determined on a case-by-case basis using the City of Modesto's environmental review process. (NS)	
Temporary impacts from construction of redevelopment projects may violate allowable land uses and zoning provisions. (PS)	Temporary impacts from construction such as excessive noise, increased dust, equipment parking, and excavation should be minimized using noise and dust abatement procedures and conscientious construction practices. (NS)	
<u>3.2 VISUAL/AESTHETICS</u>		
The assemblage and disposition of parcels for modern commercial development, the assistance to existing property owners to upgrade their facilities, and the implementation of development standards for parking, signs, and landscaping should each have the	None required.	The City of Modesto Office of Planning and Community Development shall monitor all recommended mitigation measures pertaining to visual resources to ensure compliance.

(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant
 (PS) = Potentially Significant

(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM	
<p>effect of improving the physical character of Modesto. (B)</p>	<p>Visual buffers such as temporary fences should be installed during construction phases to minimize the short-term adverse visual impacts which inevitably result from these phases. (NS)</p>		
<p>Although the initial impacts of projects may include unsightly construction areas, obstruction of views by machinery, reduced or hazardous pedestrian and vehicle access, dust and particulate matter in the air, and other visually negative impacts, this plan will eventually result in improved aesthetic conditions such as reduced traffic congestion and beautification of the downtown area parking lots, signs, and streets, ultimately providing a suitable environment for the well-being of Modesto residents. (NS)</p>	<p>The applicants should be required to design landscaping so as to complement project development and to minimize views of the sites from residences and major view corridors.</p>		
<p>Potential secondary visual impacts may occur due to the construction of future projects which are facilitated by the redevelopment infrastructure improvements. The potential to disrupt or block view corridors or view opportunities is possible, depending on proposed structure heights, bulks, and specific locations; however, at this time, the specific impacts are not known. (PS)</p>	<p>Owners of frontage properties should be encouraged to maintain and repair their structures and landscaping in conjunction with public improvements to streets.</p>		
	<p>Development should be consistent and designed to blend with the existing character of surrounding sites.</p>		
	<p>The undergrounding of utility lines should be undertaken, where feasible, along public streets at the time of construction or reconstruction.</p>		
	<p>Streetside landscaping should buffer residential, commercial, industrial, and recreational areas from one another.</p>		
	<p>Dwellings and other structures should be concentrated into neighborhood units to help preserve</p>		
<p>(B) = Beneficial (PS) = Potentially Significant</p>	<p>(S) = Significant</p>	<p>(NS) = Not Significant</p>	<p>(LS) = Less Than Significant</p>

(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
<p>Detailed site architectural and landscaping plans are not available for potential redevelopment projects such as the Amtrak Station, City Hall, Performing Art Theaters, Centre Plaza Expansion, and Senior Citizens Center, and hence it is difficult at this preliminary stage of planning to determine compliance with the General Plan's design guidelines. (PS)</p>	<p>large areas of open space and agriculture.</p> <p>Beard Brook Park and Graceada Park should be recognized, and maintained and enhanced as primary assets of the redevelopment area. (NS)</p> <p>Further evaluation of the site design impacts should be conducted by the city when the design plans for the Amtrak Station, Performing Arts Theaters, and other projects facilitated by the Redevelopment Plan become available, in order to determine compliance with the Modesto General Plan Guidelines. Future topographic conditions, grading operations, proposed landscaping, open space buffer zones, exterior building materials, and roof-mounted equipment, if any, should be included in the review. (NS)</p>	
<p><u>3.3 TRAFFIC AND CIRCULATION</u></p> <p>The projected improvements to streets, roadways, and intersections would facilitate continued development within the redevelopment area in accordance with General Plan designations/zoning and continued roadway improvements needed to maintain acceptable roadway operating characteristics and avoid adverse impacts. (B)</p>	<p>The agency/city should continue to review and evaluate traffic-related impacts associated with specific projects within the redevelopment areas as they are proposed. Traffic-related impacts should be mitigated in accordance with the city's LOS policy.</p> <p>The city should assess traffic impact fees from future development to fund roadway improvements required, to mitigate impacts of future buildout of the city.</p> <p>The agency/city should participate in a comprehensive plan for construction of roadway improvements required to accommodate future buildout of the city, including widening of Kansas Avenue, upgrading Carpenter Avenue to expressway status, and constructing a new SR 132 expressway between the city's urban limit and SR 99.</p>	<p>The City of Modesto Traffic Engineering Division shall ensure the implementation of these mitigation measures.</p>
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>		

(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
<p>The various street and infrastructure improvements will create temporary adverse impacts to the safety and convenience of motorists and pedestrians. (S)</p>	<p>The agency/city should continue to monitor traffic volume and congestion levels in the downtown area, particularly on B, G, H, K, L, 7th, 9th, and 14th Streets, and implement improvements as needed.</p> <p>The agency/city should consider replacing the existing 7th Street bridge over the Tuolumne River and widen the 9th Street bridge to safely accommodate bicycle and pedestrian traffic.</p> <p>The agency/city should continue to work with CALTRANS to improve access to SR 99 including upgrading interchanges at Briggsmore Avenue and at Kansas Avenue.</p> <p>Developers should implement roadway improvement/traffic mitigation measures suggested as part of the environmental review of currently proposed projects, as those projects are constructed. (B)</p> <p>Coordinate plans for construction within street rights-of-way with officials of the police and fire departments. Ensure that adequate detour routes are established if through traffic is to be temporarily suspended.</p> <p>Time construction activity in travel lanes to occur during off-peak hours. Peak hours may be different for collector streets, arterials, and the downtown area.</p> <p>Complete trenching across all streets in segments to allow at least one travel lane to remain open at all times with the use of decking.</p> <p>Use flagpersons wherever construction equipment is operating in existing roadways.</p>	
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>		

(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
	<p>Implement plans to control pedestrian and bicycle movements across the construction right-of-way.</p> <p>Use flagpersons whenever opposing traffic flows are required to use a single traffic lane. (NS)</p>	
<p><u>3.4 AIR QUALITY</u></p> <p>Earthmoving, hauling and other construction activities would result in localized and temporary increases in the levels of ten micron particulates (PM₁₀). Construction vehicles travelling over unpaved roadways will also result in temporary increases in levels of PM₁₀. (S)</p> <p>The difference in the emissions decrease with or without the redevelopment project is less than one percent of the total Stanislaus County emissions. (LS)</p>	<p>The following mitigation measures would minimize particulate emissions to acceptable levels in the event that construction emissions present a nuisance to surrounding residents:</p> <ul style="list-style-type: none"> - Areas of soil redistribution should be watered down twice daily or as necessary to trap fugitive dust and particulates during construction until planting, grass growth, or building coverage reduce the need for such measures. - If water is limited, soil binders such as soil cement may be spread in conjunction with watering, or sheet coverings such as burlap may be used on small areas. Areas covered with soil binders should be turned over prior to revegetation. - During periods of excessive wind speeds, construction should be temporarily suspended. - Disturbed areas should be revegetated or paved, as soon as possible, to reduce dust during construction activities. (LS) <p>None required.</p>	<p>Determinations of consistency with the 1989 Rules and Regulations should be made on a project-by-project basis as development occurs within and outside of the redevelopment area.</p>
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>		

(CONTINUED)

TABLE 5-3 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM	
<p>The redevelopment project would have the effect of reducing congestion and idling time at intersections through the construction of intersection improvements and roadway widening. Roadway widening will allow for the smoother flow of additional traffic, relieving congestion. The combination of roadway improvements, and decreasing exhaust emissions in the future, would result in lower CO levels at congested areas; the redevelopment project area would generally contribute to a beneficial effect upon localized CO levels. (B)</p>	<p>Individual projects resulting from the redevelopment project could elevate local carbon monoxide levels in excess of state and federal standards. Consequently, individual projects should be evaluated by the lead agency for the need for an environmental impact analysis on a project-by-project basis.</p>		
<p>Cumulatively, no significant impact to regional or local air quality is foreseen. However, because of the scope of the Redevelopment Plan, this analysis cannot predict the effect of future development projects indirectly related to the Redevelopment Plan. (LS)</p>	<p>Future development projects should be evaluated on a project-by-project basis to ensure compliance with current air quality regulations. (LS)</p>		
<p><u>3.5 NOISE</u></p>			
<p>Construction of the proposed project would temporarily increase noise levels generated in the redevelopment area. (S)</p>	<p>All construction vehicles and equipment should be properly muffled. California state noise standards for delivery motor vehicles should be met.</p>		
	<p>In residential areas, construction operations and related travel in the vicinity of the project site to and from the construction area should be limited to between the hours of 7:30 A.M. and 6:00 P.M., Monday through Saturday.</p>		
	<p>The Redevelopment Agency should inform the public of proposed construction timelines to minimize potential annoyance related to construction noise. (NS)</p>		
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>			

(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
<p>Secondary traffic noise impacts to existing sensitive land uses resulting from development facilitated by the redevelopment project. (S)</p>	<p>In areas with existing or projected noise levels above the standards of the General Plan, retrofitting existing structures and neighborhoods with noise dampening equipment is a possible solution to existing and projected noise impacts. Soundwalls could be placed in areas where structures are not oriented towards the noise source.</p> <p>The city should provide noise reduction information such as ceiling/roof and/or wall modifications to homeowners and commercial business owners who are considering reconstruction or remodeling to improve the noise attenuating capabilities of their structures. (NS)</p>	
<p>Secondary traffic noise impacts to future sensitive land uses resulting from development facilitated by the redevelopment project. (PS)</p>	<p>Structures in impacted locations should be evaluated for their conformance to city noise standards.</p> <p>For proposed projects which will generate a substantial number of motor vehicle trips in the area, acoustical analyses may be conducted as part of the city's environmental review process.</p> <p>Soundwalls and noise insulation strategies designed by an acoustical engineer should be considered and installed, where appropriate. Double-paned windows, weather seals, and other insulation measures should be considered on any new building which faces busy roadways.</p> <p>Specific measures to mitigate noise impacts which may occur as a result of secondary development should be determined on a case-by-case basis using the city's environmental review process. (NS)</p>	<p>The City of Modesto Office of Planning and Community Development shall monitor all recommended mitigation measures pertaining to noise impacts.</p>
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>		

(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
3.6 BIOLOGY/ECOLOGY		
<p>Various potential redevelopment projects, including street widening and reconstruction, storm drainage improvements, bridge construction, and construction of various structures, could potentially require removal of urban vegetation such as street trees and landscaping shrubs. The impact of removal of this vegetation in the project area would be insignificant, as it provides only minimal value to wildlife. (NS)</p>	<p>Any trees removed during the construction process should be replaced with trees of suitable type, size, and density. Replacement trees should have low maintenance requirements, should be visually aesthetic, and should be types specified by the City of Modesto Parks and Recreation Department. Native trees should be given preference, as they generally require less irrigation and are more valuable to wildlife. (NS)</p>	<p>The City of Modesto Planning Department shall require proponents of future projects to specifically indicate the fate of mature trees on future project sites and to submit appropriate landscaping plans, subject to approval by the Department of Parks and Recreation.</p>
<p>Silt and dust generation could have a significant localized impact during construction if allowed to coat leaf surfaces. Additionally, construction activities could impact vegetation not scheduled for removal by damaging roots or branches which extend into the construction area. (PS)</p>	<p>Temporary fencing should be placed around trees during grading and construction activities to prevent inadvertent damage. Construction within the dripline of mature trees should be avoided to the maximum extent feasible. Standard construction practices to minimize dust and silt generation and their runoff into streams (e.g., watering of construction sites and use of temporary catch basins) should be employed. (NS)</p>	<p>The City of Modesto Building Inspectors shall visit project sites to ensure compliance with the recommended vegetation protection measures. Failure of the applicants to comply will result in the cessation of construction activity until remedial action has been proposed and approved.</p>
<p>The replacement of the 7th Street bridge could affect a few individual native trees along the Tuolumne River, either directly by removal or indirectly by erosion and deterioration of ecological conditions. (PS)</p>	<p>Each individual native tree removed from a riparian area to accommodate bridge projects must be replaced on a seven-to-one basis by trees of the same species, as per CDFG guidelines. (NS)</p>	
3.7 GEOLOGY		
<p>Accelerated erosion could occur during the construction phase without the use of proper erosion control measures.</p>	<p>Cuts and fills and removal of vegetation shall be minimized.</p>	<p>Prior to issuance of building permits, building plans should indicate the use of treated concrete and steel members, if indicated by soil testing results.</p>
<p>Excessive grading could cause erosion and slumps, especially along the banks of Dry Creek. (NS)</p>	<p>To mitigate grading impacts, revegetation of cut and fill slopes shall be carried out.</p>	
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>		

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TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
<p>Seismic activity from distant faults could result in moderate groundshaking. Groundshaking can significantly impact proposed buildings and structures included in the project area. (S)</p>	<p>Land should be excavated and graded during the dry season, from May to October.</p> <p>Catch basins shall be used to retain sediment on site. (NS)</p> <p>Seismic design requirements of the Uniform Building Code shall be satisfied in order to ensure that project structures are designed to withstand the effects of groundshaking. (NS)</p>	<p>No building permits should be issued if structures do not conform to earthquake standards of the Uniform Building Code.</p>
<p>Landslides and slumps could occur from poorly planned grading along the banks of Dry Creek. (PS)</p>	<p>The grading requirements of the Building Code shall be followed. (NS)</p>	
<p><u>3.8 DRAINAGE/HYDROLOGY/WATER QUALITY</u></p>		
<p>Impacts on drainage ways could occur during construction activities. Accelerated erosion due to the exposure of soils to wind and rain could result in sedimentation and reduced drainage capacity of creeks and ditches. (S)</p>	<p>The grading requirements of the Building Code must be followed, especially along Dry Creek, in order to prevent alteration of the watercourse. (NS)</p>	<p>Building permits should not be issued until drainage plans have been approved by the City of Modesto Public Works Department.</p> <p>A City of Modesto Public Works Construction Inspector should inspect the construction site for the proper use and maintenance of catch basins.</p>
<p>Development of previously undeveloped land will increase the amount of impervious surfaces and stormwater runoff. (PS)</p>	<p>Impacts on storm drainage due to increases in impervious surfaces shall be mitigated on a project-by-project basis. The improvements to the storm drain capacity with redevelopment will more than accommodate increased flows. (NS)</p>	
<p>Flooding of the area along Dry Creek may limit development in this part of the project area. The southern edge of the proposed redevelopment area is located within a 100-year floodplain along Dry Creek. (PS)</p>	<p>Construction of any improvements requires the approval of requisite state and federal agencies as is presently required.</p>	
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>		

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TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
<p>The primary concerns for water quality are increases of pollutants in stormwater runoff from urban areas and accelerated erosion and resulting turbidity and siltation due to construction activities. (PS)</p>	<p>Future developments should mitigate increases in street contaminants such as oil and grease that enter surface waters in the project area.</p> <p>Land should be excavated and graded during dry construction seasons, from April to November. (NS)</p>	
<p><u>3.9 PUBLIC SERVICES</u></p>		
<p>The City of Modesto Fire Department will experience impacts associated with fire safety during the construction of new buildings and projects. During project construction, increased traffic congestion, water supply, and safety problems may develop. Impacts may result from the implementation of specific sewer upgrade projects. These impacts include the disruption of city streets and the associated health and safety risks. The health and safety impact of these projects would need to be addressed on a case-by-case basis. (PS)</p>	<p>Public safety impacts associated with major infrastructure improvements shall be mitigated by coordination among the Public Works and Transportation, Police, and Fire Departments.</p> <p>Before the initiation of any redevelopment project impacting traffic flow, the Chief of Police and Fire Chief shall be informed of specific project location, duration of construction, and alternate routes available.</p> <p>A traffic flow plan shall be approved by the city traffic engineer prior to construction of each roadway improvement project.</p> <p>Public agencies and private developers should consider the undergrounding of utilities where feasible. (NS)</p>	<p>The city Planning Department shall monitor all proposed mitigation measures to ensure they are implemented. This would require the Planning Department to coordinate redevelopment projects among the city traffic engineer, the Police and Fire Departments, the Public Works Department, PG&E, and the Modesto Irrigation District. The city Planning Department should inform all parties of proposed projects and ensure all parties coordinate efforts to ensure public safety.</p> <p>The Police Department should monitor the effectiveness of this plan during the construction phases of each roadway improvement project.</p>
<p>Street widenings, street realignments, and other projects may have temporary impacts on the existing location of electric and gas lines. Due to obstructions, it is likely that relocating 12 Kv overhead lines would not be practical. It is the policy of the MID to require the cost of undergrounding of electric lines to be borne by the requesting party. (NS)</p>	<p>No mitigation required.</p> <p>Improvement of facilities that will require relocation, installation or removal of gas utilities shall be submitted to PG&E for their review and assessment.</p>	
<p>As the Modesto city schools are currently experiencing overcrowding conditions in many</p>	<p>The agency and all entities receiving a share of the property tax will be negotiating regarding</p>	<p>The Redevelopment Agency shall negotiate facility improvements with Modesto city schools to</p>
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>		

(CONTINUED)

TABLE 5 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM	
<p>of their schools, growth resulting from the redevelopment project will have a negative impact. Residential growth will increase student enrollment and overcrowding, unless more school facilities are provided. The school facilities in the redevelopment area have not been specifically identified as potential recipients of redevelopment financing. The Modesto Junior College is exploring agreements with the city to privately develop parts of the West Campus and retaining all or parts of the resulting tax revenues for campus facility development. Agreements may prevent further overcrowding by making more facilities feasible. (PS)</p> <p>The redevelopment project should have a positive impact on the local construction economy. The project proposes the construction of a number of facilities which would benefit local builders and contractors. The overall fiscal effect of the redevelopment project on the city would be positive. Beautification of the downtown area and alleviation of traffic congestion would likely entice more consumers into the downtown area, allowing for a sustained economic recovery of the area. Based on the past experience of Burns & Watry and Earth Metrics with similar redevelopment projects, tax increment financing appears to be the principal source of long-term redevelopment funding available to the city at this time. Some projects may be partially funded through capital facility fees. The city, however, plans to investigate the use of other funding sources, such as assessment districts, to fund proposed projects. Several city</p>	<p>impacts as part of the redevelopment fiscal review process. (NS)</p> <p>To reduce adverse effects of the Redevelopment Plan on any taxing entity, Community Redevelopment Law allows for the formation of a fiscal review committee composed of one representative from each of the affected taxing entities. Within 15 days after receiving notification that a fiscal review committee has been created, and prior to sending a Redevelopment Plan to the fiscal review committee, the Agency shall commence consultation with the committee regarding the impact of the proposed redevelopment project upon the affected taxing entities. If the report of the fiscal review committee concludes that the Redevelopment Plan will cause a financial burden or detriment upon one or more members of the committee, the report may include recommended actions to be implemented by the Agency which would alleviate or eliminate the financial burden or detriment. This would include, but not be limited to, the following:</p> <ul style="list-style-type: none"> - Amendments to the Redevelopment Plan which would modify the total amount of tax increments 	<p>ensure proper consideration of growth impacts to schools.</p> <p>The agency will monitor the recommended fiscal mitigation measures. The Redevelopment Agency shall coordinate all fiscal considerations with the city Planning Department to ensure their compliance with recommended measures.</p>	
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>			

(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM
<p>service departments funded through the City of Modesto general fund could be affected by the tax increment financing method. Property tax increases from this area would not accrue to the general fund, and departments such as police and fire would experience increased service demand due to the cumulative effects of redevelopment growth. (S)</p>	<p>to be received by the Redevelopment Agency, the duration of the Redevelopment Plan, the size of the project area, in kind or number, specific projects proposed to be undertaken by the Agency, or include specific actions or projects to be undertaken by the Agency which would reduce or eliminate the detrimental fiscal effect upon the members of the fiscal review committee.</p> <p>- Payments by the Agency to the taxing entity which is adversely affected by the Redevelopment Plan. (NS)</p>	
<p><u>3.10 CULTURAL RESOURCES</u></p>		
<p>Archaeological resources not previously identified within the redevelopment area, due to the lack of a comprehensive survey, might be uncovered. Discovery would be most likely in areas not previously disturbed. Subsurface construction activities, such as grading, could result in damage to these archaeological resources. If this were to occur, by law all construction activities shall cease until a qualified archaeologist has been contacted. (PS)</p>	<p>Land alteration work shall be stopped if archaeological resources are observed during construction activities. A qualified archaeologist shall be notified. Prompt evaluations shall then be made regarding the finds, and a course of action acceptable to all concerned parties determined. (NS)</p>	<p>The city Office of Planning and Community Development shall monitor recommended mitigation measures to ensure compliance.</p>
<p>As with most areas in California, there is a possibility that Native American burial sites would be encountered during construction. (PS)</p>	<p>In the event that human remains are observed during construction activities, halt all excavation or disturbance of the site until the county coroner has been informed. If the remains are of Native American origin, notify the Native American Heritage Commission within 24 hours. Local Native American Associations and descendants of the deceased should be informed and make recommendations for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code, Section 5097.89. (NS)</p>	
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(CONTINUED)

TABLE 5-1 (CONTINUED). REVISED SUMMARY OF IMPACTS, MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

IMPACT	MITIGATION MEASURES	MITIGATION MONITORING PROGRAM	
<p>There are buildings listed in the Historic Resources Inventory in the project area. The construction of redevelopment projects may have adverse effects upon known and unknown historic resources in the area. Specific projects identified as part of the Predevelopment Plan include the reconstruction of J Street and a street overlay from 13th to Downey. These projects may have adverse effects upon the McHenry Mansion on 15th and I Street, and the U.S. Post Office at 12th and I Streets. The Redevelopment Plan proposes the renovation and upgrading of candidate buildings which are structurally deficient and have "obsolete lay-out." Some of the currently undefined "candidate" buildings may be potentially historically significant resources. The renovation of these structures without proper historical identification and due consideration may destroy their historical integrity. (S)</p>	<p>The city shall make every reasonable effort to preserve the integrity of any potentially significant historic buildings in the redevelopment area. A finding of historical significance for buildings in the redevelopment area should be agreed upon by the Landmark Preservation Commission and submitted to the city council for approval. This list should be circulated to the Planning Department, the Building Inspection Department, and the Redevelopment Agency for reference. Once designated, any application for permits for demolition or remodeling shall be referred to the Landmark Preservation Commission. The Commission shall either approve or suggest changes to the permit in order to comply with the historical nature of the site prior to issuance of the permit. If an historic structure may be affected, the Landmark Preservation Commission, a qualified architectural historian, and the city engineer shall agree upon solutions to mitigate any significant impacts.</p>		
<p>(B) = Beneficial (S) = Significant (NS) = Not Significant (LS) = Less Than Significant (PS) = Potentially Significant</p>			

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 11-2002**

**A RESOLUTION ACCEPTING A REPORT ON THE PROGRESS OF,
RECEIVING TESTIMONY FROM INTERESTED PERSONS ON, AND HEREBY
AFFIRMING THE FIVE-YEAR (2000-2004) IMPLEMENTATION PLAN.**

WHEREAS, the Agency by Resolution No. 16-94 adopted a five-year (1995-99) implementation plan in 1994, pursuant to California Redevelopment Law, and

WHEREAS, the Agency by Resolution No. 12-99 updated its implementation plan by adopting the current five-year (2000-2004) implementation plan in 1999, and

WHEREAS, California Redevelopment Law § 33490 requires that the Agency, at least once within the five year term of the plan, conduct a public hearing and hear testimony of all interested parties for the purpose of reviewing the redevelopment plan and the corresponding implementation plan for each redevelopment project within the jurisdiction and evaluating the progress of the redevelopment project, and

WHEREAS, a duly noticed public hearing was held by the Agency on October 08, 2002, at which public hearing all interested persons were given an opportunity to be heard relative to the five-year implementation plan.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that the Agency does hereby accept a report on the progress of the five-year (2000-2004) implementation plan.

BE IT FURTHER RESOLVED that the Agency has received testimony from interested parties for the purpose of reviewing the redevelopment plan and the corresponding implementation plan.

BE IT FURTHER RESOLVED that the Agency does hereby affirm the five-year (2000-2004) implementation plan.

The foregoing resolution was introduced at a regular meeting of the Modesto Redevelopment Agency held on the 8th day of October, 2002, by Agency Member Fisher, who moved its adoption, which motion being duly seconded by Agency Member Frohman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agency Members: Conrad, Fisher, Frohman, Keating, O'Bryant

NOES: Agency Members: None

ABSENT: Agency Members: Jackman, Chairman Sabatino

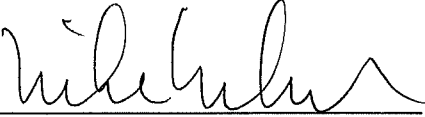
ATTEST:



JEAN ZAHR, Secretary

APPROVED AS TO FORM:

BY:



MICHAEL D. MILICH, General Counsel

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 12-2002**

A RESOLUTION APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH MBIA MUNISERVICES COMPANY (MMC) TO PROVIDE PROPERTY TAX AUDIT AND REVIEW SERVICES ON A CONTINGENCY FEE BASIS AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE SAID AGREEMENT.

WHEREAS, the City of Modesto, by Resolution 89-532, approved an agreement with Municipal Resource Consultants to provide sales tax audit services, and

WHEREAS, the City of Modesto by Resolution 93-337, approved an amendment to the agreement with Municipal Resource Consultants to provide audits for business license tax, franchise fees, transient occupancy tax, utility users tax and documentary transfer tax, and

WHEREAS, MBIA MuniServices Company (MMC), the successor to Municipal Resources Consultants, has proposed expanding its services to include audit of property tax revenues, and

WHEREAS, at its meeting on September 4, 2002, the Redevelopment Agency Citizens Advisory Commission recommended approval of the award of the property tax audit contract in concept,

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that it hereby approves the agreement with MMC to provide property tax audit and review services.

BE IT FURTHER RESOLVED that the Executive Director, or his designee, is hereby authorized to execute said agreement.

**REDEVELOPMENT AGENCY OF THE CITY OF MODESTO
RESOLUTION NO. 13-2002**

**A RESOLUTION APPROVING THE PURCHASE OPTION AGREEMENT
BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO, A PUBLIC BODY, CORPORATE AND POLITIC (THE "AGENCY")
AND FMC CORPORATION (THE "OWNER") AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO EXECUTE SAID AGREEMENT**

WHEREAS, Owner's parcel located within the City of Modesto and within the Modesto Redevelopment Agency Project, specifically identified as Stanislaus County Assessors Parcel Number 029-1313, containing 45 acres, more or less, is proximate to State Route 99 and within an area that would be conducive to the development of a business park, and

WHEREAS, the Agency is desirous of encouraging the development of said business park (also known as "Kansas Avenue Business Park") in the area of downtown Modesto for the benefit of the Agency and the City of Modesto, and

WHEREAS, the Agency and the Owner have determined that it is in the best interest of both parties to pursue the development of said business park on said parcel, and

WHEREAS, the Agency and the Owner have successfully negotiated a Purchase Option Agreement containing certain terms and conditions relating to the purchase of said property by the Agency,

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that the Purchase Option Agreement by and between the Redevelopment Agency of the City of Modesto, a public body, corporate and politic (the "Agency") and FMC Corporation (the "Owner") is hereby approved.

BE IT FURTHER RESOLVED that the Redevelopment Agency of the City of Modesto does hereby authorize and direct the Executive Director to execute on behalf of the Agency a Purchase Option Agreement with Owner for purchase of Owner's property located on Kansas Avenue, which agreement is attached as **Exhibit A** and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto held on the 6th day of November, 2002, by Agency Chair Sabatino, who moved its adoption, which motion being duly seconded by Agency member Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agency members: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Chair Sabatino

NOES: Agency members: None

ABSENT: Agency members: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

APPROVED AS TO FORM:

Michael D. Milich

MICHAEL D. MILICH, General Counsel

OPTION AGREEMENT

This Option Agreement ("Agreement") is entered into as of this ___ day of November, 2002 (the "Effective Date"), by and between FMC CORPORATION, a Delaware corporation ("Optionor") and REDEVELOPMENT AGENCY OF THE CITY OF MODESTO, a public body, corporate and politic ("Optionee").

Recitals

A. Optionor is the owner of that certain real property located in the City of Modesto, County of Stanislaus, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. Optionor and its predecessors formerly operated manufacturing facilities on the Property for the production of certain chemicals. Optionor desires to return the Property to productive use as a "Brownfields" property.

C. Optionee desires to acquire the Property for redevelopment into a business park.

D. In order to accomplish their mutual goals, Optionor desires to grant to Optionee and Optionee desires to receive from Optionor an option to purchase the Property subject to the terms and conditions set forth below. Subject to the satisfaction of the conditions precedent set forth herein for the effectiveness of the option and upon the timely exercise of the option by Optionee, the parties intend to effect the purchase and sale of the Property as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, each of the parties hereto agree as follows:

1. Background; Assumptions.

(a) Environmental Disclosures. Optionor and its predecessors in interest in the Property variously operated manufacturing facilities on the Property for the production of barium and strontium chemicals. These operations included the use from the early 1950's to the late 1970's of on-site evaporation ponds to manage residual solids from the ore processing units and air pollution control equipment, which solids were slurried with water and discharged to the ponds. The operation of the ponds resulted in contamination of the groundwater with total dissolved solids, particularly sulfates. The Property is currently subject to Cleanup and Abatement Order No. 98-724 adopted by the California Regional Water Quality Control Board, Central Valley Region ("RWQCB"), on July 26, 1998 ("Order"), and Cleanup and Abatement Order Nos. 93-202 and 96-063 issued by the RWQCB (collectively, "Prior Orders"). Starting in the early 1960's, FMC has installed a number of groundwater monitoring wells, both on and off the Property, and routinely has sampled and reported on the results of samples from these wells to the Board under the terms of the Order, the Prior Orders and other previous orders issued by the RWQCB. Since 1996, Optionor has operated on the Property a groundwater remediation system including monitoring and extraction wells and a treatment system, which discharges to the City of Modesto's ("City") publicly owned treatment works under the terms of a permit

issued by the City. Optionor will be required to perform groundwater remediation on the Property for an indefinite period of time after the Close of Escrow (as defined in Section 6(b)).

Pursuant to the Order, Optionor is undertaking a remedial investigation of the groundwater on the Property and will prepare a feasibility study addressing alternatives for remediation of groundwater contamination. Soils under the former pond areas are impacted with sulfates and other compounds that migrate to the upper groundwater aquifer as sulfates and total dissolved solids. FMC anticipates that the remedial alternatives that FMC will propose will include fill, regrading and cover of soil in areas of the soil, including the former pond areas, that provide an ongoing source of sulfates and total dissolved solids as a means of preventing further groundwater contamination through infiltration of these soils by storm and surface water (such work is hereafter referred to as the "Regrading/Cover Work"). The RWQCB may also require additional soil remediation measures in the vicinity of the former pond areas or in the former manufacturing and former materials and waste storage areas.

As a result of the past storage of barite ore and the processing of this ore and management of residues from this processing, areas of surface soils on the Property are impacted with elevated concentrations of barium. In addition, as a result of past manufacturing and other operations, surface soils may be impacted by other contaminants. Optionor and the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") entered into a Voluntary Cleanup Agreement ("VCA") effective as of July 8, 2002 for soil contamination on the Property. The VCA requires that Optionor prepare a Soil Removal Action Workplan ("RAW"), or, if determined by DTSC, a Soil Remedial Action Plan ("RAP"). Optionor anticipates that the RAW, or if required by the DTSC, the RAP, will require that contaminated soils be relocated, consolidated and covered by buildings, landscaping, parking lots and roadways that will be constructed during the redevelopment of the Property (such work is hereafter referred to as the "Soil Management Work"). The RAW, or RAP, if required, may require that additional remediation measures be taken on the Property with respect to soil.

Optionor contemplates that the implementation of institutional controls such as deed restrictions on the Property will be required by both the RWQCB and DTSC. Separate deed restrictions may be required or the requirements from both agencies may be imposed in one deed restriction. The deed restrictions may limit the use of the Property to commercial and industrial purposes. In addition, any deed restriction required by the RWQCB may include provisions on maintenance of covered areas in the former pond areas and other areas of the Property, a prohibition on disturbance of the covered areas without notification to and approval of the RWQCB and a prohibition on use of the groundwater from the first semi-confined aquifer above the blue clay subsurface layer. Any deed restrictions required by the DTSC may include provisions with respect to the cover of impacted soils by buildings or paving and require that a soil management plan be approved by the DTSC before excavation in any covered areas occurs.

Optionee acknowledges that the full extent of the soil remedial measures required for the Property will not be known until DTSC approval of the RAW, or RAP, if required, and RWQCB approval of any remedial measures proposed by FMC under the Order. Notwithstanding the foregoing, Optionee acknowledges that the time period for DTSC approval

of the RAW, or RAP, if required, and RWQCB approval of remedial measures proposed by FMC under the Order is uncertain and may extend beyond the Option Term (as defined in Section 2(b)).

(b) Assumptions. Optionor and Optionee desire to cooperate to return the Property to productive use as a "Brownfields" property. The parties anticipate that their mutual goals can be achieved if (i) the DTSC approves the Soil Management Work as the final remedial measure for the remediation of contaminated soils on the Property, (ii) the RWQCB approves the Regrading/Cover Work, and (iii) the costs to Optionor for performance of the Soil Management Work and Regrading/Cover Work are within Optionor's estimate. The parties acknowledge that they are entering into this Agreement on the assumption that the DTSC will approve the Soil Management Work as the final remedial measure for the remediation of contaminated soils on the Property and the RWQCB will approve the Regrading/Cover Work, and that the cost to Optionor of performance of the Soil Management Work and Regrading/Cover Work will not exceed Optionor's estimate thereof. The parties further acknowledge that the option granted to Optionee pursuant to this Agreement is conditioned on such assumptions. The parties agree to cooperate in good faith to achieve the goals stated herein.

(c) Conceptual Site Plan. Optionor and Optionee shall use diligent efforts to reach agreement, within six (6) months after the Effective Date, on a conceptual site plan for the redevelopment of the Property showing the location of public streets, parking and paved areas, building footprints, landscaped areas, retention ponds and other improvements ("Conceptual Site Plan"). The Conceptual Site Plan will be developed based on the assumption that (i) the RWQCB will approve the Regrading/Cover Work; (ii) the DTSC will approve the Soil Management Work as the final remedial measure for contaminated soils on the Property and (iii) any Regrading/Cover Work and Soil Management Work shall be performed beneath the public streets, parking areas, paved areas and building footprints shown on the Conceptual Site Plan (such areas are hereafter referred to as the "Containment Areas"). In addition, the Conceptual Site Plan will recognize the need to maintain groundwater extraction and monitoring wells, a treatment facility and related equipment on the Property to continue groundwater remediation for an indefinite period of time. Once the Conceptual Site Plan has been fully approved, both parties shall initial the same. If the Conceptual Site Plan is not approved by both parties by the date that is six (6) months after the Effective Date, then unless the parties otherwise agree in writing, this Agreement shall terminate, and neither party shall have any further obligation hereunder.

(d) Cooperation. Once the Conceptual Site Plan has been approved by Optionor and Optionee, then as to the Containment Areas shown on the Conceptual Site Plan, based on the anticipated results of further remedial investigation work to be undertaken by Optionor under the VCA and the Order, Optionor expects to propose (i) the Regrading/Cover Work to the RWQCB, and (ii) the Soil Management Work to the DTSC, as part of the RAW, or if required the RAP, as the final remedial measure for remediation of contaminated soils on the Property. Once proposed, Optionor shall use diligent efforts to obtain DTSC approval of the Soil Management Work and RWQCB approval of the Regrading/Cover Work. Optionee shall cooperate with Optionor in seeking DTSC approval of the Soil Management Work and RWQCB approval of the Regrading/Cover Work. Optionor shall give Optionee prior written notice of any

meetings with DTSC regarding the Soil Management Work or with RWQCB regarding the Regrading/Cover Work to allow Optionee to send representatives to such meeting. Similarly, Optionee shall not schedule any meeting with DTSC or RWQCB regarding the Property without providing prior written notice to Optionor together with a proposed agenda for such meeting in order to permit Optionor to prepare for and send representatives to such meetings. During the term of this Agreement, each party shall provide the other party with copies of any reports or correspondence sent to or received by either Optionor or Optionee from DTSC or RWQCB with respect to the Property.

2. Option.

(a) Grant of Option. Optionor hereby grants to Optionee the exclusive right to purchase the Property at the price and under the terms and conditions set forth herein (the "Option"). The effectiveness of the Option shall be subject to satisfaction of the condition set forth in Section 2(c).

(b) Option Term. The term of the Option ("Option Term") shall commence on the Effective Date and expire on the earlier of (i) fifteen (15) days after the Option Condition is satisfied or (ii) the third (3rd) annual anniversary of the Effective Date. If the expiration of the Option Term shall fall on a Saturday, Sunday or legal holiday, then such expiration shall be extended to the next following business day.

(c) Option Condition. The parties acknowledge that the Option granted herein and Optionee's ability to exercise the Option shall be subject to the condition precedent that (i) DTSC approve, by letter of acceptance or approval to Optionor, as part of the RAW and/or RAP, the Soil Management Work within the Containment Areas shown on the Conceptual Site Plan approved by the parties as the final remedial measure for contaminated soil on the Property ("DTSC Approval"); (ii) that the RWQCB approve, by letter of acceptance or approval to Optionor, the Regrading/Cover Work to prevent infiltration of storm and surface waters into areas of the soil, including the former pond areas, that provide an ongoing source of sulfates and total dissolved solids in groundwater ("RWQCB Approval"); and (iii) that Optionor's estimated cost ("Estimated Cost") not exceed One Million Dollars (\$1,000,000) (collectively, "Option Condition"). The parties acknowledge that DTSC Approval and RWQCB Approval may not occur concurrently and that such approvals may be issued at different times. Optionor shall give Optionee prompt written notice of each of the DTSC Approval and RWQCB Approval, when and if each is received by Optionor. Optionor's "Estimated Cost" shall mean the estimated cost to Optionor to review and approve the Conceptual Site Plan, to develop and/or review the design and engineering work, to obtain permits and authorizations required to perform, and actual field work performed by Optionor in connection with the Soil Management Work, Regrading/Cover Work, and any other remedial work obligation involving soil remediation imposed upon FMC by the DTSC or RWQCB with respect to the Property, including any Additional Work (as defined in Section 9(b)), any work involving Additional Cost (as defined in Section 9(b)), and staging and coordination of the Additional Work to be performed by Optionor with the Grading Activities (as defined in Section 9(b)) to be performed by Optionee. Not later than the date that Optionor has proposed both of (i) the Soil Management Work to DTSC for approval as part of the RAW or

RAP and (ii) the Regrading/Cover Work to the RWQCB for approval, Optionor shall develop a good faith estimate of Optionor's Estimated Cost. Optionor shall provide Optionee with a copy of the good faith estimate. If Optionor's good faith estimate of Optionor's Estimated Cost exceeds One Million Dollars (\$1,000,000), then Optionor may give Optionee written notice of Optionor's good faith estimate of the amount by which Optionor's Estimated Cost exceeds One Million Dollars (\$1,000,000) (such amount is hereafter referred to as the "Excess Cost"). In such event, Optionor may elect to treat the Option Condition as not satisfied and give written notice of its intent to terminate the Agreement to Optionee ("Termination Notice"). Within fifteen (15) calendar days after receipt of Optionor's Termination Notice, Optionee may give Optionor written notice of Optionee's election and agreement to pay all of Optionor's Excess Cost, which notice shall identify the source of funds Optionee intends to use to pay the Excess Cost and indicate that such funds will be available upon the Close of Escrow to pay the Excess Cost ("Excess Cost Notice"). If Optionee delivers the Excess Cost Notice within fifteen (15) calendar days after receipt of the Termination Notice, Optionor's termination shall be of no force and effect and this Agreement shall continue. If Optionee does not deliver the Excess Cost Notice within said fifteen (15) calendar day period, then this Agreement shall terminate at the end of said fifteen (15) calendar day period.

If the Agreement has not terminated in accordance with the foregoing paragraph, then Optionor shall have fifteen (15) calendar days after receipt of both DTSC Approval and RWQCB Approval, or the later of the dates, if these approvals are received at different times, to confirm Optionor's good faith estimate of Estimated Cost based on any changes in the Soil Management Work and/or Regrading/Cover Work approved by the DTSC and RWQCB, respectively, from the Soil Management Work and Regrading/Cover Work proposed by Optionor. If Optionor is able to confirm within said fifteen (15) calendar day period that its good faith estimate of Optionor's Estimated Cost will not exceed One Million Dollars (\$1,000,000), Optionor shall give written notice of such confirmation to Optionee and the Option Condition shall be satisfied. If within said fifteen (15) calendar day period, Optionor determines in good faith that Optionor's Estimated Cost will exceed One Million Dollars (\$1,000,000) or that Optionor's Excess Cost will be higher than Optionor's previous good faith estimate, then Optionor shall give written notice of Optionor's good faith estimate of Optionor's revised Excess Cost. In such event, Optionor may elect to treat the Option Condition as not satisfied and give a Termination Notice to Optionee. If Optionee gives an Excess Cost Notice to Optionor within fifteen (15) calendar days after receipt of Optionor's Termination Notice, the Termination Notice shall be of no force and effect and the Option Condition shall be satisfied. If Optionee fails to deliver an Excess Cost Notice within fifteen (15) calendar days after receipt of Optionor's Termination Notice, the Option Condition shall be deemed not satisfied and this Agreement shall terminate. Optionor's failure to deliver a Termination Notice within the fifteen (15) calendar day period referenced in this paragraph after determining that Optionor's Estimated Cost will exceed One Million Dollars (\$1,000,000) shall be deemed satisfaction of the Option Condition. Once the Option Condition has been satisfied, Optionee may exercise the Option in accordance with Section 2(d) below. If the Option Condition is not satisfied prior to the expiration of the Option Term or if Optionor terminates this Agreement due to non-satisfaction of the Option Condition, this Agreement shall terminate, Optionor shall have no obligation to sell and Optionee shall have no right to purchase the Property, and neither party shall have any further obligation hereunder

(except as provided in the Due Diligence Agreement).

(d) Exercise of Option. From and after the date the Option Condition has been satisfied in accordance with Section 2(c) above, Optionee may exercise the Option at any time prior to the expiration of the Option Term by giving written notice to Optionor at the address set forth in Section 16(b) hereof or such other address as may be designated in writing by Optionor ("Exercise Notice") and by delivery by Optionee to Escrow Holder (defined in Section 6(a) hereof) concurrently therewith the amount of Fifty Thousand Dollars (\$50,000.00) ("Exercise Deposit"). The date upon which the Exercise Notice is delivered to Optionor shall be referred to in this Agreement as the "Exercise Date." Time is of the essence as to the exercise of the Option.

(e) Automatic Termination; Release of Option. If Optionee (i) fails to exercise the Option in strict accordance with the provisions hereof prior to the expiration of the Option Term, (ii) fails to close escrow on the Property through no fault of Optionor following the timely exercise of the Option in accordance with the provisions hereof, (iii) fails to deliver the Exercise Deposit to Escrow Holder on or before the date that such amount is due, or (iv) is in breach or default of any of its obligations under this Agreement after any applicable notice and cure period, then (x) this Agreement and the rights of Optionee hereunder shall automatically and immediately terminate without notice, (y) each party shall be discharged of its obligations hereunder (except that Optionee's indemnity obligations set forth in Sections 7 and 14 hereof and the Due Diligence Agreement (as defined in Section 7) shall survive the termination of this Agreement), and (z) Optionor shall be entitled to retain the Option Payment and the Exercise Deposit (if applicable). Upon termination of this Option as described in this Section 2(e), Optionee agrees that it will, within three (3) days following written request by Optionor, execute and deliver to Optionor a release of option or such other document as may be reasonably required by Optionor to verify the termination of this Agreement.

(f) Option Consideration Payment. Concurrently with the execution of this Agreement, Optionee shall deliver to Escrow Holder, together with a fully executed copy of this Agreement, the sum of Fifty Thousand Dollars (\$50,000.00) (the "Option Payment"), as consideration for the grant of the Option. Optionee shall instruct Escrow Holder to immediately release the Option Payment to Optionor.

(g) Nonrefundability of Option Payment; Application to Purchase Price. The Option Payment shall be non-refundable to Optionee under all circumstances, including non-satisfaction of the Option Condition (unless Escrow fails to close due to Optionor's material default) and shall be applicable to the Purchase Price (as defined in Section 4) of the Property at the Close of Escrow. If Escrow fails to close due to Optionee's default, Optionor may retain the Option Payment as part of the liquidated damages specified in Section 15. The parties acknowledge and agree that the nonrefundable nature of the Option Payment is a bargained for term and condition of this Agreement, and is fair compensation to Optionor for the Option granted herein.

3. Purchase and Sale of Property. If Optionee exercises the Option within the

Option Period in accordance with Section 2(d), Optionor shall sell the Property to Optionee, and Optionee shall purchase the Property from Optionor, upon the terms and conditions hereinafter set forth. The Property shall include all rights, privileges, and easements appurtenant to the Property, including, without limitation, all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, any rights of way or other appurtenances used in connection with the beneficial use and enjoyment of the Property, and all of Optionor's right, title, and interest in and to all public roads and alleys adjoining or servicing the Property.

4. Purchase Price. The purchase price for the Property ("Purchase Price") shall be the sum of (i) One Million Dollars (\$1,000,000) and (ii) five percent (5%) of the Gross Proceeds (as defined in Section 5(c)) received by Optionee upon the sale, lease, disposition or other transfer of the Property in excess of One Million Dollars (\$1,000,000).

Optionee acknowledges that the Purchase Price has been established with the understanding that (i) this Agreement is conditioned on the satisfaction of the Option Condition and (ii) the timing of DTSC Approval and RWQCB Approval is uncertain. Optionee further acknowledges that Optionee or its purchaser of the Property will be unable to purchase and redevelop the Property until the Option Condition has been satisfied. In addition, Optionee acknowledges that Optionor may be required to enter onto the Property after the Close of Escrow to implement and/or complete remedial measures which are not part of the Soil Management Work or Regrading/Cover Work (such work is defined in Section 9(b) as the "FMC Remedial Work").

5. Payment of Purchase Price. The Purchase Price for the Property shall be payable by Optionee to Optionor as follows:

(a) Exercise Deposit. On the Exercise Date, Optionee shall deliver to Escrow Holder the Exercise Deposit in accordance with Section 2(d) above. Optionee shall instruct Escrow Holder to immediately release the Exercise Deposit to Optionor. Except as otherwise expressly set forth herein, the Exercise Deposit shall be nonrefundable. The Exercise Deposit shall be credited against the Purchase Price at the Close of Escrow (as defined in Section 6(b) below). If Optionee fails to complete the purchase of the Property in accordance with this Agreement, then Optionor shall be entitled to retain the Exercise Deposit as liquidated damages pursuant to Section 15 hereof.

(b) Cash Portion of Purchase Price. At the Close of Escrow, Buyer shall deposit with Escrow Holder cash in the amount of Nine Hundred Thousand Dollars (\$900,000), which represents the One Million Dollar (\$1,000,000) amount of the Purchase Price under Section 4(i), less the Exercise Deposit and the Option Payment ("Cash Purchase Price").

(c) Contingent Portion of Purchase Price. As additional consideration for the sale of the Property, Optionee shall pay to Optionor at the time set forth below, five percent (5%) of the amount by which the Gross Proceeds received by Optionee upon the sale, lease, disposition or other transfer of the Property to a third party exceed One Million Dollars (\$1,000,000) ("Contingent Purchase Price"). As used herein, the term "Gross Proceeds" shall

mean the total amount of compensation, income, revenue, rent, fees (other than City plan check or development-related fees designed to defray City costs), charges or other monetary consideration received by or payable to Optionee (or any other agency or entity related to Optionee or the City of Modesto to whom Optionee transfers the Property or any interest in the Property ("City Affiliate")) in connection with any transfer of the Property or any interest therein made by Optionee or a City Affiliate to a third party during the ten (10) year period beginning with the date of the Close of Escrow ("Contingent Payment Period"). If Optionee and/or a City Affiliate should enter into a ground lease, lease, license or other agreement that permits a third party to occupy the Property or any portion thereof during the Contingent Payment Period, "Gross Proceeds" shall include all rent, fees (other than City plan check or development-related fees designed to defray City costs), charges or other monetary sums payable to Optionee and/or a City Affiliate, and the Contingent Purchase Price shall include five percent (5%) of all rent, fees, charges or other monetary sums due and payable to Optionee and/or a City Affiliate during the term of such lease, license or other agreement. With respect to a transfer by grant deed or similar conveyance that transfers fee interest in the Property or a portion thereof, Optionee shall pay the Contingent Purchase Price to Optionor concurrently with such transfer by Optionee and/or a City Affiliate of the Property or any interest therein to a third party transferee. With respect to a transfer by ground lease, lease, license, occupancy agreement or other agreement by which the Optionee and/or City Affiliate receive consideration on a periodic basis during the Contingent Payment Period, Optionee shall pay the Contingent Purchase Price to Optionor as such periodic consideration is received by Optionee and/or such City Affiliate. Optionee and/or such City Affiliate shall provide Optionor with a copy of any instrument transferring an interest in the Property, whether by deed, ground lease, lease, license, occupancy agreement or other agreement at the same time as Optionee and/or the City Affiliate transfers such interest. The obligation to pay the Contingent Purchase Price pursuant to this Section 5(c) shall be binding upon each person or entity acquiring the Property or an interest therein and shall constitute a covenant running with the land pursuant to applicable law, including without limitation, California Civil Code section 1468. At the Close of Escrow, Optionor and Optionee shall execute and deliver a Memorandum of Obligation to Pay Contingent Purchase Price in the form of Exhibit "B" attached hereto ("Memorandum"), which Memorandum shall be recorded in the Official Records of Stanislaus County, California ("Official Records") at the Close of Escrow.

6. Escrow.

(a) Escrow Holder. Within three (3) business days following the Effective Date, the parties shall open an escrow ("Escrow") with First American Title Guaranty Company, whose address is 1506 H Street, Modesto, California 95354 ("Escrow Holder") for purposes of consummating the transaction contemplated by this Agreement. Concurrently with the opening of Escrow, the parties shall deliver to Escrow Holder a copy of this Agreement and instructions for disposition of the Option Payment and the Exercise Deposit in accordance with the terms of this Agreement. At least twenty-four (24) hours prior to the Close of Escrow, Optionee and Optionor shall each deliver to Escrow Holder written closing instructions and all executed documents, payments and funds necessary to complete the same in accordance with the terms hereof.

(b) Close of Escrow. The Close of Escrow for the purchase and sale of the Property shall occur on the date that is fifteen (15) days after the Exercise Date. For purposes of this Agreement, the "Close of Escrow" or the "Closing Date" shall mean the date that the Grant Deed (as defined in Section 11(a)(i)) is recorded by Escrow Holder in the Official Records of Stanislaus County, California ("Official Records").

(c) Excess Cost Escrow. If Optionee has delivered an Excess Cost Notice in accordance with Section 2(c), then at the Close of Escrow the parties shall establish a separate escrow with Escrow Holder ("Excess Cost Escrow"). At the Close of Escrow, Optionee shall deposit funds into the Excess Cost Escrow in the amount equal to the Excess Costs estimated by Optionor in its last Termination Notice. Optionor and Optionee shall also execute and deliver escrow instructions to Escrow Holder for the disposition of the funds in the Excess Cost Escrow to pay Excess Costs after the Close of Escrow in accordance with the terms set forth in the Right of Entry Agreement (as defined in Section 9(a)).

7. Due Diligence Agreement. Concurrently with the execution of this Agreement, Optionor and Optionee shall enter into that certain Due Diligence Agreement in the form of Exhibit "C" attached hereto ("Due Diligence Agreement"). Under the Due Diligence Agreement, Optionee shall have a ninety (90) day period commencing with the Effective Date ("Feasibility Period") to review the Due Diligence Documents (as defined in the Due Diligence Agreement), perform Physical Inspections and/or Environmental Investigations (as defined in the Due Diligence Agreement) and perform such other due diligence investigation of the Property as Optionee deems necessary. Optionee's exercise of the Option shall be deemed to be Optionee's approval of its review of the Due Diligence Documents, any Physical Inspections and/or Environmental Investigations performed by Optionee and Optionee's due diligence investigation of the Property. Optionee shall maintain and shall cause Optionee's agents, contractors and consultants entering onto the Property to perform Physical Inspections and/or Environmental Investigations to maintain the insurance required by the Due Diligence Agreement. Optionee shall indemnify, defend and hold Optionor harmless from and against any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees and other direct costs that Optionor may actually incur as a result of Optionee's activities on the Property; provided, however, the foregoing indemnity shall not extend to liability for existing environmental conditions on, in or under the Property discovered by Optionee in the course of its Physical Inspections and/or Environmental Investigations, except and to the extent that Optionee's activities on the Property exacerbate any existing environmental conditions.

8. Title.

(a) Title Report. Within five (5) business days after the Effective Date, Optionee shall obtain from Escrow Holder a current preliminary title report for the Property (the "Title Report"), together with copies of all related underlying documents and a map plotting any easements encumbering the Property. During the Feasibility Period, Optionee shall have the right to obtain, at Optionee's sole cost and expense, an ALTA Survey of the Property ("Survey"); provided, however, that the Feasibility Period shall not be extended in order to permit Optionee to obtain a Survey. During the Feasibility Period, Optionee shall have the opportunity to review

the Title Report, the easement plat, the documents listed as exceptions to title in the Title Report and any Survey obtained by Optionee. Optionee's exercise of the Option shall be deemed Optionee's acceptance of all exceptions to title shown in the Title Report and all matters shown on the easement plat, the documents listed in the Title Report and any matter shown on any Survey. Optionee shall acquire title to the Property subject to the lien of real property taxes and assessments not yet due and payable and supplemental taxes, if any; all exceptions shown on the Title Report (including all preprinted exceptions); an easement for overhead wires in favor of the Modesto Irrigation District; any deed restrictions required to be recorded against the Property by the DTSC, RWQCB or any other governmental agency having jurisdiction over the environmental condition of the Property; the Memorandum; any encumbrances securing Optionee's financing for the purchase of the Property; any title exceptions arising or resulting from, or caused by Optionee in connection with, its inspection, use or contemplated improvement and development of the Property; the Right of Entry Agreement; and all other matters of record and all matters which are disclosed by any Survey (collectively, the "Permitted Exceptions").

(b) Title Insurance. Optionor shall pay the premium for a standard coverage CLTA owner's policy of title insurance to be issued by Escrow Holder to Optionee at the Close of Escrow with a liability limit equal to the Purchase Price, showing title to the Property vested in Optionee subject to the Permitted Exceptions (the "Title Policy"). In the event Optionee desires to obtain a standard coverage ALTA owner's policy of title insurance, Optionee shall be responsible for obtaining an ALTA Survey of the Property, the payment of the ALTA portion of the title policy premium and the cost of any endorsements required by Optionee. During the Feasibility Period, Optionee shall arrange with the Title Company for the issuance of a title insurance policy in form and content and with endorsements required by Optionee at the Close of Escrow.

9. Environmental.

(a) Right of Entry Agreement. Under the Due Diligence Agreement, Optionor has made available for Optionee's review copies in the possession of Optionor and its consultants of the Order, the Prior Orders, the VCA, and reports, studies and investigation and remediation plans regarding the environmental condition of the Property and Optionor's investigation and remediation activities on the Property. At the Close of Escrow, Optionor and Optionee shall enter into a Right of Entry Agreement and Easement substantially in the form attached hereto as Exhibit "D" ("Right of Entry Agreement") under which Optionee shall grant to Optionor (i) the right to enter onto the Property to perform remediation pursuant to the Order, the Prior Orders, the VCA, the RAW or RAP, or the requirements of any other governmental entities having jurisdiction with respect to the Property, including any FMC Remedial Work, (ii) the right to enter the Property to perform Additional Work concurrently with the redevelopment of the Property and (iii) an easement over the Property for the installation, maintenance, repair, replacement and removal of any monitoring or extraction wells, trenches, groundwater treatment systems or other remediation equipment or structures now or hereafter located on the Property or required by applicable governmental agencies, together with the right of ingress and egress to the Property for such purposes, all as set forth in the Easement Agreement and Memorandum of Right of Entry Agreement attached to the Right of Entry Agreement ("Environmental

Easement"). Prior to the Close of Escrow, Optionor and Optionee shall update the form of Right of Entry Agreement to include any new information or regulatory events obligations that have occurred or been imposed since the date of execution of this Agreement. In addition, Optionee shall cooperate with Optionor in permitting any deed restrictions as are required by the DTSC and/or RWQCB to be recorded against the Property and shall, if necessary, execute such covenants as the owner of the Property.

(b) Performance of Remedial Work. Subject to the terms of the Right of Entry Agreement and this Section 9(b), and subject to Optionee's exercise of the Option in accordance with Section 2(d) and the Close of Escrow, Optionor and Optionee agree that the Soil Management Work and Regrading/Cover Work shall be incorporated into the grading, consolidation, balancing, relocation, compaction and covering of soil required for building pad and site preparation for redevelopment of the Property (collectively, "Grading Activities") and shall be performed by Optionee as part of the Grading Activities to the maximum extent possible. All Soil Management Work, Regrading/Cover Work and Grading Activities shall be performed immediately after the Close of Escrow and within the time period required for implementation of the Soil Management Work under the VCA. Optionor and Optionee shall cooperate to accomplish the Soil Management Work, Regrading/Cover Work and Grading Activities in the foregoing manner. Promptly after the date, or the later of the dates, if this occurs at different times, that Optionor has submitted the RAW, or RAP, to the DTSC and the Regrading/Cover Work to the RWQCB for approval, the parties and their consultants shall meet to identify (i) the portions of the Soil Management Work and Regrading/Cover Work that can be included in the Grading Activities, and (ii) any Soil Management Work and/or Regrading/Cover Work that would increase the cost of the Grading Activities (such increased cost is hereafter referred to as "Additional Cost"). Optionee shall provide Optionor with any plans for the Grading Activities in the Containment Areas. Optionor shall inform Optionee of the work, including Grading Activities, required to perform the Soil Management Work and/or Regrading/Cover Work in the Containment Areas. Optionor can require that any contractor selected by Optionee to perform Grading Activities that will include Soil Management Work and Regrading/Cover Work have the proper training and experience for performance of such work. At the same time, Optionor shall identify any Soil Management Work and/or Regrading/Cover Work that cannot or will not be performed simultaneously with or otherwise as part of the Grading Activities (such work is hereafter referred to as "Additional Work"). Promptly after the date that the Option Condition is satisfied, the parties shall again meet and make any revisions to the coordination of the Soil Management Work and Regrading/Cover Work with the Grading Activities made necessary by the DTSC Approval and the RWQCB Approval. The Right of Entry Agreement shall provide for (i) Optionee to commence the Grading Activities immediately after the Close of Escrow, (ii) Optionor to pay any Additional Cost incurred by Optionee in performing Soil Management Work and/or Regrading/Cover Work as part of its Grading Activities and (iii) Optionor to perform at its own cost any Additional Work; provided, however, that Optionor's payment obligations in clauses (ii) and (iii) shall be subject to Optionee's obligation to pay any Excess Costs if Optionee has delivered an Excess Costs Notice in accordance with Section 2(c) of this Agreement. The parties shall coordinate that portion of the Soil Management Work and Regrading/Cover Work to be performed in the Containment Areas designated on the approved Conceptual Site Plan as public streets ("Public Street Containment Areas") in the foregoing manner. The Right of Entry

Agreement shall also grant Optionor the right, but not the obligation, to perform and/or complete the Soil Management Work and Regrading/Cover Work included within the Grading Activities and to charge the cost thereof to Optionee if Optionee has not commenced the Grading Activities within sixty (60) days after the Close of Escrow, if Optionee ceases performance of the Grading Activities for a period of sixty (60) days after having commenced the same or upon any act or omission of Optionee in performing the Soil Management Work and/or Regrading/Cover Work included in the Grading Activities that delays or jeopardizes the ability to complete such work within the time period required by the VCA. Once the Soil Management Work and Regrading/Cover Work have been completed, Optionor shall not be responsible for any penetration or disturbance of the contained soil and/or the cover, if applicable, by Optionee or any party acquiring an interest in the Property from Optionee. The Right of Entry Agreement shall grant Optionor the right to perform any remedial work obligation that is imposed upon Optionor by the DTSC and/or RWQCB that is not part of the Soil Management Work and Regrading/Cover Work, as determined by Optionor in its reasonable discretion (such work is hereafter referred to as the "FMC Remedial Work"), after the Close of Escrow and for Optionor to give Optionee written notice when Optionor has completed all such work.

10. "As Is" Acquisition. Optionee represents and warrants that Optionee has satisfied itself, or prior to the Close of Escrow will satisfy itself, as to the physical, environmental, legal and economic condition of the Property and its suitability for the purposes intended by Optionee. Subject to Optionor's ongoing groundwater monitoring and groundwater extraction and treatment obligations, any Additional Work to be performed by Optionor, or FMC Remedial Work required by the DTSC or RWQCB (which will be governed by the Right of Entry Agreement), Optionee shall be responsible, at Optionee's sole cost and expense, for any demolition of existing structures and any site preparation for redevelopment of the Property. Optionee's obligations shall include closure of FMC Wells Nos. 5 and 6 on the Property following active operation of such well(s) in accordance with all applicable regulatory requirements and removal of all fencing and other structures associated with such wells. Notwithstanding the foregoing, Optionor shall have the right, but not the obligation to close and remove FMC Well No. 6 at Optionor's sole cost and expense at any time during the term of this Agreement, and further, in accordance with the provisions and requirements of the May 26, 1992 Lease Agreement between Optionor and the City, to close and remove Well No. 5 at Optionor's sole cost and expense at any time during the term of this Agreement. Optionee acknowledges and agrees that Optionee is acquiring the Property subject to all existing laws, ordinances, rules and regulations, and that neither Optionor nor any of Optionor's officers, directors, employees, agents, representatives and attorneys (collectively, "Optionor's Agents") have made any warranties, representations or statements regarding the availability of any approvals, or the laws, ordinances, rules or regulations of any governmental or quasi-governmental body, entity, district or agency having authority with respect to the ownership, possession, development, occupancy, condition and/or use of the Property. Optionor disclaims the making of any representations or warranties, express or implied, regarding the Property or matters affecting the Property, including, without limitation, the physical condition of the Property, title to or boundaries of the Property, soil condition, the presence of hazardous waste, hazardous materials, toxic waste or other environmental matters, compliance with building, health, safety, land use and zoning law regulations and orders, structural or other engineering characteristics, traffic patterns and all oth.

information pertaining to the Property. Optionee further acknowledges that Optionor has made no representation or warranty regarding the accuracy or completeness of any reports or studies relating to the Property which may have been delivered to or made available to Optionee other than that the same are true and correct copies of the reports and studies available to Optionor. Optionee moreover acknowledges that (i) Optionee is knowledgeable and experienced in the financial and business risks attendant to an investment in real property and capable of evaluating the merits and risks of entering into this Agreement and purchasing the Property, (ii) that Optionee has entered into this Agreement with the intention of making and relying upon its own or its experts' investigation of the physical, environmental, economic and legal condition of the Property, including, without limitation, the compliance of the Property with laws and governmental regulations and the operation of the Property, and (iii) that Optionee is not relying on any representations and warranties made by Optionor or anyone acting or claiming to act on Optionor's behalf concerning the Property. Optionee further acknowledges that it has not received from Optionor any accounting, tax, legal, architectural, engineering, property management or other advice with respect to this transaction and is relying upon the advice of its own accounting, tax, legal, architectural, engineering, property management and other advisors. Except for Optionor's obligations under the Right of Entry Agreement, and subject to Optionor's ongoing groundwater monitoring and groundwater extraction and treatment obligations and performance by Optionor of any Additional Work, or any FMC Remedial Work required by the DTSC or RWQCB as specified in the Right of Entry Agreement, and closure by Optionor of FMC Wells No. 5 and/or 6 under the provisions of this Section 10, Optionee shall purchase the Property in its "As Is" condition on the Closing Date and assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigations. Optionor shall have no liability for any subsequently discovered defects, whether latent or patent.

Optionee agrees that, from and after the Close of Escrow, Optionee, for itself and its agents, affiliates, successors and assigns, shall release and forever discharge Optionor, its agents, affiliates, successors and assigns from, and waives any right to proceed against Optionor for, any and all rights, claims and demands at law or in equity relating to the physical, environmental, economic or legal condition of the Property. The foregoing release shall not apply to claims arising from Optionor's failure to perform its obligations under the Right of Entry Agreement. In addition, the foregoing release shall not be deemed a waiver by Optionee of any claim Optionee may have against Optionor arising out of Optionor's fraud, intentional misrepresentation or willful misconduct in connection with this Agreement.

Such release shall survive the Close of Escrow. Optionee has read and has been fully advised of the contents of Section 1542 of the Civil Code of the State of California, which reads as follows:

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

and, Optionee hereby expressly waives any and all rights and the benefits of said section or any similar section of the laws of any other applicable jurisdiction.

11. Deposits Into Escrow.

(a) Optionor's Deposits Into Escrow. Optionor shall deposit or cause to be deposited into Escrow prior to the Close of Escrow the following:

(i) An executed and acknowledged Grant Deed in the form attached hereto as Exhibit "E" (the "Grant Deed");

(ii) An executed Federal Non-Foreign Investor Affidavit in the form attached hereto as Exhibit "F" (the "FIRPTA Affidavit");

(iii) An executed Withholding Exemption Certificate (California Form 590) as required under the California Revenue and Taxation Code;

(iv) A counterpart original of the Memorandum, executed and acknowledged by Optionor;

(v) Two counterpart originals of the Right of Entry Agreement executed by Optionor;

(vi) Two counterpart originals of the Environmental Easement executed and acknowledged by Optionor; and

(vii) Such other documents as may be reasonably required to consummate this transaction.

(b) Optionee's Deposits Into Escrow. Subject to Optionee's exercise of the Option, Optionee shall deposit into Escrow prior to the Close of Escrow the following:

(i) Funds in the amount of the Cash Purchase Price;

(ii) Funds in the amount of the estimated Excess Cost for the Excess Cost Escrow;

(iii) A counterpart of the Memorandum, duly executed and acknowledged by Optionee;

(iv) Two counterpart originals of the Right of Entry Agreement executed by Optionee;

(v) Two counterpart originals of the Environmental Easement, executed and acknowledged by Optionee;

(vi) Such additional funds as may be required to pay Optionee's share of closing costs as provided herein; and

(vii) Such other documents as may be reasonably required to

consummate this transaction.

(c) Expenses of Escrow. Optionor shall pay (i) one-half (1/2) of the escrow fees, (ii) the premium for a standard coverage CLTA owner's policy of title insurance, and (iii) all county documentary transfer taxes, unless this transaction is exempt from such tax. Optionee shall pay (i) one-half (1/2) of the escrow fees, (ii) the ALTA portion of the premium for Optionee's title insurance policy, if Optionee elects ALTA coverage, and (iii) the cost of any title endorsements Optionee elects to obtain. All other reasonable and customary expenses, fees and costs incurred in connection with the consummation of the Escrow, including, without limitation, document preparation charges and recording fees, shall be borne by the parties hereto in accordance with the custom and practice in Stanislaus County, California, or in the absence of custom, equally between the parties. Optionee and Optionor shall each bear their own respective attorneys' fees and accounting costs incurred in connection with this transaction.

(d) Prorations. All real property taxes and assessments shall be prorated between Optionee and Optionor as of the Close of Escrow with appropriate debits and credits to the accounts of Optionee and Optionor so that, as between Optionee and Optionor, Optionor shall pay all of the taxes and assessments to the extent allocable to the period ending on the date immediately prior to the Close of Escrow and Optionee shall pay all of the taxes and assessments to the extent duly allocable to the period commencing upon the Close of Escrow. If the amount of the current tax payment is not available, such proration shall be made on the basis of the most recent tax information available at the Close of Escrow and the parties shall make appropriate corrections promptly when accurate information becomes available. Any corrected adjustment or prorations shall be paid in cash to the party entitled thereto.

12. Transfers and Assignments. Optionee shall not transfer or assign this Agreement or any of Optionee's rights or obligations hereunder without the prior written consent of Optionor, which Optionor may withhold in its sole and absolute discretion. Any such transfer or assignment made without Optionor's prior written consent shall be void and of no force and effect.

13. Merger.

(a) Title. All obligations, representations and warranties, express or implied, of Optionor in connection with the state of title to the Property shall merge in the Grant Deed delivered to Optionee at the Close of Escrow. Upon acceptance of title to the Property, Optionee expressly waives any right of rescission and all claims for damages by reason of any obligation, representation, warranty, promise or agreement pertaining to the state of title to the Property. By accepting title to the Property, Optionee agrees to rely upon its policy of title insurance and shall look solely to the title insurer of the Property in the event of any claims concerning defects in or other matters affecting title to the Property.

(b) Merger of Obligations. Unless expressly provided otherwise in this Agreement, all obligations of Optionor under this Agreement shall merge in and shall not survive delivery of the Grant Deed to Optionee.

14. Broker's Commission. Each party represents and warrants to the other party that it has not dealt with nor does such representing party have any knowledge of any persons, firms or entities which would be entitled to a broker's commission, finder's fee or the like in connection with the transactions contemplated by this Agreement. In the event any warranty or representation made by a party in this Section 14 proves to be false, such party shall indemnify, defend and hold the other party harmless with respect to any claims, losses, costs, liabilities and other expenses (including attorneys' fees) which the other party may incur as a result of such breach or misrepresentation. The foregoing obligation shall survive the Close of Escrow.

15. Liquidated Damages. OPTIONEE RECOGNIZES THAT THE PROPERTY WILL BE REMOVED FROM THE MARKET DURING THE EXISTENCE OF THIS AGREEMENT. OPTIONEE ACKNOWLEDGES THAT IF OPTIONEE EXERCISES THE OPTION AND THEREAFTER DEFAULTS IN ITS PERFORMANCE HEREUNDER PRIOR TO THE CLOSE OF ESCROW, OPTIONOR SHALL BE ENTITLED TO COMPENSATION FOR THE DETRIMENT RESULTING FROM THE REMOVAL OF THE PROPERTY FROM THE MARKET. THE PARTIES HERETO AGREE THAT THE DAMAGES THAT OPTIONOR SHALL SUSTAIN AS A RESULT OF SUCH BREACH WILL BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN. THEREFORE, THE PARTIES AGREE THAT IF THE CLOSE OF ESCROW FAILS TO OCCUR AS A RESULT OF A BREACH BY OPTIONEE OF ITS OBLIGATIONS HEREUNDER, OPTIONOR SHALL BE ENTITLED TO RETAIN OR RECOVER THE OPTION PAYMENT AND THE EXERCISE DEPOSIT PLUS ANY AND ALL ACCRUED INTEREST THEREON AS ITS EXCLUSIVE REMEDY AGAINST OPTIONEE, AT LAW OR IN EQUITY, FOR BREACH OF OPTIONEE'S COVENANT TO PURCHASE THE PROPERTY (BUT NOT FOR BREACH OF THE MATTERS SET FORTH IN THE FOLLOWING SENTENCE), AND SAID SUM SHALL BE PAID AND RECEIVED AS LIQUIDATED DAMAGES AND NOT AS A PENALTY. EXCEPT WITH RESPECT TO OPTIONEE'S BREACH OF ANY INDEMNITY OBLIGATION OR ANY OTHER OBLIGATION OF OPTIONEE HEREUNDER (OTHER THAN THE COVENANT TO PURCHASE THE PROPERTY) WHICH SURVIVES THE CLOSE OF ESCROW (WHICH BREACH SHALL ENTITLE OPTIONOR TO SEEK ANY AND ALL REMEDIES AVAILABLE AT LAW AND IN EQUITY AND FOR WHICH BREACH THIS SECTION 15 SHALL NOT APPLY), BOTH PARTIES ACKNOWLEDGE AND AGREE THAT SAID AMOUNT IS PRESENTLY A REASONABLE ESTIMATE OF OPTIONOR'S DAMAGES IN THE EVENT OF OPTIONEE'S BREACH OF ITS OBLIGATION TO PURCHASE THE PROPERTY CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO OPTIONOR THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT. BY INITIALING THIS SECTION BELOW, THE PARTIES HERETO SIGNIFY THEIR APPROVAL AND CONSENT TO THE TERMS OF THIS SECTION.

Optionor's Initials

Optionee's Initials

16. General Provisions.

(a) Tax-Deferred Exchange. Optionor shall have the right, by giving written notice to Optionee not less than five (5) business days prior to the Close of Escrow, to assign its rights under this Agreement to sell the Property to one or more qualified intermediaries for the purpose of treating all or part of the sale of the Property hereunder as a like-kind exchange of property ("Section 1031 Treatment") under Section 1031 of the Internal Revenue Code of 1986, as amended ("Code"). If Optionor makes such election, all or part of the cash consideration payable to Optionor hereunder shall be paid, in lieu thereof, by Optionee to one or more qualified intermediaries, as defined in Treasury Regulations §1.1031(k)-1(g)(4), to be held in a qualified escrow or qualified trust, as defined in Treasury Regulations §1.1031(k)-1(g)(3), to enable such qualified intermediary or intermediaries designated by Optionor to acquire property that is identified by Optionor on or before the day that is forty-five (45) days following the Close of Escrow and that is transferred to Optionor on or before the day that is one hundred eighty (180) days following the Close of Escrow. Upon such election by Optionor, Optionee agrees to reasonably cooperate with Optionor in taking such further actions that Optionor shall determine are reasonable and necessary in securing Section 1031 Treatment for all or part of the Property, including further amendment to this Agreement. Optionor shall indemnify Optionee from any cost, expense or liability arising from its cooperation in connection with the like-kind exchange contemplated hereby. Optionor shall be permitted to assign all or part of its rights under this Agreement to one or more qualified intermediaries for the purpose of securing Section 1031 Treatment hereunder; provided, however, that such assignment shall in no way release Optionor from any of its agreements, representations, warranties and indemnities under this Agreement.

(b) Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be in writing and shall be deemed duly given (i) when personally delivered, (ii) sent by overnight courier providing evidence of receipt of delivery, or (iii) by United States mail, registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below or to such other address of which the parties are subsequently notified in writing:

Optionor: FMC Corporation
1735 Market Street
Philadelphia, PA 19103
Attn: Real Estate Manager

With a copy to: FMC Corporation
P.O. Box 58123
Santa Clara, CA 95052-8123
Attn: Ms. Zahra Zahiraleslamzadeh

Courier Address: 1125 Coleman Avenue
Gate 1, Annex Building
San Jose, CA 95110

With a copy to: Berliner Cohen
Ten Almaden Blvd., Eleventh Floor
San Jose, CA 95113-2233
Attn: Steven J. Casad, Esq.

Optionee: Redevelopment Agency of the City of Modesto
1010 Tenth Street, Suite 6100
Modesto, CA 95354
Attn: Mr. Jack Crist, Executive Director

With a copy to: Redevelopment Agency of the City of Modesto
1010 Tenth Street, Suite 6300
Modesto, CA 95354
Attn: Michael Milich, Esq., General Counsel

Notices shall be deemed delivered upon receipt. Any party may change its address for notice by giving written notice of such change to the other party.

(c) Legal Fees. In the event either party brings an action or suit against the other party by reason of any breach of any of the covenants or agreements on the part of the other party arising out of this Agreement, then, in that event, the prevailing party in such action or dispute, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

(d) Waiver of Jury Trial. Optionee and Optionor each acknowledge and agree that any controversy which may arise under this Agreement would be based upon difficult and complex issues, and therefore, Optionee and Optionor each hereby waive any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement and agree that any such action or proceeding shall be tried in a court of competent jurisdiction by a judge and not by a jury.

(e) Survival of Indemnities. Optionee's indemnity obligation under the Due Diligence Agreement and Sections 7 and 14 of this Agreement shall survive the recordation of the Grant Deed at the Close of Escrow. Optionor's indemnity obligations under Section 14 hereof shall survive the recordation of the Grant Deed at the Close of Escrow.

(f) Required Actions of Optionee and Optionor. Optionee and Optionor agree to execute such instruments and documents and to diligently undertake such actions as may be reasonably required in order to consummate the purchase and sale herein contemplated and shall use their diligent efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

(g) Time of Essence. Time is of the essence of each and every term, condition, obligation, and provision hereof.

(h) Counterparts. This Agreement may be executed in multiple counterparts,

each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument.

(i) Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(j) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

(k) Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference.

(l) Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

(m) Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereto.

(n) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(o) Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

(p) Severability. If any provision of this Agreement is, or hereinafter is adjudged to be, for any reason void, unenforceable, or invalid, it is the specific intent of the parties that the remainder hereof shall be and remain in full force and effect.

(q) Entire Agreement. This Agreement, which incorporates the Due Diligence Agreement by reference, supersedes any prior agreement, oral or written, and contains the entire agreement between Optionee and Optionor as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent, or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

IN WITNESS WHEREOF, Optionee and Optionor have executed this Agreement as of the day and year first above written.

“OPTIONOR”

FMC CORPORATION, a
Delaware corporation

By:

Its:

“OPTIONEE”

REDEVELOPMENT AGENCY OF THE
CITY OF MODESTO, a public body,
corporate and politic_

By:

Jack R. Crist
Executive Director

Approved as to form:

Michael Milich
General Counsel

ATTEST:

Jean Zahr
Secretary

**REDEVELOPMENT AGENCY OF THE CITY OF MODESTO
RESOLUTION NO. 14-2002**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO AUTHORIZING AND DIRECTING THE EXECUTIVE DIRECTOR
TO SOLICIT FORMAL REQUEST FOR QUALIFICATIONS (RFQ) FOR A
MASTER DEVELOPER FOR THE KANSAS AVENUE BUSINESS PARK
PROJECT**

WHEREAS, in Spring 2001, the City Council of the City of Modesto identified a 45-acre parcel located between Kansas Avenue and Woodland Avenue, east of State Route 99 (“FMC Site”) as having a high potential for business park development based on a extensive cost benefit analysis, and

WHEREAS, said FMC Site is located within the City limits of the City of Modesto and also within the Modesto Redevelopment Agency Project Area, and

WHEREAS, as part of the development of the FMC Site, the Modesto Redevelopment Agency (“RDA”) has negotiated a Property Option Agreement with the FMC Corporation for remediation, sale and development of the FMC Site, and

WHEREAS, the RDA intends to develop said FMC Site into a business park currently designated as Kansas Avenue Business Park, and

WHEREAS, as part of the successful development of said Kansas Avenue Business Park, a Master Developer will be selected using the formal Request for Qualifications process.

NOW, THEREFORE, BE IT RESOLVED that the Redevelopment Agency of the City of Modesto does hereby authorize and direct its Executive Director to distribute a formal Request for Qualifications document for the purpose of selecting a Master Developer for the development of the “KANSAS AVENUE BUSINESS PARK” located at the FMC Site.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Redevelopment Agency of the City of Modesto does hereby authorize and direct its Executive Director to execute all documents which may be necessary for the completion of said Request for Qualifications.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto, held on the 6th day of November, 2002, by Chair Sabatino, who moved its adoption, which motion being duly seconded by

Agencymember Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agencymembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant,
Chair Sabatino

NOES: Agencymembers: None

ABSENT: Agencymembers: None

ATTEST Jean Zahr
Jean Zahr, Secretary

APPROVED AS TO FORM:

By Michael D. Milich
Michael D. Milich, General Counsel

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 15-2002**

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO APPROVING AN AGREEMENT FOR A \$405,000 LOAN FROM THE STANISLAUS COUNTY ECONOMIC DEVELOPMENT "BANK" BY AND BETWEEN THE CITY OF MODESTO, THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO AND STANISLAUS COUNTY AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE AGREEMENT.

WHEREAS, on February 13, 2001, the Stanislaus County Board of Supervisors approved the formation of a Community Economic Development "Bank" ("Bank") for the purpose of providing resources for economic development projects throughout the County, and

WHEREAS, the purpose of the "Bank" is to use said funds within the nine cities and communities within Stanislaus County to leverage State, Federal and private dollars to finance infrastructure that makes possible greater opportunities for job retention and creation, and

WHEREAS, the Board of Supervisors appointed an Ad Hoc Group consisting of the City Manager from each city and the County Chief Executive Officer to identify the appropriate structure for the "Bank", funding criteria and the approval process, and

WHEREAS, the "Bank" issued a Request for Proposals on October 5, 2001 and City and Modesto Redevelopment Agency ("RDA") staff submitted a proposal requesting \$405,000 in financing to complete the Concept Master Planning for the Kansas Avenue Business Park Project. Among other costs, the City's and RDA's application included costs for master planning, engineering, design, and preliminary development, and

WHEREAS, Modesto's request for \$405,000 was approved by the "Bank" review boards and was subsequently approved by the Board of Supervisors on April 9, 2002, and

WHEREAS, the City and RDA will partner with Stanislaus County per this agreement to ensure repayment through the designated RDA revenue stream, and

WHEREAS, the City, RDA and County staffs have prepared an agreement ("**Exhibit A**") setting forth the conditions of receipt and repayment of the \$405,000 loan which is attached hereto and made a part herein by this reference. Said conditions are as follows:

1. The City's General Fund will not be used for repayment of the loan.
2. The loan will be repaid with a combination of the following: (1) Tax increment funding from the RDA resulting from the increased property values within the Project site; (2) RDA funding generated by the proceeds of the land sale to a private developer; (3) Tax allocation bonds issued by the RDA to generate funding for the Project improvements in an amount sufficient to repay the "Bank" loan.
3. The RDA revenue streams are expected to become available by December 2007. However, the RDA shall have no obligation to begin repayment until the revenue streams become available for this purpose.
4. If the loan is not repaid in full by June 30, 2015, the parties agree to renegotiate the term and conditions of the loan repayment, and

WHEREAS, the proposed agreement was reviewed by the Community Development and Housing Committee at its meeting on April 15, 2002 and was recommended for approval to the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that the agreement for the Stanislaus County Economic Development Bank loan in the amount of \$405,000 for the development of Kansas Avenue Business Park is hereby approved.

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized and directed to execute said agreement on behalf of the Redevelopment Agency of the City of Modesto.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto held on the 6th day of November, 2002, by Agencymember Fisher, who moved its adoption, which motion being duly seconded by Agencymember Jackman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agencymembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant

NOES: Agencymembers: Chair Sabatino

ABSENT: Agencymembers: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

APPROVED AS TO FORM:

Michael D. Milich
Michael D. Milich, General Counsel

**AGREEMENT BY AND BETWEEN STANISLAUS COUNTY, CITY OF MODESTO
AND MODESTO REDEVELOPMENT AGENCY**

This Agreement is made and entered into in the County of Stanislaus, State of California, this ____ day of _____, 2002, by and between the City of Modesto, a charter city and a municipal corporation of the State of California ("CITY"), the Redevelopment Agency of the City of Modesto, a public body, corporate and politic ("RDA"), and the County of Stanislaus, a political subdivision of the State of California ("COUNTY").

This Agreement is made with the reference to the following recitals:

WHEREAS, on February 13, 2001, the County Board of Supervisors authorized the establishment of an Economic Development Bank with an annual appropriation of \$1.5 million dollars. The Bank funds are to be used for economic development within the County. The Board directed the Chief Executive Officer to meet with City Managers to develop a structure for the Bank and a process for approving funding allocations from the Bank. The County's CEO and City Managers recommended that the Work Force Investment Board (WIB) act as the Board of Directors for the Bank; and

WHEREAS, on June 16, 2001, the WIB agreed to act as the Board of Directors of the Bank and established an Advisory Committee consisting of the nine City Managers and the County CEO; and

WHEREAS, on September 17, 2001, the WIB approved guiding principles, application documents, an evaluation system and criteria that measures the public benefit of promoting economic development and providing jobs; and

WHEREAS, on October 5, 2001, requests for proposals for use of the Bank funds were issued and on November 9, 2001, the Advisory Committee evaluated five proposals and its recommendations were presented to the WIB; and

WHEREAS, on December 17, 2001 the WIB approved forwarding the Board of Supervisors a proposal to award the "CITY" a loan of \$405,000 which is to be repaid to the bank for the preparation of a Master Development Plan for the 92acre Kansas Avenue Business Park (the "Project"); and

WHEREAS, CITY submitted an application to the WIB for the Project in the amount of \$405,000 and, based on the development structure and repayment revenue, it is more appropriate that both CITY and RDA be parties to the agreement, and

WHEREAS, it is the intention of the parties that the funding source for repayment of said Bank loan will be taken from any combination of the following: (1) Tax increment funding from the RDA resulting from the increased property values within the Project site; (2) Funding generated by the proceeds of the land sale to a private developer; (3) Tax allocation bonds issued

by the RDA to generate funding for the Project improvements in an amount sufficient to repay the Bank loan; and

WHEREAS, it is the intention of the parties that the Master Development Plan will be completed and at least a portion of the intended improvements will be constructed on said Project site on or about December 2007

NOW, THEREFORE, CITY, RDA and COUNTY do hereby enter into an Agreement for the consideration hereinafter stated as follows:

100. OBLIGATIONS OF THE COUNTY TO DISTRIBUTE BANK FUNDS

101. COUNTY agrees to advance sums as needed up to \$405,000 to the RDA from the Bank for the preparation of a Master Plan for the Project according to provisions in the CITY's and RDA'S application, attached hereto, as "Exhibit A". The County Auditor-Controller shall set up an account payable from the Bank to the RDA in the amount of \$405,000. Payments from the Bank to the RDA shall be made upon the RDA presenting invoices or other documentation showing that the amounts requested are within the scope of the work described in "Exhibit A". The payments of up to \$405,000 from the Bank to the RDA shall be set up in an account receivable by the County Auditor-Controller which shall be retired over time by the RDA as RDA funds generated from the Project become available. The COUNTY shall designate that the County Auditor-Controller provide the RDA with the status of the receivable account upon receiving a written request from the RDA; otherwise, a statement showing the status of the account will be provided to the RDA at the end of each fiscal year.

200. RDA's and/or CITY'S OBLIGATIONS

201. RDA agrees to utilize the funds received from the COUNTY described in paragraph 101 exclusively for the purposes described in "Exhibit A". CITY and RDA both agree to jointly review RDA's administration of said funds, as they are expended, to ensure proper and accurate accounting of said funds.

202. RDA agrees to reimburse up to \$405,000 of the funds received from the Bank and to commence repayment to the Bank as funds from development become available pursuant to this Agreement from the Project's income stream generated by any of the following: (1) Tax increments received from property improvements; (2) Proceeds of the land sale to a developer; (3) Tax allocation bonds issued by the RDA in amount sufficient to repay the Bank loan.

203. Given the current status of the development of the Project, the parties anticipate that repayment could begin on or about December, 2007. However, the RDA shall have no obligation to begin repayment until said revenue streams become available for that purpose.

204. County understands and agrees that the sole source of repayment of said Bank loan will be the income stream described in paragraph 202. The parties further agree that the RDA's obligation for repayment shall, in any event, terminate on June 30, 2015, regardless of whether or not said Bank loan has been repaid by said date. Finally, County acknowledges,

understands, and agrees that CITY shall have no obligation whatsoever to repay said Bank loan.

205. RDA upon receiving a written request from the County's Chief Executive Officer shall provide proof that the RDA has expended the funds received from the Bank as contemplated by this Agreement and is repaying funds received as required by the terms of this Agreement.

300. MUTUAL OBLIGATIONS

301. Any notices or communications required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, return receipt requested, postage prepaid as follows:

If to COUNTY:

Richard Jantz, Deputy Executive Officer
Chief Executive Office, County of Stanislaus
1010 Tenth Street, Suite 6800
Modesto, CA 95354

If to RDA or CITY:

Linda Boston, Business Development Manager
Modesto Redevelopment Agency or City of Modesto
1010 Tenth Street, Suite 3300
P.O. Box 642
Modesto, CA 95353

302. The provisions of this Agreement shall constitute the entire Agreement between the parties and unless modified by written agreement duly executed by the parties hereto, shall continue in full force and effect.

303. Venue for any actions initiated by either party shall be in the Superior Court of Stanislaus County and California law shall apply to all the Agreement's terms and conditions.

304. RDA, CITY and COUNTY further covenant to cooperate with one another in all respects necessary to ensure the successful consummation of the action contemplated by this Agreement, and each will take all actions within its authority to ensure cooperation of its officials, officers, agents and employees.

///

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

REDEVELOPMENT AGENCY
OF THE CITY OF MODESTO

By _____
Jack Crist,
Executive Director

COUNTY OF STANISLAUS

By _____
Reagan Wilson,
Chief Executive Officer

CITY OF MODESTO

By _____
Jack Crist, City Manager

APPROVED AS TO FORM:

By _____
Michael D. Milich,
City Attorney

APPROVED AS TO FORM:

By _____
E. Vernon Seeley,
Assistant County Counsel

By _____
Michael D. Milich, RDA General Counsel

**REDEVELOPMENT AGENCY OF THE CITY OF MODESTO
RESOLUTION NO. 16-2002**

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO AMENDING THE AGENCY BUDGET TO APPROPRIATE FUNDS FOR PURPOSES OF COMPLETING THE PURCHASE OPTION AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO, A PUBLIC BODY, CORPORATE AND POLITIC (THE "AGENCY") AND FMC CORPORATION (THE "OWNER")

WHEREAS, Owner's parcel located within the City of Modesto and within the Modesto Redevelopment Agency Project, specifically identified as Stanislaus County Assessors Parcel Number 029-1313, containing 45 acres, more or less, is proximate to State Route 99 and within an area that would be conducive to the development of a business park, and

WHEREAS, the Agency and the Owner have successfully negotiated a Purchase Option Agreement containing certain terms and conditions relating to the purchase of said property by the Agency, and,

WHEREAS, the Agency has approved said Purchase Option Agreement at their regularly scheduled meeting on November 6, 2002,

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Modesto that funds shall be appropriated for the purposes of completing said Purchase Option as follows: Redevelopment Agency Contingency Reserve shall be reduced by \$100,000 (Account No. 9080-800-8000-8003) and said \$100,000 shall be placed into the Redevelopment Agency's CIP Account - "Kansas Avenue Business Park Property Option" (Account No. 9080-140-QXXX-6030).

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto held on the 6th day of November, 2002, by Chair Sabatino, who moved its adoption, which motion being duly seconded by Agency member Fisher, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agency members: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Chair Sabatino

NOES: Agency members: None

ABSENT: Agency members: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

APPROVED AS TO FORM:

Michael D. Milich
MICHAEL D. MILICH, General Counsel

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 17-2002**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO AMENDING THE AGENCY BUDGET TO RECEIVE THE
REVENUE AND CREATE A CAPITAL PROJECT FOR A \$405,000 LOAN
FROM THE STANISLAUS COUNTY ECONOMIC DEVELOPMENT "BANK"
FOR PURPOSES OF DEVELOPING KANSAS AVENUE BUSINESS PARK**

WHEREAS, on February 13, 2001, the Stanislaus County Board of Supervisors approved the formation of a Community Economic Development "Bank" ("Bank") for the purpose of providing resources for economic development projects throughout the County, and

WHEREAS, the purpose of the "Bank" is to use said funds within the nine cities and communities within Stanislaus County to leverage State, Federal and private dollars to finance infrastructure that makes possible greater opportunities for job retention and creation, and

WHEREAS, Modesto's request for \$405,000 for development of the Kansas Avenue Business Park was approved by the "Bank" review boards and was subsequently approved by the Board of Supervisors on April 9, 2002, and

WHEREAS, the proposed loan was reviewed by the Community Development and Housing Committee at its meeting on April 15, 2002 and was recommended for approval to the Agency, and

WHEREAS, the City and RDA approved and accepted said "Bank" loan at their regularly scheduled meetings on November 6, 2002.

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 18-2002**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO (RDA) AUTHORIZING THE EXECUTIVE DIRECTOR TO
DISTRIBUTE THE APPROVED DOCUMENTS FOR THE REQUEST FOR
PROPOSALS (RFP) FOR SECURING A KANSAS-WOODLAND BUSINESS
PARK MASTER DEVELOPER AND AUTHORIZING THE EXECUTIVE
DIRETOR TO EXECUTE ALL DOCUMENTS RELATED TO SAID RFP**

WHEREAS, on November 6, 2002, the RDA approved the terms and conditions of a Purchase Option for the 45-acre FMC property, located in the center of the proposed Kansas-Woodland Business Park, and

WHEREAS, as part of said Business Park project, Agency also authorized and directed the Executive Director to distribute a formal Request For Proposal (RFP) for securing a Master Developer Team for consideration by the Agency, and

WHEREAS, said Master Developer Team would be responsible for various tasks which include, but are not limited to the following:

1. Acquire the property from the RDA and develop the entire 45-acre site business park subdivision
2. Participate in a land transaction completed using a "double escrow" process.
3. Pay for the purchase price of the land to FMC (\$1,000,000 + 5% of any revenue above \$1M)
4. Be responsible for the infrastructure improvements and reimburse the RDA for its cost to date as well as provide a modest fee as seed money for the RDA.
5. Agree to a contractual commitment to build the Master Plan as adopted by the RDA, and

WHEREAS, the City Council's Committee on Economic Development received a staff report on December 9, 2002 outlining said RFP process and recommended the approval of the RFP documents to the RDA, and

WHEREAS, the RDA at their Special Meeting of December 9, 2002 reviewed and approved said RFP documentation.

NOW, THEREFORE, BE IT RESOLVED that the Redevelopment Agency of the City of Modesto does hereby authorize and direct its Executive Director to distribute the approved documentation for a formal Request for Proposal for the purpose of securing a Master Developer for the **“KANSAS-WOODLAND BUSINESS PARK PROJECT”**

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Redevelopment Agency of the City of Modesto does hereby authorize and direct its Executive Director to execute all documents that may be necessary for the completion of said Request for Proposal.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto, held on the 9th day of December, 2002, by Agencymember Frohman, who moved its adoption, which motion being duly seconded by Agencymember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agencymembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant,
Mayor Sabatino

NOES: Agencymembers: None

ABSENT: Agencymembers: None

ATTEST Jean Zahr
Jean Zahr, Secretary

APPROVED AS TO FORM:

By Michael D. Milich
Michael D. Milich, General Counsel

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Insurance Requirements

A self-insured status must be supported by the filing of a copy of a current "State Certificate of Consent to Self-Insure" with the City Clerk.

If at any time any of said policies shall be unsatisfactory to the City, as to form or substance or if a company issuing such policy shall be unsatisfactory to the City, the permittee/licensee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as herein provided. Upon failure of the permittee/licensee to furnish, deliver or maintain such insurance and certificates as above provided, the permit/license, at the election of the City, may be forthwith declared suspended, or terminated. Failure of the permittee/licensee to obtain an/or maintain any required insurance shall not relieve the permittee/licensee from any liability under the permit/license, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the permittee/licensee concerning indemnification. The City, its agent, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required, except workers' compensation. The workers' compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by permittee/licensee. The permittee/licensee's insurance policy (ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A: VII or with approval of the Risk Manager.

**MODESTO REDEVELOPMENT AGENCY
RESOLUTION NO. 19- 2002**

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF
MODESTO AUTHORIZING THE ENCUMBERANCE OF \$1,714,600 IN
REDEVELOPMENT HOUSING SET-ASIDE FUNDS FOR THE PURPOSE OF
DEVELOPING A HOUSING PROJECT WITHIN THE MODESTO
DOWNTOWN AREA**

WHEREAS, the Redevelopment Agency of the City of Modesto (the "Agency") is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Modesto Redevelopment Project (the "Redevelopment Project"); and

WHEREAS, the Agency is currently under negotiations with Centerra Capital, a California limited liability company whose members are Paul Draper, an individual, and Richard Rand (the "Developer"), which negotiations provide for the acquisition and sale of certain property (s) located within the Redevelopment Project Area (the "Sites"), and development of the Sites with a multi-story affordable housing structure, consisting of above-ground parking, courtyard common area(s), potential retail uses, together with appurtenant landscaping improvements and additional on-street parking spaces (the "Housing Project");

WHEREAS, the Sites are currently owned by private individuals (the "Owners"), and are currently improved with various structures, which may be acquired by the Agency and subsequently sold to the Developer for development and operation of the Housing Project; and

WHEREAS, said negotiations include provisions for, among other things, (a) the acquisition of the Sites by the Agency from the Owners; (b) the subsequent sale of the Sites to the Developer pursuant to a subsequent DDA; (c) the development of the Housing Project as more particularly described in a subsequent DDA to be reviewed and approved by the Agency; and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law, which hearing will be held in accordance with said Law upon the successful conclusion of said Housing Project negotiations; and

WHEREAS, the Agency does fully intend to utilize said Housing Set-aside funds for the purpose of developing said Housing Project.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF MODESTO that the Redevelopment Agency Housing Set-aside funds in the amount of \$1,714,600 shall be encumbered into a Redevelopment Agency account with the purpose of utilizing said funds for the development of said Housing Project within the downtown area.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Redevelopment Agency of the City of Modesto does hereby authorize and direct its Executive Director to take all necessary actions to encumber said funds for the development expenses of said Housing Project.

The foregoing resolution was introduced at a regular meeting of the Redevelopment Agency of the City of Modesto held on the 10th day of December, 2002, by Agencymember Fisher, who moved its adoption, which motion being duly seconded by Agencymember Jackman, was upon roll call carried and the resolution adopted by the following vote:

AYES: Agencymembers: Fisher, Frohman, Jackman, Keating, O'Bryant,
Chairman Sabatino

NOES: Agencymembers: Conrad

ABSENT: Agencymembers: None

ATTEST: Jean Zahr
JEAN ZAHR, Secretary

APPROVED AS TO FORM:

Michael D. Milich

MICHAEL D. MILICH, General Counsel