

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO**

2344 Tulare Street, Suite 200 / Fresno, CA 93721
(559) 621-7600
(559) 498-1870 (Fax)

Oversight Board to the
Successor Agency to the Redevelopment Agency
of the City of Fresno

Executive Director
Marlene Murphey

Chair
Terry Bradley

Members
Larry Hodges
Alan Hofmann
Debbie Poochigian
Doug Vagim
Rene Watahira
Larry Westerlund

AGENCY BRIEFING REPORT

Date: February 25, 2016
To: Oversight Board Members
From: Andrew Sanchez
Through: Marlene Murphey
Subject: Agenda Item IV. – 18.

RECEIVED
2016 FEB 19 AM 9 25
CITY CLERK, FRESNO CA

The Agency has received an offer for approximately 1.37 acres at 4007, 4017, 4025, 4061, and 4071 E. Ventura (APNs 461-272-09T, 10T, 11T, 16T, and 17T) LRPMP #30.

- Embree Asset Group, Inc. - \$385,000

The appraised value of the property is **\$358,000**.

Please note that this is an additional offer. There is a prior approved Oversight Board resolution and fully executed Purchase and Sale Agreement with FD Partners for this property.

Attachments: Summary Appraisal
Offer Letter
Resolution
PSA

**APPRAISAL REPORT
OF
1.37 ACRES
4007 - 4071 E. VENTURA AVENUE
FRESNO, CALIFORNIA 93702**

**PREPARED FOR
THE CITY OF FRESNO
2344 TULARE STREET #200
FRESNO, CALIFORNIA 93721**

**PREPARED BY
GREGG J. PALMER, MAI
JAMES G. PALMER APPRAISALS, INC.**

**EFFECTIVE DATE OF VALUE
FEBRUARY 15, 2013
EFFECTIVE DATE OF APPRAISAL
MARCH 1, 2013**



JAMES G. PALMER
APPRAISALS INC.

1285 W. Shaw
Suite 108
Fresno, CA 93711
T 559.226.5020
F 559.226.5063
jgpinc.com

March 1, 2013

Ms. Lupe Perez
City of Fresno
2344 Tulare Street #200
Fresno, California 93721

Re: Market Valuation
1.37 Acres
4007 - 4071 E. Ventura Avenue
Fresno, California 93702

Dear Ms. Perez:

At your request and authorization, James G. Palmer Appraisals Inc. has completed an appraisal report on the above-mentioned real property, more particularly described in the enclosed appraisal report.

The appraisal report has been prepared to comply with the requirements of:

- Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).
- The Uniform Standards of Professional Appraisal Practice (USPAP) including the Ethics and Competency Provisions as promulgated by the Appraisal Standards Board of the Appraisal Foundation.
- The Federal Deposit Insurance Corporation (FDIC) appraisal standards, which include compliance with USPAP.
- The Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The current edition of USPAP states that under Standards Rules 2-2 and 8-2 each written real property appraisal report must be prepared under one of the following three formats: Self Contained Appraisal Report [Standards Rules 2-2(a) and 8-2(a)], Summary Appraisal Report [Standards Rules 2-2(b) and 8-2(b)] or Restricted Use Appraisal Report [Standards Rules 2-2(c), 8-2(c) and 10-2(b)]. In the case of this report, the appraisal is being communicated in a *Summary* format.

The property consists of five adjoining parcels of land. The purpose of the appraisal was to arrive at an opinion of value of the fee simple estate, the value to be used for evaluation for asset evaluation. A single value will be reported. The effective date of valuation is as of February 15, 2013. The following value is subject to the value definitions, extraordinary assumptions and hypothetical conditions and limiting conditions as set forth in this report.

In the opinion of the undersigned, the values are as follows:

VALUE ASSUMING VACANT

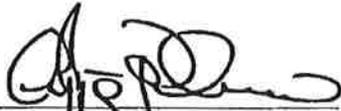
\$358,000.00

The undersigned hereby certify that they have no present or future intended interest in the property, and that neither the fee nor employment for this assignment was contingent upon the value reported herein. It is also the opinion of the undersigned that the subject has no significant natural, cultural, recreational or historic value. This letter must remain attached to the report in order for the value opinion set forth to be considered valid.

This appraisal is only valid for the purpose for which it is intended. It is invalid for a third party use or to establish a sales price for limited partners or syndication. Unless prior arrangements have been made with the appraiser, the right to photocopy all or part of this appraisal is strictly prohibited.

Thank you for this opportunity of serving you.

Sincerely,



Gregg J. Palmer, MAI
Certified General Real Estate Appraiser
California License AG002880
Expiration: April 24, 2014

GP: 8137

Executive Summary

PROPERTY DESCRIPTION

Property Name	RDA Land
Address	4007 - 4071 E. Ventura Avenue
City, State, Zip	Fresno, California 93702
County	Fresno
MSA	Fresno
Property Type	Vacant Commercial Land
Site Description	
Site Area	1.37 Acres
Road Frontage (LF)	400' NS Ventura Ave./ 150' WS Eleventh St/ 150' ES Tenth St
Orientation	Corner
Shape	Rectangular
Zoning	C-6
Description	Heavy Commercial
Flood Zone	Zone X - FEMA #06019C2110H
Improvement Description	
Building Area	Vacant Land
Year Built	N/A
Quality	N/A
Condition	N/A
Market Class	N/A
Construction Type	N/A
Real Estate Tax Data	
Assessor Parcel Number(s)	461-272-09, 10, 11, 16 & 17
Total Assessed Value	\$0.00
Real Estate Taxes	\$0.00

MARKET BOUNDARIES

North	Tulare Street
South	Butler Avenue
East	Cedar Avenue
West	Highway 41

HIGHEST & BEST USE

Land as Vacant	Hold for future commercial development
Property as Improved	N/A

PROPERTY VALUATION

Valuation Type	Fee Simple
Sales Comparison Approach	\$358,000
Cost Approach	N/A
Income Capitalization Approach	N/A
Final Value Opinion	\$358,000

APPRAISAL DATES

Inspection Date	February 15, 2013
Report Date	March 1, 2013
Date of Valuation	February 15, 2013
Exposure Time	12 Months



February 11, 2016

Mr. Enrique Mendez
Redevelopment Agency of the City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721

RE: Purchase Offer – Ventura & 10th, Fresno, CA

Dear Enrique:

The purchase price we are offering is \$385,000 and we are willing to purchase the property in "As Is" "Where Is" condition. Please find the attached Purchase Agreement for the above referenced property. If for whatever reason any of the provisions in the agreement are not satisfactory we will be happy to reconsider and make our best effort to negotiate a mutually agreeable solution. We look forward to working with the Redevelopment Agency please feel free to give me a call with any other questions or concerns.

Sincerely,

David Church
Vice President of Development Services

OVERSIGHT BOARD RESOLUTION NO. _____

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO APPROVING THE SALE OF APPROXIMATELY 1.37 ACRES AT 4007, 4017, 4025, 4061 AND 4071 E VENTURA (APNS 461-272-09T, 10T, 11T, 16T AND 17T) TO EMBREE ASSET GROUP, INC.

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Act"); and

WHEREAS, pursuant to the Dissolution Act, all non-housing assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA have been transferred to the control of the Successor Agency; and

WHEREAS, pursuant to Section 34191.5(b) of the Dissolution Act, the Successor Agency prepared a long-range property management plan (the "Plan") which addresses the disposition and use of the real properties of the Former RDA, and the Plan was adopted by the Oversight Board on July 7, 2014, and submitted to the State Department of Finance ("DOF") for approval on July 9, 2014, and is still under review by DOF; and

WHEREAS, Embree Asset Group, Inc., wishes to purchase 1.37 acres of real property which is identified in the Plan as Line #30, APNs 461-272-09T, 10T, 11T, 16T AND 17T (the "Property") for a total price of \$385,000.00 cash at close of escrow.

NOW THEREFORE BE IT RESOLVED BY OVERSIGHT BOARD AS FOLLOWS:

Section 1. The Oversight Board hereby approves the Purchase and Sale Agreement, substantially in the form attached hereto as Exhibit A, and directs the Executive Director to execute the Purchase and Sale Agreement on behalf of the Successor Agency, and to take all such actions as may be required to close escrow and convey the Property pursuant to the Purchase and Sale Agreement.

Section 2. Pursuant to Health and Safety Code Section 34180(j), staff of the Successor Agency is hereby authorized and directed to transmit the Purchase and Sale

Agreement to the Successor Agency, the County Administrative Officer, and the County Auditor-Controller.

Section 3. Pursuant to Health & Safety Code Section 34191.5(f), Oversight Board actions to implement the disposition of property pursuant to an approved Plan shall not require review by DOF.

Section 4. The Executive Director is hereby authorized and directed to do any and all things which may be necessary or advisable to effectuate this Resolution and any such actions previously taken are hereby ratified.

Section 5. This Resolution shall be effective in accordance with CRL section 34179(h).

ADOPTED by the Oversight Board this _____ day of February, 2016.

TERRY BRADLEY
Chair of the Board

I, YVONNE SPENCE, City Clerk/Clerk of the Oversight Board hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the Oversight Board for the City of Fresno as Successor Agency to the Redevelopment Agency of the City of Fresno at its meeting held on the _____ day of February, 2016, by the following vote, to wit:

AYES :
NOES :
ABSENT :
ABSTAIN :

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Fresno, California, this _____ day of February, 2016.

Yvonne Spence
City Clerk/Clerk of the Oversight Board

KBD:elb [65460elb/kbd]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE CITY OF FRESNO IN ITS CAPACITY AS SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "Successor Agency"), and Embree Asset Group, Inc., a Texas corporation, or its permitted assignee ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Freeway 99-Golden State Boulevard Corridor Redevelopment Project (the "Project Area"), in accordance with the California Community Redevelopment Law (Health and Safety Code Sections 33000, *et seq.*; hereafter the "CRL"). The Plan and the CRL authorize the Agency to purchase property for redevelopment purposes.
- B. On January 26, 2012, the City Council adopted Resolution No. 2012-12 electing to serve as the Successor Agency to the Redevelopment Agency of the City of Fresno ("Successor Agency"). Pursuant to Health & Safety Code Section 34181 (a) the Oversight Board ("Oversight Board") shall direct the Successor Agency to dispose of certain properties purchased by the former redevelopment agency with tax increment funds expeditiously and in a manner aimed at maximizing value.
- C. The Seller owns certain real properties within the Project Area, and the City of Fresno, commonly known as (APN 461-272-16T, 461-272-17T, 461-272-11T, 461-272-10T, and 461-272-09T) Fresno, California 93702, and more particularly described in Exhibit A, attached, (the "Properties").
- D. To further redevelopment in the Project Area, the Buyer desires to purchase the Properties on the terms and conditions set forth in this Agreement.

AGREEMENT

- 1 **Incorporation of Recitals.** All of the foregoing Recitals are hereby incorporated as agreements of the parties.
- 2 **Purchase and Sale.** Seller will sell the Properties to Buyer, and Buyer will purchase the

Properties from Seller on the terms and conditions set forth in this Agreement. Sale of these Properties is subject to compliance with Community Redevelopment Law of the State (California Health and Safety code Sections 33000 *et seq*),

- 3 **Conditions Precedent.** Closing shall be conditioned upon performance of all of obligations in this Agreement and satisfaction of the conditions listed in Sections 2.1 ("Seller's Conditions to Closing") and 2.2 ("Buyer's Conditions to Closing"), provided that Seller may, in Seller's sole discretion, elect to waive any such Seller's Condition to Closing and Buyer may in Buyer's sole discretion, elect to may waive any such Buyer's Condition to Closing.

3.1 **Seller's Conditions to Closing**

3.1.1 **Compliance with CEQA.** The applicable lead agency shall have complied with the California Environmental Quality Act with respect to this Agreement, as applicable. The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA) upon satisfaction of certain conditions listed in Section 2.5.

3.2 **Buyer's Conditions to Closing**

3.2.1 **Environmental Assessment.** The Properties are being sold in an "As is" condition. The Buyer may perform a Phase I Environmental Site Assessment (Phase I EA) or other due diligence test at Buyer's cost per Section 7 of this Agreement.

3.2.2 **Permits and Zoning.** Buyer will obtain all necessary permits and government approvals to build a Dollar General store on the Properties including but not limited to conditional or special use permits and all building permits and confirm Buyer can build its proposed Dollar General store at or substantially similar to the budget approved by Buyer's proposed tenant.

3.2.3 **Utilities.** Buyer will confirm the availability of utilities to the Properties, including but not limited to water sufficient for domestic use & fire suppression, sanitary and storm sewer, electric, gas and telephone lines.

3.2.4 **Title.** Any exceptions listed on the title commitment issued by Title Company for the Properties have either been removed or accepted by Buyer per Section 5.3 below.

3. **Purchase Price.** The purchase price for the Properties is THREE HUNDRED EIGHTY-

FIVE THOUSAND DOLLARS (\$385,000.00) ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement, will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.

4. **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Properties, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Properties from adjacent properties, encroachments from the Properties onto adjacent properties, and any rights of way, other than those disclosed by the public record, except for a lease agreement with CBS Outdoor, Inc. and a month to month verbal lease agreement with Condoors Security Wrought Iron Works whose rights of possession shall be terminated prior to Closing; (b) Seller has no knowledge of any pending litigation involving the Properties; (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with any code, statute, regulation, ordinance, judicial order, judicial holding, or other applicable law concerning the Properties; (d) Seller has no knowledge of any hazardous materials or substances (as now or hereafter defined in any law, regulation, or rule) stored, discharged, or otherwise present in, on, or affecting the Properties; (e) Seller has no knowledge of any material defects in the Properties; (f) Three of the of the five Properties (APN#461-272-16T, 11T, and 10T) are vacant, a fourth has a billboard located on the site (APN#461-272-17T), and the fifth Property (APN#461-272-09T) has a structure that is occupied by Condoors Security Wrought Iron Works. The Buyer will remove the billboard and the last structure after the close of escrow.

Seller's authority to sell the Properties is subject to approval of the Oversight Board of the Successor Agency and/or the California State Department of Finance and subject to the timelines set forth in California Health and Safety Code Section(s) 34170-34191. Seller shall promptly notify Buyer of such approvals.

The continued accuracy in all respects of Seller's representations and warranties shall be a condition precedent to Buyer's obligation to close. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Closing and shall survive the Closing. If any of the representations and warranties are not correct at the time made or as of the Closing, Buyer may terminate this Agreement, receive a refund of the Deposit, and there shall be no further liability on the part of Buyer to Seller.

5. **Opening Escrow/Escrow Deposit.** Within ten (10) business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with Fidelity National Title Company at 60 E. Rio Salado Parkway, 11th Floor, Tempe, Arizona 85281 ("Title Company"), Attention: Patti Graham, or such other title insurance company as designated by Buyer, and Buyer shall deposit into Escrow the sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) ("Deposit") to be placed in an interest bearing account and applicable to the Purchase Price and refundable to Buyer in the event that Buyer decides to terminate this Agreement prior to delivery of Buyer's Closing Notice

(as defined in Section 5.5). In any event where the Deposit shall be refunded to Buyer, the Title Company shall return the Deposit to Buyer less the sum of ONE HUNDRED DOLLARS (\$100.00) to be delivered to Seller as independent contract consideration for Buyer's right to terminate.

- 5.1 **Agreement as Joint Escrow Instructions.** This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.
- 5.2 **Deposits into Escrow.** Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within thirty (30) days after the Oversight Board and the Successor Agency Board approves this Agreement, Seller will deposit into the escrow with Title Company, or will conditionally deliver to Buyer, a recordable grant deed, substantially in the form attached as Exhibit "B," duly executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any signatory executing such deed on behalf of Seller.
- 5.3 **Title.** Seller will convey title of the Properties to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, except those agreed to in writing by Buyer or otherwise accepted by Buyer as set forth in this Section 5.3. Buyer shall provide a written notice to Seller and Title Company of those items indicated on the title commitment which are acceptable or unacceptable to Buyer ("Buyer's Title Objection Letter"). In the event Buyer fails to provide Buyer's Title Objection Letter prior to Closing, it shall be presumed the exceptions listed on the title commitment are accepted by Buyer.
- 5.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 5.3, above. Buyer will pay all other closing costs including but not limited to a CLTA or ALTA owner's title policy insuring Buyer's title in the condition described in Section 5.3, escrow fees, costs to record the grant deed, broker's commissions, etc.
- 5.5 **Closing.** The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant deed. The escrow will be in condition to Close and will only proceed to Close when Seller's Conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, the Title Company is otherwise able to

record the grant deed, and five (5) business days have passed since Buyer delivered written notice to Title Company and Seller of Buyer's readiness to Close including the waiver or satisfaction to Buyer's Conditions to Close ("Buyer's Closing Notice"). Unless extended by the mutual consent of the parties, the escrow and this Agreement shall terminate if Closing does not occur within one hundred and eighty (180) days following final execution of this Agreement (including attestation by Yvonne Spence, Clerk for the City of Fresno) (the "Closing Deadline"). Buyer may terminate this Agreement at any time, for any reason prior to delivering Buyer's Closing Notice. Upon termination of the escrow, the Title Company will return all funds, including the Deposit, and documents to the respective depositor, less any termination fee if applicable and \$100.00 to be delivered to Seller as independent contract consideration, and this Agreement will be of no further effect except as herein provided. Buyer shall have the right to extend the Closing Deadline for two (2) periods of forty-five (45) days each by providing written notice to the Seller and Title Company along with making an additional deposit of FIVE THOUSAND DOLLARS (\$5,000.00) for each extension (a "Closing Extension Deposit"), the Closing Extension Deposits will be applicable to the Purchase Price but refundable to Buyer only in the event of a Seller Default. If Buyer has delivered Buyer's Closing Notice and fails to Close, the Deposit and any Closing Extension Deposit deposited with Title Company shall be released to Seller.

- 5.6 **Recordation.** At Closing, Title Company shall date the grant deed, and all other undated documents in escrow, with the date of Closing, and the Title Company shall record the grant deed, performance deed of trust (the "Performance Deed of Trust" as defined in Section 9.2) and all other documents necessary to the Closing.
- 5.7 **Disbursements.** At Closing, Title Company shall disburse the Purchase Price, less Seller's costs to clear title (placing it in the condition set forth in Section 5.3), prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA or ALTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 5.3 above for the Purchase Price, (which amount of insurance may be increased to Buyer's loan amount at Buyer's expense).
- 5.8 **Prorations.** Assessments, real property taxes and rents (if any) shall be prorated between Buyer and Seller as of the Closing Date. If this sale or Buyer's use of the Property after Closing results in additional taxes, assessments, penalties, or interest for periods before Closing, the Assessments will be the obligation of the Seller. This Section 5.8 shall survive Closing.
- 5.9 **Risk of loss.** Any loss or damage, to the Properties or any improvements on it,

before Closing is at Seller's risk.

- 5.10 **Broker.** Any commission owed as a result of the transaction contemplated by this Agreement is the sole responsibility of Buyer. Buyer holds Seller harmless and shall indemnify and defend Buyer against any claims for commission.
- 6 **Delivery of Possession.** Seller shall deliver exclusive possession of the Properties to Buyer at Closing.
- 7 **Buyer's Right to Enter and Inspect the Properties.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the Properties that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Properties to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.
- 8 **Damage, Destruction, Condemnation.** If the improvements on the Properties are destroyed or materially damaged or if condemnation proceedings are commenced against the Properties between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Properties, all proceeds of insurance or condemnation awards payable to Seller by reason of the destruction, damage, or condemnation shall be paid or assigned to Buyer. In the event of nonmaterial damage to the Properties, which damage Seller is unwilling to repair prior to Closing, Buyer shall have the right either to terminate this Agreement or accept the Properties in its then existing condition, in which case Buyer shall be entitled to a reduction in the Purchase Price to the extent of the cost of repairing the damage. If Buyer elects to terminate this Agreement pursuant to this Section, escrow shall terminate, any monies deposited by Buyer into Escrow shall be released back to Buyer (less the sum of \$100 to be delivered to Seller as independent contract consideration for Buyer's right to terminate), and neither party shall have any further duties or responsibilities under this Agreement.
- 9 **Miscellaneous Provisions.**
- 9.1 **Development Conditions.** Subject to force majeure delays, within one hundred eighty (180) days from the Close of Escrow (the "Development Conditions Deadline"), Buyer shall comply with Development Conditions as follows: (a) construct a retail/commercial facility consisting of approximately 7,500 square feet with an enhanced exterior façade, mutually acceptable to Buyer and Seller, to be built in accordance with the approved site plan, building plans and permit requirements issued by the City of Fresno and the State of California; and, (b) provide landscaping on all portions of the Properties as mutually agreed by Buyer and Seller and set forth on the approved site plan. Said Development Conditions

are a material term of this Agreement, and are considered to be a portion of the consideration paid for the Properties. Buyer shall be entitled to request two (2) sixty (60) day extensions to the Development Conditions Deadline, without additional consideration. Said extension shall be requested in writing, no later than 30 days prior to the expiration of the then existing Development Conditions Deadline. Seller must approve any extension in writing, and shall do so within twenty-one days of the written request. Seller's approval shall not be unreasonably withheld. These Development Conditions shall survive the Closing.

- 9.2 **Performance Deed of Trust.** The Development Conditions set forth in Section 9.1 above shall be secured by a Performance Deed of Trust, consistent with the form attached hereto as Exhibit C. Should Buyer fail to complete the Development Conditions within the time provided in Section 9.1, or any extension thereof, Seller has the right to pursue all remedies available to recover the Properties, including but not limited to foreclosure upon the Performance Deed of Trust.
- 9.3 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
- 9.4 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of service if served personally on the person to receive the notice, (b) on the date deposited in the U.S. mail, if delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and addressed to the relevant party at the address set forth below, or (c) on the date of transmission if delivered by facsimile or email, to the number provided below, that provides a transmission confirmation showing the date and time transmitted.

To Seller:

CITY OF FRESNO IN ITS CAPACITY AS SUCCESSOR
AGENCY TO THE REDEVELOPMENT AGENCY OF
THE CITY OF FRESNO, a public body corporate and
politic

Attention: Director
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870
Email:

To Buyer:

EMBREE ASSET GROUP, INC
Attention: Jared Rann
4747 Williams Dr.
Georgetown, Texas 78633
Phone No.: (512) 819-4722
Fax No.: (512) 819-4899
EAGlegal@embreegroup.com

- 9.5 **Entire Agreement.** Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Properties, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.
- 9.6 **Amendment or Cancellation.** Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.
- 9.7 **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder without the consent of Seller.
- 9.8 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.9 **Attorneys' Fees.** If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.
- 9.10 **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California.
- 9.11 **Headings.** The Section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.12 **Waiver.** If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.

- 9.13 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.14 **Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, 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.
- 9.15 **Precedence of documents.** If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.
- 9.16 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.
- 9.17 **Survival.** All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.
- 9.18 **Seller's Default and Buyer's Remedies.** If the sale of the Properties is not consummated due to Seller's material default hereunder that is not cured within five (5) business days of Notice from Buyer of Default, then Buyer shall have the right, to elect, as its sole and exclusive remedy, to either (a) terminate this Agreement by written notice to Seller, promptly after which the Deposit and any Closing Extension Deposit shall be returned to Buyer (less the sum of \$100 to be delivered to Seller as independent contract consideration for Buyer's right to terminate), (b) waive the default and proceed to Close the transaction contemplated herein, or (c) provided that all of the conditions to Seller's obligations to Close have been satisfied and so long as Buyer is not then in default of any of its obligations under this Agreement, seek specific performance of Seller's obligations under this Agreement and record and maintain against the Properties a notice of lis pendens in accordance with applicable law if Buyer further satisfies and continues to satisfy each of the following obligations: (i) Buyer shall have reasonably demonstrated that it is prepared to deliver into escrow all funds required by this Agreement in order for Closing to occur, Buyer shall have provided written evidences of availability of funds required by this Agreement in order for the Closing to occur, and Buyer shall be ready and willing in all other respects to Close escrow in accordance with the terms and conditions of this Agreement; and (ii) Buyer shall have filed an action for specific performance (a "Specific Performance Action") within forty-five (45) days of

the date the Closing for the Properties was to have occurred. Notwithstanding anything to the contrary contained herein, Seller shall not be deemed in default unless and until Buyer provides Seller with written notice of such default and Seller fails to cure such default within five (5) business days of its receipt of such written notice.

9.19 Buyers Default and Seller's Remedies. IF THE SALE OF THE PROPERTIES IS NOT CONSUMMATED DUE TO BUYER'S MATERIAL DEFAULT HEREUNDER THAT IS NOT CURED WITHIN FIVE (5) BUSINESS DAYS OF NOTICE FROM SELLER OF DEFAULT, SELLER MAY TERMINATE THIS AGREEMENT AND SHALL BE ENTITLED TO, AS SELLER'S SOLE AND EXCLUSIVE REMEDY, THE AMOUNTS DEPOSITED WITH ESCROW HOLDER PURSUANT TO THIS AGREEMENT AS OF THE TIME OF DEFAULT AS LIQUIDATED DAMAGES; IT BEING AGREED THAT UNDER ALL THE CIRCUMSTANCES EXISTING AT THE TIME OF THIS AGREEMENT, THIS PROVISION LIQUIDATING DAMAGES IN THE EVENT OF THE BUYER'S DEFAULT IS REASONABLE, THE DAMAGES RESULTING TO SELLER BY REASON OF SUCH BREACH ARE NOW AND THEN WOULD BE DIFFICULT AND IMPRACTICAL TO DETERMINE AND THAT THE BEST ESTIMATE, BASED ON ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, OF THE TOTAL DAMAGES THAT SELLER WOULD SUFFER IS AND SHALL BE AN AMOUNT EQUAL TO THE SUMS DEPOSITED BY BUYER WITH ESCROW HOLDER AS OF THE TIME OF DEFAULT. NOTWITHSTANDING THE FOREGOING, THE LIMITATION ON SELLER'S REMEDIES AND DAMAGES PAYABLE BY BUYER SET FORTH IN THIS SECTION ABOVE SHALL NOT APPLY TO OR LIMIT IN ANY WAY BUYER'S INDEMNIFICATION OBLIGATIONS THAT SURVIVE TERMINATION AS SET FORTH ELSEWHERE IN THIS AGREEMENT. IN PLACING THEIR INITIALS IN THE SPACES PROVIDED BELOW, THE PARTIES CONFIRM THAT THEY HAVE READ, UNDERSTAND AND AGREE TO THIS PROVISION.

BUYER'S INITIALS

SELLER'S INITIALS

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates set forth below.

BUYER:

Embree Asset Group, Inc., a Texas corporation

By: _____
Philip H. Annis, President

Dated: _____, 2016

SELLER:

City of Fresno In Its Capacity as Successor Agency to the Redevelopment Agency of the City of Fresno, a public body corporate and politic

By: _____
Marlene Murphey, Director

Dated: _____, 2016

The City of Fresno In Its Capacity as Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on _____, 2016

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

By _____
Deputy

Dated: _____, 2012

APPROVED AS TO FORM:
DOUGLAS T. SLOAN Ex-officio Attorney

By _____
Deputy/Sr. Deputy/Assistant

Dated: _____, 2012

Attachments:

- Exhibit A: Legal Description
- Exhibit B: Grant Deed
- Exhibit C: Performance Deed of Trust

EXHIBIT "A"

LEGAL DESCRIPTION

[To be Inserted Prior to Execution]

DRAFT

EXHIBIT "B"

Recording Requested By:

The City of Fresno In Its Capacity as
Successor Agency to the Redevelopment
Agency of the City of Fresno
No Fee-Government Code Sections
6103 and 27383

When Recorded Mail to:

The City of Fresno In Its Capacity as
Successor Agency to the Redevelopment
Agency of the City of Fresno
2344 Tulare Street, 2nd Floor
Fresno, CA 93721

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

[To be Inserted Prior to Execution]

DRAFT

EXHIBIT "C"

Performance Deed of Trust

[To be Inserted Prior to Execution]

DRAFT