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
Alan Hofmann

Members
Jeff Becker
Larry Hodges
Debbie Poochigian
Doug Vagim
Rene Watahira
Larry Westerlund

RECEIVED
2016 NOV 14 AM 8 09
CITY CLERK, FRESNO CA

AGENCY BRIEFING REPORT

Date:	November 16, 2016
To:	Oversight Board Members
From:	Andrew Sanchez
Through:	Marlene Murphey
Subject:	Agenda Item V.

Pursuant to the Board's action on October 19th 2016, the Agenda provides for action regarding the method of disposition to be used for Parking Lot 2 with the actual disposition of the property to come back at a later date. The range of options include:

1. Property Disposition Guideline (PDG) methods:
   A. Open Market Solicitation;
   B. Request for Offer to Purchase including Proposed Development;
   C. Auction; or

2. Waive the Property Disposition Guidelines and bring back a Purchase and Sale Agreement for direct sale to Tutelian INC for $521,000 with terms to be approved.

On November 3, 2016 the Successor Agency approved resolution SA-35 (attached) recommending that the Oversight Board sell Parking Lot 2 to Tutelian and Company.

Should the Board act to directly sell Lot 2 to Mr. Tutelian, direction is needed regarding the

terms of sale. The Purchase and Sale Agreements (PSA) for both "Auction" and "Non-Auction" methods of sale have been updated over time consistent with Department of Finance (DOF) direction, and, DOF and Board policies to reduce the Successor Agency's liability and costs and to expedite the sale of property and closing periods. The current Purchase and Sale Agreements for both auction and non-auction are posted on the Agency website.

Upon inquiry from Mr. Tutelian's attorney Successor Agency staff advised that the current Non Auction PSA could be found on the Agency's website and a copy was emailed on October 11, 2016. A copy of the Tutelian offer executed October 19th was later received by the Successor Agency staff on October 28th.

The terms of Mr. Tutelian's offer differ from the current Non-Auction PSA. The primary differences are charted below:

Tutelian Offer	**Successor Agency Standard PSA – Non-Auction**
Seller to pay costs of clearing and conveying title	Buyer to pay costs of clearing and conveying title
Escrow to close within 180 days of execution of agreement	Escrow to close within 60 days of execution of agreement
Buyer has right to extend for 2 extension periods of 45 days each upon payment of $2500 per extension, applicable to purchase price	No right of Buyer to extend
Seller must transfer property 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	Property transferred AS IS
Seller warrants it has no knowledge of hazardous materials	Hazardous materials warranty removed

Attachments: Resolution SA-35
PSA Non-Auction

RESOLUTION NO. SA-35

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE CITY OF FRESNO REDEVELOPMENT AGENCY REGARDING THE DISPOSITION OF PROPERTY OF APPROXIMATELY 1.38 ACRES AT 1911 MERCED AND 1900 TUOLUMNE STREET (APN(s) 466-206-50T AND 466-206-51T)

WHEREAS, the City of Fresno previously adopted Resolution No. 2016-173, and the Successor Agency to the City of Fresno Redevelopment Agency (the "Successor Agency") previously adopted Resolution No. SA-34, which Resolutions affirmed that the City of Fresno considered its first right of refusal to purchase 1911 Merced and 1900 Tuolumne Street, APNs 466-206-50T and 466-206-51T commonly referred to as Parking Lot 2; and resolved the City of Fresno determined it does not wish to purchase nor exercise its right of first refusal for Parking Lot 2; and

WHEREAS, Resolution No. 2016-173 and Resolution No. SA-34 also referenced the offer to purchase Parking Lot 2 made to the Oversight Board by Tutelian and Company, and therein recommended that the Oversight Board consider sale of the property to Tutelian and Company; and

WHEREAS, The Successor Agency has considered the terms and conditions of the offer to purchase Parking Lot 2 made by Tutelian and Company to the Oversight Board on October 19, 2016 (the "Tutelian Offer") (a copy of which is attached hereto as Exhibit "A"), which provides an over 22% above the current appraised value for Parking Lot No. 2, and finds a sale of Parking Lot 2 in accordance with the terms of the Tutelian Offer is consistent with the approved long-range property management plan, and with the provisions of the Property Disposition Guidelines.

Date Adopted: 11/03/2016
Date Approved: 11/03/2016
Effective Date: 11/03/2016

NOW THEREFORE BE IT RESOLVED, the Recitals set forth above are true and correct and are incorporated into this Resolution by reference.

NOW THEREFORE BE IT FURTHER RESOLVED, the Successor Agency hereby approves the sale of Parking Lot 2 to Tutelian and Company, in accordance with the terms of the Tutelian Offer, subject to the approval of the Oversight Board.

NOW THEREFORE BE IT FURTHER RESOLVED, the Successor Agency requests that the Oversight Board approve the sale of Parking Lot 2 to Tutelian and Company, in accordance with the terms of the Tutelian Offer, at the next regularly scheduled meeting of the Oversight Board.

* * * * * * * * * * * * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, Ex-Officio Clerk to the Successor Agency to the City of Fresno Redevelopment Agency, certify that the foregoing resolution was adopted by the Successor Agency at a regular meeting held on the 3rd day of November, 2016.

AYES : Baines, Brand, Brandau, Olivier, Quintero, Soria, Caprioglio
NOES : None
ABSENT : None
ABSTAIN : None

YVONNE SPENCE, CMC
Ex-Officio Clerk to the Successor Agency to the Redevelopment Agency of the City of Fresno

By: Yvonne Spence
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
Ex-Officio Attorney to the Successor Agency to the Redevelopment Agency of The City of Fresno

By: Laurie Avedisian-Favini 11/10/16
Laurie Avedisian-Favini Date
Assistant

LAF:ns [72831ns/laf] 10/27/16

EXHIBIT "A"
TUTELIAN OFFER

EXHIBIT A

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "Successor Agency"), and TUTELIAN & COMPANY INC., a corporation ("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 both the Agency and Oversight Board have approved it.

RECITALS

A. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as APNs 466-206-50T & -51T, Fresno, California, and more particularly described in Exhibit A, attached, (the "Property").

B. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Central Business District Redevelopment Plan Area (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.

C. 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 Property purchased by the former redevelopment agency with tax increment funds expeditiously and in a manner aimed at maximizing value.

D. The Buyer has agreed to purchase the entire parcel as-is.

E. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

This Agreement shall not come before the Successor Agency or Oversight Board for approval until it is executed by the Buyer. Then, the Successor Agency and Oversight Board shall review this agreement in accordance with the terms of the CRL. This Agreement shall not be binding until approved by both Successor Agency and Oversight Board, and fully executed by all parties. Neither Successor Agency nor Oversight Board have any obligation to approve this Agreement, and Buyer shall have no claim for damages due to failure by either body to approve this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

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

2. **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, 2.2, and 2.3, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.

   2.1 **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).

   2.2 **Environmental Assessment.** The Property is being sold in an "As is" condition. The Buyer may perform a Phase 1 Environmental Site Assessment at Buyer's cost. Seller shall provide Buyer with any copies of environmental reports pertaining to the Property in Seller's possession without any warranty as to their accuracy.

   2.3 Approval of this Agreement by Successor Agency and Oversight Board.

3. **Purchase Price.** The purchase price for the Property is FIVE HUNDRED TWENTY ONE THOUSAND DOLLARS ($521,000.00) ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement (if any), 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 Property, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Property from adjacent Property, encroachments from the Property onto adjacent Property, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (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 Property; (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 Property; (e) Seller has no knowledge of any material defects in the Property; (f) the Property is currently vacant.

Seller's authority to sell the property may be subject to approval of the Oversight Board of the Successor Agency and subject to the timelines set forth in California Health and Safety Code section(s) 34170-34191.

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 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 7485 N. Palm Avenue, Suite 106, Fresno California ("Title Company"), Attention: Bernadette Watson, and Buyer shall deposit into Escrow the sum of TWENTY-SIX THOUSAND FIFTY DOLLARS ($26,050.00) (5% of total purchase price) ("Deposit") to be placed in an interest bearing account.

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 approve this Agreement, Seller will deposit into the escrow with Title Company, or will conditionally deliver to Buyer, a recordable grant deed 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 Property 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.

5.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 5.3. Buyer will pay the cost of 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, etc., shall be split equally between Buyer and Seller.

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 when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. 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 the Clerk) (the "Outside Closing Date"). Seller's Executive Director is authorized to agree to administratively extend this Agreement as necessary to accommodate satisfaction of conditions precedent. 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 this Agreement will be of no further effect except as herein provided. Notwithstanding the foregoing, Buyer shall have the right to extend the Outside Closing Date for up to two (2) extension periods of forty-five (45) days each by providing written notice to the Seller along with making an additional deposit of $2,500.00 for each extension, such additional deposits to be applicable to the Purchase Price but refundable only in the event of a Seller Default.

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 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 or such lesser amount as Buyer may designate.

5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.

5.9 **Broker.** Neither party engaged a broker for this transaction.

6. **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.

7. **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property 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. **Miscellaneous Provisions.**

8.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.

8.2 **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, (c) on the date of transmission if delivered by facsimile, to the number provided below, that provides a transmission confirmation showing the date and time transmitted, or (d) on the date of transmission if delivered electronically via email and showing the date and time transmitted.

To Seller:
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic
Attention: Executive Director
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:
TUTELIAN & COMPANY INC., a corporation
Attn: Clifford Tutelian, President
1401 Fulton Street Suite 210
Fresno, CA 93721
Phone No.:559.266.8000

8.3 **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 Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.

8.4 **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.

8.5 **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.

8.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.

8.7 **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.

8.8 **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.

8.9 **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.

8.10 **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.

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

8.12 **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.

8.13 **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.

8.14 **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. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.

8.15 **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.

8.16 **Seller's Default and Buyer's Remedies.** If the sale of the Property 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 shall be returned to Buyer, (b) waive the default and proceed to close the transaction contemplated herein. 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.

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

BUYER:

TUTELIAN & COMPANY, Inc., a California corporation

By: _____
Clifford Tutelian, President

Dated: 10/19, 2016

SELLER:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic

By: _____
Marlene Murphey, Executive Director

Dated: _____, 2016

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on _____, 201____.

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

By: _____
Deputy

Dated: _____, 2016

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

By: _____
Deputy

Dated: _____, 2016

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"

Legal Description

[To be attached after Preliminary Title Report
for the Title Policy is Obtained from Escrow Holder]

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Seller" or "Successor Agency"), and _____, ("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 both the Agency and Oversight Board have approved it.

RECITALS

A. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as APN _____, Fresno, California, and more particularly described in Exhibit A, attached, (the "Property").

B. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the _____ Redevelopment Plan Area (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.

C. 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 Property purchased by the former redevelopment agency with tax increment funds expeditiously and in a manner aimed at maximizing value.

D. The Buyer has agreed to purchase the entire parcel as-is.

E. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

This Agreement shall not come before the Successor Agency or Oversight Board for approval until it is executed by the Buyer. Then, the Successor Agency and Oversight Board shall review this agreement in accordance with the terms of the CRL. This Agreement shall not be binding until approved by both Successor Agency and Oversight Board, and fully executed by all parties. Neither Successor Agency nor Oversight Board have any obligation to approve this Agreement, and Buyer shall have no claim for damages due to failure by either body to approve

this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

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

2. **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, 2.2, and 2.3, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.

   2.1 **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 _____ Class _____ of the California Environmental Quality Act (CEQA).

   2.2 **Environmental Assessment.** The Property is being sold in an "As is" condition. The Buyer may perform a Phase 1 Environmental Site Assessment at Buyer's cost. Seller shall provide Buyer with any copies of environmental reports pertaining to the Property in Seller's possession without any warranty as to their accuracy.

   2.3 Approval of this Agreement by Successor Agency and Oversight Board.

3. **Purchase Price.** The purchase price for the Property is _____ ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement (if any), 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 Property, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Property from adjacent Property, encroachments from the Property onto adjacent Property, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (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 Property;

   Seller's authority to sell the property may be subject to approval of the Oversight Board of the Successor Agency and subject to the timelines set forth in California Health and Safety Code section(s) 34170-34191.

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 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 _____ ("Title Company"), Attention: _____, and Buyer shall deposit into Escrow the sum of _____ (5% of total purchase price) ("Deposit") to be placed in an interest bearing account.

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 approve this Agreement, Seller will deposit into the escrow with Title Company, or will conditionally deliver to Buyer, a recordable grant deed 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 Property to Buyer AS IS, without regard to all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller.

5.4 **Title and Closing Costs.** Buyer will pay any costs of clearing and conveying title. Buyer will pay the cost of 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, etc., shall be split equally between Buyer and Seller.

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 when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein,

and the Title Company is otherwise able to record the grant deed. 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 sixty (60) days following final execution of this Agreement (including attestation by the Clerk) (the "Outside Closing Date"). Seller's Executive Director is authorized to agree to administratively extend this Agreement as necessary to accommodate satisfaction of conditions precedent. 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 this Agreement will be of no further effect except as herein provided.

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 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 or such lesser amount as Buyer may designate.

5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.

5.9 **Broker.** Neither party engaged a broker for this transaction.

6. **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.

7. **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property 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. **Miscellaneous Provisions.**

8.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.

8.2 **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, (c) on the date of transmission if delivered by facsimile, to the number provided below, that provides a transmission confirmation showing the date and time transmitted, or (d) on the date of transmission if delivered electronically via email and showing the date and time transmitted.

To Seller:
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic
Attention: Executive Director
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:

_____
Attention: _____
_____
_____
Phone No.: _____

8.3 **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 Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.

8.4 **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.

8.5 **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.

8.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.

8.7 **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.

8.8 **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.

8.9 **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.

8.10 **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.

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

8.12 **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.

8.13 **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.

8.14 **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. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.

8.15 **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.

8.16 **Seller's Default and Buyer's Remedies**. If the sale of the Property 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 shall be returned to Buyer, (b) waive the default and proceed to close the transaction contemplated herein. 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.

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

BUYER:

_____

By: _____

_____

Dated: _____, 20___

SELLER:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic

By: _____
Marlene Murphey, Executive Director

Dated: _____, 20___

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on_____, 20___

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

By_____
Deputy

Dated: _____, 20___

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

By_____
Deputy

Dated: _____, 20___

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION

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

APN: _____