AGREEMENT BIBLIOGRAPHY

Agreement With:	Food Partners, LLC
Agreement Type:	Disposition and Development Agreement
Date Approved by Agency:	06 08 1999
Start Date:	06 08 1999
End Date:	-
Contract Amount:	-
Comments:	12951 Euclid Street
Insurance Expiration:	-
Date Archived:	

GARDEN GROVE

CITY OF GARDEN GROVE, CALIFORNIA

11222 ACACIA PARKWAY, P.O. BOX 3070, GARDEN GROVE, CALIFORNIA 92842

(714) 741-5040

June 30, 1999

Food Partners, LLC
Attn: Mark Burger
177 S. Beverly Drive
Beverly Hills, CA 90212-3002

Enclosed for your files is a copy of the Disposition and Development Agreement between the Agency for Community Development and Food Partners, LLC for property located at the northwest corner of Garden Grove Boulevard and Euclid Street at 12951 Euclid Street.

The Agreement was approved by the Agency on June 8, 1999.

Sincerely,

Ruth E. Smith
Secretary

By: Priscilla Stierstorfer
Deputy Secretary

Enclosure

c: Controller
Community Development
Stradling, Yocca, Carlson & Rauth

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between the

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT

and

FOOD PARTNERS, LLC,
a California Limited Liability Company

ATTACHMENTS

Attachment No. 1	Site Legal Description
Attachment No. 2	Site Map
Attachment No. 3	Grant Deed
Attachment No. 4	Schedule of Performance
Attachment No. 5	Scope of Development
Attachment No. 6	Release of Construction Covenants
Attachment No. 7	Maintenance Agreement
Attachment No. 8	Parking Lease Amendment

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of June 8, 1999, by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic (the "Agency"), and **FOOD PARTNERS, LLC**, a California limited liability company (the "Developer").

RECITALS

The following recitals are a substantive part of this Agreement:

A. In furtherance of the objectives of the California Community Redevelopment Law, the Agency desires to redevelop a certain 33,000 square foot portion of the Garden Grove Community Project (the "Redevelopment Project") located at 12951 Euclid Street at the northwest corner of Garden Grove Boulevard and Euclid Street (the "Site") in the City of Garden Grove (the "City"). The Site is part of the Garden Grove Higher Educational Center, and is subject to a Reciprocal Easement Agreement which governs the use of the entire Garden Grove Higher Educational Center. The Site has previously been developed for urban use. The Site is legally described in the Site Legal Description attached hereto as Attachment No. 1, and depicted in the Site Map attached hereto as Attachment No. 2, both of which are incorporated herein.

B. The Agency and the Developer desire by this Agreement for the Agency to convey the Site to the Developer, and for the Developer to purchase the Site and to agree to construct and complete a new drive-thru fast food restaurant thereon (the "Improvements"). The Site shall be rezoned to allow drive-thru fast food restaurant use.

C. The Agency's disposition of the Site to the Developer, and the Developer's acquisition of the Site and construction and completion of the Improvements pursuant to the terms of this Agreement, are in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of the Redevelopment Project has been undertaken.

NOW, THEREFORE, the Agency and the Developer hereby agree as follows:

100. DEFINITIONS

"Actual Knowledge" is defined in Section 208.1 hereof.

"***Agency***" means the Garden Grove Agency for Community Development, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, Health and Safety Code, Section 33000, *et seq.*, and any assignee of or successor to its rights, powers and responsibilities.

"Agency's Conditions Precedent" means the conditions precedent to the Closing to the benefit of the Agency, as set forth in Section 205.1 hereof.

"Agreement" means this Disposition and Development Agreement between the Agency and the Developer.

"Basic Concept Drawings" means the plans and drawings to be submitted by the Developer and approved by the Agency, as set forth in Section 302.1 hereof.

"City" means the City of Garden Grove, a California municipal corporation.

"Closing" means the close of Escrow for the Conveyance of the Site from the Agency to the Developer, as set forth in Section 202 hereof.

"Closing Date" means the date of the Closing, as set forth in Section 202.4 hereof.

"Condition of Title" is defined in Section 203 hereof.

"Construction Drawings" means the detailed construction drawings and plans to be prepared with respect to the Improvements, as set forth in Section 302.3 hereof.

"Conveyance" means the conveyance of the Site by the Agency to the Developer on the Closing Date.

"Date of Agreement" means the date set forth in the first paragraph hereof.

"Default" means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

"Developer" means Food Partners, LLC, a California limited liability company, and its successors and assigns.

"Developer's Conditions Precedent" means the conditions precedent to the Closing to the benefit of the Developer, as set forth in Section 205.2.

"Developer's Environmental Consultant" means the environmental consultant which may be employed by the Developer pursuant to Section 208.2 hereof.

"Developer's Environmental Report" means the environmental investigation of the Site which may be conducted for the Developer by Developer's Environmental Consultant, as set forth in Section 208.2 hereof.

"Environmental Reports" means the collective environmental investigations of the Site as reported in the Developer's Environmental Report and any investigations conducted by or for the Agency performed pursuant to Section 208 hereof.

"Escrow" is defined in Section 202 hereof.

"Escrow Agent" is defined in Section 202 hereof.

"Escrow Costs" are defined in Section 202.1 hereof.

"Exceptions" is defined in Section 203 hereof.

"Good Faith Deposit" means the developer's deposit as security for the performance of Developer's obligations under this Agreement, as set forth in Section 505 hereof.

"Governmental Requirements" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Site.

"Grant Deed" means the grant deed for the conveyance of the Site from the Agency to the Developer, in the form of Attachment No. 3 hereto which is incorporated herein.

"Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (I) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) methyl tert butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*

"Improvements" means the new improvements to be constructed by the Developer upon the Site, all as more particularly described in Section 301.1 hereof and in the Scope of Development.

"Lender" is defined in Section 311.2 hereof.

"Maintenance Agreement" means the document to be recorded with respect to the Site which contains the Developer's continuing maintenance obligations with respect to the Site, as described in Section 404 hereof and in the form of Attachment No. 7 hereof, which is incorporated herein.

"Mortgage" is defined in Section 311.2 hereof.

"Notice" shall mean a notice in the form prescribed by Section 601 hereof.

"Outside Date" shall mean the last date the Closing shall occur, as set forth in Section 202.4 hereof.

"Parking Lease Amendment" means the First Amendment to Parking Lease to be entered into between the Agency and the Developer as provided in Section 406 hereof, the form of which is attached hereto as Attachment No. 8, which is incorporated herein.

"Phase 1 Report" is defined in Section 208.1 hereof.

"Purchase Price" means the price to be paid by the Developer to the Agency in consideration for the Conveyance of fee title to the Site, as set forth in Section 201 hereof.

"RAP" means the remedial action plan for the remediation of the Site, as defined in Section 208.3 hereof.

"REA" means the Reciprocal Easement Agreement and Covenants Relating to Real Property by and between the Agency and the Coast Community College District, dated as of February 22, 1996 and recorded in the official records of Orange County on February 27, 1996 as Instrument No. 19960091848, as amended by the First Amendment to Reciprocal Easement Agreement and Covenants Relating to Real Property, dated as of May 14, 1996 and recorded in the official records of Orange County on August 26, 1996 as Instrument no. 19960436243, and as amended by the Second Amendment to Reciprocal Easement Agreement and Covenants Relating to Real Property, dated as of December 10, 1996 and recorded in the official records of Orange County on January 8, 1997 as Instrument No. 19970010499, and as such document may be further amended from time to time. The REA shall include the Third Amendment to the REA.

"Redevelopment Plan" means the Redevelopment Plan for the Redevelopment Project, adopted by Ordinance No. 1339 and amended by Ordinance Nos. 1388, 1476, 1548, 1576, 1642, 1699, 1760, 2035 and 2232 of the City Council of the City of Garden Grove, and incorporated herein by reference.

"Redevelopment Project" means the Garden Grove Community Project, adopted by the City pursuant to the Redevelopment Plan.

"Release of Construction Covenants" means the document which evidences the Developer's satisfactory completion of the Improvements, as set forth in Section 310 hereof, in the form of Attachment No. 6 hereto which is incorporated herein.

"Remedial Work" is defined in Section 208.3 hereof.

"Remediation Cost" is defined in Section 208.2 hereof.

"Report" means the preliminary title report, as described in Section 203 hereof.

"Restaurant" means a nationally recognized fast food chain (together with its successors and assigns).

"Schedule of Performance" means the Schedule of Performance attached hereto as Attachment No. 4 and incorporated herein, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the Agency's Director. Unless otherwise specified herein, the Agency's Director is authorized to make such revisions as he or she deems reasonably necessary.

"Scope of Development" means the Scope of Development attached hereto as Attachment No. 5 and incorporated herein, which describes the scope, amount and quality of development of the Improvements to be constructed by the Developer pursuant to the terms and conditions of this Agreement.

"Site" means that certain approximately 33,000 square foot portion of the Redevelopment Project located at 12951 Euclid Street, at the northwest corner of Euclid Street and Garden Grove Boulevard in the City of Garden Grove, which has previously been developed for urban use. The Site is legally described in the Site Legal Description and depicted in the Site Map.

"Site Legal Description" means the description of the Site which is attached hereto as Attachment No. 1 and incorporated herein.

"Site Map" means the map of the Site which is attached hereto as Attachment No. 2 and incorporated herein.

"Site Plan Drawings" means the plans and drawings to be submitted by the Developer and approved by the Agency, as set forth in Section 302.2 hereof.

"Third Amendment to the REA" is defined in Section 209 hereof.

"Threshold Amount" is defined in Section 208.2 hereof.

"Title Company" is defined in Section 203 hereof.

"Title Policy" is defined in Section 204 hereof.

"Transfer" is defined in Section 603.1 hereof.

200. CONVEYANCE OF THE SITE

201. Disposition of Site. The Developer agrees to purchase the Site from the Agency, and the Agency agrees to sell the Site to the Developer, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, for the all-inclusive purchase price of Four Hundred Thousand Dollars ($400,000) (the "Purchase Price"). The Purchase Price shall be payable by Developer's deposit into the Escrow for the Closing of cash or immediately available funds in the amount of the Purchase Price. Payment of the Purchase Price represents the agreed upon fair market value of the Site.

Should Developer be unable to secure the relevant land use approvals as discussed in Section 303 herein by September 30, 1999, and upon a showing to Agency that Developer used reasonable efforts to secure such approvals, or should Developer be unable to secure a lease agreement with Restaurant by October 29, 1999, and upon a showing to Agency that Developer used reasonable efforts to market the Site to potential lessees, then Developer shall have the right to put the Site back to the Agency (the "Reconveyance"). The Reconveyance, if any, must be exercised by October 29, 2001, and shall be for a price equal to the Purchase Price plus the actual costs incurred to prepare a building pad on the Site and/or provide utilities therefor, all at an aggregate cost not to exceed Seventy Five thousand Dollars ($75,000). Any Reconveyance is expressly conditioned on the following:

The Agency's obligation to close escrow on the Reconveyance shall be subject to the Agency's approval of new matters disclosed by a then-current preliminary title report. Any exceptions shown on such preliminary title report created on or after the Developer's acquisition of the Site shall be removed by Developer at its sole expense prior to the close of escrow pursuant to this Section 201 unless such exception(s) is(are) accepted by Agency in its reasonable discretion; provided, however, that Agency shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Developer's acquisition of the Site, (iii) liens and encumbrances in favor of the City of Garden Grove, (iv) matters shown as printed exceptions in the standard form CLTA owner's policy of title insurance, and (v) matters created by this Agreement. In the event the Site or any portion thereof is encumbered by a mortgage or deed of trust, the Agency shall be permitted to unilaterally instruct the escrow agent to satisfy the indebtedness secured thereby out of the proceeds payable to the Developer through the foregoing escrow, or the Agency may satisfy all or a portion of the Reconveyance Price through the Agency's assumption of the promissory note or notes held by the holders of the deeds of trust encumbering the Site, if such holder or holders consent thereto. Agency shall have thirty (30) days after Developer's exercise of the Reconveyance to enter upon the Site to conduct any tests, inspections, investigations, or studies of the condition of the Site. Developer shall permit the Agency access to the Site for such purposes. Escrow shall close within sixty (60) days after Notice of the put from the Developer. Until the Closing of the Reconveyance, if any, the terms of this DDA and any agreement executed and recorded pursuant thereto shall remain in full force and effect.

Agency and Developer shall each pay one-half (1/2) of any closing costs associated with the Reconveyance, provided, however that no brokerage commission shall be paid by either party. Should Developer elect not to exercise its right to put the Site back to the Agency pursuant to this Section 201 by October 29, 2001, then Agency shall have the option to purchase the Site from the Developer (the "Option") within sixty (60) days, provided that the Site is not subject to a valid and binding lease agreement with a Restaurant (the "Lease"). If the Option is exercised, the Agency shall pay Developer an amount equal to the purchase price which would have been due if the Reconveyance had occurred. Any purchase pursuant to the Option is expressly conditioned on the same title conditions as the Reconveyance.

202. Escrow. Within ten (10) days after the execution of this Agreement by the Agency, the parties shall open escrow ("Escrow") with the escrow division of Chicago Title Company in its Orange County office, or another escrow company mutually satisfactory to both parties (the "Escrow Agent").

202.1 Costs of Escrow. Agency and Developer shall each pay one half of the premium for the Title Policy as set forth in Section 204 hereof, the Agency shall pay for the documentary transfer taxes, if any, due with respect to the conveyance of the Site, and Developer and Agency each agree to pay one-half of all other usual fees, charges, and costs which arise from Escrow (the "Escrow Costs").

202.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and Agency, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and Agency will cancel its own policies after the Closing. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account. However, if Escrow does not close within one (1) business day from deposit of the Purchase Price, the funds shall be deposited into an interest bearing account with such interest accruing to the benefit of the Developer.

If in the opinion of either party or the Escrow Agent it is necessary or convenient in order to accomplish the Closing of this transaction, such party may require that the parties sign supplemental escrow instructions within fifteen (15) days of notice thereof; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place within thirty (30) days after the date when both the Agency's Conditions Precedent and the Developer's Conditions Precedent as set forth in Section 205 have been satisfied or waived by the respective parties. Escrow Agent is instructed to release Agency's escrow closing and Developer's escrow closing statements to the respective parties.

202.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) Pay and charge Developer and Agency for their respective shares of the Escrow Costs payable under Section 202.1 of this Agreement, any endorsements to the premium of the Title Policy thereto as set forth in Section 204, and any amount necessary to place title in the condition necessary to satisfy Section 203 of this Agreement.

(b) Pay and charge Developer and Agency for their respective shares of any escrow fees, charges, and costs.

(c) Disburse funds and deliver and record the Grant Deed and Maintenance Agreement, when both the Developer's Conditions Precedent and the Agency's Conditions Precedent have been fulfilled or waived by Developer and Agency.

(d) Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations under this Agreement.

(e) Within the discretion of Escrow Agent, direct Agency and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably

necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by Escrow Agent, on the form to be supplied by Escrow Agent.

(f) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

202.4 Closing. This transaction shall close ("Closing") within thirty (30) days of the parties' satisfaction of all of Agency's and Developer's Conditions Precedent to Closing as set forth in Section 205 hereof, but in no event later than June 30, 1999 (the "Outside Date"). The Closing shall occur at a location within Orange County at a time and place reasonably agreed on by the parties. The "Closing" shall mean the time and day the Grant Deed is filed for record with the Orange County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

202.5 Termination. If Escrow is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate the Escrow. If either party makes a written demand for return of documents or properties, the Escrow shall not terminate until five (5) days after Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Developer, however, shall have the sole option to withdraw any money deposited by it with respect to the Closing less Developer's share of costs of Escrow, if any. Termination of the Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

202.6 Closing Procedure. Escrow Agent shall close Escrow for the Site as follows:

(a) Record the Grant Deed with instructions for the Recorder of Orange County, California to deliver the Grant Deed to Developer;

(b) Record the Maintenance Agreement with instructions for the Recorder of Orange County, California to deliver the Maintenance Agreement to the Agency;

(c) Instruct the Title Company to deliver the Title Policy to Developer;

(d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements; and

(e) Deliver the Parking Lease Amendment, FIRPTA Certificate and California Form 590RE to Developer; and

(f) Forward to both Developer and Agency a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

203. Review of Title. The Agency shall cause Chicago Title Company, or another title company mutually agreeable to both parties (the "Title Company"), to deliver to Developer a standard preliminary title report (the "Report") with respect to the title to the Site, together with legible copies of the documents (the "Documents") underlying the exceptions ("Exceptions") set forth in the Report, within thirty (30) days from the date of this Agreement. The Developer shall have the right to approve or disapprove the Exceptions in its sole and absolute discretion; provided, however, that the Developer hereby approves the following Exceptions:

(a) The Redevelopment Plan.

(b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).

(c) The existing REA and Third Amendment to the REA.

Developer shall have thirty (30) days from the date of its latest receipt of the Report, the Documents and the Survey to give written notice to Agency and Escrow Holder of Developer's approval or disapproval of any of such Exceptions. If Developer notifies Agency of its disapproval of any Exceptions in the Report, Agency shall have the right, but not the obligation, to remove any disapproved Exceptions within thirty (30) days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer in Developer's sole and absolute discretion that such Exception(s) will be removed on or before the Closing. If Agency cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have fifteen (15) days after the expiration of such thirty (30) day period to either give the Agency written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the Agency written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by Developer as provided herein shall hereinafter be referred to as the "Condition of Title." Developer shall have the right to approve or disapprove in its sole and absolute discretion any further Exceptions reported by the Title Company after Developer has approved the Condition of Title for the Site (which are not created by Developer). Agency shall not voluntarily create any new exceptions to title following the date of this Agreement. If Agency agrees to remove any exceptions prior to the Closing, it shall do so at its sole expense.

204. Title Insurance. Concurrently with recordation of the Grant Deed conveying title to the Site, there shall be issued to Developer an ALTA policy of title insurance (1970 Form B) (the "Title Policy"), together with such endorsements as are reasonably requested by the Developer, issued by the Title Company insuring that the title to the Site is vested in Developer in the condition required by Section 203 of this Agreement. The Title Company shall provide the Agency with a copy of the Title Policy. The Title Policy shall be for the amount of the Purchase Price. The Agency agrees to remove on or before the Closing any deeds of trust or other monetary liens against the Site. The Escrow Costs shall include that portion of the premium for the Title Policy equal to the

cost of an ALTA Extended Coverage Owner's Policy of Title Insurance in the amount of the Purchase Price.

205. Conditions of Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

205.1 Agency's Conditions of Closing. Agency's obligation to proceed with the Closing of the sale of the Site is subject to the fulfillment or waiver by Agency of each and all of the conditions precedent (a) through (d), inclusive, described below ("Agency's Conditions Precedent"), which are solely for the benefit of Agency, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **No Default.** Prior to the Close of Escrow, Developer shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(b) **Execution of Documents.** The Developer shall have executed the Grant Deed, Maintenance Agreement, Parking Lease Amendment and any other documents required hereunder and delivered such documents into Escrow.

(c) **Payment of Funds.** Prior to the Close of Escrow, Developer shall have paid the Purchase Price and all required costs of Closing into Escrow in accordance with Sections 201 and 202 hereof.

(d) **Lot Line Adjustment.** A lot line adjustment which creates a separate legal parcel comprised of the Site shall have been completed and recorded.

205.2 Developer's Conditions of Closing. Developer's obligation to proceed with the purchase of the Site is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (f), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **No Default.** Prior to the Close of Escrow, Agency shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of Agency contained herein shall be true and correct in all material respects.

(b) **Execution of Documents.** The Agency shall have executed the Grant Deed, Maintenance Agreement, Parking Lease Amendment, FIRPTA Certificate, California Form 590RE and any other documents required hereunder, and delivered such documents into Escrow.

(c) **Review and Approval of Title.** Developer shall have reviewed and approved the condition of title of the Site, as provided in Section 203 hereof.

(d) **Title Policy.** The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide to the Developer the Title Policy for the Site upon the Close of Escrow, in accordance with Section 204 hereof.

(e) **No Default**. Prior to the Close of Escrow, Agency shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of Agency contained herein shall be true and correct in all material respects.

(f) **Payment of Funds**. Prior to the Close of Escrow, Developer shall have paid the Purchase Price and all required costs of Closing into Escrow in accordance Sections 201 and 202 hereof.

206. Representations and Warranties.

206.1 Agency Representations. Agency represents and warrants to Developer as follows:

(a) **Authority**. Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health and Safety Code Section 33000), which has been authorized to transact business pursuant to action of the City. Agency has full right, power and lawful authority to acquire, grant, sell and convey the Site as provided herein, and the execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(b) **FIRPTA**. Agency is not a "foreign person" within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or that Agency has complied and will comply with all the requirements under FIRPTA or any similar state statute.

(c) **No Conflict**. To the best of Agency's knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(d) **Litigation**. There are no claims, causes of action or other litigation or proceedings pending or, to the Actual Knowledge of the Agency, threatened with respect to the ownership, operation or environmental condition of the Site or any part thereof (including disputes with mortgagees, governmental authorities, utility companies, contractors, adjoining landowners or suppliers of goods and services).

(e) **Violation**. To the Actual Knowledge of the Agency, there are no violations of any health, safety, pollution, zoning or other laws, ordinances, rules or regulations with respect to the Site, which have not heretofore been entirely corrected. In the event Agency has Actual Knowledge of any such violations, Agency shall (I) immediately provide Developer with copies of all documents evidencing such violation, and (ii) cure such violation prior to Closing.

(f) **No Proffers**. Other than the REA, Agency has not made, and prior to the Closing Date will not make, any commitments to any governmental authorities, utility company, school board, church or other religious body, or any homeowner or homeowner's association, or to any other organization, group or individual, relating to the Site which would impose any obligation on the Developer, or its successors or assigns, after the Closing Date to make any contributions of money, dedications of land or grant of easements or rights of way, or to construct, install or maintain

any improvements of a public or private nature on or off the Site, without the approval of the Developer, which Developer may withhold in its sole discretion.

(g) **Zoning**. The Site is currently zoned Mixed Use, and is contained within the Community Center Specific Plan, and there are no proceedings threatened or pending with respect to a change in such zoning or specific plan.

(h) **Leases**. There are no leases, licenses or occupancy agreements affecting the Site with the exception of the Parking Lease Amendment.

Until the Closing, Agency shall, upon the change of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of Closing, immediately give written notice of such change, fact or condition to Developer. The representations and warranties set forth in this Section 206.1 shall survive the Closing.

206.2 Developer's Representations. Developer represents and warrants to Agency as follows:

(a) **Authority**. Developer is a California limited liability company in good standing under the laws of the State of California. The copies of the documents evidencing the organization of the Developer which have been delivered to the Agency are true and complete copies of the originals, as amended to the date of this Agreement. Developer has full right, power and lawful authority to purchase and accept the conveyance of the Site and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer.

(b) **Experience**. Developer is an experienced developer of drive-thru fast food restaurants.

(c) **No Conflict**. To the best of Developer's knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.

(d) **No Developer Bankruptcy**. Developer is not the subject of a bankruptcy proceeding.

Until the Closing, Developer shall, upon the change of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of Closing, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Site. If Agency elects to close Escrow following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Agency elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or

liabilities hereunder. The representations and warranties set forth in this Section 206.2 shall survive the Closing.

207. Studies and Reports. Prior to the Closing, representatives of Developer shall have the right of access to all portions of the Site for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, including the investigation of the environmental condition of the Site pursuant to Section 208 hereof. Any preliminary work undertaken on the Site by Developer prior to the Closing shall be done at the sole expense of the Developer, and the Developer's execution of a right of entry agreement to be provided by the Agency. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

208. Condition of the Site.

208.1 Disclosure. The Agency hereby discloses to the Developer the following information it has received with respect to the environmental condition of the Site:

(a) The Agency has obtained a Phase I Environmental Audit from Tetra Tech dated as of March 8, 1991, and a "Follow-Up Limited Phase II Environmental Site Assessment" for the Acacia Restaurant Site from Fero Engineering and dated as of April 17, 1991. Both of the above documents have been provided to the Developer, and the Developer acknowledges receipt thereof. The conclusion and recommendation of the latter report were as follows:

> "Recently obtained field laboratory data portray the subject site as having low but detectable levels of gasoline related volatile organic compounds in the subsurface soil pore spaces. Specifically, subsurface THP and Toluene vapors were found present in Probe B4.
>
> The levels of these compounds detected at the location of the on-site building are not considered an eminent (sic) concern as their respective PELs are not currently exceeded.
>
> The most probable source of these detected parameters is the former gasoline facility located at 11125-11141 Garden Grove Boulevard. This facility is the closest source of potential migrating vapors and may result from former releases of gasoline to the subsurface. American Environmental Management Corp. conducted a subsurface soil sample program at this southerly former gasoline station early in 1988. Based on a review of their related report dated March 18, 1988, and composited soil sample analyses reported therein, no subsurface gasoline contamination was noted in any of the five soil borings conducted. The borings conducted by American Environmental Management Corp. appear to have been placed according to most probable source locations (e.g. former tanks, dispensers, piping, etc.) and other unknown factors. It is our understanding that no formal Plot Plan of the

former gasoline dispenser facilities was available at the time of this investigation.

Although the observed levels of contamination are below acceptable standards for workplace exposure, the existence of these low levels of hydrocarbon contamination more than 200 feet from the suspected source suggests a significant source somewhere to the south of the subject site. It is recommended that a supplemental soil vapor survey investigation be initiated at the former gasoline facility (11125-11141 Garden Grove Boulevard) located to the south of the project site in order to establish the source of subsurface gasoline contaminants which may not have been identified by the previously performed gasoline facility assessment. A soil vapor survey offers the ability to provide real time data regarding specific parameter soil gas concentrations at specific depths and locations in a soil profile at the time of the evaluation. This type of survey would allow the tracking of vapors toward their source or sources by following a trend of contaminant concentrations in the direction of increasing concentration. Borings may then be conducted to verify the actual levels of contaminants entrained in the soils at the identified soil gas 'high' points to allow quantitative determination of the necessity for mitigation of any contamination.

The above conclusions are based on information supplied by the client and on soil gas data collected in the field. It should be noted that migration patterns of subsurface gases can be highly dependent upon geologic setting, groundwater depth and travel variations, prevailing weather conditions, and other factors which render transient subsurface vapor conditions."

(b) Two service stations were formerly located at the southern end of the Garden Grove Higher Educational Center, at 10091-11111 Garden Grove Boulevard and at 11125-11141 Garden Grove Boulevard. A site assessment performed by American Environmental Management Corporation found no contamination at 11125-11141 Garden Grove Boulevard, but found contaminated soil at 10091-11111 Garden Grove Boulevard. American Environmental Management Corporation remediated such soil as of June 16, 1988, to the satisfaction of the Orange County Health Care Agency per a letter dated January 6, 1989. A copy of the "Final Report of Soil Remediation for City of Garden Grove" dated as of November 4, 1988, and a copy of the above referenced January 6, 1989 letter have been delivered to the Developer, and the Developer acknowledges receipt thereof.

(c) The Agency has obtained the "Results of Geophysical Investigation, Vacant Lot, Corner of Garden Grove Boulevard and Euclid Street, Garden Grove, California," prepared by Spectrum Environmental Services, Inc., from an investigation dated March 13 - 15, 1996. Such report concluded that "Several significant anomalies were identified in the terrain conductivity and magnetics data which could not be explained by surface cultural features." The

report concluded that it is possible that the source of one anomaly may be a steel-reinforced concrete pad covered with soil or an underground storage tank, and the source of another anomaly may be attributed to a former road.

Agency hereby represents and warrants to the Developer that, except for the foregoing, it has no actual knowledge, and has not received any notice or communication from any government agency having jurisdiction over the Site, notifying the Agency of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Site, or any portion thereof. "Actual knowledge," as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of the Agency officers, employees and agents who have participated in the preparation of this Agreement and the management of the Site. The foregoing representation and warranty shall survive the Closing.

208.2 Investigation of Site. The Developer shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Developer's Environmental Consultant") to make such investigations as Developer deems necessary, including any "Phase 1" and/or "Phase 2" investigations of the Site, and the Agency shall promptly be provided a copy of all reports and test results provided by the Developer's Environmental Consultant (the "Developer's Environmental Report"). If the Agency, based upon the Developer's Environmental Reports or an environmental report prepared at the request of the Agency (collectively, the "Environmental Reports"), reasonably estimates that the cost of remediating the Site prior to the Conveyance in accordance with all Governmental Requirements (the "Remediation Cost") is One Hundred Thousand Dollars ($100,000) or less (the "Threshold Amount"), then Agency shall be required to fund the Remediation Cost, not to exceed the Threshold Amount, and shall cause the Remediation of the Site to be performed with reasonable diligence, and in accordance with all Governmental Requirements. If during the course of such Remediation work the projected Remediation Cost exceeds the Threshold Amount, then Agency may, by Notice to Developer, terminate its obligations under this Agreement to perform the remediation work; provided, however, that if Developer, at its option, agrees in writing to pay the excess of the actually incurred Remediation Cost over the Threshold Amount, such termination shall be ineffective. If Agency, based upon the above Environmental Reports, reasonably estimates that the projected Remediation Cost of the Site exceeds the Threshold Amount, then Agency may give Notice to Developer that it does not intend to perform the remediation work; provided, however, that if Developer, at its option, agrees in writing to pay the excess of the actually incurred Remediation Cost over the Threshold Amount, such termination shall be ineffective. In such event, Agency shall be required to fund the portion of the Remediation Cost up to the Threshold Amount, and Developer shall be required to fund the portion of the Remediation Cost which exceeds the Threshold Amount. In such event, the Agency shall be required to fund the costs of remediation of the Site prior to and as a Developer Condition to Closing.

The Developer shall reasonably approve or disapprove of the environmental condition of the Site within the time set forth in the Schedule of Performance (as may be delayed due to the performance of any Remediation). The Developer's approval of the environmental condition of the Site shall be a Developer's Condition Precedent to the Closing, as set forth in Section 205.2 hereof. If the Developer, based upon the above environmental reports, disapproves the environmental condition of the Site in its sole discretion, then the Developer may terminate this Agreement by written Notice to the Agency pursuant to Section 503 hereof. The Developer may obtain a policy of insurance at the Closing reasonably acceptable to the Agency which protects the

Developer against damages arising from the pre-existing environmental condition of the Site, and one-half of the cost of such insurance policy shall be payable by the Agency through the Escrow.

208.3 Remediation of Site Prior to Closing. If the Agency is required or otherwise elects to perform the Remediation of the Site, within a reasonable period after giving Notice to Developer that it intends to proceed with remediation of the Site, Agency shall deliver to Developer a proposed remedial action plan ("RAP"), which RAP shall be approved by an appropriate public agency with jurisdiction over the remedial work to be performed pursuant to the RAP (the "Remedial Work"). The Remedial Work shall be performed in accordance with applicable Governmental Requirements. The Agency shall proceed continuously and diligently with the Remedial Work. The dates for the parties' performance of the provisions of this Agreement, as set forth in the Schedule of Performance, shall be extended by the period of the Remedial Work. In the event Agency has elected to remediate the Site, the Agency's compliance with the provisions of this Section 208.3, and the issuance of one or more closure letters without any requirement of further remedial work by all governmental agencies which have asserted jurisdiction over the remediation of the Site, shall each be a Developer's Condition Precedent to the Closing.

208.4 Remediation After the Closing. If within one hundred fifty (150) days after the Conveyance the Developer determines that is required pursuant to Governmental Requirements to perform the Remediation of the Site, Agency and Developer shall jointly select a mutually acceptable environmental contractor to conduct such studies as may be necessary to determine the environmental condition of the Site and to prepare a RAP for the Remediation of the Site. The proposed RAP shall be subject to the mutual approval of the Agency and the Developer, and the further approval of an appropriate public agency asserting jurisdiction over the Remedial Work to be performed pursuant to the RAP. Upon approval of the RAP by the Agency, the Developer and the appropriate public agency, the Remedial Work shall be continuously and diligently performed in accordance with applicable Governmental Requirements until the issuance of a closure letter without any requirement of further remedial work by all governmental agencies which have asserted jurisdiction over the remediation of the Site. The Agency shall be responsible for all of the Remediation Cost in the event that the Remediation Cost (including the cost of any Remedial Work performed prior to the Closing at the expense of the Agency) is One Hundred Thousand Dollars ($100,000) or less. In the event that the Remediation Cost (including the cost of any Remedial Work performed prior to the Closing at the expense of the Agency) exceeds One Hundred Thousand Dollars ($100,000), then Agency shall be required to fund the first One Hundred Thousand Dollars ($100,000) of the Remediation Cost, and the Developer shall be responsible for all costs in excess of such amount. Each party shall pay its share of the Remediation Cost within thirty days of request for payment from the environmental contractor, accompanied by an invoice from the contractor and evidence that the work has been satisfactorily performed. The dates for the parties' performance of the provisions of this Agreement, as set forth in the Schedule of Performance, shall be extended by the period of the Remedial Work.

208.5 No Further Warranties As To Site; Release of Agency. Except as otherwise provided herein, the physical condition, possession or title of the Site is and shall be delivered from Agency to Developer in an "as-is" condition, with no warranty expressed or implied by Agency, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder. To the extent authorized by contract or law, the

Agency shall assign to the Developer all insurance policies, warranties and guaranties with respect to the environmental condition of the Site, if any, that the Agency may have received from prior owners of the Site.

The Developer hereby waives, releases and discharges forever the Agency and the City, and their employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the condition of the Site, any Hazardous Materials on the Site, or the existence of Hazardous Materials Contamination due to the generation of Hazardous Materials from the Site, however they came to be placed there, except that arising out of the act or omission of the Agency or its employees, officers, agents or representatives.

The Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides 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."

As such relates to this Section 208.5, the Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

208.6 Developer Precautions After Closing. Upon the Closing, the Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

208.7 Indemnities. Upon the Closing, Developer agrees to indemnify, defend and hold Agency harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (I) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site which occurs after the Closing, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site which occurs after the Closing. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of the Developer, the Agency shall cooperate with and assist the Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage,

liability, deficiency, fine, penalty, punitive damage, or expense; provided that the Agency shall not be obligated to incur any expense in connection with such cooperation or assistance. The Developer shall have the right to defend the Agency with the legal counsel defending the Developer. The foregoing indemnity shall apply to, and during, the Developer's ownership of the Site.

Should Developer exercise its option to put or Agency exercise its Option pursuant to Section 201 herein, upon such put, Agency agrees to indemnify, defend and hold Developer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (I) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site which occurs after the Closing, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site which occurs after the Closing. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of the Agency, the Developer shall cooperate with and assist the Agency in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the Developer shall not be obligated to incur any expense in connection with such cooperation or assistance. The Agency shall have the right to defend the Developer with the legal counsel defending the Agency. The foregoing indemnity shall apply to, and during, the Agency's ownership of the Site.

The Agency hereby waives, releases and discharges forever the Developer, and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the condition of the Site, any Hazardous Materials on the Site, or the existence of Hazardous Materials Contamination due to the generation of Hazardous Materials from the Site, however they came to be placed there, except that arising out of the act or omission of the Agency or its employees, officers, agents or representatives.

The Agency acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides 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."

As such relates to this Section 208.5, the Agency hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

209. Reciprocal Easement Agreement. Agency and Developer shall use good faith efforts to execute an amendment to the REA (which allows for a drive-thru fast food restaurant in the Center, as defined in the REA) with the parties to the REA (the "Third Amendment to the REA").

300. DEVELOPMENT OF THE SITE

301. Scope of Development.

301.1 Developer's Obligation to Construct Improvements. The Developer shall develop or cause the development of the Improvements in one phase in accordance with the Scope of Development, the City Municipal Code, and the plans, drawings and documents submitted by the Developer and approved by the Agency as set forth herein. The Improvements shall generally consist of an approximately 3,500 square foot fast food restaurant and all related parking area improvements. In addition, the Agency shall develop or cause the development of any improvements which are identified in the Scope of Development as the responsibility of the Agency.

301.2 Local Contractors. The Developer shall endeavor to solicit and obtain bids from qualified responsible local businesses for the construction of the Improvements to be constructed by Developer.

302. Design Review.

302.1 Basic Concept Drawings. Within the time set forth in the Schedule of Performance, the Developer shall submit conceptual drawings for the Improvements, including materials, color board, elevations of all four sides of the Improvements, preliminary landscape plans, the traffic and circulation plan which has been prepared by the Developer, and a rendered perspective (collectively, the "Basic Concept Drawings"). Within the time set forth in the Schedule of Performance, the Agency shall either approve the Basic Concept Drawings or set forth the reasons for its disapproval in writing.

302.2 Site Plan Drawings. After the Agency's approval of the Basic Concept Drawings, and within the time set forth in the Schedule of Performance, the Developer shall submit to the Agency and City the following plans and drawings with respect to the Improvements (the "Site Plan Drawings"), which must include all documents, plans and drawings, including any application materials required by the City Planning Services Division, which are necessary to obtain all City approvals for the construction of the Improvements. Within the time set forth in the Schedule of Performance, the Agency shall either approve the Site Plan Drawings or set forth the reasons for its disapproval in writing. In the event that the Agency fails to act within the time set forth in the Schedule of Performance, the Site Plan Drawings shall be deemed to have been approved by the Agency.

302.3 Agency Review and Approval. The Agency shall have the right to review and approve the Basic Concept Drawings in its reasonable discretion. The Agency shall have the

right to review and reasonably approve or disapprove the Site Plan Drawings; provided, however, that the Agency shall reasonably approve logical evolutions and/or extensions of drawings which it has previously approved. The Agency may review any and all aspects of the Basic Concept Drawings and Site Plan Drawings. The Developer acknowledges and agrees that the Agency is entitled to approve or disapprove the Basic Concept Drawings and Site Plan Drawings in order to satisfy the Agency's obligation to promote the sound development and redevelopment of land within the Redevelopment Project, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and the Redevelopment Project.

302.4 Standards for Disapproval. The Agency shall have the right to disapprove the Basic Concept Drawings in its reasonable discretion. The Agency shall have the right to disapprove in its reasonable discretion any of the Site Plan Drawings if (a) the Site Plan Drawings do not conform to the approved Basic Concept Drawings, or (b) the Site Plan Drawings do not conform to the Scope of Development or this Agreement, or (c) the Site Plan Drawings are incomplete; provided, however, that the Agency shall reasonably approve logical evolutions and/or extensions of drawings which it has previously approved. The Agency shall state in writing the reasons for disapproval within fifteen (15) days of such disapproval as stated herein, and in the event that the Agency fails to do so, the drawings shall be deemed approved. The Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder, shall revise such portions and resubmit to the Agency by the time established therefor in the Schedule of Performance.

302.5 Consultation and Coordination. During the preparation of the Basic Concept Drawings, Site Plan Drawings and Construction Drawings, staff of the Agency and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of the Basic Concept Drawings, Site Plan Drawings and Construction Drawings by the Agency. The staff of the Agency and the Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the Agency can receive prompt and thorough consideration. The Agency shall designate an Agency employee to serve as the project manager who is responsible for the coordination of the Agency's activities under this Agreement and for expediting the land use approval and permitting process.

302.6 Revisions. If the Developer desires to propose any material revisions to the Agency-approved Basic Concept Drawings, Site Plan Drawings or Construction Drawings, it shall submit such proposed changes to the Agency, and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance. At the sole discretion of the Agency, if any material change in the basic uses of the Site is proposed in the Basic Concept Drawings, Site Plan Drawings or Construction Drawings from the basic uses of the Site as provided for in this Agreement, then this Agreement is subject to renegotiation of all terms and conditions, including without limitation, the economic terms of the Agreement. If the Basic Concept Drawings, Site Plan Drawings or Construction Drawings, as modified by the proposed change, generally and substantially conform to the requirements of this Section 302 of this Agreement and the Scope of Development, the Agency Director shall review the proposed change and notify the Developer in writing within fifteen (15) days after submission to the Agency as to whether the proposed change is approved or disapproved. In the event that the Agency fails to act within the fifteen (15) day time period set forth above, the proposed change or changes shall be deemed approved by the Agency. The Agency's Director is authorized to approve changes

to the Agency-approved Basic Concept Drawings, Site Plan Drawings and Construction Drawings provided such changes 1) do not significantly reduce the cost of the proposed development; 2) do not materially reduce the quality of materials to be used; and 3) do not reduce the imaginative and unique qualities of the project design. Any and all change orders or revisions required by the City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Basic Concept Drawings, Site Plan Drawings and Construction Drawings and completed during the construction of the Improvements.

302.7 Defects in Plans. The Agency shall not be responsible either to the Developer or to third parties in any way for any defects in the Basic Concept Drawings, the Site Plan Drawings or the Construction Drawings, nor for any structural or other defects in any work done according to the approved Basic Concept Drawings, Site Plan Drawings or Construction Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 302.

302.8 Use of Architectural Plans. The Agency shall not have the right to use any Basic concept Drawings, Site Plan Drawings or Construction Drawings which are submitted to the Agency by the Developer pursuant to this Section 203, nor shall the Agency confer any rights to use such architectural plans to any person or entity.

303. Land Use Approvals. Before commencement of construction of the Improvements or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Improvements by the City or any other governmental agency affected by such construction or work, except for those which are the responsibility of the Agency as set forth herein. The Developer also intends to enter into a Development Agreement with the City pursuant to Government Code Section 65864 through 65869.5 concerning the Site, in implementation of the promulgated state policy to protect and promote the sound development and redevelopment of the Redevelopment Project area in furtherance of the goals and objectives of the Redevelopment Plan, provided that the Development Agreement does not impose any fees or exactions which, in the aggregate, exceed one percent (1%) of the development value. The Agency shall exercise reasonable efforts to assist Developer in securing any and all land use and other entitlements, permits and approvals from the City and any other governmental agency from which such permits and entitlements are required. The Developer shall, without limitation, apply for and secure the following, and pay all costs, charges and fees associated therewith:

(a) Site Plan

(b) Development Agreement with the City.

(c) All other permits and fees required by the City, County of Orange, and other governmental agencies with jurisdiction over the Improvements.

(d) Any environmental studies and documents required pursuant to the California Environmental Quality Act.

(e) Traffic mitigation fee not to exceed fifty thousand dollars ($50,000), the balance of which shall be paid by Agency.

Before commencement of construction of the Improvements, the Agency shall, without limitation, apply for and attempt to secure and Developer shall pay for all costs, charges and fees associated with the rezoning application and the City's General Plan amendment. However, the execution of this Agreement does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals required by the Agency or the City.

304. Schedule of Performance. The Developer shall submit all Basic Concept Drawings, Site Plan Drawings and Construction Drawings, commence and complete all construction of the Improvements, and satisfy all other obligations and conditions of this Agreement, within the times established therefor in the Schedule of Performance, subject to permitted delays due to events of force majeure as set forth in Section 602 hereof.

305. Cost of Construction. Except to the extent otherwise expressly set forth in this Agreement, all of the cost of planning, designing, developing and constructing all of the Improvements, site preparation and grading shall be borne solely by the Developer. Each party shall also bear its own administrative, legal and consulting costs incurred in the negotiation and administration of this Agreement.

306. Insurance Requirements. The Developer shall take out and maintain or shall cause its contractor, Restaurant, to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 310 of this Agreement, a comprehensive general liability policy in the amount of One Million Dollars ($1,000,000.00) combined single limit policy, including contractual liability, as shall protect the Developer, City and Agency from claims for such damages, and which policy shall be issued by a "B+" rated insurance carrier. Such minimum policy amounts may be raised from time to time by the Agency by written notice to the Developer, but in no event shall such increases exceed the percentage increase in the Consumer Price Index from the date of this Agreement. Such policy or policies shall be written on an occurrence form. The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that Developer and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. The Developer shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the Agency setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and the Agency and their respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City and the Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Developer shall be primary insurance and not be contributing with any insurance maintained by the Agency or City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City and the Agency. The required certificate shall be furnished by the Developer at the time set forth therefor in the Schedule of Performance.

307. Developer's Indemnity. The Developer shall defend, indemnify, assume all responsibility for, and hold the Agency and the City and their officers, employees, agents, representatives and volunteers harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury occasioned by the negligence of the Agency or its agents or employees. The Developer's obligations under this Section 307 shall apply only to acts or omissions occurring prior to the date that the Agency furnishes the Release of Construction Covenants to the Developer pursuant to Section 310 hereof.

The Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Developer shall compromise or settle such action in a way that fully protects Agency from any liability or obligation. The Developer shall have the right to defend the Agency with the legal counsel defending the Developer. In this regard, Developer's obligation and right to defend shall include the right to hire attorneys and experts necessary to defend (subject to written approval by the Agency, except that no such approval shall be necessary if the attorneys and experts selected by the Developer are also defending the Developer in connection with the same action), the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Developer or Agency. If Developer defends any such action, as set forth above, it shall indemnify and hold harmless Agency and its officers, employees, representatives and agents from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation.

308. Rights of Access. Prior to the issuance of a Release of Construction Covenants (as specified in Section 310 of this Agreement), for purposes of assuring compliance with this Agreement, representatives of the Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as Agency representatives comply with all safety rules. The Agency (or its representatives) shall, except in emergency situations, notify the Developer at least forty-eight (48) hours prior to exercising its rights pursuant to this Section 308.

309. Compliance With Laws. The Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

309.1 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

309.2 Taxes and Assessments. Upon and after the Closing, the Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site, subject to the Developer's right to contest in good faith any such taxes. The Developer agrees that during all times that the Agency is permitted to receive property tax increment from the Redevelopment Project pursuant to Health and Safety Code Section 33670 (as it may be amended or substituted), the Developer shall not contest the assessed valuation of the Site or any part thereof, as established by the Orange County Assessor's Office, in a manner which would cause the assessed value of the Site, as improved, to be less than Eight Hundred Thousand Dollars ($800,000), less than Four Hundred Thousand Dollars ($400,000) if the Site is not improved, or if the Improvements are demolished by Developer's lessee pursuant to the terms of the Lease.

310. Release of Construction Covenants. Upon the earlier of (a) the expiration of Agency's Option pursuant to Section 201 herein or (b) the completion of the Improvements in conformity with this Agreement, the Agency shall furnish the Developer with a "Release of Construction Covenants," in the form of Attachment No. 6 hereto which is incorporated herein by reference. The Agency shall not unreasonably withhold such Release of Construction Covenants. If the Agency shall have failed to approve or disapprove the Release of Construction Covenants and provide such written statement within such fifteen (15) day period, the Developer shall thereupon provide written notice to the Agency that the Agency's failure to act within five (5) days of its receipt of such notice will result in the Release of Construction Covenants being deemed approved. If the Agency still fails to approve or disapprove the Release of Construction Covenants and provide such written statement within such five (5) day period, the Developer shall be deemed entitled to the Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as described in the Grant Deed.

If the Agency refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, the Agency shall, within fifteen (15) days of written request therefor, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Agency's

opinion of the actions the Developer must take to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

311. Financing of the Improvements.

311.1 Approval of Financing. As required herein and as an Agency Condition Precedent to the Closing, Developer shall submit to Agency evidence that Developer has obtained sufficient equity capital or has obtained binding commitments for construction and permanent financing, subject to such lender's reasonable, customary and normal conditions necessary to undertake the development of the Site and the construction of the Improvements in accordance with this Agreement. The Agency shall approve or disapprove such evidence of financing commitments within thirty (30) days of receipt of a complete submission. Approval shall not be unreasonably withheld or conditioned. If Agency shall disapprove any such evidence of financing, Agency shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to Agency new evidence of financing. Agency shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 311.1 for the approval or disapproval of the evidence of financing as initially submitted to Agency.

Such evidence of financing shall include the following: (a) a copy of a loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for financing to fund the construction and completion of the Improvements, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) a certificate from the chief financial officer of Developer or other evidence that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and/or other documentation satisfactory to the Agency as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the construction and completion of the Improvements, less financing authorized by those loans set forth in subparagraph (a) above.

311.2 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Mortgages, deeds of trust and sales and leases-back shall be permitted before the issuance of the Release of Construction Covenants only with the Agency's prior written approval, which shall not be unreasonably withheld or delayed, but only for the purpose of securing loans of funds to be used for financing the construction of the Improvements (including architecture, engineering, legal, and related direct costs as well as indirect costs) on or in connection with the Site, permanent financing, and any other purposes necessary and appropriate in connection with development under this Agreement provided, however, that no such mortgage, deed of trust or sale and lease-back shall exceed eighty percent (80%) of the then existing value of the Site. The Developer shall notify the Agency in advance of any mortgage, deed of trust or sale and lease-back financing, if the Developer proposes to enter into the same before completion of the construction of the Improvements. The words "mortgage" and "trust deed" as used hereinafter shall include sale and lease-back.

311.3 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. 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.

311.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever the Agency may deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the Agency are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Agency by written agreement reasonably 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. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the sixty (60) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such sixty (60) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

311.5 Failure of Holder to Complete Developer Improvements. In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from Agency of a default by the Developer in completion of construction of any of the Developer Improvements under this Agreement, and such holder has not exercised the option to construct as set forth in Section 311, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the Agency may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All expenses with respect to foreclosure including reasonable attorneys' fees;

(c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;

(d) The costs of any improvements made by such holder;

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency; and

(f) Any prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Developer.

311.6 Right of the Agency to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Developer prior to the completion of the construction of any of the Developer Improvements or any part thereof, Developer shall immediately deliver to Agency a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the Agency shall have the right but no obligation to cure the default, to the extent permitted by law or by the terms of such financing. In such event, the Agency shall be entitled to reimbursement from the Developer of all proper costs and expenses incurred by the Agency in curing such default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements, except to the extent prohibited by any Mortgagee. Any such lien shall be junior and subordinate to the mortgages or deeds of trust pursuant to this Section 311.

311.7 Modifications Requested by Lender. The Agency shall reasonably consider modifications to this Agreement which are requested by the Lender, and shall execute such further documents as may be reasonably requested by Lender.

400. COVENANTS AND RESTRICTIONS

401. Use in Accordance with Redevelopment Plan. The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that upon the Closing and during construction, operation, and thereafter, the Developer shall devote the Site to the uses specified in the Redevelopment Plan and this Agreement for the periods of time specified therein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to the Redevelopment Plan and all applicable provisions of the City Municipal Code. The foregoing covenants shall run with the land.

402. Use Restriction. For a term commencing upon the close of Escrow and ending upon the tenth anniversary thereafter, the Developer hereby covenants and agrees for itself, its successors, its assigns and all voluntary and involuntary successors in interest to the Site, or any part thereof, that the Site will only be used as a fast food restaurant. Such restaurant shall be a franchise of a fast food chain which owns and operates not fewer than twenty five (25) other fast food restuarnats in the United States, and which entity has not less than Ten Million Dollars ($10,000,000) of net assets.

403. Maintenance Covenants. The Developer shall maintain the Site and all improvements thereon, including all landscaping, in compliance with the terms of the Redevelopment Plan and with all applicable provisions of the City Municipal Code. To ensure Developer's continued maintenance of the Improvements, Developer agrees to execute, acknowledge and record in the official records of Orange County a Maintenance Agreement in the form attached hereto as Attachment No. 7.

404. Nondiscrimination Covenants. The Developer 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, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, 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:

(a) **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, national origin or ancestry 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."

(b) **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, 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, sublessees, subtenants, or vendees in the premises herein leased."

(c) **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, 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 premises."

405. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right 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, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site or in the Redevelopment Project. The Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches and to avail itself of the rights granted herein to which it or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect for the periods described herein, specifically including, without limitation, the following:

(a) The environmental covenants set forth in Sections 208.5, 208.6 and 208.7 shall remain in effect in perpetuity.

(b) The insurance obligations set forth in Section 306 hereof shall remain in effect until the expiration of the covenants set forth in Section 403 hereof, which expire upon the expiration of the Redevelopment Plan.

(c) The indemnity obligations, as set forth in Section 307 hereof, shall remain in effect only as to acts or omissions occurring prior to the date that the Agency furnishes the Release of Construction Covenants to the Developer pursuant to Section 310 hereof.

(d) The obligation to comply with applicable laws, as set forth in Section 309 hereof, shall remain in effect in perpetuity.

(e) The covenants pertaining to use of the Site which are set forth in Sections 401 and 403 shall remain in effect for the term of the Redevelopment Plan.

(f) The covenants pertaining to maintenance of the Site and all improvements thereon, as set forth in Section 403 hereof, shall remain in effect for the term of the Redevelopment Plan.

(g) The covenants against discrimination, as set forth in Section 404, shall remain in effect in perpetuity.

(h) The default and remedies sections, as set forth in Sections 500 through 512 hereof, and the general provisions, as set forth in Sections 600 through 618 hereof, shall remain in effect to the extent applicable to the above provisions.

(i) The use restrictions which are set forth in Section 402 shall remain in effect as specified therein.

406. Amendment to Parking Lease. Agency and Developer shall enter into an "Amendment to Parking Lease" in the form of Attachment No. 8 hereof pursuant to which the Site shall be excluded from the existing Parking Lease.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to the extensions of time set forth in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such Default within thirty (30) days of such notice, or if such default cannot reasonably be cured within such thirty (30) day period, if such party immediately after receipt of such notice with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy available at law or in equity. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in that county, or in the District of the United States District Court in which such county is located.

503. Termination by the Developer Prior to the Conveyance. In the event that prior to the Conveyance the Developer is not in default under this Agreement and (a) the Agency does not tender title to the Site pursuant to the Grant Deed in the manner and condition and by the date provided in this Agreement, or (b) one or more of the Developer's Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the Developer, or (c) any default of the Agency prior to the Closing is not cured within the time set forth in Section 501 hereof, after written demand by the Developer, or (d) the Developer timely disapproves the environmental condition of the Site pursuant to Section 208 hereof, then this Agreement may, at the option of the Developer, be terminated by written Notice thereof to the Agency (the "Notice of Termination"). From the date of the written Notice of Termination of this Agreement by the Developer to the Agency and thereafter this Agreement shall be deemed terminated, the Good Faith Deposit and any interest accrued thereon shall be returned to the Developer, as provided in Section 505 herein, and if the Agreement has been terminated due to the alleged default of the Agency hereunder, the Developer shall be entitled to pursue any remedies it has pursuant to Section 502 hereof, and there shall be no further rights or obligations between the parties with respect to the Site by virtue of or with respect to this Agreement.

504. Termination by the Agency Prior to the Conveyance. In the event that prior to the Conveyance the Agency is not in Default under this Agreement and (a) the Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or (b) one or more of the Agency's Conditions Precedent to the

Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the Agency or City; or (c) the Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof; then this Agreement and any rights of the Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of the Agency, be terminated by the Agency by written Notice thereof to the Developer. From the date of the written Notice of Termination of this Agreement by the Agency to the Developer and thereafter this Agreement shall be deemed terminated, the Agency shall be entitled to retain the Good Faith Deposit and any interest accrued thereon as provided in Section 505 hereof, and there shall be no further rights or obligations between the parties.

505. Developer Deposit; Liquidated Damages. On or before the date of the Agency's consideration and approval of this Agreement, the Developer shall deliver to the Agency cash or a cashier's or certified check in the amount of Twenty Five Thousand Dollars ($25,000) (the "Good Faith Deposit") as security for the performance of the obligations of the Developer to be performed pursuant to this Agreement, or its retention by the Agency as liquidated damages in accordance with this Section 505. There shall be no obligation to invest the Good Faith Deposit funds, and if invested such funds may be in a general passbook account, and interest, if any, shall accrue to the Agency. Concurrent with the close of the Escrow for the Conveyance, as defined herein, or the Developer's termination of this Agreement pursuant to Section 503 hereof, the Good Faith Deposit shall be returned to the Developer through the Escrow. The Good Faith Deposit, together with any interest earned thereon, shall be returned to the Developer if this Agreement is terminated for any reason other than the default of the Developer.

LIQUIDATED DAMAGES: THE DEVELOPER AND THE AGENCY, BY THIS AGREEMENT, MUTUALLY AGREE THAT IN THE EVENT OF AGENCY TERMINATION OF THIS AGREEMENT UNDER SECTION 504 HEREOF, THE GOOD FAITH DEPOSIT OF $25,000, TOGETHER WITH ANY INTEREST THEREON, SHALL BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY OF THE AGENCY HEREUNDER. IN THE EVENT OF TERMINATION, THE AGENCY WOULD SUSTAIN DAMAGES BY REASON THEREOF WHICH WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE DELAY OR FRUSTRATION OF TAX REVENUES THEREFROM TO THE CITY AND THE AGENCY, THE DELAY OR FAILURE OF THE AGENCY TO FURTHER THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN, AND A LOSS OF OPPORTUNITY TO ENGAGE IN OTHER POTENTIAL TRANSACTIONS, RESULTING IN DAMAGE AND LOSS TO THE AGENCY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE GOOD FAITH DEPOSIT (WITH ANY INTEREST THEREON), AND SUCH AMOUNT SHALL BE RETAINED BY THE AGENCY UPON TERMINATION AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. AGENCY SHALL NOT BE ENTITLED TO PURSUE ANY OTHER REMEDY AT LAW OR IN EQUITY AS A RESULT OF THE DEFAULT OF THE DEVELOPER PRIOR TO THE

CONVEYANCE, AND WAIVES THE BENEFIT OF CALIFORNIA CIVIL CODE SECTION 3389.

THE DEVELOPER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES BELOW:

Developer	**Agency**

506. Reentry and Revesting of Title in the Agency After the Closing and Prior to Completion of Construction. The Agency has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the Agency the estate conveyed to the Developer if after the Closing and prior to the issuance of the Release of Construction Covenants, the Developer (or its successors in interest) shall:

(a) unless due to an Enforced Delay as described in Section 602 hereof, fail to start the construction of the Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from the Agency; or

(b) unless due to an Enforced Delay as described in Section 602 hereof, abandon or substantially suspend construction of the Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from the Agency; or

(c) contrary to the provisions of Section 603 Transfer or suffer any involuntary Transfer in violation of this Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Grant Deed shall contain appropriate reference and provision to give effect to the Agency's right as set forth in this Section 505, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in the Agency the estate conveyed to the Developer. Upon the revesting in the Agency of title to the Site as provided in this Section 505, the Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

i. First, to reimburse the Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by the Agency, excluding City and Agency staff costs, but specifically, including, but not limited to, any expenditures by the Agency or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Agency from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Developer has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or revesting of title thereto in the Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the Agency, and in the event additional proceeds are thereafter available, then

ii. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by the Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property. The rights established in this Section 505 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have conveyed the Site to the Developer for redevelopment purposes, particularly for development of a new nationally known fast food restaurant, and not for speculation in undeveloped land.

507. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Director 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 Developer, service of process on the Developer shall be made by personal service on the Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

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

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

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

511. Non-Liability of Officials and Employees of the Agency. No member, official or employee of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the Agency (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

512. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency: Garden Grove Agency for Community Development
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attention: Director

To Developer: Food Partners, LLC
177 S. Beverly Drive
Beverly Hills, CA 90212-3002
Attention: Mark Burger

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

602. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where

delays or Defaults are due to causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform, which may include the following: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In addition, the dates for the parties' performance of the provisions of this Agreement, as set forth in the Schedule of Performance, shall be extended by the period of Remedial Work undertaken pursuant to Section 208 hereof. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Transfers of Interest in Site or Agreement.

603.1 Prohibition. The qualifications and identity of the Developer as the developer of high quality, fast food restaurants are of particular concern to the Agency. Furthermore, the parties acknowledge that the Agency has negotiated the terms of this Agreement in contemplation of the development of a drive-thru fast food restaurant on the Site and the property tax increment to be generated by the development of the fast food restaurant on the Site. Accordingly, for the period commencing upon the date of this Agreement and until the Release of Construction Covenants, (a) no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, (b) nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Improvements thereon, (c) nor shall any business other than a fast food restaurant be operated thereon, either in addition to or in replacement of the fast food restaurant being operated on the Site (collectively referred to herein as a "Transfer"), without the prior written approval of the Agency, except as expressly set forth herein.

603.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, prior to the issuance of the Release of Construction Covenants, Agency approval of a Transfer shall not be required in connection with any of the following:

(a) Any Transfer to an entity or entities in which the Developer retains a minimum of fifty one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities, and such entity has entered into an agreement with a reputable nationally or regionally recognized fast food restaurant operator with respect to the operation of the a fast food restaurant on the Site.

(b) Any Transfer, through bona fide merger, consolidation, corporate reorganizations or otherwise, to a nationally reputable entity which owns and operates not fewer than twenty five (25) other fast food restaurants in the United States which are of a comparable quality to the fast food restaurant, and which entity has not less than Ten Million Dollars ($10,000,000) of net assets.

(c) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements.

(d) Any requested assignment for financing purposes (subject to such financing being considered and approved by the Agency pursuant to Section 311 herein), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Improvements.

(e) Any transfer to an entity in which Mark Burger, the MTB Family Limited Partnership, Ronald Recht, and/or the RAR Family Limited Partnership retain a minimum of twenty five percent (25%) of the ownership or beneficial interest and retain management and control of the transferee entity or entities, provided that such transfer is made for no profit.

(f) Any transfer to a limited liability company of which Developer is the managing member, and Developer retains a minimum of fifty-one percent (51%) of the ownership.

(g) Any transfer to a franchisee of Developer who owns, or will own concurrently with the proposed transfer, not less than five (5) fast food restaurants, and who has entered into an agreement with a reputable nationally or regionally recognized fast food restaurant operator with respect to the operation of the fast food restaurant on the Site for a duration of not less than ten (10) years.

In the event of a Transfer by Developer under subparagraphs (a), (b), (e) or (f) above not requiring the Agency's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to Agency of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement of all of the obligations of this Agreement. Such assignment shall not, however, release the assigning Developer from any obligations to the Agency hereunder.

603.3 Agency Consideration of Requested Transfer. The Agency agrees that it will not unreasonably withhold approval of a request for approval of a Transfer made pursuant to this Section 603, provided the Developer delivers written notice to the Agency requesting such approval. Such notice shall be accompanied by evidence regarding the proposed transferee's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 603 and as reasonably determined by the Agency. The Agency may, in considering any such request, take into consideration such factors as (I) the quality of any new and/or replacement operator, (ii) the transferee's past performance as an operator of fast food restaurants, (iii) the current financial condition of the transferee, and similar factors.

The Agency agrees not to unreasonably withhold its approval of any such requested Transfer, taking into consideration the foregoing factors.

An assignment and assumption agreement in form satisfactory to the Agency's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of the Developer's written notice requesting Agency approval of a Transfer pursuant to this Section 603, the Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Agency reasonably requires in order to complete the request and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Agency such further information as may be reasonably requested.

603.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

603.5 Assignment by Agency. The Agency may not assign or transfer any of its rights or obligations under this Agreement without the approval of the Developer, not to be unreasonably withheld.

604. Relationship Between Agency and Developer. It is hereby acknowledged that the relationship between the Agency and the Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements.

605. Agency Approvals and Actions. The Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Agency Director (or his duly authorized representative). The Agency Director shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially change the uses or development permitted on the Site, or add to the costs incurred or to be incurred by the Agency as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

606. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

607. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings,

representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 7, which are incorporated herein.

608. Real Estate Brokerage Commission. The Agency and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's acquisition of the Site from the Agency. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any other broker, agent or finder with respect to this Agreement which is payable by such party.

609. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

610. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

611. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

612. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

613. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

614. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

615. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this

Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

616. Time of Essence. Time is expressly made of the essence with respect to the performance by the Agency, the Developer of each and every obligation and condition of this Agreement.

617. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

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

619. Time for Acceptance of Agreement by Agency. This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before forty-five (45) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

IN WITNESS WHEREOF, the Agency and the Developer have executed this Disposition and Development Agreement as of the date set forth above.

AGENCY:

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic

By: _____
Agency Director

ATTEST:

_____
Agency Secretary

APPROVED AS TO FORM:

_____
Stradling Yocca Carlson & Rauth
Agency Special Counsel

DEVELOPER:

FOOD PARTNERS, LLC, a California limited liability company

By: _____
Mark Burger
Its: _____

By: _____
Ronald Recht
Its: _____

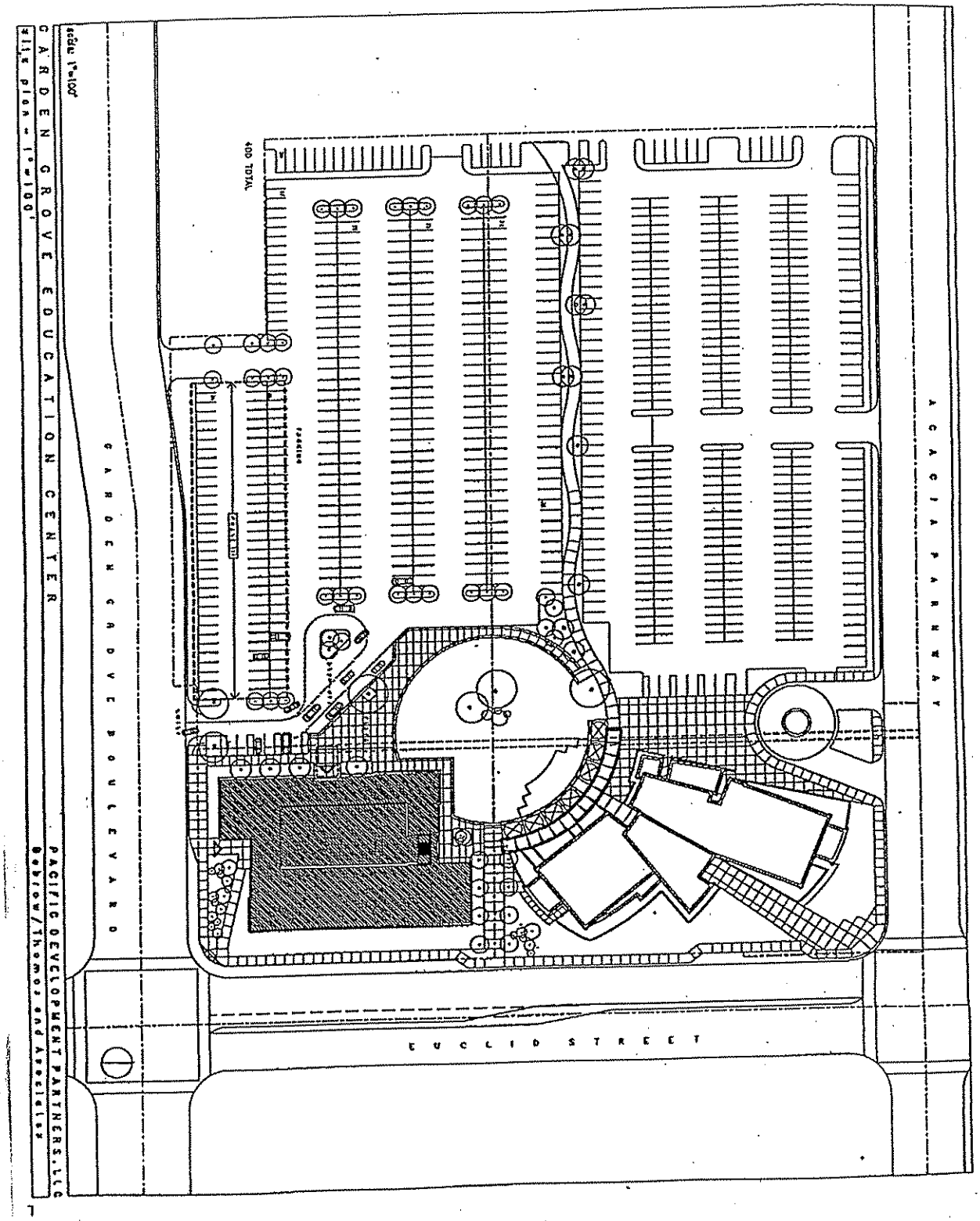
ATTACHMENT NO. 1

LEGAL DESCRIPTION OF SITE

Parcel 1 as shown on Plot Map in Exhibit "B" attached to Lot Line Adjustment No. LLA 4-99 in the City of Garden Grove, County of Orange, State of California, recorded _____, 1999 as Instrument No. _____ of Official Records of said County.

ATTACHMENT NO. 2

SITE MAP



COMPLETE THIS INFORMATION:

RECORDING REQUESTED BY:

CHICAGO TITLE

AND WHEN RECORDED MAIL TO:

This document was electronically recorded by
CHICAGO TITLE COMPANY

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder

19990533085 3:53pm 07/20/99

No Fee

004 14026040 14 30
G02 3 55 0.00 6.00 0.00 0.00 0.00 0.00 0.00
0.00 0.00

THIS SPACE FOR RECORDER USE ONLY

GRANT DEED

Order Number: 9309109-M14-1

THIS PAGE IS ADDED TO PROVIDE SPACE FOR RECORDING INFORMATION
(additional recording fee applies)

CHICAGO TITLE COMPANY

Recording Requested By:

CITY OF GARDEN GROVE

AND WHEN RECORDED MAIL TO

Garden Grove Agency for Community Development
P. O. Box 3070
Garden Grove, CA 928420
Attn.: Real Property Office

ASSESSOR PARCEL NUMBER
Escrow No. _____

This is to certify that this document covers City Business within the meaning of Section 6103 of the Government Code.
By: _____

930991094-MK4-1

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FOOD PARTNERS, LLC a California limited liability company

*does hereby **GRANT** to,* GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body corporate and politic *the real property in the City of Garden Grove, County of Orange, State of California, described as*

AS PER LEGAL DESCRIPTION SHOWN IN EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

Dated: 7-8-99

FOOD PARTNERS, LLC, a California limited liability company

By: _____
Its: Member

By: Mark T. Burger
Its: MEMBER

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } S.S.

On JULY 8, 1999 before me,

WILLIAM G. GREENFIELD,

a Notary Public in and for said County and State, personally appeared

RONALD A. RECHT AND

MARK T. BURGER

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

WITNESS my hand and official seal

Signature _____

WILLIAM G. GREENFIELD
Commission # 1066341
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires JUL 23, 1999

FOR NOTARY SEAL OR STAMP

A 3772

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by deed or grant deed dated July 8, 1999, form Food Partners, LLC to the Garden Grove Agency for Community Development, a public body corporate and politic, is hereby accepted by the undersigned officer on behalf of the Garden Grove Agency for Community Development pursuant to authority conferred by Resolution of said Agency adopted July 17, 1978, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: 7-12-99

By: _____
Secretary

EXHIBIT A

PARCEL 2 AS SHOWN ON PLOT MAP IN EXHIBIT B ATTACHED TO LOT LINE ADJUSTMENT NO. LLA-4-99, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA RECORDED July 7, 1999, AS INSTRUMENT NO. 19990500578 OF OFFICIAL RECORDS OF SAID COUNTY.

RECORDING REQUESTED BY,)
MAIL TAX STATEMENTS TO)
AND WHEN RECORDED MAIL TO:)
)
Food Partners, LLC)
177 S. Beverly Drive)
Beverly Hills, CA 90212-3002)
Attn: Mark Burger)

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic (the "Agency"), acting to carry out the Redevelopment Plan ("Redevelopment Plan") for the Garden Grove Community Project (the "Project"), under the Community Redevelopment Law of California, as of _____, 1999, hereby grants to **FOOD PARTNERS, LLC**, a California limited liability company ("Developer"), the real property hereinafter referred to as the "Site," described in Exhibit "A" attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

1. **Reservation of Mineral Rights.** Agency excepts and reserves from the conveyance herein described all interest of the Agency in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through, and to use and occupy all parts of the Site lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said Site or other lands, but without, however, any right to use either the surface of the Site or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the Site in such a manner as to create a disturbance to the use or enjoyment of the Site.

2. **Conveyance in Accordance With Redevelopment Plan, Disposition and Development Agreement.** The Site is conveyed in accordance with and subject to the Redevelopment Plan which was approved and adopted by Ordinance No. 1339 and amended by Ordinance Nos. 1388, 1476, 1548, 1576, 1642, 1699, 1760, 2035 and 2232 of the City Council of the City of Garden Grove, and a Disposition and Development Agreement entered into between Agency and Developer dated ____ _____, 1999 (the "DDA"), a copy of which is on file with the Agency at its offices as a public record and which is incorporated herein by reference. The DDA generally requires the Developer to construct and operate a drive-thru fast food restaurant on the Site (the " Improvements"), and other requirements as set forth therein. All terms used herein shall have the same meaning as those used in the DDA.

3. **Permitted Uses.** The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, that upon the date of this Grant

Deed and during construction through completion of development and thereafter, the Developer shall devote the Site to the uses specified in the Redevelopment Plan and this Grant Deed for the periods of time specified therein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to the DDA, shall conform to the DDA, the Redevelopment Plan and all applicable provisions of the City Municipal Code. The foregoing covenants shall run with the land.

4. Restrictions on Transfer. The Developer further agrees as follows:

(a) For the period commencing upon the date of this Grant Deed and until the Agency's issuance of the Release of Construction Covenants as set forth in Section 310 of the DDA, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under the DDA or this Grant Deed, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Improvements thereon, nor shall any other restaurant other than a drive-thru fast food restaurant be operated thereon, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the restaurant being operated upon the Site, without the prior written approval of the Agency pursuant to Section 603 of the DDA, except for transfers permitted pursuant to Section 603.2 of the DDA.

(b) For the period commencing upon the date of this Grant Deed and until the Agency's issuance of the Release of Construction Covenants as set forth in Section 310 of the DDA, the Developer shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, or any other form of conveyance required for financing of the construction of the Improvements on the Site, and any other expenditures necessary and appropriate to develop the Site pursuant to the DDA, except as provided in Section 311 of the DDA.

(c) All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Developer and the permitted successors and assigns of the Developer. Whenever the term "Developer" is used in this Grant Deed, such term shall include any other successors and assigns as herein provided.

5. Nondiscrimination. The Developer herein covenants by and for itself, its 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, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Developer itself or any person claiming under or through Developer, 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.

The Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, 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:

(a) 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, national origin or ancestry 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."

(b) 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, 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, sublessees, subtenants, or vendees in the premises herein leased."

(c) 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, 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 premises."

6. Agency Right of Reentry. The Agency has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the Agency the estate conveyed to the Developer if after the Closing and prior to the issuance of the Release of Construction Covenants, the Developer (or its successors in interest) shall:

a. fail to start the construction of the Improvements as required by the DDA for a period of thirty (30) days after written notice thereof from the Agency (subject to permitted delays as a result of events of force majeure pursuant to Section 602 of the DDA); or

b. abandon or substantially suspend construction of the Improvements required by the DDA for a period of thirty (30) days after written notice thereof from the Agency (subject to permitted delays as a result of events of force majeure pursuant to Section 602 of the DDA); or

c. contrary to the provisions of Section 603 of the DDA transfer or suffer any involuntary Transfer in violation of the DDA.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by the DDA; or

2. Any rights or interests provided in the DDA for the protection of the holders of such mortgages or deeds of trust.

Upon the revesting in the Agency of title to the Site as provided in this Section 6, the Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for the Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

i. First, to reimburse the Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by the Agency, excluding City and Agency staff costs, but specifically, including, but not limited to, any expenditures by the Agency or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Agency from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Developer has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or revesting of title thereto in the Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the Agency, and in the event additional proceeds are thereafter available, then

ii. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by the Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property. The rights established in this Section 6 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have conveyed the Site to the Developer for redevelopment purposes, particularly for development of a new fast food restaurant, and not for speculation in undeveloped land.

7. **Violations Do Not Impair Liens.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by paragraph 4 of this Grant Deed; provided, however, that any subsequent owner of the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. **Covenants Run With Land.** All covenants contained in this Grant Deed shall be covenants running with the land. All of Developer's obligations hereunder except as provided hereunder shall terminate and shall become null and void upon the expiration of the Redevelopment Plan. Every covenant contained in this Grant Deed against discrimination contained in paragraph 5 of this Grant Deed shall remain in effect in perpetuity.

9. **Covenants For Benefit of Agency.** All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire period during which such covenants shall be in force and effect, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. The Agency, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

10. **Revisions to Grant Deed.** Both Agency, its successors and assigns, and Developer and the successors and assigns of Developer in and to all or any part of the fee title to the Site shall have the right with the mutual consent of the Agency to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site. However, Developer and Agency are obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed. The covenants contained in this Grant Deed, without regard to technical classification, shall not

benefit or be enforceable by any owner of any other real property within or outside the Project Area, or any person or entity having any interest in any other such realty. No amendment to the Redevelopment Plan shall require the consent of the Developer.

AGENCY:

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic

By: _____
Executive Director

ATTEST:

_____
Secretary of the Agency

APPROVED AS TO FORM:

_____
Stradling Yocca Carlson & Rauth
Agency Special Counsel

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____,

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

WITNESS my hand and official seal.

_____
Signature Of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title Or Type Of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF SITE

Parcel 1 as shown on Plot Map in Exhibit "B" attached to Lot Line Adjustment No. LLA 4-99 in the City of Garden Grove, County of Orange, State of California, recorded _____, 1999 as Instrument No. _____ of Official Records of said County.

ATTACHMENT NO. 4

SCHEDULE OF PERFORMANCE

1. Execution of the Third Amendment to REA. Agency and Developer shall execute the Third Amendment to the REA.	Not later than _____.
2. Consideration of Agreement by the Agency Board. The Agency Board shall consider this Agreement, and if approved, shall deliver one executed copy thereof to the Developer.	Not later than June 30, 1999.
3. Submission of Basic Concept Drawings. Developer submits Basic Concept Drawings to Agency.	Completed.
4. Agency Approval or Disapproval of Basic Concept Drawings. Agency shall review the Basic Concept Drawings and approve or disapprove same.	Concurrent with consideration of this Agreement.
5. Agency Submission of Rezoning Application. Agency shall submit an application to the City for rezoning of the Site.	Not later than forty-five (45) days following execution of this Agreement.
6. Agency Notice of Rezoning Decision. Agency shall give Developer Notice of the City's rezoning decision.	Within seven (7) days of Agency's receipt of the City's decision.
7. Submission of Site Plan and Other Entitlement Applications for the Project. The Developer shall prepare and submit to the City and Agency a complete Site Plan application and other entitlements necessary for the construction, development and operation of the Improvements on the Site.	Completed.
8. Review of Site Plan Application and Approval or Disapproval Thereof. The Agency shall cause the Planning Commission (or applicable governmental entity) to consider and take action to approve or disapprove the Site Plan application, Site Plan Drawings, and other entitlement applications.	Within sixty (60) days of submission of Site Plan application.

9. Agency/City Council Review of Site Plan and Approval or Disapproval Thereof. If required the Agency and/or City Council shall consider and approve or disapprove the Site Plan application and Site Plan Drawings.	Within thirty (30) days of submission of Site Plan application.
10. Submission of Construction Drawings. Developer shall submit to the Building/Engineering Department complete Site Improvement and Construction Drawings.	Within sixty (60) days after approval of Site Plan by the Planning Commission.
11. Building/Engineering Review of Complete Site Improvement and Construction Drawings. The Building/Engineering Department shall approve or disapprove the complete Site Improvement and Construction Drawings and Street Improvement Plans (collectively "Construction Drawings".)	Within fifteen (15) days of submission.
12. Revisions of Construction Drawings By the Developer. Developer shall prepare revised Construction Drawings as necessary, and resubmit them to the Building/Engineering Department for review.	Within fifteen (15) days after receipt of Building/Engineering's comments.
13. Final Review of Complete Construction Drawings. The Building/Engineering Department shall approve or disapprove the revisions submitted by Developer provided that the revisions necessary to accommodate the Department's comments have been made.	Within ten (10) days after submission.
14. Revisions of Construction Drawings by the Developer. Developer shall prepare revised Construction Drawings as necessary, and resubmit them to the Building/Engineering Department for review.	Within ten (10) days after Building/ Engineering's approval of Site Improvement Drawings.
15. Final Review of Complete Construction Drawings. The Building/Engineering Department and Agency shall approve or disapprove the revisions submitted by the Developer, and Developer shall be ready to obtain building permits, provided that the revisions necessary to	Within fifteen (15) days after submission.

accommodate the Department's comments have been made.	
16. Opening of Escrow. The Agency shall open an Escrow with an Escrow Agent.	Not later than June 23, 1999.
17. Conditions Precedent. Developer and Agency shall satisfy (or waive) all of their respective Conditions Precedent to Closing.	Not later than June 30, 1999.
18. Close of Escrow for Conveyance. Agency shall convey the Site to the Developer.	Not later than June 30, 1999.
19. Commencement of Construction. Developer shall commence construction of the Improvements to be constructed on the Site.	If applicable, not later than _____.
20. Completion of Construction. Developer shall complete construction of the Improvements.	Within 360 days of Commencement of Construction.
21. Third Amendment to the REA. Agency shall execute and cause to be recorded the Third Amendment to the REA.	Not later than _____.
22. Design Approvals. The Developer shall have obtained approval by the Agency and City of the Basic Concept Drawings, Site Plan application drawings, Site Plan application, and Construction Drawings as set forth in Section 302 hereof.	Not later than _____.
23. Land Use Approvals. The Developer and the Agency shall have received all land use approvals required pursuant to Section 303 hereof. Agency shall have applied to have had the Site officially rezoned to allow drive-thru fast food restaurant use, the City's General Plan shall have been amended accordingly, and any period in which a challenge or appeal could be made to the City or any CEQA challenge shall have expired without such challenge or appeal.	Not later than _____.
24. Plans and Permits. The Developer shall have obtained City approval of its final building plans for all of the Improvements, and grading and building permits shall be ready to be issued (upon payment of necessary fees, posting of required security, and similar items).	Not later than_____.

25. Building and Grading Permits. All building and grading permits required for the construction of the Improvements shall be available for issuance upon the payment of applicable fees. Not later than _____.

26. Insurance. The Developer shall have provided proof of insurance as required by Section 306 hereof. Not later than _____.

Not later than _____.

27. Financing. The Agency shall have approved construction and acquisition financing as provided in Section 311.1 hereof.

28. Proof of Lease Agreement. Developer shall have executed and provided proof of a valid and binding lease agreement with Restaurant. Not later than _____.

29. General Contractor Contract. Developer shall have provided or have caused to be provided by Restaurant or another third party a copy of a valid and binding contract between the Developer and one or more duly licensed general contractors reasonably acceptable to the Agency for the construction of the Improvements, certified by the Developer to be a true and correct copy thereof. Not later than _____.

ATTACHMENT NO. 5

SCOPE OF DEVELOPMENT

I. GENERAL

This Scope of Development presents general requirements for all improvements to the Site, including on-site and off-site public improvements (collectively, the "Improvements"). Detailed requirements and approval of specific construction plans and documents will be addressed in the development review process.

II. DEVELOPMENT CONCEPT

The Developer shall develop the Site in accordance with the Site Plan attached hereto as Exhibit 1 to Attachment No. 5 and incorporated herein, as it may be approved by the City and the Agency. Developer shall construct: 1) a first quality fast food restaurant and shall include the number of parking spaces as established in the entitlement for the Property; 2) parking lot and driveway improvements on the Site consisting of pavement, curbing, textured pavement, striping, gutters and sidewalks; 3) high quality signage, including: channelized letter signs, monument signs, directional and traffic control signs; and 4) landscaping, including, but not limited to: trees, shrubs, ground cover, entry treatments, decorative paving, and decorative, security and parking lot lighting.

Project Design The attainable building area are will be dependent upon a detailed Site Plan review process. Developer agrees to incorporate the following standards into the project in accordance with the Garden Grove Municipal Code: (1) a parking area which shall provide adequate parking for the Site, (2) a landscape setback on Garden Grove Boulevard equal in size to the existing set-back; (3) a screened trash enclosure area sufficient to serve the project; (4) enhanced building elevations which are architecturally compatible in terms of material and color with the existing Center, as defined in the REA; (5) points of ingress and egress which comply with the requirements of the City's Traffic Engineer Division; (6) major trees which obstruct the view of the Site on Garden Grove Boulevard may be trimmed or relocated with the written approval of the City's Planning Departments. All trees which are removed shall be relocated on Site; and (7) all building signs shall have channel lettering.

A. Site Description

The Site upon which development will occur is located at 12951 Euclid Street, at the northwest corner of Garden Grove Boulevard and Euclid Street. The Site consists of approximately 33,000 square feet and is within the Community Center Specific Plan.

B. Uses

The Developer shall devote the property to the uses specific in Section 401 of the DDA.

III. ON-SITE DEVELOPMENT AND IMPROVEMENTS

The following Improvements shall be the sole financial responsibility of the Developer and shall be completed in accordance with the Schedule of Performance.

A. Project - The Developer shall construct a first quality fast food restaurant (in one-phase) as well as all appurtenant vehicle parking, common areas and Site amenities.

B. Site Preparation - Except as provided in Section 301 and 301.1 of the DDA, the Developer shall be solely responsible for preparing the Site for construction, and shall ready the Site for the construction of the Improvements. The Developer shall be responsible for the removal of all known and/or discovered conduits, pipes, poles, concrete, asphalt and trash that may appear upon grading the Site.

C. Easements - The Developer shall grant and permit all necessary and appropriate utility easements and rights for the development of the Site, including but not limited to sanitary sewers, storm drains, water, electrical power, telephone, natural gas, CATV, etc.

D. Reciprocal Access - The Developer shall execute the Third Amendment to the REA, as defined in the DDA.

E. Off-Site Improvements - The Developer shall, at its sole expense, be responsible for the construction of all off-site improvements.

F. Traffic Mitigation Fee - The Developer shall be responsible for the payment of a traffic mitigation fee not to exceed fifty thousand dollars ($50,000), the balance of which shall be paid by the Agency.

IV. AGENCY RESPONSIBILITIES

The Agency and the City shall retain sole reasonable discretion of the Site Plan, including all Conditions of Approval, and the entitlement for the Developer Improvements to be processed for review by the City and the Agency.

V. DEVELOPMENT STANDARDS

All development on the Site shall be in accordance with the development standards applicable to the Community Center Specific Plan as set forth in the Zoning Ordinance contained in the Garden Grove Municipal Code and development standards contained in the Redevelopment Plan.

A. Building Design

Goal: To develop an architecturally pleasing fast food restaurant.

1. All outdoor storage of materials or equipment shall be enclosed or screened to the extent and in the manner required by and shown on the approved Site Plan.

2. All utilities on the Property shall be underground or enclosed at Developer's expense.

3. All exterior walls to be painted (pursuant to the Site Plan) shall be painted by the Developer with colors which shall be subject to approval by the Agency.

4. Buildings shall be constructed such that the Developer Improvements are of high architectural quality, and shall be effectively and aesthetically designed.

B. Groundscapes

1. The Developer shall provide and maintain landscaping within the public rights-of-way and within any setback areas along all street frontages, to conform with the Site Plan as approved by the City and Agency.

2. Landscaping shall consist of trees, shrubs and installation of an automatic irrigation system adequate to maintain such plant material. The type and size of trees to be planted, together with a landscaping plan, shall be subject to City approval prior to any planting.

VI. DESIGN STANDARDS

The Agency Director, or his designee, shall review and approve all plans prior to Site Plan review to insure compliance with these design standards, this Scope of Development and the DDA. The Director shall determine if a variation is required under the design standards.

VII. VARIATION OF DESIGN STANDARDS

Variations of the design standards may be approved if the Agency Director or his designee determines that a variation meets the objectives of this Scope of Development, and are of benefit to the Redevelopment Project Area.

EXHIBIT 1 TO ATTACHMENT NO. 5

SITE PLAN

[To Be Inserted]

ATTACHMENT NO. 6

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
Food Partners, LLC)
177 S. Beverly Drive)
Beverly Hills, CA 90212-3002)
Attn: Mark Burger)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

THIS RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT,** a public body, corporate and politic (the "Agency"), in favor of **FOOD PARTNERS, LLC**, a California limited liability company (the "Developer"), as of the date set forth below.

RECITALS

A. The Agency and the Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated _____, 1999 concerning the redevelopment of certain real property situated in the City of Garden Grove, California as more fully described in Exhibit "A" attached hereto and made a part hereof.

B. As referenced in Section 310 of the DDA, the Agency is required to furnish the Developer or its successors with a Release of Construction Covenants upon the earlier of completion of construction of the Improvements (as defined in Section 100 of the DDA) or the expiration of the Agency's Option pursuant to Section 201 of the DDA (which shall expire two (2) years and sixty (60) days from the Close of Escrow). The Release is required to be in such form as to permit it to be recorded in the Recorder's office of Orange County and is a conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. The Agency has conclusively determined that such construction and development has been satisfactorily completed or period to exercise Agency's Option has expired.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. Either the Improvements to be constructed by the Developer have been fully and satisfactorily completed in conformance with the DDA or the period to exercise the Agency's Option

pursuant to the Section 201 of the DDA has expired (such period being two (2) years and sixty (60) days from the Close of Escrow).

2. The following covenants contained in the DDA shall remain in effect for the periods described herein:

a. The environmental covenants set forth in Sections 208.5, 208.6 and 208.7 of the DDA shall remain in effect and enforceable according to their terms.

b. The insurance obligations set forth in Section 306 of the DDA shall remain in effect until the expiration of the covenants set forth in Section 403 of the DDA, which expire upon the expiration of the Redevelopment Plan.

c. The indemnity obligations, as set forth in Section 307 of the DDA, shall remain in effect only to acts or omissions occurring prior to the date hereof.

d. The obligation to comply with applicable laws, as set forth in Section 309 of the DDA, shall remain in effect in perpetuity.

e. The covenants pertaining to use and operation of the Site which are set forth in Sections 401 and 403 of the DDA shall remain in effect for the term of the Redevelopment Plan.

f. The covenants pertaining to maintenance of the Site and all improvements thereon, as set forth in Section 403 of the DDA, shall remain in effect for the term of the Redevelopment Plan.

g. The covenants against discrimination, as set forth in Section 405 of the DDA, shall remain in effect in perpetuity.

h. The default and remedies sections, as set forth in Sections 500 through 512 of the DDA, and the general provisions, as set forth in Sections 600 through 619 of the DDA, shall remain in effect to the extent applicable to the above.

i. The use restrictions which are set forth in Section 402 shall remain in effect as specified therein.

3. Except as set forth in Section 2 hereof, the remainder of the DDA and Sections 4 and 6 of the Grant Deed shall be of no further force and effect. Nothing in the Release shall affect the requirements of other documents executed pursuant to the DDA, including, without limitation, the Maintenance Agreement, the Parking Lease Amendment and the other provisions of the Grant Deed.

IN WITNESS WHEREOF, the Agency has executed this Release this _____ day of _____, _____.

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic

By:_____
Executive Director

ATTEST:

_____
Agency Secretary

APPROVED AS TO FORM:

_____
Stradling Yocca Carlson & Rauth
Agency Special Counsel

APPROVED BY DEVELOPER:

FOOD PARTNERS, LLC, a California limited liability company

By:_____
Mark Burger
Its:_____

By:_____
Ronald Recht
Its:_____

EXHIBIT "A"

SITE DESCRIPTION

[To Be Attached]

This document w[illegible] electronically recorded by
CHICAGO TITLE COMPANY

CHICAGO TITLE COMPANY

CHICAGO TITLE COMPANY
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Garden Grove Agency for
Community Development
11222 Acacia Parkway
Garden Grove, California 92840
Attention: Real Property Manager

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder

30.00

19990533086 3:53pm 07/20/99

004 14026041 14 30
602 9 18 NonDis 6.00 24.00 0.00 0.00 NonDis
0.00 0.00 0.00

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

9 399109-44-3

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT (the "Agreement") is hereby entered into by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic (the "Agency"), and **FOOD PARTNERS, LLC**, a California limited liability company (the "Developer"), as of June 29, 1999

RECITALS

A. The Agency and the Developer have entered into a Disposition and Development Agreement ("DDA") as of June 8, 1999, for the development of a new fast food restaurant located on certain real property located in the Garden Grove Community Project Area, which is more particularly and legally described on Exhibit "A" attached hereto and made a part hereof (the "Site"). The DDA requires that Developer shall execute this Maintenance Agreement, and shall maintain the improvements and the landscaping on the Site in accordance herewith.

B. The Agency and the Developer desire to set forth herein their respective rights and obligations and the maintenance standards (including without limitation the definition of "Maintenance Standards") concerning the maintenance of all the improvements on-site and off-site in the public right-of-way to the back of the curbline(s) abutting the boundary of the Site (herein "improvements to the curbline"). The City is an intended third party beneficiary of this Agreement, and shall have the enforcement rights provided herein.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Purpose of This Agreement. The purpose of this Agreement is to set forth general maintenance standards and obligations of Developer in its maintenance of the private and public improvements on and within the Site to the back of the curbline.

2. Parties to the Agreement.

The Garden Grove Agency for Community Development is a public body corporate and politic of the State of California. The "Agency" as used in this Agreement includes the Garden Grove Agency for Community Development and any assignee of or successor to its rights, powers, and responsibilities.

Food Partners, LLC is a California limited liability company. The "Developer" as used in this Agreement includes Food Partners, LLC and any assignee of or successor to its rights, powers and responsibilities.

The City of Garden Grove ("City") is a California municipal corporation. The City is a third party beneficiary of this Agreement.

3. Representatives of the Parties and Services of Notices. The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

Agency: Garden Grove Agency for Community Development
11222 Acacia Parkway
Garden Grove, California 92840
Attention: Director

To Developer: Food Partners, LLC
177 S. Beverly Drive
Beverly Hills, CA 90212-3002
Attn: Mark Burger

Formal notices, demands and communications to be given hereunder by any party shall be made in writing and may be effected by personal delivery, telecopy, overnight delivery service or by registered or certified mail, postage prepaid, return receipt requested. Notices which are properly mailed shall be deemed communicated not earlier than forty-eight (48) hours after the date of mailing.

If the name of the person designated to receive the notices, demands or communications or the address is changed, written notice shall be given, in accord with this section, within five (5) working days of said change.

4. Performance of Maintenance.

a. Developer shall maintain in accordance with the Maintenance Standards, as hereinafter defined, the private improvements and public improvements and landscaping to the curbline(s) on and abutting the Site. Said improvements shall include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and in the public right-of-way to the nearest curbline(s) abutting the Site.

b. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

c. The following standards ("Maintenance Standards") shall be complied with by Developer and its maintenance staff, contractors or subcontractors:

1. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

2. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

3. All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

4. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

5. The Improvements (as the term is defined in the DDA) shall be maintained in conformance and in compliance with the approved Site construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City (and Agency, if such approval is required) and reasonable commercial development maintenance standards for similar projects, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

6. The Improvements (as defined in the DDA) shall be maintained as required by this Section 4(c) in good condition and in accordance with the custom and practice generally applicable to comparable first-class drive-thru fast food facilities located within Orange County, California. The public right-of-way improvements to the curbline(s) shall be maintained as required by this Section 4(c) in good condition and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Garden Grove, California.

5. Failure to Maintain Improvements. In the event Developer does not maintain the private improvements and the public improvements or the Site to the curbline(s) in the manner set forth herein and in accordance with the Maintenance Standards, Agency and/or City shall have the right to

maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to Developer. However, prior to taking any such action, Agency agrees to notify Developer in writing if the condition of said improvements do not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City or the Agency, then Developer shall have forty eight (48) hours to rectify the problem.

In the event Developer fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then City and/or Agency shall have the right to maintain such improvements. Developer agrees to pay Agency such charges and costs. Until so paid, the Agency shall have a lien on the Site for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Site. Upon recordation of a Notice of a Claim of Lien against the Site, such lien shall constitute a lien on the fee estate in and to the Site prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien. Any such lien shall be subject and subordinate to any lease or sublease of the interest of Developer in the Site or any portion thereof and to any easement affecting the Site or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice. Any lien in favor of the Agency created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien describing such lien as aforesaid, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgage or beneficiary thereunder expressly subordinates his interest, of record, to such lien. No lien in favor of the Agency created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Upon foreclosure of any mortgage or deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure-purchaser shall take title to the Site free of any lien imposed by the Agency that has accrued up to the time of the foreclosure sale, and upon taking title to the Site, such foreclosure-purchaser shall only be obligated to pay costs associated with this Agreement accruing after the foreclosure-purchaser acquires title to the Site. If the Site is ever legally divided with the written approval of the Agency and fee title to various portions of the Site is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in this Agreement and the charges levied by the Agency to reimburse the Agency for the cost of undertaking such maintenance obligations of Developer and its successors and the lien for such charges shall be apportioned among the fee owners of the various portions of the Site under different ownerships according to the square footage of the land contained in the respective portions of the Site owned by them. Upon apportionment, no separate owner of a portion of the Site shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Site, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Site owned in fee by the owner who is liable for the apportioned charges levied by the Agency and secured by the apportioned lien and against no other portion of the Site. Developer acknowledges and agrees City and Agency

may also pursue any and all other remedies available in law or equity. Developer shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

6. **Compliance with Law**. Developer shall comply with all local, state and federal laws relating to the uses of or condition of the Site private improvements and public improvements to the curbline(s). Local laws for the purposes of this section shall include only those ordinances which are nondiscriminatory in nature and applicable to the public welfare, health, safety and aesthetics. If any new local laws relating to uses of or condition of the improvements create a condition or situation that constitutes a lawful nonconforming use as defined by local ordinance with respect to the Site or any portion thereof, then so long as the lawful nonconforming use status remains in effect (i.e., until such lawful status is properly terminated by amortization as provided for in the new local law or otherwise), Developer shall be entitled to enjoy the benefits of such lawful nonconforming use pursuant to the lawful nonconforming uses ordinance.

7. **Covenants Run with the Land**. The Improvements to the curbline(s) and the maintenance thereof touch and concern the Site and inure to the benefit of any and all present or successive owners of the Site. Therefore, whenever the word "Developer" is used herein, it shall include the owner as of date of execution of this Agreement, and any and all successive owners or assigns of the Site, and the provisions hereof are expressly binding upon all such successive owners or assigns, and the parties agree all such provisions shall run with the land. Agency or City shall cause a fully executed copy of this Agreement to be recorded in the Office of the Orange County Recorder. Notwithstanding the foregoing, in the event Developer or its successors or assigns, shall convey its fee interest in all or any portion of the Site, the conveying owner shall be free from and after the date of recording such conveyance of all liabilities, respecting the performance of the restrictions, covenants or conditions contained in this Agreement thereafter to be performed with respect to the Site, or any part thereof, it being intended that the restrictions, covenants and conditions shall be binding upon the record owners of the Site only during such time as they own the same, provided that the conveying owner shall remain liable for any actions prior to the date of the conveyance.

8. **Indemnification**. Developer agrees to protect, defend, indemnify and hold harmless City and Agency and their elective and appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including reasonable attorney fees, (a) for injury to, or death of, any person, and for injury to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the performance of this Agreement by Developer or its agents, servants, employees or contractors, but not from (i) the negligence or intentional acts of the City or Agency, or their agents, servants, employees or contractors in connection with supervision or direction of the work, or (ii) third parties unrelated to Developer or its agents, servants, employees or contractors, but not by the City or Agency or their respective agents, servants, employees or contractors and (b) from violation of any statute, law regulation or other legal requirement concerning a safe place for employment of workers by Developer or its agents, servants, employees or contractors, but not by (i) the City or the Agency or their respective agents, servants, employees or contractors or (ii) third parties unrelated to Developer or its agents, servants, employees or contractors.

Developer shall comply with all of the provisions of the Workers' Compensation Insurance and Safety in Employment laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto, and all similar state,

federal or local laws applicable; and shall indemnify and hold harmless City and Agency from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees, presented, brought or recovered against City or Agency, for or on account of any liability under any of said laws which may be incurred by reason of work performed under this Agreement by Developer or its agents, servants, employees, contractors, but not by the sole acts of City and/or the Agency or if available, their respective agents, servants, employees or contractors.

City and Agency do not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by City or the deposit with the City by Developer of any insurance policies or certificate of insurance purporting to indemnify for the aforesaid losses. The aforesaid hold harmless agreements by Developer shall apply to all liabilities, claims, expenses and damages of every kind, including but not limited to reasonable attorney fees, suffered or alleged to have been suffered, by reason of the aforesaid operations by Developer or any of its agents, servants, employees or contractors, regardless of whether or not such insurance policies are applicable.

Similarly, the City and the Agency shall protect, defend, indemnify, and hold harmless Developer, its successors and assigns, and/or if available, their respective boards, officers, agents and employees from any and all claims, liabilities, expenses or damages of any nature, including reasonable attorney's fees, (a) for injury to, or death of, any person, and for injury to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the acts or inactions taken by the City and/or the Agency pursuant to the terms of this Agreement, but not the negligence or intentional acts of Developer, or its agents, servants, employees or contractors; and (b) from violation of any statute, law, regulation, or other legal requirement concerning a safe place for employment of workers by the City and/or the Agency, or their respective agents, servants, employees or contractors or by (i) Developer or its agents, servants, employees or contractors or (ii) third parties unrelated to the City or Agency or their respective agents, servants, employees or Contractors.

The City and/or the Agency shall comply with all the provisions of the Workers' Compensation Insurance and Safety and Employment Laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code an all amendments thereto, and all similar state, federal or local laws applicable; and shall indemnify and hold harmless Developer and its successors and assigns, from and against any and all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees, presented, brought or recovered against Developer or its successors and assigns, for or on account of any liability under any of said laws which may be incurred by reason of any work performed under this Agreement by the City and/or Agency, or their respective agents, servants, employees or contractors, but not by (i) Developer or its agents, servants, employees or contractors or (ii) third parties unrelated to the City or Agency or their respective agents, servants, employees or contractors.

Developer or its successors or assigns do not, and shall not, waive any rights against the City and/or the Agency which it (they) may have by reason of the aforesaid hold harmless agreement because of any insurance policies or certificates of insurance purporting to indemnify for the aforesaid losses. The aforesaid hold harmless agreement by the City and/or the Agency shall apply to all liabilities, claims, expenses and damages of every kind, including, but not limited to, reasonable

attorney's fees, suffered or alleged to have been suffered, by reason of the aforesaid operations by the City and/or the Agency, or their respective agents, servants, employees or contractors, regardless of whether or not such insurance policies are applicable.

9. Workers Compensation Insurance Requirements. Developer shall obtain and maintain during the life of this Agreement workers' compensation insurance and if any work is sublet by Developer, then Developer shall require the subcontractor similarly to provide workers' compensation insurance. Developer agrees to indemnify City and Agency for any damages resulting to it from failure of either Developer or any subcontractor to obtain or maintain such insurance.

10. Bodily Injury and Damage Insurance Requirements. The Developer shall defend, assume all responsibility for and hold the Agency and the City and their officers, employees, and agents, harmless from, all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any of the Developer's activities under this Agreement, whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement.

11. Waiver. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The aggrieved party shall give written notice of the default to the party in default as set forth in Section 3 hereof. The defaulting party must within a reasonable time commence to cure, correct, or remedy such default, and shall complete such cure, correction or remedy with reasonable and due diligence, and during such period or curing shall not be in default. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise hereunder. The exercise of any remedy shall not preclude the exercise of other remedies City, Agency, or Developer may have at law or at equity.

12. Modification. This Agreement may be modified only by subsequent mutual written agreement executed by Developer and the Agency.

13. Attorney's Fees. In the event of litigation arising out of any breach of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorney's fees.

IN WITNESS WHEREOF, the parties hereto have executed this Maintenance Agreement as of the date first set forth above.

AGENCY:

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic

By: _____
Executive Director

ATTEST:

_____, Deputy
Secretary of the Agency

APPROVED AS TO FORM:

_____
Stradling Yocca Carlson & Rauth
Special Counsel to the Agency

DEVELOPER:

FOOD PARTNERS, LLC, a California limited liability company

By: _____
Mark Burger
Its: Member

By: _____
Ronald Recht
Its: Member

STATE OF CALIFORNIA)
) ss.
COUNTY OF Orange)

On June 29, 1999, before me, A. J. Morales, Notary Public,
(Print Name of Notary Public)
personally appeared George L. Lindall,

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

A. J. MORALES
Commission # 1179987
Notary Public - California
Orange County
My Comm. Expires May 14, 2002

WITNESS my hand and official seal.

Signature Of Notary
A. J. Morales

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On JUNE 24, 1999, before me, WILLIAM G. GREENFIELD, Notary Public,
(Print Name of Notary Public)

personally appeared RONALD A. RECHT AND MARK T. BURGER,

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

NNA1 WILLIAM G. GREENFIELD Commission #1066341 Notary Public — California LOS ANGELES COUNTY My Comm. Expires JUL 23, 1999 NNA1

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

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☐ Corporate Officer

Title(s)

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☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF SITE

Parcel 1 as shown on Plot Map in Exhibit "B" attached to Lot Line Adjustment No. LLA 4-99 in the City of Garden Grove, County of Orange, State of California, recorded July 7, 1999 as Instrument No. 19990500578 of Official Records of said County.

ATTACHMENT NO. 8

AMENDMENT TO PARKING LEASE

[To Be Inserted]

A-55.218

RECORDED AT THE REQUEST OF
CHICAGO TITLE COMPANY

This document was electronically recorded by
CHICAGO TITLE COMPANY

RECORDING REQUESTED BY:

When recorded mail to:

Garden Grove Agency for Community Development
P. O. Box 3070
Garden Grove, CA 92842
Attn.: Real Property Office

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder

No Fee

19990615029 11:35am 08/24/99

006 28022188 28 63
M15 P04 3 0 12.00 0.00 6.00 0.00 0.00 0.00
0.00 0.00 0.00

MODIFICATION AND PARTIAL TERMINATION OF LEASE

This is to certify that this document covers governmental business within the meaning of Section 6103 of the Government Code.

This Modification and Partial Termination of Lease is dated this 21st day of July, 1999

WHEREAS, the Garden Grove Agency for Community Development, a public body corporate and politic (the "Agency"), exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, California Health and Safety Code, Section 33000, et seq., is the owner of the following described real property, hereinafter referred to as Parcel A:

Parcel A

Parcel 2 of Parcel Map 98-166, in the City of Garden Grove, County of Orange, State of California as shown on a map filed in Book 302, Pages 49 and 50 of Parcel Maps in the Office of the County Recorder of said County; and

9309109-1114

WHEREAS, Food Partners, LLC a California limited liability company, successor in interest to Mark T. Burger, Trustee of the 12951 Euclid Street Trust, dated August 5, 1998 a California irrevocable trust (the "Developer"),is the owner of the following described real property hereinafter referred to as Parcel B:

Parcel B

Parcel 1 of Parcel Map 98-166, in the City of Garden Grove, County of Orange, State of California as shown on a map filed in Book 302, Pages 49 and 50 of Parcel Maps in the Office of the County Recorder of said County; and

WHEREAS, Agency and Developer entered into a Parking Lease (the" Lease") for that certain lease of parking spaces over the Agency real property described in said Parcel A; as said lease is disclosed by a Memorandum of Lease recorded November 3, 1998, as Instrument No. 19980747118 of Official records of Orange County, California and by Assignment of Lease recorded November 5, 1998 as Instrument No. 19980751117 of Official Records of said Orange County; and

Attachment No 8
of 10 pp

WHEREAS, Agency has entered into a Disposition and Development Agreement dated June 8, 1999 (the "DDA") with Developer, for the development of a commercial establishment over a portion of said Parcel 1,

WHEREAS, in order to effectuate the Agency's Amended Redevelopment Plan for the Garden Grove Community Project (the "Project") and to carry out the impending disposition and development of the properties located in the Amended Redevelopment Project Area (the "Project Area"), and in order to effectuate the terms and conditions of the DDA, Agency desires to terminate the Lease, insofar and only insofar as the Lease affects the following described real property, herein after referred to as Parcel C:

Parcel C

Parcel 1, as shown on Plot Map in Exhibit B attached to Lot Line Adjustment No. LLA-4-99, in the City of Garden Grove, County of Orange, State of California, recorded July 7, 1999, as Instrument No. 19990500578 of Official Records of said County: and

WHEREAS, it has been found and determined that it is in the best interest of the Agency and in accord with the public purposes and provisions of the Community Redevelopment Law and other applicable state and local laws and requirements to terminate that portion of the Lease described in said Parcel C.

NOW THEREFORE, the Agency does hereby terminate the Parking Lease, and find that said Parking Lease shall be of no further force and effect, insofar and only insofar as same affects the real property herein described in said Parcel C. All other terms, conditions, restrictions and provisions set forth in the Parking Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the Agency has executed this Modification and Partial Termination of Lease as of the date set forth above.

GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT, a
public body corporate and politic

By: _____
Its: Director

ATTEST:

_____
Ruth E. Smith
Secretary of the Agency

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of ORANGE } ss.

On JULY 21, 1999 (Date), before me, A.J. MORALES, NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),
personally appeared GEORGE L. TINDALL & RUTH E. SMITH (Name(s) of Signer(s)),

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

Signature of Notary Public

A. J. MORALES
Commission # 1179987
Notary Public - California
Orange County
My Comm. Expires May 14, 2002

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

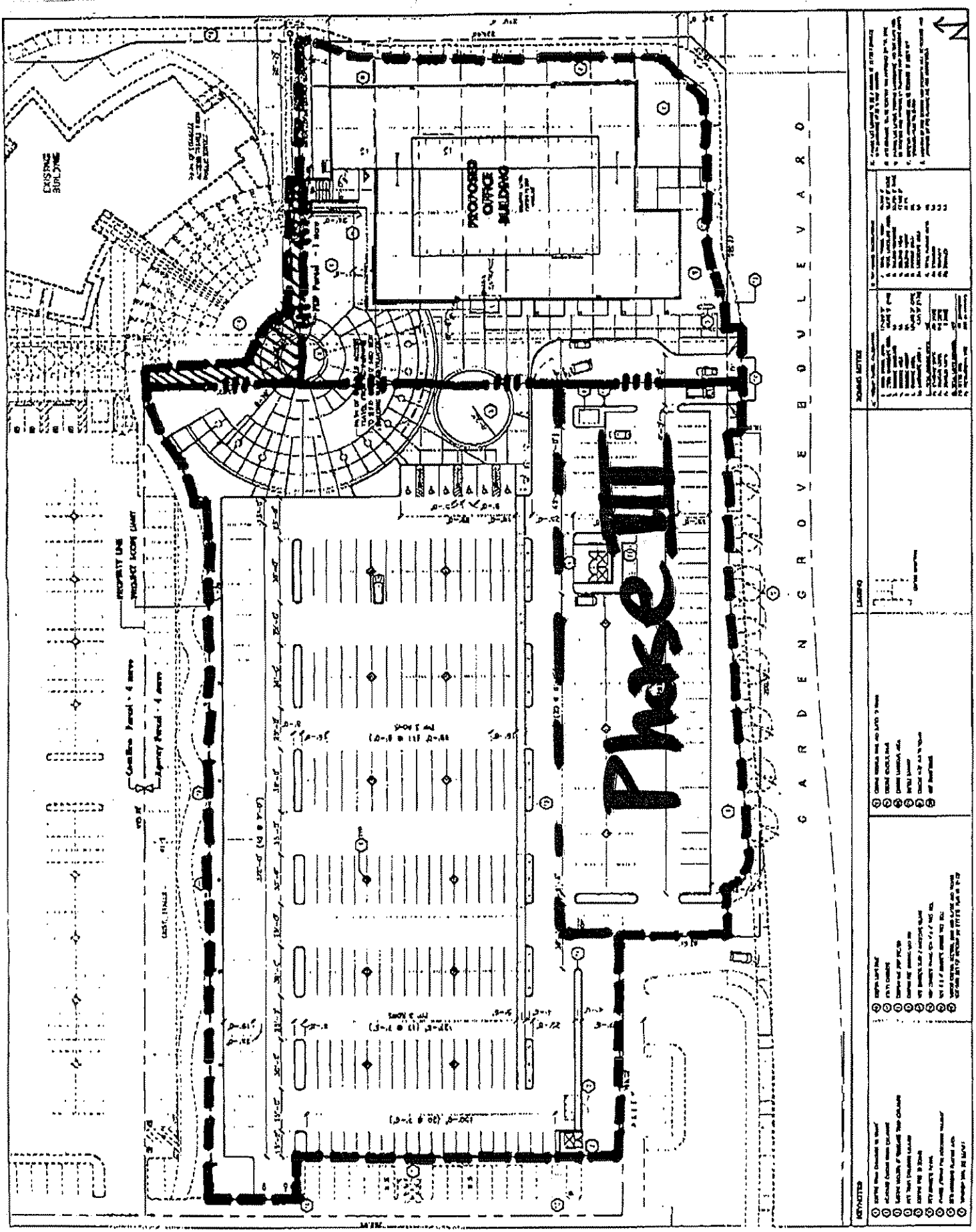
Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

SITE MAP


PROPOSED OFFICE BUILDING
EXISTING BUILDING
Phase II
GARDEN GROVE BOULEVARD

SALIENT PROVISIONS OF PROPOSED DDA

Food Partners
Education Center - Phase III

1. Developer agrees to build in one phase, a minimum of a 3,300 square foot, drive-thru restaurant on approximately .75 acres (33,000 sq.ft.), located on the north side of Garden Grove Boulevard, between Main and Euclid Street.

2. Developer has agreed to a Liquidated Damages amount of Twenty-Five Thousand ($25,000), as security for the performance of the obligations of the Developer to be performed pursuant to the Agreement.

3. Developer agrees to accept and operate the facility as a drive-thru restaurant throughout the life of the Redevelopment Plan (July 13, 2032).

4. Agency agrees to sell to the Developer and the Developer agrees to purchase from the Agency the Property for the sum of $400,000, which is determined to be the highest and best use value and re-use value of the property. The Purchase Price is to be paid upon the Close of Escrow.

5. Agency agrees to prepare or cause to be prepared a Parcel Map which shall establish the total square footage of the property to be conveyed by the Agency to the Developer prior to conveyance.

6. Prior to conveyance, should the remediation of hazardous materials be necessary in preparation of the development site, Agency agrees to pay a maximum threshold amount of $100,000. Should the remediation costs exceed this amount, both Agency and Developer may terminate the Agreement without default.

7. Developer agrees to submit a full and complete Site Plan application to the City no later than thirty (30) days after Agency approval of the DDA.

8. Developer agrees to submit to the City complete Construction Drawings and Landscape Plan within seventy-five (75) days after City approval of the Site Plan Application.

9. Developer agrees to obtain building permits for construction of the Developer Improvements, within ten (10) days after final approval of complete Construction Drawings.

10. Developer agrees to commence construction of the Education Center Improvements no later than thirty (30) days following the receipt of Building Permits.

11. Developer agrees to complete construction of all of the Developer and Agency Improvements no later than twelve (12) months following the commencement of construction of the Developer Improvements.

12. The Developer agrees not to challenge, appeal, or take action to decrease the property tax basis value of the Property below Eight Hundred Thousand ($800,000) prior to the termination of the Redevelopment Plan (July 13, 2032).

13. The Developer shall enter into a Reciprocal Easement Agreement (REA) between itself, the Agency and the Coast Community College District concerning ingress, egress and parking.

14. The Agency and the Developer shall execute a Maintenance Agreement.

15. Developer agrees to comply with the provisions of the City policy concerning the execution of a Development Agreement.

SUMMARY REPORT PURSUANT TO
SECTION 33433
OF THE
CALIFORNIA COMMUNITY REDEVELOPMENT LAW
ON A
DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT
AND
FOOD PARTNERS

The following Summary Report has been prepared pursuant to Section 33433 of the California Health and Safety Code. This report sets forth certain details of the proposed Disposition and Development Agreement (Agreement) between the Garden Grove Agency for Community Development (Agency) and the Food Partners (Developer).

The Agreement requires the Agency to convey an approximately 33,000 square foot site located on the north side of Garden Grove Boulevard between Main and Euclid Streets (Development Site) to the Developer to effect the development of a new drive-thru McDonald's Restaurant (Project).

This Summary Report is based upon information contained within the Agreement, and is organized into the following seven sections:

I. **Salient Points of the Agreement**: This section describes the major responsibilities imposed on the Developer and the Agency by the Agreement.

II. **Cost of the Agreement to the Agency**: This section details and quantifies the costs to be incurred by the Agency to implement the Agreement.

III. **Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted Under the Redevelopment Plan**: This section estimates the value of the interests to be conveyed determined at the highest use permitted under the existing zoning and the requirements imposed by the Garden Grove Community Project Redevelopment Plan (Redevelopment Plan).

IV. **Estimated Reuse Value of the Interests to be Conveyed**: This section estimates the value supported by the Development Site based on the required scope of development and the other conditions and covenants required by the Agreement.

V. **Consideration Received and Comparison with the Fair Reuse Value**: This section describes the compensation to be received by the Agency, and explains the reasons for any difference between the compensation and the established fair reuse value of the Development Site.

VI. **Blight Elimination**: This section describes the blighting conditions on the Development Site, and explains how the implementation of the Agreement will alleviate the blighting influence.

VII. **Conformance with the AB 1290 Implementation Plan**: This section explains how the Agreement complies with the redevelopment strategy identified in the Agency's adopted AB 1290 Implementation Plan.

This report and the Agreement are to be made available for public inspection prior to the approval of the Agreement.

I. SALIENT POINTS OF THE AGREEMENT

The Agreement requires the Agency to convey the Development Site to the Developer to allow for the construction and operation of an approximately 3,300 square foot McDonald's drive-thru restaurant.

A. Developer Responsibilities

The Agreement requires the Developer to accept the following responsibilities:

1. The Developer must build a drive-thru restaurant with a minimum of 3,300 square feet on approximately .75 acres (33,000-sq. ft.). This facility must be operated as a drive-thru restaurant through the remaining life of the Redevelopment Plan (July 13, 2032).

2. The Developer must purchase the Site from the Agency for $400,000 (Purchase Price).

3. The Developer must pay for 100% of the on- and off-site improvement costs required to support the Project.

4. The Developer will enter into a Reciprocal Easement Agreement (REA) between itself, the Agency and the Coast Community College District concerning ingress, egress and parking on the parcels controlled by the various entities.

5. The Developer shall submit drawings for Agency approval in accordance with the Agreement.

6. The Developer is required to complete the Project's construction within one year after the Agreement is executed.

7. The Developer will grant and permit utility easements and rights for the Development Site.

8. The Developer agrees not to challenge, appeal, or take action to decrease the property tax base value below $800,000 prior to the end of the Redevelopment Plan (July 2032).

B. Agency Responsibilities

The Agency must accept the following responsibilities:

1. The Agency will prepare, or cause to be prepared, a Parcel Map prior to conveyance of the Development Site to the Developer.

2. The Agency and the Developer will execute an agreement that will dictate the maintenance standards that must be fulfilled on the Development Site over time.

II. COST OF THE AGREEMENT TO THE AGENCY

The Agency costs to implement the Agreement are equal to the out-of-pocket expenditures previously incurred to acquire the Development Site. These costs are calculated as follows:

1. The Agency assembled four parcels at a total acquisition cost of $433,626.

2. Under the terms of the Agreement, the Agency is selling one parcel plus portions of the remaining three parcels, to the Developer.

3. The pro rata cost of the land being conveyed to the Developer to total $322,923.

The Agency costs will be offset by the Developer's land acquisition payment and the property tax increment revenues generated by the Project. The net cost of the Agreement to the Agency is illustrated below:

Agency Costs		($322,923)
Agency Revenues		
Land Sale Proceeds	$400,000	
Property Tax Increment [1]	113,000	
Total Agency Revenues		$513,000
Net Agency Revenue/(Cost)		$190,077

As shown in the preceding table, the Agency costs total approximately $322,923, while the projected Agency revenues total $513,000. Thus, the Agency revenues exceed the Agency costs by approximately $190,000. In addition, the City of Garden Grove will receive 100% of the sales tax revenues generated by the Project.

III. ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

Section 33433 of the California Health and Safety Code requires the Agency to identify the value of the interests being conveyed at the highest and best use allowed by the Development Site's zoning and the requirements imposed by the Redevelopment Plan. The valuation must be based on the assumption that near-term development is required, but the valuation does not take into consideration any extraordinary use and/or quality restrictions being imposed on the development by the Agency.

Given the uses permitted under the Redevelopment Plan, and the location/size of the Development Site, fast food restaurant development has been deemed the highest and best use for the Site. To arrive at the value of the Development Site at its highest and best use, Keyser Marston Associates, Inc. (KMA), the Agency's financial consultant, compiled information regarding eight fast food restaurant pad sales that recently occurred in various Orange County locations.

The pad sales identified indicated prices ranging from $325,000 to $850,000 per pad. Given the Development Site's mid-block location on a secondary commercial arterial, KMA reasoned that the Development Site's value is within the lowest quartile of these sales, which is the range

[1]Based on $800,000 in development costs. The property tax increment estimate is net of the 20% Housing Set-Aside Fund allocation. The revenues are discounted to present value at a 6% discount rate.

of $325,000 and $450,000. If the midpoint of the range is applied, the Development Site's value at the highest use allowed by the Redevelopment Plan, is approximately $390,000.

IV. ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

KMA has concluded that the Project represents the highest and best use of the Development Site from an economic perspective. Therefore, the fair reuse value of the Development Site is equal to the highest land value achievable in an open and unrestricted or $390,000.

V. CONSIDERATION RECEIVED AND COMPARISON WITH THE FAIR REUSE VALUE

The Agreement requires the Agency to convey the Development Site to the Developer for $400,000. Thus, the consideration to be received for the Development Site is greater than the established fair reuse value for the Development Site.

VI. BLIGHT ELIMINATION

The Development Site was assembled by the Agency and the existing improvements were demolished during the mid-1980's to effect the development of a commercial office building. This project ultimately was not developed as a result of the prolonged downturn in the regional economy. At this time, the implementation of the Agreement will eliminate a vacant lot (Development Site) by facilitating new commercial development. The new development is in turn anticipated to assist in reversing the stagnant property values in the area.

VII. CONFORMANCE WITH THE AB1290 IMPLEMENTATION PLAN

The primary AB1290 Implementation Plan program objective for the Garden Grove Community Project Area is to eliminate conditions which negatively impact economic development of the community by acquiring, removing, consolidating and rehabilitating substandard and underutilized properties. To that end, the Agency plans to convey the Development Site to the Developer for fast food restaurant development.

The Implementation Plan also established a priority objective of increasing the community's economic base by encouraging new investment in the redevelopment project area. The Implementation Plan explicitly lists ensuring the optimum generation of sales tax revenues by facilitating the reuse, rehabilitation and development of commercial properties as an Agency goal. The Project, which will provide new commercial development and the subsequent generation of sales tax revenues within the redevelopment project area, conforms to the Implementation Plan, and will achieve goals specifically defined in the Implementation Plan.

ENVIRONMENTAL CHECKLIST FORM

1. **PROJECT TITLE:**
   Mc Donald's Restaurant - SP-246-99

2. **LEAD AGENCY:**
   City of Garden Grove
   11222 Acacia Pkwy.
   Garden Grove, CA 92842

3. **CONTACT PERSON:**
   Rosalinh M. Ung

4 **PROJECT LOCATION:**
   11171 Garden Grove Boulevard, north side of Garden Grove Boulevard, west of Euclid Street.

5. **PROJECT SPONSOR:**
   Mc Donald's Corporation

6. **GENERAL PLAN DESIGNATION:**
   Mixed Use

7. **ZONING:**
   Mixed Use District Area 33 of Community Center Specific Plan (MX/33-CCSP)

8. **DESCRIPTION OF PROJECT:**
   Development of a 3,330 square foot restaurant with an outdoor-dinning area and a drive-through lane.

9. **OTHER AGENCIES WHOSE APPROVAL (AND PERMITS) IS REQUIRED:**
   City of Garden Grove Planning Commission
   Garden Grove Agency for Community Development

10. **REQUESTED ENTITLEMENTS:**
    Implementation of the proposed restaurant requires the following discretionary actions:

- Negative Declaration
- Variance
- Site Plan & Code Amendment
- Disposition and Development Agreement

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" or "Potentially Significant Unless Mitigated," as indicated by the checklist on the following pages.

___Land Use	_X_Transportation/Circulation	___Public Services
___Housing	___Biological Resources	_X_Utilities and Services
___Geophysical	___Energy Resources	___Aesthetics
_X_Water	___Hazards	___Cultural Resources
___Air Quality	___Noise	___Recreation

___ Mandatory Findings of Significance

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

DETERMINATION:
(To be completed by the Lead Agency)

On the basis of this initial evaluation:

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project.

Signature

May 18, 1999
Date

Rosalinh M. Ung

City of Garden Grove

EVALUATION OF ENVIRONMENTAL IMPACTS:

1. *A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cited in the parentheses following each question.* A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2. All answers must take into account the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3. "Potentially Significant Impact" is appropriate if an effect is significant or potentially significant, or if the lead agency lacks information to make a finding of significance. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4. "Potentially Significant Unless Mitigated applies when the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analysis," may be cross-referenced).

5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). Earlier analyses are discussed in Section XVII at the end of the checklist.

6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

I. LAND USE AND PLANNING

a. Conflict with General Plan designation or Zoning

			X

Response: The proposed restaurant is consistent with the General Plan designation and CC/44 (Community Commercial District Area 44) zone which permits restaurant uses. However, to facilitate the applicant's request, an amendment to the MX/33 of the Community Center Specific Plan to allow

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

drive-through is proposed. A drive-through lane is an accessory component of the proposed restaurant, therefore, will not be in conflict with the General Plan and zoning designations.

b. Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project.

			X

Response: The proposed restaurant is located within a highly urbanized area of Orange County and is in conformance with applicable federal, state and the City of Garden Grove environmental requirements and plans.

c. Affect agricultural resources or operations (e.g. impacts to soils or farmlands, or impacts from incompatible uses).

			X

Response: There are no lands dedicated to agricultural uses within the project area. Therefore, there will be no impacts to agricultural resources or operations.

d. Disrupt or divide the physical arrangement of an established community (including a low-income or minority community).

			X

Response: The proposed restaurant is part of the education facility, and is adjacent commercial developments to the south and east. The project will not disrupt the physical arrangement of the immediate area as the site is zoned to allow commercial and professional related uses.

II. POPULATION AND HOUSING.

a. Cumulatively exceed official regional or local population projections.

			X

b. Induce substantial growth in an area either directly or indirectly (e.g. through projects in an undeveloped area or extension of major infrastructure).

			X

c. Displace existing housing, especially affordable housing.

			X

Response: There are no housing units existing on the site and therefore, no displacement of residents will occur as a result of the proposed development. In addition, the proposed project will not increase the demand for new housing or create any impact on housing in the immediate area.

III. GEOPHYSICAL

a. Seismicity: fault rupture.

		X	

Response: According to the seismic and safety element of the General Plan, the Shady Canyon fault is the only fault line known to exist within the Garden Grove city limits. This fault has no history of seismic activity and is not considered to be active. The city lies in proximity to the Newport/Inglewood fault, as well as larger general fault lines which may affect buildings within Garden Grove. As required by the General Plan EIR, all new construction shall be required to adhere to the Uniform Building Code requirements for this seismic zone.

b. Seismicity: ground shaking or liquefaction.

		X	

Response: The project area, like all of Southern California, is subject to ground-shaking and other secondary impacts from seismic activity, such as liquefaction. Liquefaction could potentially occur during a maximum intensity event along the Newport-Inglewood fault due to the possibility saturated nature of the sandy soils in the area.

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

Some exposure to seismic-related hazards is expected. However, this impact is not considered significant because the exposure is no different than the exposure of virtually all new and existing development in Orange County and because of the proposed project does not alter the existing exposure. To mitigate any potential impacts all construction is required to adhere to the Uniform Building Code as it pertains to seismic safety.

c. Seismicity: Sieche or tsunami.

			X

Response: Seiches and tsunamis are not anticipated to occur in the vicinity of this project due its distance from the coast and absence of large water bodies in the project area.

d. Landslides or mudslides.

			X

Response: The project area is relatively flat and would not normally be subject to landslides or mudslides. The construction of the proposed project may involve comparatively small excavations which will be required to be made in accordance with all applicable codes and standards to minimize the threat of a landslide or mudslide.

e. Erosion, changes in topography or unstable soil conditions from excavation, grading or fill.

		X	

Response: The site is part of a paved parking lot area. Disruptions in the soil will result during the site preparation and grading. The developer is required submit grading, drainage, and underground utility plans to the Engineering Services Division prior to the issuance of any permits.

f. Subsidence of the land.

			X

Response: All new construction is required to adhere to the requirements of the Engineering Services Division to address any subsidence of the land. All improvements are required to adhere to applicable codes including the Uniform Building Code and State and Federal Occupational Safety requirements.

g. Expansive soils.

			X

Response: All improvements are required to adhere to applicable codes including the Uniform Building Code, and California Occupational Safety requirements.

h. Unique geologic or physical features.

			X

Response: There are no known unique geologic or physical features in the project area.

IV. WATER

a. Changes in absorption rates, drainage patterns, or the rate and amount or surface runoff.

		X	

Response: The developer is required to comply with all provisions of the Garden Grove Water Department and the Engineering Services Division to address any concern resulting from the design of this project. Water line locations plans and grading plans are required to be submitted to ensure safe and proper location of water service facilities and surface drainage.

b. Exposure of people or property to water related hazards such as flooding.

			X

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

Response: The project area is not located within 100 year flood zone.

c. Discharge into surface waters or other alteration of surface water quality, including, but not limited to, temperature, dissolved oxygen, turbidity or other typical storm water pollutants (e.g., sediment from construction, hydrocarbons and metals from vehicle use, nutrients and pesticides from landscape maintenance, metals and acidity from mining operations).

	X		

Response: In accordance with the 1972 Clean Water Act and National Pollution Discharge Elimination System (NPDES) requirements, the developer is required to submit a long-term post construction Water Quality Management Plan (WQMP). The WQMP shall include provisions for the installation and maintenance of appropriate structural facilities and conduct of non-structural Best Management Practices (BMPs). The plan shall be submitted to and approved by the Public Works and Community Development Departments prior to the issuance of a grading or building permit, whichever occurs first.

d. Changes in the amount of surface water in any water body.

			X

e. Changes in currents, or the course or direction of water movements.

			X

Response (c through e): There is no surface water within the project area. All runoff from the area is, and will be transported with other urban runoff into City and County drainage facilities. Therefore, the project will not directly affect surface water.

f. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations.

			X

g. Altered direction or rate of flow of groundwater.

			X

h. Change in the quality of ground waters through infiltration of reclaimed water or storm water runoff that has contracted pollutants from urban, industrial, or agricultural activities.

		X	

i. Substantial reduction in the amount of groundwater otherwise available for public water supplies.

		X	

j. Alterations of wetlands in any way.

			X

Response: (f through j: The development will not involve operations that could affect aquifers' recharge capability or alter the direction of flow of groundwater. The area is urbanized with existing commercial uses. Construction is proposed at this time, but would not require substantial excavations or other extensive below-grade work or the use of large quantities of water.

V. AIR QUALITY

a. Violate any air quality standard or contribute to an existing or projected air quality violation.

		X	

Response: No long term additional impacts are seen to the existing air quality standards nor additional created that would contribute to an existing or project air quality violation.

Construction activities may contribute to air quality violations. These impacts are not considered significant due to their short-term nature and shall be addressed during the grading permit process.

b. Expose sensitive receptors to pollutants.

			X

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

Response: The proposed project will not significantly increase the exposure of sensitive receptors to pollutants.

c. Alter air movement, moisture, or temperature, or cause any change in climate.

			X

Response: The proposed project and the necessary on-site improvements would not have the capacity to alter air movement, moisture or temperature, or cause a change in the climate.

d. Create objectionable odors.

			X

Response: The site is currently part of a paved parking lot area. The site preparation and construction of a new commercial structure will not create objectionable odors.

VI. TRANSPORTATION

a. Increased vehicle trips or traffic congestion.

		X	

b. Hazards to safety from design features (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment).

			X

Response (a & b): The developer is required to address any traffic issues this project will generate. Impact on any traffic circulation patterns will be addressed by the City Traffic Engineer to ensure compliance with the goals and objectives of the Circulation Element of the City's General Plan. The project is subject to traffic mitigation fees in order to mitigate any impacts to City streets. All projects involving construction in the public right-of-way will be required to submit a traffic safety plan to minimize traffic congestion.

The project is likely to increase vehicle trips and traffic congestion in the area, but not beyond the scope analyzed in the General Plan EIR. However, a traffic study has been prepared to ensure that there are no adverse impacts from the additional traffic generated by the proposed restaurant in relation to the existing infrastructure improvements.

The primary access for the site will be on Garden Grove Boulevard. The driveways will be developed to the City standard, and will provide adequate access to and from the project site.

During construction increased vehicle trips or traffic congestion may occur but would be temporary in nature and would not create a significant impact. All projects involving construction in the public right-of-way are required to submit a traffic safety plan to minimize traffic congestion. In conclusion, the traffic study indicates that the site area intersections will operate at acceptable levels of service with implementation of the proposed project.

c. Inadequate emergency access to nearby uses.

			X

Response: Emergency access to the proposed development and surrounding areas will not be affected. Police and Fire services in the area are adequate to accommodate the development provide the project complies with the conditions of approval included on the project by the Police and Fire Departments. These conditions of approval include, but are not limited to, providing fire sprinklers in the building, and appropriate levels of security within the project area.

d. Insufficient parking capacity on-site or off-site.

	X		

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

Response: The site requires a total of 452 spaces for the existing educational center and the proposed restaurant. The site will provide a total of 354 spaces resulting in a code deficiency of 98 parking spaces, or approximately 14 percent below code requirement.

The developer is requesting a Variance to deviate from the required on-site parking. As part of the Variance application, the developer has submitted a traffic study.

The traffic study indicates that the proposed number of on-site parking spaces will be adequate to meet the needs of the entire educational center including the proposed restaurant. Based on the study, the peak parking demand for the education center with different schools will be different from the proposed restaurant. Therefore, the amount of on-site parking provided for the entire educational center and restaurant will be adequate as proposed. However, to ensure there will be adequate parking for all tenants located on the premises and there will be no negative parking and traffic impacts to the Main Street parking areas, a detail parking study with a parking management plan will be required. The parking study and parking management plan should address parking and traffic circulation on both of the parking lots (Coastline College and Education Center), and any potential impacts to Acacia Parkway and the Main Street parking areas. These plans must be submitted to the City Traffic Engineer for review and approval prior to the building permit issuance.

e. Hazards or barriers for pedestrians or bicyclists.

		X	

Response: Barriers for pedestrians or bicyclists may occur during the period of construction. All projects involving construction in the public right-of-way will be required to submit a traffic safety plan to ensure the safety of pedestrians and/or bicyclists.

f. Conflicts with adopted policies supporting alternative transportation

			X

Response: The proposed development would not impact existing or proposed policies pertaining to alternative transportation and is located adjacent to mass transit stops.

g. Rail, waterborne or air traffic impacts.

			X

Response: There are no air or waterborne traffic corridors in the immediate area. The site is not located within a fight path for any airport.

VII. BIOLOGICAL RESOURCES

a. Endangered threatened or rate species or their habitats (including but not limited to plants, fish, insects, animals, and birds).

			X

Response: The project site is located in an urbanized area. Therefore, endangered species are not expected to occur in the area due to lack of suitable habitat.

b. Locally designated species (e.g. heritage trees).

			X

c. Locally designated natural communities (e.g. oak forest, coastal habitat, etc.).

			X

Response (b & c): The site is devoid of native vegetation and there are no locally designated species and natural communities on the project site.

d. Reduction in acreage of wetland habitat (e.g., marsh, riparian and vernal pool).

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

			X

Response: There are no wetland habitats in the area of the project site.

e. Wildlife dispersal or migration corridors.

			X

Response: The project area does not serve as a dispersal and/or migration corridor as the area is within a highly urbanized area.

VIII. ENERGY AND MINERAL RESOURCES

a. Conflict with adopted energy conservation plans.

			X

Response: The development of a commercial structure on this site is not in conflict with adopted energy conservation plans.

b. Use non-renewable resources in a wasteful and inefficient manner.

			X

Response: All development on the project site is required to adhere to all State and City energy-conservation regulations including energy efficient lighting, ventilation, and heating systems. Therefore, the development will not create uses that use non-renewable resources in a wasteful manner.

IX. HAZARDS

a. A risk of accidental explosion or release of hazardous substances (e.g. oil, pesticides, chemicals, and radiation).

			X

b. Possible interference with an emergency response plan or emergency evacuation plan.

			X

c. The creation of any health hazard or potential health hazard.

			X

d. Exposure of people to existing sources of potential health hazards.

			X

Response (a through d): The site is currently part of a paved parking lot area. This area will be improved with a commercial structure for a restaurant use. No flammable and/or hazardous liquids will be stored on the premises.

e. Increased fire hazard in area with flammable brush, grass, or trees.

			X

Response: There are no anticipated physical changes that would increase fire hazards within the scope of the project area. New landscaping will be installed per the City standards and regulations including irrigation.

X. NOISE

a. Increases in existing noise levels.

		X	

b. Exposure of people to extreme noise levels.

		X	

Response (a & b): Increase in existing noise levels will result during the construction. The developer is required to observe code provisions as they pertain to days and hours of construction. Furthermore, due to the proposed drive-through window, the developer must comply with conditions of

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

approval pertaining to the volume levels of the order speaker box so it does not create an impact to the adjacent neighboring uses.

XI PUBLIC SERVICES

a. Fire protection.

			X

Response: There will be an increase in fire protection services for the proposed restaurant. The development shall comply with the conditions of approval from the Fire Department.

b. Police protection.

			X

Response: There will be no increase in police protection since the proposed restaurant is a family-oriented business with no alcoholic beverage license.

c. Schools.

			X

Response: There are no anticipated physical changes that would affect schools or school districts in any area affected by this project as the project will not induce growth, generate new housing in the area or attract families with school ages children to the area.

d. Maintenance of public facilities, including roads or storm drain facilities.

		X	

Response: The existing public facilities appear to be in reasonable condition and adequate to meet the demands of the proposed development.

e. Other governmental services.

			X

Response: It is not anticipated that the project will increase demands on other governmental services other than those addressed in this analysis.

XII. UTILITIES AND SERVICE SYSTEMS

a Power or natural gas.

			X

b. Communication systems.

			X

c. Local or regional water treatment or distribution facilities.

			X

d. Sewer or septic tanks.

			X

Response (a through d): There less than significant impacts to the existing utilities and services systems caused by this project. The existing systems are adequate to meet the demands of the area including those generated by this project.

e. Storm water drainage or storm water quality control.

	X		

Response: In accordance with the 1972 Clean Water Act and National Pollution Discharge Elimination System (NPDES) requirements, the developer is required to submit a long-term post construction Water Quality Management Plan (WQMP). The WQMP shall include provisions for the installation and maintenance of appropriate structural facilities and conduct of non-structural Best Management Practices (BMPs). The plan shall be submitted to and approved by the Public Works

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

and Community Development Departments prior to the issuance of a grading or building permit, whichever occurs first.

f. Solid waste disposal.

			X

Response: The site plan provides adequate trash location and trash receptacles to accommodate the proposed development.

XIII. AESTHETICS

a. Affect on a scenic vista or scenic highway.

			X

Response: The project area is not adjacent to any scenic vistas or highways. The physical improvements for this site will be compatible with the surrounding uses.

b Have a demonstrable negative aesthetic effect.

			X

Response: There will be no demonstrable negative aesthetic effects caused by the proposed development.

c. Create light or glare.

		X	

Response: The development will be required to provide additional lighting in the area. The project is required to adhere to all code requirements pertaining to minimum lighting levels. Additionally, lighting will not be permitted to spill onto adjoining properties.

XIV. CULTURAL RESOURCES

a. Disturb paleontological resources.

			X

b. Disturb archaeological resources.

			X

Response (a & b): There are no known paleontological and archaeological resources in the area. If unanticipated paleontological resources are discovered during construction, all attempts will be made to preserve in place or leave in an undisturbed state in compliance with CEQA Section 21083.2.

c. Affect historical resources.

			X

Response: There are no known historical resources in the area. The Garden Grove General Update notes 13-historically significant or potentially significant sites within the City limits. None of these sites are located in the project area.

d. Have the potential to cause physical change which would affect unique ethnic cultural values.

			X

Response: There are no structures or activities that have unique cultural or ethnic value. The project, therefore will not have the potential to affect unique ethnic or cultural values.

e. Restrict existing religious or sacred uses within the potential impact area.

			X

Response: There is no potential to restrict existing religious or sacred uses within the area of the project.

		Potentially		
	Potentially	Significant	Less than	
	Significant	Unless	Significant	No
	Impact	Mitigated	Impact	Impact

XV. RECREATION

a. Increase the demand for neighborhood or regional parks or other recreational facilities.

			X

b. Affect existing recreation facilities.

			X

Response (a & b): The area to be developed does not contain public open space or otherwise reduce neighborhood or regional park facilities.

XVI. MANDATORY FINDINGS OF SIGNIFICANCE

a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory.

			X

b. Does the project have the potential to achieve short-term, to the disadvantage of long-term environmental goals.

			X

c. Does the project have impacts that are individually, but cumulatively considerable ("Cumulatively considerable" means the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of current projects and the effects of probable future projects.)

			X

d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

			X

XVII. EARLIER ANALYSIS

Earlier analyses may have been used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D).

a. **EARLIER ANALYSIS:**

1. The City of Garden Grove General Plan Update
2. The City of Garden Grove Existing Condition Report
3. The City of Garden Grove Final Environmental Impact Report for the General Plan Update, State Clearinghouse No. 93051015
4. Title 9 of the Garden Grove Municipal Code

b. **IMPACTS ADEQUATELY ADDRESSED:** .

1. Geophysical
2. Water
3. Air Quality
4. Transportation
5. Noise
6. Public Services
7. Aesthetics

c. **MITIGATION MEASURES:**

All conditions of approval for the proposed development of SP-246-99, shall be adhered to in order to mitigate negative impacts on the property or surrounding area.

AGENCY
ROLL CALL PRESENT: (5) CHAIRMAN LEYES, MEMBERS BROADWATER, CHUNG, DALTON, ROSEN
ABSENT: (0) NONE

JOINT PUBLIC HEARING WITH THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT TO CONSIDER A DISPOSITION AND DEVELOPMENT AGREEMENT WITH FOOD PARTNERS, LLC, FOR THE SALE AND DEVELOPMENT OF AN APPROXIMATELY .76-ACRE SITE CURRENTLY OWNED BY THE AGENCY AND LOCATED ON THE NORTH SIDE OF GARDEN GROVE BOULEVARD BETWEEN MAIN STREET AND EUCLID STREET (F: A-55.218)

Staff report dated June 8, 1999, was introduced, and staff reviewed the proposed project and provided background information for the development of a 3,300 square foot, fast-food restaurant on a .76-acre site located along the north side of Garden Grove Boulevard, between Main and Euclid Streets.

Mayor/Member Broadwater inquired about the placement of the play area. Staff indicated that the developer has agreed to placing the play area in the interior of the restaurant rather than outside.

Councilman/Chairman Leyes declared the public hearing opened and asked if anyone wished to address the Council/Agency on this matter.

Mark Burger, the main partner in Food Partners, LLC, addressed the Council/Agency. He indicated that they are moving slowly ahead with McDonald's, who they are confident will meet the architectural standards. He commented that they are certain that the project will be a successful for everyone.

Bob Owens addressed the Council/Agency and inquired into the financial picture, including the original purchase price of the land and the price obtained upon sale to the developer. He also inquired as to how many jobs the restaurant will provide.

There being no further comments from the audience, the public hearing was declared closed.

Councilman/Member Rosen noted that the staff report contains the answers to Mr. Owens' questions, and he read that portion of the report aloud.

RESOLUTION NO. 8188-99

Mayor Broadwater moved, seconded by Councilman Rosen, that full reading of Resolution No. 8188-99 be waived, and said Resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE MAKING ENVIRONMENTAL FINDINGS WITH RESPECT TO THE PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND FOOD PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, be and hereby is adopted. Upon the following vote:

AYES:	COUNCILMEMBERS:	(5)	CHUNG, DALTON, LEYES, ROSEN, BROADWATER
NOES:	COUNCILMEMBERS:	(0)	NONE
ABSENT:	COUNCILMEMBERS:	(0)	NONE

said Resolution No. 8188-99 was declared adopted.

RESOLUTION NO. 595

Member Broadwater moved, seconded by Member Rosen, that full reading of Resolution No. 595 be waived, and said Resolution entitled A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT MAKING ENVIRONMENTAL FINDINGS WITH RESPECT TO THE PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND FOOD PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, be and hereby is adopted. Upon the following vote:

AYES:	MEMBERS:	(5)	BROADWATER, CHUNG, DALTON, ROSEN, LEYES
NOES:	MEMBERS:	(0)	NONE
ABSENT:	MEMBERS:	(0)	NONE

said Resolution No. 595 was declared adopted.

RESOLUTION NO. 8189-99

Mayor Broadwater moved, seconded by Councilman Rosen, that full reading of Resolution No. 8189-99 be waived, and said Resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND FOOD PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH, be and hereby is adopted. Upon the following vote:

AYES: COUNCILMEMBERS: (5) CHUNG, DALTON, LEYES, ROSEN, BROADWATER
NOES: COUNCILMEMBERS: (0) NONE
ABSENT: COUNCILMEMBERS: (0) NONE

said Resolution No. 8189-99 was declared adopted.

RESOLUTION NO. 596

Member Broadwater moved, seconded by Member Rosen, that full reading of Resolution No. 596 be waived, and said Resolution entitled A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND FOOD PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH, be and hereby is adopted. Upon the following vote:

AYES: MEMBERS: (5) BROADWATER, CHUNG, DALTON, ROSEN, LEYES
NOES: MEMBERS: (0) NONE
ABSENT: MEMBERS: (0) NONE

said Resolution No. 596 was declared adopted.

RECESS

At 7:50 p.m., the Mayor declared a recess.

RECONVENE

At 8:49 p.m., the meeting was reconvened with Mayor Broadwater and all Councilmembers in attendance.

CITY COUNCIL
ROLL CALL: PRESENT: (5) MAYOR BROADWATER, COUNCILMEMBERS CHUNG, DALTON, LEYES, ROSEN

ABSENT: (0) NONE

JOINT PUBLIC HEARING WITH THE GARDEN GROVE CITY COUNCIL TO CONSIDER A DISPOSITION AND DEVELOPMENT AGREEMENT WITH FOOD PARTNERS, LLC, FOR THE SALE AND DEVELOPMENT OF AN APPROXIMATELY .76-ACRE SITE CURRENTLY OWNED BY THE AGENCY AND LOCATED ON THE NORTH SIDE OF GARDEN GROVE BOULEVARD BETWEEN MAIN STREET AND EUCLID STREET (F: A-55.218)

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AYES:	COUNCILMEMBERS:	(5)	CHUNG, DALTON, LEYES, ROSEN, BROADWATER
NOES:	COUNCILMEMBERS:	(0)	NONE
ABSENT:	COUNCILMEMBERS:	(0)	NONE

said Resolution No. 8188-99 was declared adopted.

RESOLUTION NO. 595

Member Broadwater moved, seconded by Member Rosen, that full reading of Resolution No. 595 be waived, and said Resolution entitled A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT MAKING ENVIRONMENTAL FINDINGS WITH RESPECT TO THE PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND FOOD PARTNERS, A CALIFORNIA LIMITED LIABILITY COMPANY, be and hereby is adopted. Upon the following vote:

AYES:	MEMBERS:	(5)	BROADWATER, CHUNG, DALTON, ROSEN, LEYES
NOES:	MEMBERS:	(0)	NONE
ABSENT:	MEMBERS:	(0)	NONE

said Resolution No. 595 was declared adopted.

RESOLUTION NO. 8189-99

Mayor Broadwater moved, seconded by Councilman Rosen, that full reading of Resolution No. 8189-99 be waived, and said Resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND FOOD PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH, be and hereby is adopted. Upon the following vote:

AYES:	COUNCILMEMBERS:	(5)	CHUNG, DALTON, LEYES, ROSEN, BROADWATER
NOES:	COUNCILMEMBERS:	(0)	NONE
ABSENT:	COUNCILMEMBERS:	(0)	NONE

said Resolution No. 8189-99 was declared adopted.

RESOLUTION NO. 596

Member Broadwater moved, seconded by Member Rosen, that full reading of Resolution No. 596 be waived, and said Resolution entitled A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT AND FOOD PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH, be and hereby is adopted. Upon the following vote:

AYES:	MEMBERS:	(5)	BROADWATER, CHUNG, DALTON, ROSEN, LEYES
NOES:	MEMBERS:	(0)	NONE
ABSENT:	MEMBERS:	(0)	NONE

said Resolution No. 596 was declared adopted.

SITE PLAN

It was moved by Member Broadwater, seconded by Member Rosen, and carried by unanimous vote, that the Agency determines that the preliminary site plan for the above project meets the objectives of the Redevelopment Plan and the Implementation Plan.

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Mayor and City Councilmembers	From:	Ruth E. Smith
Dept:		Dept:	City Manager's Office
Subject:	JOINT PUBLIC HEARING - DDA - FOOD PARTNERS, LLC	Date:	June 8, 1999

The backup material for this item will be found in your Agency packet as Agenda Item No. 3.a.

RUTH E. SMITH
City Clerk

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

Agency for Community Development

To:	George L. Tindall	From:	Matthew Fertal
Dept:	Director	Dept:	Community Development
Subject:	**JOINT PUBLIC HEARING: DISPOSITION AND DEVELOPMENT AGREEMENT WITH FOOD PARTNERS, LLC.**	Date:	June 8, 1999

OBJECTIVE

The purpose of this report is for the Agency and the City Council to hold a joint public hearing to consider the Disposition and Development Agreement with Food Partners, LLC. for the development of a 3,300 square foot, fast-food restaurant on a .76 acre site, located along the north side of Garden Grove Boulevard, between Main and Euclid Street. In addition, staff is requesting that the Agency review the attached site plan for conformance with the goals of the Redevelopment Plan and the Agency's Implementation Plan.

BACKGROUND

In August 1998, the Agency approved a Disposition and Development Agreement with Food Partners (dba Pacific Development Partners) for the construction of the second phase of the Education Center. That Agreement provided for the negotiation of a third phase which contemplated the development of a restaurant to complete the site. In February, staff received a proposal from Food Partners to develop a 3,300 square foot fast-food restaurant as the third phase of the development. The third phase would incorporate approximately 33,000 square feet (0.76 acres); the Agency would retain ownership of the remaining 3.24 acres for the Education Center's use as a surface parking lot. After reviewing the preliminary development concept and proposed economic terms, the Agency directed staff to negotiate a Disposition and Development Agreement with Food Partners for the development of the third phase of the Education Center on a 0.76 acre portion of the four acre site.

ANALYSIS

Pursuant to Agency direction, staff and Food Partners, LLC. have negotiated a Disposition and Development Agreement (DDA). The salient terms of the DDA and project are summarized as follows.

A. Development Site/Project Description

The 0.76 acres on which the third phase is proposed is located on the north side of Garden Grove Boulevard, between Main and Euclid Streets, and is currently an unimproved parcel. The restaurant is proposed to be constructed on the parcel with the remaining Agency parcel to be used as surface parking for the Education Center. The boundaries of the combined site are identified on the attached Site Map.

B. Scope of Development

The DDA with Food Partners (the "Developer") requires the development of a nationally known, high quality, drive-thru restaurant, which meets the restrictions set forth in the Reciprocal Easement Agreement which exists between Coastline, Food Partners and the Agency. The development must include adequate parking to accommodate the city's municipal code and the building must be a minimum of 3,300 square feet. The parking and landscaping improvements on the Agency parcel will continue to be maintained by the Developer pursuant to a Reciprocal Easement Agreement.

C. Parking Lot Lease

The Agency will retain the remaining 3.24 acres of vacant property for the Education Center's use as surface parking and will continue to lease it to the Developer for the remaining term of the Redevelopment Plan (July 13, 2032). In return for the use of the parking lot, the Developer will agree to operate and maintain the parking lot. The Developer has agreed to make the lot available to Main Street merchants Monday - Friday, 7:30 a.m. to 5:30 p.m. and weekends.

D. Schedule of Performance

The DDA requires that the close of escrow occur not later than June 30, 1999. Food Partners is required to complete the construction of the facility within twelve (12) months following the Commencement of Construction.

E. Environmental Review

The Agency, acting as the lead agency, prepared an Initial Study of Environmental Effects for the proposed project. The DDA was presented to the Planning Coordinating Committee (PCC), the City's environmental review committee for consideration. PCC recommends that a Negative Declaration be adopted, subject to the incorporation of mitigation measures recommended in the traffic study which was conducted for the proposed project. The mitigation measures recommended in the traffic study were approved by the City's Engineering Section and PCC.

FINANCIAL IMPACT

A. Fair Reuse Value/Purchase Price

The Agency's economic consultant, Keyser Marston Associates (KMA), has completed a detailed pro forma and re-use analysis for the development. The analysis examines the development costs in relation to expected operating revenues to determine the supportable land value and developer purchase price.

The KMA analysis concludes that the proposed sale of the land for the price of $400,000 represents the highest and best use of the development site from an economic perspective, and exceeds the reuse value of the site which is equal to the highest land value achievable in an open and unrestricted market. The Developer is responsible for all of the on and off-site improvements required by the development.

B. Project Cost/Benefit

As shown on the attached Summary (33433) Report, it is estimated that the Agency has spent approximately $322,923 in the acquisition of the development for the 0.76 acre development. The Agency will receive $400,000 as a land purchase price, plus an additional $113,000 in tax increment, for a total of $513,000 in projected Agency revenues. The Agency revenues exceed the Agency costs by approximately $190,000. In addition, the City of Garden Grove will receive 100% of the sales tax revenues generated by the Project.

RECOMMENDATION

Based upon the information presented above, staff recommends that the City Council and the Agency

- approve the DDA with Food Partners, LLC
- authorize the Chairman and Secretary to execute the DDA and all other documents necessary to implement the Agreement
- that the City Council and Agency approve the resolutions adopting the Mitigated Negative Declaration.

Staff further recommends that the Agency:

- determine that the Preliminary Site Plan meets the objectives of the Redevelopment Plan for the Community Project and the Implementation Plan.

MATTHEW FERTAL, Director
Community Development

By: Kimberly Huy
Project Manager

Attachments: Proposed Disposition and Development Agreement
Site Map
Salient Provisions of the DDA
Summary Report
Mitigated Negative Declaration
City Council Resolution Adopting Mitigated Negative Declaration
Agency Resolution Adopting Mitigated Negative Declaration
City Council Resolution Approving the DDA
Agency Resolution Approving the DDA

Approved for Agenda Listing

George L. Tindall
Director

KH: (h:/edctrii/ddamcdee.doc)

PROOF OF PUBLICATION
(2015.5 C.C.P.)

STATE OF CALIFORNIA,)
COUNTY OF ORANGE)

I am a citizen of the United States and a resident of the aforesaid county; I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am the principal clerk of the ORANGE COUNTY NEWS, a newspaper of general circulation printed and published twice weekly in the city of GARDEN GROVE, County of Orange, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Orange, State of California, under the date of 3/20/64 case # A31502 that the notice, of which the annexed is a printed copy, has been published by distribution in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

5/14, 21

all in the year 19 99.

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Cathy Olsen

signature

Date: 5-21-1999, Executed at GARDEN GROVE, California.

THIS SPACE IS FOR THE COUNTY CLERK'S FILING STAMP

Proof of Publication of:

NOTICE OF PUBLIC HEARING

A joint public hearing will be held by the Garden Grove Agency for Community Development and the Garden Grove City Council on June 8, 1999, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chamber, 11300 Stanford Avenue, Garden Grove, California.

Pursuant to Redevelopment Law Sections 33431 and 33433, Health and Safety Code, State of California, the Garden Grove Agency for Community Development and the City Council will consider the Disposition and Development Agreement with FOOD PARTNERS, LLC, for the sale and development of an approximately .76 acre site currently owned by the Agency and located on the north side of Garden Grove Boulevard between Main and Euclid Street.

The project will not have a significant adverse effect on the environment, therefore the city of Garden Grove has prepared a negative declaration pursuant to the California Environmental Quality Act. Further, the City Council will consider de minimus impact in relation to fish and game.

Documentation relative to said sale of property is available for public inspection in the Community Development Department, Third Floor, 11222 Acacia Parkway, Garden Grove, California, during normal working hours. Any person or organization is invited and may appear at the public hearing to offer oral testimony relative to the subject sale.

All written testimony must be received no later than June 8, 12:00 noon. Any person or organization may file written testimony on the proposed redevelopment of said property with the City Clerk, 11222 Acacia Parkway, Post Office Box 3070, Garden Grove, California 92842.

Dated: May 11, 1999
By:/s/RUTH E. SMITH
City Clerk/Agency Secretary

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