

**FIRST AMENDMENT TO
AGREEMENT FOR DISPOSAL AND SALE OF PROPERTY
AND ESCROW INSTRUCTIONS
Palm Lakes Property, Fresno, California**

Fresno Moose Family Center 445, a non-profit organization hereinafter called the "Buyer," and the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, hereinafter called the "Agency" or "Seller," hereby enter into this First Amendment to Agreement for Disposal and Sale of Property and Escrow Instructions effective this ___ day of _____, 2014.

WHEREAS, Buyer and Agency entered into an Agreement for Disposal and Sale of Property and Escrow Instructions ("Agreement") on March 6, 2014; and

WHEREAS, Buyer and Agency now wish to amend the Agreement as set forth below.

NOW THEREFORE, in consideration of the foregoing and of the covenants and conditions hereinafter contained, the parties agree that the Agreement be amended as follows:

1. Paragraph 2 of the Agreement shall be amended to read: The purchase price for the Property shall be the sum of TWO HUNDRED EIGHTY ONE AND 0/100 DOLLARS (\$281,000.00). The purchase price, subject to any adjustments provided in this Agreement, will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.

The Agreement shall remain in full force and effect except as amended hereby or inconsistent herewith.

BUYER:

Fresno Moose Family Center 445, a nonprofit organization

By: 
Gail Marlatt
Moose Lodge Administrator

By: 
Chris Olson
Moose Lodge Chairman

SELLER:

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

By: _____
Marlene Murphey, Director

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on March 6, 2014.

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

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

By _____
Deputy

By _____
Deputy

Dated: _____, 2014

Dated: _____, 2014

**AGREEMENT FOR DISPOSAL AND SALE OF PROPERTY
AND ESCROW INSTRUCTIONS
Palm Lakes Property, Fresno, California**

Fresno Moose Family Center 445, a non-profit organization hereinafter called the "Buyer," without regard to number or gender, hereby offers to purchase from the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, hereinafter called the "Agency" or "Seller," the hereinafter described property which is being purchased in fee simple on the following terms and conditions:

1. Buyer shall purchase, and Seller shall sell, all that real property which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "Property," situated in the City of Fresno, State of California, more particularly described as Assessors' Parcel Number 493-020-29ST (2.25 acres, 5025 E. Dakota Avenue. The Property is more fully described in Exhibit "A" and made part of this Agreement.

2. The purchase price for the Property shall be the sum of TWO HUNDRED SIXTY FIVE THOUSAND AND 00/100 DOLLARS (\$265,000.00). The purchase price, subject to any adjustments provided in this Agreement, will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.

3. The sale of the Property is contingent upon the approval of the Seller, the Successor Agency Board, the Oversight Board to the Successor Agency ("Oversight Board"), and approval of the Property Management Plan by the Successor Agency, Oversight Board, and State of California Department of Finance, as well as compliance with all applicable laws and ordinances.

4. It is understood that, while the Buyer may have a conceptual idea for a project to be built on the Property, all such plans are speculative in nature and the sale of the Property is not contingent upon construction or development of any specific project or element of a project. All permits, variances, zoning or other entitlements shall be obtained and any conditions of issuance shall be the sole responsibility of Buyer and performed at the sole cost and expense of Buyer. Nothing in this Agreement shall be deemed to imply that Agency or the City of Fresno ("City") has agreed or bound itself to

approve any entitlement for use of the Property by Buyer, and the City shall retain its full governmental discretion to consider Buyer's land use applications on their merits. Any legally proper denial of a permit or entitlement by the City shall not be considered a breach of this Agreement and shall not result in any damage accruing to Buyer hereunder.

5. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 8050 N. Palm Avenue, Suite 110, Fresno, Ca, 93711, attention Bernadette Watson. Within ten (10) business days after the execution of this Agreement by both parties, escrow shall be opened upon the following terms and conditions, and the Buyer and Seller by their signature to this Agreement make this paragraph their escrow instructions:

- a. Upon opening escrow, Buyer shall deposit the sum of FOURTEEN THOUSAND FIFTY DOLLARS (\$14,050.00) (the "Deposit") to be placed in an interest bearing account. The Deposit shall be applied as part of the Purchase Price.
- b. Buyer and Seller shall deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies of (ii) the Title Company may require that are consistent with the terms and purpose 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 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.
- c. 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.

- d. Escrow and title fees to be paid as customary. Seller shall provide and pay for a CLTA insurance policy. Buyer has the option to pay for an ALTA policy. Recording fees to be paid for as customary.
- e. The escrow will be considered closed on the date that the Title Company records the grant deed. The escrow will be in condition to close when any 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 mutual consent of the parties, the escrow shall close within ninety (90) days of the escrow being in a condition to close. If it does not close within ninety (90) days, escrow shall terminate unless otherwise extended pursuant to this paragraph. 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 date for closing for up to two extension periods of forty-five 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 refunded only in the event of a Seller Default.
- f. At closing, Title Company shall disburse the purchase price less Seller's cost to clear title, prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in subsection b., above.
- g. It is understood that Buyer shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Property from the date escrow closes.
- h. Seller shall conduct a Phase I on the parcel at Seller's cost, prior to the close of escrow. Nevertheless, Buyer fully understands the purchase of the Property is an "as is" transaction. The sale of the Property is also

contingent on approval by the Buyer of the physical condition of the Property, including subsurface soil, including the approval of any inspection reports and sampling the soil for contamination within 15 days of transmittal of a Phase 1. Buyer has the option of performing an environmental or any other inspection of the Property and subsurface at Buyer's cost. Buyer has the option of making any necessary repairs or alterations at Buyer's expense.

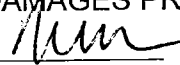
- i. At closing, the Title Company will prorate the following, between Seller and Buyer, based on a 30-day month: real property taxes, special assessments, and rents, if any.
 - j. Any loss or damage to the Property or any improvements on it before closing is at Seller's risk.
 - k. Each party represents and warrants that it has not engaged a broker or real estate agent for this transaction, and no commissions are payable concerning this purchase and sale.
 - l. Seller shall deliver possession at closing.
 - m. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.
6. Remedies for Default.

a. REMEDIES FOR BUYER'S DEFAULT. IF THE CLOSING FAILS TO OCCUR BECAUSE OF BUYER'S DEFAULT UNDER THE TERMS OF THIS AGREEMENT, BUYER WILL BE RESPONSIBLE FOR ALL CANCELLATION CHARGES REQUIRED TO BE PAID TO ESCROW HOLDER AND ANY ESCROW CHARGES. IN ADDITION, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES WILL TERMINATE AND A PORTION OF THE DEPOSIT IN THE AMOUNT OF ONE THOUSAND FOUR HUNDRED-FIVE DOLLARS

AND 00/100 (\$1,405.00) (THE "LIQUIDATED DAMAGES SUM") WILL BE IMMEDIATELY DELIVERED BY ESCROW HOLDER TO SELLER ON SELLER'S REQUEST. THE LIQUIDATED DAMAGES SUM WILL BE DEEMED LIQUIDATED DAMAGES FOR BUYER'S NONPERFORMANCE AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER (INCLUDING, WITHOUT LIMITATION, SELLER'S RIGHT TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT AND TO RECEIVE DAMAGES) FOR BUYER'S FAILURE TO PURCHASE THE PROPERTY, WHICH SUMS WILL BE PRESUMED TO BE A REASONABLE ESTIMATE OF THE AMOUNT OF ACTUAL DAMAGES SUSTAINED BY CITY BECAUSE OF BUYER'S BREACH OF ITS OBLIGATION TO PURCHASE THE PROPERTY. FROM THE NATURE OF THIS TRANSACTION, IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES THAT SELLER WOULD SUSTAIN IF BUYER BREACHES SUCH OBLIGATION. THE IMPRACTICABILITY AND DIFFICULTY OF FIXING ACTUAL DAMAGES IS CAUSED BY, WITHOUT LIMITATION, THE FACT THAT THE PROPERTY IS UNIQUE. GIVEN THE FOREGOING FACTS, AMONG OTHERS, BUYER AND SELLER AGREE THAT LIQUIDATED DAMAGES ARE PARTICULARLY APPROPRIATE FOR THIS TRANSACTION AND AGREE THAT SAID LIQUIDATED DAMAGES MUST BE PAID IN THE EVENT OF BUYER'S BREACH OF ITS OBLIGATION TO PURCHASE THE PROPERTY, DESPITE ANY WORDS OR CHARACTERIZATIONS PREVIOUSLY USED OR CONTAINED IN THIS AGREEMENT IMPLYING CONTRARY INTENT. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE § 3275 OR § 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER UNDER CALIFORNIA CIVIL CODE §§ 1671, 1676, AND 1677.

WE ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION:

BUYER: 

SELLER: 

b. **Seller's Default.** Seller will be deemed to be in default under this Agreement: (a) if Seller fails, for any reason other than Buyer's default under this Agreement or the failure of a condition precedent to Seller's obligation to perform under this Agreement, to meet, comply with, or perform any covenant, agreement, or obligation required on its part within the time limits and in the manner required in this Agreement, or (b) if a material breach of any representation or warranty (made by Seller) has occurred because of Seller's actual fraud or intentional misrepresentation; provided, however, that no such default will be deemed to have occurred unless and until Buyer has given Seller written notice of the default, describing its nature, and Seller has failed to cure such default within ten (10) days after receipt of such notice (but in any event before the Closing Date, unless such default occurs after Closing).

c. **Remedies for Seller's Default.** If Seller defaults in its obligations under this Agreement to sell the Property to Buyer on the Closing Date through no fault of Buyer, then Buyer at its option may have the right to specific performance of this Agreement or the right to all of its general and specific damages.

7. **Miscellaneous Provisions:**

- a. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

- b. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.

- c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the Buyer and the Seller.

8. Release. Buyer releases and hereby agrees to indemnify Seller from any and all claims Buyer or any other party may have against Seller, of whatever kind or nature, resulting from, or in any way connected with, the environmental condition of the Property due to conditions caused solely by Buyer, Buyer is not obligated to defend Seller for Contamination that was not caused by Buyer including any and all claims Buyer may have against Seller under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) or any other federal, state or local law, whether statutory or common law, ordinance or regulation, pertaining to the release of hazardous substances into the environment from or at the Property. This indemnity is not intended to restrict or limit any right or action Buyer may have against Seller in the event Buyer is subject to any federal, state or local governmental regulatory enforcement action related to release, response, removal, remedy or remedial action of hazardous material as defined within CERCLA or any other environmental laws wherein said regulatory agency is requiring Buyer to either remediate or remedy part or all of any hazardous waste at the Property

Buyer expressly waives the benefits of Civil Code Section 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected settlement with the debtor.”

Buyer's obligations under this indemnity and release shall survive the recordation of the Deed.

9. Time is of the essence of each and every term, condition, and covenant hereof.

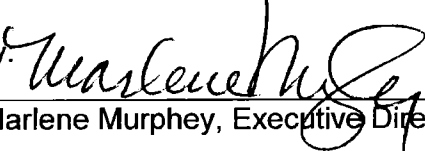
10. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Successor Agency, Oversight Board, and State of California Department of Finance. Upon its duly authorized execution within said time by the Agency, this Agreement shall become a contract for the sale and purchase of the Property binding upon Buyer and Seller, their heirs, executors, administrators, successors in interest, and assigns.

SIGNATURES APPEAR ON NEXT PAGE

This Agreement is executed by the Seller by and through the Executive Director pursuant to authority granted by the Agency on March 6, 2014.

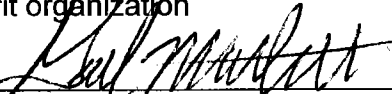
Seller:


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

By: 
Marlene Murphey, Executive Director

Buyer:

Fresno Moose Family Center 445, a non-profit organization

By: 
Gail Marlatt, Moose Lodge Administrator

By: 
Chris Olson, Moose Lodge Chairman

Address of:

Successor Agency
Attention: Executive Director
2344 Tulare, Suite 200
Fresno, CA 93721-3623

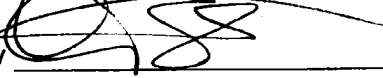
Address of Buyer:

5025 E. Dakota Ave
FRESNO CA

APPROVED AS TO FORM:

DOUGLAS T. SLOAN

Ex Officio Attorney

By: 
Deputy

ATTEST:

YVONNE SPENCE, CMC

Ex Officio Clerk

By: Cindy Bruer 3/6/14
Deputy

Exhibit A: Legal Description of Property

EXHIBIT A
LEGAL DESCRIPTION

Parcel 2

Parcel "E" of Parcel Map No. 84-33, according to the map thereof recorded October 30, 1984, in Book 42 of Parcel Maps at Page 57, Fresno County Records.

EXCEPTING THEREFROM all oils, gas and other hydrocarbons and minerals therein and thereunder as reserved in the Deed from Bank of America National Trust and Savings Association, dated March 26, 1941 and recorded April 12, 1941 in book 1877 at Page 308, Official Records of Fresno County, as Document No. 13437.

By Quitclaim Deed recorded April 3, 1959 in book 4202 at Page 428, Official records of Fresno County, as Document no. 24675, Capital Company released and surrendered easements and rights reserved in conjunction with said minerals on the above described land from the surface and for a distance of not more than 500 feet below said surface