
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THE CITY OF FRESNO in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno, a public body, corporate and politic ("Seller" or "Housing Successor"), and Noyan Frazier Capital, L.P., a California limited partnership ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Agreement), effective as of the date of Council approval, notwithstanding the date of execution (Effective Date).

RECITALS

- A. The Seller owns certain real property commonly known as the Berkeley Building located at 877 Fulton Street (APN 468-282-21T), Fresno, California, and more particularly described in Exhibit A, attached, (Property).
- B. The City of Fresno is the housing successor in interest to the Redevelopment Agency of the City of Fresno pursuant to Resolution No. 2012-12, and as such assumes all housing rights and obligations of the former Redevelopment Agency.
- C. Buyer was granted an exclusive negotiating right for the Property as part of the Disposition and Development Agreement for the South Fulton Street Mixed Use Residential Rental Project dated March 15, 2016. The exclusive negotiating right was originally granted through December 31, 2017, administratively extended by letter from the City Manager dated December 13, 2017, through June 29, 2018, extended further by the First Amendment to DDA dated June 28, 2018, through April 11, 2020, and extended most recently by the First Amendment to Exclusive Negotiation Agreement dated April 9, 2020, through April 11, 2021 (ENA).
- D. Buyer paid an exclusive negotiating fee of \$5,000 pursuant to the ENA, to offset the costs of maintaining the Property for the past five years and the cost of obtaining an updated appraisal. This fee is not applied to the Purchase Price.
- E. The parties initially anticipated a Disposition and Development Agreement for the Property, but have determined a Purchase and Sale Agreement is appropriate in light of the proposed market rate project. Proceeds from the sale of this property will go into the Low and Moderate Income Housing Fund and be used to purchase affordable housing.
- F. Since the Property is subject to an ENA, it is not subject to the newly adopted provisions of the Surplus Land Act (Government Code 54220, et seq.), provided disposition of the Property is completed no later than December 31, 2022.
- G. The Buyer has agreed to purchase the Property as-is.
- H. 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.

2. **Conditions Precedent.** Closing shall be conditioned upon performance of all of obligations in this Agreement and satisfaction of the conditions listed below, 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.

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

2.3 **Building Plans.** A complete set of plans have been submitted to the City for review.

2.4 **Proof of Financing.** Proof of available financing has been submitted and approved by the Seller.

3. **Purchase Price.** The purchase price for the Property is \$800,000 ("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. **Sale "AS IS" - No Warranties.** Subject to the terms and conditions contained herein, City will convey the Property "AS IS" with all faults, including, without limitation, the conditions disclosed in any toxics reports delivered to Buyer, and any environmental or other physical conditions on or under the Property, buried debris or structures, and soil compaction, presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, and the suitability of the Property for the development purposes intended.

5. **Opening Escrow/Escrow Deposit.** Within ten business days after the Effective Date, the parties will open an escrow ("Escrow") with _____ ("Title Company"), Attention: _____, and Buyer shall deliver to the Title Company a nonrefundable deposit of \$25,000 (Initial Earnest Money Deposit), which shall be credited toward the Purchase Price.

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. Prior to Closing, 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 and the Title Company is otherwise able to record the grant deed. The escrow and this Agreement shall terminate if Closing does not occur by October 8, 2021. If this Agreement is terminated prior to closing, the Initial Earnest Money Deposit is nonrefundable, and this Agreement will be of no further effect except as herein provided. No further extension of the Closing date shall be granted.

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 and all other documents necessary to the Closing.

5.7 **Disbursements.** At Closing, Title Company shall disburse the Purchase Price, less any Deposits previously disbursed and credited toward the Purchase Price, if any, to Seller, when Title Company is committed to issue a standard CLTA or ALTA owner's title insurance policy to Buyer, 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.

6. **Emergency Repairs.** In the event the Property becomes a health and safety risk, the Seller may, at the Seller's sole option, remediate the health and safety risk including, without limitation, demolition of the building, and the reasonable cost thereof shall be added to the Purchase Price and paid to Seller at the Closing.

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

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

9. **Buyer's Right to Enter and Inspect the Property.** During the escrow period, 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.

10. **Parking.** Seller agrees to negotiate in good faith with Buyer to provide parking at market rate within the Fulton Corridor.

11. **Miscellaneous Provisions.**

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

11.2 **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 of Fresno in its capacity as Housing Successor
Attention: Executive Director
848 M Street, 3rd Floor
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:

Noyan Frazier Capital, L.P.
685 W Alluvial, #101
Fresno, CA 93711
Phone No.:
Fax No.:

11.3 **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.

11.4 **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.

11.5 **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. Buyer may not assign this Agreement without the express written consent of Seller.

Buyer may not assign this Agreement without the consent of Seller which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer shall have the right to transfer Buyer's rights and obligations under this Agreement without Seller's consent to a limited liability company, corporation, joint venture or partnership which satisfies all of the following requirements (a "Permitted Transferee"): (i) Buyer, or a corporation or other entity controlling, controlled by or under common control with Buyer (a "Buyer Affiliate"), owns at least a fifty percent (50%) in the Permitted Transferee, (ii) Buyer or a Buyer Affiliate is responsible for the day-to-day management of the Permitted Transferee, (iii) the Permitted Transferee assumes all obligations of Buyer under this Agreement, and (iv) Buyer promptly notifies Seller in writing of such transfer and assumption of obligations and, upon Seller's request, provides Seller with copies of the operative documents that evidence compliance with the foregoing requirements. No assignment shall relieve Buyer of its obligations hereunder.

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

11.7 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.

11.8 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.

11.9 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.

11.10 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.

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

11.12 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.

11.13 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.

11.14 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.

11.15 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.

11.16 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 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 Deposits 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 business days of its receipt of such written notice.

11.17 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, after which the Deposits shall be forfeited.

12. Seller's Right to Buy Back Property. If Buyer has not obtained certificate of Occupancy within 24 months following issuance of building permits, Seller shall have the right to buy back the Property at current fair market value or the Purchase Price, whichever is less.

12.1 Within 180 days of the date that is 24 months from the issuance of building permits, Seller may exercise its right to purchase by notifying Buyer in writing of its intent to purchase. Within ten days of notice, Buyer shall execute a purchase agreement in a form provided by Seller.

12.2 This Section shall survive the Closing.

12.3 Nothing in this Section is intended to limit any other the rights of the City or Housing Successor, including, without limitation the rights of Code Enforcement to abate dangerous conditions.

13. Condemnation. If, before the Closing Date, either Buyer or Seller receive notice of any condemnation or eminent domain proceeding, or any proceeding in lieu of condemnation being initiated against the Property, the party receiving the notice shall promptly notify the other party of that fact. Buyer may elect within thirty (30) days after the date the notice is received to either: (a) proceed with the purchase of the affected portion of the Property as contemplated by this Agreement, and if so, all condemnation proceeds shall be paid to Buyer (or assigned if not yet collected); (b) reduce the Purchase Price by the amount of the condemnation proceeds, and if so, all condemnation proceeds shall be paid to Seller; or (c) terminate the Agreement with respect to such portion.

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

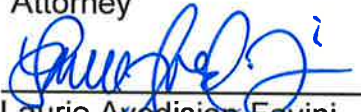
SELLER:

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__

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

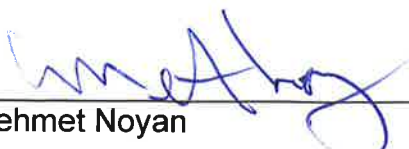
By:  3/30/21
Laurie Avedisian-Favini Date
Assistant City Attorney

ATTEST:
YVONNE SPENCE, CMC
City Clerk

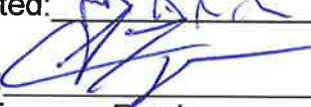
By: _____
Deputy

BUYER:

NOYAN FRAZIER CAPITAL, L.P.

By: 
Mehmet Noyan

Dated: March 25, 2021

By: 
Terance Frazier

Dated: 3/25, 2021

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: 468-282-21T

LEGAL DESCRIPTION

EXHIBIT "A"

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

Lots 1, 2 and 3 in Block 74 of the TOWN (now City) of Fresno, according to the map thereof recorded December 10, 1888 in Book 4, Page 2 of Plats, records of said County.

EXCEPTING THEREFROM the Southeasterly 4.32 inches of Lot 3 in Block 74.

APN: 468-282-21