

**The City of Garden Grove as Successor Agency to the
Garden Grove Agency for Community Development**

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	Kingsley Okereke	
Dept:	Director	Dept:	Finance	
Subject:	ADOPTION OF A RESOLUTION APPROVING THE PURCHASE AND SALE AGREEMENT WITH THE HENNESSY GROUP INC., FOR THE SALE OF REAL PROPERTY LOCATED 13502 LANNING STREET, 13501 BARNETT WAY AND 13502 BARNETT WAY, GARDEN GROVE		Date:	May 27, 2014

OBJECTIVE

To conduct a Public Hearing and adopt a Resolution approving a Purchase and Sale Agreement ("Purchase and Sale Agreement") between The City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") and Hennessy Group Inc., ("Buyer") for the sale of three (3) parcels of real property located at 13502 Lanning Street, 13501 Barnett Way and 13502 Barnett Way in Garden Grove, more particularly described in Exhibit "A" and as shown on the map in Exhibit "B" attached to the agreement, and fully incorporated herein by reference ("Property").

BACKGROUND/DISCUSSION

Pursuant to the terms and conditions of the Purchase and Sale Agreement, the Successor Agency agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Successor Agency for the total sum of Five Hundred Fifteen Thousand Dollars (\$515,000) ("Purchase Price").

<u>Property Address</u>	<u>Property Type</u>	<u>Market Value</u>
13501 Barnett Way	Vacant land – 6,214 sq. ft.	\$150,000
13502 Barnett Way	Vacant land - 8,571 sq.ft.	\$205,000
<u>13502 Lanning Street</u>	<u>Vacant land - 6,488 sq.ft.</u>	<u>\$160,000</u>
	Total Purchase Price	\$515,000

To establish an estimate of market value of the unencumbered fee simple interest in the Property, as of April 18, 2014,(the "Date of Value") staff had its consultant, Lidgard and Associated ("Appraiser"), appraise the Property. The Appraiser determined the value to be \$515,000, which is consistent with the Purchase Price. A draft of the proposed Purchase and Sale Agreement is attached to this report.

Escrow shall close ("Close of Escrow," "Close," or "Closing") within ten (10) days following the fulfillment and/or waiver of the conditions precedent set forth in Section 8, but in no event later than the three hundred sixty-five (365) days following the date that the Department of Finance has approved this transaction ("Outside Closing Date").

Adoption of a Resolution approving the Purchase and Sale Agreement with the Hennessy Group Inc., for the sale of real property located 13502 Lanning Street, 13501 Barnett Way and 13502 Barnett Way, Garden Grove
May 27, 2014
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If the Buyer defaults under the Purchase and Sale Agreement as to its obligation to purchase the Property, and provided Successor Agency is not itself in default, the Successor Agency will be released from any obligation to sell the Property to the Buyer, and the Successor Agency will be entitled to receive liquidated damages from Buyer in the sum of Twenty Thousand Dollars (\$20,000).

FINANCIAL IMPACT

The gross proceeds are \$515,000. Closing costs, attorney's fees and survey fees will be paid from the gross proceeds and the balance of the proceeds will be deposited into the RTP Trust Fund, as required by the Dissolution Act.

RECOMMENDATION

Staff recommends that the Successor Agency:

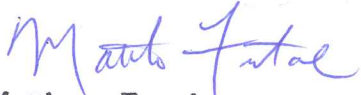
- Hold a Public Hearing to receive testimony on this matter;
- Approve the attached Purchase and Sale Agreement with Hennessy Group Inc. for the sale of real property located 13502 Lanning Street, 13501 Barnett Way and 13502 Barnett Way, in the amount of \$515,000;
- Authorize the Director to transmit, on behalf of the Successor Agency, this Resolution and Agreement to the Oversight Board for approval; and
- Authorize the Secretary to accept the grant deed on behalf of the Successor Agency; and
- Upon approval by the Oversight Board and the California Department of Finance, authorize the Director to execute the Purchase and Sale Agreement, Assignment, and any other required related documents on behalf of the Successor Agency and to make minor modifications as needed.


KINGSLEY OKEREKE
Finance Director


By: Greg Blodgett
Senior Project Manager

Attachment 1: Agreement
Attachment 2: Resolution

Approved for Agenda Listing


Matthew Fertal
Director

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** ("Agreement") is dated for reference purposes as of the ____ day of _____, 2014 ("Agreement Date"), and is being entered into by and between the **SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT** ("Successor Agency"), and **MICHAEL J. HENNESSEY**, an individual, **dba HENNESSEY GROUP**, its successor and assigns ("Buyer"), for the acquisition by Buyer of certain real property described below.

As used in this Agreement, the term "Final Approval Date" means the date on which the California Department of Finance has approved (or been deemed to have approved) this Agreement in accord with Health & Safety Code Sections 34179 and 34181.

NOW, THEREFORE, Successor Agency and Buyer hereby agree as follows:

1. Agreement to Sell and Purchase. Successor Agency is the owner in fee of that certain vacant real property consisting of three (3) parcels located at: 13502 Lanning Street, 13501 Barnett Way and 13502 Barnett Way in the City of Garden Grove ("City"), County of Orange, State of California ("Land"). The Land is more particularly described in Exhibit "A" and is shown on the map in Exhibit "B" attached hereto and fully incorporated herein by reference. As used in this Agreement, the term "Property" means the Land and (a) all of Successor Agency's right, title and interest in and to any and all guarantees, warranties and indemnities relating to the Land, any and all development rights, entitlements, franchises and other intangible property pertaining to or inuring to the benefit of Successor Agency with respect to the Land, including, without limitation, all consents, authorizations, variances or waivers, licenses, registrations, certificates, warranties, permits and approvals from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality in respect of the Land, or any part thereof, and required for the occupancy, maintenance, or use of the Land; and (b) all of Successor Agency's right, title and interest, if any, in and to any and all plans, drawings, renderings, maps and engineering studies used in connection with, or related to, the Land.

Successor Agency agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Successor Agency upon the terms and for the consideration set forth in this Agreement. Buyer intends but is not obligated to construct three (3) single family detached residences (or any other development Buyer may elect, subject to exercise by the City of its constitutional police power) (the "Project") on the Property.

2. Purchase Price. The purchase price of the Property is as follows: 13502 Lanning Street) One Hundred Sixty Thousand Dollars (\$160,000.00), 13501 Barnett Way One Hundred Fifty Thousand Dollars (\$150,000.00) and 13502 Barnett Way Two Hundred Five Thousand Dollars (\$205,000.00) for a total purchase price of Five Hundred Fifteen Thousand Dollars (\$515,000.00) (the "Purchase Price"). The Purchase Price is not less than the fair market value of the Property.

3. Conveyance of Title and Possession. Successor Agency agrees to convey by Grant Deed to Buyer fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, taxes and other title or survey matters ("Exceptions") except such matters which are acceptable to the Buyer, in its sole and absolute discretion, following Buyer's review of the Report (defined below) as provided in this Section 3. Within fifteen (15)

calendar days following the Agreement Date, Successor Agency shall cause First American Title Company ("Title Company") to deliver to Buyer a preliminary title report or commitment ("Report") with respect to the title to the Property, together with legible copies of documents creating the Exceptions set forth in the Report. Buyer shall have thirty (30) days from its receipt of the Report within which to give written notice to Successor Agency of Buyer's approval or disapproval of any of such Exceptions. Buyer's failure to give written approval of the Report within such time limit shall be deemed Buyer's disapproval of the Exceptions set forth in the Report. If Buyer notifies Successor Agency of any Exceptions in the Report which are disapproved by Buyer, Successor Agency shall have the right, but not the obligation, within thirty (30) days after receiving Buyer's written notice, to remove any disapproved Exceptions or provide assurances or endorsements satisfactory to Buyer, acting in its sole and absolute discretion, that such disapproved Exception(s) will be removed on or before the Closing at Successor Agency's sole cost. The foregoing notwithstanding, all monetary liens and encumbrances are disapproved regardless of whether Buyer provides affirmative notice of disapproval. If Successor Agency cannot or does not elect to remove or provide assurances with respect to any of the disapproved Exceptions within that period, Buyer shall have the right, within thirty (30) days following written notice by Successor Agency to Buyer of such election, to either give Successor Agency and the Escrow Holder written notice that Buyer elects to proceed with the purchase of the Property subject to the disapproved Exceptions or to give Successor Agency written notice that Buyer elects to terminate this Agreement, and in such case, the parties will split the cost of all of Escrow Holder's and Title Company's cancellation charges and fees. Buyer shall have the right to approve or disapprove, in its sole and absolute discretion, any Exceptions reported by the Title Company after Buyer has approved the condition of title for the Property. Successor Agency shall not voluntarily create any new Exceptions to title following the Agreement Date.

4. Title Insurance Policy. Escrow Holder shall, following recording of the Grant Deed, provide Buyer with a standard owner's CLTA (or extended coverage ALTA, at the request of Buyer) policy of title insurance in the amount of the Purchase Price, issued by the Title Company, together with any endorsements and additional coverage requested by Buyer, showing fee simple title to the Property vested in Buyer, subject only to the Exceptions set forth in Section 3 approved by Buyer and the printed exceptions and stipulations in the policy. Successor Agency shall pay the portion of the premium which would be charged for a CLTA (standard coverage) owners title insurance policy ("Owner's Policy") in the amount of the Purchase Price, and Buyer shall pay the additional cost for an ALTA (extended coverage) title insurance policy ("Extended Policy") if Buyer elects to receive such a policy and for any other additional costs, including the costs of any endorsements and additional coverage, not otherwise Successor Agency's responsibility under Section 3 above.

5. Escrow. Buyer and Successor Agency shall open an escrow ("Escrow") in accordance with this Agreement with First American Title Company ("Escrow Holder"). This Agreement, together with the escrow instructions prepared by Escrow Holder and executed by Buyer and Successor Agency, constitutes the joint escrow instructions of Buyer and Successor Agency, and the Escrow Holder to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow on or before the Closing Date set forth in Section 7.6 hereof; provided, however, Buyer shall not be obligated to waive any of its rights, conditions or contingencies under this Agreement in order to close the Escrow.

5.1 Grant Deed. Successor Agency shall execute and deliver into the Escrow a Grant Deed ("Grant Deed") to Buyer, in substantially the form attached hereto as Exhibit "C" and incorporated herein. Buyer agrees to deposit, or cause its lender to deposit, the Purchase Price upon

the Close of Escrow. Buyer and Successor Agency agree to deposit with Escrow Holder any additional instruments as may be necessary to complete this transaction.

5.2 Insurance. Insurance policies are not to be transferred, and Successor Agency may cancel its own policies after the Close of Escrow.

5.3 Escrow Account. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.

6. Tax Adjustment Procedure. Escrow Holder shall pay and charge Successor Agency for any unpaid delinquent property taxes and/or penalties and interest thereon, if any, and for any delinquent assessments or bonds against the Property. Escrow Holder shall prorate property taxes and assessments for the current fiscal year, if any, as of the Closing Date.

7. Escrow Holder Authorization. Escrow Holder is authorized to, and shall:

7.1 Fees, Charges and Costs Borne by Successor Agency. Successor Agency shall bear and Escrow Holder shall discharge on Successor Agency's behalf out of the sums payable to Successor Agency hereunder all costs and expenses associated with the Owner's Policy as set out in Section 4, one-half of Escrow Holder's fee and any additional costs and charges customarily charged to sellers in accordance with common escrow practices in Orange County.

7.2 Fees, Charges and Costs Borne by Buyer. Buyer shall bear and Escrow Holder shall discharge on Buyer's behalf out of the sums deposited by Buyer the fee for recordation of the Grant Deed, any costs and expenses with the Extended Policy (if applicable) as set out in Section 4, one-half of Escrow Holder's fees and any additional costs and charges customarily charged to buyers in accordance with common escrow practices in Orange County.

7.3 Disbursement. Disburse funds, record the Grant Deed and deliver the title policy to Buyer when the conditions to the Close of Escrow have been fulfilled (or waived in writing) by Buyer and Successor Agency.

7.4 Close of Escrow. The terms "Close of Escrow" and "Closing Date," if and where written in these instructions, shall mean the date the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Orange County Recorder. Recordation of instruments delivered through this Escrow is authorized, if necessary or proper for the issuance of the policy of title insurance pursuant to Section 4 hereof.

7.5 Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.

7.6 Time of the Essence. Escrow shall close ("Close of Escrow," "Close," or "Closing") within ten (10) days following the fulfillment and/or waiver of the conditions precedent set forth in Section 8, but in no event later than the three hundred sixty-five (365) days following the Final Approval Date ("Outside Closing Date"). Section 31 notwithstanding, the Outside Closing Date may be extended only for delays due to third party litigation against Successor Agency or the City pertaining

to either the approval of this Agreement or the issuance of land use entitlements and permits for the Project. In the event the Closing does not occur on or before the Closing Date or Outside Closing Date, as applicable, either party that is not in Default hereunder shall be entitled to cancel Escrow, terminate this Agreement, and the Escrow Holder shall return to the depositor thereof all documents, instruments, and monies which were deposited hereunder. The foregoing shall not constitute an election of remedies for a non-defaulting party if the other party wrongfully fails to close Escrow.

7.7 Limitations on Escrow Holder Responsibility. Escrow Holder shall have no responsibility for performance or ensuring either party's performance of the provisions set forth in Sections 9, 11, 12, 13, and 14 of this Agreement.

7.8 Tax Requirements. Escrow Holder shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

8. Conditions Precedent to Close of Escrow.

8.1 Buyer's Conditions Prior to Closing. Buyer's obligation to complete the purchase of the Property is subject to the satisfaction, or Buyer's affirmative written waiver in its sole and absolute discretion, of each of the following conditions:

a. Successor Agency shall have delivered through Escrow an executed and recordable Grant Deed sufficient to convey fee title to Buyer as set forth in Section 5.1.

b. Successor Agency shall have delivered through Escrow such other documents as are necessary to comply with Successor Agency's obligations under this Agreement.

c. Buyer shall have approved the condition of title to the Property pursuant to Section 3 hereof and the Title Company shall have committed to deliver to Buyer a title insurance policy as required by Section 4 hereof at or immediately after the Closing.

d. The physical, soils, and environmental condition of the Property shall be satisfactory to the Buyer in accordance with Sections 9 and 14.4 hereof, in the exercise of Buyer's sole and absolute discretion.

e. On or before the thirtieth (30th) day prior to the Outside Closing Date, the City shall have granted land use entitlements in form and substance satisfactory to Buyer in its sole and absolute discretion and, other than the payment of permit fees, building permits are ready to be issued for the Project.

f. Buyer shall not have terminated this Agreement as permitted by the provisions of this Agreement.

g. Successor Agency shall not be in default of any of its obligations under the terms of this Agreement, and all representations of Successor Agency herein shall be true and correct as of the Closing.

h. Buyer shall have secured financing for the purchase of the Property and the development of the Project satisfactory to Buyer, in its sole and absolute discretion, and such financing is ready to close concurrently with the Close of Escrow.

i. The Final Approval Date shall have occurred no less than one hundred (100) days following the Agreement Date.

j. No government agency with jurisdiction shall have directed the Successor Agency not to proceed with the Closing.

8.2 Successor Agency's Conditions Precedent to Closing. Successor Agency's obligation to complete the sale of the Property is subject to the satisfaction, or Successor Agency's affirmative written waiver in its sole and absolute discretion of each of the following conditions:

a. Buyer shall have delivered through Escrow the Grant Deed in recordable form, as set forth in Section 5.1.

b. Buyer shall not be in default of any of its obligations under the terms of this Agreement, and all representations of Buyer herein shall be true and correct as of the Close of Escrow.

c. Buyer shall have deposited (and/or Buyer's lender [as described in Section 8.1h] shall have deposited) with Escrow Holder immediately available funds in an amount equal to the Purchase Price and Buyer's share of title charges described in Section 4.

d. The Successor Agency shall not have terminated this Agreement as permitted by the provisions of this Agreement.

e. The Final Approval Date shall have occurred no less than one hundred (100) days following the Agreement Date.

f. No government agency with jurisdiction shall have directed the Successor Agency not to proceed with the Closing.

g. On or before the thirtieth (30th) day prior to the Outside Closing Date, the City shall have granted land use entitlements in form and substance satisfactory to Buyer in its sole and absolute discretion and, other than the payment of permit fees, building permits are ready to be issued for the Project.

h. Buyer shall have approved the condition of title to the Property pursuant to Section 3 hereof and the Title Company shall have committed to deliver to Buyer a title insurance policy as required by Section 4 hereof at or immediately after the Closing.

i. The physical, soils, and environmental condition of the Property shall be satisfactory to the Buyer in accordance with Sections 9 and 14.4 hereof, in the exercise of Buyer's sole and absolute discretion.

9. Permission to Enter on Premises. Pursuant to the terms and conditions of a right of entry agreement by and between Successor Agency and Buyer to be negotiated by the parties,

Successor Agency will grant to Buyer, or its authorized agents, permission to enter upon the Property at all reasonable times prior to Close of Escrow for the purpose of making necessary or appropriate inspections, tests, surveys, assessments and reports of the Property, at Buyer's expense ("Tests"). Buyer shall indemnify, defend, and hold harmless Successor Agency and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities or damages, and including expert witness fees and reasonable attorney's fees and costs, caused by Buyer's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Property. Nothing in this Section 9 imposes any liability or obligation on Buyer due to Buyer's discovery of the presence of hazardous materials during the course of Buyer's investigations. Buyer shall immediately report such discovery to the Successor Agency. Unless otherwise provided by law, Successor Agency and not Buyer shall have the obligation to report same to the appropriate regulatory agency(s).

10. Closing Statement. Successor Agency instructs Escrow Agent to release a copy of Successor Agency's closing statement to Buyer, and Buyer instructs Escrow Agent to release a copy of Buyer's closing statement to Successor Agency.

11. Possession and Disposition of Personal Property. Successor Agency shall, prior to the Close of Escrow, remove or otherwise dispose of all personal property which is located on the Property.

12. Warranties, Representations, and Covenants of Successor Agency. Successor Agency hereby warrants, represents, and/or covenants to Buyer that:

12.1 Successor Agency's Title. Until the Close of Escrow, Successor Agency shall not do anything which would impair Successor Agency's title to the Property or Buyer's right of possession, development, or use of the Property after the Close of Escrow consistent with this Agreement.

12.2 Conflict with Other Obligation. To Successor Agency's Actual Knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Successor Agency or the Property may be bound.

12.3 Authority. Successor Agency has the full right, power, and authority to sell, convey, and transfer the Property to Buyer as provided herein and to carry out Successor Agency's obligations hereunder.

12.4 Bankruptcy. Successor Agency is not the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Successor Agency to be able to transfer the Property as provided herein.

12.5 Governmental Compliance. Successor Agency has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Successor Agency following the date this Agreement is signed by Buyer, Successor Agency shall, within ten (10) days of receipt of such notice notify Buyer; Successor Agency then, at its option, may either elect to perform the work or take the necessary corrective action prior to

the Close of Escrow or refuse to do so, in which case Successor Agency shall notify Buyer of such refusal and Buyer shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement, and in such case the parties will split all of Escrow Holder's and Title Company's cancellation charges and fees.

12.6 Right to Possession. No person, firm, partnership or corporation has or will have the right to possess the Property or any portion of it as of the Agreement Date or the Close of Escrow.

12.7 No Contracts Surviving Close of Escrow. There are no contracts or other agreements or obligations affecting or concerning the Property which will survive the Close of Escrow.

12.8 Change of Situation. Until the Close of Escrow, Successor Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in the section not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Buyer.

12.9 Successor Agency's Actual Knowledge. As used in this Agreement, "Successor Agency's Actual Knowledge" means the actual knowledge of Matthew Fertal, with no duty of investigation.

13. Warranties, Representations, and Covenants of Buyer. Buyer hereby warrants, represents, and/or covenants to Successor Agency that:

13.1 Authority. Buyer is an individual doing business as Hennessey Group; this Agreement and all documents executed by Buyer are and at the time of Close of Escrow will be duly authorized, executed and delivered by Buyer, are and at the time of Close of Escrow will be legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

13.2 Bankruptcy. Buyer is not the subject of a bankruptcy proceeding.

13.3 Change of Situation. Until the Close of Escrow, Buyer shall, upon learning of any fact or condition which would cause any of the warranties and representations in the section not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Successor Agency.

14. Condition of the Property.

14.1 Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes, regulated by any local governmental authority, the County of Orange, the State of California, any regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response

Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

14.2 Compliance with Environmental Laws. Successor Agency represents and warrants that it is not aware of, and that it has not received any notice from any governmental agency, that the Property is not in compliance with any applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environmental Quality Act, and the rules, regulations, and ordinances of the City of Garden Grove, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.

14.3 As Is Sale. The physical condition, possession or title of the Property is and shall be delivered from Successor Agency to Buyer in an “as is” condition, with no implied warranty by Successor Agency, including without limitation, as to the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Property for the development purposes intended hereunder.

Except as to a breach of Successor Agency’s express representations or warranties contained in Sections 12 and 14.2, Buyer hereby waives, releases and discharges forever Successor Agency and City and their respective elected officials, employees, volunteers, directors, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the condition of the Property, any Hazardous Materials on or under the Property, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Property, however they came to be placed there, except that arising out of the gross negligence or willful misconduct of Successor Agency or City or their respective elected officials, employees, volunteers, contractors, directors, officers, agents or representatives.

Buyer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

As such relates to this Section 14.3, Buyer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

14.4 Approval of Physical Condition of the Property. Buyer shall have ninety (90) days from the Final Approval Date to inspect the Property in accordance with Section 9 and to either approve the condition of the Property or terminate this Agreement, in Buyer's sole and absolute discretion. Any alteration or remediation of the Property deemed necessary by Buyer shall be performed by Buyer, at Buyer's sole cost and expense, and only after the Closing.

15. Nondiscrimination Covenants. Buyer covenants by and for itself and any assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Buyer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

16. Broker's Commission. Buyer hereby agrees to and does indemnify and hold Successor Agency harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings against City and/or Successor Agency which may be brought by any broker, agent or finder, licensed or otherwise, which Buyer has employed in connection with the transaction covered by this Agreement.

17. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Buyer and Successor Agency shall be deemed both a covenant and a condition and shall be a material consideration for Successor Agency's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Successor Agency shall be deemed a material default hereunder by such breaching party. Either party may specifically and expressly waive in writing any condition or portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, including Section 17.1, either party hereto, after expiration of the cure period specified in Section 20 below without cure thereof, may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

17.1 Liquidated Damages upon Buyer's Breach. IF BUYER DEFAULTS UNDER THIS AGREEMENT AS TO ITS OBLIGATION TO PURCHASE THE PROPERTY, AND PROVIDED SUCCESSOR AGENCY IS NOT ITSELF IN DEFAULT, SUCCESSOR AGENCY

WILL BE RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, SUCCESSOR AGENCY WILL HAVE RELEASED BUYER FROM ANY CLAIMS OR CAUSES OF ACTION ARISING OUT OF SUCH DEFAULT, AND BUYER WILL HAVE AGREED THAT SUCCESSOR AGENCY WILL BE ENTITLED TO RECEIVE FROM BUYER THE SUM OF TWENTY THOUSAND DOLLARS (\$20,000) ("LIQUIDATED DAMAGES"). THE RECEIPT OF SUCH PAYMENT WILL BE SUCCESSOR AGENCY'S SOLE REMEDY AND RESOURCE IN REGARD TO SUCH DEFAULT. THE PARTIES HAVE CONSIDERED THE AMOUNT OF DAMAGES WHICH SUCCESSOR AGENCY IS LIKELY TO INCUR IN THE EVENT OF A DEFAULT OR BREACH HEREUNDER BY BUYER AND THE PARTIES HAVE AGREED THAT THE LIQUIDATED DAMAGES IS A REASONABLE APPROXIMATION AND LIQUIDATION OF SUCCESSOR AGENCY'S POTENTIAL DAMAGES, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SUCCESSOR AGENCY THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE RECEIPT OF SUCH AMOUNT BY SUCCESSOR AGENCY IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SUCCESSOR AGENCY PURSUANT TO THE CALIFORNIA CIVIL CODE AND WILL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF THE CALIFORNIA CIVIL CODE OR ANY SIMILAR PROVISION. THE PAYMENT OF LIQUIDATED DAMAGES WILL BE IN LIEU OF ANY OTHER REMEDIES, DAMAGES, OR SUMS DUE OR PAYABLE TO SUCCESSOR AGENCY ARISING UNDER THIS AGREEMENT OR AT LAW OR EQUITY.


BUYER

SUCCESSOR
AGENCY

18. Attorney's Fees. In the event any declaratory or other legal or equitable action is instituted between Successor Agency, Buyer and/or Escrow Holder in connection with this Agreement then, as between Buyer and Successor Agency, the prevailing party shall be entitled to recover from the losing party all of its reasonable costs and expenses, including court costs, reasonable attorneys' fees, expert witness fees, and all fees, costs and expenses incurred on any appeal, in collection of any judgment, and in any bankruptcy proceedings.

19. Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another reasonably acceptable method, and addressed to the party for whom intended, as follows:

If to Successor Agency: Successor Agency to the Garden Grove Agency
for Community Development
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, California 92842
Attention: Director

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr., Esq.

If to Buyer: Hennessey Group
17602 17th Street, Suite 102
Tustin, California 92780-7915
Attention: Michael J. Hennessey

With a copy to: Gresham Savage Nolan & Tilden, PC
550 E. Hospitality Lane, Suite 300
San Bernardino, California 92408
Attention: Kevin K. Randolph, Esq.

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

20. Breaches and Defaults. Subject to Enforced Delay, failure or delay by either party to perform any material term or provision of this Agreement (a "Breach") following written notice and failure to cure as described hereafter constitutes a "Default" under this Agreement.

The nondefaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the nondefaulting party ("Notice of Default"). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion ("Cure Period"). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a "Default" hereunder.

Any failure or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

21. Gender and Number. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

22. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

23. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

24. Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.

25. Counterparts. This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument.

26. Invalidity of Provision. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

27. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Buyer and Successor Agency.

28. Time of Essence. Time is of the essence of each provision of this Agreement.

29. Binding Upon Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

30. Public Works Requirement. If Buyer performs construction on the Property, Buyer shall carry out same in conformity with any applicable federal and state labor laws (including, without limitation, if applicable, the requirement under California law to pay prevailing wages and to hire apprentices). Although the parties believe that any development, if any, of the Property would not be considered to be a "public work" under California law because (i) the Property is being sold to Buyer at its fair market value, (ii) no Successor Agency assistance is being provided to Buyer and/or such development, and (iii) Buyer is under no obligation to develop the Property, Buyer shall be solely responsible for determining and effectuating compliance with such laws, and the Successor Agency makes no representation as to the applicability or non-applicability of any of such laws to any such construction and development. Buyer hereby expressly acknowledges and agrees that the Successor Agency has not previously affirmatively represented to the Buyer or its contractor(s) for the construction or development of the Property, in writing or otherwise, in a call for bids or otherwise, that the development of the Property is not a "public work," as defined in Section 1720 of the Labor

Code. Buyer hereby agrees that Buyer shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. Buyer shall indemnify, protect, defend and hold harmless the Successor Agency and its officers, employees, contractors and agents, with counsel reasonably acceptable to Successor Agency, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development of the Property, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Buyer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Buyer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Property, including, without limitation, any and all public works (as defined by applicable law), Buyer shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 30, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of any development of the Property by the Buyer.

31. Enforced Delay. In addition to specific provisions of this Agreement, performance by either party hereunder with respect to the Closing shall not be deemed to be a Breach, and all performance and other dates specified in this Agreement (excluding the Outside Closing Date, which shall be extended only as provided in Section 7.6) shall be extended where delays with respect to the Closing are due to litigation challenging the validity of this transaction or any element thereof or the rights of either party to engage in the acts and transactions contemplated by this Agreement, acts or omissions of the other party; acts or failure to act of the City or any public or governmental agency or entity (other than acts or failures to act of the Successor Agency which shall not excuse performance by the Successor Agency) ("Enforced Delay"). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for a period reasonably attributable to the Enforced Delay and shall commence to run from the time of commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times and performance under this Agreement may also be extended in writing by the mutual agreement of the parties.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Agreement Date.

**SUCCESSOR AGENCY TO THE
GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT,
a public entity**

By: _____
Matthew Fertal, Director

ATTEST:

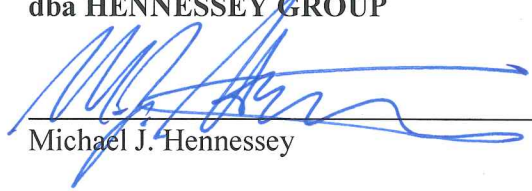
City Clerk

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Successor Agency Special Counsel

BUYER:

**MICHAEL J. HENNESSEY, an individual,
dba HENNESSEY GROUP**



Michael J. Hennessey

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Agreement Date.

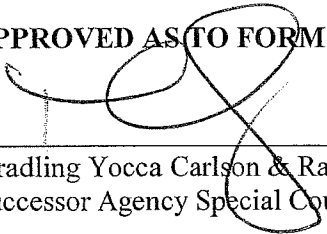
**SUCCESSOR AGENCY TO THE
GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT,**
a public entity

By: _____
Matthew Fertal, Director

ATTEST:

City Clerk

APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth
Successor Agency Special Counsel

BUYER:

MICHAEL J. HENNESSEY, an individual,
dba HENNESSEY GROUP

Michael J. Hennessey

EXHIBIT "A"

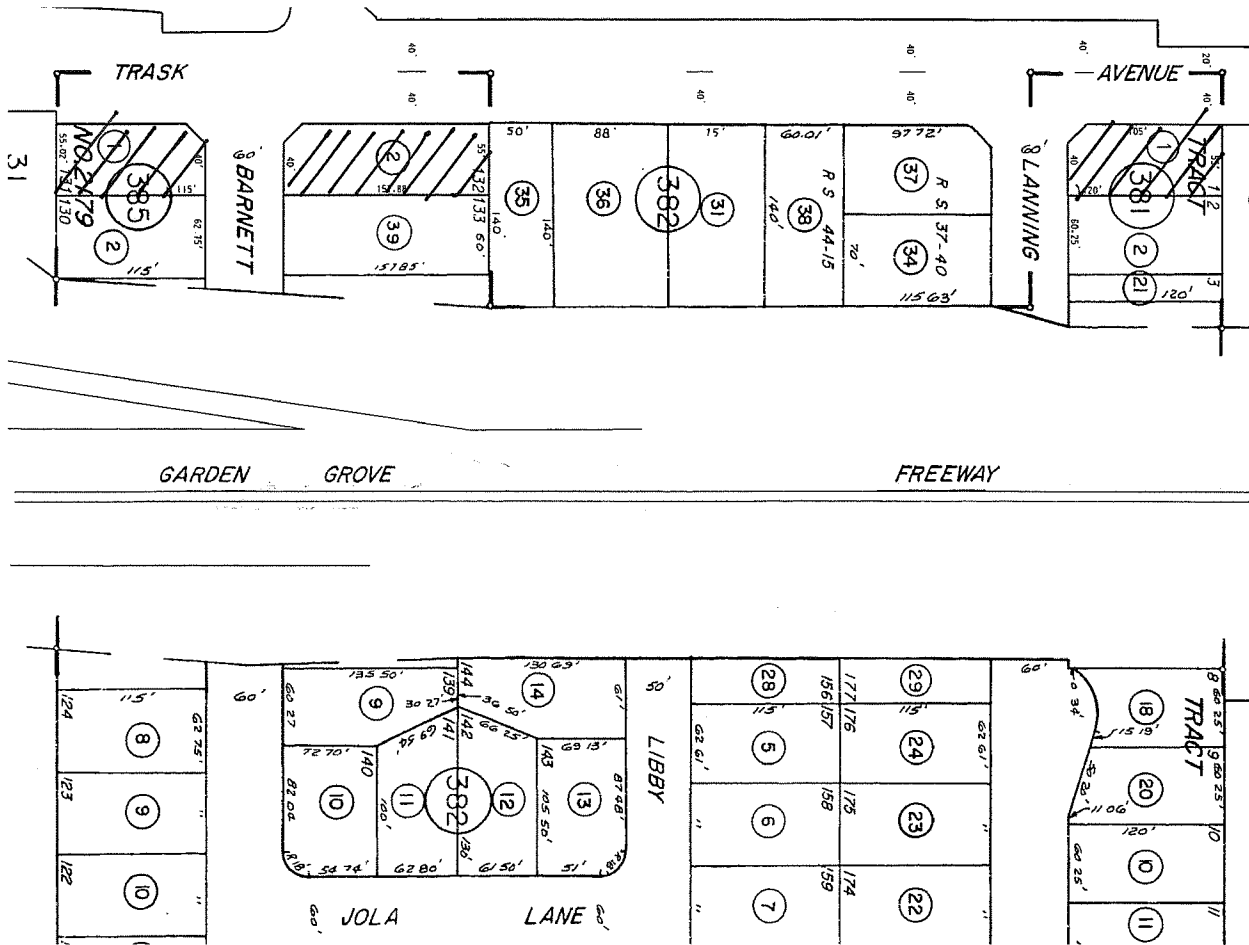
LEGAL DESCRIPTION

That real property located in the City of Garden Grove, County of Orange, State of California, and described as follows:

LOTS 1, 131 AND 132 OF TRACT NO. 2179, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 65, PAGES 16 THROUGH 19 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

EXHIBIT "B"

MAP



APN: 100-381-01, 100-385-01 and 100-382-02

EXHIBIT "C"

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Hennessey Group
17602 17th Street, Suite 102
Tustin, California 9270-7915
Attention: Michael J. Hennessey

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383.

Documentary Transfer Tax: \$ _____
Based on full value of property conveyed

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The **SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT** ("Grantor"), grants to [_____] ("Grantee"), for the acquisition by Grantee of certain real property described below. The real property is hereinafter referred to as the "Property," described in Attachment No. 1 attached hereto and incorporated herein.

The Grantee herein covenants by and for itself, its successors and assigns, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

The Grantee further covenants that all deeds, leases and contracts relating to the Property shall contain the following prohibition against discrimination:

(a) **In deeds:** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees,

subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) **In Leases:** “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) **In Contracts:** “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

[Signatures appear on following page.]

ATTACHMENT NO. 1
PROPERTY DESCRIPTION

That real property located in the City of Garden Grove, County of Orange, State of California, and described as follows:

LOTS 1, 131 AND 132 OF TRACT NO. 2179, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 65, PAGES 16 THROUGH 19 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

RESOLUTION WILL BE PROVIDED TO THE
SUCCESSOR AGENCY AT THE MEETING.