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Agenda Item: ID16-1005 (2:50 P.M.)

Date: 9/1/16

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Supplemental Information Packet

Agenda Related Item(s) – ID16-1005

Contents of Supplement: Purchase and Sales Agreement and Declaration of Covenants and Restrictions

Agenda Item Title

JOINT MEETING OF CITY (IN ITS CAPACITY AS HOUSING SUCCESSOR) AND FRESNO REVITALIZATION CORPORATION

Action pertaining to sale of 0.39 acres of property at 473 N. Glenn Ave. (APN 459-061-29T)

1. Adopt a finding of Categorical Exemption pursuant to CEQA Guidelines section 15332
2. Approve a Purchase and Sale Agreement between the City in its capacity as Housing Successor Agency and Brad Hardie and WITR, LLC.

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.

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

THE CITY OF FRESNO, a municipal corporation, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno ("Seller"), and BRAD HARDIE and WITR, LLC, ("Buyers"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer and Agency have executed it.

RECITALS

- A. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as APN 459-061-29T, Fresno, California, and more particularly described in Exhibit A, attached, (the "Property").
- B. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Fwy 99/Goldenstate Corridor Redevelopment Plan Area (the "Project Area"), in accordance with the California Community Redevelopment Law (Health and Safety Code Sections 33000, *et. seq.*; hereafter the "CRL"). The Plan and the CRL authorized the Agency to purchase property for redevelopment purposes.
- C. On January 26, 2012, the City Council adopted Resolution No. 2012-12 electing to retain the housing assets and housing functions previously performed by the Agency pursuant to Health & Safety Code Section 34176. Accordingly, the City of Fresno became the Housing Successor to the former Redevelopment Agency.
- D. The Buyer has agreed to purchase the entire parcel as-is.
- E. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

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

AGREEMENT

1. **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement. Sale of the Property is subject to compliance with Community Redevelopment Law of the State (California Health and Safety code Sections 33000 *et seq*).
2. **Conditions Precedent.** Closing shall be conditioned upon performance of all of obligations in this Agreement and satisfaction of the conditions listed in Sections 2.1, 2.2, and 2.3, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.
 - 2.1 **Compliance with CEQA.** The applicable lead agency shall have complied with the California Environmental Quality Act with respect to this Agreement, as applicable. The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA).
 - 2.2 Approval of this Agreement by City of Fresno in its capacity as the Housing Successor to the Redevelopment Agency.
 - 2.3 Execution of a Declaration of Covenants and Restrictions, to be recorded upon close of escrow.
3. **Purchase Price.** The purchase price for the Property is TWENTY THOUSAND DOLLARS (\$20,000.00) ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement (if any), will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.
4. **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Property from adjacent Property, encroachments from the Property onto adjacent Property, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with any code, statute, regulation, ordinance, judicial order, judicial holding, or other applicable law concerning the Property except Order Correction Notice #16-00005328.

The continued accuracy in all respects of Seller's representations and warranties shall be a condition precedent to Buyer's obligation to close. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Closing and shall survive the Closing. If any of the representations and warranties are not correct at the

time made or as of the Closing, Buyer may terminate this Agreement and there shall be no further liability on the part of Buyer to Seller.

5. **Opening Escrow/Escrow Deposit.** Within ten (10) business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with Old Republic Title Company at 7451 N Remington Ave #102, Fresno, CA 93711 ("Title Company"), Attention: Kimberly Peracchi.

5.1 **Agreement as Joint Escrow Instructions.** This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.

5.2 **Deposits into Escrow.** Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within fifteen (15) days after the agreement is executed, Buyer will deposit the balance of the Purchase Price and Seller will deposit, or will conditionally deliver to Buyer, a recordable grant deed duly executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any signatory executing such deed on behalf of Seller.

5.3 **Title.** Seller will convey title of the Property to Buyer AS IS, without regard to all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller.

5.4 **Title and Closing Costs.** Buyer will pay any costs of clearing and conveying title. Buyer will pay the cost of a CLTA or ALTA owner's title policy insuring Buyer's title in the condition described in Section 5.3. Escrow fees, costs to record the grant deed, etc., shall be split equally between Buyer and Seller.

5.5 **Closing.** The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Unless extended by the mutual consent of the parties, the escrow and this Agreement shall terminate if Closing does not occur within sixty (60) days following final execution of this Agreement (including attestation by the Clerk) (the "Outside Closing Date"). Seller's Executive Director is authorized to agree to administratively extend this Agreement as necessary to accommodate satisfaction of conditions precedent. Upon termination of the escrow, the Title Company will

return all funds and documents to the respective depositor, including deposit if Seller defaults under section 8.16, and this Agreement will be of no further effect except as herein provided. If Buyer defaults under section 8.17 this Agreement will be of no further effect except as herein provided.

- 5.6 **Recordation.** At Closing, Title Company shall date the grant deed, and all other undated documents in escrow, with the date of Closing, and the Title Company shall record the grant deed, Declaration of Covenants and Restrictions, and all other documents necessary to the Closing.
- 5.7 **Disbursements.** At Closing, Title Company shall disburse the Purchase Price, less Seller's costs to clear title (placing it in the condition set forth in Section 5.3), prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA or ALTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 5.9 **Broker.** Neither party engaged a broker for this transaction.
- 6. **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.
- 7. **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.
- 8. **Miscellaneous Provisions.**
 - 8.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
 - 8.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of service if served personally on the person to receive the notice, (b) on the date deposited in the U.S. mail, if delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and addressed to the relevant party at the address set forth below, (c) on the date of transmission if delivered by facsimile, to the number provided below, that provides a transmission confirmation showing

the date and time transmitted, or (d) on the date of transmission if delivered electronically via email and showing the date and time transmitted.

To Seller:

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

Attention: Executive Director

2344 Tulare Street, Suite 200

Fresno, CA 93721

Phone No.: 559.621.7600

Fax No.: 559.498.1870

To Buyer:

BRAD HARDIE

352 W. Bedford Ave. Suite 110

Fresno, CA 93711

Phone No.: 559.433.7613

WITR, LLC

Attention: Wayne Rutledge,

352 W. Bedford Ave. Suite 110

Fresno, CA 93711

Phone No.: 559.213.7373

- 8.3 **Entire Agreement.** Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.
- 8.4 **Amendment or Cancellation.** Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.
- 8.5 **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder without the consent of Seller.
- 8.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.

- 8.7 **Attorneys' Fees.** If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.
- 8.8 **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California.
- 8.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 8.10 **Waiver.** If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.
- 8.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 8.12 **Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.
- 8.13 **Precedence of documents.** If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.
- 8.14 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.
- 8.15 **Survival.** All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.
- 8.16 **Seller's Default and Buyer's Remedies.** If the sale of the Property is not consummated due to Seller's material default hereunder that is not cured within five (5) business days of Notice from Buyer of Default, then Buyer shall have the right, to elect, as its sole and exclusive remedy, to either (a) terminate this

Agreement by written notice to Seller, promptly after which the Deposit shall be returned to Buyer, (b) waive the default and proceed to close the transaction contemplated herein. Notwithstanding anything to the contrary contained herein, Seller shall not be deemed in default unless and until Buyer provides Seller with written notice of such default and Seller fails to cure such default within five (5) business days of its receipt of such written notice.

- 8.17 **Buyer's Default and Seller's Remedies.** If the sale of the Property is not consummated due to Buyer's material default, then Seller shall have the right, to elect, as its sole and exclusive remedy, to terminate this Agreement by written notice to Buyer.

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

BUYERS:

BRAD HARDIE, an individual

Dated: _____, 20__

WITR, LLC, a California limited liability company

By: Wayne Rutledge

Dated: _____, 20__

SELLER:

CITY OF FRESNO, in its capacity as Housing
Successor to the Redevelopment Agency of the
City of Fresno

By: _____
Marlene Murphey, Executive Director

Dated: _____, 20__

The City of Fresno has signed this Agreement pursuant to authority granted on _____,
20__

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By _____
Deputy

By _____
Deputy

Dated: _____, 20__

Dated: _____, 20__

Attachments:
Exhibit A: Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION

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

APN: 459-061-29T

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno, in its capacity as
Housing Successor to the
Redevelopment Agency of the City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement is recorded at the request and for the benefit of the City of Fresno in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

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

By: _____
Its: Executive Director

Dated: _____

DECLARATION OF COVENANTS AND RESTRICTIONS

by and between

City of Fresno in its capacity as Housing Successor to the Redevelopment Agency of the City of
Fresno,
a municipal corporation

and

Brad Hardie, an individual, and WITR, LLC, a California limited liability company

473 N. Glenn Avenue,
Residential Rental Project
Fresno, CA 93701

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this _____ day of September, 2016, by and between the CITY OF FRESNO in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno, a municipal corporation ("City"), and BRAD HARDIE and WITR, LLC, ("Buyers").

R E C I T A L S:

- A. Whereas, pursuant to a Purchase and Sale Agreement ("PSA" or "Agreement") by and between City and Buyer dated September _____, 2016, City has sold property APN 459-061-29T (Property) for the amount of approximately TWENTY THOUSAND DOLLARS (\$20,000.00), for the purpose of assisting Buyer in the acquisition of real property and the development of a multi-unit residential use.
- B. And whereas, Buyer agrees to redevelop, construct, and maintain and rent one (1) unit (the "Affordable Unit") to an extremely low income household earning 30 percent or less of the area median income, on that certain real property located in the City of Fresno, County of Fresno, State of California, more particularly described in Attachment "1" attached hereto and incorporated herein by reference (the "Site").
- C. Whereas, the City and Buyer now desire to place restrictions upon the use and operation of the Affordable Unit, to ensure that the Affordable Unit shall be operated continuously as a rental unit available for rental by an extremely low income household for the term of this Agreement.

A G R E E M E N T:

NOW, THEREFORE, the Buyer and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Affordable Unit shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of provision of an affordable housing unit.

In addition to the covenants and conditions contained in the Agreement, the following California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) affordability requirements shall be imposed upon one Affordable Unit on the Property under the Agreement and shall bind the Buyer and all purchasers of the Property and their successors for a fifty-five (55) year period (the "Affordability Period").

The Affordable Unit on the Property is held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set

forth in this Agreement, all of which are in furtherance of the Project, the Agency's Community Redevelopment Law and Plan Area obligations including obligations set forth at California Health & Safety Code including sections 33334.2 et seq. and 33413 (a). All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Affordable Unit upon the Property or any part thereof, will inure to the benefit of the City, and will be enforceable by it. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Affordable Units upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Agreement for the period of fifty-five (55) years running from and after recordation of this Agreement.

1. Restrictions. The following covenants and restrictions ("Restrictions") on the use and enjoyment of the Affordable Unit upon the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the Agency and shall run with the Affordable Units upon the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by City. From the date of recordation of this Agreement until the expiration of the Affordability Period the one (1) Affordable Unit under the Agreement is to be used as affordable rental housing. Unless otherwise provided in the Agreement, the term affordable rental housing shall include without limitation compliance with the following requirements:

- a. Nondiscrimination. There shall be no discrimination against nor segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall Developer or any person claiming under the Developer, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Property.
- b. Principal Residence. The Affordable Unit shall be sold or leased only to natural persons, who shall occupy such as a principal residence.
- c. Income Requirements. The Affordable Unit may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy is not greater than 30% of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable price/rental consistent with the applicable California Redevelopment Law.

2. Enforcement of Restrictions. Without waiver or limitation, the City shall be entitled to injunctive or other equitable relief against any violation or attempted violation of the Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

3. Acceptance and Ratification. All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the above Restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Restrictions, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Restrictions shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

4. Benefit. This Agreement and the Restrictions therein shall run with and bind the Property for a term commencing on the date this Agreement is recorded in the Office of the Recorder of the county Fresno, state of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of City and/or any other person entitled to enforce these Restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

5. Costs and Attorney's Fees. In any proceeding arising because of failure of Buyer or any future owner of the Property to comply with the Restrictions required by this Agreement, as may be amended from time to time, City shall be entitled to recover its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

6. Waiver. Neither Buyer nor any future owner of the Property may exempt itself from liability for failure to comply with the Restrictions required in this Agreement.

7. Severability. The invalidity of the Restrictions or any other covenant, restriction, condition, limitation, or other provision of this Agreement shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Agreement and each shall be enforceable to the greatest extent permitted by law.

8. Pronouns. Any reference in this Agreement and the Restrictions therein to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

9.. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Agreement are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Agreement or any provision hereof.

10.. Capitalized Terms. All capitalized terms used in this Agreement, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.

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IN WITNESS WHEREOF, the City and Owner have executed this Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

"CITY"

CITY IN ITS CAPACITY AS HOUSING
SUCCESSOR TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO, a
municipal corporation

By: _____
Marlene Murphey
Executive Director

ATTEST:
YVONNE SPENCE, CMC
City Clerk

Deputy

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

Deputy

"BUYER"

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTACHMENT "1"

LEGAL DESCRIPTION

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

APN: 459-061-29T