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1:30pm - C  
3/8/11



FRESNO County Recorder  
Paul Dictos, C.P.A.

**DOC- 2011-0089283**

Wednesday, JUL 06, 2011 14:44:54

Ttl Pd \$0.00

Nbr-0003467950

APR/R1/1-49

Recording Requested by and  
When Recorded Return to:

**CITY CLERK**  
**2600 FRESNO STREET**  
**FRESNO, CA 93721-3603**

SPACE ABOVE LINE FOR RECORDER'S USE

**REDEVELOPMENT AGENCY OF THE CITY OF FRESNO  
FULTON REDEVELOPMENT PLAN**

**OWNER PARTICIPATION AGREEMENT**

THIS AGREEMENT (the "**Agreement**"), is entered into this 9<sup>th</sup> day of March, 2011 (the "**Effective Date**"), by and between the Redevelopment Agency of the City of Fresno, a public body corporate and politic (the "**Agency**"), and Harry R. and Daniel C. Boyajian DBA Sam's Party Rentals whose offices are located at 1950 Broadway/16 Yosemite Fresno California 93721 (collectively, the "**Owner-Participants**").

RECITALS:

A. The Fresno City Council and the Agency adopted the Fulton Redevelopment Project Area Plan on June 30, 1998, by Ordinance No. 98-42, and subsequently amended the redevelopment plan two times by way of Ordinance 2008-9 adopted February 26, 2008, and 2010-28 adopted on July 22, 2010, in compliance with the provisions of CRL ("**Fulton Project**" or "**Plan**"); and

B. The Fulton Redevelopment Project Area Plan (the "**Project or Plan**") provides for the participation and the redevelopment of property in the project area subject to the Plan (the "**Project or Plan**") by the owners of property who agree to participate in the redevelopment in conformity with the Plan by entering into a binding agreement with the Agency; and

C. Owner-Participant is the owner in fee simple of property in the Project Area which is depicted and legally described on Exhibit A (the "**Property**") attached hereto and incorporated by reference herein; and

D. Owner-Participant desires to participate in the use, operation, maintenance, development and redevelopment of its Property in the Project Area in a manner consistent with the criteria and in conformity with the terms of this Agreement and the Plan.

NOW, THEREFORE, in consideration of the mutual promises and the respective obligations, conditions and covenants herein, the Agency and the Owner-Participant agree as follows:

AGREEMENT

1. The Plan, including all future amendments thereto, and the "Owner Participation Rules governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Fulton Redevelopment Project Area", as adopted by Resolution 1483 on May 26, 1998, and as amended from time to time (the "**Rules**"), are attached hereto as Exhibit "G" and incorporated herein by this reference, and are made a part of this Agreement with the same force and effect as though set forth in full herein.

2. The Agency has determined that certain work and improvements (collectively, the "**Improvements**") on the Property are necessary to make the Property and the Owner Participant's use thereon conform to the uses permitted by the City of Fresno, and the applicable standards, covenants, restrictions, conditions, controls and requirements of the Plan and the Rules. The Improvements are described on Exhibit B, attached hereto and incorporated by reference herein. Prior to the Effective date of the Owner Participation Agreement, the Owner Participant will provide the Agency with a signed Parking Lease Agreement with Fulton Plaza, LLC, A California Limited Liability Company. Within 10 days after the Effective Date, the Owner Participant shall commence, and shall thereafter diligently pursue to completion within the time set forth in Exhibit "C", all steps necessary to construct and install the Improvements. The Improvements shall be constructed and installed in accordance with Exhibit "B", other provisions of this Agreement, the Plan, all applicable federal, state and local codes, ordinances, regulations and standards, and any site plan and building plans as approved by the City of Fresno (the "**City**") and the Agency. The Owner Participant shall pay or otherwise be responsible for all direct and indirect costs in connection with the Improvements, including without limitation development and building fees, architecture and engineering, construction work and labor, insurance, interim financing, and other items necessary or appropriate to complete the Improvements.

If, during the period the Improvements are being constructed and installed, the Owner Participant desires to make any change to the site plan or building plans which the City or the Agency have previously approved for the project, the Owner participant shall submit the proposed change to the Agency and the City for review. The Agency and the City shall approve or reject the proposed change within 15 working days after submittal. If the Agency or the City finds that the proposed change is not in conformity with this Agreement, the Plan, or applicable federal, state or local codes, regulations or standards, the Agency shall reject the proposed change and so notify the Owner Participants, setting forth the reasons for rejection. The Owner Participants may thereafter resubmit the proposed change for review in accordance with this paragraph.

Upon completion of the Improvements, the Owner Participant shall so notify the Agency. Within ten days after such notice, the Agency shall inspect the Improvements. When the Agency determines that the Improvements have been completed fully in accordance with this Agreement, the Plan, and applicable codes, regulations and standards, the Agency shall promptly deliver to the Owner Participant an appropriate document certifying such completion (the "**Release of**

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**Construction Covenants**”). The Agency shall not unreasonably withhold the Release of Construction Covenants. The Release of Construction Covenants shall be, and shall state that it is, conclusive evidence that the Owner Participant and its successors and assigns have satisfied all agreements and obligations in this Agreement with respect to completion of the Improvements and the dates for beginning and completion thereof. The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Fresno County Recorder’s Office. The Release of Construction Covenants shall not be evidence of compliance with or satisfaction of any obligation of the Owner Participant to any holder of a mortgage or trust deed arising from or related to money loaned to finance acquisition of the Property, the Improvements or any part of either.

3. (a) The Owner-Participant covenants for itself, its heirs, executors, administrators, successors and assigns, and all persons claiming under or through any of them, that the Owner-Participant, its heirs, executors, administrators, successors and assigns, and all persons claiming under or through any of them shall:

(i) Continue to devote, use, operate and maintain the Property, the Improvements and all improvements now or hereafter existing thereon, including uses which are ancillary to the existing use, in conformity with this Agreement, the Plan and the Rules, as amended, and all applicable federal, state and local laws, ordinances, codes, regulations and standards; and shall submit for the Agency’s review and approval all site, development or building plans for modifications or additions to such uses, including but not limited to plans for façade treatment, signs, and fencing to be attached to structures on the Property, to ensure their consistency with the existing use or other uses specified in the Plan as then in effect and the standards, covenants, restrictions, conditions, and requirements of the Plan and the Rules as then in effect. The Agency’s review shall be in addition to and without limitation on review by the City and any other federal, state or local governmental agency having jurisdiction. The Agency shall approve or reject the proposed plans within 15 working days after submittal. If the Agency finds that the proposed plans are not in conformity with this Agreement, the Plan or the Rules as then effect, or applicable federal, state or local laws, ordinances, codes, regulations or standards, the Agency shall reject the proposed plans and so notify the Owner Participant, setting forth the reasons for the rejection. The Owner Participant may thereafter modify and resubmit the proposed plans for further review by the Agency in accordance with this subject subparagraph.

(ii) Not effect or execute any agreement, lease, conveyance or other instrument whereby the Property or any part thereof or interest therein is restricted upon the basis of race, religion, color, creed, sex, marital status, ancestry, or national origin, in the sale, lease, rental or occupancy thereof.

(iii) Not discriminate against or segregate any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property, any interest therein, or any improvements erected or to be erected thereon, nor shall the Owner-Participant itself, or any person claiming under-or through it, establish any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy

of tenants, lessees, subtenants, sub-lessees, or vendees in the Property.

(iv) Provide in all leases, subleases or conveyances affecting the Property or any part thereof or interest therein that no person shall, on the ground of race, color, creed, religion, sex, marital status, ancestry, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity on the Property as contemplated by this Agreement.

(v) Comply with all federal, state and local laws in effect from time to time prohibiting discrimination or segregation by reason of race, religion, color, creed, sex, marital status, ancestry, or national origin, in the sale, lease or occupancy of the Property.

The covenant set forth in Subparagraph 3(a)(i) above shall remain in effect during the life of the Plan; the covenants in Subparagraphs 3(a)(ii) through 3(a)(v) shall remain in effect in perpetuity, and shall be interpreted and applied in accordance with state and federal law as amended from time to time.

(b) The Owner Participant shall not be entitled to, and the Development Department of the City of Fresno shall not issue or approve, any building permit for new construction or rehabilitation work on the Property until the Agency has issued and delivered to the Development Department a document certifying that the new construction or rehabilitation work will be in full and complete compliance with the uses permitted by, and all applicable standards, covenants, restrictions, conditions, controls and regulations specified in, the Plan and the Rules as then in effect.

4. So long as the Owner-Participant and any of its lessees of the Property or any part thereof fully conforms to Paragraphs 2 and 3 above:

(a) The Owner-Participant will be permitted to remain as a conforming owner and the Agency will not acquire the Owner-Participant's Property through the exercise of eminent domain without the Owner-Participant's consent.

(b) The Owner-Participant has applied for and will participate in the Commercial Rehabilitation Loan Program (the "**Program**") that is established by the Agency for the Project Area. The Program is a match of 50% of eligible project costs. Funds for the Program are available on a first come first serve basis, generally offered to property and business owners within the redevelopment project areas of the City of Fresno. The planned improvements as described on Exhibit "B" attached hereto and incorporated by reference herein are eligible project improvements under the Program. Therefore, under the Program, the Owner Participant shall receive a loan not to exceed \$11,000 at a rate of zero (0%) percent interest, and payable in five (5) years (the "Loan") repayable in accordance with the promissory note attached hereto as Exhibit "E-1" and secured by the deed of trust attached hereto as Exhibit "F," and a forgivable loan that is forgiven after five (5) years not to exceed \$11,000 at a rate of zero (0%) percent (the "Forgivable Loan"), repayable in accordance with the terms of the promissory note attached hereto as Exhibit "E-2."

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5. All agreements, covenants and conditions provided in this Agreement shall be covenants running with the land and they shall inure to the benefit of and be enforceable by the Agency, its successors and assigns, and the owner of any other land in the Project Area which is subject to the land use requirements and restrictions of the Plan, and the Owner- Participant, its successors, heirs and assigns. The agreements, covenants and conditions set forth in this Agreement shall run in favor of the Agency, and its successors and assigns, and the Owner- Participant, its heirs, successors and assigns for the entire applicable period during which such Agreement shall remain in force and effect without regard to whether the Agency has at any time been, remains, or is the owner of any land or interest therein to which these covenants relate. In the event of any breach, the Agency and the Owner-Participant may exercise all the rights and remedies available at law or in equity to enforce the curing or remediation of such breach, in addition to any remedies contained in this Agreement.

6. The Owner Participant shall not assign, delegate, convey or otherwise transfer this Agreement or any right, interest, duty or obligation hereunder without the Agency's prior written consent. Subject to the preceding sentence, this Agreement shall be in full force and effect and be binding on the parties and their respective heirs, successors and assigns, including lessees, assignees, transferees and successors-in-interest of the Owner Participant, from the Effective Date.

7. The Owner Participant shall permit the Agency access to the Property for any purpose necessary in carrying out the provisions of the Plan or this Agreement. This access shall include, without limitation, inspection of work on the Improvements or other work and improvements on the Property by representatives of the Agency, the federal government, any mortgagee, the City or any other state or local governmental agency having jurisdiction with respect to any local, state or federal building, health, safety, zoning or housing laws, standards, codes or regulations.

8. The following occurrences shall constitute events of default under this Agreement after written notice of default, ten (10) days will be provided to cure the default:

(a) Failure by the Owner-Participant or any of its lessees, transferees, assignees or successors-in-interest to comply with or satisfactorily perform any of the terms, covenants, conditions or requirements of this Agreement, the Plan, the Rules or any amendment to any of them; or

(b) The fact that any representation or warranty made by or on behalf of the Owner-Participant in connection with the execution of this Agreement, or any other agreement, instrument or document referred to herein, or hereafter submitted to the Agency or the City of Fresno in connection with the construction, redevelopment, rehabilitation, use, maintenance or ownership of the Property, shall prove at any time to have been incorrect in any material respect when made.

9. In the event of default or other breach of this Agreement or any of its terms, covenants or conditions by either party or by any of such party's lessees, transferees, assignees or successors-in-interest, the non-defaulting party may pursue all rights and remedies for such default

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or breach available in law or equity, including without limitation, specific performance of this Agreement and termination of the Agreement. Failure or delay in giving notice of default shall not be deemed a condition precedent to or waiver of the default, nor shall it change the time of default. All remedies shall be cumulative. Pursuit of any one remedy by the non-defaulting party shall not be deemed an election of remedies or a waiver of any other remedy, and shall not preclude said party from exercising any other remedy at the same time or different times for the same default or any other default.

10. It is understood and agreed that no official or employee of either party will be personally liable in damages to the other party for breach of any obligations under the terms of this Agreement.

11. The development, redevelopment, use, operation and maintenance of the Property, pursuant to this Agreement are a private undertaking by the Owner-Participant and not a partnership, joint venture, or similar relationship between the Owner-Participant and the Agency. The Owner-Participant shall have full power over and exclusive control of the Property, and of all employees, contractors, or other persons employed in connection with such development, redevelopment, use, operation or maintenance of the Property, subject only to the limitations, obligations, standards, covenants, restrictions, controls and conditions set forth in this Agreement, the Plan and the Rules, as any of them may be amended from time to time.

12. This Agreement shall be in full force and effect and shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors or assigns, including lessees, assignees, transferees and successors-in-interest of the Owner-Participant, from the Effective Date.

13. Every conveyance of title to the Property or any portion thereof or interest therein subsequent to the Effective Date, including leases and assignments, shall, in addition to any other covenants, contain a covenant that the Owner-Participant, its heirs, successors and assigns, of the Property or any part thereof and any lessee of the Property or any part thereof, will and shall ensure that the development, redevelopment, operation and maintenance of the Property, conforms to this Agreement, the Plan and the Rules, as amended, and shall devote such Property to the uses specified in this Agreement, the Plan and the Rules, as amended.

14. The provisions of this Agreement do not limit the right of obliges to foreclose or otherwise enforce any mortgage, deed of trust or other encumbrance upon the Property, or the right of obliges to pursue any remedies for the enforcement of any pledge or lien upon the Property; provided, however, that in the event of a foreclosure sale under any mortgage, deed of trust, or other lien or encumbrance, or a sale pursuant to any power of sale contained in any such mortgage or deed of trust, the purchasers, or purchasers and their successors and assigns, and the Property, shall be, and shall continue to be, subject to all the conditions, restrictions and covenants in this Agreement, the Plan and the Rules, as amended.

15. In the event that the Agency shall abandon the Plan, as amended, the Agency

16. shall record a suitable instrument terminating all obligations of the Owner-

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Participant and its heirs, executors, administrators, successors and assigns and all persons claiming under or through said Owner-Participant hereunder. The Owner-Participant shall indemnify, defend and hold the Agency, the City and each of their respective officers, officials, employees, agents, boards and volunteers harmless from any judicial action filed against the Agency or the City by any third party arising out of the Agency's or the City's approval of this Agreement or any permit, entitlement or other action required to implement this Agreement, including without limitation approvals under the Redevelopment Law, CEQA or the City's Municipal Code. The City will promptly notify the Owner-Participant of the action. Within fifteen (15) days after receipt of the notice, the Owner-Participant shall take all steps necessary and appropriate to assume defense of the action. The City will cooperate with the Owner-Participant in the defense of the action (at no cost to the Agency or the City). Neither the Owner-Participant nor the City will compromise the defense of such action or permit a default judgment to be taken against Agency or the City without the prior written approval of the other party(ies).

17. All communications and notices provided for hereunder shall be in writing and mailed or delivered as follows:

To City or Agency:

Marlene Murphey  
Executive Director  
REDEVELOPMENT AGENCY OF THE  
CITY OF FRESNO  
2344 Tulare Street, Suite 200  
Fresno, California 93721

To Owner – Participant:

Harry R. Boyajian  
Daniel C. Boyajian dba:  
Sam's Party Rental  
1950 Broadway  
Fresno CA 93721

Or to such other address as the parties shall designate in written notices to the other. Notice by personal delivery shall be effective upon delivery. Notice by mail shall be effective upon receipt or three (3) calendar days after the postmark date, whichever is earlier.

18. This Agreement may be amended only by a written instrument, signed by duly authorized representatives of the Owner-Participant and the Agency, after approval of such amendment by the Agency's Board of Directors.

19. In the event either party hereunder commences any proceeding or legal action or arbitration to enforce or interpret any provisions of this Agreement, the prevailing party in such proceeding or action or arbitration shall be entitled to recover from the party its reasonable attorneys' fees, court costs and legal expenses in the amounts determined by the court or tribunal

having jurisdiction.

20. The provisions of this Agreement shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

A small, handwritten mark or signature located in the bottom right corner of the page.

IN WITNESS WHEREOF, the Agency and the Owner-Participant each acknowledge and represent that this Agreement has been executed by such party or its duly authorized representative as of the Effective Date.

“AGENCY”

“OWNER-PARTICIPANT”

REDEVELOPMENT AGENCY OF THE  
CITY OF FRESNO

Harry R. Boyajian  
Daniel C. Boyajian DBA:  
Sam’s Party Rental’s

By: Marlene Murphey  
Marlene Murphey, Executive Director

By: Harry R. Boyajian  
Harry R. Boyajian

Date: 3/8/11

Date: 3-8-11

By: Daniel C. Boyajian  
Daniel C. Boyajian

Date: 3-8-11

REBECCA KLISCH, Ex. Officio Clerk,  
Redevelopment Agency

By: Rebecca Klisch  
Deputy Rebecca Klisch

Date: 3-9-11

APPROVED AS TO FORM:

James Sanchez, Ex Officio Attorney  
Redevelopment Agency

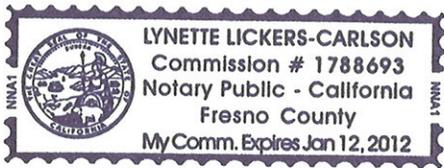
By: James Sanchez  
Deputy James Sanchez

Date: 3/9/11

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of Fresno }

On March 8 2011 before me, Lynette Lickers-Carlson Notary Public  
Date Here Insert Name and Title of the Officer  
 personally appeared Harry R Boyajian & Daniel C  
Name(s) of Signer(s)  
Boyajian



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lynette Lickers-Carlson  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
 Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



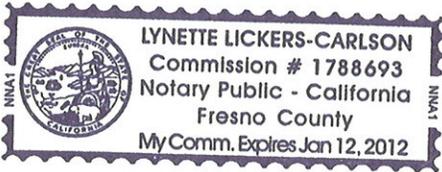
Signer Is Representing: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of Fresno }

On May 8 2011 before me, Lynette Lickers-Carlson Notary Public  
Date Here Insert Name and Title of the Officer  
 personally appeared Marlene Murphy  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lynette Lickers-Carlson  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
 Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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**Exhibit "A"**

Lots 11 and 12 in Block 12 of CENTRAL ADDITION TO FRESNO, according to the map thereof recorded September 19, 1887, in Book 1, Page 30 of Plats, records of said County:

EXCEPTING THEREFROM the South 8 feet of said Lots heretofore conveyed to the City of Fresno for alley purposes;

ALSO EXCEPTING THEREFROM that portion thereof conveyed to the City of Fresno, described as follows:

Beginning at the Northwest corner of said Lot 12; thence South along the West line of said Lot 12 a distance of 14.40 feet; thence Northeasterly in a direct line to a point on the East line of said Lot 11 distant thereon 12.20 feet South of the Northeast corner of said Lot 11; thence North along the East line of said Lot 11 to the Northeast corner of said Lot 11; thence west along the North line of said Lot 12 to the point of beginning.

**PARCEL 2:**

Lots 13 and 14 in Block 12 of CENTRAL ADDITION TO FRESNO, according to the map thereof recorded September 19, 1887, in Book 1 Page 30 of Plats, records of said County;

EXCEPTING THEREFROM that portion thereof described as follows:

Beginning at the Northwest corner of said Lot 14; thence South along the West line of said Lot 14, a distance of 16.60 feet; thence Northeasterly in a direct line to a point on the East Line of said Lot 13 distant thereon 14.40 feet South of the Northeast corner of said Lot 13; thence North along the East line of said Lot 13 to the Northeast corner of said Lot 13; thence West along the North line of said Block 12 to the point of beginning, granted to the City of Fresno by deed dated March 3, 1934, and recorded in Book 1329 Page 353 of Official Records;

ALSO EXCEPTING THEREFROM the South 8 feet of said Lots heretofore conveyed to the City of Fresno for alley purposes.

**PARCEL 3:**

Those portions of Lots 15, 16 and 17 in Block 12 of CENTRAL ADDITION TO FRESNO CITY, according to the map thereof recorded September 19, 1887, in Book 1 Page 30 of Plats, records of said County, described as follows:

Beginning at a point on the East line of the West half of Lot 16, distant thereon 18.25 feet South of the North, line of said Lot 16, thence along a line bearing South 9° 41' 04" West to its intersection with a line drawn parallel to and 8 feet North of the South line of said Block 12, thence East along said line drawn parallel to the South line of said Block 12 to its intersection with the East line of said Lot 15, thence North along the east line of said Lot 15 to a point thereon distant 16.60 feet south of the Northeast corner of said Lot 15, thence Southwesterly in a straight line to the point of beginning.

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PARCEL 4:

That portion of Block 371 of the TOWN (now City) of FRESNO, according to the supplemental map of the Town of Fresno thereof recorded April 11, 1877 in Book 1 Page 5 of Maps, records of said County, and more particularly described as follows:

Beginning at the most Westerly corner of said Block, thence running Southwesterly along the Southwesterly line of said Block, 75 feet; thence Northwesterly at a right angle to a line running parallel with the Southwesterly line of said Block to the intersection of said line with a line running parallel with and 8 feet South of the East and West center line of Section 4, Township 14 South, Range 20 East, Mount Diablo Base and Meridian; thence West along said line running parallel with and 8 feet South of said East and West center line to its intersection with the Northwesterly line of said Block; thence Southwesterly along said Northwesterly line to the point of beginning;

EXCEPTING THEREFROM the Southwesterly 10 feet as conveyed to the City of Fresno.

PARCEL 5:

Beginning at a point in the Southwesterly line of Block 371 of the CITY OF FRESNO, according to the supplemental map of the Town of Fresno thereof recorded April 11, 1877, in Book 1 Page 3 of Plats, records of said County, 275 feet Northwesterly from the corner of said Block formed by the intersection of L and Sacramento Streets; running thence Northeasterly at a right angle and parallel with the Southwesterly line of said Block, 150 feet; thence at a right angle Northwesterly, parallel with the Southwesterly line of said Block, to a point 311 feet from the Southeasterly line of said Block; thence Westerly on a line parallel with and 8 feet South of the East and West center line of Section 4, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, to the intersection of said line with a line running parallel with and 325 feet Northwesterly from the Southeasterly line of said Block 371; thence running Southwesterly parallel with the Southwesterly line of said Block to the Southwesterly line of said Block; thence Southeasterly along the Southwesterly line of said Block 50 feet to the point of beginning.

Said property would be Lots 28 and 29 if said Block 371 was subdivided on the map above mentioned as other Blocks are subdivided;

EXCEPTING THEREFROM the Southwesterly 10 feet as conveyed to the City of Fresno.

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PARCEL 4:

That portion of Block 371 of the TOWN (now City) of FRESNO, according to the supplemental map of the Town of Fresno thereof recorded April 11, 1877 in Book 1 Page 5 of Maps, records of said County, and more particularly described as follows:

Beginning at the most Westerly corner of said Block, thence running Southwesterly along the Southwesterly line of said Block, 75 feet; thence Northwesterly at a right angle to a line running parallel with the Southwesterly line of said Block to the intersection of said line with a line running parallel with and 8 feet South of the East and West center line of Section 4, Township 14 South, Range 20 East, Mount Diablo Base and Meridian; thence West along said line running parallel with and 8 feet South of said East and West center line to its intersection with the Northwesterly line of said Block; thence Southwesterly along said Northwesterly line to the point of beginning;

EXCEPTING THEREFROM the Southwesterly 10 feet as conveyed to the City of Fresno.

PARCEL 5:

Beginning at a point in the Southwesterly line of Block 371 of the CITY OF FRESNO, according to the supplemental map of the Town of Fresno thereof recorded April 11, 1877, in Book 1 Page 3 of Plats, records of said County, 275 feet Northwesterly from the corner of said Block formed by the intersection of L and Sacramento Streets; running thence Northeasterly at a right angle and parallel with the Southwesterly line of said Block, 150 feet; thence at a right angle Northwesterly, parallel with the Southwesterly line of said Block, to a point 311 feet from the Southeasterly line of said Block; thence Westerly on a line parallel with and 8 feet South of the East and West center line of Section 4, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, to the intersection of said line with a line running parallel with and 325 feet Northwesterly from the Southeasterly line of said Block 371; thence running Southwesterly parallel with the Southwesterly line of said Block to the Southwesterly line of said Block; thence Southeasterly along the Southwesterly line of said Block 50 feet to the point of beginning.

Said property would be Lots 28 and 29 if said Block 371 was subdivided on the map above mentioned as other Blocks are subdivided;

EXCEPTING THEREFROM the Southwesterly 10 feet as conveyed to the City of Fresno.

APN: 466-182-29

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EXHIBIT "B"

SCOPE OF WORK AND ESTIMATED COST OF IMPROVEMENTS FOR  
16 N. Yosemite/1950 Broadway Fresno CA

<u>IMPROVEMENTS</u>	<u>COST</u>
Power wash, paint exterior of 3 buildings, repair exterior doors, windows, roof, replace gutters and drains,	\$9,000
Remove cyclone fence replace, and replace with decorative wrought iron fence and gates	4,000
Resurface and strip parking lot	<u>8,000</u>
TOTAL	\$22,000

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**EXHIBIT "C"**  
**Performance and Payment Schedule**

**SCHEDULE OF PERFORMANCE**

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
<u>Submission – Scope of Work.</u> The Owner shall submit a Scope of Work to the Redevelopment Agency of the City of Fresno for review.		
<u>Submission – Signed Parking Lease Agreement</u> between The Owner and Fulton Plaza, LLC	Within 30 days after receiving Scope of Work	
Owner executes and delivers Agreement and executed Promissory Note, Deed of Trust	On or before _____	
Agency Board approves Owner Participation Agreement (OPA) with Owner for Project	On or before _____	
Agency executes Agreement and records Deed of Trust for the Agency Loan	On or before _____.	
<u>Initial Loan and Forgivable Loan Disbursement.</u> The Agency shall make a disbursement of loan proceeds in the amount not to exceed \$11,000 plus a disbursement of Forgivable Loan proceeds in the amount not to exceed of \$11,000 (for a total not to exceed of \$22,000.00)	After the Deed of Trust and Regulatory Agreement are recorded and concurrently with the issuance of any permits required for the Improvements	
<u>Commencement of Owner's Improvements.</u> Within 30 days after execution of Owner Participation Agreement	On a schedule that will coordinate with the Owner's Performance schedule	
<u>Completion of Improvements of Owner's Improvements</u> The Owner shall complete the improvements to be completed on the Project Site within 90 days of execution of the Owner Participation Agreement.	Within the specified months after commencement thereof by the Owner, not to exceed 3 months after commencement of Improvements	
<u>Issuance – Certificate of Completion.</u> The Agency shall furnish the Owner with a Certificate of Completion on the Project.	Promptly after completion of all Improvements and upon written request thereof by the Owner.	

Improvements shall be completed within 3 months of the start of Improvements.

Improvements to commence by: \_\_\_\_\_

Improvements to be completed by: \_\_\_\_\_ ("Improvements Completion Date")

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## SCHEDULE OF AGENCY LOAN REPAYMENT

Commencing 120 Days after the Project Completion Date set forth in the Certificate of Completion for a Term of 5 Years: Not to exceed \$183.34/Month<sup>1</sup>

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<sup>1</sup> (This reflects a 0% interest on the Loan amount, commencing at the Payment Commencement Date)

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**EXHIBIT "D"**

**CERTIFICATE OF COMPLETION**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

Redevelopment Agency of City of Fresno  
2344 Tulare St., Suite 200  
Fresno, Ca. 93721  
Attention: Executive Director

---

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Certificate of Completion is recorded at the request and for the benefit of the Redevelopment Agency of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

Redevelopment Agency

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

Marlene Murphey

Its: Executive Director

Dated: \_\_\_\_\_

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Certificate of Completion

Recitals:

- A. By an Owner/Developer Participation Agreement (the "Agreement") dated \_\_\_\_\_, 2011 between Harry R. Boyajian, and Daniel C. Boyajian, ("Owner") and the Redevelopment Agency of the City of Fresno, a public body corporate and politic ("Agency"), Owner agreed to Improve certain commercial unit(s) on the premises legally described in Attachment "A" hereto (the "Property") while meeting the requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq., according to the terms and conditions of the Agreement.
- B. The Agreement was recorded on \_\_\_\_\_, 2011 in the Official Records of Fresno County, California as Instrument No. \_\_\_\_\_.
- C. Under the terms of the Agreement, after Owner completes the Improvements on the Property, Owner may ask Agency to record a Certificate of Completion.
- D. Owner has asked Agency to furnish Owner with a recordable Certificate of Completion.
- E. Agency's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the Improvements on the Property as set forth in the Agreement.

NOW THEREFORE:

- 1. Agency certifies that Owner commenced the construction work on the Project on \_\_\_\_\_, 2011, and completed the Improvement work on the Project on \_\_\_\_\_, 201\_\_\_\_, and has done so in full compliance with the Agreement.
- 2. This Certificate of Completion is not evidence of Owner compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.
- 3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.
- 4. Nothing contained herein modifies any provision of the Agreement.

IN WITNESS WHEREOF, the Agency has executed this Certificate of Completion as of this \_\_\_\_ day of \_\_\_\_\_, 201\_.

Redevelopment Agency of the City of Fresno

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

Marlene Murphey,  
Executive Director



Owner hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: \_\_\_\_\_, 201\_

By: \_\_\_\_\_  
Harry R. Boyajian

By: \_\_\_\_\_  
Daniel C. Boyajian

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:  
EX- OFFICIO CITY CLERK

APPROVED AS TO FORM:  
EX-OFFICIO CITY ATTORNEY

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

CONSENTED TO BY/RECORDATION APPROVED BY FEE HOLDERS:

By: \_\_\_\_\_  
Harry R. Boyajian

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

By: \_\_\_\_\_  
Daniel C. Boyajian

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

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**EXHIBIT "E-1"**

**FORM OF PROMISSORY NOTE FOR THE LOAN**

## PROMISSORY NOTE

**DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for cancellation.**

\$11,000.00  
March 9, 2011

Fresno, California

For value received, the undersigned, Harry R. Boyajian and Daniel C. Boyajian ("Borrower"), promises to pay to the order of the Redevelopment Agency of the City of Fresno ("Lender" or "Beneficiary"), the sum of \*ELEVEN THOUSAND AND NO CENTS\* (\$11,000.00), to the extent that such funds are loaned to Borrower, without interest on the unpaid principal balance, payable as described herein. This Promissory Note ("Note") is made and entered into in accordance with the terms of the Owner Participation Agreement dated March 9, 2011, entered into between Borrower and Lender ("Agreement").

Principal shall be due and payable in one lump sum on the date which is five (5) years after the date of recordation of the Certificate of Completion ("Maturity Date"), along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement.

This Note, and any extensions or renewals hereof, is secured by a [Deed of Trust, Security Agreement with Assignment of Rents] on real estate in Fresno County, California (the "Property"), dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"). The Deed of Trust provides for acceleration of the repayment of this Note upon stated events.

Time is of the essence with respect to all terms of this Note. It will be a default under this Note if Borrower defaults under the Agreement or other documents pursuant to the Agreement, including but not limited to the Deed of Trust and Regulatory Agreement and Declaration of Covenants and Restrictions (collectively, the "Project Loan Documents"), and if Borrower fails to pay when due any sum payable under this Note. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other project loan documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Agreement or Project Loan Documents gives rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part, at any time, without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note, the Agreement or Project Loan Documents, and then to the interest and then to the principal balance.

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as an acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

The Deed of Trust provides as follows:

**DUE ON SALE—CONSENT BY BENEFICIARY.** Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land

trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter, but Lender will retain all rights and powers given by this Note with respect to Property not transferred.

If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Borrower agrees that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender may consent to in a writing duly signed by Lender or its authorized agents.

The Loan shall be non-recourse to the Borrower and all constituent members of the Borrower.

**IN WITNESS WHEREOF**, Borrower has caused this Note to be executed by Borrower or Borrower's authorized agent(s).

**Borrower:**

Harry R. Boyajian

Daniel C. Boyajian

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

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

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

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

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**EXHIBIT "E-2"**

**FORM OF PROMISSORY NOTE FOR THE FORGIVABLE LOAN**

## AGENCY PROMISSORY NOTE

DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for Cancellation.

\$11,000.00

Fresno, California  
March 9, 2011

For value received, the undersigned, Harry R. Boyajian and Daniel C. Boyajian ("Borrower"), promises to pay to the order of the Redevelopment Agency of the City of Fresno ("Lender" or "Beneficiary"), the sum of \*ELEVEN THOUSAND AND NO CENTS\* (\$11,000.00), to the extent that such funds are loaned to Borrower, without interest on the unpaid principal balance, payable as described herein. This Promissory Note ("Note") is made and entered into in accordance with the terms of the Owner Participation Agreement dated March 9, 2011, entered into between Borrower and Lender ("Agreement").

Principal shall be forgiven on the date which is five (5) years after the "Project Completion Date" set forth in the "Certificate of Completion" for the "Project", as described in the Agreement, is recorded in the Official Records of Fresno County, California (the "Maturity Date").

Any failure to make a payment required hereunder shall constitute a default under this Note.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement. In addition, as used in this Note, the following terms will have the following meanings:

"Business Day" means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day. However, if the extension would cause the payment to be made in a new calendar month, that payment will be made on the preceding Business Day.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust with Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed

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in favor of and delivered to the Lender ("Deed of Trust"), insured by First American Title Company as no worse than an ALTA or CLTA second position lien.

Time is of the essence with respect to all terms of this Note. It will be a default under this Note if Borrower defaults under the Agreement, any other Loan Documents (as defined in the Agreement), or if Borrower fails to pay when due any sum payable under this Note or under any other obligation secured by a deed of trust or other lien senior to the deed of trust which secures this Note. Borrower shall promptly inform Lender of any new or additional financing or funding, and Borrower shall provide Lender copies of all agreements with any and all Funding Sources for this Project. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Agreement or Loan Documents gives rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due and payable without any further presentment, demand, protest, or notice of any kind.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part, at any time, without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note, the Agreement, or other Loan Documents, and then to the interest and then to the principal balance.

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by

Handwritten signature or initials in the bottom right corner of the page.

Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as an acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

The Deed of Trust provides as follows:

**DUE ON SALE—CONSENT BY BENEFICIARY.** Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any cumulative change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter, but Lender will retain all rights and powers given by this Note with respect to Property not transferred.

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If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Borrower agrees that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender may consent to in a writing duly signed by Lender or its authorized agents.

The Loan shall be nonrecourse to the Borrower and all constituent members of the Borrower.

The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Note.

*[Signatures on following page.]*

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IN WITNESS WHEREOF, Borrower has executed this Note.

Borrower

Borrower

Harry R. Boyajian

Daniel C. Boyajian

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

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

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

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

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**EXHIBIT "F"**  
**FORM OF DEED OF TRUST**

## DEED OF TRUST

**RECORDING REQUESTED BY:**

**When Recorded Mail Document To:**  
Redevelopment Agency of the City of  
Fresno  
2344 Tulare St., Suite 200  
Fresno, Ca. 93721  
Attention: Executive Director

APN: 466-182-29 and 40

SPACE ABOVE THIS LINE FOR  
RECORDER'S USE

## DEED OF TRUST AND ASSIGNMENT OF RENTS

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is entered into between Harry R. Boyajian and Daniel C. Boyajian, tenants in common, whose principal office is at 1950 Broadway Street and 16 N. Yosemite, Fresno, California 93721 (herein called "Trustors"), in favor of First American TITLE COMPANY, whose address is 644 Pollasky Avenue, Clovis, CA 93711 (herein called "Trustee"), for the benefit of the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (the "Beneficiary"), with offices at 2344 Tulare St., Suite 200, Fresno, California 93721.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness created this date by that promissory note executed by THE TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, for the benefit of Beneficiary, with the power of sale, the real property in the City of Fresno, Fresno County, State of California, more particularly described in **Attachment 1** attached hereto and made part hereof by reference (the "Property").

TOGETHER WITH the rents, and profits thereof, for the purposes of securing a promissory note in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), executed by Trustors in favor of Beneficiary this date, and for any costs that may become due under the promissory note, bearing the same date as this Deed of Trust, and any and all modifications, extensions or renewals thereof or substitutions therefor (the "Note"), and performance and satisfaction of each and all other obligations of the Trustor under the Note;

(a) Performance of every obligation or Trustor in this Deed of Trust, the Note, the Owner Participation Agreement between Beneficiary and Trustor related to the Property (the "Owner Participation Agreement," dated \_\_\_\_\_) contemplating

the improvement of the "Project" (as that term is defined in the Owner Participation Agreement ); and

(b) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by the Beneficiary to or for the benefit of the Trustor or to its successors, transferees and assigns, made to the Trustor while the Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of the Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

THIS DEED OF TRUST IS SUBJECT TO the terms and conditions set forth below:

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTORS COVENANTS AND AGREES AS FOLLOWS:

1. The Trustor shall not use or permit the use of any of the collateral for any purpose other than the use for which it was intended at the time this Deed of trust was executed, as provided in the Owner Participation Agreement.
2. The person(s) or entity(ties) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind the Trustor to this Deed of Trust.
3. To keep said property in good condition and repair; to pay when due all claims for labor performed and materials furnished in connection with the performance of any work or construction of any structures on the property therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts which, from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
4. To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustors. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
5. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs

and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

6. To pay before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock when due; all encumbrances, charges, and liens, with interest, on said property, or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust.

7. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, from date of expenditure at the amount allowed by law in effect at the date hereof.

8. Should Trustors fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustors, and without releasing Trustors from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which, in the judgment of either, appears to be prior or superior hereto; and, in exercising any such powers or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel, and pay his reasonable fees.

B. It is mutually agreed that:

1. Subject to the rights of any senior lien holder, any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above-provided for disposition of proceeds of fire or other insurance

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby, Trustee may reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge thereof.

4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, upon surrender of this Deed of trust and said note to Trustee for cancellation of retention, and upon payments of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in any reconveyance executed

under this Deed of Trust of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5. As additional security, subject to the rights of any senior lien holder, Trustors hereby give to and confer upon Beneficiary the right, power, and authority, during the continuance of these Trusts, to collect the rents, issues, and profits of said property, reserving unto Trustors the right, prior to any default by Trustors in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, Beneficiary may, at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property, or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein, therein), for the purpose of protecting its interests hereunder, the Beneficiary, at its option, may declare the whole of the obligations and sums secured hereby to be immediately due and payable.

7. Upon default by Trustors in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary may employ counsel to enforce payment of the obligations secured hereby and shall execute or cause the Trustee to execute a written notice of such default and his election to cause to be sold the herein-described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each county wherein said real property or some part thereof is situated.

8. Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the property described herein, pursuant to the provisions of law and this Deed of Trust.

9. Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, trustee, without demand on Trustors, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine at public auction to the highest bidder for cash in lawful

money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time-to-time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchase its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustors, Trustee, or beneficiary, may purchase at such sale.

10. After deducting all costs, fees, and expenses of Trustee and this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms of hereof, not then repaid, with accrued interest at seven percent (7%) per annum; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

11. This Deed of Trust applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby; or if the note has been pledged, the pledge thereof. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

12. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustors, Beneficiary, or Trustee shall be a party unless brought by Trustee.

13. Beneficiary may, from time-to-time or anytime, substitute a Trustee or Trustees to execute the trust hereby created and, when any such substitution has been filed for record in the office of the Recorder of the county in which the property herein-described is situated, it shall be conclusive evidence of the appointment of such Trustee or Trustees, and such new Trustee or Trustees shall succeed to all of the powers and duties of the Trustee or Trustees named herein.

14. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it and 1950 Broadway/16 N. Yosemite Fresno CA, CA 93721

15. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, shall be determined, according to California law.

16. Capitalized terms not otherwise defined herein shall have the meanings given them in the Owner Participation Agreement or the Note.

\* \* \* \* \*

IN WITNESS WHEREOF, Trustors have executed this Deed of Trust as of the date first-  
above written.

TRUSTORS:

By: \_\_\_\_\_  
Harry R. Boyajian

By: \_\_\_\_\_  
Daniel C. Boyajian

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ACKNOWLEDGMENTS

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF FRESNO            )

On \_\_\_\_\_, 201\_\_\_\_, before me,  
\_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_, who proved to me on the  
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

(SEAL)

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## ATTACHMENT 1

### LEGAL DESCRIPTION

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

Lots 11 and 12 in Block 12 of CENTRAL ADDITION TO FRESNO, according to the map thereof recorded September 19, 1887, in Book 1, Page 30 of Plats, records of said County:

EXCEPTING THEREFROM the South 8 feet of said Lots heretofore conveyed to the City of Fresno for alley purposes;

ALSO EXCEPTING THEREFROM that portion thereof conveyed to the City of Fresno, described as follows:

Beginning at the Northwest corner of said Lot 12; thence South along the West line of said Lot 12 a distance of 14.40 feet; thence Northeasterly in a direct line to a point on the East line of said Lot 11 distant thereon 12.20 feet South of the Northeast corner of said Lot 11; thence North along the East line of said Lot 11 to the Northeast corner of said Lot 11; thence west along the North line of said Lot 12 to the point of beginning.

#### PARCEL 2:

Lots 13 and 14 in Block 12 of CENTRAL ADDITION TO FRESNO, according to the map thereof recorded September 19, 1887, in Book 1 Page 30 of Plats, records of said County;

EXCEPTING THEREFROM that portion thereof described as follows:

Beginning at the Northwest corner of said Lot 14; thence South along the West line of said Lot 14, a distance of 16.60 feet; thence Northeasterly in a direct line to a point on the East Line of said Lot 13 distant thereon 14.40 feet South of the Northeast corner of said Lot 13; thence North along the East line of said Lot 13 to the Northeast corner of said Lot 13; thence West along the North line of said Block 12 to the point of beginning, granted to the City of Fresno by deed dated March 3, 1934, and recorded in Book 1329 Page 353 of Official Records;

ALSO EXCEPTING THEREFROM the South 8 feet of said Lots heretofore conveyed to the City of Fresno for alley purposes.

#### PARCEL 3:

Those portions of Lots 15, 16 and 17 in Block 12 of CENTRAL ADDITION TO FRESNO CITY, according to the map thereof recorded September 19, 1887, in Book 1 Page 30 of Plats, records of said County, described as follows:

Beginning at a point on the East line of the West half of Lot 16, distant thereon 18.25 feet South of the North, line of said Lot 16, thence along a line bearing South 9° 41' 04" West to its intersection with a line drawn parallel to and 8 feet North of the South line of said Block 12, thence East along said line drawn parallel to the South line of said Block 12 to its intersection with the East line of said Lot 15, thence North along the east line of said Lot 15 to a point thereon distant 16.60 feet south of the Northeast corner of said Lot 15, thence Southwesterly in a straight line to the point of beginning.

PARCEL 4:

That portion of Block 371 of the TOWN (now City) of FRESNO, according to the supplemental map of the Town of Fresno thereof recorded April 11, 1877 in Book 1 Page 5 of Maps, records of said County, and more particularly described as follows:

Beginning at the most Westerly corner of said Block, thence running Southwesterly along the Southwesterly line of said Block, 75 feet; thence Northwesterly at a right angle to a line running parallel with the Southwesterly line of said Block to the intersection of said line with a line running parallel with and 8 feet South of the East and West center line of Section 4, Township 14 South, Range 20 East, Mount Diablo Base and Meridian; thence West along said line running parallel with and 8 feet South of said East and West center line to its intersection with the Northwesterly line of said Block; thence Southwesterly along said Northwesterly line to the point of beginning;

EXCEPTING THEREFROM the Southwesterly 10 feet as conveyed to the City of Fresno.

PARCEL 5:

Beginning at a point in the Southwesterly line of Block 371 of the CITY OF FRESNO, according to the supplemental map of the Town of Fresno thereof recorded April 11, 1877, in Book 1 Page 3 of Plats, records of said County, 275 feet Northwesterly from the corner of said Block formed by the intersection of L and Sacramento Streets; running thence Northeasterly at a right angle and parallel with the Southwesterly line of said Block, 150 feet; thence at a right angle Northwesterly, parallel with the Southwesterly line of said Block, to a point 311 feet from the Southeasterly line of said Block; thence Westerly on a line parallel with and 8 feet South of the East and West center line of Section 4, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, to the intersection of said line with a line running parallel with and 325 feet Northwesterly from the Southeasterly line of said Block 371; thence running Southwesterly parallel with the Southwesterly line of said Block to the Southwesterly line of said Block; thence Southeasterly along the Southwesterly line of said Block 50 feet to the point of beginning.

Said property would be Lots 28 and 29 if said Block 371 was subdivided on the map above mentioned as other Blocks are subdivided;

EXCEPTING THEREFROM the Southwesterly 10 feet as conveyed to the City of Fresno.

APN 466-182-29 and 40

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**EXHIBIT "G"**

**OWNER PARTICIPATION RULES GOVERNING PARTICIPATION BY  
PROPERTY OWNERS AND THE EXTENSION OF REASONABLE  
PREFERENCES TO BUSINESS OCCUPANTS IN THE FULTON  
REDEVELOPMENT PROJECT AREA**

**FULTON AREA  
COMMUNITY REDEVELOPMENT PLAN AREA**

**RULES GOVERNING PARTICIPATION BY PROPERTY  
OWNERS AND THE EXTENSION OF REASONABLE  
PREFERENCES TO BUSINESS OCCUPANTS**

REDFVELOPMENT AGENCY OF THE CITY OF FRESNO

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RULES GOVERNING PARTICIPATION BY PROPERTY OWNERS  
AND THE EXTENSION OF REASONABLE PREFERENCES  
TO BUSINESS OCCUPANTS IN THE  
FULTON REDEVELOPMENT PROJECT

I.    [§100] PURPOSE AND INTENT

These rules are adopted pursuant to the Community Redevelopment Law of the State of California in order to implement the provisions of the Redevelopment Plan for the Fulton Redevelopment Project regarding participation by property owners and the extension of reasonable preferences to business occupants within the Project (the "Rules"). These Rules set forth the procedures governing such participation and preferences.

It is the intention of the Agency to encourage and permit participation in the redevelopment of the Project Area by property owners and to extend reasonable preferences to business occupants of real property within the boundaries of the Project Area to the maximum extent consistent with the objectives of the Redevelopment Plan.

It is also the intention of the Agency, in its consideration of proposals with respect to owners of real property in the Project Area, to take appropriate actions, as determined by the Agency, to achieve the major purposes of the Redevelopment Plan or any amendments thereto, which are to promote the elimination of blight, reverse the trend of economic stagnation, and ensure the realization of the Project Area's potential for industrial and commercial growth.

II.   [§200] DEFINITIONS

As used herein, the following definitions apply:

(1)    "Agency" means the Redevelopment Agency of the City of Fresno.

(2)    "Business Occupant" means any person, persons, corporation, association, partnership or other entity engaged in business within the Project Area on or after the date of adoption of the Redevelopment Plan by the City Council of the City of Fresno.

(3)    "Criteria for Owner Participation" means criteria for selection of owner-participants in redevelopment areas in the City of Fresno as established by Resolution No. 1182 adopted by the Agency in December of 1982, and any

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amendments thereto.

(4) "Owner" means any person, persons, corporation, association, partnership or other entity holding title of record to real property in the Project Area on or after the date of adoption of the Redevelopment Plan by the City Council of the City of Fresno.

(5) "Owner Participation Agreement" means an agreement entered into by an Owner with the Agency in accordance with the provisions of the Redevelopment Plan and these Rules.

(6) "Project" means the Fulton Redevelopment Project.

(7) "Project Area" means the area described in the "Legal Description of the Project Area Boundaries" (Attachment No. 1 of the Redevelopment Plan) and shown on the "Redevelopment Plan Map" (Attachment No. 2 of the Redevelopment Plan).

(8) "Redevelopment Plan" means the Redevelopment Plan for the Fulton Redevelopment Project as adopted by the City Council of the City of Fresno.

### III. [§300] ELIGIBILITY

Owners shall be eligible to participate in the redevelopment of property within the Project Area in accordance with the provisions of the Redevelopment Plan, these Rules and the limitations herein described.

Participation opportunities are necessarily subject to and limited by factors such as the following:

- (1) The elimination and changing of some land uses;
- (2) The construction, widening or realignment of some streets or public rights-of-way;
- (3) The ability of participants to finance acquisition and development or rehabilitation in accordance with the Redevelopment Plan;
- (4) The reduction in the total number of individual parcels in the Project Area; and
- (5) The construction or expansion of public facilities; and

(6) The effective implementation of the Redevelopment Plan's, or amendments thereto, goals and objectives.

The Agency presently contemplates that in carrying out the Redevelopment Plan, certain portions of the Project Area may be acquired by the Agency for public improvements, facilities and utilities and for other uses and purposes in accordance with the Redevelopment Plan. Therefore, owner participation opportunities will not be available for such properties.

#### IV. [§400] TYPES OF PARTICIPATION

Subject to these Rules and the limitations in Section 300, this Section 400 and California Health and Safety Code Sections 33339 and 33340, Owners will be given a reasonable opportunity to participate in redevelopment by:

- (1) Retaining all or a portion of their properties and developing or improving such property for use in accordance with the Redevelopment Plan;
- (2) Acquiring adjacent or other properties within the Project Area and developing or improving such property for use in accordance with the Redevelopment Plan; or
- (3) Selling their properties to the Agency and purchasing other properties in the Project Area.

Each proposal for participation shall be reviewed by the Agency specifically with respect to the following:

- (1) Conformity with the land use provisions of the Redevelopment Plan;
- (2) Compatibility with the standards, covenants, restrictions, conditions and controls of the Redevelopment Plan;
- (3) Compatibility with parcelization of the Project Area into sites adequate for redevelopment;
- (4) The participant's ability to finance the acquisition and development or improvement in accordance with the Redevelopment Plan; and
- (5) Conformity with the Agency's Criteria for Owner Participation.

If conflicts develop between the desires of participants for particular sites or

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land uses, the Agency is authorized to establish reasonable priorities and preferences among the Owners. Some of the factors to be considered in establishing these priorities and preferences may include:

- (1) A participant's length of occupancy in the area;
- (2) Accommodation of as many participants as possible;
- (3) Similarity of land use;
- (4) The necessity to assemble sites for integrated, modern development;
- (5) Conformity of a participant's proposal with the intent and objectives of the Redevelopment Plan; and
- (6) Service to the community of a participant's proposal.

V. [§500] CONFORMING OWNERS

The Agency may, in its sole and absolute discretion, determine that certain real property within the Project Area presently meets the requirements of the Redevelopment Plan, and the Owners of such property will be permitted to remain as conforming Owners without an Owner Participation Agreement with the Agency, provided such Owners continue to operate, use and maintain the real property within the requirements of the Redevelopment Plan.

Under certain specified circumstances, the Agency may determine that property previously determined by the Agency to be conforming, may nevertheless, be acquired by the Agency, through eminent domain if necessary, if acquisition of such a property will be of benefit to the Project, or is necessary to carry out the goals or objectives of the Redevelopment Plan as outlined in Section 100 of the Redevelopment Plan, or for other more necessary public purposes, even if the conforming Owner has continued to operate, use and maintain the real property within the requirements of the Redevelopment Plan.

In the event that any of the conforming Owners desire to (1) construct any additional improvements or substantially alter or modify existing structures on any of the real property described above as conforming, or (2) acquire additional property within the Project Area, then, in such event, such conforming Owners may be required by the Agency to enter into an Owner Participation Agreement with the Agency.

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VI. [§600] OWNER PARTICIPATION AGREEMENTS

Public and private Owners wishing to develop or improve their properties within the Project Area may be required, as a condition to Agency approval of such development or improvement, to enter into an Owner Participation Agreement with the Agency if the Agency determines it is necessary to impose upon such property any of the standards, restrictions and controls of the Redevelopment Plan. The Agreement may require the participant to join in the recordation of such documents as the Agency may require in order to ensure the property will be developed and used in accordance with the Redevelopment Plan and the Owner Participation Agreement.

VII. [§700] NOTICE TO OWNERS; TIME TO ENTER INTO AGREEMENT

If the Agency determines that an Owner of real property within the Project Area shall be required to enter into an Owner Participation Agreement as provided in Section 600 of these, the Agency shall notify the Owner in writing of its intention to require an Owner Participation Agreement and shall provide the Owner with a copy of the proposed Owner Participation Agreement.

An Owner presented with an Owner Participation Agreement by the Agency must enter into the Agreement within a reasonable period of time as determined by the Agency. An Owner must submit proof of his/her qualifications, including financial responsibility, to carry out the terms and provisions of the Owner Participation Agreement.

VIII. [§800] CONTENTS OF OWNER PARTICIPATION AGREEMENTS

An Owner Participation Agreement shall obligate the Owner, his heirs, and successors and assigns, and tenants to devote the property to the uses specified in the Redevelopment Plan, abide by all provisions and conditions of the Redevelopment Plan for the period of time that the Redevelopment Plan is in force and effect, and comply with all the provisions of the Owner Participation Agreement according to their terms, duration and effect.

An Owner Participation Agreement may provide that if the Owner does not comply with the terms of the Agreement, the Agency, in addition to other remedies, may acquire such property or any interest therein by any lawful means, including eminent domain, for its fair market value as of the date of the Owner Participation Agreement, and the Agency may thereafter dispose of the property or interest so acquired in accordance with the Redevelopment Plan.

An Owner Participation Agreement shall contain such other terms and

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conditions which, in the discretion of the Agency, may be necessary to effectuate the purposes of the Redevelopment Plan.

IX. [§900] PREFERENCE TO BUSINESS OCCUPANTS WITHIN THE PROJECT AREA

Business Occupants who desire to remain within the Project Area shall be extended a reasonable preference to remain or reenter in business within the Project Area if they otherwise meet the requirements prescribed in these and the Redevelopment Plan.

X. [§1000] AMENDMENT OF RULES

These may be modified or amended from time to time by the Agency at any regular or duly called special meeting.

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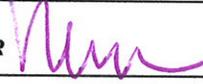
**REPORT TO THE REDEVELOPMENT AGENCY**

AGENDA ITEM NO 1:30 pm. C

BOARD MEETING: 03-08-11

APPROVED BY

EXECUTIVE DIRECTOR



**March 10, 2011**

**FROM:** Marlene Murphey, Executive Director

**BY:** Lupe Perez, Project Manager

**SUBJECT:** Agency Board approve matters of an Owner Participation Agreement between the Redevelopment Agency of the City of Fresno, Harry R. Boyajian and Daniel C. Boyajian for (APN 466-182-29 and 40) in the Fulton Redevelopment Project Area

Presented to Fresno Redevelopment Agency  
Date 3/8/11  
Disposition Law approved  
RDA Res. 1283

1. Adopt a Redevelopment Agency Resolution, Waiving Certain Owner Participation Criteria; and Approving an Owner Participation Agreement for Harry R. Boyajian and Daniel C. Boyajian; and
2. Authorize the Executive Director of the Agency to Execute the Owner Participation Agreement.

**RECOMMENDATION**

It is recommended that the Agency Board approve the following matters:

1. Adopt a Resolution approving Waivers of Requirements of the Criteria, and approving an Owner Participation Agreement between the Redevelopment Agency of the City of Fresno, Harry R. Boyajian, and Daniel C. Boyajian for (APN 466-182-29 and 40), substantially in the form attached, in the Fulton Redevelopment Project Area; and
2. Authorize the Executive Director to execute the Owner Participation Agreement, and to take such further actions as may be necessary or appropriate to carry out the Agency's obligations under the Agreement.

**EXECUTIVE SUMMARY**

Redevelopment Agency staff recommends that the Agency Board approve the attached Owner Participation Agreement with Mr. Harry R. and Daniel C. Boyajian, owners of Sam's Party Rentals which will lead to exterior improvements of their commercial building located in the Fulton Redevelopment Project Area, by authorizing Agency participation in the building improvements at 1950 Broadway, in the amount not to exceed \$22,000.00.

The Boyajian's desire to improve their building was spurred by the Iron Bird Lofts which are adjacent. These improvements are a continuation of the Agency's revitalization efforts in the Fulton Redevelopment Project Area, and will significantly improve the corner at Broadway and Divisadero. The general intent of the improvement requirements is to enhance the visual character of the subject OPA site by painting, replacing windows, doors, outdoor lights, install a new decorative wrought iron fence with gates, and resurface the parking lot. These improvements will be performed by the Owner

Participant. In addition, through discussions facilitated by the Agency, the Boyajians' have agreed to provide parking for the residences of the Iron Bird Lofts by way of a lease. (Attached)

The terms and conditions of the OPA are those that Agency staff has reviewed with the Boyajians' in prior discussions which resulted in a mutually satisfactory outcome, and is in conformance with the Fulton Redevelopment Plan. The Agreement is conditioned on the Owner Participant receiving development approvals, variances and or permits by this Agreement, and the City of Fresno.

## **BACKGROUND**

The City of Fresno ("Council") adopted Ordinance No. 98-42 on June 30, 1998, approving and adopting the redevelopment plan for the Fulton Redevelopment Project (the "Project"), and subsequently amended the redevelopment plan two (2) times by way of Ordinance 2008-9 adopted on February 26, 2008, and 2010-28 adopted on July 22, 2010, in compliance with the provisions of the CRL ("Fulton Project" or "Plan").

This Plan provides for the selection of owner participants as one method to assist in the implementation of the Redevelopment Plan. The Redevelopment Agency may grant Owner-Participant status provided the Participant's proposed project uses, maintains, develops and/or rehabilitates the property in conformance with the Redevelopment Plan, and the Participant is capable of carrying-out the proposed improvements. Other factors considered in establishing Participation Agreements include the participant's length of occupancy of over 30 years, compatibility of land uses, and conformity of the participant's proposal with the objectives of the Plan.

An Owner Participation Agreement (OPA) has been negotiated and prepared for Harry R. Boyajian, and Daniel C. Boyajian (Owner Participants) for the property at 1950 Broadway, and is within the Fulton Redevelopment Project Area. The Boyajians' will be completing façade improvements on the Sam's Party Rental building with the assistance from the Redevelopment Agency's Commercial Rehabilitation Loan Program. Included in Exhibit B to the OPA are a List of Improvement Requirements that describes the improvements and a Performance Schedule.

The OPA with the Owner Participant is similar in form to other Agency approved OPA's (i.e. Lanfranc, Fresh & Easy, Iron Bird Lofts, Fultonia, and Mayflower) with some differences in the language of the documents as it would relate to each specific case. Staff's inspection of the site revealed that on the whole, the property was fairly well maintained. Extensive renovation was not considered necessary for the property in order for the Owner Participant to conform to the Redevelopment Plan. Those deficiencies that were noted can be eliminated or reduced primarily through the application of fix-up remedies previously listed that will be performed by the Owner Participants.

## **RELATIONSHIP TO ENVIRONMENTAL IMPACT REPORT**

On July 22, 2010, the Council and Agency adopted a joint resolution (Council Resolution No. 2010-158 and Agency Resolution No. 1758) certifying Final Subsequent Environmental Impact Report prepared for Merger No. 1 Redevelopment Plan Amendments which contained an amendment to the Fulton Redevelopment Plan which included the environmental assessment of the proposed rehabilitation of existing properties and new development on vacant or underutilized properties, including the concept of Owner Participation Agreements. The proposed OPA, including its respective "List of Improvement Requirements", are consistent with the Redevelopment Plan. The expansion, renovation, or construction of new buildings on any OPA site would involve submission and review of building plans, site plans, conditional use permits, etc., which would be subject to an environmental review at that time.

## **PROPOSED WAIVER OF REQUIREMENTS TO OWNER PARTICIPATION CRITERIA**

On December 21, 1982, the Redevelopment Agency adopted through Resolution No. 1182, the "Criteria for the Selection of Owner-Participants in the Redevelopment Areas of the City of Fresno" (the "Criteria"), and subsequent amendments to the Criteria have been adopted by Agency Resolutions 1363, and 1460 on December 22, 1992. The purpose of the Criteria was to provide guidelines for the consideration of owner participation requests in any of the City's adopted redevelopment areas, if they

agreed to provide for a level of development that is harmonious and compatible with the purposes of the Redevelopment Plan. In attempting to apply the Criteria in regard to its applicability in implementation of the Fulton Redevelopment Plan, it became obvious that the strict application of the Criteria would prove an undue hardship to the Boyajians. Creating this hardship would be directly contradictory to the commitment of the Agency to work with owners and businesses to maximize their participation and to maximize the benefit they can receive from revitalizing downtown.

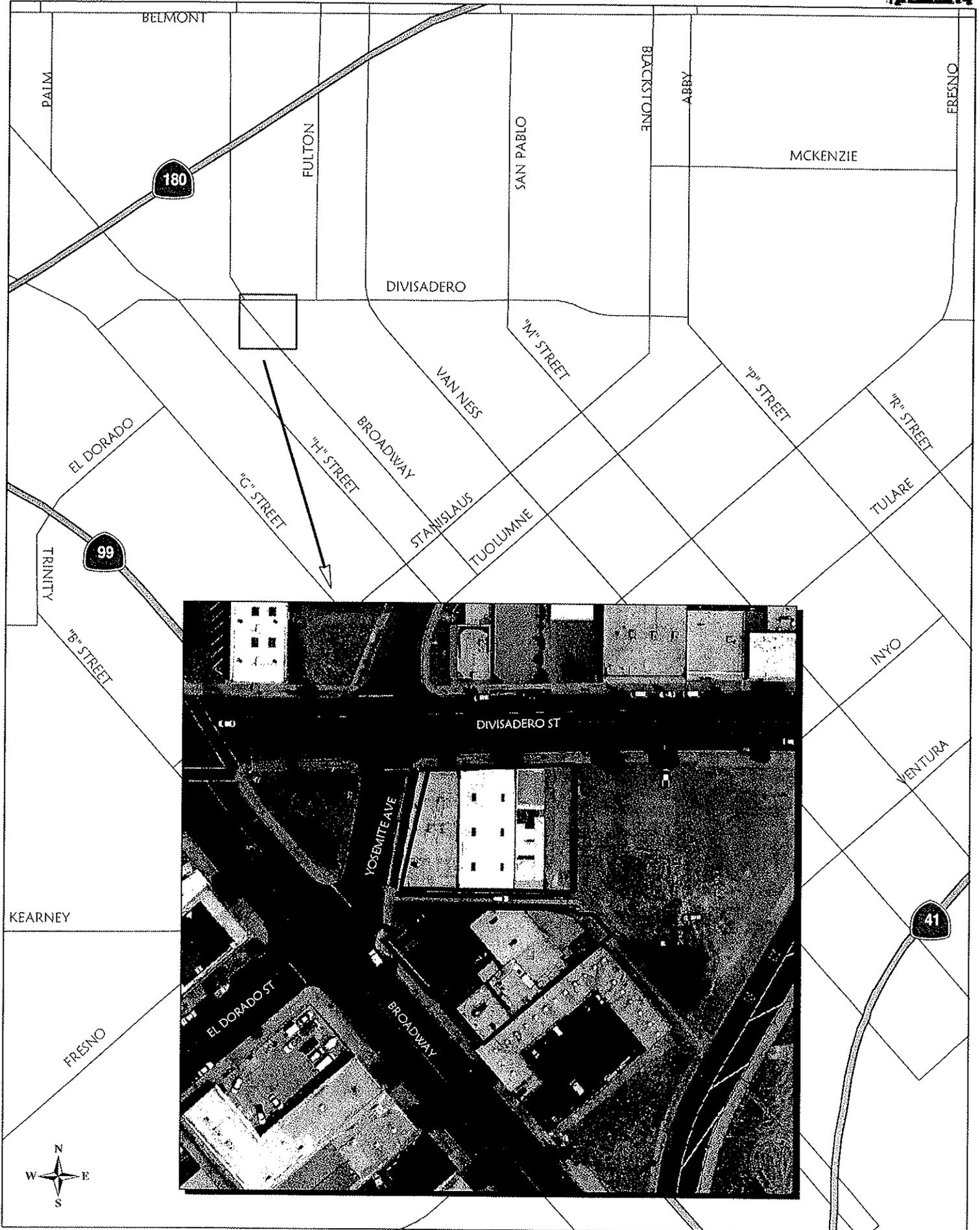
Therefore, the Resolution in Attachment "B" provides for the waiver of one or more of the requirements of the Criteria by the Redevelopment Agency. After review of the Boyajians OPA, the characteristics of the property, the proposed improvements, the relevant circumstances, and in the context of the purposes of the Fulton Redevelopment Plan, such a waiver of any or all of the requirements of the Criteria would promote and carry out the redevelopment plan.

ATTACHMENTS: "A" Location Map

"B" Resolution Approving Waivers of the Requirements of the Agency's  
Selection Criteria of Owner Participants

"C" Owner Participation Agreement

# Boyajian Properties Location Map



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, CALIFORNIA, APPROVING WAIVERS TO THE CRITERIA FOR THE SELECTION OF OWNER PARTICIPANTS IN THE REDEVELOPMENT AREAS OF THE CITY OF FRESNO, AND APPROVAL OF AN OWNER PARTICIPATION AGREEMENT WITH HARRY R. BOYAJIAN AND DANIEL C. BOYAJIAN, IN THE FULTON REDEVELOPMENT PROJECT AREA**

WHEREAS, the Redevelopment Agency of the City of Fresno (the "Agency") desires to provide the opportunity of owner participation for Harry R. Boyajian, and Daniel C. Boyajian (collectively the "Owner Participant") on the subject properties identified in the proposed Owner Participation Agreement (the "OPA") attached to this resolution as Exhibit One; and

WHEREAS, on December 21, 1982, by Resolution No. 1182, the Agency adopted the "Criteria for the Selection of Owner Participants in the Redevelopment Areas in the City of Fresno" (the "Criteria") attached to this resolution as Exhibit Two, and subsequent amendments to the Criteria have been adopted by Agency Resolutions 1363, and 1460 ; and

WHEREAS, on June 20, 1998, by Ordinance No. 98-42, the City council of the City of Fresno adopted the redevelopment plan for the Fulton Redevelopment Project, and subsequently amended the redevelopment plan two (2) times by way of Ordinance 2008-9 adopted on February 26, 2008, and 2010-28 adopted on July 22, 2010, in compliance with the provisions of the CRL ("Fulton Project" or "Plan"); and

WHEREAS, on July 22, 2010, the Council and Agency adopted a joint resolution (Council Resolution No. 2010-158 and Agency Resolution No. 1758) certifying Final Subsequent

Environmental Impact Report prepared for Merger No. 1 Redevelopment Plan Amendments which contained an amendment to the Fulton Redevelopment Plan which included the environmental assessment of the proposed rehabilitation of existing properties and new development on vacant or underutilized properties, including the concept of Owner Participation Agreements. The proposed OPA, including its respective "List of Improvement Requirements", are consistent with the Redevelopment Plan. The expansion, renovation, or construction of new buildings on any OPA site would involve submission and review of building plans, site plans, conditional use permits, etc., which would be subject to an environmental review at that time. In regard to the proposed waivers to the requirements to the Criteria for Selection of Owner Participants, the proposed waivers are exempt from the provisions of CEQA pursuant to Section 15305 (Class V exemption) Minor Alterations in Land Use Limitations of the CEQA Guidelines; and

WHEREAS, on September 15, 2010 Agency met with Owner Participant to discuss their interest in becoming an Owner Participant in the Fulton Redevelopment Project Area regarding Sam's Party Rental at the corner of Broadway and Divisadero Streets; and

WHEREAS, in discussing potential owner participation in the Fulton Redevelopment Project Area with the Owner Participant, staff has determined that a strict application of the Criteria could provide undue hardships and may not be applicable in all situations in the Fulton Redevelopment Project Area, and that flexibility in the application of the Criteria is warranted; and

WHEREAS, The OPA between the Redevelopment Agency, and the Owner Participant, emerged from discussions recently held the terms and conditions of the OPA are those that

Agency staff has reviewed with Owner Participant which have resulted in mutually satisfactory outcome, and are in conformance with the Redevelopment Plan; and

WHEREAS, on March 9, 2011 at a regular meeting, the Housing and Community Development Commission ("HCDC") will hear the testimony of staff and interested citizens, consider the proposed waivers to the Criteria, and consider recommending that the Redevelopment Agency Board approve the proposed waivers and approval of the subject Owner Participation Agreement as recommended by staff.

NOW, THEREFORE, BE IT RESOLVED that the Redevelopment Agency of the City of Fresno hereby waives the application of the following requirements of the Criteria, as described in the following and approves the Owner Participation Agreement for Harry R. Boyajian, and Daniel C. Boyajian, as an Owner Participant in the Fulton Redevelopment Project Area:

1. Item 1, "A Narrative Description of the Proposed Development/Rehabilitation to be Undertaken" - The Owner Participation Agreement contains a List of Improvement Requirements, that enhance the subject properties, as well as language that provide a more applicable review process for any subsequent site plans and building plans to be reviewed by the Agency during the life of the Redevelopment Plan. The Owner Participant has a well established business in the Project Area and submission of information regarding projections of jobs to be retained or generated is not necessary at this time.

2. Item 2, "Schematic Project Design Work" - Submission of schematic site plans at this time would be premature, and an unnecessary hardship for the Owner Participant as the Owner Participation Agreement provides for a more applicable review process for any plans to be submitted by an owner participant.

3. Item 3, "Development Team Information", and Item 4, "Experience" - The Owner Participant business is well established in the Project Area, and is contemplating a major renovation and expansion of the Haron Motors building. It is not necessary at this time to submit such information about Owner Participant's Development Team and Experience, as the Owner Participation Agreement provides a more applicable review process for any subsequent site plans and building plans to be reviewed by the Agency.

4. Item 6, "Financial Statement" - The Owner Participant's established business in the Project Area has the capability of carrying-out its obligations, in cooperation with the Agency, under the proposed Owner Participation Agreement. It is not necessary at this time to submit such information, as the Owner Participation Agreement provides a more applicable review process for any subsequent site plans and building plans to be reviewed by the Agency.

5. Item 8, "Release from Acquisition Plan" - The proposed Owner Participation Agreement provides appropriate language protecting the Owner Participant, based upon performance under the proposed Owner Participation Agreement, to be suitably protected from eminent domain, unless an Owner Participant were to agree to being acquired in such a manner. The application of the specific language in this Item of the Criteria is not necessary.

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