



**REPORT TO THE REDEVELOPMENT AGENCY**

AGENCY ITEM NO. 8:30AM "F"

AGENCY MEETING: 1/20/11

APPROVED BY



(Executive Director)

**DATE:** January 20, 2011

**FROM:** Marlene Murphey, Executive Director

**BY:** Terry Cox, Project Manager

**SUBJECT:** Authorize the Executive Director to enter into a Purchase and Sale Agreement for the property located at 731 E California Street (APN 467-246-01) owned by Graves and Halls Properties, LLC and Earl Brown; and to take all other actions as necessary and consistent with Agency Board approval. The property is located within the Southwest Fresno General Neighborhood Renewal Project Area.

**RECOMMENDATION**

Grant authorization to the Executive Director to enter into a Purchase and Sale Agreement for the purchase of Assessor Parcel Number 467-246-01, located within the Southwest Fresno General Neighborhood Renewal Project Area, and to take the necessary actions to close escrow

**EXECUTIVE SUMMARY**

The Agency is seeking authorization to make an acquisition of a vacant commercial building located at 731 E California Street in the Southwest Fresno General Neighborhood Renewal Project Area, per the attached Purchase and Sale Agreement. The property, located on California Street just west of Martin Luther King Blvd. and east of Tulare Street is on a 11,326 sf lot zoned C-5.

The Agency received an appraisal effective January 4, 2011 by Carstens' Appraisal Services, that values the property at \$309,929, the agreed upon purchase price.

The acquisition of this property will complete the assembly of 4.68 acres for the proposed California Triangle mixed-use project. The project will support mixed income housing as well as potential commercial development along the California Avenue street frontage. The project will enhance the appearance of California Avenue and facilitate the required widening of California Avenue. Upon completing acquisition of this property, the Agency will prepare and solicit a request for proposals for the development of this site. In addition to the acquisition costs, the Agency would incur nominal typical closing costs such as legal, title, and escrow costs estimated between \$3,000 and \$5,000

This project is consistent with the goals and objectives for implementation of the Southwest Fresno General Neighborhood Renewal Area (GNRA) and the California Avenue

Revitalization Plan. The project conforms to the Subsequent Environmental Impact Report (SCH No 20010041058).

**BACKGROUND**

This property has been identified for acquisition as necessary to complete assembly of a 4.68 acre mixed use project. The acquisition furthers the Southwest Fresno General Neighborhood Renewal Area 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 provide mixed uses that may include affordable and market rate housing as well as commercial and retail uses to serve the neighborhood.

The Agency retained and received an appraised value of \$309,929, effective January 4, 2011 by Carstens' Appraisal Services, for the property.

Staff and the Seller have negotiated the attached Purchase and Sale Agreement. The seller has agreed to sell the property for the appraised amount of \$ 309,929. The building is currently vacant and the acquisition of the parcel will not require relocation assistance. Escrow conditions include provisions to ensure the property is not encumbered or clouded by lease/sublease and/or probate interests and rights.

On January 12, 2011 the Housing and Community Development Commission (HCDC) voted unanimously to recommend this item to the Agency Board.

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

Sylvesta Hall Property  
731 E. California  
apn 467-246-01

### Location Map



California Triangle Project Area



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

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THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic ("Buyer" or "Agency"), and Graves and Halls Properties, LLC, a California limited liability company, and Earl W Brown, an individual (collectively, the "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 Southwest Fresno General Neighborhood Renewal Project 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 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 731 E. California Street, Fresno, California 93706, 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.** Buyer's obligation to proceed to Closing shall be conditioned upon Seller's performance of all of obligations in this Agreement and satisfaction of the conditions listed in Sections 2.1 and 2.2, provided that Buyer may, in Buyer'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.** Buyer shall obtain a Phase I Environmental Site Assessment with findings satisfactory to Buyer

3     **Purchase Price.** The purchase price for the Property is THREE HUNDRED NINE THOUSAND NINE HUNDRED TWENTY-NINE AND 00/100 DOLLARS (\$309,929.00) (“Purchase Price”). 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, judicial holding, or other applicable law concerning the Property; (d) Seller has no knowledge of any hazardous materials or substances (as now or hereafter defined in any law, regulation, or rule) stored, discharged, or otherwise present in, on, or affecting the Property; (e) Seller has no knowledge of any material defects in the Property

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.** 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.

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, including but not limited to a quitclaim deed executed by the spouse of Earl W Brown and deposited into escrow by Earl W Brown. Within five (5) days after the Agency Board approves this Agreement, Seller will deposit into the escrow with Title Company, or will conditionally deliver to Buyer, a recordable grant deed, substantially in the form

attached as Exhibit "B," 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 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, 4, 5, 7, 10, and 12 in the preliminary title report, Escrow No. 11-295893-BW, effective as of December 30, 2010 at 7:30A.M., which is attached hereto and incorporated herein as Exhibit "C."
- 5.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 5.3, above. Buyer will pay the costs of a CLTA owner's title policy insuring Buyer's title in the condition described in Section 5.3, escrow fees, and costs to record the grant deed. Buyer and Seller will pay any other costs according to the custom in Fresno County
- 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 any conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Unless extended by 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 Ex-officio Clerk). Upon termination of the escrow, the Title Company will return all funds and documents to the respective depositor, less any termination fee, and 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 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, 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 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Prorations.** At Closing, the Title Company shall prorate the following, between Seller and Buyer, based on a 30-day month real property taxes, special assessments, and rents, if any

- 5 9 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 5 10 **Broker.** Any commission is the sole responsibility of Seller. Seller holds Buyer harmless and shall indemnify and defend Buyer against any claims for commission.
- 6 **Delivery of Possession.** Seller shall deliver possession at Closing, subject to Buyer's responsibilities, if any, under applicable law to relocate any occupants.
- 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 **Damage, Destruction, Condemnation.** If the improvements on the Property are destroyed or materially damaged or if condemnation proceedings are commenced against the Property between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Property, all proceeds of insurance or condemnation awards payable to Seller by reason of the destruction, damage, or condemnation shall be paid or assigned to Buyer; Seller shall also pay to Buyer the amount of any deductible and coinsurance under any policy. In the event of nonmaterial damage to the Property, which damage Seller is unwilling to repair prior to Closing, Buyer shall have the right either to terminate this Agreement or accept the Property in its then existing condition, in which case Buyer shall be entitled to a reduction in the Purchase Price to the extent of the cost of repairing the damage. If Buyer elects to terminate this Agreement pursuant to this Section, escrow shall terminate and neither party shall have any further duties or responsibilities under this Agreement.
- 9 **Miscellaneous Provisions.**
- 9 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.
- 9.2 **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, or (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.

**To Seller:**

Sylvesta Hall  
Graves and Hall Properties, LLC  
731 E California Street  
Fresno, CA 93706  
Fax No.:  
Phone No.:

Earl W Brown  
731 E California Street  
Fresno, CA 93706  
Fax No.:  
Phone No.:

**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  
Phone No.: (559) 621-7600

- 9.3 **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.
- 9.4 **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.
- 9.5 **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
- 9.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.7 **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.

- 9.8 **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.
- 9.9 **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.
- 9.10 **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.
- 9.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.12 **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.
- 9.13 **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.
- 9.14 **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.
- 9.15 **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.
- 9.16 **Seller Obligations.** As between Graves and Halls Properties, LLC, a California limited liability company, and Earl W. Brown, all liability of Seller arising under this Agreement, including but not limited to paragraph 10, shall be joint and several and shall not be limited to either seller's interest in the Property.

10 **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 set forth below

*[Signatures on following page.]*

BUYER.

SELLER.

REDEVELOPMENT AGENCY OF  
THE CITY OF FRESNO

Graves and Halls Properties, LLC,  
a California limited liability company;

By: \_\_\_\_\_  
MARLENE MURPHEY  
Executive Director

By: \_\_\_\_\_  
Name: Sylvesta Hall  
Its: \_\_\_\_\_

Dated. \_\_\_\_\_, 2011

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Name: Sylvesta Hall  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2011

Earl W Brown

\_\_\_\_\_  
Earl W Brown

Dated. \_\_\_\_\_, 2011

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

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

By \_\_\_\_\_  
Deputy

By \_\_\_\_\_  
Deputy/Sr Deputy/Assistant

Dated. \_\_\_\_\_, 2011

Dated. \_\_\_\_\_, 2011

Attachments:

- Exhibit A: Legal Description
- Exhibit B: Grant Deed
- Exhibit C: Preliminary Title Report

**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

All of Block 5 of Kearney Boulevard Heights, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 5 Page 59 of record of Surveys, Fresno County Records.

APN 467-246-01

**EXHIBIT "B"**

**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, 2<sup>nd</sup> Floor  
Fresno, CA 93721

APN 467-246-01

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Graves and Halls Properties, LLC, a California limited liability company, and Earl W Brown, an individual, (collectively, "GRANTORS"), hereby GRANT 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:

All of Block 5 of Kearney Boulevard Heights, in the City of Fresno, County of Fresno, State of California, according to the map recorded in Book 5 Page 59 of record of Surveys, Fresno County Records.  
APN 467-246-01

Graves and Halls Properties, LLC,  
a California limited liability company

Earl W Brown

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

Name: Sylvesta Hall

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

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Earl W Brown

Dated \_\_\_\_\_, 2011

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

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

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

Dated: \_\_\_\_\_, 2011

**EXHIBIT "C"**

[Preliminary Title Report]