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Agenda Item: ID#17-434 (9:00 A.M.-2)

Date: 3/23/17

2017 MAR 22 PM 3 15



## Supplemental Information Packet

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

#### Contents of Supplement: Agreement for Transfer and Acceptance of Real Property and Joint Escrow Instructions

#### Item(s)

Actions pertaining to 532-614 Fulton Street (Fulton) 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**  
**AGREEMENT FOR TRANSFER AND ACCEPTANCE OF REAL PROPERTY**  
**AND JOINT ESCROW INSTRUCTIONS**

2017 MAR 22 PM 3 15

THIS AGREEMENT FOR TRANSFER AND ACCEPTANCE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made this \_\_\_ day of March, 2017 ("**Agreement Date**") by and between the FRESNO REVITALIZATION CORPORATION, a California nonprofit public benefit corporation ("**FRC**"), and TFS INVESTMENTS, LLC, a limited liability company ("**Owner**"). FIDELITY NATIONAL TITLE INSURANCE COMPANY shall act as Escrow Holder under the terms of this Agreement ("**Escrow Holder**").

**RECITALS:**

**A.** City of Fresno ("**City**") was awarded a Neighborhood Stabilization Program ("**NSP**") grant from the United States Department of Housing and Urban Development to advance the supply of affordable rental housing within the City.

**B.** In November 2012, City entered into an agreement with Owner dated November 29, 2012 to provide residual receipts NSP loan(s) to Owner to assist Owner in acquiring, rehabilitating and renting foreclosed and abandoned residential properties thereafter be preserved as low, moderate, and middle-income rental housing as defined by the NSP ("**NSP Agreement**").

**C.** In 2013, Owner acquired and rehabilitated seven (7) residential properties in the City of Fresno as described on Exhibit A ("**7 NSP Properties**"), all of which were rehabilitated pursuant to the NSP Agreement.

**D.** In 2013, Owner also executed those certain seven (7) promissory notes as subsequently amended in favor of City which currently total in the aggregate the sum of One Million Two Hundred Twenty-Six Thousand and Eighty-Six Dollars (\$1,226,086) ("**7 NSP Notes**") secured by those certain seven (7) deeds of trust against the 7 NSP Properties of even date therewith and recorded against the 7 NSP Properties ("**7 NSP Trust Deeds**") in the Official Records of the County of Fresno ("**Official Records**").

**E.** Fultonia Partners, LLC ("**Fultonia**") and Thaler Investments LLC ("**Thaler**") (jointly "**Fultonia Owners**") currently own that certain real property on 532 & 614 North Fulton Avenue, Fresno, CA (APNs 452-275-05 & 452-275-13) ("**Fultonia Property**") subject to that certain deed of trust recorded against the Fultonia Property on January 24, 2011 as Instrument No. 2011-0011318 ("**Fresno Trust Deed**") securing that certain Promissory Note dated November 10, 2009 in the original amount of Six Hundred Thousand Dollars (\$600,000) ("**Fresno Note**").

**F.** The current owner of the Fresno Note and Fresno Trust Deed is the City of Fresno in its Capacity as Housing Successor to the Redevelopment Agency of the City of Fresno ("**Fresno HS**").

**G.** 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.** Owner, Fultonia Owners, 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. Fultonia Owners are currently in escrow to sell the Fultonia 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**”).

J. Owner and Fultonia Owners 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) fee title of the 7 NSP Properties be transferred to FRC.

K. Pursuant to that certain Loan Modification Agreement and Escrow Instructions of even date herewith between Owner and Fresno HS (“**Loan Modification Agreement**”), Owner is obligated to (i) execute a non-recourse Restated and Amended Promissory Note (“**Restated Note**”) in the principal of Five Hundred Thousand Dollars (\$500,000) after a One Hundred Thousand Dollar (\$100,000) principal reduction is paid to Fresno HS, and (ii) execute a new deed of trust to be recorded against the 7 NSP Properties junior to the 7 NSP Trust Deeds (“**New Trust Deed**”) to be consummated through that certain escrow no. 2011701101 with Escrow Holder (“**Loan Escrow**”)

L. Immediately following the close of the Loan Escrow, Owner is obligated to transfer fee title of the 7 NSP Properties to FRC pursuant to this Agreement upon the terms and conditions of this Agreement.

M. Owner is aware that the real property taxes for the 7 NSP Properties are delinquent all of which must be paid as a condition to closing this transaction.

NOW, THEREFORE, the parties hereto agree as follows:

**TERMS AND CONDITIONS:**

1. **TRANSFER OF PROPERTY.** Upon the terms and conditions set forth in this Agreement, Owner agrees to transfer fee title of the 7 NSP Properties to FRC and FRC agrees to accept such transfer.
2. **ESCROW.**
  - 2.1 **Opening of Escrow.** Within three (3) business days of execution and delivery of this Agreement by Owner, which shall occur concurrently with the execution and delivery of the Loan Modification Agreement, 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) the Loan Escrow has been opened, and (ii) 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 (“**Opening of Escrow**”). If Opening of Escrow does not occur on or before March 24, 2017 for any reason, FRC may, in its

sole discretion, terminate this Agreement upon written notice to Owner and Escrow Holder.

- 2.2 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 FRC.
- 3. CONSIDERATION.** Owner is transferring fee title of the 7 NSP Properties to City solely upon the terms of this Agreement subject to the 7 NSP Notes and 7 NSP Trust Deeds and without payment of any additional amounts to Owner.
- 4. CLOSING FUNDS AND DOCUMENTS REQUIRED FROM FRC AND OWNER.**
- 4.1 From Owner.** Owner agrees that on or before 12:00 noon one (1) business day prior to the Closing Date (as defined in Section 9), Owner will deposit or cause to be deposited with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:
- a. The grant deed in the form approved by FRC for the 7 NSP Properties executed by Owner ("**Grant Deed**") and such other documents as reasonably required by the Title Company (as defined in Section 5) in order to issue the Owner Title Policy.
  - b. One Assignment of Leases in the form of Exhibit B ("**Lease Assignment**") executed by Owner for the Existing Leases (as defined in Section 6.1) for the 7 NSP Properties ("**Leases**").
  - c. Estoppel Certificate (in accordance with Section 6.2.(b)).
  - d. A Non-Foreign Affidavit as required by federal law.
  - e. Such funds (in Good Funds as defined in Section 4.4) and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.
- 4.2 From FRC.** FRC agrees that on or before 12:00 noon one (1) business day prior to the Closing Date, FRC will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:
- a. A Preliminary Change of Ownership Statement completed in the manner required in Fresno County.
  - b. A Certificate of Acceptance of the Grant Deed in the form provided by FRC shall be attached to the Grant Deed(s) prior to recordation.
  - c. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

**4.3 Recordation, Completion and Distribution of Documents.** Prior to Closing, Escrow Holder shall:

- a. Confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents.
- b. Date all the documents (including, but not limited to, the Assignment of Leases) with the date of Close of Escrow.
- c. Complete the legal description for the 7 NSP Properties using the information provided in the Title Report (as defined in Section 5) in Exhibit 1 to the Grant Deed (with the Certificate of Acceptance attached) prior to recordation.

Promptly following Close of Escrow, Escrow Holder shall distribute Escrow Holder's closing statement and the documents deposited in Escrow as follows:

**(a) To FRC:**

- i. One (1) certified conformed copy of the Grant Deed (with the Certificate of Acceptance), the original to be mailed to FRC following recordation thereof;
- ii. One copy of the Non-Foreign Affidavit;
- iii. The Owner's Title Policy;
- iv. The original Assignment of Leases;
- v. One (1) certified conformed copy of each of the Revised 7 NSP Notes and 7 NSP Trust Deeds, which Escrow Holder shall obtain from the City of Fresno through separate recording instructions from the City to Escrow Holder and approved by FRC ("**Fresno City Recording Instructions**");
- vi. One (1) certified conformed copy each of the Restated Note and New Trust Deed, which Escrow Holder shall obtain from the close of the Loan Escrow; and
- vii. One (1) certified copy, conformed if recorded, of any other document delivered to Escrow Holder by FRC or Owner pursuant to the terms hereof.

**(b) To Owner:**

- i. A copy of the Non-foreign Affidavit; and
- ii. One (1) certified copy, conformed if recorded, of any other document delivered to Escrow Holder by FRC or Owner pursuant to the terms hereof.

**4.4 Good Funds at Closing.** Prior to Closing, 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.

5. **OWNER'S TITLE POLICY.** Within two (2) days of Opening of Escrow, Escrow shall deliver to FRC a single preliminary report (which 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, Escrow Holder shall furnish FRC with an ALTA owner's non-extended Policy of Title Insurance ("**Owner's Title Policy**") insuring title to the 7 NSP Properties vested in FRC, showing only:
- (a) an exception for only non-delinquent real property taxes;
  - (b) exceptions as acceptable to FRC in its sole discretion;
  - (c) the 7 NSP Trust Deeds which are being amended by City pursuant to the Fresno City Recording Instructions;
  - (d) the New Trust Deed to Fresno HS pursuant to the Loan Escrow;
  - (e) the Existing Leases; and
  - (f) such endorsements as required by FRC in its sole discretion.

Prior to Closing, FRC shall deliver written direction to Escrow Holder specifying the approved exceptions and required endorsements. The amount of the insurance coverage shall be Six Hundred Thousand Dollars (\$600,000) which is the fair market value of the 7 NSP Properties.

The cost of the Owner's Title Policy shall be paid by Owner.

6. **DUE DILIGENCE**

- 6.1 **Owner's Obligation to Deliver Due Diligence Items.** Within one (1) business day following Opening of Escrow, Owner shall deliver all the following items to FRC:
- i. True, accurate and complete copies of all existing Leases related to the 7 NSP Properties ("**Existing Leases**").
  - ii. A certified rent roll (in a form satisfactory to FRC) for the 7 NSP Properties with reasonable detail including names of tenants ("**Tenants**"), dates of the existing lease, security deposits, current rent amounts, any prepaid rent, list of any defaults (by landlord or tenant), etc. ("**Rent Roll**") which shall be executed by Owner and verified by the existing property manager.
  - iii. Copies of all contracts and agreements and all amendments and modifications to any such contracts and agreements including, but not limited to, the existing property management contract.
  - iv. Engineering reports, soils studies, soils compaction reports; and grading plans.
  - v. Environmental audits and reports, environmental remediation plans (and correspondence and documents related thereto) and environmental impact reports.

- vi. Inspections, reports, notices and/or correspondence regarding structural, seismic, roof, HVAC, soil, paving, environmental and ADA compliance.
- vii. Report of all present and/or pending claims, actions, suits, legal proceedings, arbitrations or any other legal or administrative proceeding which affect the 7 NSP Properties and copies of insurance policies.
- viii. Permits, inspections, reports, notices and/or correspondence regarding governmental agency review and approval respecting fire, building, health, zoning and use compliance.
- ix. Original architectural and current "as-built" building plans.
- x. Such other due diligence materials as may be reasonably requested by FRC.

## **6.2 Investigation.**

**a. Right to Investigate.** Subject to the terms and limitations of the Existing Leases, at FRC's sole cost and expense, FRC and its agents and contractors shall have the right at reasonable times during normal business hours upon not less than one (1) business day prior notice to Owner to make an analysis of the 7 NSP Properties consisting of such engineering, feasibility studies, soils tests, ADA/Title 24 compliance review; inspections, environmental studies, surveys, contact with tenants, and any and all other investigations of any kind as FRC may desire, in its sole discretion, in order that FRC may determine the suitability of the 7 NSP Properties for FRC's contemplated uses and to conduct such other review and investigation which FRC deems appropriate to satisfy itself to acquire the 7 NSP Properties.

**b. Estoppel Certificate.** At least one (1) day prior to the Closing Date, Owner shall have delivered to FRC through Escrow Holder an estoppel certificate in the form required by FRC executed by Owner and verified by the existing property manager ("**Estoppel Certificate**"). The Estoppel Certificate must be consistent with all information provided by Owner on the Rent Roll. In the event of an inconsistency between the Rent Roll and the Estoppel Certificate or any untrue statement, Owner shall defend, indemnify and hold FRC harmless from any losses or damage (including attorney fees) incurred by FRC by reason of such discrepancies. This indemnity shall survive Closing.

**6.3 FRC Acceptance Notice.** At least one (1) business day prior to Closing, FRC shall provide a written notice to both Owner and Escrow indicating whether it approves or disapproves its due diligence. If approved, the Closing shall proceed. If disapproved, FRC shall have the right to terminate this Agreement and Escrow upon written notice to Owner and Escrow Holder.

## **7. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

**7.1 Conditions to FRC's Obligations.** The obligations of FRC under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by FRC of each of the following conditions precedent:

- a. The Sale Escrow and the Loan Escrow close *immediately preceding* the Closing under this Agreement.
- b. Escrow Holder holds and will deliver the Owner's Title Policy to FRC.

- c. Escrow Holder holds and will deliver to FRC all documents accruing to FRC pursuant to this Agreement.
- d. FRC has issued FRC's approval of the due diligence matters in Section 6 including review and approval of the Existing Leases, the Rent Roll and the Estoppel Certificate.
- e. Owner has executed and delivered to Escrow Holder the Rent Roll, Estoppel Certificate (verified by the property manager) and the Assignment of Leases.
- f. Escrow Holder holds and will deliver to FRC the instruments and funds, if any, accruing to FRC pursuant to this Agreement.
- g. Owner is not in default of its obligations under this Agreement

**7.2 Conditions to Owner's Obligations.** The obligations of Owner under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Owner of the following conditions precedent:

- a. The Sale Escrow and Loan Escrow close *immediately preceding* the Closing under this Agreement.
- b. FRC has executed the acceptance of the Certificate of Acceptance and delivered same to Escrow Holder to be attached to the Grant Deed prior to recordation.
- c. Escrow Holder holds and will deliver to Owner the instruments and funds accruing to Owner pursuant to this Agreement.
- d. FRC is not in default of its obligations under this Agreement.

**8. REPRESENTATIONS & WARRANTIES.** Owner makes the following representations and warranties to FRC, 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 each of the 7 NSP Properties:

(a) There are no natural or environmental hazards located on the 7 NSP Properties that would limit its marketability, merchantability, or suitability for development or impede its use in any way.

(b) 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.

(c) There are no contracts, leases, claims or rights affecting the 7 NSP Properties and no agreements entered into by or under Owner which shall survive the Close of Escrow that would adversely affect FRC's rights with respect to the 7 NSP Properties except the current Existing Leases.



(d) Owner has received no written notice from any third parties, prior owners of the 7 NSP Properties, of any federal, state or local governmental agency, indicating that any hazardous waste remedial or clean-up work will be required on the 7 NSP Properties.

(e) Each of the 7 NSP Properties are currently leased to a qualified person and true, correct and complete copies of all Existing Leases have been delivered to FRC.

(f) No construction or repair work has been done on any of the 7 NSP Properties within the six (6) months prior to the Opening of Escrow:

(g) All structures on the 7 NSP Properties are in good condition and repair.

(h) There are no easements or encroachments onto the 7 NSP Properties by buildings or improvements on any adjoining property, nor do any buildings or improvements on the 7 NSP Properties encroach on other properties.

(i) Owner is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

(j) All utilities, including gas, electricity, water, sewage, and telephone, are available at the 7 NSP Properties, and all such items are in good working order.

(k) Owner has the unimpeded power to execute, deliver and perform Owner's obligations under this Agreement and the documents executed and delivered by Owner pursuant hereto.

(l) There are no pending or threatened lawsuits or claims which would affect any of the 7 NSP Properties.

(m) 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.

(n) 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.

No representation, statement or warranty by Owner 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 Owner's execution hereof and prior to the Closing, any event occurs or condition exists of which Owner becomes aware which renders any of the representations contained herein untrue or misleading, Owner shall promptly notify FRC in writing. All representations and warranties in this Agreement shall survive Closing.

## **9. CLOSING DATE; TIME IS OF THE ESSENCE.**

**9.1 Closing Date.** Unless otherwise extended in writing by the parties, Escrow shall close (i) as soon as practicable after the Due Diligence Date but, in no event, after March 28, 2017, but (ii) immediately following the concurrent close of the Sale Escrow and Loan Escrow ("**Closing Date**"). The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the date that the Grant Deed with the Certificate

of Acceptance is recorded in the Official Records. If the Closing does not occur, FRC shall have the right, in its discretion, to terminate this Agreement and Escrow by delivering written notice to Owner.

- 9.2 Time is of the 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.
- 9.3 Possession.** Upon the Close of Escrow, exclusive possession and occupancy of the 7 NSP Properties shall be delivered to FRC except for the Existing Tenants.

**10. ESCROW PROVISIONS.**

**10.1 Escrow Instructions.** Sections 1 through 5, inclusive, 7, 9, 10 & 12 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.

**10.2 General Escrow Provisions.** Escrow Holder shall deliver (i) the Owner's Title Policy to FRC and instruct the Fresno County Recorder to mail the Grant Deed to FRC at the address set forth in Section 12.12 after recordation. 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.

**10.3 Prorations; Security Deposits; Utility and Utility Deposits.**

(a) **Real Property Taxes.** Owner shall pay all delinquent real property taxes through Escrow. All non-delinquent general and special real property taxes and assessments shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty day (360) year. Any supplemental tax bills received after Close of Escrow shall be promptly paid by Owner.

(b) **Prorations.** Rentals, utilities and other income or expenses of the 7 NSP Properties (including but not limited to payment of the property management fees to the existing property manager) which are payable by Owner shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. In the event final amounts with respect to said prorations are not available as of Close of Escrow, the proration shall be done on an estimated basis and the parties shall prepare a final proration within sixty (60) days following Close of Escrow. Any party who is obligated to pay net amounts based on said final proration shall reimburse the other party said amount within thirty (30) days after completion of the final proration.

(c) **Security Deposits.** The amount of the Security Deposits as specified on the rent roll shall be paid to FRC through Escrow at Closing.

(d) **Utilities.** FRC and Owner shall cause any and all utilities which are in the name of Owner to be transferred to the name of FRC as of the Close of Escrow or as soon thereafter as practicable. Escrow Holder shall also allocate any prepaid rent appropriately on the closing statement. Owner shall receive a credit for any refundable utility or governmental deposits made by Owner with respect to the 7 NSP Properties and shall assign FRC all rights to refund of same.

The provisions of this Section 10.3 shall survive Close of Escrow. If either party fails to pay its pro rata share of taxes or other expenses by the times herein provided, interest shall accrue on all unpaid amounts from when owing until paid at five percent (5%) over the Federal Discount Rate quoted by the Federal Reserve Bank of San Francisco on the 25th day of the month preceding the date interest commences to accrue.

- 10.4 Costs.** Owner shall pay all costs and charge in this Escrow including, but not limited to, escrow fees, title premiums, and recording fees.
- 10.5 Closing Statement.** Not less than one (1) business day prior to Closing, Escrow Holder shall prepare estimated closing statements to each party for their review and approval.
- 10.6 Termination and Cancellation of Escrow.** If Escrow fails to close as provided above, either party may elect to terminate this Agreement and the Escrow by delivering written notice to the other party 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. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights FRC or Owner may have against each other arising from the Escrow or this Agreement.
- 10.7 Information Report.** Escrow Holder shall file, and FRC and Owner agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. FRC and Owner also agree that FRC and Owner, their respective employees and attorneys, and Escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither FRC nor Owner shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

- 10.8 No Brokerage Commission.** Owner represents and warrants to FRC 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. Owner agrees to indemnify and hold FRC 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.
- 10.9 No Withholding as Foreign Seller.** Owner represents and warrants to FRC that Owner is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to FRC on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.
- 11. RISK OF PHYSICAL LOSS.** Risk of physical loss to the 7 NSP Properties shall be borne by Owner prior to the Close of Escrow and by FRC after Close of Escrow. In the event that the 7 NSP Properties shall be damaged by fire, flood, earthquake or other casualty FRC shall have the option to terminate this Agreement, provided notice of such termination is delivered to Owner within two (2) days following the date FRC learns of the occurrence of such casualty. If FRC elects not to terminate this Agreement, or fails to terminate this Agreement pursuant to the foregoing sentence within said two (2) day period, FRC shall complete the acquisition of the 7 NSP Properties, in which case Owner shall assign to FRC the interest of Owner in all insurance proceeds relating to such damage (subject to the rights of Tenants under Leases of the 7 NSP Properties). Owner shall consult with FRC regarding any proposed settlement with the insurer and FRC shall have the reasonable right of approval thereof. Owner shall hold such proceeds until the Close of Escrow.
- 12. GENERAL PROVISIONS.**
- 12.1 No Assignment.** Owner may not assign this Agreement without the prior written consent of FRC 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 the parties hereto.
- 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 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 FRC does not in any way or for any purpose become a partner of Owner in the conduct of their respective businesses or otherwise, or a joint venturer with Owner.
- 12.11 Non-Collusion.** No official, officer, or employee of FRC has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of FRC 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. 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, Owner 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 FRC, as a result or consequence of obtaining this Agreement. Owner 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.

FRC: Fresno Revitalization Corporation  
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.

Owner: TFS 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 Owner shall not constitute an offer to accept transfer of fee title to the 7 NSP Properties, and FRC shall have no obligation of any kind, express or implied, to perform any of the foregoing until FRC has approved, executed and delivered to 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 FRC 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, and B attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Transfer and Acceptance of Real Property and Joint Escrow Instructions as of the date set forth above.

**OWNER:**

TFS INVESTMENTS, LLC,  
a limited liability company,

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

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

**FRC:**

FRESNO REVITALIZATION CORPORATION,  
a California nonprofit public benefit corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Accepted and Agreed to:**

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

**ESCROW HOLDER:**

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY, a corporation

By: \_\_\_\_\_  
Bernadette Watson, Escrow Officer

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

**EXHIBIT A**  
**DESCRIPTION OF THE 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 B**  
**LEASE ASSIGNMENT**

THIS LEASE ASSIGNMENT ("**Assignment Agreement**") is dated as of \_\_\_\_\_, 2017 ("**Assignment Date**"), by and between TFS INVESTMENTS, LLC, a limited liability company ("**Assignor**"), in favor of FRESNO REVITALIZATION CORPORATION, a California nonprofit public benefit corporation ("**Assignee**").

**RECITALS**

A. Assignor is the owner of that certain real property located in the City of Fresno, County of Fresno, State of California, located at 709 N 4<sup>th</sup> Street (APN #454-191-05), 4575 E Illinois Avenue (APN #460-234-18), 2317 E Lewis Avenue #A-B (APN #452-156-19), 4678 E Madison Avenue (APN #460-084-07), 4174 E Nevada Avenue (APN #460-214-09), 347 N Roosevelt Avenue (APN #459-036-04), and 3803 E Verrue Avenue (APN #461-052-08) in the City of Fresno, CA together with all improvements thereon (collectively, "**Properties**").

B. On \_\_\_\_\_, 2017, Assignor and Assignee entered into an Agreement for Transfer and Acceptance of Real Property and Joint Escrow Instructions pursuant to which Assignee agreed to accept fee title to the Properties from Assignor ("**Transfer Agreement**").

C. The Properties are subject to those certain leases identified on Exhibit 1 attached hereto and incorporated herein by reference ("**Leases**").

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Recitals.** All of the foregoing recitals are true and correct and are incorporated herein by reference.

2. **Assignment.** Assignor hereby assigns, sells, conveys, and otherwise transfers to Assignee all of Assignor's interests, rights, and obligations under the Leases. This assignment shall be effective as of the Effective Date (as defined below).

3. **Representations, Warranties and Covenants.** All Assignor's representations, warranties and covenants set forth in the Transfer Agreement shall survive the Closing and are incorporated into this Assignment Agreement.

4. **Due Execution.** The person(s) executing this Assignment Agreement on behalf of Assignor represent and warrant to Assignee that: (i) Assignor is duly organized and existing; (ii) they are duly authorized to execute and deliver this Assignment Agreement on behalf of Assignor; (iii) by so executing this Assignment Agreement, Assignor is legally bound to the provisions of this Assignment Agreement; and (iv) the entering into of this Assignment Agreement does not violate any provision of any other agreement to which Assignor is bound.

5. **Effect on Assigned Leases.** Nothing in this Assignment Agreement shall be deemed as modifying or otherwise affecting any of the provisions of the Leases.

6. **Indemnification.** Assignor agrees to indemnify, defend, and hold harmless Assignee and all persons and entities affiliated with Assignee including their respective officers, agents and employees from and against any and all claims, liabilities, and losses (collectively,

"Claims") arising out of the Leases arising before the Assignment Date, including any Claims arising as a result of any inaccuracies in Assignor's representations and warranties set forth in the Transfer Agreement and in this Assignment Agreement.

7. **Effective Date.** This Assignment shall be effective as of the date that the Properties are transferred to Assignee pursuant a grant deed recorded in the Official Records of the County of Fresno.

IN WITNESS WHEREOF, Assignor has executed this Lease Assignment as of the Assignment Date.

**ASSIGNOR:**

TFS INVESTMENTS, LLC,  
a limited liability company

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

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

**EXHIBIT 1**  
**IDENTIFICATION OF LEASES**