

RECEIVED
CITY OF GARDEN GROVE
CITY CLERK'S OFFICE

THE EMLLEN W. HOAG FOUNDATION

**9860 Larson Avenue
Garden Grove, California 92844**

2015 DEC -3 A 8: 16

December 3, 2015

HAND DELIVERED

Mr. Scott C. Stiles
City Manager
City Clerk's Office
City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840

Re: Property Owned by The Emlen W. Hoag Foundation ("Hoag Foundation") and Located at 10080 & 10180 Garden Grove Boulevard, Garden Grove, California (the "Property")

Dear Mr. Stiles:

Enclosed is a City Clerk file-stamped copy of Hoag Foundation's correspondence to you dated November 20, 2015. Also, enclosed is an executed copy of the "Annual Registration Renewal Fee Report to Attorney General of California" of Hoag Foundation for 2014 and the Addendum thereto (the "Annual Report"). The Annual Report was enclosed with Hoag Foundation's November 20 correspondence, and was filed with the California Attorney General on November 23, 2015.

In the November 20 letter, Hoag Foundation informed the City of Hoag Foundation's decision that it is not in Hoag Foundation's best interest to continue to cooperate in connection with Cathay Bank's attempts to locate a replacement developer for the Property. At the November 24, 2015 City Council meeting, at the request of the City, Hoag Foundation agreed to reconsider the decision.

On December 1, 2015, Hoag Foundation held a Special Meeting of the Board of Trustees to reconsider the decision. The Board of Trustees considered the conditional offer made by Cathay Bank at the November 24 City Council meeting to reimburse a portion of the attorneys' fees and costs incurred by Hoag Foundation. However, as mentioned in the Annual Report, there are several other issues of concern to Hoag Foundation, in addition to the conditions Cathay Bank seeks to impose on the reimbursement of Hoag Foundation's attorneys' fees.

The primary issue of concern is the speculative nature of the "investment." In summary, Hoag Foundation is an Internal Revenue Code 501(c)(3) charitable foundation and a non-profit California corporation. Pursuant to California law, Hoag Foundation is prohibited from engaging in speculative investing.

It has been over five (5) years since construction ceased and any progress towards the resumption of construction has been negligible, at best. As of today, there has been no meeting of the minds as to even the key conceptual terms of any transaction.

In addition to Cathay Bank, to conclude any transaction Hoag Foundation would be required to negotiate with a developer and the developer's capital partner and/or lender. The members of the Board of Trustees of Hoag Foundation are unpaid volunteers and do not have any development experience. Additionally, Hoag Foundation does not have any staff or employees to supervise and manage a clearly complex transaction.

Mr. Scott C. Stiles
City Manager
December 3, 2015
Page 2

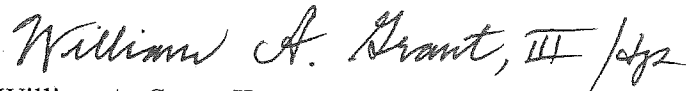
As fiduciaries, the Board of Trustees are obligated to make informed and prudent business decisions. To participate in such a complex transaction, Hoag Foundation is completely reliant upon attorneys and other experts, which is extremely costly. Also, the management and supervision duties that would be required for the Board of Trustees to oversee and protect Hoag Foundation's interests would unduly burden them as volunteers.

Thus, after considering all of the above, and based upon the advice of experts and other professional advisers, the Board of Trustees voted unanimously at the Special Meeting on December 1, 2015, not to reverse their prior unanimous decision. The Board of Trustees determined the potential benefit, if any, to be derived by Hoag Foundation is far outweighed by the potential detriment to Hoag Foundation by participating in any transaction with Cathay Bank.

As the City stated at the November 24 City Council meeting, issues involving any replacement developer for the Property is a private party matter. Hoag Foundation sincerely hopes the City respects and appreciates this difficult decision of the Board of Trustees.

Hoag Foundation requests this letter and the enclosures be filed and incorporated into the official record for the City Council meeting on Tuesday, December 8, 2015. For the information of the City, Hoag Foundation is concurrently providing this correspondence to Cathay Bank.

Very truly yours,



William A. Grant, II
President

Enclosures

cc: California Attorney General (w/encls.)
Hoag Foundation Board of Trustees (w/encls.)(via email)
Ms. Pat Halberstadt, Boys & Girls Club of Garden Grove (w/encls.)(via email)
William B. Brinckloe, Jr., Esq. (w/encls.)(via email)
Thomas E. Gibbs, Esq. (w/encls.)(via email)

THE EMLLEN W. HOAG FOUNDATION
9860 Larson Avenue
Garden Grove, California 92844

RECEIVED
CITY OF GARDEN GROVE
CLERK'S OFFICE
2015 NOV 20 P 2:28

November 20, 2015

HAND DELIVERED

Mr. Scott C. Stiles
City Manager
City Clerk's Office
City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840

Re: Property Owned by The Emlen W. Hoag Foundation ("Hoag Foundation") and Located at 10080 & 10180 Garden Grove Boulevard, Garden Grove, California (the "Property")

Dear Mr. Stiles:


The City of Garden Grove requested Hoag Foundation provide the City with an update on the status of the efforts of Hoag Foundation to cooperate with Cathay Bank, in connection with Cathay Bank's attempt to locate a replacement developer for the Property. Enclosed for the information of the City is an executed copy of the "Annual Registration Renewal Fee Report to Attorney General of California" of Hoag Foundation for 2014 and the Addendum thereto (the "Annual Report").

The Annual Report is being filed by Hoag Foundation with the Attorney General and will be available for public viewing on the website of the Attorney General. Hoag Foundation also provided Cathay Bank with the Annual Report.

As discussed in the Addendum, the Board of Trustees of Hoag Foundation held a Special Meeting on November 12, 2015. For, among others, the reasons stated in the Addendum, the Board of Trustees determined it is not in Hoag Foundation's best interest to continue to cooperate in connection with Cathay Bank's attempts to locate a replacement developer for the Property. In view of the decision of the Board of Trustees, the City is advised Hoag Foundation will not be signing a Letter of Authorization granting Cathay Bank, or any other party, the right to submit to the City of Garden Grove Community Development Department for entitlements or development approval for the Property.

As the City is aware, Hoag Foundation is a tax-exempt charity and nonprofit corporation that benefits the Boys & Girls Club of Garden Grove. Hoag Foundation hopes the City respects the fact that the Board of Trustees of Hoag Foundation is obligated, pursuant to federal and California law, to make decisions that are in the best interest of Hoag Foundation and its charitable mission.

Very truly yours,


William A. Grant, II
President

Enclosure

cc: Hoag Foundation Board of Trustees (w/encl.)(via email)
Ms. Pat Halberstandt, Boys & Girls Club of Garden Grove (w/encl.)(via email)
William B. Brinckloe, Jr., Esq. (w/encl.)(via email)
Thomas E. Gibbs, Esq. (w/encl.)(via email)

MAIL TO:
 Registry of Charitable Trusts
 P.O. Box 903447
 Sacramento, CA 94203-4470
 Telephone: (916) 445-2021

WEB SITE ADDRESS:
<http://ag.ca.gov/charities/>

ANNUAL REGISTRATION RENEWAL FEE REPORT TO ATTORNEY GENERAL OF CALIFORNIA

Sections 12586 and 12587, California Government Code
 11 Cal. Code Regs. sections 301-307, 311 and 312

Failure to submit this report annually no later than four months and fifteen days after the end of the organization's accounting period may result in the loss of tax exemption and the assessment of a minimum tax of \$800, plus interest, and/or fines or filing penalties as defined in Government Code section 12586.1. IRS extensions will be honored.



State Charity Registration Number <u>001249</u> Name of Organization <u>The Emlien W. Hoag Foundation</u> Address (Number and Street) <u>9860 Larson Avenue</u> <u>Garden Grove, California 92844</u> City or Town, State and ZIP Code	Check if: <input type="checkbox"/> Change of address <input type="checkbox"/> Amended report Corporate or Organization No. <u>D 0254444</u> Federal Employer I.D. No. <u>95-1890734</u>
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ANNUAL REGISTRATION RENEWAL FEE SCHEDULE (11 Cal. Code Regs. sections 301-307, 311 and 312)
 Make Check Payable to Attorney General's Registry of Charitable Trusts

Gross Annual Revenue	Fee	Gross Annual Revenue	Fee	Gross Annual Revenue	Fee
Less than \$25,000	0	Between 100,001 and \$250,000	\$50	Between \$1,000,001 and \$10 million	\$150
Between \$25,000 and \$100,000	\$25	Between \$250,001 and \$1 million	\$75	Between \$10,000,001 and \$50 million	\$225
				Greater than \$50 million	\$300

PART A - ACTIVITIES

For your most recent full accounting period (beginning 01 / 01 / 2014 ending 12 / 31 / 2014) list:
 Gross annual revenue \$ 1,256,842.00 Total assets \$ 1,258,180.00

PART B - STATEMENTS REGARDING ORGANIZATION DURING THE PERIOD OF THIS REPORT

Note: If you answer "yes" to any of the questions below, you must attach a separate sheet providing an explanation and details for each "yes" response. Please review RRF-1 instructions for information required.

	Yes	No
1. During this reporting period, were there any contracts, loans, leases or other financial transactions between the organization and any officer, director or trustee thereof either directly or with an entity in which any such officer, director or trustee had any financial interest?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. During this reporting period, was there any theft, embezzlement, diversion or misuse of the organization's charitable property or funds?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. During this reporting period, did non-program expenditures exceed 50% of gross revenues? See the Addendum attached	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. During this reporting period, were any organization funds used to pay any penalty, fine or judgment? If you filed a Form 4720 with the Internal Revenue Service, attach a copy.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. During this reporting period, were the services of a commercial fundraiser or fundraising counsel for charitable purposes used? If "yes," provide an attachment listing the name, address, and telephone number of the service provider.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. During this reporting period, did the organization receive any governmental funding? If so, provide an attachment listing the name of the agency, mailing address, contact person, and telephone number.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. During this reporting period, did the organization hold a raffle for charitable purposes? If "yes," provide an attachment indicating the number of raffles and the date(s) they occurred.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Does the organization conduct a vehicle donation program? If "yes," provide an attachment indicating whether the program is operated by the charity or whether the organization contracts with a commercial fundraiser for charitable purposes.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Did your organization have prepared an audited financial statement in accordance with generally accepted accounting principles for this reporting period?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Organization's area code and telephone number (714) 838 - 1704
 Organization's e-mail address vets4pets@aol.com

I declare under penalty of perjury that I have examined this report, including accompanying documents, and to the best of my knowledge and belief, it is true, correct and complete.

 Signature of authorized officer	David P. Stewart Printed Name	Treasurer Title	11/20/15 Date
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ADDENDUM TO THE EMLLEN W. HOAG FOUNDATION, A CALIFORNIA NONPROFIT CORPORATION, 2014 ANNUAL REGISTRATION RENEWAL FEE REPORT TO ATTORNEY GENERAL OF CALIFORNIA

I. BACKGROUND. Part B, Question #3 of the Annual Fee Report inquires, "During this reporting period, did non-program expenditures exceed 50% of gross revenues?" The instructions to Part B, Question #3 state, if the answer to Question #3 is "Yes":

"provide a signed statement listing the non-program expenditures and the reasons why they exceeded 50% of gross revenues. If you believe that non-program expenditures were reasonable, furnish a signed statement explaining the reasons why. If not, describe the steps the organization will take to lower non-program expenditures. Non-program expenditures are any expenditures that do not meet the definition of 'program services' set forth in the Internal Revenue Service Instructions for Form 990 and Form 990-EZ."

The Internal Revenue Service instructions to Form 990 define a program service as "an activity of an organization that accomplishes its exempt purposes." The 2014 Form 990 for THE EMLLEN W. HOAG FOUNDATION ("**Hoag Foundation**") provides Hoag Foundation's mission and program service is to provide "financial support for the Boys & Girls Club of Garden Grove."

II. 2014 NON-PROGRAM EXPENDITURES. As shown in Hoag Foundation's IRS Form 990 for 2014, Hoag Foundation's total revenues for 2014 were \$1,256,842.00. In 2014, Hoag Foundation was paid \$264,000.00 in rent pursuant to the Ground Lease of an approximate three-acre parcel of land owned by Hoag Foundation and located at 10080 & 10180 Garden Grove Boulevard, Garden Grove, California (the "**Property**"). The remaining revenues received by Hoag Foundation in 2014 were for the reimbursement of attorneys' fees and other costs and expenses incurred by Hoag Foundation and involving the Property.

In 2014, Hoag Foundation paid a total of \$321,239.92 in attorneys' fees to two (2) law firms that represented Hoag Foundation in connection with matters involving the Property. The attorneys' fees paid by Hoag Foundation exceeded fifty percent (50%) of the gross revenues of Hoag Foundation for 2014, excluding the amounts reimbursed to Hoag Foundation in 2014.

III. HISTORY OF HOAG FOUNDATION AND THE PROPERTY. Hoag Foundation is a California nonprofit corporation that was formed on May 29, 1951, "for general charitable and eleemosynary purposes ..." for the benefit of the Boys & Girls Club of Garden Grove ("**BGCGG**"). The Board of Trustees of Hoag Foundation manages and administers the operations of Hoag Foundation. The Board of Trustees are volunteers who receive no compensation and are members of the community.

Hoag Foundation also owns an eight-acre parcel of land that adjoins the Property to the south. The eight-acre parcel contains the BGCGG's main facility, KiwanisLand, which is an approximate five-acre park, and the Lions Club building (the "**Boys & Girls Club Parcel**"). Hoag Foundation leases the Boys & Girls Club Parcel to the BGCGG for \$1.00 per year.

Historically, Hoag Foundation ground leased the Property. The rent received by Hoag Foundation is used to support the BGCGG. Initially, the Property was ground leased by Hoag Foundation to a Chrysler dealership in the 1950's, which ground lease terminated in 2002.

In 2003, Hoag Foundation entered into the Ground Lease of the Property with Garden Grove Galleria ("GGG"). In the Ground Lease, GGG agreed to construct on the Property a mixed-use high-end retail and luxury residential project known as "Garden Grove Galleria." The retail component consisted of a two-story shopping center containing a total of 125,983 square feet. The residential component consisted of 66 condominiums

In October 2007, GGG entered into a Construction Loan with Cathay Bank pursuant to which Cathay Bank agreed to lend GGG \$42.5 million to construct the project. In January 2010, after funding approximately \$19 million on the Construction Loan, Cathay Bank ceased funding the Construction Loan.

When Cathay Bank ceased funding the Construction Loan, construction halted and numerous mechanic's lien claims and lawsuits were filed and litigation ensued. GGG defaulted pursuant to the Ground Lease. GGG sued Cathay Bank, alleging Cathay Bank breached the Construction Loan. Cathay Bank filed counterclaims against GGG for breach of the Construction Loan, and to foreclose Cathay Bank's Deed of Trust that secured the Construction Loan and encumbered the Ground Lease.

In connection with the Construction Loan, Hoag Foundation, Cathay Bank and GGG entered into a Ground Lease Consent, Estoppel Certificate and Agreement on November 7, 2007 (the "**Consent**"). In the Consent, Hoag Foundation consented to the encumbrance of the Ground Lease by Cathay Bank's Deed of Trust. As more particularly provided in the Consent, Hoag Foundation is prevented from terminating the Ground Lease, while Cathay Bank is pursuing its foreclosure remedies for GGG's alleged breach of the Construction Loan.

In August 2012, a jury returned a verdict finding that GGG did not breach the Construction Loan and that Cathay Bank did breach the Construction Loan, and awarding GGG approximately \$11,275,000 in damages. The Court subsequently entered judgment on that verdict, and also for GGG and against Cathay Bank on Cathay Bank's foreclosure cause of action, which judgment Cathay Bank appealed. On November 6, 2015, the Court of Appeal for the State of California, Fourth Appellate District, Division Three, denied Cathay Bank's appeal and affirmed GGG's judgment against Cathay Bank, including on Cathay Bank's foreclosure cause of action.

Cathay Bank has until December 17, 2015, to file a Writ for Certiorari to the California Supreme Court appealing the decision of the Court of Appeal. It is not known whether Cathay Bank will seek review by the California Supreme Court.

In October 2012, Hoag Foundation and Cathay Bank entered into a Cure and Reinstatement Agreement (the "**Cure Agreement**"). Pursuant to the Cure Agreement, Cathay Bank agreed to resolve the mechanic's lien claims that encumbered the Property. Additionally, Cathay Bank agreed to pay delinquent property taxes owed on the Property to the Orange County Tax Collector/Assessor, the delinquent rent owed to Hoag Foundation and the attorneys' fees incurred by Hoag Foundation to October 2012.

In 2014, Hoag Foundation, without any obligation on the part of or liability to Hoag Foundation, cooperated with Cathay Bank's attempts to locate a developer to replace GGG. As part of the process, in October 2014, Cathay Bank reimbursed the attorneys' fees incurred by Hoag Foundation for the period of November 2012 through May 2014.

In December 2014, Cathay Bank proposed to Hoag Foundation a replacement developer for the Property. However, based upon the opinions of experts and the advice of consultants to Hoag Foundation, the Board of Trustees voted to unanimously disapprove the proposed development of the replacement developer.

In 2015, Hoag Foundation, once again, without any obligation on the part of or liability to Hoag Foundation, cooperated with Cathay Bank's renewed attempt to identify and obtain a replacement developer. In approximately February 2015, Cathay Bank proposed a second replacement developer to Hoag Foundation.

For the period of February through September 2015, Hoag Foundation cooperated with Cathay Bank and the proposed second replacement developer. Hoag Foundation's cooperation included attending several meetings with Cathay Bank, the proposed developer, and the City of Garden Grove. In addition, Hoag Foundation assisted in facilitating access to the Property by the proposed developer to perform due diligence.

On June 18, 2015, Hoag Foundation requested Cathay Bank to reimburse Hoag Foundation the attorneys' fees it incurred for the one-year period commencing as of June 1 2014, the date to which Cathay Bank last reimbursed Hoag Foundation's attorneys' fees, through May 31, 2015. In addition, Hoag Foundation requested Cathay Bank to reimburse the cost Hoag Foundation incurred to have a Retail Market Feasibility Analysis prepared on the Property. Cathay Bank was advised the Board of Trustees would not authorize Hoag Foundation's counsel to perform any further work in connection with the proposed replacement developer transaction, if Hoag Foundation was not reimbursed the attorneys' fees and costs by July 1, 2015.

Initially, Cathay Bank responded it would consider the reimbursement request and provide a response. Thereafter, Cathay Bank requested copies of the attorneys' fees invoices for which Hoag Foundation was requesting reimbursement. In August 2015, Hoag Foundation redacted any attorney-client privileged information and provided Cathay Bank with copies of all of the attorneys' fees invoices.

During the period of July through September 2015, Hoag Foundation continued to cooperate with Cathay Bank and the proposed replacement developer. This is because Cathay Bank continued to advise Hoag Foundation that Cathay Bank was evaluating the attorneys' fees and costs reimbursement request and would provide a response to Hoag Foundation. When it became reasonably apparent to the Board of Trustees that Cathay Bank would not reimburse the attorneys' fees and costs incurred by Hoag Foundation, the Board of Trustees held a Special Meeting on October 1, 2015.

At the October 1, 2015 Special Meeting, the Board of Trustees reviewed the mission statement of Hoag Foundation and the fiduciary duties and obligations of the Board of Trustees. The Board of Trustees directed transactional counsel to further advise the Board of Trustees on the propriety of Hoag Foundation continuing to incur unreimbursed fees and costs in attempting to cooperate with Cathay Bank. Also, the Board of Trustees instructed legal counsel not to perform any further work in connection with any transaction with Cathay Bank, unless required to protect the interests of Hoag Foundation.

On November 12, 2015, the Board of Trustees held a second Special Meeting. At the Special Meeting, transactional counsel summarized California and federal law that applies to nonprofit corporations. Additionally, the Board of Trustees was advised as to the provisions of the California

Corporation Code governing assets, such as the Property, held for investment by nonprofit corporations.

The Board of Trustees was provided with a summary of their fiduciary obligations pursuant to California law. The Board of Trustees was also provided with the California Attorney General's Guide for Charities and the Internal Revenue Service publication Governance and Related Topics - 501(c)(3) Organizations (the "**Publication**").

IV. LAWS GOVERNING CALIFORNIA TAX-EXEMPT NONPROFIT CORPORATIONS.

Hoag Foundation is an Internal Revenue Code 501(c)(3) tax-exempt nonprofit corporation. To maintain its qualification as a tax-exempt organization pursuant to the Internal Revenue Code, Hoag Foundation is prohibited from expending funds that do not further its program services. In the Publication, the IRS concludes "[b]y making full and accurate information about its mission, activities, finance, and governance publicly available, a charity encourages transparency and accountability to its constituents."

Since the Property is owned by a nonprofit corporation and is held for investment, Hoag Foundation must comply with the requirements of Corporations Code Section 5240. Section 5240(b) provides that a nonprofit corporation, when investing assets held for investment must:

"(1) Avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the corporation's capital.

(2) Comply with additional standards, if any, imposed by the articles, bylaws or express terms of an instrument or agreement pursuant to which the assets were contributed to the corporation."

Section 5240(d) provides directors of a corporation, in carrying out their duties pursuant to Section 5240, may rely upon the advice of consultants and third parties, as provided in Section 5231(b) of the California Corporations Code.

Section 5231(a) addresses the duties of a director of a nonprofit corporation and provides a director shall perform its duties "in good faith, in a manner that director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." Section 5231(c) provides, in part, a director who performs its duties in accordance with the requirements of Section 5231 "shall have no liability based upon any alleged failure to discharge the person's obligations as a director"

V. DECISIONS OF THE BOARD OF TRUSTEES. At the Special Meeting on November 12, 2015, the Board of Trustees discussed and considered the legal obligations of Hoag Foundation and the Board of Trustees under federal and California law. The Board of Trustees voted unanimously, for several reasons, that it would not be reasonable and/or in the best interest of Hoag Foundation, for Hoag Foundation to continue to attempt to cooperate with Cathay Bank in locating a replacement developer.

The reasons include:

- Continued expenditures by Hoag Foundation would not further the mission or program services of Hoag Foundation.

- Hoag Foundation has no obligation and/or duty to cooperate with Cathay Bank in connection with any attempts by Cathay Bank to locate a replacement developer.
- Proceeding any further would constitute speculation by Hoag Foundation, as there is no guarantee Cathay Bank will consummate any transaction with a replacement developer.
- Continuing to incur unreimbursed expenses could constitute a waste of the assets of Hoag Foundation, and ultimately result in exhausting the financial resources of Hoag Foundation.

VI. CONCLUSION. As noted above, the instructions to Part B, Question #3 state, if non-program expenditures exceed fifty percent (50%) of gross revenues, explain why the organization believes the expenditures were reasonable. Hoag Foundation believes the amounts expended, in an attempt to cooperate with Cathay Bank were reasonable, as Hoag Foundation determined a completed project would benefit the community and assure the long-term payment of the rent to Hoag Foundation pursuant to the Ground Lease.

However, after two (2) years of attempting to cooperate with Cathay Bank and incurring significant unreimbursed fees and costs, the Board of Trustees determined it is no longer appropriate or in the best interest of Hoag Foundation for Hoag Foundation to continue to attempt to cooperate with Cathay Bank in locating a replacement developer. As a result, Hoag Foundation has taken the steps required to eliminate the non-program related expenditures by ceasing to incur fees and costs in attempts to cooperate with Cathay Bank.

Hoag Foundation intends to evaluate its legal rights and remedies in view of the existing situation.

IN WITNESS WHEREOF, the duly authorized representatives of Hoag Foundation have executed this Addendum on November 20, 2015.

HOAG FOUNDATION

THE EMLEN W. HOAG FOUNDATION, a
California nonprofit corporation

By: William A. Grant, II
William A. Grant, II
President

By: David P. Stewart
David P. Stewart
Treasurer