

CITY OF GARDEN GROVE
INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Keith G. Jones
Dept:	City Manager	Dept:	Public Works
Subject:	ACQUISITION OF REAL PROPERTY LOCATED AT 12971 RANCHERO WAY	Date:	January 27, 2009

OBJECTIVE

It is requested that the City of Garden Grove ("City") consider the acquisition of real property located at 12971 Ranchero Way, owned by Joaquin Tolentino ("Owner").

BACKGROUND

On April 1, 2008, the subject property was listed at \$329,000 after Homecomings Financial, LLC, and National Association Bank ("Lenders") filed two Notices of Default in the amounts of \$504,000 and \$62,900 respectively. The Fairview-Trask Intersection Improvement Project is designed to widen the westerly side of Fairview Street extending north from Avalon Avenue to Ranchero Way. The subject property is part of the Fairview-Trask Intersection Improvement Project.

DISCUSSION

Due to the proximity of the existing single-family residence to the proposed street improvements, the acquisition of the entire parcel is required. A site map of the subject property is enclosed as Attachment 1.

An agreement has been reached with the Owner to acquire fee simple title to 12971 Ranchero Way (Attachment 2). The agreed upon purchase price of \$316,000 has been determined to be at fair market value by an independent appraiser. The property contains 7,410 square feet of land and is improved with a 940 square foot single-family residence. The property has been declared tax defaulted for non-payment of taxes for fiscal year 2007-2008 in the amount of \$5,161.75. However, the Owner and Lender have agreed to provide the City with marketable title free of monetary liens.

In an effort to minimize expenses, the City will lease the subject property to the Owner at an affordable rate given his current financial status to allow him to identify a new permanent replacement dwelling. The Owner will not be eligible for relocation assistance since the property was offered for sale due to foreclosure pursuant to Chapter 7277 of the California Government Code.

FINANCIAL IMPACT

The street improvement project is funded by Measure" M" local funds, which have been set aside for the acquisition of the subject property. The proposed action does not impact the general fund.

COMMUNITY VISION IMPLEMENTATION

Maintain and improve the transportation system in the City to ensure the safe and efficient flow of traffic.

RECOMMENDATION

Based on the foregoing information, staff recommends that the City Council:

- Approve the acquisition of the subject property and the Purchase Agreement (Attachment 2).
- Authorize the City Manager and City Clerk to execute the Purchase Agreement and accept the Grant Deed, and make minor modifications as needed, on behalf of the City (Attachments 2-3);
- Authorize the Finance Director to draw a warrant in the amount of Three Hundred Sixteen Thousand Dollars (\$316,000);
- Authorize the City Manager and City Clerk to execute agreements for asbestos testing, asbestos abatement, and demolition to the lowest responsible bidder.
- Authorize the City Manager and City Clerk to execute a rental agreement on an interim basis pending the construction of street improvements.


KEITH G. JONES
Director of Public Works

By: 
Carlos Marquez
Real Property Agent

Recommended for Approval


Matthew Fernald
City Manager

Attachment 1 - Site Map

Attachment 2 - Agreement for Acquisition of Real Property and Escrow Instructions

Attachment 3 - Grant Deed

Acquisition Map of 12971 Ranchero Way



Legend
Red: Property Boundaries
Yellow: Right of Way Boundary

TITLE REPORT NO.: 11387869-03
PROJECT NAME: Fairview/Trask

AGREEMENT FOR ACQUISITION OF REAL PROPERTY AND ESCROW INSTRUCTIONS

THIS AGREEMENT is entered into this _____ day of _____, 2009, by and between the CITY OF GARDEN GROVE, a municipal corporation, ("City"), and the undersigned owner, JOAQUIN TOLENTINO, a married man as his sole and separate property ("Seller"), for acquisition by City of certain real property described below.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Agreement to Sell and Purchase.** Seller agrees to sell to City, and City agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, that certain real property ("Property") situated in the City of Garden Grove, County of Orange, State of California, and legally described in Exhibit "A" attached hereto and incorporated herein by reference.
2. **Purchase Price.** The total purchase price, payable in cash through escrow, shall be the sum of Three Hundred Sixteen Thousand Dollars (\$316,000) (the "Purchase Price").
3. **Conveyance of Title.** Seller agrees to convey by Grant Deed to City marketable fee simple title to the Property free and clear of all records and unrecorded liens, encumbrances, assessments, easements, leases, and taxes EXCEPT:
 - A. Taxes for the tax year in which escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if paid at the close of escrow.
 - B. Covenants, conditions, restrictions and reservations of record, or contained in the above referenced title report issued by Commonwealth Land Title Company, Dated August 13, 2008.
 - C. Easements or rights-of-way over the Property for public or quasi-public utility or public street purposes, if any.
4. **Title Insurance Policy.** Escrow Agent shall, following recording of deed of City, provide City with CLTA Standard Coverage Policy of Title Insurance in the amount of the Purchase Price, issued by Land America Commonwealth or a title company mutually satisfactory to City and Seller, showing fee simple title to the Property vested in City, subject only to the exceptions set forth in Paragraph 3 and the printed exceptions and stipulations in the policy. City agrees to pay the premium charged.
5. **Escrow.** City agrees to open an escrow in accordance with this Agreement with West Coast Escrow Company, 18615 Yorba Linda Blvd, Yorba Linda, California 92714 or an escrow company mutually satisfactory to City and Seller. This Agreement constitutes the joint escrow instructions of City and Seller, and Escrow Agent to whom these instructions are delivered is hereby

empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

5.1 Grant Deed. Seller will execute and deliver a Grant Deed (the "Grant Deed") to City via escrow. As soon as possible after opening of escrow, Seller will deposit the executed Grant Deed. City agrees to deposit the Purchase Price upon demand of Escrow Agent. City and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

5.2 Insurance. Insurance policies for fire or casualty are not to be transferred, and Seller will cancel its own policies after close of escrow.

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

6. Property Offered by Seller. Seller has offered to sell the Property to City, willingly, voluntarily and by Seller's own actions, pursuant to Section 7277 of the California Government Code.

6.1 Relocation. Seller acknowledges and agrees that Seller (for itself and all other persons or entities claiming by or through Seller) is/are not eligible for, and the all-inclusive Purchase Price does not include payment or allowance for, relocation assistance or benefits under any and all applicable federal, state and local laws and regulations, including without limitation the California Relocation Assistance Law, Government Code Section 7260, *et seq.* or the regulations promulgated thereunder, located at Title 25 California Code of Regulations, Section 6000. Seller expressly waives any claim for any such relocation assistance and benefits.

7. Tax Adjustment Procedure.

ESCROW AGENT IS AUTHORIZED AND IS INSTRUCTED TO COMPLY WITH THE FOLLOWING TAX ADJUSTMENT PROCEDURE:

7.1 Delinquent Taxes. Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the Property.

7.2 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.

7.3 Refund of Taxes. Seller shall have the sole right, after close of escrow, to apply to the Orange County Tax Collector for refund of any excess property taxes which have been paid by Seller with respect to the Property. This refund would apply to the period after City's acquisition, pursuant to Revenue and Taxation Code Section 5096.7.

8. Escrow Agent Authorization.

ESCROW AGENT IS AUTHORIZED TO, AND SHALL:

- 8.1 Seller. Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement.
- 8.2 City. Pay and charge City for any escrow fees, charges, and costs payable under Paragraph 5 of this Agreement.
- 8.3 Disbursement. Disburse funds and deliver the Grant Deed when conditions of this escrow have been fulfilled by City and Seller.
- 8.4 Close of Escrow. The term "close of escrow," if and where written in these instructions, shall mean the date, the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Orange County Recorder. Recordation of instruments delivered through this escrow is authorized, if necessary or proper in the issuance of the policy of title insurance.
- 8.5 Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.
- 8.6 Time of the Essence. **TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE.** If (except for deposit of money by City, which shall be made by City upon demand of Escrow Agent before close of escrow) this escrow is not in condition to close within 15 days from date of these instructions, any party who then shall have fully complied with its instructions may, in writing, demand the return of its money or property; but if neither party complied, no demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in these escrow instructions, and if any objections are raised within five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or mutual instructions. If no demands are made, Escrow Agent shall proceed with closing of this escrow on or before 45 days from the execution of this Agreement.
- 8.7 Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 20 and to its liability under any policy of title insurance issued in regard to this escrow.
- 8.8 Escrow Fees, Charges and Costs. City agrees to pay all City's and Seller's usual fees, charges, and costs which arise in this escrow.

9. **Conditions Precedent to Close of Escrow.**

City's Conditions Prior to Closing. The obligation of the City to complete the purchase of the Property is subject to the satisfaction of the following conditions:

- 9.1 Seller shall deliver through escrow an executed and recordable Grant Deed sufficient to convey fee title to the City as set forth in Section 5.1.

- 9.2 Seller shall deliver through escrow a Non-Foreign Transferor Declaration duly executed and in the form of Exhibit "B" attached hereto and made a part hereof.
- 9.3 Seller shall deliver through escrow such funds and documents as are necessary to comply with Seller's obligations under this Agreement.
- 9.4 Seller is not in default of any of its obligations under the terms of this Agreement, and all representations of Seller herein are true and correct.
- 9.5 Escrow Agent has committed to deliver to City a title insurance policy as required by Section 4 hereof.
- 9.6 The City shall not have terminated this Agreement.
- 9.7 The Property is in the condition required by this Agreement.

Seller's Conditions Precedent to Closing. The obligation of Seller to complete the sale of the Property is subject to the satisfaction of the following conditions:

- 9.8 The City is not in default of any of its obligations under the terms of this Agreement, and all representations of City herein are true and correct.
- 9.9 The City shall have deposited with the Escrow Agent immediately available funds in an amount equal to the Purchase Price and the City's share of costs described herein.
- 9.10 The Seller shall not have terminated this Agreement.

10. **Rental and Occupancy by Seller.**

- 10.1 Statement of Rentals. Seller agrees to execute a complete, current, and correct statement of rentals on a form furnished by City to Seller and deliver it to City within fifteen (15) days with copies of any written leases or rental agreements attached. All rents will be prorated as of the close of escrow on the basis of a 30-day month consistent with that Statement, subject to approval of City. Seller agrees not to rent any units on the premises which are now vacant, or which may be vacated by present occupants prior to close of escrow.
- 10.2 Rental Statement Terms. Seller hereby warrants that the rental statement referred to shall include the terms of all rental agreements, tenancies, and leases (written, unwritten, recorded, or unrecorded) and agrees to hold City harmless from all liability from any leases or agreements. Seller also warrants that there are no oral or written leases on all or any portion of property exceeding a period of one month, and Seller further agrees to hold City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of for period exceeding one month, except: None.

- 11. **Permission to Enter on Premises.** Seller hereby grants to City, or its authorized agents, permission to enter upon the Property at all reasonable times upon not less than two (2) days advance notice prior to close of escrow for the purpose of making necessary or appropriate inspections.

- 11.1 **Testing.** Within five (5) days of City's execution of this Agreement, City at its expense may (but is not required to) perform such soil tests, as City shall deem appropriate (the "Tests"). As soon as practicable after the completion of the Tests, City shall provide Seller with a written report (the "Report") describing (i) the results of any such Tests and (ii) any repairs or remedial measures (the "Remedial Measures") proposed to be undertaken to comply with all federal, state and local legal requirements applicable to the conditions disclosed by such Tests, including, but not limited to, any legal requirements relating to hazardous or toxic materials. If Remedial Measures are deemed necessary, City and Seller shall each have the right to terminate this Agreement, in which event no party shall have any further liability to the other. Within seven (7) days after receipt of City's notice to terminate, Seller shall have the option to undertake the Remedial Measures in accordance with a remediation plan which is approved by all appropriate governmental authorities and approved by City (collectively, the "Plan"), in which event, the City's termination shall be revoked and this Agreement shall close as set forth herein, provided, however, City shall have no obligation to close unless and until Seller has delivered to City a certificate (the "Certificate") from a California licensed hazardous materials specialist that the Property has been remediated in accordance with the Plan. Should Seller elect to undertake Remedial Measures, it shall, in consultation with the appropriate governmental agencies, promptly initiate at its cost and expense such Remedial Measures in a timely manner. The results of the Tests (or any subsequent test conducted prior to the Close of Escrow) shall be deemed to represent the condition of the soil at the Close of Escrow. In the event the Remedial Measures are not complete and Seller has not delivered the Certificate to City within fourteen (14) days from the date hereof, City shall have the further right to terminate this Agreement, in which event no party shall have any further liability to the other hereunder.
- 11.2 City agrees to indemnify Seller and save it harmless from all damages, actions, causes of action, claims, judgments, costs of litigation, and attorney's fees which may in any way arise out of or result from the Tests. City further agrees to repair as nearly as reasonably can be accomplished any damages to the area covered by the Tests and will restore said area to as near its original condition as can be reasonably accomplished.
12. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument.
13. **Closing Statement.** Seller instructs Escrow Agent to release a copy of Seller's closing statement to City for the purpose of ascertaining if any reimbursements are due Seller.
14. **Loss or Damage to Improvements.** Loss or damage to the Property including any improvements thereon, by fire or other casualty, occurring prior to the recordation of the Grant Deed shall be at the risk of Seller. In the event that loss or damage to the real property or any improvements thereon, by fire or other casualty, occurs prior to the recordation of the grant deed, City may elect to require that the Seller pay to City the proceeds of any insurance policy or policies which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the total price by an amount equal of the diminution in value of the Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.

15. **Eminent Domain Dismissal.** Seller and City acknowledge that this transaction is a negotiated settlement in lieu of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the County of Orange, wherein the herein described property is included and also waives any and all claims to any money on deposit in the action and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Seller (or Seller's Tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's Tenant) is a named defendant, upon the close of escrow, Seller agrees and consents to City taking a default in the action.
16. **Possession and Disposition of Seller's Furniture.** Possession of real property and fixtures thereto which are located in or on the Property at the close of escrow shall be given to City upon the recording of the Grant Deed. All of the furniture and furnishings shall remain the property of Seller (or Seller's Tenant or other party entitle thereto) and Seller shall have the right at any time to remove or otherwise dispose of all or any portion of same, provided that all tenants occupying the premises at the time the Grant Deed is recorded shall be entitled to continue to use the furniture and furnishings then being used by them until they vacate each of their respective apartments or living spaces, and provided that within ten (10) days after notice from City that the premises have been vacated, Seller will remove or otherwise dispose of all the furniture and furnishings. All furniture and furnishings remaining on the Property after ten (10) days shall become the property of City and City may dispose of same without liability as it alone sees fit. City shall not be liable for any loss of or damage to the furniture or furnishings, regardless of when loss or damage occurs.
17. **Warranties, Representations, and Covenants of Seller.** Seller hereby warrants, represents, and/or covenants to City that:
- 17.1 **Pending Claims.** To the best of Seller's 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 City, domestic or foreign.
- 17.2 **Encroachments.** To the best of Seller's 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.
- 17.3 **Condition of Property.** Until the close of escrow, Seller shall maintain the property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the property.
- 17.4 **Seller's Title.** Until the close of escrow, Seller shall not do anything which would impair Seller's title to any of the real property.
- 17.5 **Utilities.** All utilities, without limitation, including gas, electricity, water, sewage, and telephone, are available to the Property, and to the best of Seller's knowledge, all items are in good working order.
- 17.6 **Conflict with Other Obligation.** To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease,

covenants, conditions and restriction, or other agreement or instrument to which Seller or Seller's Property may be bound.

- 17.7 Change of Situation. Until the close of escrow, 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 City.
- 17.8 Authority. Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to City as provided herein and to carry out Seller's obligations hereunder.
- 17.9 Bankruptcy. Neither Seller nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.
18. Hazardous Waste. 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 waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. 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. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the "United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Section 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 "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) asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as "hazardous"; or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 9601).
19. Compliance With Environmental Laws. To the best of Seller's knowledge the Property and its intended use complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water Act, Clean Air Act, Federal Water Pollution Control Act, Solid Waste Disposal

Act, Resource Conservation Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act, and the rules, regulations, and ordinances of the City of Garden Grove, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection City, and all applicable federal, state, and local agencies and bureaus. Seller has not received any notices of violation of any of the above laws and regulations.

20. **Indemnity.** Seller agrees to indemnify, defend and hold City harmless from and against any claims, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in or about, or the transportation of any such materials to or from, the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in or about, to or from, the Property, or (iii) as a negative result from the City's vote to decline to purchase the property, Seller agrees to protect, defend, and hold harmless City and its elective or appointive boards, officers, agents, and employees. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment. This indemnity extends only to liability created prior to or up to the date this escrow shall close. Seller shall not be responsible for acts or omissions to act after the close of this escrow.
21. **Contingency.** It is understood and agreed between the parties hereto that the completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the City herein. The execution of these documents and the delivery of same to Escrow Agent constitutes said acceptance and approval.
22. **Full and Complete Settlement for Fee Interest.** The total compensation to be paid by City to Seller is all of Seller's interest in the property and any rights or obligations which exist or may arise out of the acquisition of the property for public purposes, including without limitation, Seller's fee interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), 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 City. The compensation paid under this Agreement does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits, which Seller acknowledges that he is not entitled to receive.
23. **Broker's Commission.** City warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property. Seller agrees to and do hereby indemnifies and hold City harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which he has employed in connection with the transaction covered by this Agreement.

24. **Waiver, Consent and Remedies.** Each provision of this Agreement to be performed by City and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and City's performance hereunder, as appropriate, and any breach thereof by City or Seller shall be deemed a material default hereunder. 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 herein, 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.
25. **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between Seller, City and/or Escrow Agent in connection with this Agreement then as between City 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 attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.
26. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

If to Seller:

Joaquin Tolentino
12971 Ranchero Way
Garden Grove, CA 92843

Copy to Agent:

Esveydy Garcia
17291 Irvine Boulevard Suite 208
Tustin, CA 92780

If to City:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Attention: Carlos Márquez

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

27. **Default.** Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within seven (7) days from the date of the notice or such longer period if the nature of the default is such that more than ten (10) days is required to cure such default. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within the time set forth herein.
28. **Gender and Number.** In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.
29. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.
30. **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.
31. **Governing Law.** This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.
32. **Invalidity of Provision.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
33. **Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by City and Seller.
34. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
35. **Time of Essence.** Time is of the essence of each provision of this Agreement
36. **Binding upon Successors.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth herein above.

"CITY"
CITY OF GARDEN GROVE

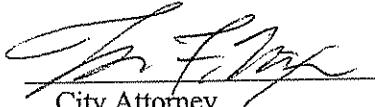
ATTEST:

City Clerk

City Manager

Date _____

APPROVED AS TO FORM:



City Attorney

Date 11/14/09

"SELLER"
JOAQUIN TOLENTINO, a married man as his sole and separate property

See next page

Date _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth herein above.

"CITY"
CITY OF GARDEN GROVE

ATTEST:

City Clerk

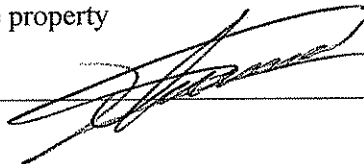
City Manager

Date _____

APPROVED AS TO FORM:

"SELLER"
JOAQUIN TOLENTINO, a married man as his sole and separate property

See previous page
City Attorney



Date _____

Date 01-07-09

EXHIBIT "A"

LEGAL DESCRIPTION
(APN: 101-301-49)

All that certain real property situated in the County of Orange, State of California, described as follows:

LOT 17 OF TRACT NO. 1414, IN THE CITY OF GARDEN GROVE, AS SHOWN ON MAP RECORDED IN BOOK 47, PAGE 6 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

End of Legal Description

EXHIBIT "B"

Non-Foreign Transferor Declaration

Section 1445 of the Internal Revenue Code of 1954, as amended ("Code"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, the undersigned hereby certifies the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor's U.S. employer identification number or social security number are _____; and _____.
3. The Transferor's office address or mailing address is

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury we declare that we have examined this Certification and to the best of our knowledge and belief it is true, correct, and complete, and further declare that we have authority to sign this document on behalf of the Transferor.

Date: _____