**LOAN AGREEMENT FOR PROPERTY ACQUISITION**
**(1600 Enterprise Drive, City of Lemoore)**

This Loan Agreement for Property Acquisition ("Agreement) is entered into effective this 3rd day of May, 2011 ("Effective Date") by and between the City of Lemoore ("City" or "Lemoore"), the Redevelopment Agency of the City of Lemoore ("Agency" or "RDA") and Gary V. Burrows, Inc. ("Burrows") (collectively, the "Parties") on the terms and conditions which follow.

**RECITALS**

**WHEREAS,** Burrows operates a substantial portion of its petroleum products business ("business") at the present time in central Lemoore close to residential areas, including churches and schools, and retail uses, which is incompatible with those uses and creates a potential danger to those uses; and

**WHEREAS**, it is in the best interests of the Agency and the citizens who live and work in close proximity to the Burrows' business that the relocation of the business be accomplished in order to reduce the risks arising from this incompatibility; and

**WHEREAS**, the relocation of Burrows' business is consistent with the Five Year Implementation Plan of the Agency in that it will eliminate the blighting influences in the project area arising from this incompatibility while at the same time retaining valuable jobs and the tax base of the City of Lemoore ("City") and the Agency; and

**WHEREAS**, Burrows has entered into a purchase agreement ("purchase agreement") to acquire property identified as Parcel A of Parcel Map No. 2010-01 located at a street address currently known as 1600 Enterprise Drive in the City (referred

to herein as the "Western RV site" or the "site") in order to relocate a substantial portion of its business with the remainder of its business in close proximity to the site; and

**WHEREAS**, to facilitate the relocation and to retain Burrows, and Burrows & Castadio, Inc.'s (also collectively referred to herein as the "Burrows Corporations") business in the City, the RDA is prepared to loan the principal sum of $1.2 million pursuant to the terms of this Agreement ("the loan") to Burrows on condition that escrow is opened, for the purpose of acquiring the site, and closes on the transfer of title of the site from Premier Valley Bank to Burrows and for other consideration as stated herein; and

**WHEREAS**, the Agreement sets forth the terms, conditions and covenants for the loan to Burrows.

## TERMS, CONDITIONS & COVENANTS

**NOW, THEREFORE,** the Parties agree as follows:

1. **The Loan**. The principal amount of the loan shall be $1.2 million payable over a 25 year term at an interest rate of 5.85% per annum. The loan amortization and payment schedule is set forth in Exhibit A and incorporated herein by this reference (the "schedule").

2. **Purpose of the Loan**. The loan shall be used by Burrows to acquire title to the Western RV site which will also facilitate the complete relocation of the business outside of the central area of the City.

3. **Funding of the Loan**. The RDA agrees to fund the loan by depositing the full loan amount into escrow prior to the close of escrow for the acquisition of the site consistent with the escrow time requirements of the purchase agreement.

4. **Security for the Loan; Escrow and Title Company**. As a condition to funding of the loan, payment of the loan and performance by Burrows of the provisions of this Agreement shall be secured by a first deed of trust on the Western RV site. The title and escrow company, Chicago Title Company located at 7330 N. Palm Avenue, Suite 101, Fresno, California 93711, used for the purpose of transferring title to the site to Burrows, shall be prepared to issue, pursuant to the RDA and City's lender escrow instructions at their cost, a lender's policy of title insurance insuring that the City and the RDA are in a first deed of trust position recorded on the site. The escrow officer, designated below, shall prepare a pro forma lender's policy of title insurance for review by the City and the RDA before close of escrow for the purchase agreement. The RDA and the City may, at their election, prepare a promissory note secured by the first deed of trust. The RDA and the City may, in the alternative, secure the Agreement by the first deed of trust in lieu of preparation of a promissory note. The escrow officer is Judy M. Pezoldt (phone: 559-451-3730; fax: 559-431-8906; email: pezoldtj@ctt.com) and the escrow number is 45033199-JP.

5. **Loan Forgiveness; Acceleration if Burrows Relocates**. Provided that Burrows performs its obligations under the Agreement and there is no default or breach of the Agreement, the Disposition and Development Agreement Joint Escrow Instructions and Covenants Running with the Land ("DDA") separately executed by Burrows & Castadio, Inc. and the Agency, the Purchase Agreement for Improvements separately executed by Burrows and the Agency, or the Agreement of Covenants Running with the Land recorded on the property located at 416 N. Lemoore Avenue separately executed by Burrows, the City and the Agency (collectively, the

"Agreements"), an annual amount of $100,000, including principal and interest as set forth in the schedule, shall be forgiven on an annual basis commencing on the first scheduled payment date of July 1, 2013. If the Burrows Corporations are in default or breach of the Agreements as described in section 11, Burrows shall be obligated to make payments pursuant to the schedule, on an annual or pro rated basis thereof, until the default is cured or the breach is remedied. If Burrows, including Burrows & Castadio, Inc., relocates its business from the site without the written consent of the RDA and the City to another suitable location in the City, there shall be no additional loan forgiveness and Burrows shall be in breach of the Agreement. In the event of such breach, the City and the RDA, at their election, may accelerate payment of the balance of the principal of the loan, together with accrued interest after thirty (30) calendar days notice to Burrows of the accelerated principal amount due with accrued interest thereon, and the City and the RDA may pursue any and all judicial and nonjudicial remedies including recovery of liquidated damages as set forth in section 8 below.

6. **Consideration for the Loan.** In consideration for the loan and other consideration accruing to Burrows, the Burrows Corporations agree not to relocate their respective businesses, as currently conducted in the City, outside of the City and agree to pay to the City a minimum of ninety percent (90%) of any local sales tax revenue generated by the Burrows Corporations, or their successors in interest, in the City for a period of 25 years commencing on the close of escrow for the purchase agreement or on July 1, 2012, whichever is earlier, and ending on July 1, 2036.

7. **Reports; Inspection of Records**. Commencing on October 1, 2011, and quarterly thereafter, the Burrows Corporations agree to provide to the City quarterly

reports of its sales tax obligations and sales tax expenditures. In addition, the City shall have the right to inspect all relevant books and/or accounts of the Burrows Corporations, including those relating to the other 10% of sales tax revenue generated by the Burrows Corporations outside of the City of Lemoore, after the City provides notice of its intent to review said books and/or accounts. The Burrows Corporations agree to comply within ten (10) business days thereafter with the City's request or at such other time as the City and the Burrows Corporations shall agree in writing. Failure to provide such records and reports shall constitute a breach of the Agreement and shall entitle the RDA to suspend forgiveness of the loan described in section 5.

8. **Liquidated Damages if Burrows Relocates Outside the City**. A material inducement for the RDA's loan is the continued receipt of sales tax revenue as described in section 6. The Parties agree that in the event of breach by the Burrows Corporations, through relocating their current business operations, in whole or in part, outside the City of Lemoore at any time during the period after the close of escrow and until July 1, 2036, the amount of damages, in the absence of liquidated damages, would be impracticable or extremely difficult to fix as actual damages. Accordingly, the Parties concur that liquidated damages is appropriate under the circumstances existing at the time the Agreement is entered into. The measure of liquidated damages, with an annual declining liquidated damages amount, is set forth in Exhibit B and incorporated herein by this reference ("liquidated damages"). Liquidated damages may be recovered from the Burrows Corporations. The first deed of trust shall serve as partial security for the liquidated damages. At the City or RDA's election, without cost to the Burrows Corporations, the City or RDA may obtain additional security such as a letter of credit.

No security shall limit the measure of liquidated damages or any other damages or remedies provided by law.

9. **Representations, Warranties & Covenants**. Burrows, including Gary V. Burrows, Inc., represents and warrants that (1) it is a corporation in good standing; (2) it holds all licenses necessary to conducts its business; (3) has not entered into any agreement to sell its business or to transfer all or substantially all its business assets; (4) is in compliance with all local, state and federal laws in conducting its business; and (5) shall perform any other contractual agreements and covenants between the Parties referenced as the Agreements in section 5. Burrows further warrants and covenants, during the term of the Agreement, to comply with all local, state and federal laws in conducting its business in the City. Burrows also covenants that it will comply with all federal, state and local laws in effect from time to time prohibiting unlawful discrimination or segregation by reason of race, color, religion, sex, marital status, national origin or ancestry, or other protected classifications from unlawful discrimination. The representations, warranties and covenants described herein shall be continuing throughout the term of the Agreement as defined in section 21.

10. **Relocation of Burrows from Central Lemoore Area**. Within one year of the close of escrow and transfer of title of the site to Burrows, Burrows will commence relocation of its business operations out of the central Lemoore area where it is currently located at 416 N. Lemoore Avenue and 40 E Street. The portion of business operations relocated to the site shall be consistent with any CC&Rs recorded on the site. The remaining business operations will be relocated to adjacent sites in close proximity to the Western RV site including the properties located at 1200 S. 19th Avenue and 1280 S.

19th Avenue. All of the Burrows Corporations' business operations shall be completely relocated and operational at their relocated and expanded sites no later than December 31, 2013. Also, by December 31, 2013, the following relocation activities shall be completed regarding the Burrows site located at 416 N. Lemoore Avenue: (1) removal of all tanks, plumbing and related fueling equipment from the site; (2) removal of all structures except for the warehouse and fencing at the site; (3) storage only of nonhazardous materials in the warehouse at the site; (4) removal of any vehicles and/or equipment from the site; (5) the cessation of any storage and transportation of oil, grease and other petroleum products and any other hazardous materials at the site; and (6) maintaining the site free of weeds, debris or litter, until developed pursuant to covenants running with the land agreed upon by the Parties in a separate agreement recorded on the 416 N. Lemoore Avenue site.

11. **Breach/Default.** Except in the event of relocation, in whole or in part, of Burrows Corporations' business outside of the City, or Burrows Corporations' failure to comply with section 7 of this Agreement (both of which shall be considered a default hereunder without the need of any written notice of breach as is otherwise provided immediately below), in the event a Party believes that the other Party or Parties are in breach in the performance of the obligations of the Agreements, the non-breaching Party shall give written notice to the other Party specifying the nature of the breach. The Party to whom notice is given shall have five (5) calendar days to respond in writing as to whether it will oppose or contest the alleged breach or to state whether it will diligently cure the alleged breach in an expeditious manner.

In the event Burrows Corporations are deemed in breach hereunder without notice (as provided in the preceding paragraph), or in the event a default is claimed because the noticed Party fails to give a written response to the notice of breach as hereinabove provided, or the noticed Party opposes or contests the alleged breach, or the noticed Party does not diligently begin a cure of the alleged breach, a default shall be deemed to have occurred from the date the default is alleged to have occurred (if without notice), or five (5) days after the required notice of breach was given; and the noticing or non-defaulting Party shall have the right to pursue all remedies at law or in equity available under this Agreement. In the event the defaulting Party is Burrows, then Burrows shall be obligated to make payments on the loan during the period of default pursuant to section 1 of this Agreement. Once any such default is cured, no further payment under section 1 shall be required for such default and the terms and provisions of section 5 of this Agreement shall be reinstated from the date the default is cured forward.

Further, if the City or Agency alleges a default by Burrows that is later determined or stipulated by adjudication, arbitration or settlement not to have been a default, the City or Agency (as applicable) shall reimburse Burrows for all payments made on the loan pursuant to this section 11 and section 1 above during the period beginning with the date of the alleged breach through and until such time as it is adjudicated, determined or stipulated that a breach had not occurred.

12. **Alternative Dispute Resolution (ADR)**. The Parties may, but shall not be obligated as a condition to pursuing judicial and non-judicial remedies as provided by law, engage in alternative dispute resolution.

13. **Relationship of the Parties**. The Parties, as between Burrows, including Burrows & Castadio, Inc., and the RDA and the City, are independent entities. There is no business partnership, joint venture, or other entrepreneurial relationship between and among the Parties. Although separate corporations, for the purpose of the Agreement, and other agreements to facilitate the relocation and expansion of the business referenced herein between the City, RDA, Gary V. Burrows, Inc. and Burrows & Castadio, Inc., as the Burrows Corporations, they shall be considered as agents for one another regarding their rights, duties and obligations as described in the Agreements.

14. **Indemnity**. Burrows agrees to indemnify, defend and hold harmless the RDA and the City, its officers, representatives, agents and assigns, from any and all claims or liability arising out of relocation activities, including construction and renovation of new facilities, or any business activities conducted by Burrows whether conducted by Burrows at the Western RV site or any other relocated sites where Burrows conducts its business operations.

15. **Non-Assignability**. This Agreement may not be assigned without the express written consent of the Parties.

16. **Modification**. No modification to the Agreement may be made except in writing executed by the Parties.

17. **Notice**. Written notices may be sent to Burrows at its business office in the City. Notices to the City and the RDA may be sent care of the City Manager at City Hall. Notices may be personally delivered, mailed with certified return receipt requested, or faxed with proof of facsimile transmission, or by express mail with tracking information verifying delivery.

18. **Enurement**. The Agreement is binding upon the heirs, successors and assigns of the Parties which shall include the Burrows Corporations.

19. **Enforceability.** The Agreement is deemed fully executed and enforceable, in accordance with its terms, upon the effective date and ratification as set forth in section 25.

20. **Conditions Precedent**. The conditions precedent for the funding of the loan are (1) the execution of the Agreement; (2) the close of escrow and transfer of title of the Western RV site to Burrows; (3) the recordation, upon close of escrow, of a first deed of trust on the Western RV site securing the Agreement as verified by a lender's policy of title insurance; (4) the execution of the Disposition and Development Agreement Joint Escrow Instructions and Covenants Running with the Land; and (5) the execution of the Agreement of Covenants Running with the Land (416 N. Lemoore Avenue).

21. **Waiver.** Any party's waiver of a breach of any provision herein will not be a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

22. **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.

23. **Interpretation.** This Agreement is the result of the combined efforts of the Parties. If any provision of this Agreement is found to be ambiguous whether or not a defined term, the ambiguity will not be resolved by construing this Agreement in favor or

against any Party, but by construing the terms according to their generally accepted meaning.

24. **Complete Agreement; Term**. The Parties recognize that there are other agreements relating to other properties which are not part of this Agreement. Upon execution by the Parties, this Agreement supersedes any and all previous oral understandings or written communications, letters of intent, or previous agreements relating to the subject matter of this Agreement and shall not affect the other Agreements between the Parties. The term of the Agreement shall be from the Effective Date to July 1, 2036.

25. **Release and Termination of Recorded DDA.** Upon execution of the Agreement and ratification, the Agency agrees to release and terminate the agreement entitled "Lemoore Redevelopment Agency Disposition and Development Agreement (Western RV Center Project)" which was recorded on January 14, 2005 as Instrument No. 0501627 in the records of the County of Kings and is described as exception 9 to the Chicago Title Company preliminary title report dated April 6, 2011 for the Western RV Site. The Executive Director is authorized to execute any and all documents in order to terminate said agreement and to remove from the policy of title issued to Burrows on the close of escrow for the Western RV Site.

26. **Ratification.** This Agreement shall be ratified, as required by law, by the City and the RDA. Subsequent to ratification, the City Manager/Executive Director shall have the authority, but not the obligation, to make non-substantive modifications to the Agreement with the concurrence of Burrows.

27. **Execution in Counterparts**. This Agreement may be executed in counterparts by the Parties. Copies of signatures shall have the same force and effect as original signatures.

**WHEREFORE**, the Parties hereto, by their signatures below, enter into this Agreement effective on the date set forth above.

Dated: _____, 2011

GARY V. BURROWS, INC.

_____
By: Brian Castadio
Its: President

Dated: _____, 2011

BURROWS & CASTADIO, INC.

_____
By: Brian Castadio
Its: President

Dated: _____, 2011

THE CITY OF LEMOORE

_____
By: Jeff Briltz
Its: City Manager

Dated: _____, 2011

REDEVELOPMENT AGENCY OF THE CITY OF LEMOORE

_____
By: Jeff Briltz
Its: Executive Director

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