



RESOLUTION OF NECESSITY TO ACQUIRE EASEMENT  
AT 12521 HARBOR BOULEVARD  
BY EMINENT DOMAIN  
April 27, 2010  
Page 2

Resolution of Necessity to use its legal authority to acquire the right-of-way. The adoption of the Resolution of Necessity and the potential use of eminent domain will facilitate the acquisition and assembly of the site in a number of ways. Acquisition through the City of Garden Grove's ("City") legal authority will provide an objective, third party process for resolving disagreements between the City and the Property Owners concerning the fair market value of the easement. The use of eminent domain would allow the City to gain possession of the property while the court continues its efforts to determine the total value of the property and determine just compensation. The eminent domain action would not preclude staff from continuing in good faith to reach negotiated settlements to acquire the easement.

Required Findings:

The adoption of the Resolution of Necessity is the first step in the use of the City's legal authority to acquire property. Prior to the adoption of the Resolution of Necessity, the City must make the determination that the following conditions are met:

- a. The public interest and necessity require the project;
- b. The project is planned or located in a manner that will be most compatible with the greatest public good and least private injury;
- c. The property sought to be acquired is necessary for the project;
- d. The offer required by California Government Code § 7267.2 has been made to the owner or owners of record.

Public interest:

The Project is part of a network of roadways that will provide safe, convenient, and efficient transportation allowing for the movement of people and goods throughout the City and the region.

Greatest Public Good and Least Private Injury:

The project is planned and located in a manner that will be most compatible with the greatest public good and least private injury. The project is consistent with the goals and objectives of the Circulation Element of the City's General Plan, which provides programs and policies to establish a roadway system that adequately accommodates future growth consistent with the Land Use Element.

The Project will not have a significant adverse effect on the environment as reflected in the Negative Declaration previously adopted for the Project, including the acquisition of the easement. The easement was designed in such a way to minimize any adverse impact on the privately owned property.

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Property is Necessary:

The easement affecting the subject property is located in within a heavily congested intersection. The aforementioned improvements will significantly benefit motorists traveling through the wider intersection and easing congestion during peak traffic hours.

The adoption of the Resolution of Necessity is the first step in the use of the City's legal authority to acquire the easement.

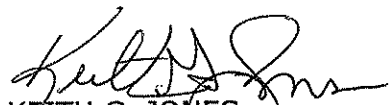
FINANCIAL IMPACT

The expected financial impact including just compensation will be determined in a court of law governed under the laws of the State of California.

RECOMMENDATION

It is recommended that City Council:

- Conduct a public hearing;
- Adopt the Resolution of Necessity authorizing the acquisition of an easement over real property at 12521 Harbor Boulevard through eminent domain proceedings.

  
KEITH G. JONES  
Public Works Director

By: Carlos Marquez  
Real Property Agent

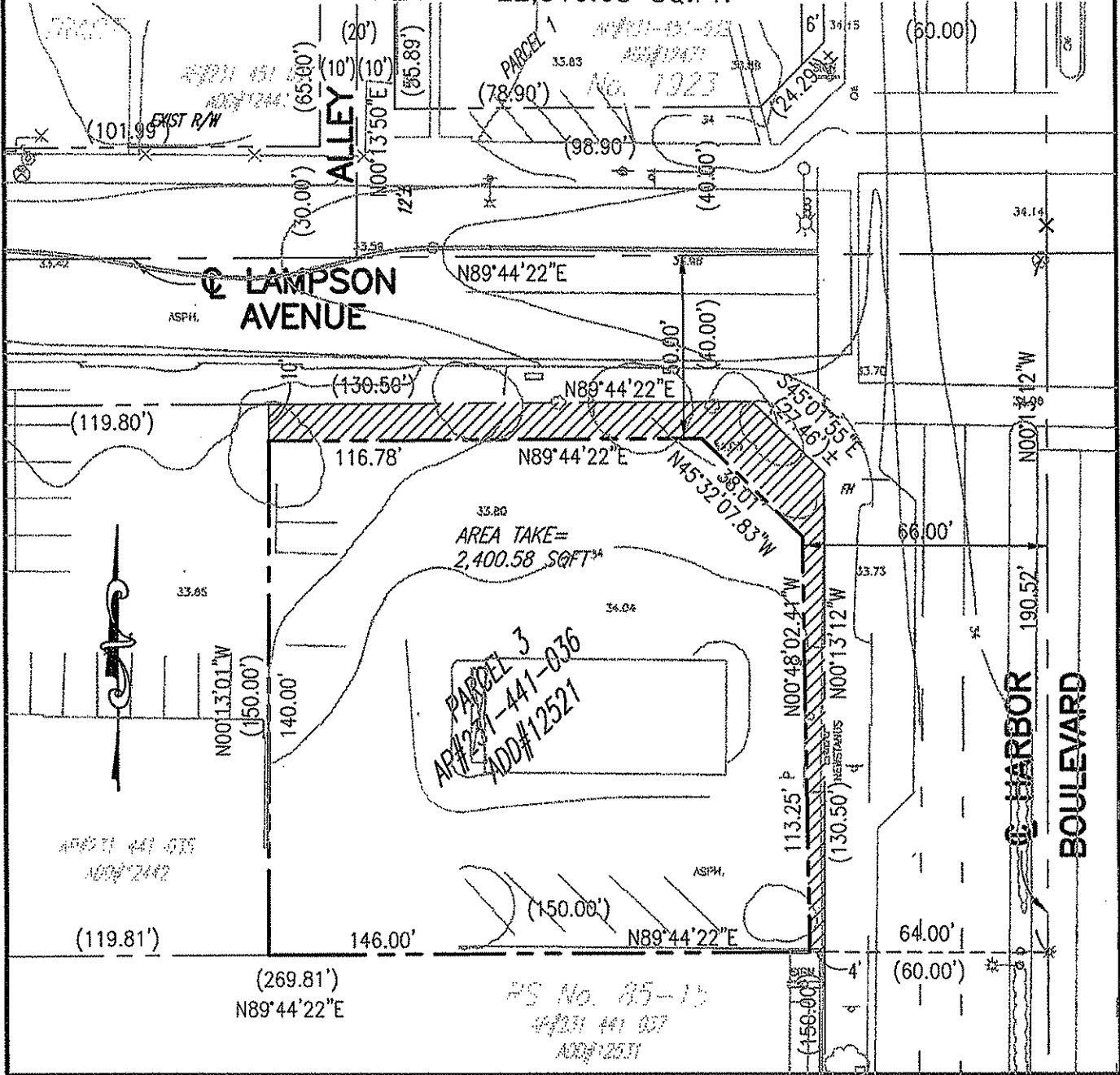
**Recommended for Approval**

  
**Matthew Fertal**  
City Manager

Attachment 1 – Site Map  
Attachment 2 – Resolution of Necessity

**PARCEL 3**

RIGHT OF WAY TAKE = 2,400.58 SQ.FT.  
 RESIDUAL AREA = 19,910.10 SQ.FT.  
 TOTAL LOT AREA = 22,310.68 SQ.FT.



City Of Garden Grove  
 Department Of Public Works

DWG NO. :  
 -  
 PREPARED BY :  
 MCB  
 DRAWN BY:  
 MCB  
 CHECKED BY:  
 MU

**ACQUISITION MAP**

R/W NO: PROJECT NO. :  
 SCALE: 1"=40' APPROVED BY :  
 CITY ENGINEER

THIS IS NOT A SURVEY BUT IS COMPILED FROM EXISTING RECORDS

Resolution No. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AUTHORIZING AND DIRECTING THE CONDEMNATION OF AN INTEREST IN REAL PROPERTY (APN: 231-441-36) LOCATED IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, A PERMANENT EASEMENT FOR ROADWAY PURPOSES OVER AND THROUGH A PORTION OF THAT CERTAIN REAL PROPERTY, OWNED BY PAUL NIKOLAU & JOYCE NIKOLAU, TRUSTEES OF THE NIKOLAU LIVING TRUST, DATED SEPTEMBER 13, 2005, AND DECLARING THE PUBLIC NECESSITY THEREFORE.

WHEREAS, the City of Garden Grove ("City") is a municipal corporation organized and operating pursuant to the laws of the State of California, and is authorized as specified herein to take real property by condemnation and to hold, use and enjoy such property as necessary to fully exercise its powers; and

WHEREAS, the City has considered and investigated the necessity to pursue the Harbor Boulevard/Lampson Street Intersection Improvement Project, a public works project incorporating widening and improvement of Harbor Boulevard and Lampson Avenue to conform it to the Circulation Element of the City's General Plan 2020 ("General Plan") and provide the community with a superior roadway complete with improved public facilities and amenities (the "Project"); and

WHEREAS, the City has determined that its acquisition of a permanent easement for roadway purposes over and through a portion of that certain improved real property located at the southwest corner of Harbor Boulevard and Lampson Avenue, identified as assessor's parcel number ("APN") 231-441-36, represents a necessary and essential component of the City's ability to pursue, construct and complete the Project; and

WHEREAS, the City has determined that this permanent easement for roadway purposes may be described as follows: over and through two thousand five hundred fifty five (2,555) square feet in area, described as a ten foot wide strip of land located on the current northern boundary of APN 231-441-36 contiguous to Lampson Avenue at its current alignment and width; and a six foot wide strip of land tapering to a four foot width of land located on the eastern boundary contiguous to Harbor Boulevard at its current alignment and width (the "Easement"); and

WHEREAS, the Easement is more particularly described in the two (2) pages of **Exhibit A** attached hereto and incorporated by reference herein, said Exhibit A consisting of: *(i)* a legal description of the area subject to the Easement marked as **A-1**, and *(ii)* an accompanying plat showing the area subject to the Easement as "Parcel A – RIGHT OF WAY ACQUISITION" marked as **A-2**, and

WHEREAS, on March 6, 2006, the City Council did, in compliance with the California Environmental Quality Act codified at California Public Resources Code §21000 *et seq.*, and the "CEQA Guidelines," codified at Title 14 of the California Code of Regulations, Chapter 3, §15000 *et seq.*, consider and adopt an Environmental Assessment inclusive of a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program, the Council having determined that each and every actual, potential and cumulative environmental impact of the Project, including but not limited to the City's acquisition of the Easement, will be mitigated to the point of not being significant; and

WHEREAS, the City, in carrying out its powers and functions, is empowered and authorized by California state law, including but not limited to Article I, Section 19 of the California Constitution, and California Government Code Sections 37350.5 and 39792, to acquire the Easement for public use by

condemnation, said City power and authority to be exercised pursuant to the provisions of section 1230.010 *et seq.* of the California Code of Civil Procedure; and

WHEREAS, the City mailed the owner of the Property, Paul Nikolau and Joyce Nikolau, as Trustees of the Nikolau Living Trust, dated September 13, 2005, (collectively, the "Owner") a letter meeting the requirements of California Government Code Section 7267.2, an offer to purchase the Property (the "Letter") on or about January 15, 2010, a true and correct copy of said letter being attached hereto, inclusive of its various exhibits, and incorporated herein by this reference as **Exhibit B**; and

WHEREAS, on March 31, 2010, the City mailed the Owner a legal notice of intention to adopt a resolution of necessity to acquire by eminent domain the Easement described in Exhibit A in fee simple, pursuant to and in compliance with the requirements of California Code of Civil Procedure Section 1245.235 (the "Notice") and which Notice advised the owner of a public hearing in this matter by the City on Tuesday, April 27, 2010, a true and correct copy of the Notice being attached hereto, inclusive of its various exhibits, and incorporated herein by this reference as **Exhibit C**; and

WHEREAS, the City Council of the City of Garden Grove (the "Council") held a duly noticed public hearing on Tuesday, April 27, 2010 (the "Hearing"), at which the matters set forth in California Code of Civil Procedure Section 1240.030 were discussed, including the following matters:

- a) Whether the public interest and necessity require the proposed Project;
- b) Whether the proposed Project is planned and located in the manner that would be most compatible with the greatest public good and the least private injury;
- c) Whether the property sought to be acquired (which is described herein) is necessary for the proposed Project; and
- d) Whether the offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record; and

WHEREAS, the City, *via* the Notice, has provided all persons whose names appear on the last equalized County Assessment Roll as having an interest in APN: 231-441-36, the real property proposed to be subject to the proposed Easement, with a reasonable opportunity to appear and be heard on those matters referred to in section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, at the Hearing, City Staff presented a written report to the Council, supplemented by oral information, regarding the proposed Project and the matters set forth herein.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Garden Grove, by vote of four-fifths or more of its members, hereby declares, finds, and determines as follows:

1. The recitals above are true and correct and incorporated herein by reference, inclusive of referenced exhibits and defined terms.
2. The public interest and necessity require the City's acquisition and taking of the entirety of the Easement, to wit that certain real property interest described in Exhibit A. The City Council finds that the Easement's acquisition is a necessary exercise of the City's powers and functions, advancing the Project and the public health, safety and welfare.

3. The public interest and necessity require the Easement's acquisition and taking in order for the proposed Project to proceed, the proposed Project being a public use authorized by State law. As is expressed in the recitals, the California Constitution and California Government Code Sections 37350.5 and 39792, among other provisions of the statutes of the State of California, permit and empower this acquisition and taking by the City through its exercise of the power of eminent domain for the stated public use.

4. The real property interest sought to be condemned in this matter is legally described in Exhibit A to this resolution of necessity.

5. The public interest and necessity require the proposed Project.

6. The proposed Project is planned and located in the manner that is most compatible with the greatest public good and the least private injury.

7. The Easement, described in Exhibit A, the property interest sought to be acquired, is necessary for the proposed Project.

8. The offer required by Government Code Section 7267.2, Subdivision (a) (the "Offer Statute"), together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the Owner or owners of record, which offer and accompanying statement/summary were in a form and contained all of the factual disclosures provided by the Offer Statute.

9. The City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Easement, the real property interest described in Exhibit A.

10. The law firm of Woodruff, Spradlin & Smart, is hereby authorized, empowered and directed to prepare, commence and prosecute an eminent domain action or actions in the Superior Court of the State of California in and for the County of Orange in the name and on behalf of the City of Garden Grove against all owners and persons and entities claiming or having interests in APN: 231-441-36, the improved real property over and through a portion of which the Easement described in Exhibit A hereto runs, for the purpose of performing and carrying out all proceedings and steps incident to the condemnation and the acquisition of said Easement, including obtaining warrants for deposit of funds, orders for pre-judgment possession, and other steps necessary to acquire title to the said Easement, by and for the City of Garden Grove.

ADOPTED this 27<sup>th</sup> day of April 2010

/s/ WILLIAM J. DALTON  
MAYOR

/s/ KATHLEEN BAILOR  
CITY CLERK

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) SS:  
CITY OF GARDEN GROVE   )

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on the 27<sup>th</sup> day of April 2010, by the following vote:

AYES:       COUNCIL MEMBERS:  
NOES:       COUNCIL MEMBERS:  
ABSENT:     COUNCIL MEMBERS:

/s/ KATHLEEN BAILOR  
CITY CLERK



**Exhibit A-1**

Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION:

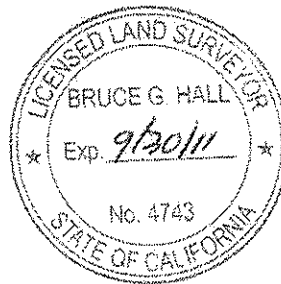
PARCEL "A":

All that certain real property of that portion of the North 190.00 feet of the East 210.00 feet of the East one-half of the Northeast quarter of the Southwest quarter of Section 34, Township 4 South, Range 10 West in the Rancho Las Bolsas, in the State of California, County of Orange, City of Garden Grove as said section is shown on a map recorded in Book 51 page 10 of Miscellaneous Maps, in the office of the County Recorder of said county described as follows:

BEGINNING AT THE point of intersection of the centerline of Lampson Avenue and Harbor Boulevard as shown on Record of Survey Map No. 85-1060 recorded in Book 112 Page 49 of Surveys, in the office of said County Recorder, said point being the Northeast corner of the southwest quarter of said Section 34; thence southerly along said centerline of Harbor Blvd. S0°13'22"E 190.00 feet; thence S89°44'22"W 60.00 feet to the TRUE POINT OF BEGINNING; thence S89°44'22"W 4.00 feet; thence N01°14'04"W 133.25 feet; thence N45°43'25"W 38.16 feet to a line that is parallel with and distant 50.00 feet southerly, measured at right angles, from the centerline of Lampson Avenue; thence westerly along said line S89°44'22"W 116.78 feet; thence N00°13'22"W 10.00 feet to a line that is parallel with and distant 40.00 feet southerly, measured at right angles, from the centerline of Lampson Avenue; thence easterly along said line N89°44'22"E 136.99 feet to a tangent curve concave southwesterly having a radius of 13.00 feet; thence southeasterly 20.43 feet along said curve through a central angle of 90° 02' 16" to a line that is parallel with and distant 60.00 feet westerly, measured at right angles, from the centerline of Harbor Boulevard S00°13'22"E 136.99 feet to the TRUE POINT OF BEGINNING. Containing 2,555 square feet more or less. See Exhibit B attached.

Prepared by: Bruce Hall Land Surveyor  
LS 4743  
Exp. 9/30/11

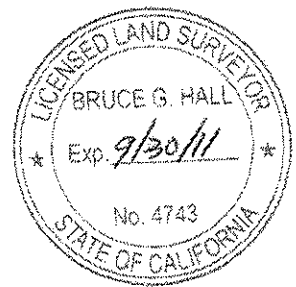
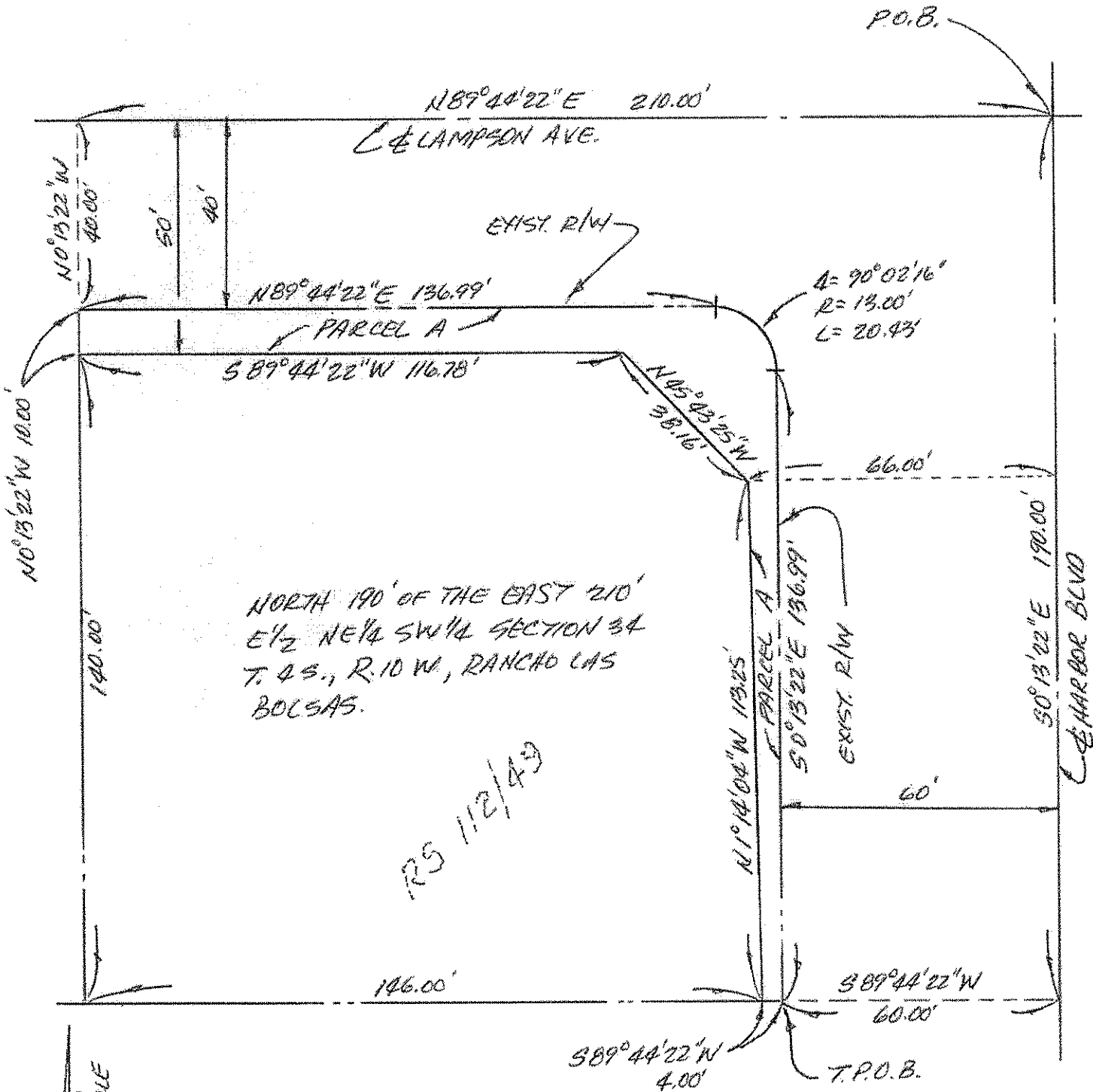
B. Hall 3/19/10  
Bruce Hall LS 4743



**Exhibit A-2**

Plot Map

EXHIBIT B



**Exhibit B**

Offer Letter

7006 0100 0005 5374 4408

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Postmark  
JAN 15 2010

Sent To  
 Street, Apt. No. or PO Box No. Paul and Joyce Nikolau Trust  
 10387 Los Alamitos Blvd.  
 City, State, Zip Los Alamitos CA 90720

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)          LOIS M. KIGABA</p> <p>C. Date of Delivery          JAN 21 2010</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No          If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p>Paul and Joyce Nikolau Trust          10387 Los Alamitos Blvd.          Los Alamitos CA 90720</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number          (Transfer from service label)</p>		<p>7006 0100 0005 5374 4408</p>	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	



# CITY OF GARDEN GROVE

January 15, 2010

Paul and Joyce Nikolau Trust  
10387 Los Alamitos Boulevard  
Los Alamitos, CA 90720

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Subject: **NOTICE OF OFFER TO PURCHASE  
EASEMENT FOR STREET PURPOSES  
12521 HARBOR BOULEVARD  
APN: 231-441-36  
PROJECT: 7381      PARCEL: 3**

William J. Dalton  
Mayor

Steven R. Jones  
Mayor Pro Tem

Dina Nguyen  
Council Member

Bruce A. Broadwater  
Council Member

Andrew Do  
Council Member

Dear Mr. & Mrs. Nikolau:

The City of Garden Grove ("City") wishes to advise you of its decision to undertake the acquisition of an easement over the real property located at 12521 Harbor Boulevard for street and highway purposes. Your property is within the proposed improvement area and, therefore, the City intends to acquire an easement over said property for the widening and improving the Harbor Boulevard and Lampson Avenue intersection.

Address: 12521 Harbor Boulevard

Assessor Parcel No. 231-441-36

To determine the fair market value of the real property, the City had the property appraised by a qualified independent appraiser. On this basis, the City offers the total amount of **One Hundred Twenty Eight Thousand Three Hundred Dollars (\$128,300)** as fair market value for the **2,400.58 square foot** easement over the property. This offer is the full amount that the City believes to be just compensation for the interest sought to be acquired. It is not less than the approved appraisal of the fair market value of your property.

This offer is subject to and conditioned upon soils acceptable conditions and the absence from the property of toxic or hazardous substances and any other kind of soil or water contamination, and to the grant of a right-of-entry to the City for the purpose of conducting a soils, toxic and hazardous substances investigation of the subject property at City's expense. This offer is further subject to modification depending on the results of said investigation to the extent that the results of such investigation could have an impact on the value of the subject property. The completion of this transaction is contingent upon the specific acceptance and approval of the City Council of Garden Grove.

Enclosed for your review and consideration are Written Summary of Just Compensation, Summary Statement Relating to the Purchase of Real Property and City's acquisition brochure entitled "Property Owner's Information Pamphlet on Use of Eminent Domain in California" which will provide you with answers to questions owners frequently ask concerning land acquisition procedures. Also enclosed is the pertinent Right-of-Way Agreement.

On January 1, 2007, a new law was adopted, Code of Civil Procedure section 1263.025, which gives you the right to be reimbursed for the amount of your real property appraisal up to but not exceed \$5,000, when a

Notice of Offer to Purchase  
January 15, 2010


public agency, the City of Garden Grove (City), offers to purchase real property under threat of eminent domain.

The City is required to document presentation of this offer to you. In this regard, we request that you sign where indicated and return the enclosed copy of this letter indicating receipt of the letter of offer and enclosed materials. **Please be assured that your signature does not indicate acceptance of this offer to purchase.**

The City of Garden Grove Real Property Office will make every effort to cooperate with you in reaching a mutually satisfactory conclusion to these negotiations.

Should you have any questions regarding this matter, please call me (714) 741-5131.

Sincerely,



Carlos Marquez  
Real Property Agent

Attachments:   Written Summary of Just Compensation  
                  Summary Statement  
                  City's Acquisition Brochure  
                  Plot Map  
                  Right-of-Way Agreement  
                  Street Deed  
                  Summary of Sales Comparables

RECEIPT OF OFFER, WRITTEN  
SUMMARY OF JUST COMPENSATION,  
AND SUMMARY STATEMENT ONLY

(signature does not indicate  
acceptance of offer)

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

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

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

Please return this page to the City of Garden Grove: Real Property Office



Notice of Offer to Purchase  
January 15, 2010

*SUMMARY STATEMENT RELATING TO PURCHASE  
OF REAL PROPERTY OR AN INTEREST THEREIN*

State of California Real Property Acquisition Guidelines requires that each owner from whom the City of Garden Grove purchases real property or an interest therein or each tenant owning improvements on said property be provided with a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possessions.
2. The City will offer to purchase remnant(s) considered by the City to be an uneconomic unit(s) which is owned by you, or, if applicable, occupied by you as a tenant and which is contiguous to the land being conveyed.
3. All buildings, structures, and other improvements affixed to the land described in the referenced documents covering this transaction and owned by the grantors herein, or if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The interest acquired is fee simple ( ); easement ( X ); month to month tenancy ( ). The property being purchased is described in the attached Grant Deed ( ); Street Deed ( X ) and further identified by address on the attached Appraisal Summary Statement and outlined in color on the attached map.
4. The market value of the property being purchased is based upon a market value appraisal, which is summarized on the attached Appraisal Summary Statement and such amount:
  - a. Represents the full amount of the appraisal of just compensation for the property to be purchased;
  - b. Is not less than the approved appraisal of the fair market value of the property as improved;
  - c. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and; D
  - d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits, which the owner is entitled to receive under an agreement with the City of Garden Grove.
5. If you ultimately elect to reject the City's offer for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.
6. The owner of a business conducted on a property to be acquired, or conducted on the remaining property which will be affected by the purchase of the required property, may be entitled to compensation for the loss of goodwill. Entitlement is contingent upon the (property owner's) (lessee's) (month-to-month tenant's) ability to prove such loss in accordance with the provisions of Section 1263.510 and 1263.520 of the Code of Civil Procedure.

Notice of Offer to Purchase  
January 15, 2010

**City of Garden Grove  
EXHIBIT "A"**

**LEGAL DESCRIPTION  
(APN: 231-441-36)**

**PARCEL 1:**

THE WEST 6.00 FEET OF THE EAST 66.00 FEET OF THE NORTH 190.00 FEET OF THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

EXCEPT THEREFROM THE NORTH 40.00 FEET THEREOF.

TO BE KNOWN AS HARBOR BOULEVARD

**PARCEL 2:**

THE SOUTH 10.00 FEET OF THE NORTH 50.00 FEET OF THE EAST 210.00 FEET OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

EXCEPT THEREFROM THE EASTERLY 66.00 FEET THEREOF.

TO BE KNOWN AS LAMPSON AVENUE

**PARCEL 3:**

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTLINE OF THE EAST 66.00 FEET OF SAID SOUTHWEST QUARTER AND THE SOUTH LINE OF THE NORTH 50 FEET THEREOF, THENCE WEST ALONG SAID QUARTER SOUTHERLY LINE 25.00 FEET; THENCE SOUTHEASTERLY IN A DIRECT LINE TO A POINT IN THE WEST LINE OF THE EAST 66.00 FEET OF SAID SOUTHWEST QUARTER TO A DISTANCE SOUTHERLY THEREOF 25.00 FEET FROM THE POINT OF BEGINNING; THENCE NORTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

End of Legal Description

Notice of Offer to Purchase  
January 15, 2010

Real Property Office

Owner:	Nikolau Trust	Project:	7821
Location:	12521 Harbor Blvd	Parcel No.:	3
Land Area:	22310.68 sf	APN:	231-441-36
Date of Valuation:	October 21, 2009	Acquisition Area:	2,400.58
Zoning:	DC - Commercial Zone	Temp. Const. Area:	N/A

Purpose of Acquisition: Street and highway purposes

Highest & Best Use: Vacant

Value of Land & Improvements to be acquired:

Method of Calculation

*There are three conventional methods, which can be used to estimate value; sales comparison approach, cost approach and income approach. The sales comparison approach was the only approach the appraiser considered applicable as a reliable indicator of value.*

Sales Comparison Approach: \$ 110,796.00

Principial Transactions:

Cost Summation:

The Cost Summation Approach is based on the replacement cost new of the subject building and on-site improvements, less accrued depreciation, plus the value of the underlying land parcel.

or "N/A" if not used) N/A

Items set forth above are considered to be real property and will become the property of the City upon payment by the City to the owner. All personal property may be retained by the person entitled thereto.

Severance Damages: \$ -

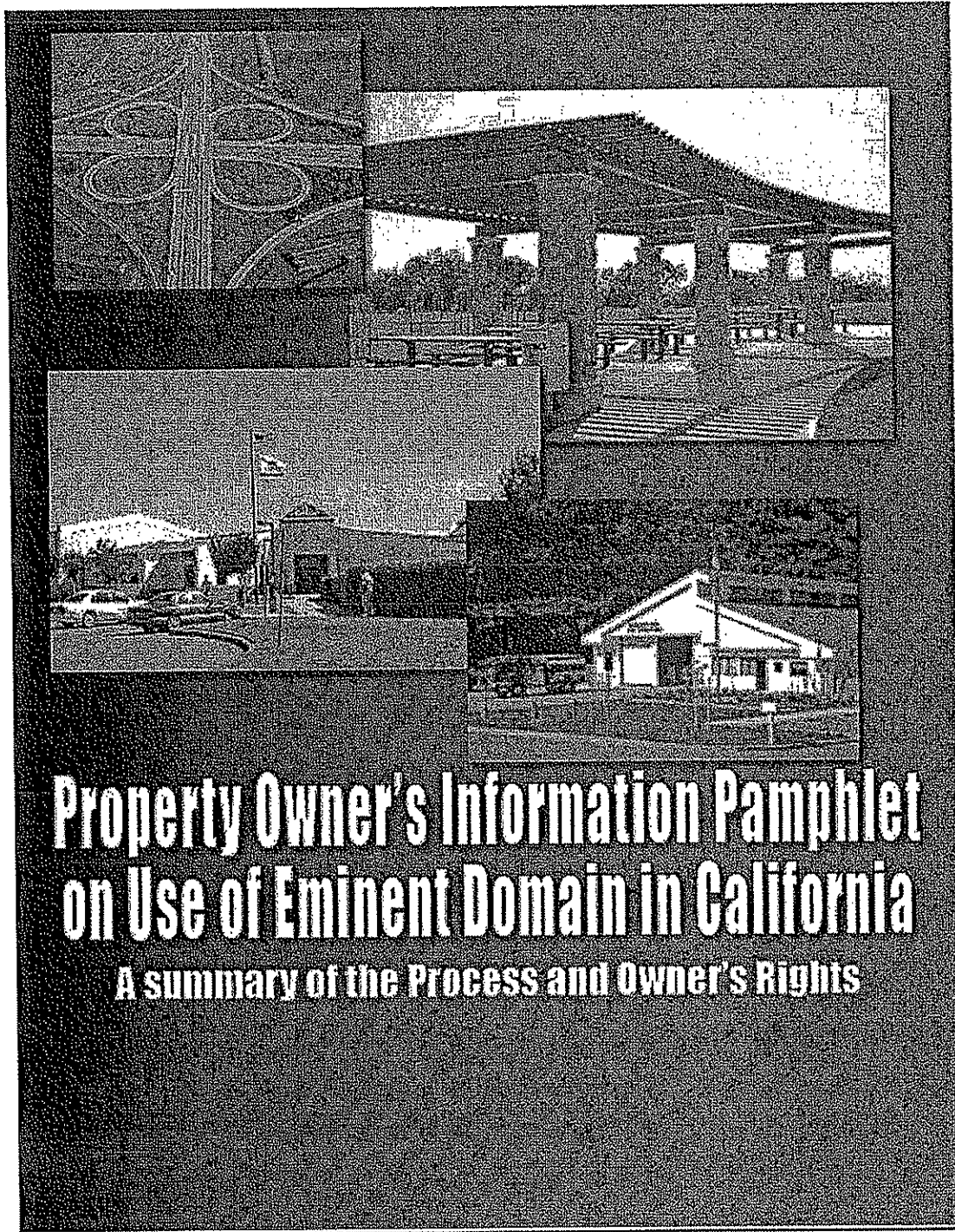
Site Improvements: Ground cover & shrubs w/ sprinklers, concrete driveway  
4" concrete extruded curbing; 2 24' trees incl. Planting. \$ 17,437.00

Total Just Compensation: The value of the real property: \$ 110,796.00

Total Just Compensation (Rounded): \$ 128,300.00

The value of the property being purchased as presently improved, and as indicated by the Sales Comparison Approach is based upon a market value appraisal prepared in accordance with accepted appraisal procedures. The value of the real property:

- A. Is the full amount believed by the City to be just compensation.
- B. Is not less than the approved appraisal of the fair market value of the property as improved.
- C. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public purposes or improvements for which the property is to be acquired, other than that due to physical deterioration within reasonable control of the owner or occupant.



# Property Owner's Information Pamphlet on Use of Eminent Domain in California

A summary of the Process and Owner's Rights

ABOUT THE EMINENT DOMAIN PAMPHLET

SB 698 which went into effect on January 1, 2008, requires that every property owner who is the subject of an eminent domain action must be given an “informational pamphlet” outlining the property owner’s rights under the Eminent Domain Law of California.

This pamphlet has been put together through the efforts of the following organizations:

League of California Cities

California State Association of Counties

Association of California Water Agencies

California Special Districts Association

California Redevelopment Association

## EMINENT DOMAIN – Information Pamphlet (SB 698)

### I. Introduction

Eminent domain is the power of the government to purchase private property for a "public use" so long as the property owner is paid "just compensation." Whenever possible, City of Garden Grove tries to avoid use of the eminent domain power, exercising it only when it is necessary for a public project. The decision to acquire private property for a public project is made by the City of Garden Grove only after a thorough review of the project, which often includes public hearings.

This pamphlet provides general information about the eminent domain process and the rights of the property owner in that process.<sup>1</sup>

- **What is a "public use"?**

A "public use" is a use that confers public benefits, like the provision of public services or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects such as street improvements, construction of water pipelines or storage facilities, construction of civic buildings, redevelopment of blighted areas, and levee improvements to increase flood protection. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public.

- **What is "just compensation"?**

Just compensation is the fair market value of the property being acquired by the government. The state law definition of fair market value is "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."

### II. The Eminent Domain Process and the Property Owner's Rights

The eminent domain process begins with a public use project. When selecting a project location, the goal is to render the greatest public good and the least private injury or inconvenience. If it is determined that all or a portion of your property may

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<sup>1</sup> This pamphlet reflects the current law as of January 1, 2008. However, the information in this pamphlet is not, nor should it be construed as, legal advice. You should consult with qualified legal counsel regarding your specific situation rather than relying on this pamphlet as legal advice.

be necessary for a public use project, the City of Garden Grove will begin the appraisal process to determine the property's fair market value.

- **How is the fair market value of my property determined?**

The City of Garden Grove will retain an independent, accredited appraiser familiar with local property values to appraise your property. The appraiser will invite you to accompany him or her during an inspection of your property. You may give the appraiser any information about improvements and any special features that you believe may affect the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to ensure that nothing of value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property meet with the appraiser instead.

After the inspection, the appraiser will complete an appraisal that will include the appraiser's determination of your property's fair market value and the information upon which the fair market value is based. The appraiser will provide the City of Garden Grove with the appraisal. The City of Garden Grove will then make a written offer to purchase the property. The offer will also include a summary of the appraisal. The offer will be for no less than the amount of the appraisal.

- **What factors does the appraiser consider in determining fair market value?**

Each parcel of real property is different and, therefore, no single formula can be used to appraise all properties. Among the factors an appraiser typically considers in estimating fair market value are:

- The location of the property;
- The age and condition of improvements on the property;
- How the property has been used;
- Whether there are any lease agreements relating to the property;
- Whether there are any environmental issues, such as contaminated soil;
- Applicable current and potential future zoning and land use requirements;
- How the property compares with similar properties in the area that have been sold recently;
- How much it would cost to reproduce the buildings and other structures, less any depreciation; and
- How much rental income the property produces, or could produce if put to its highest and best use.

- **Will I receive a copy of the appraisal?**

The City of Garden Grove is required to provide you with its purchase offer, a summary of the appraiser's opinion, and the basis for the City of Garden Grove's offer. Among other things, this summary must include:

- A general statement of the City of Garden Grove's proposed use for the property;
- An accurate description of the property to be acquired;
- A list of the improvements covered by the offer;
- The amount of the offer; and
- The amount considered to be just compensation for each improvement which is owned by a tenant and the basis for determining that amount.

However, the City of Garden Grove is only required to show you a copy of the full appraisal if your property is an owner-occupied residential property with four or fewer residential units. Otherwise, the City of Garden Grove may, but is not required, to disclose its full appraisal during negotiations (though different disclosure requirements apply during the litigation process if the issue of fair market value goes to court).

- **Can I have my own appraisal done?**

Yes. You may decide to obtain your own appraisal of the property in negotiating the fair market value with the City of Garden Grove. At the time of making its initial offer to you, the City of Garden Grove must offer to reimburse you the reasonable costs, not to exceed \$5,000, of an independent appraisal of your property. To be eligible for reimbursement, the independent appraisal must be conducted by an appraiser licensed by the State Office of Real Estate Appraisers.

- **What advantages are there in selling my property to the City of Garden Grove?**

A real estate transaction with the City of Garden Grove is typically handled in the same way as the sale of private property. However, there may be a financial advantage to selling to the City of Garden Grove.

- You will not be required to pay for real estate commissions, title costs, preparation of documents, title policy or recording fees required in closing the sale. The City of Garden Grove will pay all these costs.
- Although the City of Garden Grove cannot give you tax advice or direction, you might also be eligible for certain property and income tax advantages. You should check with the Internal Revenue Service (IRS) for details or consult your personal tax advisor.

- **If only a portion of my property is taken, will I be paid for the loss to my remaining property?**

In general, when only a part of your property is needed, every reasonable effort is made to ensure you do not suffer a financial loss to the "remainder" property. The



City of Garden Grove will pay you the fair market value of the property being taken as well as compensation for any loss in value to your remaining property that is not offset by the benefits conferred by the project. The compensation for the loss in value to your remaining property is often referred to as "severance damages."

Also, if any remaining part is of such a size, shape, or condition as to be of little market value, the City of Garden Grove will offer to acquire that remaining part (or remnant) from you, if you so desire.

- **Will I be compensated for loss of goodwill to my business?**

If you are the owner of a business that is conducted on the property being acquired, you may have a right to compensation for lost business goodwill if the loss is caused by the acquisition of the property. "Goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

- **What will happen to the loan on my property?**

Where the City of Garden Grove is acquiring the entire property, generally the compensation payable to the owner is first used to satisfy outstanding loans or liens as in a typical real estate transaction. Where less than the entire property is being acquired, whether outstanding loans or liens are paid from the compensation will depend on the particular facts and circumstances.

- **Do I have to sell at the price offered?**

No. If you and the City of Garden Grove are unable to reach an agreement on a mutually satisfactory price, you are not obligated to sign an offer to sell or enter into a purchase agreement.

- **If I agree to accept the City of Garden Grove's offer, how soon will I be paid?**

If you reach a voluntary agreement to sell your property or an interest in the property to the City of Garden Grove, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after a purchase/sale contract is signed by all parties.

- **What happens if we are unable to reach an agreement on the property's fair market value?**

The City of Garden Grove, to the greatest extent practicable, will make every reasonable effort to acquire your property by negotiated purchase. If, however, the negotiations are unsuccessful, the City of Garden Grove may either file an eminent

domain action in a court located within the same county where your property is located or it may decide to abandon its intention to acquire the property. If the City of Garden Grove abandons its intention to acquire, it will promptly notify you.

If the City of Garden Grove proceeds with eminent domain, the first step is for City of Garden Grove staff to request authority from the Garden Grove City Council to file a condemnation action. The approval from the Garden Grove City Council is called a "Resolution of Necessity." In considering whether condemnation is necessary, the Garden Grove City Council must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project. You will be given notice and an opportunity to appear before the Garden Grove City Council when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or contact an attorney referral service right away. You or your representatives can raise any objections to the Resolution of Necessity and the condemnation either orally before the Garden Grove City Council or in writing to the Garden Grove City Council.

If the Garden Grove City Council adopts the Resolution of Necessity, the City of Garden Grove can file a complaint in court to acquire title to the property upon payment of the property's fair market value. The City of Garden Grove is the plaintiff. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), are named as defendants. Often, the City of Garden Grove will also deposit the amount the City of Garden Grove believes is the "probable amount of compensation" with the State Treasurer where the complaint is filed. A deposit must be made if the City of Garden Grove is seeking to acquire possession of the property before agreement is reached on the fair market value.

- **Can the City of Garden Grove acquire possession of my property before the property's fair market value is determined in the eminent domain lawsuit?**

In some cases, the City of Garden Grove may decide it needs possession of the property before the property's fair market value is finally determined. In such a case, the City of Garden Grove must apply to the court for an "order for possession" to allow it to take possession and control of the property prior to resolution of the property's fair market value. The City of Garden Grove is required to schedule a hearing with the court on the proposed order for possession and to give you notice of the hearing. Notice must generally be sent at least 90 days before the hearing date if the property is occupied and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, the City of Garden Grove must deposit with the State Treasurer the probable amount of just compensation in order to obtain possession of the property.

- **Can I oppose the motion for an order for possession?**

Yes. You may oppose the motion in writing by serving the City of Garden Grove and the court with your written opposition within the period of time set forth in the notice from the City of Garden Grove.

- **Can I rent the property from the City of Garden Grove?**

If the City of Garden Grove agrees to allow you or your tenants to remain on the property after the City of Garden Grove acquires possession, you or the tenants will be required to pay a fair rent to the City of Garden Grove. Generally, such rent will not be more than that charged as rent for the use of a property similar to yours in a similar area.

- **Can I withdraw the amount deposited with the State Treasurer before the eminent domain action is completed, even if I don't agree that the amount reflects the fair market value of my property?**

Yes. Subject to the rights of any other persons having a property interest (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher fair market value during the eminent domain proceedings, but you may not contest the right of the City of Garden Grove to acquire the property, meaning you cannot contest that the acquisition of your property is for a public purpose or is otherwise improper.

You also have the right to ask the court to require the City of Garden Grove to increase the amount deposited with the State Treasurer if you believe the amount the City of Garden Grove has deposited less than the "probable amount of compensation."

- **Can I contest the condemning agency's acquisition of the property?**

Yes. Provided you have not withdrawn the amount deposited, you can challenge in court the City of Garden Grove's right to acquire or condemn the property.

- **What happens in an eminent domain trial?**

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking or severance damages. The trial is usually conducted before a judge and jury. You (and any others with interests in the property) and the City of Garden Grove will have the opportunity to present evidence of value, and the jury will

determine the property's fair market value. In cases where the parties choose not to have a jury, the judge will decide the property's fair market value. Generally, each party to the litigation must disclose its respective appraisals to the other parties prior to trial.

If you challenge the City of Garden Grove's right to acquire the property, the eminent domain trial will also determine whether or not the City of Garden Grove has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

At the end of the trial, the judge will enter a judgment requiring the City of Garden Grove to pay fair market value. Once the City of Garden Grove pays the amount listed in the judgment, the judge will enter a final order of condemnation. The City of Garden Grove will record the final order with the County Recorder, and title to the property will then pass to the City of Garden Grove.

- **Am I entitled to interest?**

Anyone receiving compensation in an eminent domain action is generally entitled to interest on that compensation from the date the condemning agency takes possession of the property until the person receiving the compensation has been fully paid. The rate and calculation of the interest is determined under formulas in State law.

- **Will the City of Garden Grove pay my attorneys' fees and costs.**

In an eminent domain action, you are entitled to be reimbursed by the condemning agency for your court costs such as court filing fees. In some circumstances, you may also be entitled to be reimbursed by the condemning agency for your attorneys' fees in the lawsuit. Whether you will be entitled to receive reimbursement for your attorneys' fees will depend on the particular facts and circumstances of the case and the offers and demand for compensation made in the action.

- **Will I receive assistance with relocation?**

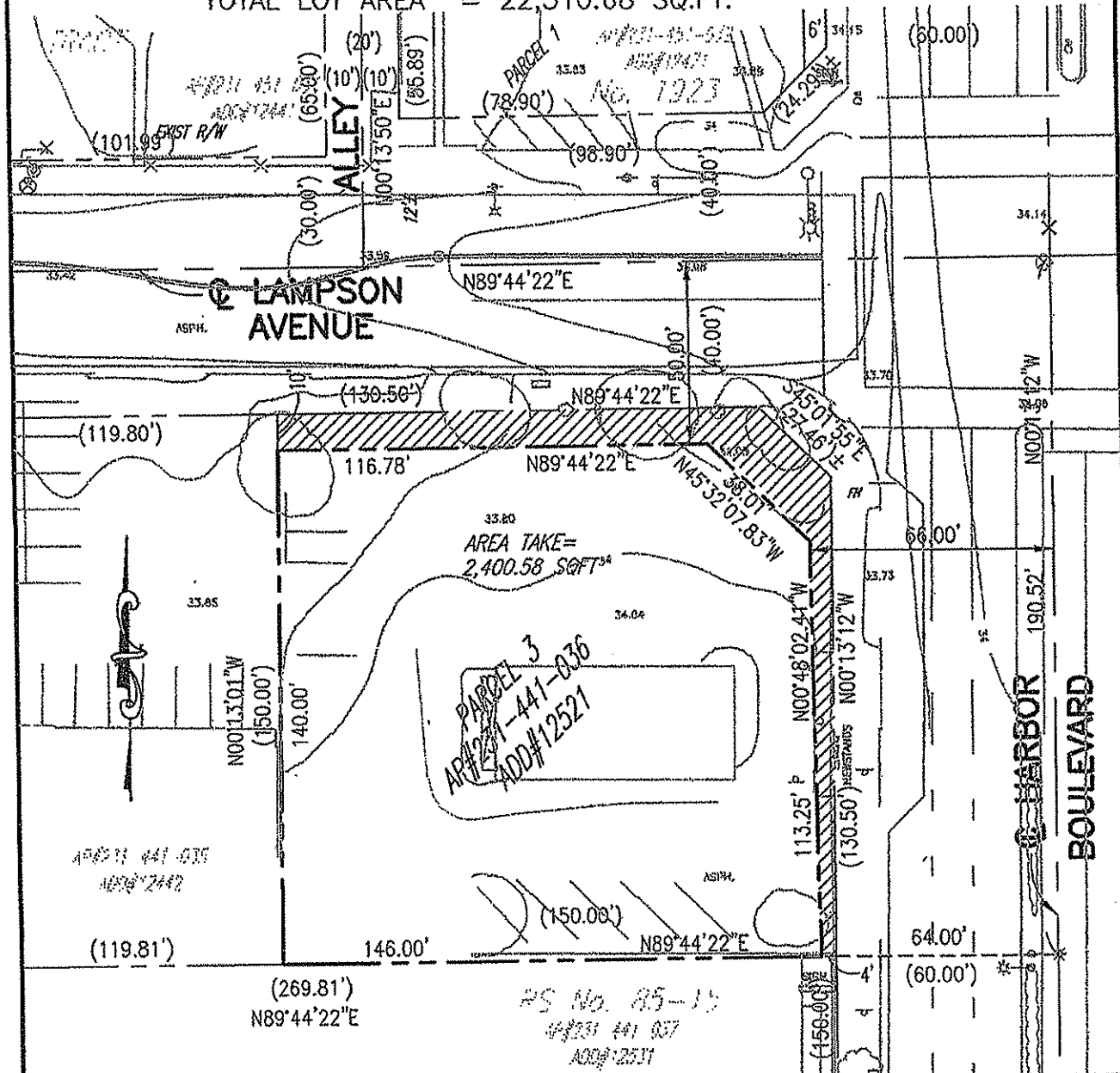
Any person, business, or farm operation displaced as a result of the property acquisition is typically entitled to relocation advisory and financial assistance for eligible relocation expenses, such as moving expenses. The amount of relocation compensation is determined on a case-by-case basis in accordance with prescribed law. Relocation benefits are handled separate and apart from the determination of the property's fair market value and are not part of the eminent domain process.

### **III. Contact Information**

We are available to answer your questions and to assist you in understanding the acquisition program and the eminent domain process. Should you desire further information, please contact the City of Garden Grove at (714) 741-5120.

# PARCEL 3

RIGHT OF WAY TAKE = 2,400.58 SQ.FT.  
 RESIDUAL AREA = 19,910.10 SQ.FT.  
 TOTAL LOT AREA = 22,310.68 SQ.FT.



City Of Garden Grove  
 Department Of Public Works

DWG NO. :	-
PREPARED BY :	MCB
DRAWN BY:	MCB
CHECKED BY:	MU

## ACQUISITION MAP

R/W NO:	PROJECT NO. :
SCALE: 1"=40'	APPROVED BY :
	CITY ENGINEER

THIS IS NOT A SURVEY BUT IS COMPILED FROM EXISTING RECORDS

PARCEL NO: 3  
TITLE REPORT NO.: 86608318  
PROJECT: Harbor/Lampson Intersection  
PROJECT NO: 7281

**RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY  
AND ESCROW INSTRUCTIONS**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of, \_\_\_\_\_ 2010, by and between the CITY OF GARDEN GROVE, a municipal corporation ("City"), and the undersigned owners, PAUL NIKOLAU AND JOYCE NIKOLAU, AS TRUSTEES OF THE NIKOLAU LIVING TRUST, DATED SEPTEMBER 13, 2005, collectively, (the "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 an **EASEMENT FOR STREET AND HIGHWAY PURPOSES** ("Easement"), upon the terms and for the consideration set forth in this Agreement, over and across 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 this reference.
2. **Purchase Price.** The total purchase price, payable in cash through escrow, shall be the sum of **One Hundred Twenty Eight Thousand Three Hundred Dollars (\$128,300)** (the "Purchase Price").

2.1 **Right of Possession.** Seller and City agree and confirm that notwithstanding other provisions in this Agreement, the right of possession and use of the Easement by City, including the right to remove and dispose of improvements located in or on the Property shall commence within one year from the execution of this Agreement by City or the close of escrow controlling this transaction, whichever occurs first, and that the amount of compensation shown in Paragraph 2 of this Agreement includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

2.2 In exchange for Seller's grant of a Temporary Construction Easement and Right of Entry as to the Remainder Property as set forth in Section 9 herein, the City shall perform the following obligations:

- A. Remove existing landscaping irrigation systems from the Easement and replace a like system on Seller's property in an area designated by Seller.
- B. Construct curb, gutter, drainage, and sidewalks within the Easement in a manner as determined and approved by City.

3. **Conveyance of Title.** Seller agrees to convey by Street Deed to City the Easement free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes EXCEPT:

- 3.1. 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 unpaid at the close of escrow.
- 3.2. Covenants, conditions, restrictions and reservations of record, or contained in the above referenced title report issued by Western Resources Title Company dated June 26, 2008.
- 3.3. Easements or rights of way over the Property for public or quasi-public utility or public street purposes, if any.
- 3.4. Deeds of Trust/Mortgages. Except as otherwise provided in Paragraph 3.1 above, Seller agrees to cooperate with City to cause all such liens to be eliminated from title or subordinated to the Easement conveyed pursuant to this Agreement. City shall pay the costs of any appraisals or similar studies required by a lien holder in conjunction with the elimination or subordination of a lien pursuant to this Paragraph 3.4. Escrow Agent is hereby authorized and instructed to cause the reconveyance, partial reconveyance, or subordination, as the case may be, of any liens, including liens for the total amount of unpaid principal and interest on note(s) secured by mortgages(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust including late charges, if any, except penalty (if any) in advance of maturity.
4. Title Insurance Policy. Escrow Agent shall, following recording of the Street Deed, provide City with a CLTA Standard Coverage Owner's Policy of Title Insurance in the amount of the Purchase Price, issued by Western Resources Title Company, showing title to the Easement 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. 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 Street Deed. Seller has executed and delivered a Street Deed (the "Street Deed") to City concurrently with this Agreement. As soon as possible after opening of escrow, City will deposit the executed Street Deed, with Certificate of Acceptance attached, with Escrow Agent on Seller's behalf. City agrees to deposit the Purchase Price no less than two (2) days prior to the close of escrow upon notice thereof from the Escrow Agent as set forth in Section 8.9 herein. City and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.
  - 5.2 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. Tax Adjustment Procedure.

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

- 6.1 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.
- 6.2 Proration. Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller's prorata portion of taxes, if any, 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.
- 6.3 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.

7. Escrow Agent Authorization.

**ESCROW AGENT IS AUTHORIZED TO, AND SHALL:**

- 7.1 Seller. Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement.
- 7.2 City. Pay and charge City for cost of any transfer taxes, recording fees, title insurance premium fees, reconveyance fees, escrow fees, and any other closing costs incidental charges, and costs payable under Paragraph 5 of this Agreement.
- 7.3 Disbursement. Disburse funds and deliver the Street Deed when conditions of this escrow have been fulfilled by City and Seller.
- 7.4 Close of Escrow. The term "close of escrow," if and where written in these instructions, shall mean the date that the Street 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.
- 7.5 Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.
- 7.6 Time of the Essence. **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 45 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.**

7.7 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.

7.7 Escrow Fees, Charges and Costs. City agrees to pay all City's and Seller's usual fees, charges, and costs incidental to the conveyance of the Easement which arise in this escrow and as set forth in Paragraph 7.2 of this Agreement.

8. Conditions Precedent to Close of Escrow.

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

- 8.1 Seller shall deliver through escrow an executed and recordable Street Deed sufficient to convey an easement for street purposes to the City as set forth in Paragraph 5.1.
- 8.2 Seller shall deliver through escrow a Non-Foreign Transferor Declaration duly executed and in the form of Exhibit "C" attached hereto and made a part hereof.
- 8.3 Seller shall deliver through escrow such documents as are necessary to comply with Seller's obligations under this Agreement.
- 8.4 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.
- 8.5 Escrow Agent has committed to deliver to City a title insurance policy as required by Paragraph 4 hereof.
- 8.6 The City shall not have terminated this Agreement.
- 8.7 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:

- 8.8 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.
- 8.9 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.
- 8.10 The Seller shall not have terminated this Agreement.
9. **Temporary Construction Easement.** Seller hereby grants to the City, its authorized agents or contractors a temporary construction easement for the purpose incidental to the construction of the street improvements, including but not limited to the adjustment of the grade of the Remainder Property to the proposed grade of the street improvements and the relocation of certain improvements to the Remainder Property ("Temporary Construction Easement").
- 9.1 **Termination.** It is understood that the Temporary Construction Easement shall terminate and end upon the completion of construction of the street improvements or one (1) year following the execution of this Agreement by City, whichever occurs first.
- 9.2 **Indemnity.** City agrees to indemnify and hold Seller harmless from liability arising out of the City's use of the remainder property pursuant to the Temporary Construction Easement. City further agrees to repair all damages caused by the use of the Remainder Property at its sole cost and expense. City shall restore the Remainder Property as nearly as practicable to the state in which it existed prior to the use of said Remainder Property by City, its agents or contractors.
10. **Right of Entry.** Seller hereby grants to City, 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. **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.
12. **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.
13. **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 Street 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 Street 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.

14. **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 escrow 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.
15. **Warranties, Representations, and Covenants of Seller.** Seller hereby warrants, represents, and/or covenants to City that:
- 15.1 **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.
- 15.2 **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.
- 15.3 **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.
- 15.4 **Seller's Title.** Until the close of escrow, Seller shall not do anything which would impair Seller's title to the Property.
- 15.5 **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.
- 15.6 **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.
- 15.7 **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.
- 15.8 **Authority.** Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Easement to City as provided herein and to carry out Seller's obligations hereunder.

- 15.9 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 Easement as provided herein.
16. 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).
17. 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 District, 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.
- 17.1 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 Easement, 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.

18. **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.
19. **Full and Complete Settlement.** The total compensation to be paid by City to Seller is all of Seller's interest in the Easement and any rights or obligations which exist or may arise out of the acquisition of the Easement for public purposes, including without limitation, Seller's 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), business interruption (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 may be entitled to receive, if any. Relocation assistance, if any, will be handled via separate Agreement.
20. **Broker's Commission.** Seller and City each 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 Easement. Seller and City agree to and do hereby indemnify and hold the other 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 it has employed in connection with the transaction covered by this Agreement.
21. **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.

22. **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.
23. **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: Paul and Joyce Nikolau Trust  
10387 Los Alamitos Boulevard  
Los Alamitos, CA 90720

If to City: City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92640  
Attention: Carlos Marquez

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.

24. **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 thirty (30) days from the date of the notice or such longer period if the nature of the default is such that more

than thirty (30) 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.

25. **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.
26. **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.
27. **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.
28. **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.
29. **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.
30. **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.
31. **Time of Essence.** Time is of the essence of each provision of this Agreement
32. **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.

(SIGNATURES ON THE FOLLOWING PAGE)



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

CITY OF GARDEN GROVE, a municipal corporation

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

"Seller"  
PAUL NIKOLAU AND JOYCE NIKOLAU,  
AS TRUSTEES OF THE NIKOLAU LIVING  
TRUST, DATED SEPTEMBER 13, 2005

By: \_\_\_\_\_  
Paul Nikolau, Trustee

By: \_\_\_\_\_  
Joyce Nikolau, Trustee

**EXHIBIT "A"**  
**DEPICTION-Easement**



**EXHIBIT "B"**  
**LEGAL DESCRIPTION**

PARCEL 1:

THE WEST 6.00 FEET OF THE EAST 66.00 FEET OF THE NORTH 190.00 FEET OF THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

EXCEPT THEREFROM THE NORTH 40.00 FEET THEREOF.

TO BE KNOWN AS HARBOR BOULEVARD

PARCEL 2:

THE SOUTH 10.00 FEET OF THE NORTH 50.00 FEET OF THE EAST 210.00 FEET OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

EXCEPT THEREFROM THE EASTERLY 66.00 FEET THEREOF.

TO BE KNOWN AS LAMPSON AVENUE

PARCEL 3:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTLINE OF THE EAST 66.00 FEET OF SAID SOUTHWEST QUARTER AND THE SOUTH LINE OF THE NORTH 50 FEET THEREOF, THENCE WEST ALONG SAID QUARTER SOUTHERLY LINE 25.00 FEET; THENCE SOUTHEASTERLY IN A DIRECT LINE TO A POINT IN THE WEST LINE OF THE EAST 66.00 FEET OF SAID SOUTHWEST QUARTER TO A DISTANCE SOUTHERLY THEREOF 25.00 FEET FROM THE POINT OF BEGINNING; THENCE NORTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

End of Legal Description

Recording Requested By:  
CITY OF GARDEN GROVE  
AND WHEN RECORDED MAIL TO  
City of Garden Grove  
P. O. Box 3070  
Garden Grove, CA 92842  
Attn: Real Property Office

Portion of - 231-441-36  
ASSESSOR PARCEL NUMBER

This document is exempt from payment of recording fees pursuant to Section 6103 of the Government Code.

City Clerk's No. \_\_\_\_\_

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

### STREET DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

PAUL NIKOLAU AND JOYCE NIKOLAU, AS TRUSTEES OF THE NIKOLAU LIVING TRUST, DATED SEPTEMBER 13, 2005

do hereby GRANT to the CITY OF GARDEN GROVE, a municipal corporation, an easement for public street and highway purposes in, on and over the real property in the City of Garden Grove, County of Orange, State of California, described as

PER LEGAL DESCRIPTION SHOWN ON EXHIBIT "A", AND DELINEATED ON PLOT MAP SHOWN AS EXHIBIT "B" BOTH OF WHICH ARE ATTACHED HERETO, AND MADE A PART HEREOF

*It is understood that each undersigned grantor grants only that portion of the above described land in which said grantor has an interest.*

Dated \_\_\_\_\_

NIKOLAU LIVING TRUST, DATED SEPTEMBER 13, 2005

By: \_\_\_\_\_  
Paul Nikolau, Trustee

By: \_\_\_\_\_  
Joyce Nikolau, Trustee

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_ } S.S.

On \_\_\_\_\_ before me,

\_\_\_\_\_

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

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

FOR NOTARY SEAL OR STAMP

WITNESS my hand and official seal

Signature \_\_\_\_\_

# Street Deed

City of Garden Grove

APPROVED AS TO FORM OTHER THAN LEGAL  
DESCRIPTION

By: \_\_\_\_\_  
City Attorney

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

APPROVED AS TO EXECUTION AND DESCRIPTION

By: \_\_\_\_\_  
Right of Way Agent

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

This is to certify that the interest in real property conveyed by  
the deed or grant dated \_\_\_\_\_ from

\_\_\_\_\_ to the City of Garden Grove, a governmental agency, is hereby accepted by the undersigned officer on behalf of the Garden Grove City Council pursuant to authority conferred by Resolution of the Garden Grove City Council adopted July 17, 1978, and the grantee consents to recordation thereof by its duly authorized officer.

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

By: \_\_\_\_\_  
City Clerk

**EXHIBIT "A"**

(AP NO. -----; Parcel --)

City of Garden Grove  
EXHIBIT "A"

LEGAL DESCRIPTION  
(APN: 231-441-36)

PARCEL 1:

THE WEST 6.00 FEET OF THE EAST 66.00 FEET OF THE NORTH 190.00 FEET OF THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

EXCEPT THEREFROM THE NORTH 40.00 FEET THEREOF.

TO BE KNOWN AS HARBOR BOULEVARD

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THE SOUTH 10.00 FEET OF THE NORTH 50.00 FEET OF THE EAST 210.00 FEET OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,

EXCEPT THEREFROM THE EASTERLY 66.00 FEET THEREOF.

TO BE KNOWN AS LAMPSON AVENUE

PARCEL 3:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 10 WEST IN THE RANCHO LAS BOLSAS, IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF GARDEN GROVE, AS SAID SECTION IS SHOWN ON A MAP RECORDED IN BOOK 51 PAGE 10 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTLINE OF THE EAST 66.00 FEET OF SAID SOUTHWEST QUARTER AND THE SOUTH LINE OF THE NORTH 50 FEET THEREOF, THENCE WEST ALONG SAID QUARTER SOUTHERLY LINE 25.00 FEET; THENCE SOUTHEASTERLY IN A DIRECT LINE TO A POINT IN THE WEST LINE OF THE EAST 66.00 FEET OF SAID SOUTHWEST QUARTER TO A DISTANCE SOUTHERLY THEREOF 25.00 FEET FROM THE POINT OF BEGINNING; THENCE NORTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

End of Legal Description



Summary of Sales Comparables

	Subject	S-1	S-2	S-3	S-4	S-5
Location	12521 Harbor Bl	2450 E. La Palma Ave	512 E. Katella	16161 Springdale	1329 W. 1st St	11162 Garden Grove Bl
City	Garden Grove 92840	Anaheim, 92806	Anaheim, 92867	Huntington Bch, 92649	Santa Ana, 92703	Garden Grove, 92843
Land Area - Sq. Ft.	22,311	46,609	28,759	33,288	14,266	18,487
Recording Date (COE)		1/23/2009	12/30/2008	9/24/2008	1/8/2008	6/13/2007
Sales Price		\$1,480,000	\$1,200,000	\$1,650,000	\$580,000	\$800,000
Price per SF		\$31.75	\$41.73	\$49.57	\$40.66	\$43.27

**Exhibit C**

Notice of Hearing Regarding Adoption of a  
Resolution of Necessity to Acquire Property  
By Eminent Domain



**CITY OF GARDEN GROVE  
OFFICE OF THE CITY CLERK**

*Safeguard all official records of the City.  
Conduct municipal elections and oversee legislative administration.  
Provide reliable, accurate, and timely information to the  
City Council, staff, and the general public.*

March 31, 2010

Nikolau Living Trust, dated September 13, 2005  
Paul Nikolau & Joyce Nikolau, Trustees  
10387 Los Alamitos Boulevard  
Los Alamitos, CA 90720

William J. Dalton  
Mayor

Steven R. Jones  
Mayor Pro Tem

Dina Nguyen  
Council Member

Bruce A. Broadwater  
Council Member

Andrew Do  
Council Member

Re: NOTICE OF HEARING REGARDING ADOPTION OF A RESOLUTION OF NECESSITY  
TO ACQUIRE PROPERTY BY EMINENT DOMAIN [CALIFORNIA CODE OF CIVIL  
PROCEDURE SECTION 1245.235]

Dear Property Owners:

I am the City Clerk for the City of Garden Grove, and am authorized to provide you with this Notice.

- 1. Notice of the Intent of the Garden Grove City Council to Adopt a Resolution of Necessity.** The City Council intends to consider the adoption of a Resolution of Necessity on April 27, 2010 that, if adopted, will authorize the City of Garden Grove (City) to acquire a portion of the property located at 12521 Harbor Boulevard, Garden Grove, California, by eminent domain for the construction of a right turn lane from eastbound Lampson Avenue onto southbound Harbor Boulevard, a right of way for public purposes, including for public street, highway and all public uses appurtenant thereto pertaining to the Harbor Boulevard and Lampson Avenue Improvement Project.

A description of the property being considered for acquisition is attached to the proposed Resolution of Necessity, which accompanies this Notice, as Exhibit A (which property shall be referred to hereinafter as the Property).

- 2. Notice of Your Right to Appear and Be Heard.** Please take notice that the City Council of the City of Garden Grove, at a Regular Meeting to be held on April 27, 2010, at 6:30 p.m. or as soon thereafter as the matter may be heard at the Council Chamber, Community Meeting Center, 11300 Stanford Avenue, Garden Grove, CA 92840, will hold a hearing on whether such a Resolution of Necessity should be adopted, as required by California Code of Civil Procedure Section 1245.220 for the commencement of an eminent domain proceeding to acquire real property.

You have a right to appear and be heard and/or submit written testimony before the City Council at the above scheduled hearing on the following matters and issues, and to have the City Council give judicious consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity.

- a. Whether the public interest and necessity require the proposed project;
- b. Whether the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the proposed project;
- d. Whether the offer required by Government Code Section 7267.2, subdivisions (a), (b), and (c), together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to you and whether said offer and statement/summary were in a form and contained all of the factual information required by Government Code Section 7267.2, subdivisions (a), (b), and (c), a copy of which is attached hereto;
- e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain; and
- f. Whether the City has statutory authority to acquire the property by eminent domain.

The statutes that authorize the City to acquire the property by eminent domain for this proposed project are Streets and Highways Code Section 10102 (street right of way); and Streets and Highways Code Section 5100 et seq. (Street Improvement Act acquisitions).

**3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After this Notice is Mailed Will Result in Waiver of the Right to Appear and Be Heard.** If you desire to be heard, please be advised that you must file a written request with the City Clerk within fifteen (15) days after this Notice was mailed. You must file your request to be heard at 11222 Acacia Parkway, Garden Grove, CA 92842.

Should you elect to mail your request to the City Clerk, it must be actually received by the City Clerk for filing within fifteen (15) days after this Notice was mailed.

The date of mailing appears at the end of this Notice.

Nikolau Living Trust, dated September 13, 2005  
Paul Nikolau & Joyce Nikolau, Trustees  
March 31 2010  
Page 3

California Code of Civil Procedure Section 1245.235(b)(3) provides that "failure to file a written request to appear and be heard within fifteen (15) days after the Notice was mailed will result in waiver of the right to appear and be heard" on the above matters and issues that are the subject of the hearing.

**If you elect not to appear and be heard in regard to compensation, your nonappearance will not be a waiver of your right to claim greater compensation in a court of law. The amount to be paid for the property will not be considered by the City Council at this hearing.**

The amount of the compensation to be paid for the acquisition of the property is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, in and as determined by a court of law in accordance with the laws of the State of California. This Notice is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property.

**If you elect not to appear and not to be heard, your failure to appear will be a waiver of your right to later challenge the right of the City to take property by eminent domain.**

If you elect not to appear and not to be heard, you will only be foreclosed from raising in a court of law the issues that are the subject of this noticed hearing and that are concerned with the right to take the property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six (6) months of the adoption of the Resolution, the City will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

Dated and Mailed on March 31, 2010.

Sincerely,



Kathy Bailor  
City Clerk

Attachments

Copy of Government Code Section 7267.2, Subdivisions (a), (b), and (c)  
Proof of Service by Mail Form  
Proposed Resolution of Necessity

## California Government Code 7267.2

**7267.2.** (a) (1) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the **Code** of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. The amount shall not be less than the public entity's approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property.

(2) At the time of making the offer described in paragraph (1), the public entity shall provide the property owner with an informational pamphlet detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law.

(b) The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

(1) The date of valuation, highest and best use, and applicable zoning of property.

(2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.

(3) If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

(c) Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. The public entity may, but is not required to, satisfy the written statement, summary, and review requirements of this section by providing the owner a copy of the appraisal on which the offer is based.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action; I am employed by the City of Garden Grove, 11222 Acacia Parkway, Garden Grove, CA 92840.

On March 31, 2010, I served the foregoing document(s) described as NOTICE OF HEARING REGARDING ADOPTION OF A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY BY EMINENT DOMAIN [CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1245.235] to Nikolau Living Trust, dated September 13, 2005; Paul Nikolau & Joyce Nikolau, Trustees

by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

Addressee(s)

(BY MAIL) I placed said envelope(s) for collection and mailing, following ordinary business practices, at the business offices of the City of Garden Grove, and addressed as shown on the attached service list, for deposit in the United States Postal Service. I am readily familiar with the practice of the City of Garden Grove for collection and processing correspondence for mailing with the United States Postal Service, and said envelope(s) will be deposited with the United States Postal Service on said date in the ordinary course of business.

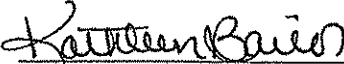
(BY FACSIMILE) I caused the above-referenced document to be transmitted to the interested parties via facsimile transmission to the fax number(s) as stated on the attached service list.

(BY PERSONAL SERVICE) I delivered such envelope(s) by hand to the offices of the addressee(s).

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on March 31, 2010, at Garden Grove, California.

  
Kathleen Bailor, City Clerk  
City of Garden Grove