



AGENCY ITEM NO. 10:45 AM C

AGENCY MEETING: 03-31-09

APPROVED BY


(Executive Director)

REPORT TO THE REDEVELOPMENT AGENCY

DATE: March 31, 2009

FROM: Marlene Murphey, Executive Director

SUBJECT: Conditionally authorize the Executive Director to enter into a Purchase and Sale Agreement for the property located at 4035 E. Ventura Street (APN 461-272-11) owned by Ara Adanalian. The property is within the Southeast Fresno Revitalization Project Area.

RECOMMENDATION

Grant conditional authorization to the Executive Director to enter into a Purchase and Sale Agreement for the purchase of Assessor Parcel Number 461-272-11, located within the Southeast Fresno Revitalization Project Area; and to take the necessary actions to close escrow.

EXECUTIVE SUMMARY

The Agency is seeking authorization to make a voluntary acquisition of a vacant parcel located at 4035 E. Ventura Street in the Southeast Fresno Revitalization Project Area, per the attached Purchase and Sale Agreement. The 11,250 sf. vacant parcel is located just west of the Ventura and Eleventh Street intersection and is zoned C-6.

The advantage of this voluntary acquisition is for blight removal along a highly visible corridor, and the prospect of a higher density use of the land that would be consistent with the Southeast Fresno Revitalization Plan.

The RDA has recently purchased the adjacent vacant building and parking lot at 4007-4017 Ventura on the corner of Ventura and Tenth Streets. The purchase of the subject property on the same block will enable the Agency to assemble a more development-ready parcel. The RDA has been meeting with various Developers that are interested in revitalizing several strip malls and vacant land in Southeast Fresno. The subject parcel, along with the recently acquired adjacent property could be marketed and made available to a developer through a competitive "Request for Proposal/Qualifications" process.

The Agency received an appraisal effective October 1, 2008 by Kenneth Hopper, MAI, that values the property at \$117,300, the agreed upon purchase price. The RDA would also incur nominal typical closing costs such as legal, title, and escrow costs estimated between \$3,000 to \$5,000. The RDA has also agreed to pay \$3,925 towards the soil abatement of the site.

The Housing and Community Development Commission (HCDC) reviewed this item for recommendation to the Agency Board on Wednesday, March 11, 2009 and it passed unanimously.

BACKGROUND

In 2000, the RDA began engaging in activities necessary to execute and implement the Redevelopment Plan adopted for Southeast Fresno including acquisition of blighted properties proposed for new mixed-use and other development throughout the Ventura/Kings Canyon Corridor. It is the Agency's goal to work in partnership with the private sector to revitalize and beautify this major arterial to both the Sierra's and Downtown Fresno. The concept of the redevelopment plan is to focus on blighted and underutilized areas that have been identified in the City's General Plan for commercial, residential, and industrial uses in the Project Area.

This corridor has received several million dollars worth of RDA investment in the last five years with the median island improvements on Ventura from First to Chestnut, the recently-updated Fresno Fair sign, the on-going Storefront Improvement Program, and the future mixed-use senior housing project on Seventh and Ventura.

The subject property has been identified for acquisition to remove blight and serve as a potential location for future development. The acquisition furthers the Southeast Fresno Revitalization Project Area's goals and objectives for the removal of blight, to increase the area's potential attraction of new investments, to improve the area's image, and accommodate larger scale urban uses necessary for the revitalization of this commercial corridor.

The Agency retained and received an appraisal (effective October 1, 2008) by Kenneth Hopper, MAI, indicating the market value of the real property at \$117,300.

Staff and the Sellers have negotiated the attached Purchase and Sale Agreement. The sellers have agreed to sell the property for its appraised amount of \$117,300. Escrow conditions include provisions to ensure the property is not encumbered or clouded by lease/sublease and/or probate interests and rights.

A Phase-One Environmental Assessment and a Phase II Soil Assessment were conducted by Krazan & Associates. The upper approximate 1.5 feet of impacted soils would need to be characterized, excavated, and properly disposed at a landfill. The cost estimate to perform this service would be approximately \$7,850. The Agency has agreed to split this cost with the seller.

- Attachments:**
1. Location Map/Aerial Map
 2. Purchase & Sales Agreement



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

THE REDEVELOPMENT AGENCY, a public body, corporate and politic ("Buyer"), and Ara Adanalian, Trustee of the Ara Adanalian Declaration of Trust "established November 16, 2007" ("Seller"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. The Agency is responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Southeast Fresno Redevelopment Revitalization Project a (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 authorize the Agency to purchase property for redevelopment purposes.
- B. The Seller owns certain Real Property within the Project Area, and the City of Fresno, commonly known as 4035 E. Ventura, Fresno, California 93702, and more particularly described in Exhibit A, attached, (the "Property").
- C. To further redevelopment in the Project Area, the Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

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.** Escrow Closing and Buyer's obligation to purchase the Property are subject to the satisfaction of the following conditions precedent. The conditions are solely for Buyer's benefit unless otherwise indicated. Each condition must be satisfied or Buyer must waive it in writing within the time provided. If no time is stated, then the condition must be satisfied within a reasonable time. If any condition is not timely satisfied, the Buyer may waive the condition and close escrow, or it may terminate this Agreement by giving the Seller and Title Company 10 days' written notice. After expiration of the 10 days, this Agreement, and any escrow will terminate. In addition, Buyer, at Buyer's option, may delay close of escrow to allow for satisfaction of the conditions. The Title Company will return any documents and money deposited into escrow to the depositor, after deducting any escrow cancellation fee, and Buyer will have no further obligation to Seller.

- 2.1 **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, (c) Buyer indemnifies and holds Seller harmless from any costs or liability resulting from the tests or investigations and, if the escrow is canceled for a reason that is not the fault of Seller, for any damage to the Property resulting from Buyer's tests and investigations.
 - 2.2 **Compliance with CEQA.** The Property shall be in compliance with the California Environmental Quality Act, as applicable.
 - 2.3 **Tenant Has Vacated Property.** The current tenant of the Property shall have completely vacated the Property and the Property shall otherwise be vacant.
 - 2.4 **Buyer Has Received and Approved Phase I Environmental Report.** Buyer shall have received and approved a Phase I Environmental Report on the Property.
- 3 **Purchase Price.** The purchase price for the Property is ONE HUNDRED SEVENTEEN THOUSAND THREE HUNDRED DOLLARS (\$117,300⁰⁰). Buyer will pay the purchase price by depositing a check into the escrow in time to meet the Title Company's requirements regarding immediately available funds for 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, encroachments on the Property from adjacent properties, encroachments from the Property onto adjacent properties, 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, or judicial holding concerning the Property; (d) Seller has no knowledge of any hazardous materials or substances stored, discharged, or otherwise present in, on, or affecting the Property, (e) Seller has no knowledge of any material defects in the Property, and (f) the Property is free of occupancies excepting only those stated in Section 5 hereof. These warranties shall survive the Closing and the recording of the grant deed.
- 5 **Property Vacant.** Seller represents and warrants that the Property is currently vacant. The subject property, APN#461-272-11, is a 11,250 sf vacant parcel. Seller shall not rent, re-rent, or otherwise permit any part of the Property to be occupied, after the Seller executes this Agreement until the earlier to occur of the following: (a) Closing, (b) failure of the Agency

Board to approve this Agreement, or (c) or other termination of this Agreement. Since the Property is vacant, no relocation is required.

6 **Opening Escrow.** The parties will open an escrow with Fidelity National Title Company at 8050 N Palm Avenue, Suite 110, Fresno, California 93711 ("Title Company"), Attention: Bernadette Watson.

6.1 **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.

6.2 **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 five days after the Agency Board approves this Agreement, Seller will deposit a recordable grant deed, substantially in the form attached as Exhibit "B," into the escrow with Title Company, or will conditionally deliver it to Buyer.

6.3 **Title.** Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller, subject only to title exceptions numbered 1, 2, 3, 4, 5, 6, 7, and 8 in the preliminary title report, Order No. 08-284153-ak, issued by the Title Company, effective as of September 23, 2008 at 7:30am.

6.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 6.3, above. Buyer will pay the costs of a CLTA owner's title policy insuring Buyer's title in the condition described in Section 6.3, escrow fees, and costs to record the grant deed. Buyer and Seller will pay any other costs according to the custom in Fresno County.

6.5 **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 any conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. The escrow will continue in effect until Closing unless Buyer or Seller gives a 30-day written demand to terminate the escrow. If Seller demands that escrow terminate, then Buyer, within the 30 days, may either (a) deposit the purchase price into escrow, and Title Company will Close escrow, or, (b) it may agree to the demand, and the Title Company will terminate the escrow and return all funds or all documents, less any termination fee, and this

Agreement will be of no further effect except as herein provided.

- 6.6 **Disbursements.** At Closing, Title Company may disburse the purchase price, less Seller's costs to clear title, prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 6.3, above, for the purchase price or such lesser amount as Buyer may designate.
- 6.7 **Prorations.** At Closing, the Title Company will prorate the following, between Seller and Buyer, based on a 30-day month: real property taxes, special assessments, and rents, if any.
- 6.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 6.9 **Broker.** Any commission is the sole responsibility of Seller. Seller holds Buyer harmless and shall indemnify Buyer against any claims for commission.
- 7 **Delivery of Possession.** Seller shall deliver possession at Closing, subject to Buyer's responsibilities under applicable law to relocate any occupants.
- 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 duly given on the date of service, if (a) served personally on the person to receive the notice, (b) 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, or (c) by facsimile that provides a transmission confirmation showing the date and time transmitted.

To Seller:

Ara Adanalian
6132 E. Lane Avenue
Fresno, CA California 937217

To Buyer:

Redevelopment Agency of the City of Fresno
Attention: Executive Director

2344 Tulare Street, Suite 200
Fresno, CA 93721

Fax No.: (559) 498-1870

- 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.
- 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.
- 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.
- 9 **Environmental Indemnity.** Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before Closing. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the Agency by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

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

BUYER:
REDEVELOPMENT AGENCY OF
THE CITY OF FRESNO

MARLENE MURPHEY
Executive Director

Dated: _____, 2009

SELLER:

Ara Adalian Declaration of Trust established
November 16, 2007

Ara Adalian
By: Ara Adalian, Trustee

Date: 2-24-09, 2009

The Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted by the Redevelopment Agency Board on _____.

ATTEST:
REBECCA E. KLISCH
Ex-officio Clerk

By _____
Deputy

Dated: _____, 2009

APPROVED AS TO FORM:
JAMES C. SANCHEZ
Ex-officio Attorney

By James C. Sanchez
Deputy/Sr. Deputy/Assistant

Dated: Feb. 24, 2009

Attachments:

Exhibit A: Legal Description
Exhibit B: Grant Deed

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 461-272-11

Lots 23, 24, and 25 in Block 65 of East Fresno, according to the Amended Map of a portion of East Fresno, recorded in Book 3, Page 51 of Record of Surveys, Fresno County Records.

EXHIBIT "A"

Recording Requested By:
Redevelopment Agency of the
City of Fresno
No Fee-Government Code Sections
6103 and 27383

When Recorded Mail to:
Redevelopment Agency of Fresno
2344 Tulare Street, 2nd Floor
Fresno, CA 93721

APN: 461-272-11

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Ara Adanalian, Trustee, GRANTOR, hereby GRANTS to the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic, all that real property situated in the City of Fresno, County of Fresno, State of California, described as follows:

APN 461-272-11

Lot 23, 24 and 25 inclusive in Block 65 of East Fresno, according to the Amended Map of a portion of East Fresno, recorded in Book 3, Page 51 of Record of Surveys, Fresno County Records.

Ara Adanalian Declaration of Trust
established November 16, 2007

By: Ara Adanalian, Trustee

Date: _____, 2009

EXHIBIT "B"