



ACQUISITION OF REAL PROPERTY  
12222 HARBOR BOULEVARD (LIN)  
October 14, 2008  
Page 2

COMMUNITY VISION IMPLEMENTATION

- Improving the City's economic base through the development of tax generating uses where appropriate.

RECOMMENDATION

Based on the abovementioned, staff recommends the following:

- Approve the acquisition of the subject property;
- Authorize the Agency Director and Secretary to execute the pertinent documents on behalf of the Agency, and
- Authorize the Finance Officer to draw a warrant in the amount of \$2,154,320 when appropriate to do so.

  
CHET YOSHIZAKI  
Economic Development Director

By:   
Paul Guerrero  
Senior Economic Development Specialist

Approved for Agenda Listing

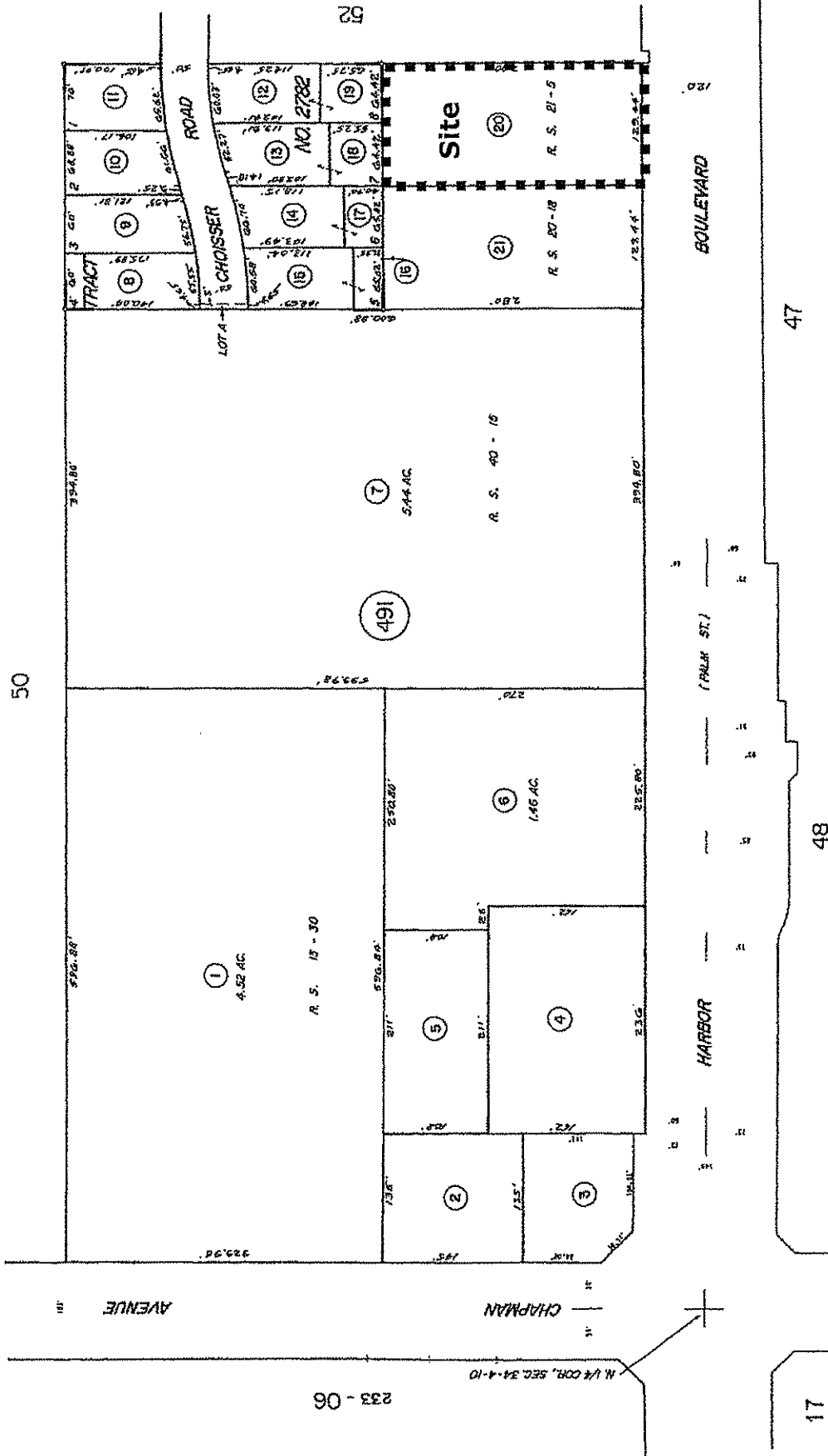
  
Matthew Fertal  
Director

Attachment 1 - Site Map  
Attachment 2 - Purchase and Sale Agreement

231-49

POR. W 1/2, NW 1/4, NE 1/4, SEC. 34, T 4 S. R 10 W

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO THE ACCURACY FOR ASSUMES AND WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. COPYRIGHT ORANGE COUNTY ASSESSOR 2006



7/1/06

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

TRACT NO. 2782 M.M. 89-24, 25

MARCH 1980

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

**SELLER:** Jen Fu Lin and Hong Yu Lin

**BUYER:** Garden Grove Agency for  
Community Development

**DATED:** October 14, 2008

**BASIC TERMS**

Effective Date: The Effective Date shall be deemed to be October 14, 2008.

Property: Real property generally known as 12222 Harbor Blvd.  
Garden Grove, California; 92840; APN 231-491-20

Seller: **Jen Fu Lin and Hong Yu Lin**

Seller's Address: 1302 Alta Avenue  
Santa Monica, California 90402  
Telephone No. (805) 449-2327

Seller's Attorney:  
(as elected by Seller) Rutan & Tucker, LLP  
611 Anton Blvd., Suite 14  
Costa Mesa, CA 92626  
Attn: Dan Slater, Esq.

Buyer: **Garden Grove Agency for Community Development,**  
a public body corporate and politic

Buyer's Address: 11222 Acacia Parkway  
Garden Grove, California 92840  
Attention: Matthew Fertal, Agency Director  
Tel. (714) 741-5100; Fax No.: (714) 741-5044

Buyer's Attorney: Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Attention: Celeste Stahl Brady, Esq.

Purchase Price: \$2,154,320.00. See Section 2(a) herein.

Outside Closing Date (or Closing) 180 days after the Effective Date.

Title Company: Chicago Title Company  
700 South Flower, Suite 800  
Los Angeles, California 90017  
Attention: Clark McKinnon, Title Officer  
Telephone No.: (213) 488-4300 or 488-4369  
Fax No.: (213) 488-4385  
Order No. 810075094X59

Escrow Holder: West Coast Escrow  
218 N. Canon Drive  
Beverly Hills, California 90210  
Attn: Minny Ng  
Telephone No.: (310) 288-0101; Fax No.: (310) 288-0178

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

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made and entered into this 14<sup>th</sup> day of October, 2008 ("Effective Date"), by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic ("Agency" or "Buyer"), and **JEN FU LIN AND HONG YU LIN**, husband and wife as community property ("Seller") for acquisition by Buyer of all of Seller's interests, tangible and intangible, in that certain Property defined and described below. The Effective Date shall be only the date on which the Agency's board duly considered and took action to approve this Agreement at an open public meeting thereof and Seller and Buyer have executed this Agreement, which date Buyer shall insert above.

**RECITALS**

A. Seller is the fee owner of certain real property located in the City of Garden Grove, California, commonly known as 12222 Harbor Blvd., Garden Gove, CA 92840 and legally described on Exhibit "A" attached hereto and made a part hereof ("Property" as more fully defined in Section 1 below). The Property is unimproved and not occupied by Seller or any other individuals or entities, and there are no rights to occupancy by any person or entity other than Seller.

B. Buyer is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* ("CRL") and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Garden Grove, a California municipal corporation ("City").

C. The City Council originally adopted the Redevelopment Plan ("Plan") for the Garden Grove Community Project ("Project Area") by Ordinance No. 1339 on June 26, 1973 and thereafter said Plan was amended by City Council Ordinance Nos. 1388, 1476, 1548, 1699, 1576, 1642, 1699, 1760, 1971, 2035, 2232, 2304, 2455, 2576, and 2709, including the addition of the subject Property into the Project Area boundaries in 1992 by Ordinance No. 2232.

D. Pursuant to Section 403 of the Plan and for the purpose of redevelopment Buyer may purchase, lease, obtain option upon or otherwise acquire any interest in real property by gift, devise, exchange, purchase, or any other means authorized by law, including the use of eminent domain, subject to the provisions thereof and applicable provisions of Government Code Section 7267.2, *et seq.* and Code of Civil Procedure Section 1230.010, *et seq.*

E. Pursuant to California Health & Safety Code §§ 33342 and 33391 and the provisions of the Plan, as amended by Ordinance No. 2232, Buyer has the authority to acquire property for redevelopment purposes, including as and when determined in the public interest and necessity acquisition by exercising its power of eminent domain subject to the provisions thereof and applicable provisions of Government Code Section 7267.2, *et seq.* and Code of Civil Procedure Section 1230.010, *et seq.*

F. Subject to and after Seller's compliance with Government Code § 7267.2, *et seq.*, in lieu of Buyer's exercise of said power and under the threat thereof, Seller has negotiated this Agreement with Buyer, and Seller and Buyer are willing to enter into this Agreement for Seller to sell to Buyer and Buyer to acquire from Seller the Property on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Purchase and Sale.** Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. Seller shall convey to Buyer fee simple, marketable title with the condition of title for the Property meeting the requirements of Section 3 herein for which Seller is responsible. The term "Property" is defined inclusively and collectively for and under this Agreement as the following:

- (a) The fee interest in the Property;
- (b) All improvements, if any, to the Property;
- (c) All rights, privileges, easements, licenses and interests, both tangible and intangible, appurtenant to the Property. "Property" shall be deemed to include, without limitation, all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) derived from the Property that are owned by Seller;
- (d) All moveable and immovable personal property, equipment, supplies, furniture, and fixtures owned by Seller and located at the Property, if any, as of Closing, as set forth in Section 2(c) below;
- (e) All licenses, permits, authorizations and approvals issued by governmental authorities respect to the Property and the improvements thereon; and
- (f) The Purchase Price is and shall remain total compensation paid by Buyer to Seller for each and all of Seller's interests in the Property, inclusive of any and all rights or obligations which exist or may arise out of Buyer's acquisition of the Property, including without limitation, Seller's fee interest in the land, all improvements pertaining to the realty, all other improvements, furnishings, fixtures, and equipment located thereon, severance damages, if any, alleged pre-condemnation damages, if any, alleged loss of business goodwill, if any, relocation benefits and assistance, if any, costs, interest, attorney's fees, and any claim whatsoever of, by, or through Seller that may arise out of or relate in any respect to Buyer's acquisition of the Property from Seller. In this regard, Seller acknowledges that based on the advice of its counsel, Seller is and will be fully satisfied that the Purchase Price is fair and adequate consideration for all interests in the Property and that it is all-inclusive compensation for the Property.
- (g) In consideration for Seller entering into this Agreement and Buyer's right to purchase the Property as set forth herein, and notwithstanding anything in this Agreement to the contrary, upon the Effective Date, Buyer shall pay to Seller the sum of One Hundred Dollars (\$100), which shall be non-refundable to Buyer and shall not be applicable to the Purchase Price.

**2. Payment of Purchase Price.**

(a) **All Inclusive Purchase Price.** The Purchase Price for the Property is the sum of Two Million One Hundred Fifty Four Thousand Three Hundred Twenty Dollars (\$2,154,320) ("Purchase Price"), and there is and shall be no interest accruing or due on the Purchase Price.

(i) **Full and Complete Settlement for Property; Complete Settlement and Waiver of all Relocation Claims.** In furtherance of Section 1 above, the Purchase Price is the total compensation to be paid by Buyer to Seller and is paid in consideration for all of Seller's interests in the Property and any rights or obligations that exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Seller's fee interests in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, relocation assistance, any alleged pre-condemnation damages, loss of business goodwill, costs, interest, attorney's fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Property by the Buyer (collectively, the "Released Claims"). Buyer acknowledges that the Released Claims include, and this Agreement deals fully and comprehensively with, any relocation benefits or assistance for Seller arising from or in connection with the sale of the Property and the cessation of Seller's rights to the Property. In connection therewith, Buyer's payment to Seller of the Purchase Price shall constitute full and complete satisfaction of any obligation Buyer may have for providing relocation assistance and paying relocation costs required to comply with all applicable federal, state and local laws, rules and regulations arising out of, based upon, or relating to, relocation assistance or benefits owing under Government Code § 7260 *et seq.*, Title 25 of the California Code of Regulations, Section 6000 *et seq.*, or under any other federal, state or local relocation statutes, regulations or guidelines (collectively, "Relocation Laws").

(ii) **Release and Waiver.** It is hereby intended that the waiver and release contained above in Section 2(i) relates to both known and unknown claims that Seller may have, or claim to have, against the Buyer with respect to the Released Claims. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the Released Claims, Seller expressly waives any rights under California Civil Code Section 1542, which provides:

"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."

JFL by JYL  
Seller initials  
AS HIS ATTORNEY-IN-FACT

HYL by JYL  
Seller initials  
AS HER ATTORNEY-IN-FACT

(b) **Deposit of All Inclusive Purchase Price into Escrow.** As consideration for the sale of the Property from Seller to Buyer, within the times set forth herein Buyer shall deposit with the escrow officer ("Escrow Holder") immediately available funds in the amount of the Purchase Price, together with funds necessary to cover all of the Buyer Charges described in Section 11(b) and any Prorations described in Section 11(c), as follows:



(i) First Deposit into Escrow. Buyer shall make an initial deposit into Escrow of an amount equal to Sixty-Seven Thousand Five Hundred Dollars (\$67,500) (“First Deposit”) upon the opening of Escrow. The First Deposit shall be released to Buyer by Escrow on the date that is one hundred thirty-six (136) days after the Opening of Escrow (one day after the Contingency Date) without the need of any additional instructions signed by Buyer or Seller provided this Agreement has not terminated pursuant to Sections 3(b) or 6 of this Agreement as a result of Buyer’s due diligence investigations during the period from the Effective Date to the Contingency Date described in Section 3 below. If this Agreement and the Escrow is terminated by Buyer on or before the Contingency Date pursuant to Buyer’s rights hereunder, then Seller has no rights to the First Deposit and Escrow Holder shall release, return, and refund in full the First Deposit to Buyer. If this Agreement and the Escrow is terminated due to a Buyer Default (as defined in Section 17(a)) that occurs during the period starting from the Effective Date and ending on the Contingency Date and conditioned upon there being no Seller Default hereunder (as defined in Section 17(a)), then Seller shall retain the First Deposit as liquidated damages as more fully set forth in Section 17(c). If this Agreement and the Escrow is terminated for any other reason than a Seller Default after the Contingency Date, then Seller shall retain the First Deposit as liquidated damages as more fully set forth in Section 17(c).

(ii) Second Deposit. Not later than the date that is one hundred thirty six (136) days after the Opening of Escrow, Buyer shall make a second deposit into Escrow of an amount equal to One Hundred Eighty Two Thousand Five Hundred Dollars (\$182,500) (“Second Deposit”), which together with the First Deposit equals a cumulative “Deposit” of \$250,000. The Second Deposit shall be released to Buyer by Escrow immediately and concurrent with the release of the First Deposit pursuant to subsection (b)(i) above without the need of any additional instructions signed by Buyer or Seller provided this Agreement has not been terminated by Buyer pursuant to Sections 3(b) or 6 of this Agreement as a result of Buyer’s due diligence investigations during the period from the Effective Date and ending on the Contingency Date described in Section 3 below and provided there is no Seller Default. The Second Deposit shall be retained by Seller as liquidated damages as provided more fully in Section 17(c) only in the event of a Buyer Default under this Agreement and/or Buyer’s termination without cause of this Agreement after the Contingency Date and prior to the Closing Date provided there is no Seller Default hereunder. If this Agreement and the Escrow is terminated because of a Seller Default, or if the Title Company is unable to deliver the Title Policy to Buyer pursuant to Section 7(a)(ii) hereof, Seller shall return and refund in full the Second Deposit to Buyer.

(iii) Applicable to Purchase Price. The First Deposit and the Second Deposit are collectively referred to herein as the “Deposit.” The Deposit shall be applicable to the Purchase Price upon the Close of Escrow.

(iv) Deposit of Balance into Escrow. The balance of the Purchase Price, together with funds necessary to cover all of the Buyer Charges described in Section 11(b) and any Prorations described in Section 11(c), shall be deposited in Escrow by Buyer prior to Closing.

(c) **Possession and Disposition of Seller’s FF&E.** Upon the Closing Date, possession of the Property, including land, improvements, furniture, fixtures and equipment, whether immovable or moveable (FF&E), on, upon, or about the Property, but not including the Fence, shall be deemed to be the property of and in the possession of Buyer. Seller shall have the right to remove or otherwise dispose of all moveable FF&E at the Property prior to the Closing Date. Subject to Section 15, after the Closing Date, Seller acknowledges and agrees that Buyer has the right to and

may dispose of any FF&E remaining at the Property as Buyer alone sees fit without further notice or any liability whatsoever to Seller.

**3. Escrow and Title Matters.**

**(a) Escrow and Closing.**

(i) Opening of Escrow. For the purposes of this Agreement, the escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that Escrow Holder receives a copy of this Agreement fully executed by Seller and executed and attested by Buyer. Buyer and Seller shall use reasonable efforts to cause the Opening of Escrow to occur on or before five (5) business days after the Effective Date. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental Escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no instrument shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of an instrument and the terms of this Agreement, then the terms of this Agreement shall control. Without limiting the generality of the foregoing, no instrument shall extinguish any obligations imposed by this Agreement or any other contract between Seller and Buyer.

(ii) Closing. For purposes of this Agreement, the "Closing" or "Closing Date" shall be the date the Deed (as defined below) is recorded pursuant to applicable law in the Official Records of Orange County. Unless changed in writing by Buyer and Seller, the Closing shall occur on or before the date that is one hundred eighty (180) days after the Effective Date. If the Closing has not, for any reason, occurred by the Closing Date, then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the Closing Date; provided, however, that if there is a Seller Default or a Buyer Default under this Agreement at the time of the termination, then the termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party. If neither party so elects to terminate this Agreement and the Escrow, Escrow Holder shall close the Escrow as soon thereafter as Buyer's and Seller's Conditions Precedent to Closing are satisfied pursuant to Sections 7(a) and 7(b) of this Agreement.

**(b) Title Matters.**

(i) Title Review. Prior to the Effective Date, Buyer requested and has obtained from Chicago Title Company ("Title Company") a preliminary report ("Title Report") for the Property, together with legible copies of all exceptions to title listed on Schedule B of the Title Report ("Exceptions"). Seller acknowledges that Buyer has provided a complete copy of such Title Report to Seller's counsel. On or before the date that is one hundred and thirty five (135) days after the Opening of Escrow ("Contingency Date" and the period between the Effective Date and the Contingency Date shall be referred to as the "Contingency Period"), Buyer shall notify Seller in writing ("Title Objection Notice") of any objections Buyer may have to matters of title disclosed by the following (collectively, "Title Documents"): (i) the Title Report; (ii) the Exceptions; (iii) the legal description of the Property, and (iv) any survey Buyer desires to obtain at Buyer's sole cost and expense. In the event Buyer fails to deliver the Title Objection Notice by the Contingency Date, Buyer shall be deemed to have approved all matters in the Title Documents; provided however, all monetary liens, court judgments, and mechanics liens, of record, (except those caused by, through or

under Buyer or its agents) and all leases and all possessory rights (except Seller's possession prior to Closing), are hereby deemed disapproved by Buyer whether or not included in any notice and shall be Seller's obligation to cause to be cleared from title as a condition to Closing.

(A) In the event Buyer delivers a Title Objection Notice on or before the Contingency Date disapproving any matters in the Title Documents (including any exceptions deemed disapproved pursuant to (b)(1) above), then Seller shall have ten (10) days from receipt of Buyer's Title Objection Notice (and ten days from the Contingency Date as to exceptions deemed disapproved if no Title Objection Notice is provided) to notify Buyer in writing ("Title Response Notice") of Seller's election in its sole and absolute discretion to either (1) agree to remove or cure the objectionable exceptions to title prior to the Closing, or (2) decline to remove or cure the objectionable exceptions and terminate this Agreement. Seller's failure to deliver a Title Response Notice shall be deemed Seller's election to terminate this Agreement, in which event Escrow Holder shall release, refund and pay in full the First Deposit to Buyer unless Buyer elects in writing to accept the Property with the objectionable conditions pursuant to the following paragraph.

(B) If Seller notifies Buyer of Seller's election to terminate this Agreement rather than remove and cure the objectionable exceptions or Seller is deemed to have made that election, Buyer shall have the right, in its sole discretion, by written notice delivered to Seller no later than the date that is five (5) days after receipt of Seller's Title Response Notice, or fifteen (15) days after delivery of Buyer's Title Objection Notice if Seller does not deliver a Title Response Notice, to agree to accept the Property subject to all of the objectionable exceptions that Seller does not agree to remove, in which event Seller's election to terminate this Agreement shall be of no effect, and Buyer shall take title at the Close of Escrow subject to such exceptions without any adjustment to or credit against the Purchase Price. In the event Seller cannot convey title at Closing in such condition, then the First Deposit and the Second Deposit shall be refunded in full to Buyer.

(C) Seller shall have no obligation to cure any title objections; provided, however, that Seller shall pay and satisfy in full all mortgages, deeds of trust and any tax liens, judgment liens, mechanic's and materialmen's liens, security interests and other instruments which evidence or secure indebtedness created by or consented to by Seller. The matters in the Title Documents that Buyer expressly approves pursuant to this Section 3(b) or is deemed to have approved pursuant to Section 3(b)(i) by failing to deliver the Title Objection Notice shall be referred to herein as the "Approved Title Exceptions." The Approved Title Exceptions shall also include (1) the standard, preprinted exceptions to Buyer's Title Policy; (2) liens to secure payment of real estate taxes or assessments not yet delinquent; (3) matters affecting the Property created by or with the written consent of Buyer; and (4) exceptions disclosed in any supplement to the Title Report that may be issued by Title Company which are approved by Buyer in its sole, reasonable discretion.

(D) Buyer shall have the right at its sole cost and expense to obtain an ALTA survey for the Property, but Buyer agrees that the Contingency Date shall not be extended for Buyer to obtain or review a survey and that all matters on the survey, other than those Buyer has disapproved or are deemed disapproved by the Contingency Date, and that Seller has agreed to remove pursuant to this Section 3(b) shall constitute Approved Title Exceptions; provided however, in the event a survey reveals any new or additional monetary lien, court judgment, mechanics lien, lease, or other possessory rights, such encumbrances are hereby deemed disapproved exceptions by Buyer that shall be removed by Seller at Seller's sole cost as a condition to Closing, except Seller shall not be required to remove any monetary liens or other encumbrances created by, through or under Buyer or its agents.

(E) Upon the issuance of any amendment or supplement to the Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement (provided that the period for Buyer to review such amendment or supplement shall be the later of the Contingency Date or ten (10) days from receipt of the amendment or supplement).

(ii) No New Liens or Exceptions. During the period from the Contingency Date to the Closing, Seller agrees it shall not cause any new or modified lien or encumbrance to title to become of record against the Property, unless such lien or encumbrance is approved in writing by Buyer. Each and every new lien or encumbrance created by or through Seller shall be subject to Buyer's prior written consent and unless and until approved by Buyer shall be deemed a disapproved exception to title that shall be removed by Seller at Seller's sole cost as a condition to Closing.

(iii) Buyer's Title Policy. On or before the Closing, the Title Company shall, upon payment of the Title Company's premium, have agreed to issue to Buyer, a CLTA or ALTA, at the option of Buyer, owner's policy of title insurance ("Buyer's Title Policy") in the amount of the Purchase Price showing fee title to the Property vested solely in Buyer and subject only to the Approved Title Exceptions. The premium for the Title Policy attributable to CLTA standard owner's coverage shall be paid by Seller. Buyer shall pay for any additional title coverage requested by Buyer, including the difference between a CLTA standard owner's policy and an ALTA extended owner's policy, and any endorsements required by Buyer.

#### 4. Seller's Delivery of Property Documents; Natural Hazard Disclosure Report.

(a) Seller's Delivery of Property Documents. Within ten (10) days after the Opening of Escrow, Seller shall deliver to Buyer complete, true, and legible copies the following items (collectively, "Property Documents"):

(i) Copies of tax bills, including assessments, if any.

(ii) Proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.

(iii) Each and every contract or agreement relating to the Property that will be binding on Buyer or the Property following the Close of Escrow, if any, with the exception of the Title Documents which shall be handled as set forth in Section 3(b).

(b) Natural Hazard Disclosure. Buyer and Seller acknowledge that Seller is required to disclose if any of the Property lies within the following natural hazard areas or zones: (a) a special flood hazard area designated by the Federal Emergency Management Agency; (b) an area of potential flooding; (c) a very high fire hazard severity zone; (d) a wild land area that may contain substantial forest fire risks and hazards; (e) an earthquake fault or special studies zone; or (f) a seismic hazard zone. Buyer and Seller hereby instruct Escrow Holder or such other third party approved by the parties (who, in such capacity, is herein called the "Natural Hazard Expert") to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations with respect to the natural hazards referred to above and to report the results of its examination to Buyer and Seller in

writing. Escrow Holder shall provide a written report prepared by the Natural Hazard Expert regarding the results of its examination no later than fourteen (14) days prior to the expiration of the Contingency Period. The written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller from its disclosure obligations referred to herein, and, for the purposes of this Agreement, the provisions of Civil Code Section 1103.4 regarding the non-liability of Seller for errors and/or omissions not within its personal knowledge shall be deemed to apply, and the Natural Hazard Expert shall be deemed to be an expert dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above.

**5. Buyer's Right of Entry and Tests of Property.** From and after the Effective Date through the earlier to occur of the termination of this Agreement or the Contingency Date, Seller hereby grants to and agrees that Buyer and Buyer's employees, agents, consultants and contractors, including Phase I, Inc. (collectively, the "Buyer Parties") shall have the right to enter upon the Property during normal business hours, provided 24 hours prior notice has been given to Seller, for the purpose of conducting any physical and legal (but not feasibility or economic) inspections, investigations, assessments, tests, and studies as Buyer in its sole discretion elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; surveying; soils, seismic and geologic reports; environmental audits, inspections and studies; environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations, including without limitation the presence, release, and/or absence of adverse soils conditions, adverse groundwater conditions, asbestos, lead based paint, and/or Hazardous Materials, as hereinafter more fully defined and described. (collectively, "Tests").

**(a) Seller's Pre-Approval of Phase One, Inc. for Right of Entry to Conduct Tests at Property.** Buyer has informed Seller that one of the consultants that will be conducting Tests at the Property is Phase One, Inc., which company has entered into that certain "Contract Services Agreement" with the City of Garden Grove dated as of March 14, 2008 to provide professional consulting services. Buyer has provided to Seller, and Seller acknowledges receipt of, a complete copy of such Contract Services Agreement, including copies of the evidence of insurance required thereunder and provided by Phase One, Inc. to the City. Seller consents to Phase One, Inc.'s entry onto the Property to conduct Tests pursuant to the terms and conditions set forth in Section 5(b), with such Tests authorized to commence on or after the Effective Date. While Phase One, Inc. is disclosed and approved for right of entry pursuant to the preceding provisions of this subsection (a), Buyer may authorize and notify Seller of one or more other employees, agents, consultants, or contractors to conduct such other or additional Tests as may be desired by Buyer (or City).

**(b) Conditions to Right of Entry for Tests.** As a condition to conducting any Tests, Buyer shall (i) prior to entry, notify Seller not less than 24 hours in advance of the purpose of the intended entry and provide to Seller the names and affiliations of the entity or person(s) entering the Property (A) in this regard, Seller pre-approves Phase One, Inc. for right of entry onto the Property to conduct Tests; (ii) conduct or cause the Buyer Parties to conduct all Tests in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property; (iii) comply with or cause the Buyer Parties to comply with applicable laws and governmental regulations in conducting such Tests; (iv) keep the Property free and clear of materialmen's liens, lis pendens and other liens arising out of entry onto the Property for such Tests performed by or on behalf of Buyer; (v) Buyer to maintain, or Buyer to cause to be maintained by Buyer's contractor(s), workers' compensation insurance on all persons entering the Property for such

Tests in the amounts required by the State of California; (vi) Buyer to cause each of its (or City's, as applicable) consultants to obtain and maintain commercial general liability insurance policy with a financially responsible insurance company covering any and all liability of such consultant or consultants, Buyer, and its agents, contractors, and employees, with respect to or arising out of the Tests conducted at the Property, written on a per occurrence and not claims made basis in a combined single limit of not less than One Million Dollars (\$1,000,000); (vii) promptly repair any and all damage to the Property from such Tests caused by Buyer, or the Buyer Parties and return the Property to its original condition (subject to the Tests conducted) following Buyer's entry. Buyer shall indemnify, defend, and hold harmless Seller and its agents from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) arising from the entry(ies) of Buyer, or the Buyer Parties upon the Property for and related to such entry and Tests or from Buyer's failure to comply with the conditions to entry onto the Property by Buyer or the Buyer Parties for such Tests. Such indemnity shall survive the Close of Escrow or the termination of this Agreement for any reason, but shall be limited to actions and inactions arising from and related to such entry onto the Property and/or the Tests.

**6. Due Diligence Notices.**

**(a) Buyer's Due Diligence Notice.** Buyer shall notify Seller in writing on or before the Contingency Date of Buyer's approval or disapproval in its sole and absolute discretion of the Property Documents and of the condition of the Property as disclosed by the Tests ("Buyer's Due Diligence Notice"). Any disapproval shall state the matters objected to and the action Seller would be required to take to remediate or cure the objectionable matters to Buyer's satisfaction.

(i) Buyer's failure to deliver the Buyer's Due Diligence Notice on or before the Contingency Date shall be deemed Buyer's disapproval of the Property Documents and/or condition of the Property; in no event shall Buyer be deemed to have approved any of the Property Documents or any condition of the Property. In such event of Buyer's failure to deliver its Buyer's Due Diligence Notice, then such failure shall be deemed Buyer's election to not proceed with this purchase and to terminate this Agreement; provided however, in such event the First Deposit shall be retained by the Seller.

**(b) Seller's Due Diligence Notice.** In the event Buyer timely delivers its Buyer's Due Diligence Notice disapproving any Property Documents or any condition of the Property, Seller shall have ten (10) days from receipt of Buyer's Due Diligence Notice to deliver written notice to Buyer ("Seller's Due Diligence Response Notice") of Seller's election in its sole and absolute discretion to any of the following: (i) decline to remediate all such conditions and to terminate Escrow and this Agreement; or (ii) correct and/or remediate certain (but not all) of the objectionable conditions at its sole cost prior to the Close of Escrow; or (iii) correct and/or remediate all objectionable conditions at its sole cost prior to the Close of Escrow.

(i) If Seller's Due Diligence Response Notice informs Buyer of Seller's election to terminate Escrow (choice (i) in subsection (b) above) rather than remediate all or certain objectionable conditions, then this Agreement shall terminate and the First Deposit shall be refunded in full to Buyer.

(A) Seller's failure to deliver Seller's Due Diligence Response Notice shall be deemed Seller's election to terminate this Agreement (choice (i) of subsection (b) above) and in such event the First Deposit shall be refunded in full to Buyer.

(ii) If Seller's Due Diligence Response Notice informs Buyer of Seller's election to correct certain of the objectionable conditions (choice (ii) in subsection (b) above), then Buyer shall have the right, by a second written notice delivered to Seller within five (5) days after Buyer's receipt of Seller's Due Diligence Response Notice, to agree to accept the Property subject to one or more of the objectionable conditions that Seller will not correct ("Buyer's Second Due Diligence Notice"), which notice shall list the objectionable conditions remaining that Buyer is willing to accept, in which event Seller may elect, in its sole discretion, to either (A) accept Buyer's Second Due Diligence Notice and proceed to correct the objectionable conditions listed in its notice and proceed with the sale of the Property to Buyer, with Buyer taking at the Close of Escrow subject to such remaining objectionable conditions without any adjustment to or credit against the Purchase Price (subject to Seller's correction of certain conditions to be corrected listed in Seller's Due Diligence Response Notice), or (B) reject Buyer's Second Due Diligence Notice and terminate the Escrow in which event the First Deposit shall be refunded in full to Buyer.

(A) If Seller accepts Buyer's Second Due Diligence Notice, then the correction of and/or completion of the remediation or removal of objectionable conditions listed in the Seller's Due Diligence Notice shall be deemed to be one of the Buyer's Conditions Precedent to Closing under Section 7 below, and Buyer and Seller shall exercise good faith efforts to agree in writing on an extended Closing Date, if necessary, to allow those certain conditions to be corrected and completed.

(iii) If Seller's Due Diligence Response Notice informs Buyer of Seller's election to correct all of the objectionable conditions (choice (iii) in subsection (b) above), then the completion of the correction and/or remediation or other removal of all objectionable conditions shall be deemed to be one of the Buyer's Conditions Precedent to Closing under Section 7 below, and Buyer and Seller shall exercise good faith efforts to agree in writing on an extended Closing Date, if necessary, to allow all conditions to be corrected and completed.

(c) **Seller's Right to Terminate.** No later than the Contingency Date, Buyer shall deliver to Seller copies of written reports produced resulting from Tests conducted by or on behalf of Buyer during the Contingency Period, including without limitation Phase I and Phase II reports, if any (collectively, "Environmental Reports"). Buyer shall have the right to examine and inspect or cause a third party to examine and inspect the Environmental Reports. In the event the Environmental Reports reveal the existence of Hazardous Materials within the Property or migrating onto the Property, Seller shall have the right to terminate this Agreement upon delivery of written notice of termination to Buyer within twenty (20) days after the last day of the Contingency Period, in which event the Deposit (both First Deposit and Second Deposit) shall be returned to Buyer.

## **7. Conditions Precedent to Close of Escrow and Termination Rights.**

(a) **Buyer's Conditions Precedent.** The Closing and Buyer's obligation to buy the Property and to consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Buyer's Conditions Precedent") on or before the Closing Date or such earlier time as provided for herein, which are for Buyer's benefit only.

(i) **No Termination as a Result of Buyer's Due Diligence Review.** This Agreement shall not have terminated pursuant to Sections 3(b) or 6 as a result of Buyer's review and inspection of title to, the Property Documents relating to, and the Tests on the Property.

(ii) Buyer's Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide Buyer's Title Policy for the Property upon the Closing, in accordance with Section 3(b).

(iii) Natural Hazard Disclosure Statement. If required by Government Code Sections 8589.3, 8589.4, 51183.5, or Public Resources Code Sections 2621.9, 2694, or 4136, Seller shall deliver to Buyer a Natural Hazard Disclosure Statement pursuant to AB 1195 on or before the date that is thirty (30) days after the Opening of Escrow.

(iv) Delivery of Documents. Seller's delivery of all items and documents described in Section 8 and Section 18(a).

(v) Delivery of Release and Waiver. Seller shall have delivered to Buyer the fully executed "Owner's Release and Waiver of Rights under Eminent Domain" described and required by Section 18 herein.

(vi) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be true and correct in all respects as of the Effective Date and as of the Closing.

(vii) No Seller Default. As of the Closing, there shall be no Seller Default under this Agreement.

**(b) Seller's Conditions Precedent.** The Closing and Seller's obligation to sell the Property and consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Seller's Conditions Precedent") on or before the Closing Date or such earlier time as provided for herein, which are for Seller's benefit only:

(i) No Termination as a Result of Buyer's Due Diligence Review. This Agreement shall not have terminated pursuant to Section 3(b) or 8 as a result of Buyer's review and inspection of title, the Property Documents, and the Property.

(ii) No Buyer Default. As of the Closing, there shall be no Buyer Default under this Agreement.

(iii) Representations and Warranties. All representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects as of the Effective Date and as of the Closing.

(iv) Delivery of Funds. Buyer shall have deposited with Escrow Holder immediately available funds in an amount equal to the Purchase Price (inclusive of the First Deposit and the Second Deposit), the Buyer's Charges, and Buyer's share of Prorations described in Section 11.

(v) Delivery of Letter re Threat of Eminent Domain. Buyer shall have delivered to Seller the letter described in Section 18 herein.

(vi) Delivery of Documents. Buyer shall have delivered all documents and other items described in Section 9.



(c) **Waiver.** Buyer may at any time or times, at its election in its sole and absolute discretion, waive any of the Buyer's Conditions Precedent set forth in Section 7(a), but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller and Escrow Holder. Seller may at any time or times, at its election in its sole and absolute discretion, waive any of the Seller's Conditions Precedent set forth in Section 7(b) above, but any such waiver shall be effective only if contained in a writing signed by Seller and delivered to Buyer and Escrow Holder.

(d) **Termination.** In the event that each of the Buyer's Conditions Precedent set forth in Section 7(a) is not fulfilled by the outside date for the Closing Date, or such earlier time period as provided for herein or waived by Buyer pursuant to Section 7(c), and provided there is no Buyer Default under this Agreement, Buyer may at its option terminate this Agreement and the Escrow opened hereunder. In the event each of the Seller's Conditions Precedent set forth in Section 7(b) is not fulfilled by the outside date for the Closing Date, or such earlier time period as provided for herein or waived by Seller pursuant to Section 7(c), and provided there is no Seller Default under this Agreement, Seller may at its option terminate this Agreement and the Escrow opened hereunder. Notwithstanding the foregoing, if Escrow is not in a position to close due to a party's failure to deposit into Escrow any documents or funds required for the Closing of Escrow, the non-defaulting party shall not have the right to terminate this Agreement without first having given the defaulting party notice of the default and five (5) days to cure the default, with the understanding that it is the parties' desire that this Agreement not terminate as a result of a technicality such as a party's inadvertent failure to timely make a deposit of a document or money into Escrow. No termination under this Agreement shall release either party then in default from liability for such default. In the event this Agreement is terminated, (i) all documents and funds delivered by Seller to Buyer or Escrow Holder shall be returned immediately to Seller, provided there is no Seller Default and Seller is entitled to the return of the First Deposit and/or the Second Deposit(s), as applicable, and, likewise (ii) all documents and funds delivered by Buyer to Seller or Escrow Holder shall be returned immediately to Buyer, subject to the Seller's limited rights, as and if applicable, to retain the First Deposit and/or the Second Deposit.

(i) If Escrow fails to close due to a party's default or breach, the defaulting or breaching party shall pay all Escrow Cancellation Charges. If Escrow fails to close for any other reason, each party shall pay one-half of all Escrow Cancellation Charges. The term "Escrow Cancellation Charges" shall mean all fees, charges and expenses actually charged by Escrow Holder and the Title Company to the parties in connection with the cancellation of the Escrow and the title order, if any.

**8. Seller's Deliveries to Escrow Holder.** At least two (2) business days prior to the Closing Date, except as to possession of the Property which shall be delivered as of Closing, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged:

(a) **Seller's Charges.** Immediately available funds in the amount necessary to pay Seller's Charges as set forth in Section 11(a) herein; provided, however, that instead of depositing such funds into Escrow Seller shall have the right to have Seller's Charges deducted from the sale proceeds due to Seller.

(b) **Deed.** The Grant Deed in the form attached hereto as Exhibit B ("Deed").

(c) **Licenses, Certificates, and Permits.** To the extent the same are within the actual or constructive knowledge of, or in the possession, custody or control of, Seller and are applicable and/or transferable to Buyer, all original licenses, certificates and permits pertaining to the Property and beneficial for, or necessary for, or affecting the use or occupancy thereof.

(d) **Keys.** Keys, if any, to all entrance doors and equipment and utility rooms, and any other keys relating to, the Property, including mailbox keys, to the extent such keys are in the possession, custody or control of Seller (Buyer acknowledges that the Property is unimproved, vacant real property);

(e) **FIRPTA/Tax Exemption Forms.** Transferor's Certification of Non Foreign Status in the form attached hereto as Exhibit C ("FIRPTA Certificate") (unless Seller is a "foreign person," as defined in Section 1445 in the Internal Revenue Code of 1986), together with any necessary tax withholding forms, and a duly executed California Form 593-C, as applicable ("California Exemption Certificate").

(f) **Possession of Property.** At Closing, possession of the Property shall be delivered to Buyer. Seller shall remove from title any encumbrances that Seller is required to remove pursuant to Section 3(b).

(g) **Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.

(h) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Holder.

9. **Buyer's Deliveries to Escrow.** At least two (2) business days prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, by Buyer as appropriate :

(a) **Purchase Price.** The remaining balance of the Purchase Price (i.e., less the First Deposit and the Second Deposit), together with additional funds necessary to pay Buyer's Charges set forth in Section 11(b) herein and Buyer's share of the Prorations set forth in Section 11(c). In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Title Company shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 11(d) hereof. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 597 to Title Company at or immediately after Closing.

(b) **Certificate of Acceptance.** One (1) original Certificate of Acceptance executed by Buyer to be attached to the Deed.

(c) **Final Escrow Instructions.** Buyer's final written Escrow instructions to close Escrow in accordance with the terms of this Agreement.

(d) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Company.

10. **Tax Adjustment Procedure.** Escrow Holder is authorized and is instructed to comply with the following tax adjustment procedure:

(a) **Delinquent Taxes.** Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.

(b) **Proration.** Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller's prorata portion of taxes due at close of Escrow, shall be cleared and paid by Seller, outside Escrow, pursuant to provisions of Section 5082 through 5090 of the Revenue and Taxation Code of the State of California.

(c) **Refund of Taxes.** After the Closing of the Escrow, Seller shall have the right in Seller's sole discretion to apply to the Orange County Tax Collector for refund of any excess property taxes paid by Seller with respect to the Property, so long as no proration or credit for such taxes was provided to Seller through the Escrow,. This refund would apply to the period after the Closing Date and Buyer's acquisition of the Property pursuant to Revenue and Taxation Code Section 5096.7.

11. **Escrow Holder Authorization.** Escrow Holder is authorized to and shall pay, charge and perform the following:

(a) **Seller Charges.**

(i) **Removal of Title Exceptions.** Pay and charge Seller for any amount necessary to cause the removal of any title matters that Seller agreed to remove pursuant to Section 3(b) and to convey fee simple, marketable title pursuant to the requirements of this Agreement.

(ii) **Seller's Share of Charges of Escrow.** Pay and charge Seller for one-half (1/2) of the Escrow fee, any documentary transfer taxes, and all title insurance premiums for the Buyer's Title Policy premium which would be incurred for a CLTA standard owner's form policy.

(iii) The charges set forth in this Section 11(a) are herein referred to as "Seller's Charges."

(b) **Buyer Charges.** Pay and charge Buyer for one-half (1/2) of the Escrow fee, all charges for recording the Grant Deed, and any additional title coverage requested by Buyer, including the difference between a CLTA standard owner's policy (which CLTA policy is and shall remain one of the Seller's Charges) and an ALTA extended owner's policy (collectively, "Buyer's Charges").

(c) **Prorate Revenues and Expenses.** All revenues (if any) and expenses relating to the Property (including, but not limited to, utility costs and expenses, water charges and

sewer rents and refuse collection charges) shall be prorated as of the Closing Date (collectively, the "Prorations"). Not less than five (5) business days prior to the Closing, Escrow Holder shall deliver to Buyer and Seller a tentative schedule of prorations for Buyer's and Seller's approval ("Proration and Expense Schedule"). If any prorations made under this Section 11(c) shall require final adjustment after the Closing, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same. Any corrected or adjusted proration shall be paid promptly in cash to the party entitled thereto.

**(d) 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 and/or withholding is provided for or required by law.

**(i) California Withholding.** In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code ("Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Escrow Holder shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer at Closing for payment to the California Franchise Tax Board in accordance with the Tax Code, (ii) Buyer shall deliver three (3) duly executed originals of California Form 597 to Escrow Holder at or immediately after Closing, (iii) two (2) executed originals of California Form 597 shall be delivered by Escrow Holder to Seller, and (iv) on or before the 20th day of the month following the month title to the Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Escrow Holder shall remit such funds withheld from the Purchase Price, together with one (1) executed original of California Form 597 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Escrow Holder as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 597), to the California Franchise Tax Board.

**(ii) FIRPTA Withholding.** Unless Seller is not a "foreign person" under the Foreign Investment in Real Property Transfer Act or an exemption applies, the Escrow Holder shall deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price and shall otherwise comply with all applicable provisions of the Foreign Investment in Real Property Act and any similar state act. Seller agrees to execute and deliver Exhibit C, as directed by Escrow Holder, or any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of the Foreign Investment in Real Property Act and any similar state act and regulation promulgated thereunder.

**(e) Closing Statement.** Escrow Holder is instructed to prepare and provide copies of a proposed closing statement and thereafter the final closing statement ("Closing Statement") to both Seller and Buyer. Escrow Holder shall deliver the estimated Closing Statement to Seller and Buyer no later than three (3) business days prior to the Closing Date.

**(f) Escrow Holder Responsibility.** The responsibility of the Escrow Holder under this Agreement is limited to Sections 1 through 12, and 20(b) and (c), and to its liability under any policy of title insurance issued in regard to this transaction.

**12. Closing Procedure.** On the Closing Date, and provided all of the Buyer's Conditions Precedent and Seller's Conditions Precedent set forth in Sections 7(a) and 7(b) of this Agreement have been satisfied or waived in writing by the appropriate party (per Section 7(c)), Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) **Recording.** Escrow Holder shall cause the Deed to be recorded pursuant to applicable law in Orange County and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) **Disburse Funds.** Escrow Holder shall debit or credit (as provided herein) all charges and Prorations to Buyer and Seller and withhold funds pursuant to Section 11. The Purchase Price (less any amounts required to be withheld as provided in Section 11(d)) shall be distributed by check payable to Seller unless Escrow Holder is instructed otherwise in writing signed by Seller (and, in such event, in accordance with such instructions).

(c) **Documents to Seller.** Escrow Holder shall deliver to Seller a conformed copy of the Deed, and a copy of each other document (or copies thereof) deposited into Escrow by Buyer pursuant hereto.

(d) **Documents to Buyer.** Escrow Holder shall deliver to Buyer the original FIRPTA Certificate, the original California Exemption Certificate (as applicable), a conformed copy of the Deed, the Title Report, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 8.

(e) **Title Company.** Escrow Holder shall cause the Title Company to issue the Buyer's Title Policy to Buyer.

(f) **Closing Statement.** Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party in the form of the Closing Statement prepared pursuant to Section 11(e).

(g) **Informational Reports.** Escrow Holder shall file any informational reports required by Internal Revenue Code Section 6045(e), as amended.

(h) **Possession.** Possession of the Property shall be delivered to Buyer at the Closing.

**13. Representations and Warranties.**

(a) **Seller's Representations and Warranties.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following representations and warranties as of the Effective Date and continuously as of the Closing, each of which is material and is being relied upon by Buyer (and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder), and all of which shall survive Closing:

(i) Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Closing no additional consent of any individual, director, manager, shareholder, partner, member, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party shall be required for Buyer to consummate the transaction contemplated by this Agreement.

(A) In this regard, if applicable, Seller shall deliver or cause delivery to Buyer of true and complete copies of each requisite action or authorization (corporate, trust, partnership or otherwise) that has been taken by Seller or will be taken (immediately after taking such action prior to Closing) when in connection with entering into this Agreement and execution of the instruments referenced herein.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

(iv) Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument (a) to which Seller is a party, or (b) that affect the Property of which Seller has actual or constructive knowledge, including, but not limited to, any of the Property Documents.

(v) To the best of Seller's actual or constructive knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

(vi) To the best of Seller's actual or constructive knowledge, there are no actions or proceedings pending or threatened against Seller, before any court or administrative agent in any way connected with or relating to the Property, or affecting Seller's ability to fulfill all of its obligations under this Agreement.

(vii) Seller has made no written or oral commitments to or agreements with any governmental authority or agency materially and adversely affecting the Property, or any part thereof, or any interest therein, which will survive the Closing. Seller has entered into no understanding or agreement with any taxing or assessing authority respecting the imposition or deferment of any taxes or assignments respecting the Property.

(viii) To the best of Seller's actual or constructive knowledge, Seller is not in default of its obligations under any contract, agreement or instrument to which Seller is a party pertaining to the Property. To the best of Seller's knowledge, no document supplied to Buyer by Seller contains any untrue statement of a material fact, and to the best of Seller's actual or constructive knowledge no document omits any facts that would be necessary, in the circumstances, to make the document supplied not misleading.

(ix) To the best of Seller's actual or constructive knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.

(x) To the best of Seller's actual or constructive knowledge, there are no improvements located on the Property, either on grade or below grade.

(xi) There are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Property for work performed or commenced for Seller or on Seller's behalf prior to the Effective Date of this Agreement. Seller agrees to indemnify, defend, and hold Buyer and its elected and appointed officials, officers, employees, contractors, and agents harmless from all costs, expenses, liabilities, losses, charges, and fees, including attorney fees, arising from or relating to any such lien or any similar lien claims against the Property and arising from work performed or commenced for Seller or on Seller's behalf at any time prior to Closing.

(xii) Except as may be revealed in the Title Report, there are no undisclosed contracts, licenses, commitments, undertakings or other written or oral agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Property that will be binding upon Buyer or the Property after the Closing. There are no oral contracts or other oral agreements for services, supplies or materials, affecting the use, operation, maintenance or management of the Property to which Seller is a party or of which Seller has actual knowledge.

(xiii) Except as revealed in the Title Report, there are not any written or oral leases or contractual rights or options to lease, purchase, or otherwise enjoy possession, rights or interest of any nature in and to the Property or any part thereof, and subject to Section 15 no person other than Buyer shall have any right of possession to the Property or any part thereof as of the Closing.

(xiv) No person, excepting Seller, has possession or any rights to possession or use of the Property or portion thereof. Seller agrees not to lease any portion of the Property, grant any licenses or easements in the Property, or grant any other rights of use or occupancy to the Property without the prior written approval of Buyer, which may be granted or denied in its sole and complete discretion.

(xv) Except as revealed in the Title Report, Seller shall not allow, consent to, or otherwise permit any encumbrance, lien, or other exception to title to become of record or affect title to the Property during the period from the Effective Date through the Closing Date, unless such encumbrance, lien, or other exception is expressly pre-approved by Buyer in its sole and complete discretion.

(xvi) Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any Hazardous Materials on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property.

(xvii) Until the Closing, Seller 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.

(xviii) Seller represents to Buyer, and Buyer acknowledges the representation of Seller that Seller has never operated, occupied or developed the Property.

As used herein, the term "actual knowledge" shall mean the actual, current knowledge of Seller and shall not impose any duty of investigation or inquiry and the term "constructive knowledge" shall mean implied knowledge due any notice or other document addressed to and evidenced to have been sent to Seller, and any other document in the Seller's possession and control.

**(b) Subsequent Changes to Seller's Representations and Warranties.** If, prior to the Closing, Buyer or Seller should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Seller set forth herein incorrect or untrue in any respect (collectively, the "Seller Representation Matter"), then the party who has learned, discovered or become aware of such Seller Representation Matter shall promptly give written notice thereof to the other party and Seller's representations and warranties shall be automatically limited to account for the Seller Representation Matter. Buyer shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Buyer reasonably disapproves any such change; provided, however Seller shall first have the opportunity to cure the Seller Representation Matter. In such event if this Agreement is terminated prior to the Closing due to a Seller Representation Matter, then the First Deposit and the Second Deposit shall be refunded in full to Buyer. If Buyer does not elect to terminate this Agreement, Seller's representation shall be qualified by such Seller Representation Matter and Seller shall have no obligation to Buyer for such Seller Representation Matter.

**(c) Buyer's Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property, Buyer makes the following representations and warranties as of the date hereof and at and as of the Closing, each of which is material and is being relied upon by Seller, the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder, and all of which shall survive Closing:

(i) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby, subject to this representation not becoming effective unless, until, and subject to this Agreement being placed on an agenda of the Buyer's board for consideration and action at a duly noticed, open public meeting of the Buyer's board, and, if approved, then such representation shall be effective as of the Effective Date. Buyer's execution of this Agreement after the Effective Date shall be conclusive evidence that Buyer's board has approved this Agreement at a duly noticed, open public meeting.

(ii) Subject to (c)(i) above, as of the Effective Date, all requisite governmental action has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Closing Date, no additional consent of any individual, judicial or administrative body, governmental authority or other



party shall be required for Seller to consummate the transaction contemplated by this Agreement, subject to no material change in the terms or provisions hereof.

(iii) Subject to (c)(i) above, as of the Effective Date, the individuals executing and attesting this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(iv) Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party or by which any of Buyer's properties are bound.

(v) Buyer's adopted Plan, in particular Section 403 thereof, authorizes Buyer for the purpose of redevelopment to acquire by eminent domain property within the geographic area in which the Property is located subject to the provisions thereof and applicable provisions of Government Code Section 7267.2, *et seq.* and Code of Civil Procedure Section 1230.010, *et seq.*

(d) **Subsequent Changes to Buyer's Representations and Warranties.** If, prior to the Closing, Seller or Buyer should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Buyer set forth herein incorrect or untrue in any respect (collectively, the "Buyer's Representation Matter"), then the party who has learned, discovered or become aware of such Buyer's Representation Matter shall promptly give written notice thereof to the other party and Buyer's representations and warranties shall be automatically limited to account for the Buyer's Representation Matter. Seller shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Buyer if Seller reasonably disapproves any such change; provided, however Buyer shall first have the opportunity to cure the Buyer's Representation Matter. In such event if this Agreement is terminated prior to the Contingency Date due to a Buyer Representation Matter, then Seller shall retain the First Deposit; further, in such event if this Agreement is terminated after the Contingency Date and prior to the Closing Date due to a Buyer Representation Matter, then Seller shall retain the First Deposit and the Second Deposit. If Seller does not elect to terminate this Agreement, Buyer's representation shall be qualified by such Buyer's Representation Matter and Buyer shall have no obligation to Seller for such Buyer's Representation Matter.

**14. Conveyance of Property in its Existing Condition.** As of the Closing Date, and subject to its rights under Section 5, Buyer acknowledges that will have been given an adequate opportunity to conduct the Tests at the Property. Except as otherwise expressly provided in this Agreement and except as required to be disclosed or otherwise action taken pursuant to federal, state or local laws and regulations, Seller makes no representation or warranty of any kind as to the physical or environmental condition of the Property or in connection with any matter, report or information relating to the condition of the Property, its value, fitness, use, zoning, entitlements, the existence of Hazardous Materials thereon, moratoriums, economic feasibility, developability or any other matter relating to Buyer's proposed use or development of the Property.

**15. Removal of Fence.** Seller hereby informs Buyer that a chain link fence is located on the Property ("Fence") and that the Fence is maintained by King Fence, Inc. pursuant to a contract with Seller ("Fence Contract"). Seller agrees is shall take all actions necessary to cause cancellation of, and to cancel, the Fence Contract prior to or as of Close of Escrow and shall cause the Fence to be removed either prior to the Closing Date or not later than within fifteen (15) days after the Closing Date. If the Fence is caused to be removed by Seller on or before the Closing Date, then the following requirements in subsection (a) of this Section 15 shall not apply; however, if the Fence is removed by Seller or caused to be removed by King Fence, Inc. after the Closing Date, then Buyer provides a limited right of entry onto the Property to Seller and to King Fence, Inc. only for removal of the Fence pursuant to the Fence Contract, so long the following are met by Seller or King Fence, Inc.:

**(a) Conditions to Right of Entry for Fence Removal.** As a condition to removal of the Fence, Seller or King Fence, Inc. shall (i) enter onto the Property and remove the Fence in a workmanlike, safe, and expeditious manner and not allow any dangerous or hazardous conditions to occur on the Property; (ii) comply with applicable laws and governmental regulations in conducting removing the Fence; (iv) keep the Property free and clear of materialmen's liens, lis pendens and other liens arising out of entry onto the Property for removing the Fence; (v) Seller or King Fence, Inc. to maintain workers' compensation insurance on all persons entering the Property for removal of the Fence in the amounts required by the State of California; (vi) Seller or King Fence, Inc. to maintain commercial general liability insurance policy with a financially responsible insurance company covering any and all liability of Seller, King Fence, Inc. and their agents, contractors, consultants and employees, with respect to or arising out of the removal of the Fence from the Property, written on a per occurrence and not claims made basis in a combined single limit of not less than One Million Dollars (\$1,000,000); and (vii) promptly repair any and all damage to the Property from removal of the Fence caused by Seller or King Fence, Inc. or their agents, employees, contractors, or consultants and return the Property to its original condition (subject to the Fence removal) following Seller's or King Fence, Inc.'s entry onto the Property. Seller shall indemnify, defend, and hold harmless Buyer and the City of Garden Grove and their agents from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) arising from the entry(ies) of Seller and King Fence, Inc.. their agents, contractors, consultants, and employees upon the Property for and related to the removal of the Fence or from Seller's or King Fence, Inc.'s failure to comply with the conditions to entry onto the Property to remove the Fence. Such indemnity shall survive the Close of Escrow, but shall be limited to actions and inactions arising from and related to Seller's and King Fence Inc.'s entry onto the Property and/or removal of the Fence.

**16. Seller's Covenants during Escrow Period.**

**(a) New Liens or Encumbrances.** Seller shall not further encumber or place any further liens or encumbrances on the Property from the Effective Date and during the Escrow period to the Closing Date without the express, prior written authorization of Buyer in its sole and complete discretion. Further, if the Buyer does consent to a new lien or encumbrance, then such lien or encumbrance on the Property shall not survive the Closing Date, including, but not limited to, right of entry, covenants, conditions, restrictions, easements, liens, options to purchase, options to lease, leases, tenancies, or other possessory interests or rights of use or rights of entry relating to or affecting the Property without the prior written consent of Buyer which consent may be withheld by Buyer in its sole and complete discretion.

**(b) Hazardous Materials.** Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property; provided, however, the foregoing shall not apply to Hazardous Materials that migrate onto the Property from other property or from sources other than Seller or a party acting under the direction or control of Seller. As used in this Agreement, the term "Hazardous Materials" or "Hazardous Material" shall mean any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, 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) lead based paint (viii) polychlorinated biphenyls, (ix) methyl tertiary butyl ether, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) 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 (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

## 17. Default and Remedies.

**(a) Seller Default.** The term "Seller Default" shall mean Seller's failure to timely perform a material obligation of Seller under this Agreement within five (5) business days following written notice from Buyer describing Seller's failure to perform. In the event of a Seller Default, Buyer, as its sole and exclusive remedies: (i) may terminate this Agreement and receive full repayment and refund of the First Deposit, and, as applicable, and the Second Deposit, or (ii) shall be entitled to the remedy of specific performance.

**(b) Buyer Default.** The term "Buyer Default" shall mean Buyer's failure to timely perform a material obligation of Buyer under this Agreement within five (5) business days following written notice from Seller describing Buyer's failure to perform. In the event of a Buyer Default, Seller, as its sole and exclusive remedy, as applicable: (i) may terminate and receive the First Deposit if the Buyer Default occurs after the Effective Date and prior to the Contingency Date, or (ii) may terminate and retain the First Deposit and the Second Deposit if the Buyer Default occurs after the Contingency Date.

(c) Seller's Remedy Limited to Liquidated Damages for Buyer Default.

**LIQUIDATED DAMAGES:** IF THE CLOSING OF ESCROW FOR THE PROPERTY DOES NOT OCCUR BECAUSE OF A BUYER DEFAULT UNDER THIS AGREEMENT THAT IS NOT TIMELY CURED, BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH BUYER DEFAULT, WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS A LOSS OF OPPORTUNITY TO ENGAGE IN OTHER POTENTIAL TRANSACTIONS, RESULTING IN DAMAGE AND LOSS TO SELLER. BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF A BUYER DEFAULT, HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT:


(i) FOR A BUYER DEFAULT AFTER THE EFFECTIVE DATE AND PRIOR TO THE CONTINGENCY DATE, THE FIRST DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES.

(ii) FOR A BUYER DEFAULT AFTER THE CONTINGENCY DATE AND PRIOR TO THE CLOSING DATE, THE FIRST DEPOSIT AND THE SECOND DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES.

IN THE EVENT OF AND FOR SUCH BUYER DEFAULT UNDER (c)(i) OR (c)(ii) ABOVE, AS APPLICABLE, SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND TO RETAIN THE FIRST DEPOSIT AND, AS APPLICABLE, THE SECOND DEPOSIT, AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER FOR A BUYER DEFAULT UNDER THIS AGREEMENT, EXCEPT AS TO THE BUYER'S INDEMNITY OF SELLER PURSUANT TO SECTION 5 HEREIN RELATED TO BUYER'S TESTS ON THE PROPERTY, IF SUCH INDEMNITY IS INVOKED HEREUNDER.

SELLER AND BUYER HAVE BOTH PLACED THEIR INITIALS IN THE SPACES BELOW TO INDICATE THAT THEY HAVE READ, UNDERSTAND, AND AGREE TO THIS LIQUIDATED DAMAGES PROVISION.

\_\_\_\_\_  
Buyer

JFL, HYL, by   
\_\_\_\_\_  
Seller  
AS HIS & HER ATTORNEY-IN-FACT

18. **Acquisition of Property for Public Purposes; Sale under Threat of Condemnation.** Buyer is acquiring the Property from Seller for public purposes and its purchase of the Property is in contemplation of the use of the Property for a redevelopment project, and that this negotiated acquisition arose during Buyer's investigations of the possibility of acquisition of such Property for redevelopment purposes. Seller has only agreed to enter into this Agreement with Buyer under the threat of Buyer's exercise of its power of eminent domain. In the event this negotiated sale did not occur, Buyer informs Seller that subject to and pending its completion of the necessary

statutory procedures set forth in Government Code Section 7267 *et seq.*, and Code of Civil Procedure Section 1230.010, *et seq.*, the Buyer's staff would have taken the steps thereunder to seek authorization from Buyer's Board, and staff was prepared to recommend to Buyer's Board initiation of the steps, to acquire the Property for public purposes pursuant to Government Code Section 7267 *et seq.*, and Code of Civil Procedure Section 1230.010, *et seq.*, including providing notice to Seller of its opportunity to be heard and to attend, consider, and take action on a resolution of necessity under Code of Civil Procedure Section 1245.230 *et seq.*, and that this negotiated acquisition was made in compliance with the statutory procedures of Government Code Section 7267, *et seq.* Nothing herein is intended to be, or serve as, any tax advice from Buyer to Seller, and Seller is not in any way construing or relying on any communications or advice by Buyer, or Buyer's representations herein, in any way as any type of tax advice or opinion. Buyer will provide Seller a letter confirming the foregoing, the delivery of which letter agreement shall be and is hereby deemed to be one of Seller's Conditions Precedent to Closing of Section 7(b).

**(a) Seller's Release and Waiver of Eminent Domain Rights.** Seller voluntarily, willingly, and intentionally has caused to be prepared (together with Buyer) and Seller will execute and provide to Buyer a separate written agreement under which Seller waives, releases and forever relinquishes any and all rights conferred on Seller by the provisions of Code of Civil Procedure Section 1230.010, *et seq.* with regard to the Property, effective on the Closing Date, in such form as approved by the parties prior to the Effective Date. Seller thereby and hereby expressly acknowledges that Seller has been advised of its rights regarding notice, resale, leaseback and other rights provided under Code of Civil Procedure Sections 1245.245, 1263.510 and 1263.615 and, effective on the Closing Date, expressly, intentionally, knowingly, and with advice of its legal counsel waives, releases and forever relinquishes its rights thereunder, as set forth more fully in that certain "Owner's Release and Waiver of Eminent Domain Rights", the execution of which agreement shall be and is hereby deemed to be one of Buyer's Conditions Precedent to Closing of Section 7(a).

**19. Like Kind Exchange.** Notwithstanding anything to the contrary in this Agreement, Buyer acknowledges and agrees that Seller shall have the right at Closing, in lieu of receiving the Purchase Price (less the First Deposit and the Second Deposit if paid to Seller) for the sale of the Property, to exchange the Property ("1031 Exchange") in a transaction intended to qualify as a tax-free exchange under Section 1031 of the Internal Revenue Code of 1986, as amended from time to time, and any regulations, rulings and guidance issued by the Internal Revenue Service (collectively, the "Code"). If Seller elects to effect a 1031 Exchange pursuant to this Section, Seller shall provide written notice to Buyer prior to Closing, in which case Seller shall enter into an exchange agreement and other exchange documents with a "qualified intermediary" (as defined in Treas. Reg. § 1.1031(k)-1(g)(4) of the Code) ("Exchange Party"). Buyer shall execute and deliver such documents as may be required to complete the transactions contemplated by the 1031 Exchange which are in form and substance reasonably acceptable to Buyer, and otherwise cooperate with Seller in all reasonable respects to effectuate the 1031 Exchange. Buyer agrees that if Seller elects to effectuate a 1031 Exchange pursuant to this Section, at Closing, Buyer shall pay the Purchase Price to the Exchange Party and direct the Escrow Holder to disburse the Purchase Price to the Exchange Party. Notwithstanding the foregoing, (a) the 1031 Exchange shall not diminish Buyer's rights, nor increase Buyer's liabilities or obligations, under this Agreement, nor delay the Closing; (b) Seller shall pay for all fees, costs and expenses in connection with the 1031 Exchange; (c) the purchase and sale of the Property shall not be conditioned upon the consummation of the 1031 Exchange; (d) in no event shall Seller be relieved from liability under this Agreement; (e) the consummation of the 1031 Exchange shall be at no liability, risk, fee or expense to the Buyer; and (f) the Seller shall protect, indemnify, defend and hold Buyer free and harmless from all losses, costs, claims, liabilities,

lawsuits, demands and damages, including any attorneys' fees and expenses, incurred as a consequence of effecting the transaction through the 1031 Exchange (rather than through the direct sale of the Property by Seller to Buyer).

**20. General Provisions.**

**(a) Loss or Damage to Improvements.** Loss or damage to the Property including any improvements thereon, by fire, other casualty, or acts of God, occurring at any time prior to the Closing of Escrow shall be at the sole risk of Seller.

**(b) Notices.** All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), or sent by certified mail, postage prepaid, return receipt requested, to the address listed below:

If to Seller: Jen Fu Lin and Hong Yu Lin  
1302 Alta Avenue  
Santa Monica, CA 90402  
Tel. (805) 449-2327

With a copy to: Rutan & Tucker, LLP  
611 Anton Blvd., Suite 14  
Costa Mesa, CA 92626  
Attention: Dan Slater  
Tel. (714) 641-5100  
Fax No.: (714) 546-9035

If to Buyer: Garden Grove Agency for Community Development  
Attention: Real Property Division  
11222 Acacia Parkway  
Garden Grove, California 92840  
Tel. (714) 741-5100  
Fax No.: (714) 741-5044

With a copy to: Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Attention: Celeste Stahl Brady, Esq.  
Tel. (949) 725-4141  
Fax No.: (949) 823-5141

All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written Notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the parties' respective counsels is for information only, is not required for valid Notice and does not alone constitute Notice hereunder.

**(c) Brokers.** Buyer and Seller each represent to the other that no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Each party agrees to and does hereby indemnify and hold the other free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in connection with this Agreement.

**(d) Waiver, Consent and Remedies.** Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder; provided however that failure of a condition hereunder shall not be deemed or determined to be a default unless such condition is also a covenant. Either party may specifically and expressly waive in writing any 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 in Section 17 relating to Seller's consent and agreement to liquidated damages for a Buyer Default and Buyer's consent and agreement in Section 17(a) to specific performance for a Seller Default, either party hereto 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.

**(e) Construction.** The parties acknowledge and agree that (a) each party is of equal bargaining strength; (b) each party has actively participated in the drafting, preparation and negotiation of this Agreement; (c) each party has consulted with such party's own independent counsel and such other professional advisors, if at all, as each party has deemed appropriate, relating to any and all matters contemplated under this Agreement; (d) each party and such party's counsel and advisors, if so elected by the party, have reviewed this Agreement; (e) each party has agreed to enter into this Agreement following such review and the rendering of such advice, if so elected by the party; and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

**(f) Cooperation.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof.

**(g) Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between Seller, Buyer and/or Escrow Holder in connection with this Agreement, then as between Buyer and Seller the prevailing party shall be entitled to recover from the losing party all of its costs and expenses including court costs and reasonable attorney's fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

**(h) Time.** Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

**(i) Counterparts; Facsimile Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile signature shall be deemed an original signature.

**(j) Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

**(k) No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.

**(l) Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

**(m) Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

**(n) Agency Director Authority.** The Agency Director ("Director") or his or her assignee shall have the authority to sign this Agreement, closing documents, issue interpretations, waive provisions, and enter into amendments of or supplements to this Agreement on behalf of Buyer, so long as such actions do not substantially or substantively change the terms and conditions of the purchase and sale of the Property as set forth herein and as agreed to by the Buyer in its approval of this Agreement. All other waivers or amendments shall require the consideration and written consent of Buyer's Board.

**(o) Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**(p) Exhibits and Schedules.** The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

**(q) Entire Agreement.** This Agreement (along with the Owner's Release and Waiver of Eminent Domain Rights described in Section 18(a)) supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement (along with the Owner's Release and Waiver of Eminent Domain Rights described in Section 18(a)) is executed without reliance on any oral or



written statements, representations or promises of any kind which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

**(r) Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

**(s) Assignment.** This Agreement may not be assigned without the prior written consent of the other party hereto, which consent shall not unreasonably be withheld.

**(t) Nondiscrimination.** 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.

**[Signatures begin on the following page]**

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the day and year first written above.

**“SELLER”**

**JEN FU LIN AND HONG YU LIN,**  
husband and wife as community property

By: JEN FU LIN by [Signature]  
Jen Fu Lin, by Joey Lin as Her Attorney in Fact

By: HONG YU LIN by [Signature]  
Hong Yu Lin, by Joey Lin as His Attorney in Fact

**“BUYER”**

**GARDEN GROVE AGENCY FOR  
COMMUNITY DEVELOPMENT,**  
a public body corporate and politic

By: \_\_\_\_\_  
Matthew Fertal, Agency Director

**ATTEST:**

\_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

[Signature]  
Stradling Yocca Carlson & Rauth,  
Agency Counsel

Acceptance by Escrow Holder:

West Coast Escrow hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between Jen Fu Lin and Hong Yu Lin ("Seller"), and the Garden Grove Agency for Community Development, a public body corporate and politic, as Buyer, and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
**WEST COAST ESCROW**

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

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

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

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the City of Garden Grove, County of Orange, State of California, described as follows:

THE SOUTH 129.44 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, IN TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN RANCHO LAS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 231-491-20