

RECEIVED

Agenda Item: ID#17-434 (9:00 A.M.-1)

Date: 3/23/17

2017 MAR 22 PM 5 30

CITY CLERK, FRESNO, CA

## FRESNO CITY COUNCIL

City of



### Supplemental Information Packet

#### Agenda Related Item(s) – ID#17-434 (9:00 A.M.-1)

#### Contents of Supplement: Resolution and Exhibits

##### Item(s)

Actions pertaining to 532-614 Fulton Street (Fultonina) and seven properties rehabilitated under the Neighborhood Stabilization Program:

1. \*\*\*RESOLUTION - Approving the amendment (with a principal reduction payment of \$100,000) of an existing \$600,000 Promissory Note to the Fresno Housing Successor (Revised Note) and substituting security to seven properties rehabilitated under the Neighborhood Stabilization Program (NSP) (APNs: 452-156-19, 460-084-07, 461-052-08, 454-191-05, 460-214-09, 459-036-04, 460-234-18) (NSP Properties);
2. Transfer of fee title of the seven NSP Properties from TFS Investments, LLC. to FRC; and FRC's assumption of NSP obligations on the NSP Properties and the Revised Note;
3. Amend the existing NSP notes secured by the NSP Properties.

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

RECEIVED

CITY COUNCIL RESOLUTION NO. \_\_\_\_\_

2017 MAR 22 PM 5:29 FRESNO REVITALIZATION CORPORATION RESOLUTION NO. \_\_\_\_\_

CITY CLERK, FRESNO, CA  
A JOINT RESOLUTION OF THE CITY OF FRESNO AND FRESNO REVITALIZATION CORPORATION APPROVING THE AMENDMENT (WITH A PRINCIPAL REDUCTION PAYMENT OF \$100,000) OF AN EXISTING \$600,000 PROMISSORY NOTE TO THE CITY OF FRESNO AS FRESNO HOUSING SUCCESSOR AND SUBSTITUTING SECURITY TO SEVEN PROPERTIES REHABILITATED UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (APNS: 452-156-19, 460-084-07, 461-052-08, 454-191-05, 460-214-09, 459-036-04, 460-234-18)

WHEREAS, Fultonia Partners, LLC, a California limited liability company (Fultonia) and Thaler Investments LLC, a limited liability company (Thaler) currently own that certain real property on 532 and 614 North Fulton Avenue, Fresno (APNs: 452-275-05 and 452-275-13) (Fultonia Property); and

WHEREAS, in November 2009, TFS Investments, LLC, a limited liability company (TFS) entered into an Owner Participation Agreement with the Redevelopment Agency of the City of Fresno dated November 17, 2009, which included covenants for affordable housing (OPA); and

WHEREAS, TFS executed that certain Promissory Note in favor of the Redevelopment Agency of the City of Fresno dated November 10, 2009, in the original amount of \$600,000 ("Note"); and

WHEREAS, on January 31, 2012, TFS sold the Fultonia Property to Fultonia and Thaler; and

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Resolution No.

WHEREAS, the City of Fresno in its capacity as Housing Successor (City) is the current owner of the Note as the Housing Successor to the former Redevelopment Agency; and

WHEREAS, certain payments of interest and late charges have not been paid under the Note, and on January 30, 2017, a Notice of Default was recorded; and

WHEREAS, TFS, Fultonia, Thaler and the City (together with Simon Thaler and Michael Thaler) executed a Forbearance Agreement dated February 17, 2017, whereby the parties agreed to forbear against pursuing any actions including under the Notice of Default for a period of forty-five days; and

WHEREAS, TFS is currently in escrow to sell the Fultonia Property with a closing date on or before March 28, 2017, to satisfy the buyer's 1031 tax deferred exchange ("Fultonia Escrow"); and

WHEREAS, TFS currently owns seven residential properties (APNS: 452-156-19, 460-084-07, 461-052-08, 454-191-05, 460-214-09, 459-036-04, 460-234-18) all of which were rehabilitated pursuant to the Neighborhood Stabilization Program (NSP Properties); and

WHEREAS, TFS and City have proposed the following: (1) the Fultonia Note is transferred from the Fultonia Property to the NSP Properties; (2) the OPA and covenants remain in place on the Fultonia Property; (3) TFS will make a principal reduction payment of \$100,000 on the Note; (4) TFS will transfer the NSP Properties to FRC; (5) TFS will assign the remaining \$500,000 obligation on the Note to FRC; (6) FRC will use the net income from the NSP Properties to repay the Note; and (7) after

the Note is repaid in full, FRC will use net available funds from the NSP Properties to repay the NSP loans until maturity; and

WHEREAS, the Note will be modified as set forth in the Loan Modification Agreement and Escrow Instructions attached hereto as Exhibit A; and

WHEREAS, if the Fultonia Escrow does not close by March 27, 2017, the City will provide a Substitution of Trustee and Full Reconveyance of the Trust Deed associated with the Note; provided Placer Title holds funds for the loan payoff of the Note in trust for City in the event City's escrows to amend the Note and acquire the NSP Properties do not close, as set forth in the letter to Placer Title attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED that the City of Fresno in its capacity as Housing Successor and the Fresno Revitalization Corporation do hereby resolve as follows:

1. The Loan Modification Agreement and Escrow Instructions attached hereto as Exhibit A, including the contingency set forth in the letter to Placer Title attached hereto as Exhibit B.

2. Council authorizes the City Manager and Executive Director to make any non-material changes to the Loan Modification Agreement and Escrow Instructions and related documents, and to execute the Loan Modification Agreement and Escrow Instructions and any and all necessary documents for the consummation of the transaction contemplated by this Resolution including, without limitation, Escrow Instructions, the Agreement for Transfer and Acceptance of Real Property and Joint Escrow Instructions, Promissory Notes and Trust Deeds on the NSP Properties.

\* \* \* \* \*

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

I, YVONNE SPENCE, Ex-Officio Clerk of the City of Fresno and Fresno Revitalization Corporation, certify that the foregoing resolution was adopted by the Successor Agency to the Redevelopment Agency of the City of Fresno and the Fresno Revitalization Corporation, at a public meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2017  
Mayor Approval/No Return: \_\_\_\_\_, 2017  
Mayor Veto: \_\_\_\_\_, 2017  
Council Override Vote: \_\_\_\_\_, 2017

YVONNE SPENCE  
Ex-Officio Clerk of the City of Fresno  
and Fresno Revitalization Corporation

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
Special Council for the City of Fresno  
and Fresno Revitalization Corporation

By: \_\_\_\_\_  
Laurie Avedisian-Favini [Date]  
Assistant City Attorney

LAF:ns [74418ns/laf]

# Exhibit A

## LOAN MODIFICATION AGREEMENT AND ESCROW INSTRUCTIONS

This Loan Modification Agreement and Escrow Instructions ("**Agreement**") is made this \_\_\_\_\_ day of March, 2017 by and between (i) CITY OF FRESNO IN ITS CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO ("**Fresno HS**") and (ii) TFS INVESTMENTS, LLC, a limited liability company ("**Original Borrower**"), FULTONIA PARTNERS, LLC, a California limited liability company ("**Fulton**") and THALER INVESTMENTS LLC, a limited liability company ("**Thaler**"). Fidelity National Title Insurance Company shall act as Escrow Holder under the terms of this Agreement ("**Escrow Holder**").

### RECITALS:

- A. Fulton and Thaler (hereinafter jointly "**Owner**") currently own that certain real property on 532 & 614 North Fulton Avenue, Fresno (APNs. 452-275-05 & 452-275-13) as legally described on Exhibit A ("**Property**").
- B. In November 2009, Original Borrower entered into that certain Owner Participation Agreement with the Redevelopment Agency of the City of Fresno ("**RACF**") dated November 17, 2009 ("**OPA**") for the rehabilitation of the Property which was recorded on April 18, 2011 as Instrument No. 0052943 in the Official Records of Fresno County ("**Official Records**") which is to remain on the Property for the term specified therein.
- C. Concurrently with the OPA, Original Borrower executed that certain Declaration of Covenants and Restrictions dated November 10, 2009 in favor of RACF which was recorded on February 18, 2011 as Instrument No. 2011-0029776 in the Official Records which shall remain in effect for a term of fifty-five (55) years from June 29, 2011 ("**CC&Rs**").
- D. Concurrently with the OPA and CC&Rs, Original Borrower also executed that certain Promissory Note in favor of RACF dated November 10, 2009 in the original amount of Six Hundred Thousand Dollars (\$600,000) ("**Fresno Note**") in favor of the RACF secured by that certain deed of trust against the Property of even date therewith and recorded on January 24, 2011 as Instrument No. 2011-0011318 ("**Fresno Trust Deed**") in the Official Records.
- E. On January 31, 2012, Original Borrower sold the Property to Owner as evidenced by that certain Grant Deed recorded as Instrument No. 2012-0013857 in the Official Records.
- F. Fresno HS is the current owner of the Fresno Note and Fresno Trust Deed and the legal successor-in-interest to the OPA and CC&Rs.
- G. Certain payments of interest and late charges have not been paid under the Fresno Note. On January 30, 2017, a Notice of Default under the Fresno Trust Deed was recorded as Instrument No. 2017-0011474 in the Official Records ("**NOD**").
- H. Original Borrower, Owner and Fresno HS (together with Simon Thaler and Michael Thaler) executed that certain Forbearance Agreement dated February 17, 2017 whereby the parties agreed to forbear against pursuing any actions including under the NOD ("**Forbearance Agreement**").

- I. Owner is currently in escrow to sell the Property to T & C CALKINS REAL ESTATE, INC., a California corporation ("**Buyer**") with Placer Title Company acting as escrow holder pursuant to Escrow No. P-186118 with Lupe Prado as escrow officer (559 261-2910) ("**Sale Escrow**"). Section 3.4 of the OPA requires the written consent of Fresno HS to a transfer of the Property.
- J. Original Borrower currently owns seven (7) residential properties identified on the attached Exhibit B all of which were rehabilitated pursuant to the Neighborhood Stabilization Program ("**7 NSP Properties**").
- K. Original Borrower and Owner have requested that (i) the Fresno Note be amended, (ii) the Fresno Trust Deed be reconveyed; (iii) the amended Fresno Note be secured by a deed of trust against the 7 NSP Properties; and (iv) Fresno HS consent to the sale of the Property to the Buyer by providing a written consent under the OPA.
- L. Immediately following the close of this transaction, Owner is obligated to transfer fee title of the 7 NSP Properties to Fresno Revitalization Corporation ("**FRC**") pursuant to that certain Agreement for Transfer and Acceptance of Real Property and Joint Escrow Instructions of even date herewith between Original Borrower and FRC ("**Transfer Agreement**") through that certain escrow no. 2011701159-BW with Escrow Holder ("**Transfer Escrow**").
- M. Fresno HS is willing to grant the foregoing requests provided that (i) a principal reduction payment of One Hundred Thousand Dollars (\$100,000) under the Fresno Note is made, (ii) issuance of a title insurance loan policy to Fresno HS insuring the Fresno loan against the 7 NSP Properties occurs; (iii) concurrent closing of the Sale Escrow occurs; (iv) closing of the Transfer Escrow occurs immediately following closing of this transaction; and (ii) the other terms and conditions set forth in this Agreement are satisfied.

NOW, THEREFORE, the parties hereto agree as follows:

#### **AGREEMENT**

- 1. **RECITALS.** The parties confirm the truth of the Recitals which are incorporated as a part of this Agreement.
- 2. **ESCROW.**
  - 2.1. **Opening of Escrow.** Within three (3) business days of execution and delivery of this Agreement by Fresno HS, the parties shall open an escrow ("**Escrow**") with Escrow Holder by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that (i) a fully executed copy of this Agreement is delivered to Escrow Holder (Bernadette Watson, Certified Senior Escrow Officer, 7485 N. Palm Avenue, Suite 106, Fresno, Ca 93711, (559) 261-8919 [Bernadette.Watson@fnf.com](mailto:Bernadette.Watson@fnf.com)) and accepted by Escrow Holder as evidenced by Escrow Holder's execution of this Agreement, (ii) Owner and Original Borrower have deposited the sum of One Hundred Thousand Dollars (\$100,000) ("**Deposit**") with Escrow Holder in Good Funds (as defined below); and (iii) the Transfer Escrow has been opened ("**Opening of Escrow**"). If Opening of Escrow does not occur on or before March 24, 2017 for any reason, Fresno HS may, in its sole discretion, terminate this Agreement upon written notice to Original Borrower, Owner and Escrow Holder.



- 2.2. **Good Funds.** All funds deposited in Escrow shall be in "Good Funds" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.
- 2.3. **Extensions.** The Executive Director of Fresno HS may, in her sole and exclusive discretion, authorize an extension of the Closing Date for a period of not more than ten (10) days cumulatively from March 28<sup>th</sup>. Any further extensions will require the authorization of the governing board of the Fresno HS.

### 3. NOTE MODIFICATION.

- 3.1. **Principal Reduction Payment.** As of the Closing, the Fresno Note shall be reduced by a principal reduction payment of One Hundred Thousand Dollars (\$100,000) ("**Principal Reduction Payment**").
- 3.2. **Payment of Accrued Interest and Late Charges.** Original Borrower shall pay to Fresno HS through Escrow the amount of accrued interest and late charges through to Closing. As of the Agreement Date, Owner owes (i) accrued interest totaling Eight Thousand Eight Hundred Twenty-Four Dollars and Forty-Eight Cents (\$8,824.48), plus (ii) late charges totaling Four Hundred One Dollars and Eight-Five Cents (\$401.85). From the Agreement Date to the Closing Date, interest accrues at the rate of Thirty-Three Dollars and Seventy-Eight Cents (\$33.78) per day. The total amounts dues under this Section are hereinafter referred to as "**Accrued Interest/Late Charges**".
- 3.3. **Restated Note.** As of the Closing, the Fresno Note shall be amended pursuant to that certain Restated and Amended Promissory Note in the amount of Five Hundred Thousand Dollars ("500,000") in the form of Exhibit C ("**Restated Note**") which shall be executed by Original Borrower and deposited into Escrow. The Restated Note specifically provides that it is a non-recourse obligation.

### 4. SUBSTITUTION OF SECURITY.

- 4.1. **New Trust Deed.** Original Borrower shall execute and deliver to Escrow Holder a new deed of trust in the form of Exhibit D which shall be recorded at Closing in the Official Records against the 7 NSP Properties ("**New Trust Deed**").
- 4.2. **Reconveyance.** Fresno HS shall execute a substitution of trustee and FULL reconveyance of the Fresno Trust Deed in the form of Exhibit E ("**Reconveyance**") which shall be recorded in the Official Records concurrently with the New Trust Deed.
- 4.3. **Leases.** Within two (2) days of Opening of Escrow, Original Borrower shall deliver true and complete copies of all existing leases and a rent roll for all of the 7 NSP Properties which shall comply with all applicable NSP rules and regulations.

5. **TRANSFER CONSENT.** Within two (2) days of the Opening of Escrow, Owner shall cause the Buyer to deliver to Fresno HS (i) financial information, (ii) a summary of its experience with respect to ownership and operation of affordable housing projects, and (iii) other information reasonably required by Fresno HS under Section 3.4 of the OPA to evaluate Buyer. If the information provided is acceptable to Fresno HS, Fresno HS shall execute a written Transfer Consent in the form attached as Exhibit F ("**Transfer Consent**"). At Closing, Escrow Holder is to complete the Transfer Consent with the date of the Closing and deliver the original to the Sale Escrow. If Fresno HS does not approve the Buyer, Fresno HS may elect, in its sole

discretion, to terminate this Agreement and Escrow by delivering written notice of termination to Original Borrower, Owner and Escrow Holder.

**6. LOAN TITLE POLICY.** Within two (2) days of Opening of Escrow, Escrow shall deliver to Fresno HS a single preliminary report (with includes a search of the general index) for the 7 NSP Properties ("**Title Report**") issued by Fidelity National Title Insurance Company ("**Title Company**") together with legible copies of all documents shown in the Title Report and a plotting of the easements ("**Title Documents**"). At Closing, Title Company shall issue an ALTA loan policy of title insurance to Fresno HS in the amount of Five Hundred Thousand Dollars (\$500,000) insuring that the 7 NSP Properties are vested in Original Borrower and that the New Deed of Trust is in a second lien position on each of the 7 NSP Properties ("**Loan Title Policy**") showing only:

- (a) An exception for only non-delinquent real property taxes;
- (b) Exceptions as acceptable to Fresno HS in its discretion;
- (c) Existing NSP loans in favor of the City of Fresno ("**City**") shall be concurrently amended by City as consented to by Fresno HS pursuant to separate instructions to Escrow Holder; and
- (d) Such endorsements as required by Fresno HS in its discretion.

Prior to Closing, Fresno HS shall deliver written direction to Escrow Holder specifying the approved exceptions and required endorsements.

By written notice to Escrow Holder prior to Closing, Fresno HS may elect (in its sole discretion) to have the Loan Title Policy issued following the closing of the Transfer Escrow in which event the Loan Title Policy will show title of the 7 NSP Properties vested in FRC.

## **7. FUNDS AND DOCUMENTS.**

**7.1. Fresno HS.** Fresno HS agrees that on or before 12:00 noon one (1) business day prior to the Closing Date (as defined in Section 10.1), Fresno HS will deposit or cause to be deposited with Escrow Holder:

- a. One (1) fully executed and acknowledged Reconveyance.
- b. One (1) originally executed Transfer Consent.
- c. Such other document and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

**7.2. Original Borrower and Owner.** Original Borrower and Owner agree that on or before one (1) business day prior to the Closing Date, they will deposit with Escrow Holder:

- a. One (1) originally executed copy of the Restated Note.
- b. One (1) originally executed and acknowledged copy of the New Trust Deed.
- c. All additional funds necessary to pay all costs and expenses of this Escrow.
- d. Such other documents and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

## 8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

**8.1. Conditions to Fresno HS's Obligations.** The obligations of Fresno HS under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Fresno HS of each of the following conditions precedent:

- a. Fresno HS has approved the Buyer pursuant to Section 5.
- b. The concurrent closing of the Sale Escrow.
- c. *Immediately following* the Closing under this Agreement, the Transfer Escrow shall close.
- d. Escrow Holder holds and will deliver the Loan Title Policy to Fresno HS.
- e. Escrow Holder holds and will deliver to Fresno HS the Principal Reduction Payment (defined in Section 3.1) and Accrued Interest/Late Charges (defined in Section 3.2).
- f. Escrow Holder holds and will deliver to Fresno HS all documents accruing to Fresno HS pursuant to this Agreement including, but not limited to, the original Restated Note.
- g. All representations and warranties under Section 9 are true and correct.
- h. Copies of all leases and other documents affecting the 7 NSP Properties have been delivered to Fresno HS.
- i. Original Borrower is not in default under this Agreement or the Transfer Agreement.

**8.2. Conditions to the Obligations of Owner and Original Borrower.** The obligations of Original Borrower and Owner under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, of the following conditions precedent:

- a. The concurrent closing of the Sale Escrow.
- b. Escrow Holder holds and will deliver to Original Borrower the documents accruing to Original Borrower pursuant to this Agreement.
- c. Fresno HS is not in default under this Agreement.

**9. REPRESENTATIONS & WARRANTIES.** Original Borrower, to the best of its knowledge, makes the following representations and warranties to Fresno HS, each of which is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow with respect to the 7 NSP Properties:

- a. None of the 7 NSP Properties are in violation of any ordinance, rule, law, regulation or order of any government or agency, body or subdivision thereof, or that any investigation has been commenced or is contemplated respecting such possible violations.
- b. There are no pending or threatened lawsuits or claims which would affect any of the 7 NSP Properties.
- c. There is no default or breach, or the existence of any fact or occurrence which with notice and opportunity to cure, would constitute a breach or default under any existing deeds of trust on the 7 NSP Properties.

- d. The 7 NSP Properties are in full compliance with all applicable NSP rules and regulations including but not limited to that certain Agreement between City of Fresno and TFS Investments, LLC for the Neighborhood Stabilization Program.
- e. Each of the 7 NSP Properties are currently leased to a qualified person and true and correct copies of all the leases have been delivered to Fresno HS.
- f. No construction or repair work has been done on the any of the 7 NSP Properties within the six (6) months prior to the Opening of Escrow.

No representation, statement or warranty by Original Borrower contained in this Agreement or in any exhibit attached hereto contains or will contain any untrue statements or omits, or will omit, a material fact necessary to make the statement of fact therein recited not misleading. If, after Original Borrower's execution hereof and prior to the Closing, any event occurs or condition exists of which Original Borrower becomes aware which renders any of the representations contained herein untrue or misleading, Original Borrower shall promptly notify Fresno HS in writing. All representations and warranties in this Agreement shall survive Closing.

## **10. CLOSING DATE; TIME IS OF ESSENCE.**

**10.1. Closing Date.** Unless otherwise extended in writing by the parties, Escrow shall close (i) as soon as practicable but, in no event, after March 28, 2017, but (ii) concurrently with the Sale Escrow; and (iii) the Transfer Escrow closes immediately following ("**Closing Date**"). The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the date that the following are recorded by the Escrow Holder in the Official Records: New Trust Deed then the Reconveyance. If the Closing does not occur, Fresno HS shall have the right, in its discretion, to terminate this Agreement and Escrow by delivering written notice to Original Borrower, Owner and Escrow Holder.

**10.2. Time is of Essence.** The parties specifically agree that time is of the essence. Unless otherwise expressly provided in this Agreement, any reference in this Agreement to time for performance of obligations or to elapsed time shall mean Pacific Standard Time and time periods shall mean consecutive calendar days, months or years, as applicable.

**10.3. Delivery of Documents.** Immediately following the Closing, Escrow Holder shall deliver the documents as follows:

- a. **To Fresno HS:** (i) The original Restated Note; (ii) a conformed copy of the recorded New Trust Deed; (iii) a conformed copy of the recorded Reconveyance; and (iv) the Loan Title Policy.
- b. **To Buyer through the Sale Escrow:** The original Transfer Consent completed by Escrow Holder with the date of the Closing.
- c. **To Each of Original Borrower & Owner:** (i) A conformed copy of the recorded Reconveyance; and (ii) a copy of the Transfer Consent.

## **11. ESCROW PROVISIONS.**

**11.1. Escrow Instructions.** Sections 1 through 8, inclusive, 10 through 13, inclusive shall constitute escrow instructions to Escrow Holder. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow

Holder, but about which Escrow Holder need not be concerned. The parties shall receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. The parties agree to execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close Escrow.

**11.2. Miscellaneous.** Escrow Holder shall deliver the New Loan Title Policy to the Fresno HS and instruct the Fresno County Recorder to mail the recorded New Trust Deed and Reconveyance to Fresno HS. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in the State of California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

**11.3. Costs.** Original Borrower and Owner shall pay all costs and charge in this Escrow including, but not limited to, escrow fees, title premiums, and recording fees.

**11.4. Termination.** If Escrow fails to close as provided above, any party may elect to terminate this Agreement and the Escrow by delivering written notice to the other parties and Escrow Holder. Upon such termination of this Agreement and the Escrow not as the result of the breach by a party, Escrow Holder is instructed to return all documents then in Escrow to the respective depositor of the same and the funds deposited shall be returned to the depositor of same less all escrow and title cancellation fees and any other costs. If this Agreement is terminated for any reason, the Forbearance Agreement shall also be deemed terminated and Fresno HS shall have the right to immediately pursue its rights and remedies under the Fresno Note, Fresno Trust Deed including the NOD, and the OPA.

**11.5. No Brokerage Commission.** Original Borrower and Owner represent and warrant to Fresno HS that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Original Borrower and Owner agree, jointly and severally, to indemnify and hold Fresno HS harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

## **12. GENERAL PROVISIONS.**

**12.1. No Assignment.** Original Borrower and Owner may not assign this Agreement without the prior written consent of Fresno HS in its sole discretion.

**12.2. Binding Effect; Choice of Law.** This Agreement shall be binding upon the parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the parties hereto concerning this Agreement shall be initiated in the Superior Court of the State of California for the County of Fresno.

**12.3. Attorney's Fees.** In any action between the parties seeking enforcement of any of the terms and provisions of this Agreement, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorney's fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

- 12.4. Partial Invalidity.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 12.5. Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.
- 12.6. Final Agreement.** This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter of this Agreement and all prior or contemporaneous agreements, understandings, representations and statements shall be of no force or effect.
- 12.7. Authority.** Each individual executing this Agreement on behalf of Original Borrower and Owner represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity in accordance with applicable authority documents of the entity and that this Agreement is binding upon said entity in accordance with its terms.
- 12.8. Construction.** This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. Each provision herein shall be interpreted so as to be consistent with every other provision. The Recitals are incorporated into this Agreement.
- 12.9. Time.** Time is of the essence of this Agreement.
- 12.10. Relationship of Parties.** The relationship of the parties is that of independent contracting parties, and it is expressly understood and agreed that Fresno HS does not in any way or for any purpose become a partner of Original Borrower and/or Owner in the conduct of their respective businesses or otherwise, or a joint venturer with Original Borrower and/or Owner.
- 12.11. Non-Collusion.** No official, officer, or employee of Fresno HS has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of Fresno HS participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non interest" pursuant to California Government Code Sections 1091 and 1091.5. Original Borrower and Owner represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Original Borrower or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Agreement; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of

Fresno HS, as a result or consequence of obtaining this Agreement. Original Borrower is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

**12.12. Notices.** Any notices, demands or communications under this Agreement between the parties shall be in writing, and may be given by (i) personal service, (ii) overnight delivery, or (iii) mailing via United States mail, certified mail, postage prepaid, return receipt requested ("**US Mail**"), addressed to each party as set forth below. Notice under this Section shall, if properly addressed, be deemed to have been given (a) as of the date so delivered under delivery methods (i) or (ii) above, or (b) three (3) business days after deposit into the U.S. Mail. A party may change the address set forth below by written notice by certified mail to the other parties.

Fresno HS: Fresno Housing Successor  
848 M Street, Third Floor  
Fresno, CA 93721  
Attn: Marlene Murphey,  
Director

With a copy to: City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attn: Laurie Avedisian-Favini,  
Assistant City Attorney

With a copy to: Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 400  
Irvine, CA 92612  
Attn: Anne Nelson Lanphar, Esq.

Original Borrower: TFS Investments, LLC.  
1411 L Street Suite M  
Fresno, CA 93721  
Attn: \_\_\_\_\_

Owner: Fultonia Partners, LLC  
1411 L Street Suite M  
Fresno, CA 93721  
Attn: \_\_\_\_\_

Thaler Investments, LLC.  
1411 L Street Suite M  
Fresno, CA 93721  
Attn: \_\_\_\_\_

Escrow Holder: Fidelity National Title Insurance Company  
7485 N. Palm Avenue, Suite 106,  
Fresno, Ca 93711  
Attn. Bernadette Watson, Escrow Officer

- 12.13. Not an Offer.** The submission of this Agreement and any ancillary documents to Original Borrower and Owner shall not constitute an offer to amend the Fresno Note, to rescind the NOD, to reconvey the Fresno Trust Deed, and/or to issue the Transfer Consent, and Fresno HS shall have no obligation of any kind, express or implied, to perform any of the foregoing until Fresno HS has approved, executed and delivered to Original Borrower and Owner a fully signed copy of this Agreement and then only to the extent specified in this Agreement.
- 12.14. Amendments.** This Agreement may be modified or amended only in writing executed by Fresno HS, Original Borrower and Owner.
- 12.15. No Waiver.** The failure of a party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant, or condition of this Agreement at any later date or as a waiver of any term, covenant, or condition of this Agreement.
- 12.16. No Third Party Beneficiaries.** This Agreement is only among the parties, and is not intended to be nor shall it be construed as being for the benefit of any third party.
- 12.17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile copy of such execution shall be deemed an original.
- 12.18. Exhibits.** Exhibits A, B, C, D, E, and F attached hereto are incorporated herein by reference.

**[SIGNATURES ON FOLLOWING PAGE]**



IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

<p><b>FRESNO HS:</b></p> <p>CITY OF FRESNO IN ITS CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO</p> <p>By: _____  Marlene Murphey  Director</p> <p><b>APPROVED AS TO FORM:</b></p> <p>DOUGLAS T. SLOAN  City Attorney</p> <p>By: _____ Date _____, 2017  Laurie Avedisian-Favini  Assistant City Attorney</p> <p><b>ATTEST:</b></p> <p>YVONNE SPENCE, CMC  City Clerk</p> <p>By: _____  Deputy</p>	<p><b>ORIGINAL BORROWER:</b></p> <p>TFS Investments, LLC, a limited liability company</p> <p>By: _____</p> <p>Its: _____</p> <hr/> <p><b>OWNER:</b></p> <p><b>FULTONIA:</b></p> <p>FULTONIA PARTNERS, LLC, a California limited liability company</p> <p>By: Thaler Investments, LLC, a limited liability company  Sole Member</p> <p>By: _____</p> <p>Its: _____</p> <p><b>THALER:</b></p> <p>THALER INVESTMENTS, LLC, a limited liability company</p> <p>By: _____</p> <p>Its: _____</p>
<p><b>ESCROW HOLDER:</b></p>	
<p>READ AND ACCEPTED:</p> <p>Fidelity National Title Insurance Company</p> <p>By: _____  Bernadette Watson  Senior Commercial Escrow Officer</p>	

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

That certain real property in the City of Fresno, County of Fresno, State of California, described as follows:

**PARCEL ONE:**

LOT 9 AND LOT 10, EXCEPT THE NORTH 17.2 FEET OF THE EAST 45 FEET THEREOF, IN BLOCK 1 OF VAN NESS PARK, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 1 PAGE 24 OF MISCELLANEOUS MAPS, FRESNO COUNTY RECORDS.

TOGETHER WITH A PERPETUAL EASEMENT OVER A PORTION OF LOT 11 OF SAID TRACT HEREINAFTER DESCRIBED, SO LONG AS THE CANOPY ATTACHED TO THE BUILDING LOCATED ON THE ABOVE DESCRIBED PROPERTY, EXTENDS OVER ONTO THE HEREINAFTER DESCRIBED PROPERTY, AND THAT IF AND WHEN SAID CANOPY IS REMOVED FROM EXTENDING OVER ONTO SAID PORTION OF SAID LOT 11, THAT THIS EASEMENT SHALL THERE UPON IMMEDIATELY TERMINATE.

THE PROPERTY OVER WHICH SAID EASEMENT IS GRANTED IS LOCATED ON THE COUNTY OF FRESNO, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PORTION OF LOT 11 IN BLOCK 1 OF VAN NESS PARK, AS PER MAP RECORDED IN BOOK 1 PAGE 24 OF MISCELLANEOUS MAPS, AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 11 DISTANT 11.9 FEET EAST OF THE SOUTHWEST CORNER THEREOF; THENCE NORTHEASTERLY TO A POINT THAT IS 15.1 FEET EAST OF THE WEST LINE OF SAID LOT 11 AND DISTANT 3.2 FEET NORTH OF THE SOUTH LINE OF SAID LOT 11; THENCE EAST AND PARALLEL WITH SAID SOUTH LINE OF LOT 11, A DISTANCE OF 10.6 FEET; THENCE SOUTH 3.2 FEET TO THE SOUTH LINE OF LOT 11; THENCE WEST ALONG SAID SOUTH LINE A DISTANCE OF 13.8 FEET TO THE POINT OF BEGINNING.

**PARCEL TWO:**

THE NORTH 17.2 FEET OF THE EAST 43 FEET OF LOT 10, ALL OF LOTS 11 TO 14, INCLUSIVE IN BLOCK 1 OF VAN NESS PARK, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 1 PAGE 24 OF MISCELLANEOUS MAPS, FRESNO COUNTY RECORDS, ALSO THAT PORTION OF LOT 15 IN BLOCK 1 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 15, DISTANCE THEROF 2.5 FEET WEST FROM THE SOUTHEAST CORNER OF SAID LOT 13; THENCE RUNNING WESTERLY ALONG SOUTH LINE OF SAID LOT 15, A DISTANCE OF 42.6 FEET TO A POINT THEREON;

THENCE AT A RIGHT ANGLE NORTHERLY 1.4 FEET; THENCE EASTERLY 42.6 FEET TO A POINT WHICH IS 1.1 FEET NORTH OF THE SOUTH LINE OF SAID LOT 15; THENCE SOUTHERLY 1.1 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

LOT 15 AND 16 OF BLOCK 1 OF VAN NESS PARK IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 1 PAGE 24 OF MISCELLANEOUS MAPS, FRESNO COUNTY RECORDS.

EXCEPTING FROM SAID LOT 15 THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 15, DISTANT THEREON 2.5 FEET WEST FROM THE SOUTHEAST CORNER OF SAID LOT 15; RUNNING THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LOT 15 A DISTANCE OF 42.6 FEET TO A POINT THEREON; THENCE AT RIGHT ANGLES NORTHERLY 1.4 FEET; THENCE EASTERLY 42.6 FEET TO A POINT WHICH IS 1.1 FEET NORTH OF THE SOUTH LINE OF SAID LOT 15; THENCE SOUTHERLY 1.1 FEET THE POINT OF BEGINNING.

PARCEL FOUR:

A PERPETUAL EASEMENT OVER THAT PORTION OF LOT 14, IN BLOCK 1 VAN NESS PARK, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 1 PAGE 24 OF MISCELLANEOUS MAPS, FRESNO COUNTY RECORDS, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 14, DISTANT THEREON 28.7 FEET EASTERLY FROM THE NORTHWEST CORNER OF SAID LOT 14, RUNNING AT A RIGHT ANGLE SOUTHERLY 4.0 FEET; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID LOT 14 A DISTANCE OF 10.2 FEET; THENCE NORTHWESTERLY A DISTANCE OF 5.7 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 14, DISTANT THEREON 14.2 FEET EASTERLY FROM THE NORTHWEST CORNER OF SAID LOT 14; THENCE EASTERLY ALONG SAID NORTH LINE A DISTANCE OF 14.5 FEET TO THE POINT OF BEGINNING, SO LONG AS THE CANOPY OF THE BUILDING LOCATED OF LOT 15 OF SAID TRACT EXTENDS OVER ONTO LOT 14 AS ABOVE DESCRIBED, AND THAT IF AND WHEN THIS EASEMENT SHALL THEREUPON IMMEDIATELY TERMINATE.

**EXHIBIT B**

**7 NSP PROPERTIES**

<b>Common Address</b>	<b>APN</b>
709 N 4TH ST	454-191-05
4575 E ILLINOIS AVE	460-234-18
2317 E LEWIS AVE #A-B	452-156-19
4678 E MADISON AVE	460-084-07
4174 E NEVADA AVE	460-214-09
347 N ROOSEVELT AVE	459-036-04
3803 E VERRUE AVE	461-052-08

## EXHIBIT C

### RESTATED AND AMENDED PROMISSORY NOTE

#### (Non-Recourse Obligation)

\$500,000.00

\_\_\_\_\_, 2017  
("Note Date")

For value received, TFS Investments, LLC, a limited liability company, ("**Borrower**"), promises to pay to the order of City of Fresno in its Capacity as Housing Successor to the Redevelopment Agency of the City of Fresno ("**Lender**") or order, the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000), along with interest on unpaid principal at the rate of two percent (2%) per annum commencing on the Note Date and accruing until paid in full. If not sooner paid, all principal and accrued interest shall be fully due and payable on June 29, 2041 ("**Maturity Date**").

- 1. Monthly Payment.** On the tenth (10) day of each month, Borrower shall pay to Lender an amount equal to the Net Cash Flow (as defined below) for the month calculated on a cumulative annual basis ("**Monthly Payment**").

The term "**Net Cash Flow**" means: (A) all income derived by Borrower from the Property including, without limitation, all tenant rent, all rental subsidy payments made by governmental agencies, and income from any source related to Borrower's owning, leasing, maintenance, and operation of the Property ("**Gross Income**"); less (B) (i) expenses actually and reasonably incurred by Borrower in owning, leasing, operating, maintaining, and repairing the Property but *reduced* by insurance proceeds and any costs or expenses paid or reimbursed by third parties or tenants as well as any funds submitted by tenants and held by Borrower in the form of security deposits; and (ii) any loan payments required under senior loans on the Property. Cash Flow shall be calculated on an annual accrual basis according to generally accepted accounting principles. The term "**Capital Replacement Reserve**" means an annual amount reasonably determined by Borrower per unit per year. The Capital Replacement Reserve shall be the first source of funds used by Borrower for capital improvements to the Property. On an annual basis, Borrower shall deliver a summary supporting the calculation of Cash Flow, Gross Income and Capital Replacement Reserves for the prior year. Upon Lender's request, Borrower shall provide such additional information as Lender may reasonably request.

- 2. General Requirements.** All payments must be paid in lawful money of the United States of America at any place that Lender may, from time to time, in writing designate, and in the absence of that designation, then to Lender at address specified in the Notice section below. Any payments made by Borrower in payment of this Note shall be applied in the following order: (i) first to any amounts due to Lender other than interest and principal; (ii) second, in payment of interest, if any, then accrued and due on the unpaid principal balance under this Note; and (iii) lastly, to reduction of the principal balance of this Note. All amounts under this Note shall be due without any further presentment, demand, protest, or notice of any kind.
- 3. Late Charge.** In the event Borrower fails to pay any amount under this Note when due, Borrower shall pay a late charge equal to two percent (2%) of the overdue amount.
- 4. Deed of Trust.** This Note, together with any extensions, renewals and modifications, is secured by that certain Deed of Trust and Assignment of Rents of even date herewith

executed in favor of Lender as beneficiary ("**Deed of Trust**") recorded against certain real property owned by Borrower located in the County of Fresno, California ("**Property**").

5. **Time of Essence.** Time is of the essence of the provisions of this Note.
6. **Cross-Default.** A default under the Deed of Trust shall constitute a default under this Note.
7. **Acceleration on Default.** Upon a default under this Note, Lender shall have the right to declare the full amount of the principal and interest under this Note immediately due and payable.
8. **Right to Prepay.** At the option of Borrower, this Note may be prepaid in whole or in part, at any time, without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note or under any of the other Loan Documents and then to the interest and then to the principal balance.
9. **Attorney's Fees.** Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by Lender of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by Lender of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by Lender of this Note of its rights and remedies under this Note. All costs incurred by Lender in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender on demand all attorney fees and other costs provide in this Section.
10. **No Waiver.** No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.
11. **Due on Sale.** Section 13 of the Deed of Trust provides as follows:

*Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor*



Upon transfer of the Property to FRC, notice to Borrower shall automatically be made to FRC as specified in Section 12.

17. **Usury.** Notwithstanding any provision in this Note, the total liability for payment in the nature of interest shall not exceed the limit imposed by applicable laws of the State of California.
18. **Assignability.** Lender may freely transfer, assign, or encumber Lender's interest in this Note in any manner, at Lender's sole discretion.
19. **Non-Recourse.** This Note is non-recourse to Borrower and all constituent members of Borrower.
20. **Supersedes Prior Note.** This Note supersedes in its entirety that certain Promissory Note dated November 10, 2009 in the original principal of Six Hundred Thousand Dollars (\$600,000) made by Borrower in favor of the Redevelopment Agency of the City of Fresno ("RACF"). Lender is the legal successor in interest to the RACF.

**IN WITNESS WHEREOF,** Borrower executed this Note as of the Note Date.

TFS Investments, LLC, a limited liability  
company

By: \_\_\_\_\_

Its: \_\_\_\_\_

**DO NOT DESTROY THIS NOTE:** When fully paid, this Note must be surrendered for cancellation concurrently with the Reconveyance of the Deed of Trust.



**EXHIBIT D**

**NEW TRUST DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
Fresno Housing Successor  
848 M Street, Third Floor  
Fresno, CA 93721  
Attn: Marlene Murphey, Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
EXEMPT FROM RECORDING FEE PER GOV. CODE § 27383

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("**Deed of Trust**") is made and entered into this \_\_ day of \_\_\_\_\_, 2017, by and between TFS Investments, LLC, a limited liability company ("**Trustor**"), in favor of FIDELITY NATIONAL TITLE INSURANCE COMPANY ("**Trustee**"), for the benefit of the CITY OF FRESNO IN ITS CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO ("**Beneficiary**")

TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, with the power of sale, the real property in the City of Fresno, Fresno County, California, more particularly described in Attachment "1" attached hereto and made part hereof by reference ("**Property**"), together with:

(i) All tenements, hereditaments and appurtenances of or to the Property, including without limitation all easements and rights used in connection therewith or as a means of access thereto, all right, title and interest of Trustor, now owned or hereafter acquired, in any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and other areas of land adjacent to or used in connection with the Property;

(ii) All oil and gas or other mineral rights in or pertaining to the Property and all royalty, leasehold and other rights of Trustor pertaining thereto;

(iii) All water rights pertaining to the Property and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by Trustor with respect to the Property;

(iv) The rents, issues and profits thereof, subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues and profits and set forth in this Deed of Trust;

(v) All buildings and improvements of every kind and description now or hereafter erected or placed on the Property, and all fixtures thereon, including, but not

limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigeration plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed permanently affixed to and a part of the realty;

(vi) All building materials and equipment now or hereafter delivered to the Property and intended to be installed thereon; and

(vii) All articles of personal property owned by Trustor and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, and all other goods, chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the ones herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the building or buildings in any manner; subject, however, to (and only to) any purchase money security interests in such personal property.

Said real property and personal property described above, together with appurtenances, are referred to collectively in this Deed of Trust as the "Collateral."

**FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:**

- (a) Payment to Beneficiary of an indebtedness in the principal amount of Five Hundred Thousand Dollars (\$500,000), evidenced by that certain Restated and Amended Promissory Note of even date herewith executed by Trustor as borrower payable to the order of Beneficiary as lender, and any and all modifications, extensions or renewals thereof or substitutions therefor ("**Note**"), and performance and satisfaction of each and all other obligations of Trustor under the Note; and
- (b) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by Beneficiary to or for the benefit of Trustor or to its successors, transferees and assigns, made to Trustor while Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES AS FOLLOWS:**

1. Trustor shall not use or permit the use of any of the Collateral for any purpose other than the use for which it was intended at the time this Deed of Trust was executed.
2. Upon default under this Deed of Trust or the Note (following delivery of notice and expiration of the cure period, if any, provided therein), Beneficiary, at its option, may

declare the whole of the obligations and sums secured hereby to be immediately due and payable.

3. The person(s) or entity(ies) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind Trustor to this Deed of Trust.

4. All rents, profits and income from the Collateral covered by this Deed of Trust are hereby assigned to Beneficiary for the purpose of discharging the obligations hereby secured. However, Trustor shall be permitted, so long as no default exists hereunder or under the Note, to collect such rents, profits and income for use consistent with the provisions of the Note.

5. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein or therein), for the purpose of protecting its interests hereunder, Beneficiary will be entitled to the appointment by a court having jurisdiction, without further notice and without regard to adequacy of any security for the indebtedness secured hereby, of a receiver to take possession of and protect the Collateral described herein and operate same and collect the rents, profits and income therefrom. The entering upon and taking possession of the Property or other Collateral by such receiver, the collection of such rents, profits and income and the application thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Trustor, at its sole cost and expense, shall provide and maintain on the entire Property, including all buildings and improvements thereon:

(i) A policy of commercial general liability insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence;

(ii) If Beneficiary consents in writing to any construction by Trustor on the Property, Trustor shall provide Beneficiary a policy of broad-form builder's risk insurance sufficient to cover 100% of the replacement value of all buildings and improvements on the Property including, without limitation, labor and materials in place or to be used as part of the permanent construction (including, without limitation, surplus miscellaneous materials and supplies incidental to the work, and scaffolding, staging, towers, forms and equipment not owned or rented by Beneficiary, the cost of which is not included in the cost of work), insuring against loss or damage by fire, extended coverage perils and such other hazards, casualties or other contingencies as from time to time may be reasonably required by Beneficiary; and

(iii) Such other insurance as may be reasonably required by Beneficiary, in each case in such amounts, in such manner and with such companies as Beneficiary and Trustor may reasonably approve. The foregoing minimum insurance coverage limits shall be subject to reasonable adjustment from time to time by Beneficiary. Each such policy shall be endorsed with a standard mortgage clause with loss payable to Beneficiary and Trustor, and shall provide that the policy shall not be canceled or materially changed without at least thirty (30) days' prior notice to Beneficiary. Upon

request by Beneficiary, Trustor immediately shall deposit with Beneficiary certificates evidencing such policies.

7. Trustor shall pay: (i) at least ten days before delinquency, all taxes and assessments affecting the Collateral, including assessments on appurtenant water stock; (ii) when due, all encumbrances, charges and liens, with interest, on the Collateral or any part thereof which appear to be prior or superior hereto; and (iii) all costs, fees and expenses of the Trustee or Beneficiary reasonably incurred in connection with the trusts created under this Deed of Trust.

8. Trustor shall: (i) keep the Collateral in good condition and repair and not remove or demolish any buildings on the Property; to the extent insurance or condemnation proceeds are available; (ii) complete or restore promptly and in good and workmanlike manner the buildings and improvements and any other building or improvement which may be constructed, damaged or destroyed thereon; (iii) pay when due all claims for labor performed and materials furnished therefore; (iv) comply in all material respects with all laws affecting the Collateral or requiring any alterations or improvements to be made thereon; (v) not commit or permit waste of or on the Collateral; and (vi) not commit, suffer or permit any act upon the Property in violation of law and/or any covenants, conditions or restrictions affecting the Collateral.

9. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or the Trustee, and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Beneficiary or the Trustee may appear, or in any suit brought by Beneficiary to foreclose this Deed of Trust.

10. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or the Trustee, without obligation to do so, and following notice to or demand on Trustor, and without releasing Trustor from any obligation hereof: (i) may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or the Trustee being authorized to enter on the Property for such purposes; (ii) may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or the Trustee; (iii) may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto and (iv) in exercising any such powers, may pay necessary expenses, employ legal counsel and pay such counsel's reasonable fees. All such amounts paid by Beneficiary or the Trustee hereunder shall be added to the obligations secured by this Deed of Trust.

11. Beneficiary shall have the right, but not the obligation, to pay when due fire or other insurance premiums required hereunder if Trustor fails to make such payments. All such amounts paid by Beneficiary hereunder shall be added to the obligations secured by this Deed of Trust.

12. Trustor shall pay immediately upon demand all sums so expended by Beneficiary or the Trustee under this Deed of Trust, with interest from date of expenditure at the legal rate.

13. Beneficiary may, at its option, declare immediately due and payable all sums secured

by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

14. If Trustor fails to pay any amount required by the Note or this Deed of Trust when due and payable, or fails to perform all other covenants, conditions and agreements of the Note or this Deed of Trust (following delivery of notice and expiration of the cure period, if any, provided therein), the amount of the Note, including unpaid principal and late charges, and all other charges and amounts required by the Note and this Deed of Trust shall, at the option of Beneficiary, become immediately due and payable. This shall be in addition to and without limitation on any other remedy or right available to Beneficiary for such failure.

15. Trustor shall not voluntarily create or permit to be created against the Collateral any lien or liens except as specifically permitted by this Deed of trust or otherwise authorized by Beneficiary. Trustor shall keep and maintain the Collateral free from the claims of all persons supplying labor or materials who will enter into the construction, rehabilitation, renovation or repair of any and all buildings or improvements now existing or to be erected on the Property.

16. By accepting payment of any sum secured by this Deed of Trust after its due date or by accepting partial payment of any such sum, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for Trustor's failure to pay.

17. If Trustor, without the prior written consent of Beneficiary: (i) agrees to or actually sells, conveys, transfers or disposes of the Collateral or any interest therein or portion thereof, or (ii) assigns or delegates any right or obligation under the Note or this Deed of Trust, then all amounts secured by this Deed of Trust may be declared immediately due and payable, at the option of Beneficiary. Beneficiary shall not unreasonably withhold its consent to any such transaction. Beneficiary's consent to one transaction of this type shall not be a waiver of the right to require consent to future or successive transactions.

18. As further security for the full and complete performance of each and every obligation, covenant, agreement and duty of Trustor contained herein or in the Note, Trustor hereby grants and conveys to Beneficiary a security interest in and lien on all of the Collateral. This Deed of Trust shall serve as a security agreement and financing statement created pursuant to the California Commercial Code, and Beneficiary will have and may exercise all rights, remedies and powers of a secured party under the California Commercial Code. Further, this Deed of Trust is filed as a fixture filing pursuant to the California Commercial Code and other applicable law, and covers goods which are or are to become fixtures.

19. Should the Property, the buildings or improvements thereon, or any part of any of them be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake or in any other manner, Beneficiary will be entitled, subject to the rights of the holder of any senior deed of trust, to all of Trustor's interest in compensation, awards and other payments or relief therefor; and, following the occurrence of a default as defined in the Note, Beneficiary shall be entitled, jointly with Trustor, at Beneficiary's option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any fire and other insurance affecting the Property or the buildings or improvements thereon, are hereby assigned to Beneficiary, subject to the rights of the holder of any senior deed of trust. After deducting therefrom all its expenses, including reasonable attorneys' fees, and if there has not occurred a default under the Note, Beneficiary shall apply all such proceeds to restoring the Property or the buildings or improvements thereon, or if there has been such default, or if Trustor determines not to rebuild, Beneficiary shall retain the proceeds to the extent of the amount due under the Note and any amounts due under this Deed of Trust. Any balance of such proceeds still remaining shall be disbursed by Beneficiary to Trustor.

20. If Trustor fails to perform any covenant or agreement in this Deed of Trust or if a default occurs under the Note, Beneficiary may declare all obligations and sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale and written notice of default and of election to cause the Collateral to be sold, which notice the Trustee shall cause to be duly filed for record, and Beneficiary may foreclose this Deed of Trust; provided, however that Trustor shall not be deemed to be in default hereunder for failure to make any payment when due or for failure to perform any other covenant or agreement contained herein until thirty (30) days after written notice of such failure is given to Trustor and Trustor is afforded a reasonable opportunity to cure the default. Beneficiary shall also deposit with the Trustee this Deed of Trust, the Note and all other documents evidencing the obligations or sums secured hereby.

21. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by the Trustee in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may further postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying fee title to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, the Trustee and Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of: (i) the expenses of the sale, together with the reasonable expenses of the trust created by this Deed of Trust, including reasonable Trustee's fees and attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (ii) the cost of any search and/or other evidence of title procedure in connection with the sale and of revenue stamps on the Trustee's deed; (iii) all

sums expended under the terms hereof not then repaid, with accrued interest at the legal rate; (iv) all other sums then secured hereby; and (v) the remainder, if any, to the person or persons legally entitled thereto.

22. Beneficiary may from time to time substitute a successor or successors to the Trustee named herein or acting hereunder to execute the trusts under this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which instrument, when duly recorded in Fresno County, California, shall be conclusive proof of proper appointment of the successor trustee.

23. Upon written request of Beneficiary stating that all obligations secured hereby have been satisfied and all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall reconvey, without warranty, the Collateral then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

24. The trusts created by this Deed of Trust are irrevocable by Trustor.

25. This Deed of Trust applies to, inures to the benefit of, and binds of Trustor, Beneficiary and the Trustee and their respective administrators, executors, officers, directors, transferees, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

26. In addition to and without limitation on any other rights or remedies of the Trustee or Beneficiary, if the Trustee or Beneficiary commences any legal action or proceeding to enforce or interpret any provision of this Deed of Trust or the Note, Trustor shall pay all costs and expenses incurred by the Trustee or Beneficiary in connection with such action or proceeding, including legal expenses and reasonable attorneys' fees and court costs.

27. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or the Trustee is a party, unless brought by the Trustee.

28. Notices to any party shall be given as provided in the Note.

29. If Beneficiary agrees, in its sole discretion, to subordinate to any deed of trust, Trustor shall cause a copy of any such deed of trust securing to be provided to Beneficiary immediately upon its recordation, so that Beneficiary may prepare and record a request for notice of default and notice of sale thereunder pursuant to California Civil Code Section 2924b.

30. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.

TFS Investments, LLC, a limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_



**ATTACHMENT "1"**  
**LEGAL DESCRIPTION**

That certain real property in the City of Fresno, County of Fresno, California, legally described as follows:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

On \_\_\_\_\_, 201\_ before me, \_\_\_\_\_, a notary public, personally appeared

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

SEAL:

**EXHIBIT E**

**TRANSFER CONSENT**

\_\_\_\_\_, 2017  
("Effective Date")

As of the Effective Date, CITY OF FRESNO IN ITS CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO ("**Fresno HS**") consents to the transfer of that certain real property on 532 & 614 North Fulton Avenue, Fresno (APNs. 452-275-05 & 452-275-13) ("**Property**") to T & C CALKIN'S REAL ESTATE, INC., a California corporation ("**Buyer**"). This Consent is issued pursuant Section 3.14 of that certain Owner Participation Agreement between TFS INVESTMENTS, LLC ("**Original Owner**") and the Redevelopment Agency of the City of Fresno ("**RACF**") dated November 17, 2009 ("**OPA**") which provided for the rehabilitation of the Property which was recorded on April 18, 2011 as Instrument No. 0052943 in the Official Records of Fresno County ("**Official Records**"). Concurrently with the OPA, Original Owner executed that certain Declaration of Covenants and Restrictions in favor of RACF dated November 10, 2009 which was recorded against the Property on February 18, 2011 as Instrument No. 2011-0029776 in the Official Records ("**CC&Rs**").

Fresno HS is the legal successor in interest to RACF under the OPA and CC&Rs.

Buyer understands that the OPA and CC&Rs remain in effect against the Property.

**APPROVED AS TO FORM:**

DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Laurie Avedisian-Favini  
Assistant City Attorney

CITY OF FRESNO IN ITS CAPACITY AS HOUSING  
SUCCESSOR TO THE REDEVELOPMENT AGENCY OF  
THE CITY OF FRESNO

By: \_\_\_\_\_  
Marlene Murphey  
Director

Dated \_\_\_\_\_, 2017

**ATTEST:**

YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

**EXHIBIT F**  
**SUBSTITUTION OF TRUSTEE AND RECONVEYANCE**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Fresno Housing Successor  
848 M Street Third Floor  
Fresno, CA 93711  
Attn: Marlene Murphey,  
Executive Director

APNs. 452-275-05 & 452-275-13

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE  
EXEMPT FROM RECORDING FEES UNDER GOVT CODE 27383

**SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE**

CITY OF FRESNO IN ITS CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO ("**Fresno HS**") is the beneficiary under that certain Deed of Trust and Assignment of Rents dated November 10, 2009, made by **TFS INVESTMENTS, LLC**, a limited liability company as trustor, and First American Title Company, as trustee, which was recorded on January 24, 2011 as Instrument No. 2011-0011318 in the Official Records of Fresno County, California, and affecting the land described in said Deed of Trust ("**Deed of Trust**").

Fresno HS acknowledges that all obligations under the Deed of Trust have been satisfied. Therefore, Fresno HS is reconveying the Deed of Trust in accordance with Civil Code Section 2941.

Fresno HS hereby:

- As beneficiary, substitutes itself as trustee under the Deed of Trust and accepts such appointment; and
- As substitute trustee, hereby RECONVEYS WITHOUT WARRANTY, TO THE PERSON OR PERSONS LEGALLY ENTITLED THERETO, all the the estate, title and interest held by it as trustee under the Deed of Trust.

IN WITNESS WHEREOF, Fresno HS as successor trustee and as beneficiary has caused this instrument to be executed by its duly authorized officers.

\_\_\_\_\_, 2017

**APPROVED AS TO FORM:**  
DOUGLAS T. SLOAN  
City Attorney

**AS SUBSTITUTE TRUSTEE AND AS BENEFICIARY:**

CITY OF FRESNO IN ITS CAPACITY AS HOUSING  
SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE  
CITY OF FRESNO

By \_\_\_\_\_  
Laurie Avedisian-Favini  
Assistant City Attorney  
\_\_\_\_\_, 2017

By: \_\_\_\_\_  
Marlene Murphey  
Director

**ATTEST:**  
YVONNE SPENCE, CMC  
City Clerk

By \_\_\_\_\_  
Deputy

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF SAN BERNARDINO        )

On \_\_\_\_\_, 2017 before me, \_\_\_\_\_, a notary public,  
personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

SEAL:

# Exhibit B

March \_\_, 2017

**VIA FEDERAL EXPRESS**

Placer Title Company  
("Placer Title")  
7643 N. Ingram Ave. Ste. 101  
Fresno, CA 93711  
Attn: Paul Santy  
County Manager

RE: CITY OF FRESNO in its capacity as Housing Successor to the  
Redevelopment Agency of the City of Fresno ("**Lender**")  
Fulton Partners, LLC, & Thaler Investments, LLC ("**Seller**")  
T & C CALKINS REAL ESTATE, INC ("**Buyer**")  
532 & 614 North Fulton Avenue, Fresno (APNs. 452-275-05 & 452-275-13)  
("**Property**")  
Escrow No. P-186118 ("**Placer Sale Escrow**")  
Lupe Prado ("**Escrow Officer**")

Dear Mr. Santy:

Enclosed please find:

- (i) Substitution of Trustee and Full Reconveyance executed by the Lender with respect to the deed of trust referenced therein ("**Lender Trust Deed**") which is a currently a lien on the Property ("**Reconveyance**"); and
- (ii) The payoff demand statement executed by Lender with respect to the Trust Deed ("**Demand Statement**").

Placer Title is authorized to record the Reconveyance as part of the closing of the Placer Sale Escrow upon the following conditions:

- (a) **Loan Payoff Funds.** Placer Title holds funds for the loan payoff calculated pursuant to the Demand Statement through the period of 10 days after the closing of the Placer Sale Escrow ("**Loan Payoff Funds**").
- (b) **Outside Hold Date.** Placer will hold the Loan Payoff Funds in trust for Lender until the first to occur of: (i) Placer is notified by Bernadette Watson, Escrow Officer of Fidelity National Title Insurance Company that its escrows 2011701159 and 2011701101 have been closed as confirmed by separate written notice from the undersigned ("**Fidelity Closing Notices**"); and (ii) ten (10) days of the closing of the Placer Sale Escrow ("**Outside Hold Date**").

**(c) Release of Loan Payoff Funds.** Upon Placer's receipt of the Fidelity Closing Notices, the Loan Payoff Funds shall be released to Seller in the Placer Sale Escrow. If the Fidelity Closing Notices are not received by the Outside Hold Date, Placer will immediately, without demand or offset, release the Loan Payoff Funds to Lender and will not withhold delivery of the Loan Payoff Funds to Lender for any reason including any contrary demand from Seller, TFS Investments, LLC or any other person or entity.

**(d) Placer Title.** If Placer Title breaches its obligations under this letter agreement, Placer will indemnify Lender for all costs and expenses including, but not limited to, lost interest together with attorneys fees incurred by Lender to enforce this letter agreement.

Very truly yours,

CITY OF FRESNO

Laurie Avedisian-Favini  
Assistant City Attorney

**AGREED TO & ACCEPTED:**

**PLACER TITLE COMPANY**

By: \_\_\_\_\_  
Paul Santy, County Manager

Dated: \_\_\_\_\_, 2017



**EXHIBIT A**  
**7 NSP PROPERTIES**

<b>Common Address</b>	<b>APN</b>
709 N 4TH ST	454-191-05
4575 E ILLINOIS AVE	460-234-18
2317 E LEWIS AVE #A-B	452-156-19
4678 E MADISON AVE	460-084-07
4174 E NEVADA AVE	460-214-09
347 N ROOSEVELT AVE	459-036-04
3803 E VERRUE AVE	461-052-08