

OWNER PARTICIPATION AGREEMENT

By and Between

The FULLERTON REDEVELOPMENT AGENCY

and

STEVEN PECK, as Trustee of the
Steven Peck Inter Vivos Trust

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OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT is entered into as of June 4th, 1991, by and between The FULLERTON REDEVELOPMENT AGENCY, a public agency, and STEVEN PECK, as Trustee of the Steven Peck Inter Vivos Trust.

R E C I T A L S

A. Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.).

B. Agency desires to implement the Redevelopment Plan for its Central Fullerton Redevelopment Project Area by providing for the major renovation of current structures on the Site, and by providing public parking on the Parking Structure Parcel, the Ellis Place Parking Parcel, and potentially other properties owned or to be acquired by Agency in the vicinity of the Site, all for the non-exclusive benefit of the Site and the Project.

C. Participant has represented to Agency that: (i) Participant (and a corporation wholly owned by Participant) is the owner of the fee interest in the Site, the Ellis Place Parking Parcel, and a portion of the Parking Structure Parcel (Assessor's Parcel Numbers 9 and 10 on the Assessor's Map, Book 29, Page 3, of the Official Records of the County of Orange); (ii) Participant is prepared to redevelop the Site in accordance with the requirements of Agency, provided the City will permit such redevelopment and provided that on conveyance of the interest of Participant and Participant's corporation in the Parking Structure Parcel and the Ellis Place Parking Parcel to the Agency, the Agency will covenant to utilize the same for parking for the benefit of the Site and the Project; and (iii) Participant qualifies as an Owner Participant.

D. The existing private and public parking available to the Site is not adequate to justify the expenditure of funds contemplated herein for the redevelopment of the Site. The economic viability of redevelopment of the Site is dependent on the regular and convenient availability of adequate public parking accessible to the Site.

E. Agency intends to purchase the interest of Participant and Participant's corporation in the Parking Structure Parcel and the Ellis Place Parking Parcel and construct public parking thereon in order to provide public parking for businesses and properties within the Redevelopment Project Area described in Agency's Redevelopment Plan, including adequate parking to enable Participant to redevelop the Site and construct the Project on the Site. Agency's purchase of the interest of Participant and Participant's corporation in the Parking Structure Parcel and the Ellis Place Parking Parcel is being negotiated under threat of condemnation under Agency's power of eminent domain.

F. The City Council, by its approval of this Agreement, hereby determines, pursuant to Section 15.56.170 of the Municipal Code, that adequate off-site parking for the Site and Project will exist in the Parking Structure Parcel, the Ellis Place Parking Parcel, and other public parking facilities in the area. Accordingly, the City hereby exempts the Site and the Project if redeveloped in accordance with this Agreement from municipal off-street parking requirements that would otherwise apply.

A G R E E M E N T

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. PURPOSE OF THIS AGREEMENT.

This Agreement and the Exhibits hereto are intended to effectuate the Redevelopment Plan for the Central Fullerton Redevelopment Project Area by providing for the development of the Project on the Site and by providing parking for the Site and the Project on the Parking Structure Parcel, the Ellis Place Parking Parcel, and potentially other properties owned or to be acquired by Agency in the vicinity of the Site. Participant has agreed to participate in the redevelopment of the Site by entering into this Agreement with Agency and by concurrently executing the Sale Agreement to sell to the Agency the Ellis Place Parking Parcel and the portion of the Parking Structure Parcel owned by Participant and Participant's corporation. The development of the Site and the Project pursuant to this Agreement, and the

fulfillment generally of this Agreement, are in the best interests of the City and the welfare of its residents, and consistent with the Redevelopment Plan, and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

SECTION 2. DEFINITIONS.

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

2.1 Agency. The term "Agency" shall mean the FULLERTON REDEVELOPMENT AGENCY, a public body, corporate and politic, having its offices at 303 West Commonwealth Avenue, Fullerton, California 92632, and any assignee of, or successor to, the rights, powers, and responsibilities of Agency.

2.2 Agreement. The term "Agreement" or any reference to this "Agreement" shall mean this Owner Participation Agreement executed by and between Agency and Participant.

2.3 CEQA. The term "CEQA" shall mean the California Environmental Quality Act, as amended.

2.4 City. The term "City" shall mean the CITY OF FULLERTON, CALIFORNIA, a public body, corporate and politic, organized and existing under the laws of the State of California and having its offices at 303 West Commonwealth Avenue, Fullerton, California 92632.

2.5 Consumer Price Index. The term "Consumer Price Index" shall mean the Consumer Price Index (All Items-All Urban Consumers) for the Los Angeles-Anaheim-Riverside Area (1982-84 = 100), or any successor index published by the United States Department of Labor, Bureau of Labor Statistics.

2.6 Development Project Plans. The term "Development Project Plans" shall mean the plans prepared by Participant and approved by Agency and City on June 4, 1991 (DP-90-21A), which plans are consistent with the Conceptual Site Plan and which indicate all the proposed details of the construction of the Project, including without limitation the sizes, heights, and locations of all buildings, the building elevations, the colors, the materials, and the signage program.

2.7 Ellis Place Parking Parcel. The term "Ellis Place Parking Parcel" shall mean Assessor's Parcel Number 21

on the Assessor's Map, Book 29, Page 3 of the Official Records of the County of Orange, California. The Ellis Place Parking Parcel is owned by a corporation (Jupiter Meadows Enterprises, Inc.) owned by Participant. Pursuant to the Sale Agreement, Participant's corporation has agreed to sell the Ellis Place Parking Parcel to Agency. Agency contemplates the construction and maintenance of certain public parking facilities on the Ellis Place Parking Parcel as provided herein.

2.8 Effective Date. The term "Effective Date" shall mean the date first written above.

2.9 Event(s) of Default. The term "Event(s) of Default" shall mean those events listed in Sections 7.1 and 7.2 herein.

2.10 Evidence of Financial Capability. The term "Evidence of Financial capability" shall mean the following documents, together with any other documents reasonably requested by the Executive Director:

(a) A current financial statement and/or other documentation reasonably satisfactory to Executive Director for the purpose of demonstrating that Participant has adequate funds committed to cover the difference, including working capital for a period of not less than twelve (12) months after the scheduled date for completion of construction;

(b) A copy of the contract between Participant and his contractor for construction of the Project, certified by Participant to be a true and correct copy thereof; and

(c) A corporate surety bond or bonds, irrevocable letter of credit, or other security instrument, approved as to form, content, and company by Executive Director and legal counsel of Executive Director's choosing with Participant's contractor or contractors as principal(s), in a penal sum not less than one hundred percent (100%) of the amount of the construction cost of the Project. Such security instrument shall guarantee completion of construction of the Project and the payment of wages for services engaged and bills contracted for materials, supplies, and equipment used in the construction of the Project and shall protect Participant and Agency from any liability, losses, or damages arising therefrom. Executive Director shall have the discretion to accept alternate security in his sole and absolute discretion.

2.11 Executive Director. The term "Executive Director" shall mean the individual duly appointed to the position of Executive Director of the Agency.

2.12 Force Majeure. The term "Force Majeure" shall mean any war, insurrection, strike, lock-out, riot, flood, earthquake, fire, casualty, Act of God, act of the public enemy, epidemic, quarantine restriction, freight embargo, lack of transportation, governmental restriction, unusually severe weather, inability to secure necessary labor, materials or tools, delay of any contractor, subcontractor or supplier, act of the other party, act or failure to act of City or any other public or governmental agency or entity (except that any act or failure to act of City shall not excuse performance by Agency), or any other cause beyond the control or without the fault of the party claiming an extension of time to perform.

2.13 Hazardous Substances. The term "Hazardous Substances" shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term, by any federal, state, or local environmental statute regulation, or ordinance presently in effect.

2.14 McDonald's Exchange Parcel. The term "McDonald's Exchange Parcel" shall mean that certain real property located on Chapman Avenue east of Harbor Boulevard, in the City of Fullerton, which is more particularly described in Exhibit "D" attached hereto. Agency is currently negotiating with McDonald's Corporation to acquire the McDonald's Exchange Parcel. In the event Agency is successful in negotiating the acquisition of the McDonald's Exchange Parcel, Agency contemplates constructing and maintaining certain public parking facilities on the McDonald's Exchange Parcel as provided herein.

2.15 Owner Participant. The term "Owner Participant" shall have the meaning given to it in the Redevelopment Plan, Agency's adopted rules and regulations governing the participation by owners in redevelopment of their properties, and the California Community Redevelopment Law (Health & Safety Code Section 33000, et seq.).

2.16 Parking Structure Parcel. The term "Parking Structure Parcel" shall mean that certain real property adjacent to the Site, more particularly described in Exhibit "C" attached hereto, a portion of which Participant has agreed to sell to Agency pursuant to the Sale Agreement, and upon which Agency contemplates construction and maintenance of certain public parking facilities as provided herein.

2.17 Participant. The term "Participant" shall mean Steven Peck, as Trustee of the Steven Peck Inter Vivos Trust, whose address for purposes of this Agreement is 501 Westchester Place, Fullerton, California 92632, and any legally permissible assignee or successor to the rights, powers, and responsibilities of Steven Peck hereunder.

2.18 Project. The term "Project" shall mean the construction upon the Site of a new restaurant to be named Angelo's & Vinci's Cafe and other commercial uses, with not to exceed 18,000 square feet of total building area. Said restaurant and other commercial uses shall be constructed in accordance with the approved Development Project Plans and the Final Building Plans to be approved in accordance with this Agreement.

2.19 Project Certificate of Completion. The term "Project Certificate of Completion" shall mean that certificate issued by Agency to Participant upon written request by Participant and upon satisfactory completion of the Project. The Project Certificate of Completion shall be in a form so as to permit recordation in the Office of the Recorder of the County of Orange.

2.20 Public Parking Covenant Termination Date. The "Public Parking Covenant Termination Date" shall have the meaning ascribed in Section 6.2.1.

2.21 Redevelopment Plan. The term "Redevelopment Plan" shall mean the Redevelopment Plan for the Central Fullerton Redevelopment Project Area, which was adopted by Ordinance No. 2008 of the City Council of City on December 17, 1974, as amended by Ordinance No. 2597 on December 2, 1986. The Redevelopment Plan is incorporated herein by this reference and made a part hereof as though fully set forth herein.

2.22 Redevelopment Plan Expiration Date. The term "Redevelopment Plan Expiration Date" shall mean November 26, 2019.

2.23 Sale Agreement. The term "Sale Agreement" shall mean that Agreement of Purchase and Sale of Real Property and Joint Escrow Instructions concurrently executed by Agency and Participant and Jupiter Meadows Enterprises, Inc. relating to the sale by participant and Jupiter Meadows Enterprises, Inc., to Agency of the Ellis Place Parking Parcel, a portion of the Parking Structure Parcel, and certain real property (the "Strip") described therein.

2.24 Schedule of Performance. The term "Schedule of Performance" shall mean that schedule attached hereto as Exhibit "E".

2.25 Site. The term "Site" shall mean that certain real property consisting of approximately 10,998 square feet of net land area (exclusive of existing dedicated rights-of-way and the grant of easement(s) to be made pursuant to Section 4.1.12 herein and the approved Development Project Plans), more particularly described in Exhibit "A" and depicted on the Site Map.

2.26 Site Map. The term "Site Map" shall mean the map attached hereto as Exhibit "B".

SECTION 3. PARTICIPANT REPRESENTATIONS AND WARRANTIES.

Participant hereby makes the following representations, covenants, and warranties for the benefit of Agency, and Agency's successors and assigns, and acknowledges that the execution of this Agreement by Agency has been made, in MATERIAL reliance by Agency on such representations and warranties:

3.1 Participant Ownership of the Site. As of the Effective Date, Participant represents that Participant is owner of fee title to the Site.

3.2 Litigation. To Participant's knowledge, there are no pending or threatened claims, allocations, or lawsuits of any kind, whether for personal injury, property damage, landlord-tenant disputes, property taxes, or otherwise, that could adversely affect the operation or value of the Site, nor is there any governmental investigation of any type or nature, pending or threatened, against or relating to the Site or the transactions contemplated hereby (other than those conducted by City and Agency).

3.3 No Default. The execution and delivery of this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any lease, mortgage, deed of trust, or other agreement, instrument or arrangement by which Participant or the Site are bound or any event which would permit any party to terminate an agreement or accelerate the maturity of any indebtedness or other obligation.

3.4 No Violation. Subject to the City's approval of off-site parking for the Site as contemplated by this

Agreement, to Participant's knowledge, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any provision of, or require any consent, authorization, or approval under, any law or administrative regulation or any other order, award, judgment, writ, injunction, or decree applicable to, or any governmental permit or license issued to, Participant relating to the Site.

3.5 Hazardous Substances. Participant has received no notice of and has no knowledge of any Hazardous Substances (as hereinafter defined) on any part of the Site nor does Participant have any knowledge of any on-site spills, releases, discharges, or disposal of Hazardous Substances which have occurred on the Site during Participant's ownership thereof, or are presently occurring, on any of the Site.

3.6 No Possessory Interests. Participant has the right of possession of the Site on the scheduled date of commencement of construction of the Project, free from any tenant leases, tenancies, licenses, or other similar occupancy agreements that could interfere with Participant's right to develop the Project.

3.7 No Bankruptcy. Participant has not filed or been the subject of any filing of a Petition under the Federal Bankruptcy Law or any insolvency laws, or any laws for the discharge of indebtedness or for the reorganization of debtors.

3.8 No Misrepresentation. No representation, warranty, or covenant of Participant in this Agreement, or in any document or certificate furnished or to be furnished to Agency pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

3.9 Disclosure. Participant has disclosed all information concerning the Site of which Participant is aware which may materially affect the value of the Site and/or Participant's continued ability to utilize the Site as provided in this Agreement.

3.10 Due Execution. This Agreement has been duly executed by Participant and constitutes a valid, binding, and enforceable obligation of Participant.

3.11 No Extraneous Consideration. Other than the concurrent sale by Participant and Participant's corporation to Agency of the Ellis Place Parking Parcel, a portion of the Parking Structure Parcel, and certain other real property (the "Strip"), as described in the Sale Agreement, Participant warrants that it has not paid or given to, and will not pay or give to, the Agency or City or any official or agent of the Agency or City any money or other consideration for obtaining this Agreement, except as expressly provided herein.

SECTION 4. PARTICIPANT'S COVENANTS.

4.1 Development of the Site.

4.1.1 Development in Accordance with Plans. Provided the City issues a building permit in accordance therewith, Participant shall develop the Project in accordance with the approved Development Project Plans and the Final Building Plans to be approved in accordance with Section 4.1.2 herein, including any changes thereto as may be subsequently approved in writing by both Participant and City/Agency. Notwithstanding the foregoing, Participant shall have no obligation to develop the Project unless it obtains a building permit therefor from the City, the required governmental approvals to develop and operate the Project, and the Agency covenants parking for the Site and the Project as provided in this Agreement.

4.1.2 Development Project Plans. On or before the Effective Date of this Agreement, Participant has prepared and submitted to City and Agency for their approval the Development Project Plans and City and Agency have approved the same.

4.1.3 Final Building Plans. Participant shall submit to City for City's review and approval a complete set of Final Building Plans within the time set forth in the Schedule of Performance. The Final Building Plans shall be consistent with applicable code requirements and the approved Development Project Plans and shall be sufficient to obtain all necessary building permits required for the Project. Participant shall exercise reasonable diligence to obtain City's approval of the Final Building Plans. In the event City requires any modifications or changes to the proposed Final Building Plans to meet applicable code requirements or to conform to the terms of the approved Development Project Plans, Participant shall make the necessary changes with reasonable diligence and resubmit them to City.

4.1.4 Architect and Structural Engineer. Agency's Executive Director has previously approved the architect and structural engineer selected by Participant for the Project. If Participant desires to utilize any other architect or structural engineer on the Project at any time prior to Agency's issuance of its Project Certificate of Completion, Participant shall obtain the approval of Agency's Executive Director for the change.

4.1.5 Evidence of Financial Capability. Within the time set forth in the Schedule of Performance, Participant shall submit to Executive Director Participant's Evidence of Financial Capability. The Evidence of Financial Capability shall demonstrate to Executive Director, in his reasonable discretion, that Participant has the financial resources and commitments necessary for the development of the Project in accordance with this Agreement.

4.1.6 Other Governmental Permits. Participant shall, at his own expense and before commencement of construction, rehabilitation, restoration, revitalization, or development of any buildings, structures, or other work of improvement upon the Site, secure or cause to be secured any and all permits and approvals which may be required by City or any other governmental agency affected by such construction, development or work, including but not limited to necessary building permits and all approvals required under CEQA.

4.1.7 Cost of Construction. Participant shall bear all costs of preparing and developing the Project and constructing all improvements on the Site, including but not limited to any and all costs for demolition and clearance of existing surface and sub-surface improvements inconsistent with the Project, architectural and engineering plans, preparation of the Site, costs associated with meeting applicable seismic standards, interim and permanent financing, broker's and leasing commissions, and fees or charges for development and building. Participant shall be responsible to install and maintain a temporary water line to keep his existing restaurant in service during the course of construction of the Project.

4.1.8 Construction Schedule. Subject to delay occasioned by the City and/or the Agency and force majeure, Participant shall commence and complete construction of the Project within the times set forth in the Schedule of Performance. Once construction is commenced, Participant shall diligently pursue such construction to completion, and Participant shall not abandon such construction for more than

five (5) consecutive days, except when due to an event of Force Majeure.

4.1.9 Liability Insurance. Prior to the commencement of any construction by Participant on the Site, Participant shall furnish or cause to be furnished to Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least One Million Dollars (\$1,000,000.00) for death or injury to any person, Two Million Dollars (\$2,000,000.00) for any occurrence, and Five Hundred Thousand Dollars (\$500,000.00) for property damage, naming the Participant, City, and Agency as additional insureds or co-insureds. All such insurance: (i) shall be primary insurance and not contributory to or with any insurance maintained by City or Agency; (ii) shall be with a carrier reasonably approved by Agency; and (iii) shall provide that the policy will not be cancelled or modified by the insurer or Participant unless there is a minimum of thirty (30) days' prior written notice to City and Agency. None of the above described policies shall require Participant to meet a deductible or self-insured retention amount of more than Ten Thousand Dollars (\$10,000.00) (which amount shall be permitted to increase at a rate not to exceed the percentage increase in the Consumer Price Index after the Effective Date) unless approved in writing by Executive Director in his or her sole and absolute discretion.

4.1.10 Casualty Insurance. From the date of issuance of the Project Certificate of Completion until the Redevelopment Plan Expiration Date, Participant shall maintain and shall furnish or cause to be furnished to Agency duplicate originals or appropriate certificates of fire and extended coverage insurance policies including coverage for not less than ninety percent (90%) replacement value of the Project and not more than a \$10,000 deductible or self-insured retention (which amount shall be permitted to increase at a rate not to exceed the percentage increase in the Consumer Price Index after the Effective Date). All such insurance policies shall provide that the policy will not be cancelled or modified by the Insurer or Participant unless there is a minimum of thirty (30) days' prior written notice to City and Agency. In the event of total or partial destruction of the Project due to a cause for which Participant is, or is required to be, covered by insurance, and subject to compliance with then-applicable building code requirements (but excluding any changed parking requirements) and the rights of any lender, Participant shall utilize the proceeds of such insurance and other necessary funds to restore the Project and the related on-site improvements and landscaping to substantially the same condition they were in

immediately prior to such destruction. Participant shall commence reconstruction as soon as reasonably practicable and shall diligently pursue such reconstruction to completion.

4.1.11 Workers' Compensation Insurance. Participant shall furnish, or cause to be furnished, to Agency evidence reasonably satisfactory to Agency that any contractor with whom Participant has contracted for the performance of work on the Site carries appropriate workers' compensation insurance as required by law.

4.1.12 Easements. Participant shall grant to Agency and City all necessary and appropriate easements for development of public improvements consistent with the approved plans for the Project and which do not interfere with operation of the Project on the Site, including but not limited to streets, rights of vehicular access, sidewalks, sewers, storm drains, and water improvements.

4.1.13 Rights of Access. Participant shall grant to Agency and its agents, employees or designees, the reasonable right of access to the Site, without charges or fees, at normal construction hours during the period of construction of the Project for any and all reasonable purposes.

4.1.14 Applicable Laws. Participant shall construct the Project in conformity with all applicable laws, including all applicable Federal and State labor laws.

4.1.15 Prohibition Against Transfer. Except as provided below, prior to the date Agency issues, or is required to issue, the Project Certificate of Completion, Participant shall not transfer or encumber the Site or any portion thereof or assign any of its rights or obligations under this Agreement without the prior written consent of Agency. Notwithstanding the foregoing, at any time, Participant may transfer all or any portion of its rights in this Agreement, the Site or the Project to the following:

(a) Any entity or entities owned or controlled by Participant;

(b) Any partnership formed by Participant pursuant to which Participant retains operational and managerial control;

(c) Any person or entity receiving such rights due to the death of Participant, pursuant to a testamentary device, or through the incapacitation (physical or mental) of Participant;

(d) Any trust for the benefit of Participant's spouse, child, grandchild, or other family member, or for the benefit of a charitable purpose;

(e) Any entity providing a mortgage, deed of trust, sale and leaseback, or other form of conveyance required for any reasonable method of financing the acquisition and development of the Site and the Project, including all direct and indirect costs related thereto; and

(f) City or any other appropriate governmental agency for the formation of an assessment district, or the granting of easements or permits to facilitate the development of the Site.

Except for assignments made pursuant to Section 4.1.15(e), no assignment shall be effective unless and until the proposed assignee executes and delivers to Agency an agreement, in form satisfactory to Agency's attorney, assuming the obligations of Participant which have been assigned. Thereafter, Participant shall be relieved of all responsibility to Agency for performance of the obligations assumed by the assignee; provided, however, that Participant shall remain responsible for such obligations in the event of any transfer pursuant to Sections 4.1.15(a) through 4.1.15(f).

4.1.16 Antidiscrimination During Construction. Participant, for itself and its successors and assigns, agrees that during the construction of the Project, Participant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry, or national origin.

4.1.17 Antidiscrimination After Completion of the Project. Participant covenants and agrees, for itself, its successors, its assigns and every successor in interest to the Site, or any part thereof, that it: (i) shall not discriminate against any person, or group of persons, on account of sex, race, color, creed, marital status, religion, handicap, national origin, or ancestry in the enjoyment of the Site; and (ii) shall not establish or permit any such discriminatory practice or practices with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof. The covenant in this Section 4.1.18 shall run with the land and shall remain in effect in perpetuity.

4.1.18 Antidiscrimination in Agreements.

Participant shall not restrict the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. The covenants in this Section 4.1.18 shall run with the land and shall remain in effect in perpetuity. Any and all agreements relating to the rental, sale, or lease of the Site, or any portion thereof, shall contain the following nondiscrimination or nonsegregation clauses (or clauses substantially similar thereto):

4.1.18.1 Clause for Deeds. "The

grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee himself or herself, or any persons 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."

4.1.18.2 Clause for Leases. "The

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

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself or 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 land herein leased."

4.1.18.3 Clause for Contracts. "There

shall be no discrimination against or segregation of any persons or group of persons on account of race, color, creed,

religion, sex, marital status, ancestry, or national origin in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees of land."

4.1.19 Relocation Assistance. Participant waives any claims that he, any entities owned or controlled by him, and his successors and assigns may have to receive relocation assistance or benefits arising out of the work to be performed pursuant to this Agreement.

4.2 Use of Site.

4.2.1 No Inconsistent Uses. Participant covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Site, or any part thereof, that for the period beginning on the Effective Date and ending on the Redevelopment Plan Expiration Date, Participant and such successors shall not devote the Site to uses inconsistent with the Redevelopment Plan, the applicable zoning restrictions, and the approved Project plans.

4.2.2 First-Class Condition. Participant covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Site, or any part thereof, that for the period beginning on the Effective Date and ending on the Redevelopment Plan Expiration Date, Participant and such successors shall maintain the Project and all related on-site improvements and landscaping on the Site in first class condition and repair (and, as to landscaping, in a healthy condition) and in accordance with the approved Project plans and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials. During such period, Participant and such successors shall not permit any accumulation of weeds, rubbish, or debris on the Site and Participant and such successors shall not permit any unlawful use or public or private nuisance to be maintained on the Site.

4.3 Duration of Participant's Covenants. After issuance of the Project Certificate of Completion, or the accrual of the right to its issuance pursuant to Section 6.4.6, all of the terms, covenants, agreements, or conditions set forth in this Section 4 shall cease and terminate, except as follows:

(a) Sections 4.1.7, 4.1.9, 4.1.10, 4.1.12, 4.1.19, 4.2.1, and 4.2.2 shall be binding upon Participant until the Redevelopment Plan Expiration Date.

(b) Sections 4.1.17 and 4.1.18 shall be binding upon Participant in perpetuity.

SECTION 5. AGENCY REPRESENTATIONS AND WARRANTIES.

Agency hereby represents and warrants for the benefit of Participant, and Participant's successors and assigns, that the following facts are true as of the execution of this Agreement:

5.1 No Approvals. No approvals or consents not heretofore obtained by Agency are necessary in connection with the execution of this Agreement by Agency or with the performance by Agency of Agency's obligations hereunder.

5.2 Due Execution. This Agreement has been duly executed by Agency or its duly authorized officers or agents and constitutes a valid, binding, and enforceable obligation of Agency.

SECTION 6. AGENCY COVENANTS.

6.1 Agency Approvals.

6.1.1 Plans. Agency shall approve or disapprove of all the plans, drawings, and related documents required to be submitted by Participant to Agency within the time periods set forth in the Schedule of Performance.

6.1.2 City Assistance. If Participant's Final Building Plans are acceptable to Agency and meet applicable code requirements, Agency shall provide reasonable assistance to Participant, at no expense to Agency, in obtaining City's approval of such Final Building Plans; provided, however, Agency does not warrant or represent that such approval shall be obtained.

6.1.3 Evidence of Financial Capability. Executive Director shall approve or disapprove Participant's Evidence of Financial Capability within the time period set forth in the Schedule of Performance.

6.1.4 Architect and/or Structural Engineer. Agency has approved the Architect and/or Structural Engineer

(or proposed replacement thereto) submitted by Participant to Agency.

6.1.5 Assignments. In considering whether it will grant approval to any transfer or assignment by Participant pursuant to Section 4.1.15, Agency shall consider factors such as: (i) the financial strength and capability of the proposed assignee to perform Participant's obligations hereunder; and (ii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

6.1.6 Project Certificate of Completion. Upon written request by Participant, and upon satisfactory completion of the Project, Agency shall issue to Participant a Project Certificate of Completion. The Project Certificate of Completion shall be, and shall so state, a conclusive determination of satisfactory completion of the Project required by this Agreement, and of full compliance with the terms of this Agreement relating to commencement and completion of the Project. After the date Participant is entitled to issuance of the Project Certificate of Completion, and notwithstanding any other provision of this Agreement to the contrary, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the property covered by said Project Certificate of Completion shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement for which the Project Certificate of Completion is issued, except that such party shall be bound by the covenants that survive issuance of the Project Certificate of Completion, as set forth in Section 4.3 hereof. If Agency refuses or fails to furnish the Project Certificate of Completion for the reason that specific items or materials for landscaping are not available, Agency shall issue the Project Certificate of Completion upon the posting by Participant with Agency of a cash deposit or irrevocable letter of credit (in form acceptable to Agency) in an amount representing the fair value of the work not yet completed. The Project Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

6.1.7 Standards of Review. Agency approval(s) under this Section 6.1 shall not be unreasonably withheld, conditioned, or delayed. Any disapproval by Agency shall state in writing the reasons for disapproval and the changes which Agency requests to be made. Such reasons and such changes must be consistent with any items previously approved hereunder.

6.2 Parking and Street and Parkway Improvements.

6.2.1 Construction of Public Parking Facilities and Street and Parkway Improvements. Upon Agency's acquisition of the Ellis Place Parking Parcel and Participant's interest in the Parking Structure Parcel pursuant to the separate Sale Agreement being entered into by and between Agency, Participant, and Participant's corporation concurrently with this Agreement, Agency, at no expense to Participant and without cost or assessment against the Site or the Project, shall diligently commence and complete construction of: (i) a minimum 32-space surface parking lot on the Ellis Place Parking Parcel; (ii) a temporary surface parking lot on the Parking Structure Parcel with a minimum of 110 parking spaces; and (iii) street and parkway improvements on the south side of Ellis Place from Harbor Boulevard to the Parking Structure Parcel. In addition, contingent upon Agency's acquisition of the McDonald's Exchange Parcel, Agency shall exercise reasonable diligence to commence and complete construction of an additional surface parking lot with a minimum of 30 spaces on said parcel. All such parking shall be developed within the times set forth in the Schedule of Performance. Subject to Section 6.2.2 herein and the balance of this Section 6.2.1, once constructed, such parking spaces shall be regularly and conveniently available to the public generally, including customers and invitees of Participant's restaurant and Project, until the earliest of the following dates (the "Public Parking Covenant Termination Date"): (i) five (5) years after the date that the building to be constructed by Participant on the Site (as the same may be repaired, improved, reconstructed, or replaced from time to time) is demolished and cleared from the Site and construction has not commenced on a new or replacement building; or (ii) five (5) years after the date that the business(es) on the Site is(are) discontinued and no new business(es) is(are) opened; or (iii) fifty (50) years after the date the Project Certificate of Completion is issued. The parking spaces shall be public spaces, available to, but not reserved exclusively for, the use of Participant, its successors and invitees as to the Site until the aforesaid date. Agency and City shall retain full regulatory authority over all parking spaces, including but not limited to hours of operation, maximum time limits, fees, and charges, allocation of spaces to comply with applicable laws, rules, and regulations (such as laws requiring spaces for handicapped parking), and temporary removal of spaces for repair, alteration, maintenance, and restriping, provided parking shall be provided on nondiscriminatory terms to Participant, its successors and invitees. Agency shall ensure that hourly parking restrictions will not be in effect during holidays and weekends for

the parking required to be constructed and maintained by Agency pursuant to this Agreement and Agency shall exercise reasonable diligence to cause the Traffic Commission and City Council to ensure that hourly parking restrictions will not be in effect during holidays and weekends for the public parking lot east of Harbor Boulevard, south of Chapman Avenue and west of Pomona Avenue. In addition, Agency shall have the right to reconfigure the parking spaces, to construct non-parking improvements on any of the properties on which parking spaces are to be maintained, to transfer some or all of the required minimum number of spaces from one property or parcel to another property or parcel (and to transfer from the transferor site to the transferee all or part of the covenants and restrictions that would otherwise apply to the transferor site), and to replace some or all of the surface parking spaces with a parking structure and/or subsurface parking, provided that the required minimum number of 142 public parking spaces is maintained on a permanent basis (excluding the period of construction or reconstruction) on one or more of the properties subject to this Section 6.2.1.

6.2.2 Construction of Parking Structure. At such time as the renovation of the Fox Theatre (Assessor's Parcel No. 20 on the Assessor's Map, Book 29, Page 3 of the Official Records of the County of Orange, California) commences, Agency shall begin, and diligently prosecute to completion, the construction of a parking structure on the Parking Structure Parcel, which parking structure will accommodate at least 200 vehicles. When completed, parking spaces in said parking structure shall replace the minimum number of temporary at-grade spaces to be provided pursuant to Section 6.2.1 shall also be made available for the use of Participant, its successors, and invitees to the Site in the same manner and for the same term as provided in Section 6.2.1 herein. During the period of construction of the Parking Structure, Agency shall exercise its best efforts to provide temporary public parking for Participant's restaurant (either the existing restaurant located in the Fox Theater building adjacent to the Site or the new restaurant to be located on the Site), at one or more of the following areas: (i) the west end of the Parking Structure Parcel; (ii) the Ellis Place Parking Parcel; and (iii) the McDonald's Exchange Parcel.

6.2.3 Parking Variances. Except as provided in the next sentence herein, Agency covenants that, after the Effective Date of this Agreement and for as long as the Project continues to be maintained and continuously operated in accordance with this Agreement, the Agency shall not grant and the Agency warrants and represents that it shall cause the City not to grant any variances or exemptions to other

lots or parcels within the block bounded by Harbor Boulevard, Chapman Avenue, Pomona Avenue, and Ellis Place reducing the number of off-street parking spaces required. Notwithstanding the foregoing, Agency shall be permitted to grant and to authorize the City to grant a variance of not more than five (5) parking spaces in order to accommodate the Agency's acquisition of the McDonald's Exchange Parcel.

6.3 Indemnity. Agency shall indemnify, defend, and hold Participant harmless from any damage caused or liability arising out of its exercise of its rights pursuant to Section 4.1.13 (access to Site).

6.4 Relocation Assistance. As between Agency and Participant, and without intending to acknowledge any legal liability to third parties, Agency agrees to be responsible for, and to hold Participant harmless against, any third party claims for relocation assistance or benefits that may arise out of the work to be performed pursuant to this Agreement.

6.5 Lease Extension. Upon the execution of this Agreement, Agency shall exercise reasonable diligence in attempting to obtain from Edward Lewis, Participant's landlord at its existing restaurant location, an extension of Participant's lease until February 14, 1992, and a proportionate rental reduction for vacating the backstage area of the Fox Theatre during its seismic rehabilitation. Nothing in this Section 6.5 shall make Agency liable to Participant for the failure to obtain said extension or reduction in rental.

6.6 Areas for Contractor Use. During the period of construction of the Project, the rehabilitation of the Fox Theatre, the construction of the temporary surface parking lot on the Parking Structure Parcel, and the construction of the parking structure on the Parking Structure Parcel, Agency will exercise its best efforts to ensure that the following areas are available for the use of the general and subcontractors working on such projects: (i) Project contractors, on the portion of Ellis Place immediately north of the existing liquor store location; (ii) theatre contractors, on the McDonald's Exchange Parcel (assuming that Agency has acquired the same) and a portion of the Parking Structure Parcel immediately to the east of the theatre; and (iii) parking structure contractors, on a portion of Ellis Place along the north side of the Parking Structure Parcel.

6.7 Duration of Agency's Covenants. After issuance of the Project Certificate of Completion, or the accrual of the right to its issuance pursuant to Section 6.1.6, all of

the terms, covenants, agreements, or conditions set forth in this Section 6 shall cease and terminate, except that Sections 6.2.1, 6.2.2, 6.2.3, 6.3, and 6.4, shall be binding upon Agency until the Public Parking Covenant Termination Date referenced in Section 6.2.1.

SECTION 7. DEFAULTS.

7.1 Participant Defaults. The occurrence of any one or more of the following events shall constitute an Event of Default by Participant hereunder:

7.1.1 Participant fails to observe or perform any term or provision of this Agreement and such failure is not cured to Agency's reasonable satisfaction within thirty (30) days after Agency gives Participant written notice identifying such failure; provided, if such default cannot be cured within thirty (30) days even with the exercise of due diligence, Participant shall not be deemed in default if it commences to cure within such thirty (30) day period and continues diligently to effect such cure.

7.1.2 Participant fails to timely obtain all required permits and approvals for the Project which shall be determined in the sole and absolute discretion of Agency;

7.1.3 Participant makes or delivers to Agency any statement, report, financial statement, or certificate that is not true or correct in any material respect;

7.1.4 Participant applies for the appointment of a receiver, trustee, or custodian for any of Participant's assets;

7.1.5 Participant files a petition under any section or chapter of the Bankruptcy Code or any similar law or regulation;

7.1.6 Participant makes an assignment for the benefit of his creditors;

7.1.7 Subject to events of force majeure, Participant ceases to conduct his business substantially as now conducted (except for the period of time during the relocation of the restaurant - not to exceed six (6) months);

7.1.8 Participant is enjoined, restrained, or in any way prevented by court order from conducting all or any material part of his business affairs;

7.1.9 A petition under any section or chapter of the Bankruptcy Code or any similar law or regulation is filed against Participant, and such injunction, restraint, or petition is not dismissed within ninety (90) days after the entry or filing thereof;

7.1.10 A notice of lien, levy, or assessment is filed of record with respect to all or any of Participant's assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal, or other governmental agency, or if any taxes or debts owing at any time hereafter to any one of these becomes a lien or encumbrance upon any of Borrower's assets or the Site and the same is not released within ninety (90) days after the same becomes a lien or encumbrance; provided that Participant shall have the right to contest in good faith and by appropriate proceedings any such lien, levy or assessment if Participant provides Agency with a bond or indemnity satisfactory to Agency assuring the payment of such lien, levy, or assessment;

7.1.11 Participant becomes insolvent or admits in writing his inability to pay its debts as they mature; or

7.1.12 Any of Participant's representations and warranties set forth in Section 3 of this Agreement is untrue or materially misleading.

7.2 Agency Defaults. The occurrence of any one or more of the following events shall constitute an Event of Default by Agency hereunder:

7.2.1 Agency fails to observe or perform any term of provision of this Agreement and such failure is not cured to Participant's reasonable satisfaction within thirty (30) days after Participant gives Agency written notice identifying such failure;

7.2.2 Agency makes or delivers to Participant any statement, report, or certificate that is not true or correct in any material respect; or

7.2.3 Any of Agency's representations and warranties set forth in Section 5 of this Agreement are untrue or materially misleading.

7.3 Notice of Default. The non-defaulting party shall give written notice of any default in this Section 7 to the defaulting party, clearly specifying the default. Copies of any notice of default given to the defaulting party shall also be given to any permitted lender requesting such notice.

Except as required to protect against further damages, and subject to applicable cure periods, the non-defaulting party may not institute proceedings against the defaulting party until thirty (30) days after giving such notice. Any failure or delay in giving such notice or in asserting any of either party's rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive either party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 8. REMEDIES.

In addition to any other rights or remedies set forth in this Section 8, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain specific performance and any other remedy consistent with the purposes of this Agreement. Such legal actions must be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court in that county.

8.1 Participant Remedies.

8.1.1 Damages. Subject to any applicable cure periods and the general right to notice provided for in this Agreement, upon a default or breach of this Agreement by Agency, Participant may bring an action for damages proximately caused thereby.

8.1.2 Specific Performance. Subject to any applicable cure periods and the general right to notice provided for in this Agreement, upon a default or breach of this Agreement by Agency, Participant may bring an action for specific performance of this Agreement or any term or provision hereof.

8.1.3 Right to Terminate. In the event that, prior to Participant's commencement of construction of the Project, Participant is not in default under this Agreement and: (i) Agency commits a material default hereunder and fails to cure such default within the time provided in Sections 7.2.1 and 7.3; or (ii) Participant is unable, after and despite its exercise of best efforts, to timely obtain all required governmental approvals for development and operation of the Project; or (iii) Participant provides evidence reasonably satisfactory to Agency's Executive Director that the City or other governmental agencies with jurisdiction over the Site and the Project have imposed

changes and corrections on Participant's Final Building Plans (in addition to those of which Participant has been notified as of May 29, 1991) with a cumulative cost in excess of One Hundred Thousand Dollars (\$100,000.00); then, in such event, Participant may deliver a thirty (30) day written notice of termination to Agency and, as to clauses (i) and (ii), if the applicable default or condition has not been satisfied (or waived by Participant) within said time period, this Agreement shall terminate and neither party shall have any further rights against or liabilities to the other (except Participant reserves its rights under Section 8.1.1 if Agency is in default).

8.2 Agency Remedies.

8.2.1 Performance by Agency. In the event that Participant breaches any of the covenants contained in Section 4.2.2 relating to the failure of Participant to appropriately maintain and preserve the improvements on landscaped areas located on the Site, then Agency, in addition to whatever other remedy it may have hereunder or at law or in equity, shall have the right to enter upon the Site and perform or cause to be performed all such acts and work reasonably necessary to cure the default and perform all acts and work reasonably necessary to preserve and maintain the improvements and landscaped areas on the Site. In the event that Agency shall perform any such work, Agency shall have the right to attach a lien on the Site, or to assess the Site, in the amount of the expenditures arising from such work. The costs of such work, including a fifteen percent (15%) administrative charge, shall be promptly paid by Participant to Agency upon demand.

8.2.2 Damages. Subject to any applicable cure periods and the general right to notice provided for in this Agreement, upon a default or breach of this Agreement by Participant, Agency may bring an action for damages proximately caused thereby.

8.2.3 Specific Performance. Subject to any applicable cure periods and the general right to notice provided for in this Agreement, upon a default or breach of this Agreement by Participant, Agency may bring an action for specific performance of this Agreement or any term or provision hereof.

8.2.4 Right to Terminate. In the event that, prior to Participant's commencement of construction of the Project, Agency is not in default under this Agreement and: (i) Participant commits a material default hereunder and fails to cure such default within the time provided in

Sections 7.1.1 and 7.3; or (ii) Participant fails to obtain any of the required approvals for the Project referenced herein; then, in such event, Agency may deliver a thirty (30) day written notice of termination to Participant and, if the applicable default or condition has not been satisfied (or waived by Agency) within said time period, this Agreement shall terminate and neither party shall have any further rights against or liabilities to the other (except Agency reserves its rights under Section 8.2.2 if Participant is in default).

8.3 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of its 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 another party.

SECTION 9. GENERAL PROVISIONS.

9.1 Covenants Run With The Land. All covenants, conditions, restrictions, representations, reservations, rights, interests, and privileges created by this Agreement shall be appurtenant to, for the benefit of, and shall run with the land and each part thereof and interest therein, and shall be binding upon and a burden against the Site, Participant, and its successors and assigns acquiring any right, title, or interest in the Site, and upon and against the Parking Lot Parcel, Agency and its successors and assigns acquiring any right, title or interest in the Parking Lot Parcel.

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

9.3 Attorney's Fees. In the event of litigation between the parties arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred in addition to whatever other relief to which it may be entitled.

9.4 Notices, Demands, and Communications Between the Parties. Formal notices, demands, and communications between Agency and Participant shall be sufficiently given if: (i) personally delivered; (ii) delivered by overnight courier (acknowledged by receipt); or (iii) dispatched by registered

or certified mail, postage prepaid, return receipt requested, to the addresses set forth below:

If to Participant: STEVEN PECK, as Trustee of the
Steven Peck Inter Vivos Trust
501 Westchester Place
Fullerton, CA 92632

With a copy to: Mitchell, Silberberg & Knupp
11377 W. Olympic Boulevard
Los Angeles, CA 90064
Attn: Marvin Leon, Esq.

If to Agency: FULLERTON REDEVELOPMENT AGENCY
303 West Commonwealth Avenue
Fullerton, CA 92632
Attn: Executive Director

With a copy to: Rutan & Tucker
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Attn: Jeffrey M. Oderman, Esq.

All notices shall be deemed to be received as of the earlier of actual receipt by the addressee thereof or the expiration of forty-eight (48) hours after depositing in the United States Postal System in the manner described in this Section.

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

9.6 Conflicts of Interest. No member, official, or employee of 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 this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

9.7 Nonliability of Agency Officials and Employees. No member, official, employee, or consultant of Agency or City shall be personally liable to Participant, or any successor in interest of Participant, in the event of any

default or breach by Agency or for any amount which may become due to Participant or to its successor, or on any obligations under the terms of this Agreement.

9.8 Inspection of Books and Records. Agency shall have the right at all reasonable times to inspect the books and records of Participant pertaining to the Site as pertinent to the purposes of this Agreement. Participant also has the right at all reasonable times to inspect the books and records of Agency pertaining to the Site as pertinent to the purposes of the Agreement.

9.9 Fair Meaning. This Agreement shall be construed according to its fair meaning and as if prepared by each respective party hereto.

9.10 Titles and Captions. Titles and captions are for convenience only and shall not constitute a portion of this Agreement.

9.11 Gender. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

9.12 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

9.13 Merger of Prior Agreements and Understandings. With the exception of the Sale Agreement entered into by and between Agency and Participant on or before the Effective Date (which agreement addresses, inter alia, Participant's sale to Agency of the Parking Lot Parcel and a portion of the property on which the parking structure is to be located), this Agreement and all documents incorporated herein contain the entire understanding among the parties hereto relating to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein and shall be of no further force or effect.

9.14 No Third Parties Benefited. This Agreement shall create no other third party beneficiary rights or any other rights in favor of any persons, firms or corporations. This Agreement is for the sole use and benefit of the parties hereto and is not for the use or benefit of any other person or entity.

9.15 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9.16 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first written above (the "Effective Date").

FULLERTON REDEVELOPMENT AGENCY
("Agency")

By: Chris Norby
Chairman

ATTEST:

Rune M. York
Secretary

APPROVED AS TO FORM:
RUTAN & TUCKER

By: _____
Jeffrey M. Oderman, Esq.
Attorneys for the Fullerton
Redevelopment Agency

STEVEN PECK INTER VIVOS TRUST
("Participant")

By: Steven Peck
Steven Peck, Trustee

9.15 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9.16 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first written above (the "Effective Date").


FULLERTON REDEVELOPMENT AGENCY
("Agency")

By: _____
Chairman

ATTEST:

Secretary

APPROVED AS TO FORM:
RUTAN & TUCKER

By: 
Jeffrey M. Oderman, Esq.
Attorneys for the Fullerton
Redevelopment Agency

STEVEN PECK INTER VIVOS TRUST
("Participant")

By: _____
Steven Peck, Trustee

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

The North 100.00 feet of Lot 1 of the Central Addition in the City of Fullerton, County of Orange, State of California, on a map recorded in Book 7, Pages 7 and 8 of Miscellaneous Maps, Records of said Orange County, California.

EXCEPTING THEREFROM the North 20.00 feet, the South 2.00 feet and the West 10.00 feet thereof.

ALSO EXCEPTING THEREFROM all that portion lying Northwesterly of the following described line:

BEGINNING at the intersection of the South line of said North 20.00 feet with the East line of said West 10.00 feet; thence, along said South line Easterly 12.00 feet to the TRUE POINT OF BEGINNING; thence, in a direct line Southwesterly to a point in said East line of the West 10.00 feet distant along said East line Southerly 12.00 feet from the POINT OF BEGINNING said point being the POINT OF ENDING.

RESERVING THEREFROM a non-exclusive easement and right-of-way for pedestrian purposes along across and through the South 3.00 feet of the North 98.00 feet of said Lot 1.

EXHIBIT B

Site Map

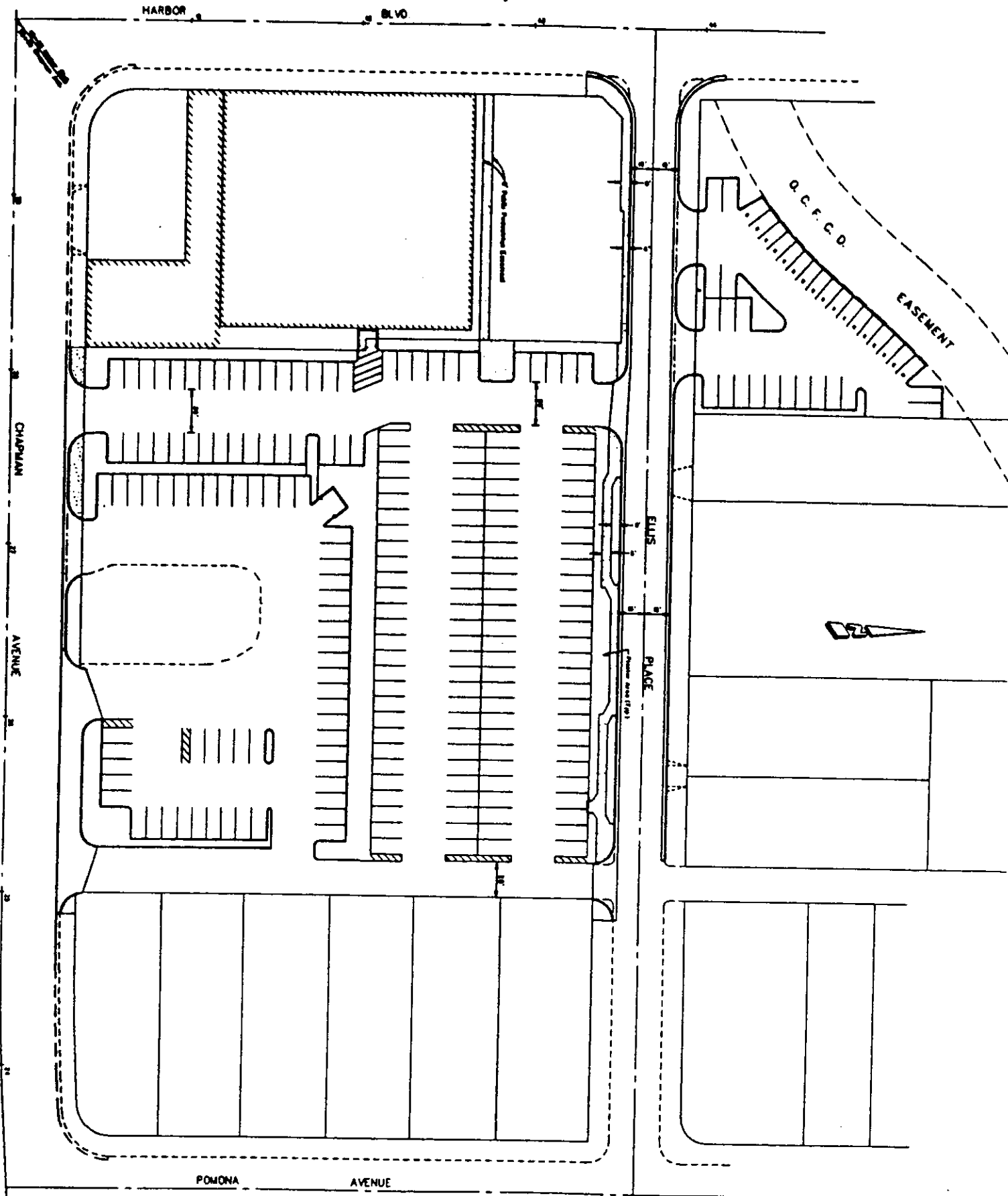


EXHIBIT "C"

LEGAL DESCRIPTION OF
PARKING STRUCTURE PARCEL

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF ORANGE, CITY OF FULLERTON AND IS DESCRIBED AS FOLLOWS:

PARCEL A

LOTS 2 AND 3 OF THE J. E. ELLIS' SUBDIVISION AS SHOWN ON A MAP
THEREOF RECORDED IN BOOK 8, PAGE 39, MISCELLANEOUS MAPS, RECORDS
OF SAID ORANGE COUNTY;

PARCEL B

THAT PORTION OF THE SOUTH 3 FEET OF ELLIS AVENUE ADJOINING LOTS
2 AND 3 ON THE NORTH AS VACATED AND ABANDONED BY RESOLUTION OF
THE BOARD OF TRUSTEES OF THE CITY OF FULLERTON ON SEPTEMBER 25,
1923, A CERTIFIED COPY OF WHICH RESOLUTION WAS RECORDED FEBRUARY
4, 1937, IN BOOK 873, PAGE 113, OFFICIAL RECORDS, IN THE OFFICE
OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, AND RECORDED
SEPTEMBER 13, 1939, IN BOOK 1012, PAGE 248, OFFICIAL RECORDS,
IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

PARCEL C

THE NORTH HALF (NORTH 1/2) OF THE EAST HALF (EAST 1/2) AND THE
NORTH 15 FEET OF THE SOUTH HALF (SOUTH 1/2) OF THE EAST HALF (EAST
1/2) OF LOT 2 OF CENTRAL ADDITION, BOOK 7 PAGES 7 AND 8 OF
MISCELLANEOUS MAPS RECORDED IN THE OFFICE OF THE COUNTY RECORDER
OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTHERLY 27.00 FEET AS GRANTED TO THE
CITY OF FULLERTON BY DEED RECORDED AUGUST 12, 1919 IN BOOK 341
PAGE 302 OF DEEDS, RECORDS OF SAID ORANGE COUNTY.

PARCEL D

THE NORTH HALF OF THE WEST HALF OF LOT 2 OF CENTRAL ADDITION, AS
SHOWN ON A MAP RECORDED IN BOOK 7, PAGES 7 AND 8 OF MISCELLANEOUS
MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE NORTHERLY 27.00 FEET AS GRANTED TO THE
CITY OF FULLERTON BY DEED RECORDED JULY 28, 1919 IN BOOK 341, PAGE
96 OF DEEDS RECORDS OF SAID ORANGE COUNTY.

EXHIBIT "D"

LEGAL DESCRIPTION OF
MCDONALD'S EXCHANGE PARCEL

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF FULLERTON, DESCRIBED AS FOLLOWS:

PARCEL 1:

THE WEST ONE-HALF OF THE WEST ONE-HALF OF THE SOUTH ONE-HALF OF LOT 2 OF THE "CENTRAL ADDITION", AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 7, PAGES 7 AND 8, MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, EXCEPTING THEREFROM THE WEST 7 FEET.

PARCEL 2:

A RIGHT OF WAY FOR INGRESS AND EGRESS OVER THE WEST 7 FEET OF THE SOUTH ONE-HALF OF LOT 2 OF "CENTRAL ADDITION", AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 7, PAGES 7 AND 8, MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, SAID RIGHT OF WAY NOT TO BE FOR THE EXCLUSIVE USE OF THE OWNER OF THE ABOVE DESCRIBED LAND, BUT TO BE USED IN COMMON WITH OTHERS.

PARCEL 3:

THE EAST HALF OF THE WEST HALF OF THE SOUTH HALF OF LOT 2, OF THE "CENTRAL ADDITION", AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 7, PAGES 7 AND 8 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, EXCEPTING THEREFROM THE EASTERLY 15.00 FEET.

PARCEL 4:

THE EASTERLY 14.00 FEET OF THE SOUTHERLY 10.00 FEET OF LOT 1 OF THE J. E. ELLIS' SUBDIVISION AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 8, PAGE 39, MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT "E"

SCHEDULE OF PERFORMANCE

<u>Item of Performance</u>	<u>Time for Performance</u>
1. Participant submits Development Project Plans	Prior to or concurrently with the OPA
2. Participant submits final building plans to City	Prior to Effective Date
3. Agency approves OPA, Development Project Plans, and Purchase and Sale Agreement with Steven Peck	Concurrently at the meeting of June 4, 1991
4. Participant submits evidence of financial capability and required insurance coverage	Within 10 days after Effective Date
5. Agency Executive Director approves evidence of financial capability and insurance	Within 5 days after submittal
6. Participant obtains building permits and commences construction of Project	Within 15 days of Effective Date
7. Agency begins design for temporary parking on Parking Structure Parcel and for expansion of existing parking lot on Ellis Place Parking Parcel	Within 30 days of Item No. 6
8. Agency commences construction of temporary parking on Parking Structure Parcel and expansion of existing parking lot on Ellis Place Parking Parcel	Construction on Parking Structure Parcel to commence within 90 days of Item No. 7; construction on Ellis Place Parking Parcel to commence within 30 days after Participant notifies Agency that Participant has vacated the building that Participant is authorized to occupy on such parcel pursuant to Section 8 of the Sale Agreement

9. Agency completes construction of temporary parking on Parking Structure Parcel and expansion of existing parking lot on Ellis Place Parking Parcel As to each facility, within 60 days after commencement of construction of such facility pursuant to Item No. 8
10. Agency completes construction of parking structure on Parking Structure Parcel In conjunction with redevelopment of Fox Theater property
11. Participant completes construction of Project Within 210 days of Item No. 6