

CITY OF GARDEN GROVE

INTER-DEPARTMENT MEMORANDUM

Garden Grove Agency for Community Development

To: Matthew Fertal
Dept: Director
Subject: PURCHASE AND SALE AGREEMENT
BETWEEN THE GARDEN GROVE
AGENCY FOR COMMUNITY
DEVELOPMENT AND MELROSS, LLC
FOR THE PURCHASE OF 12361
CHAPMAN AVENUE

From: Chet Yoshizaki
Dept: Economic Development
Date: July 13, 2010

OBJECTIVE

The purpose of this staff report is for the Garden Grove Agency for Community Development (Agency) to consider a Purchase and Sale Agreement (PSA) between Melross, LLC (Seller) and the Agency for the purchase of property located at 12361 Chapman Avenue (Property).

BACKGROUND

In recent years, the Property has been leased to non-credit tenants such as Bella Maries, and JC Fandango Restaurants. These restaurants operated as both restaurants and bars. The bars had separate subleases that promoted events that are inconsistent with the adjacent Hotels operations. These promotions and events led to an increased number of service calls for City's police department.

The owners of the Restaurant listed the property for lease but have been unsuccessful in finding a credit tenant for the 10,000 square foot restaurant. Because it is likely that the Property may be leased to another non-credit tenant with similar bar operations as those in the past, Agency staff approached the Seller to purchase the Property and staff and the seller have negotiated terms for an Agency purchase. It is staff's objective to act as a conduit to find developer to purchase the Property and staff is currently in discussions with two groups that would work with credit restaurants tenants to re-tenant the building.

ANALYSIS

The proposed Purchase Price is in the amount of two million five hundred thousand dollars (\$2,500,000) to be paid as outlined below:

- Earnest Money Deposit: fifty thousand dollars (\$50,000) shall be deposited by the Agency into escrow upon execution of the PSA, which

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THE PURCHASE OF 12361 CHAPMAN AVENUE

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will be nonrefundable following the Agency's completion of its due diligence investigation on or before August 5, 2010.

- Seller Carry-back Loan: Seller will provide the Agency with a Carry-back loan in the amount of one million two hundred and fifty thousand dollars (\$1,250,000). This loan shall bear interest of 6.5% annually, payable in monthly installments of \$8,440.09, with the entire principal and interest payable five (5) years from the close of escrow on the Property.
- Balance of Purchase Price: the Agency will pay the balance of the Purchase Price of one million two hundred thousand dollars (\$1,200,000) at the close of escrow.

Pursuant to the PSA, the Agency and the Seller will pay their respective portions of closing costs. Escrow will close on or before September 4, 2010.

FINANCIAL IMPACT

The fiscal impact to the Agency will be the Purchase Price of two million five hundred thousand dollars \$2,500,000 plus interest to accrue on the Seller Carry-back loan. The Agency's share of the closing costs are estimated to be fifteen thousand dollars (\$15,000).

RECOMMENDATION

Staff recommends that the Agency:

- Approve the PSA between the Agency and the Seller for the purchase of 12631 Chapman Avenue, and
- Authorize the Agency Director to execute the pertinent documents on behalf of the Agency, including modifications as needed.


CHET YOSHIZAKI
Economic Development Director


By: Greg Blodgett
Senior Project Manager

Recommended for Approval


Matthew Fertal
Director

Attachment: Purchase and Sale Agreement

**PURCHASE AND SALE AGREEMENT
AND
ESCROW INSTRUCTIONS**

Between

MELROSS, LLC, as Seller

and

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT,
as Purchaser

12361 Chapman Avenue, Garden Grove, CA

PURCHASE AND SALE AGREEMENT
AND
ESCROW INSTRUCTIONS

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (the "Agreement") is dated this ____ day of July, 2010, and is made by and between MELROSS, LLC, a California limited liability company ("Seller"), and GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic ("Purchaser").

RECITALS

A. Subject to the terms and conditions hereof, Seller desires to sell, assign, transfer, convey and deliver to Purchaser, and Purchaser desires to acquire from Seller, all of Seller's right, title and interest in the Property (as defined herein below), together with all rights, benefits, privileges and appurtenances pertaining thereto, for such consideration as is hereinafter set forth.

AGREEMENT

NOW, THEREFORE, for valuable consideration, including the performance of the promises, covenants, representations and warranties hereinafter set forth, the parties, intending to be legally and equitably bound, agree as follows:

I.

DEFINITIONS

As used in this Agreement, the following terms have the meanings ascribed to them in this Article I:

"Escrow Holder." Fidelity National Title Insurance Company, Attention: Valerie Rapp, 1300 Dove Street, Suite 310, Newport Beach, CA 92660, Telephone No. (949) 477-3646 Telecopier No. (949) 622-5000.

"Good Funds." A deposit of cashier's check, certified funds, or confirmed wire transfer of funds.

"Improvements." The buildings, structures, and other permanent improvements located on the Land, including, without limitation, electrical distribution systems, HVAC systems, plumbing, lighting, and mechanical equipment and fixtures installed thereon, and all rights, benefits and privileges appurtenant thereto.

"Intangible Property." All transferable certificates (including the Certificate of Occupancy for the Real Property), licenses, permits and warranties now in effect with respect to the Property.

“Land.” The land more particularly described on Exhibit “A” attached hereto and upon which the Improvements are located.

“Land Rights.” All easements, rights-of-way, strips, zones, licenses, transferable hereditaments, privileges, tenements and appurtenants belonging to the Land, and any right or interest in any open or proposed highways, streets, roads, avenues, alleys, easements, strips, gores and rights-of-way in, across, in front of, contiguous to, abutting or adjoining the Land, and other rights and benefits running with the Land and/or the owner of the Land.

“Personal Property.” All furniture, equipment, appliances, televisions, telephone systems, artwork, machinery, tools, trade fixtures and other personal property owned by Seller, located on the Real Property.

“Property.” The Land, the Improvements, the Land Rights and the Personal Property, but excluding all claims and rights in and to all refunds and claims for refunds for real property and personal property taxes in connection with the Property for any period prior to the Close of Escrow, all tax and utilities and other deposits, and all claims and judgments against third parties under leases and other agreements pertaining to the use and possession of the Real Property arising and/or existing as of the Closing Date.

“Real Property.” The Land, the Improvements and the Land Rights.

“Tarsadia Hotels.” Tarsadia Hotels, a California corporation.

“Title Insurer.” Fidelity National Title Insurance Company, Attention: David James, 1300 Dove St., Suite. 310. Newport Beach, CA 92660, Telephone: (949) 622-4845, Telecopier: (949) 477-6813.

II.

SALE AND PURCHASE OF THE PROPERTY

2.1 Purchase of Property. As of the Close of Escrow, and subject to the terms and conditions of this Agreement, Seller shall sell, assign, convey, transfer and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, all of Seller’s right, title and interest in and to the Property, subject to the Permitted Exceptions, at the purchase price provided in Section 2.2 hereof.

2.2 Purchase Price and Terms of Payment. The purchase price for the Property (“Purchase Price”) shall be Two Million Five Hundred Thousand Dollars (\$2,500,000.00), and shall consist of and be payable as follows:

2.2.1 Earnest Money Deposit. Within five (5) business days after the execution of this Agreement by Seller and Purchaser, Purchaser shall deliver to Escrow Holder, in Good Funds, the sum of Fifty Thousand Dollars (\$50,000.00) (together with all interest thereon, the “Earnest Money Deposit”). The Earnest Money Deposit shall be held by Escrow Holder in accordance with the terms of this Agreement, and shall become non-refundable to Purchaser

upon Purchaser's approval of the Property at or before the expiration of the Due Diligence Period, unless, prior to the expiration of the Due Diligence Period, Seller and Escrow Holder receive from Purchaser a Notice (in accordance with the requirements of Section 4.4 hereof) that Purchaser elects to terminate this Agreement and cancel the Escrow, in which case Escrow Holder shall immediately thereafter return the Earnest Money Deposit to Purchaser. At such time as the Earnest Money Deposit becomes non-refundable to Purchaser, it shall be refundable to Purchaser only in the event of (a) a material uncured default by Seller of its obligations under this Agreement, or (b) a failure of a condition precedent to Purchaser's obligations as set forth in this Agreement. The Earnest Money Deposit shall be applied to the Purchase Price on the Close of Escrow.

2.2.2 Seller Carryback Financing. Seller shall carryback a promissory note for a portion of the Purchase Price in the principal amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the "Note"). The terms of the Note shall include interest accruing at the fixed rate of six and one-half percent (6.5%) per annum on the principal amount, payable (a) interest and (b) principal payments amortized over twenty-five (25) years, in monthly installments, with the entire principal balance and all accrued interest due on or before the date sixty (60) months from the Closing Date, all as reflected therein on Exhibit "B" attached hereto and incorporated by reference. The obligation under the Note may be paid off in its entirety at any time during the term of the obligation without any penalty. Purchaser's obligations under the Note shall be secured by a Deed of Trust (the "Deed of Trust") encumbering the Real Property to be recorded in the first priority position.

2.2.3 Balance of Purchase Price. Not later than 5:00 p.m. California time on the business day immediately preceding the Closing Date, Purchaser shall deposit with Escrow Holder, in Good Funds, the balance of the Purchase Price, reduced or increased by such amounts required to take into account such prorations, credits, costs or other adjustments which are required by this Agreement and which can be computed and determined as of the time for the required deposit hereunder.

III.

ESCROW

3.1 Opening of Escrow. Purchaser and Seller shall open an escrow (the "Escrow") with Escrow Holder within five (5) business days after the execution of this Agreement and Seller's delivery of all Due Diligence Materials, by depositing with Escrow Holder the Earnest Money Deposit and three (3) copies of this Agreement duly executed (in counterparts or otherwise) by Seller and Purchaser. The time when Escrow Holder so receives the Earnest Money Deposit and the copies of this Agreement, fully executed by the parties and executes and delivers copies thereof to Seller and Purchaser, shall be deemed the "Opening of Escrow." Purchaser and Seller shall execute and deliver to Escrow Holder, in a timely fashion, such instruments and funds as are reasonably necessary to close the Escrow and consummate the sale and purchase of the Property (or the exchange thereof, if applicable) in accordance with the terms and provisions of this Agreement.

3.2 Escrow Holder's General Provisions. In the event of any conflict between the provisions of the typed portion of this Agreement and the General Provisions, the provisions of the typed portion of this Agreement shall be controlling and the General Provisions will be deemed amended accordingly.

3.3 Additional Escrow Holder Requirements. If there are any requirements imposed by Escrow Holder relating to the duties or obligations of Escrow Holder, or if Escrow Holder requires any other additional instructions, the parties agree to make such deletions, substitutions and additions to this Agreement which do not cause more than a ministerial or de minimis change to this Agreement or its intent. Any such changes requested by Escrow Holder shall be subject to written approval of the parties, which approval shall not be unreasonably withheld or conditioned.

3.4 Deposit of Funds. Except as otherwise provided in this Agreement, all funds deposited into the Escrow by Purchaser shall be immediately deposited by Escrow Holder into Treasury Bills or other short-term United States Government obligations, in repurchase contracts for the same, or in a federally insured money market account, subject to the control of Escrow Holder in a bank or savings and loan association, or such other institution approved by Purchaser; provided, however, that such funds must be readily available as necessary to comply with the terms of this Agreement and Escrow Holder's escrow instructions (including the return of the Earnest Money Deposit, or any portion thereof then on deposit with Escrow Holder, to Purchaser in accordance with this Agreement), and for the Escrow to close within the time specified in Section 6.1 of this Agreement. Except as may be otherwise specifically provided herein, interest on amounts placed by Escrow Holder in any such investments or interest bearing accounts shall accrue to the benefit of Purchaser, and Purchaser shall promptly provide to Escrow Holder Purchaser's completed and executed W-9 with purchaser's Tax Identification Number and Escrow Holder's Investment Instructions.

IV.

CONDITION OF TITLE

4.1 Title Commitment. Within fourteen (14) days after the Opening of Escrow, Title Insurer shall furnish to Purchaser a current commitment for a C.L.T.A. Owner's Policy of Title Insurance (standard coverage) issued by Title Insurer (the "Title Commitment") reflecting the status of title to the Real Property and all exceptions, including easements, licenses, restrictions, rights-of-way, leases, covenants, reservations and other conditions, if any, affecting the Real Property, which would appear in a C.L.T.A. Owner's Policy of Title Insurance (standard coverage) if used, and committing to issue the C.L.T.A. Owner's Policy of Title Insurance (standard coverage) to Purchaser in the full amount of the Purchase Price. Accompanying the Title Commitment, Escrow Holder shall cause to be furnished to Purchaser, to the extent available, legible copies of the documents affecting the Real Property referred to in the Title Commitment.

4.2 Title Insurance Policy. Effective as of the Close of Escrow, but conditioned upon the Close of Escrow, Title Insurer shall issue to Purchaser Title Insurer's C.L.T.A. Owner's Policy of Title Insurance (standard coverage) (the "Title Policy"), with liability in the amount of

the Purchase Price for the Real Property insuring fee title in the Land and Improvements and Seller's interest in the Land Rights as vested in Purchaser subject only to the following matters affecting title ("Permitted Exceptions").

(a) All general and special property taxes and assessments not yet delinquent, and all improvement and assessment bonds;

(b) Supplemental taxes assessed as a result of the sale of the Real Property by Seller to Purchaser pursuant to the provisions of California Revenue and Taxation Code Chapter 3.5 (commencing with Section 75);

(c) Subject to the provisions of Section 4.4 hereof, all liens, covenants, conditions, restrictions, easements, rights of way, and all other exceptions to title as referenced in the Title Commitment, except (subject to the provisions of Section 4.2.2 hereof) monetary liens and encumbrances (other than the Deed of Trust or as caused by Purchaser) which Seller shall remove at or prior to the Close of Escrow;

(d) All exceptions to title disclosed by or in, or arising from or in connection with, the Survey (and any updates thereto) of the Real Property for the Title Policy (including, without limitation, easements, encroachments and zoning);

(e) Rights of parties in possession not shown by the public records, easements or claims of easements not shown by the public records, but with respect to which Purchaser has knowledge thereof;

(f) Governmental laws, codes, ordinances and restrictions now or hereafter in effect so far as these affect the Property or any part thereof, including, without limitation, zoning ordinances (and amendments and additions relating thereto) and the Americans with Disabilities Act of 1990, as amended, and any and all other matters, known or unknown, relating to the Property, or its condition, use, value or operation;

(g) Any exceptions created by Purchaser or its agents, employees and/or contractors, including without limitation, any exceptions arising by reason of the entry on the Real Property by Purchaser or by its agents, employees and/or contractors; and

(h) All preprinted exceptions and exclusions contained in the Title Policy.

At Purchaser's election, Purchaser may obtain an A.L.T.A. Owner's Policy of Title Insurance (extended coverage). Purchaser's ability to obtain an A.L.T.A. Owner's Policy of Title Insurance (extended coverage) may, upon agreement by Purchaser and Seller, be a condition precedent to Purchaser's obligations hereunder and extend the Closing Date or delay the Close of Escrow. In addition, Purchaser shall have the right to obtain from Title Insurer such endorsements to the Title Policy and/or such additional liability protection as Purchaser may elect to obtain; provided, however, that Purchaser's ability to obtain such title endorsements and/or such additional liability protection may, by agreement of Purchaser and Seller, be a condition precedent to Purchaser's obligations hereunder and extend or delay the Close of Escrow. Purchaser shall be solely responsible for negotiating with Title Insurer with

respect to such A.L.T.A. Owner's Policy of Title Insurance (extended coverage) and/or with respect to such title endorsements and/or such additional liability protection as may be requested by Purchaser, if any.

Seller will deliver to Purchaser a copy of any survey of the Real Property in its possession, without warranty, and Purchaser shall be solely responsible for, and shall assume the risk of, obtaining a survey (or updating Seller's survey) of the Real Property (the "Survey") acceptable to Title Insurer for purposes of issuing the Title Policy.

4.2.2 Other Encumbrances. If, at any time prior to or on the Closing Date, title to the Real Property, or any portion thereof, is subject to any matter other than (a) the Permitted Exceptions, (b) those liens or encumbrances resulting from the acts or omissions of Purchaser, or (c) any other liens or encumbrances as are waived or accepted by Purchaser in writing, Purchaser shall notify Seller and Escrow Holder of the same, in writing, and the Close of Escrow shall be delayed as provided herein, and, notwithstanding any other provision of this Agreement, Seller shall not be deemed to be in default of its obligations under this Agreement. Upon receipt of such written notice specifying the lien, encumbrance or other matter and Purchaser's objection thereto, Seller, within five (5) business days thereafter, may elect any of the following, which election shall be in writing delivered to Purchaser and Escrow Holder:

(i) Deliver to Escrow Holder an instrument, in proper form for recording and reasonably acceptable in form and substance to Purchaser and Title Insurer, canceling such matters, together with any other instruments necessary thereto and the cost of recording and canceling the same, and Title Insurer will issue its Title Policy free of such matters;

(ii) Cause Title Insurer to "insure over" such lien(s), encumbrance(s) or other matter(s), unless a reasonable person would conclude that such lien(s), encumbrance(s) or other matter(s) is or would be a material defect to Purchaser's title; or

(iii) Terminate this Agreement and cancel the Escrow, and direct Escrow Holder to release to Purchaser the Earnest Money Deposit and all additional funds and instruments deposited by Purchaser with Escrow Holder, with Seller being obligated for all cancellation fees. In such event, Purchaser and Seller shall execute such other instruments and documents as may be necessary to effectuate the termination of this Agreement and the cancellation of the Escrow, whereupon the obligations and liabilities of Seller and Purchaser shall terminate (except as to those obligations which survive by their terms). Notwithstanding the foregoing, however, Seller shall provide Purchaser with two (2) business days' notice prior to so terminating this Agreement and canceling the Escrow, during which two (2) business day period Purchaser may waive and withdraw its objection(s) to close the purchase of the Property and accept title thereto in its then existing condition, without reduction of or credit to the Purchase Price, thereby waiving the title defects without further recourse against or liability to Seller, in which case Seller shall be precluded from exercising its rights under this subsection (iii).

In the event Seller elects alternative (i) or (ii) above, Seller may elect to extend the Closing Date and the Close of Escrow to a date not to exceed the earlier of the date

which is three (3) business days after such title defects are cured or sixty (60) days from the original Closing Date.

4.3 Inspection and Due Diligence Review. Purchaser shall have the right, in its sole discretion, until 5:00 p.m. California time on the date (a) thirty (30) days from both the date of this Agreement and the delivery of the Due Diligence Materials, or (b) such earlier date as Purchaser shall elect in writing, to satisfy itself, in its sole discretion, as to the condition and extent of the Property (the "Due Diligence Period"). Subject to the prior termination of this Agreement, during the term of this Agreement Seller shall use commercially reasonable efforts to cooperate and provide Purchaser with reasonable and continuing access to the Real Property upon one (1) business day prior Notice to Seller for the purpose of Purchaser's inspection and due diligence review.

Prior to the commencement of the Due Diligence Period, Seller shall deliver to Purchaser all information, documents, agreements and reports relating to the Real Property by Seller, as identified on Schedule "C" attached hereto and incorporated by reference (collectively the "Due Diligence Materials"). Seller represents and warrants that, to the best of Seller's knowledge, the Due Diligence Materials or any materials, data or other information, if any, supplied to Purchaser in connection with Purchaser's inspection of the Property are true, accurate, and complete.

Purchaser and Seller acknowledge that Seller is required to disclose if any of the Property lies within the following natural hazard areas or zones; (a) a special flood hazard area designated by the Federal Emergency Management Agency; (b) an area of potential flooding; (c) a very high fire hazard severity zone; (d) a wild land area that may contain substantial forest fire risks and hazards; (e) an earthquake fault or special studies zone; or (f) a seismic hazard zone. Purchaser and Seller hereby instruct Escrow Holder or such other third party approved by the parties (who, in such capacity, is herein called the "Natural Hazard Expert") to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations with respect to the natural hazards referred to above and to report the results of its examination to Purchaser and Seller in writing. Escrow Holder shall provide a written report prepared by the Natural Hazard Expert regarding the results of its examination no later than fourteen (14) days prior to the expiration of the Contingency Period. The written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller from its disclosure obligations referred to herein, and, for the purposes of this Agreement, the provisions of Civil Code Section 1103.4 regarding the non-liability of Seller for errors and/or omissions not within its personal knowledge shall be deemed to apply, and the Natural Hazard Expert shall be deemed to be an expert dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above.

During the Due Diligence Period, Purchaser shall also have the opportunity to conduct a Phase I environmental audit/study of the Real Property, provided such Phase I environmental audit/study is not invasive or intrusive. Any environmental audit/study proposed to be undertaken by Purchaser shall be subject to Seller's written approval prior to the commencement thereof. As a condition to any such consent, Purchaser shall obtain and maintain

such public liability insurance in an amount of Two Million Dollars (\$2,000,000.00) affecting the Real Property, naming Seller as an additional insured.

Purchaser, at all times, will conduct such due diligence in compliance with all applicable laws, and in a manner so as to not cause damage, loss, cost or expense to Seller or the Property. Purchaser shall not reveal to any third party (other than Purchaser's employees, agents, attorneys, lenders and advisors, who shall be under the same obligations as Purchaser hereunder) not approved by Seller the results of or any other information acquired pursuant to its inspections. Purchaser will promptly restore any damage to the Property caused by Purchaser's inspection to its condition immediately preceding such inspections and examinations and will keep the Property free and clear of any mechanic's liens or materialmen's liens in connection with such inspections and examinations.

The cost of the inspections and tests undertaken pursuant to this Section 4.3 shall be borne solely by Purchaser. Purchaser shall indemnify, protect, defend, and hold Seller, Seller's lenders, Tarsadia Hotels, and their affiliates, owners, agents and employees harmless from and against any obligation, liability, claim (including any claim for damage to property or injury to or death of any persons), lien or encumbrance, loss, damage, cost or expense, including reasonable attorneys' fees, whether or not legal proceedings are instituted, arising from the acts or omissions of Purchaser or its agents, employees or contractors occurring in connection with, or as a result of, such inspections, tests or examinations of the Property.

Purchaser covenants and agrees that all such information and materials (including the Due Diligence Materials) disclosed and/or delivered to it by Seller, or Seller's agents, employees and representatives, are confidential and proprietary information, and that Purchaser shall hold the same in strict confidence, and shall not disclose the same to anyone other than its employees and advisors on a "need-to-know" basis, subject to the confidentiality restrictions set forth herein and any state law governing public records. Purchaser also agrees that, in the event the transactions contemplated in this Agreement are not consummated as provided herein, Purchaser shall return all such information and documentation, and all copies thereof, to Seller promptly upon Seller's request, subject to any applicable state law governing records retention.

Purchaser shall have until the expiration of the Due Diligence Period to review and approve the Due Diligence Materials.

The obligations of Purchaser under this Section 4.3 (including its indemnification obligations) shall survive the Close of Escrow or the termination of this Agreement.

4.4 Due Diligence Notices.

4.4.1 Purchaser's Due Diligence Notice. Purchaser shall notify Seller in writing on or before the expiration of the Due Diligence Period (which is thirty (30) days from and after the Opening of Escrow) of Purchaser's approval or disapproval in its sole and absolute discretion of the Property Documents and of the condition of the Property as disclosed by the Tests ("Purchaser's Due Diligence Notice"), Purchaser may extend the Due Diligence Period by not more than thirty (30) days by delivering written notice (the "Due Diligence Extension Notice") to Seller at least ten (10) days prior to the end of the initial Due Diligence Period. Any

disapproval shall state the matters objected to and the action Seller would be required to take to remediate or cure the objectionable matters to Purchaser's satisfaction. Purchaser's failure to deliver the Purchaser's Due Diligence Notice on or before the end of the Due Diligence Period, as may be extended by the timely delivery of the Due Diligence Extension Notice, shall be deemed Purchaser's disapproval of the Property Documents and/or condition of the Property; in no event shall Purchaser be deemed to have approved any of the Property Documents or any condition of the Property. In such event of Purchaser's failure to deliver its Purchaser's Due Diligence Notice, then such failure shall be deemed Purchaser's election to not proceed with this purchase and to terminate this Agreement and the Deposit shall be refunded in full to Purchaser.

4.4.2 Seller's Due Diligence Notice. In the event Purchaser timely delivers its Purchaser's Due Diligence Notice disapproving any Property Documents or any condition of the Property, Seller shall have ten (10) days from receipt of Purchaser's Due Diligence Notice to deliver written notice to Purchaser ("Seller's Due Diligence Response Notice") of Seller's election in its sole and absolute discretion to any of the following: (i) decline to remediate all such conditions and to terminate Escrow and this Agreement; or (ii) correct and/or remediate certain (but not all) of the objectionable conditions at its sole cost prior to the Close of Escrow; or (iii) correct and/or remediate all objectionable conditions at its sole cost prior to the Close of Escrow. If Seller's Due Diligence Response Notice informs Purchaser of Seller's election to terminate Escrow (choice (i) in subsection 4.4.2 above) rather than remediate all or certain objectionable conditions, then this Agreement shall terminate and the Deposit shall be refunded in full to Purchaser.

(a) Seller's failure to deliver Seller's Due Diligence Response Notice shall be deemed Seller's election to terminate this Agreement (choice (i) of subsection 4.4.2 above) and in such event the Deposit shall be refunded in full to Purchaser. If Seller's Due Diligence Response Notice informs Purchaser of Seller's election to correct certain of the objectionable conditions (choice (ii) in subsection 4.4.2 above), then Purchaser shall have the right, by a second written notice delivered to Seller within five (5) days after Purchaser's receipt of Seller's Due Diligence Response Notice, to agree to accept the Property subject to one or more of the objectionable conditions that Seller will not correct ("Purchaser's Second Due Diligence Notice"), which notice shall list the objectionable conditions remaining that Purchaser is willing to accept, in which event Seller may elect, in its sole discretion, to either (A) accept Purchaser's Second Due Diligence Notice and proceed to correct the objectionable conditions listed in its notice and proceed with the sale of the Property to Purchaser, with Purchaser taking at the Close of Escrow subject to such remaining objectionable conditions without any adjustment to or credit against the Purchase Price (subject to Seller's correction of certain conditions to be corrected listed in Seller's Due Diligence Response Notice), or (B) reject Purchaser's Second Due Diligence Notice and terminate the Escrow in which event the Deposit shall be refunded in full to Purchaser.

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

(c) If Seller's Due Diligence Response Notice informs Purchaser of Seller's election to correct all of the objectionable conditions (choice (iii) in subsection 4.4.2 above), then the completion of the correction and/or remediation or other removal of all objectionable conditions shall be deemed to be one of the Purchaser's Conditions Precedent to Closing below, and Purchaser and Seller shall exercise good faith efforts to agree in writing on an extended Closing Date, if necessary, to allow all conditions to be corrected and completed.

4.5 Condition of the Property

(a) Environmental Conditions on Property. Seller represents and warrants to the best of Seller's knowledge that any Environmental Conditions that affects the marketability or usability of the Property, including any Environmental Damages, Environmental Requirements, and Hazardous Materials, are disclosed to Purchaser as part of the Due Diligence Materials. Seller shall cure, or be responsible for, any uncured Environmental Conditions on the Property to Purchaser's satisfaction. Purchaser shall not be responsible for any undisclosed or uncured Environmental Conditions that exists on the Property prior to the closing of escrow, unless the Environmental Conditions were caused by Purchaser during Purchaser's Due Diligence Inspection. The satisfaction of this section shall be deemed a condition precedent to Purchaser's obligations under this Agreement.

(i) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment, of whatever kind or nature, contingent or otherwise matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Materials upon, about, beneath the Real Property or migrating or threatening to migrate to or from the Real Property, or the existence of a violation of Environmental Requirements pertaining to the Real Property, regardless of whether the existence of such Hazardous Materials or the violation of Environmental Requirements arose prior to the present ownership or operation of the Real Property.

(ii) "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

(iii) "Hazardous Materials" means any substance (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance or policy; or (ii) which is defined as a "hazardous waste" or "hazardous substance" under any federal, state or local statute, regulation or ordinance, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) and amendments thereto and regulations promulgated thereunder; or (iii) which is toxic, explosive, corrosive, infectious or otherwise hazardous or is regulated by any federal, state or

local governmental authority; (iv) without limitation which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde; and (v) mold and fungi.

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

(c) The provisions of this Section 4.5 shall survive the Close of Escrow.

V.

REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

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

5.1.9 Except as to the Lease and as may be revealed in the Title Report, there are no undisclosed contracts, licenses, commitments, undertakings or other written or oral tenancies, licenses or other rights of occupancy agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Property that will be binding upon Purchaser or the Property after the Closing. There are no oral contracts or other oral

agreements for services, supplies or materials, affecting the use, operation, maintenance or management of the Property to which Seller is a party or of which Seller has actual knowledge.

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

5.1.11 No person, excepting Seller, has possession or any rights to possession or use of the Property or portion thereof. Except as to the Lease, until the Closing Seller agrees not to lease any portion of the Property, grant any licenses or easements in the Property, or grant any other rights of use or occupancy to the Property without the prior written approval of Purchaser, which may be granted or denied in Purchaser's sole and complete discretion.

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

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

5.1.14 Until the Closing, Seller shall, upon learning of any fact or condition, which would cause any of the warranties and representations in the section not to be true as of the close of Escrow, immediately give written notice of such fact or condition to Purchaser.

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

5.2 Subsequent Changes to Seller's Representations and Warranties. If, prior to the Closing, Purchaser or Seller should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Seller set forth herein incorrect or untrue in any respect (collectively, the "Seller Representation Matter"), then the party who has learned, discovered or become aware of such Seller Representation Matter shall promptly give written notice thereof to the other party and Seller's representations and warranties shall be automatically limited to account for the Seller Representation Matter. Purchaser shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Purchaser reasonably disapproves any such change;

provided, however Seller shall first have the opportunity to cure the Seller Representation Matter, In such event if this Agreement is terminated prior to the Closing due to a Seller Representation Matter, then the Deposit shall be refunded in full to Purchaser. If Purchaser does not elect to terminate this Agreement, Seller's representation shall be qualified by such Seller Representation Matter and Seller shall have no obligation to Purchaser for such Seller Representation Matter.

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

5.3.1 Purchaser has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

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

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

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

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

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

5.5 Seller's Covenants during Escrow Period.

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

5.5.2 Hazardous Materials. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property; provided, however, the foregoing shall not apply to Hazardous Materials that migrate onto the Property from other property or from sources other than Seller or a party acting under the direction or control of Seller. As used in this Agreement, the term "Hazardous Materials" or "Hazardous Material" shall mean any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) lead based paint (viii) polychlorinated biphenyls,

(ix) methyl tertiary butyl ether, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

VI.

CLOSING

6.1 Closing Date. The “Closing Date” for purposes of this Agreement shall be the date thirty (30) days after the expiration or earlier waiver/termination of the Due Diligence Period, or such earlier or later date as may be agreed upon, in writing, by Seller and Purchaser, and shall be the date on which the Close of Escrow occurs. The “Close of Escrow” for purposes of this Agreement is defined as the date and time when the Deed is recorded in the Official Records of Orange County, California, by Escrow Holder. If the Escrow has not closed on or before the Closing Date or any permitted extension thereof, Escrow Holder may nevertheless proceed in accordance with Escrow Holder’s General Provisions. In the event the Escrow and this Agreement are canceled and terminated, upon Escrow Holder’s request, the parties shall pay to Escrow Holder all title and escrow cancellation charges; provided, however, that as an agreement between the parties not to concern Escrow Holder, it is agreed that if termination of the Escrow is caused by the default of one party then such party shall be responsible for all escrow and title cancellation charges, and if the termination occurs where neither party is in default or where both parties are in default, then each party shall be responsible for one-half (½) of all title and Escrow cancellation charges.

6.2 Action Prior to the Close of Escrow by Seller. Seller agrees that, on or before 5:00 p.m. California time on the business day immediately preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for Escrow Holder to comply with this Agreement, including, without limitation, the following:

(a) A Grant Deed, in the form and content attached hereto and incorporated by reference as Exhibit “D”, prepared and executed by Seller and acknowledged before a Notary Public in the manner provided under the laws of the State of California, assigning, conveying and transferring to Purchaser all of Seller’s right, title and interest in and to the Real Property subject only to the Permitted Exceptions (the “Deed”);

(b) Two (2) duplicate originals of a Bill of Sale, in the form and content attached hereto incorporated by reference as Exhibit “E”, prepared and executed by Seller, assigning, conveying and transferring to Purchaser all of Seller’s right, title and interest in and to the Personal Property and the Inventory (the “Bill of Sale”);

(c) Two (2) duplicate originals of an Assignment of Intangible Property, in the form and content attached hereto incorporated by reference as Exhibit “F”, prepared and executed by Seller, assigning and conveying to Purchaser, at no cost or expense to Seller, and

without representation or warranty, all of Seller's right, title and interest in the Intangible Property (the "Assignment of Intangibles");

(d) A Non-Foreign Affidavit signed by Seller in the form to be prepared by Escrow Holder (the "Non-Foreign Affidavit"); and

(e) Such other funds, instruments or documents as may be necessary to effect or carry out the covenants and obligations to be performed by Seller pursuant to this Agreement.

6.3 Action Prior to the Close of Escrow by Purchaser. Purchaser agrees that on or before 5:00 p.m. California time on the business day immediately preceding the Closing Date, Purchaser will deposit with Escrow Holder all additional funds (in Good Funds) and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:

(a) The funds referred to in Section 2.2.3 hereof;

(b) Once (1) original of the Note, executed by Purchaser;

(c) One (1) original of the Deed of Trust, executed by Purchaser and acknowledged in the presence of a notary public in the manner provided under the laws of the State of California;

(d) Two (2) duplicate originals of the Assignment of Intangibles executed by Purchaser; and

(e) Such other funds, instruments or documents as may be necessary to effect or carry out the covenants and obligations to be performed by Purchaser pursuant to this Agreement.

6.4 Recording of Deed and Deed of Trust. Escrow Holder will cause the Deed and the Deed of Trust to be dated and recorded in the Official Records of the County of Orange, State of California, and all other conveyance documents deposited with Escrow Holder dated as of Close of Escrow, when (but in no event after the Closing Date) (a) all conditions precedent under this Agreement have been satisfied, and (b) Title Insurer is irrevocably committed to issue the Title Policy to be issued as contemplated in this Agreement, and holds for the account of Seller and Purchaser the items and funds (if any) to be delivered to Seller and Purchaser through the Escrow, after payment of costs, expenses, disbursements and proration chargeable to Seller or Purchaser pursuant to the provisions of this Agreement.

The amount of any documentary transfer taxes will not be posted on the Deed, but will be properly reported by a separate tax affidavit filed by Escrow Holder with the Deed.

6.5 Proration.

6.5.1 Taxes. All non-delinquent real estate and personal property general and special taxes and assessments for the Property for the current assessment year shall be prorated as of the Closing Date. It is understood that any supplemental property tax bill issued as a result

of the sale of the Property pursuant to the provisions of this Agreement, shall be borne by Purchaser. Notwithstanding anything to the contrary in this Agreement, Seller shall retain all right, title and interest in and to any and all property tax (both real property and personal property) refunds and claims for refunds with respect to the Property for any period prior to the Closing Date. Purchaser shall be responsible for, and shall pay, all sales, use and other transfer taxes imposed in connection with the sale and transfer of the Personal Property and the Intangible Property.

6.5.2 Utility Service. Seller shall request each utility company providing utility service to the Real Property to cause all utility billings to be closed and billed as of the Closing Date in order that utility charges may be separately billed for the period prior to the Closing Date and the period on and after the Closing Date. In the event any such utility charges are not separately billed, the same shall be prorated. In connection with any such proration, it shall be presumed that utility charges were uniformly incurred during the billing period in which the Close of Escrow occurs.

6.5.3 Miscellaneous Permits and Taxes. All water and sewer charges, taxes (other than ad valorem property taxes), including license taxes or fees for licenses which are assignable or transferable without added cost and have a value which will survive Close of Escrow, including, but not limited to, and any unpaid taxes payable in arrears, shall be prorated as of the Closing Date. Seller will be credited for that portion of taxes and fees paid by Seller allocable to the period after the Closing Date.

6.5.4 Other Expenses. All other expenses and obligations not otherwise specified in this Section 6.5 incurred in the ownership and operation of the Property shall be prorated between Seller and Purchaser as of the Closing Date.

6.5.5 Delayed Adjustments. If, at any time following the Closing Date, the amount of an item listed in this Section **Error! Reference source not found.** shall prove to be incorrect, the party in whose favor the error was made shall pay to the other party within fifteen (15) days after request the sum necessary to correct such error upon receipt of proof of such error, provided that such proof is delivered to the party from whom payment is requested on or before one hundred eighty (180) days after the Close of Escrow. The acceptance of the closing statement by either party shall not prevent later readjustment pursuant to this Section 6.5.5. After the Close of Escrow, each party shall have reasonable access to the books and records of the other party with respect to all matters set forth in this Section **Error! Reference source not found.** for the purposes of determining the accuracy of all adjustments and the performance of the obligations of the parties under this Section **Error! Reference source not found.**

6.5.6 Proration Allocation. For proration purposes, the date of the Close of Escrow shall be charged to Purchaser.

6.5.7 Survival. The provisions of this Section **Error! Reference source not found.** shall survive the Close of Escrow.

6.6 Closing Costs. Seller shall pay for the cost of the premium for the Title Policy, except that, notwithstanding the foregoing, Purchaser shall pay (a) the cost of that portion of the

premium for the Title Policy which is in excess of the cost of the premium for a C.L.T.A. Owner's Policy of Title Insurance (standard coverage) for the Real Property, and shall also pay all additional costs for acquiring any additional endorsements to the Title Policy not otherwise included with a C.L.T.A. Owner's Policy of Title Insurance (standard coverage), and (b) all costs of any survey (or update to the Survey) required for the Title Policy. Purchaser shall pay all documentary transfer taxes. Seller shall pay the recording fee for the Deed. Each of Seller and Purchaser shall pay its respective escrow fees for the Escrow.

6.7 California Real Estate Withholding. Seller and Purchaser appoint Escrow Holder as the withholding agent for purposes of compliance with California Revenue and Taxation Code Section 18662. Prior to the Close of Escrow, Seller will provide Escrow Holder with all information and documentation reasonably required to determine the amount, if any, to be withheld from the proceeds of the sale transaction contemplated herein for payment to the California Franchise Tax Board pursuant to said Revenue and Taxation Code Section, including California Form 593-W or California Form 593-C, whichever is applicable to Seller as of Close of Escrow.

6.8 Distribution of Funds and Documents Following Close of Escrow. Following Close of Escrow, Escrow Holder shall distribute the documents as follows:

To Seller:

- (a) The cash portion of the Purchase Price as set forth in Section 2.2, less costs, offsets and proration in accordance with the provisions of this Agreement;
- (b) One (1) fully executed duplicate original of the Bill of Sale;
- (c) One (1) fully executed duplicate original of the Assignment of Intangibles;
- (d) The original of the Note;
- (e) One (1) conformed copy of the Deed of Trust, the original to be mailed to Seller following the recordation thereof;
- (f) One (1) duplicate original or conformed copy as appropriate, of any other document to be received by Seller through Escrow pursuant to the provisions of this Agreement; and
- (g) One (1) copy of any other document delivered to Escrow Holder by Purchaser or Seller pursuant to the terms of this Agreement.

To Purchaser:

- (a) Any excess funds deposited by Purchaser which remain after disbursement to Seller;
- (b) One (1) conformed copy of the Deed, the original to be mailed to Purchaser following the recordation thereof;

- (c) One (1) fully executed duplicate original of the Bill of Sale;
- (d) One (1) fully executed duplicate original of the Assignment of Intangibles;
- (e) One (1) duplicate original or conformed copy as appropriate, of any other document to be received by Purchaser through Escrow pursuant to the provisions of this Agreement;
- (f) One (1) copy of any other document delivered to Escrow Holder by Purchaser or Seller pursuant to the terms of this Agreement; and
- (g) The original Title Policy.

6.9 Possession. Purchaser shall be entitled to possession of the Property on the Close of Escrow.

VII.

CONDITIONS PRECEDENT TO CLOSE OF ESCROW

7.1 Conditions to Seller's Obligations. The obligation of Seller to close the Escrow shall be subject to the satisfaction or Notice of its waiver (delivered to Purchaser and Escrow Holder), in whole or in part, by Seller of each of the following conditions precedent:

- (a) Escrow Holder is in a position to deliver to Seller the instruments and funds accruing to Seller pursuant to the provisions of this Agreement;
- (b) Purchaser approval of the condition of the property after review of the Due Diligence Materials and physical inspection; and
- (c) There is no existing uncured material breach of any of the covenants, representations, warranties or obligations of Purchaser set forth in this Agreement that has not been waived by Seller.

The foregoing conditions contained in this Section 7.1 are intended solely for the benefit of Seller. Seller shall at all times have the right to waive any condition precedent, provided that such waiver is in writing and delivered to Purchaser and Escrow Holder.

7.2 Conditions to Purchaser's Obligations. The obligations of Purchaser to close the Escrow shall be subject to the satisfaction or Notice of its waiver (delivered to Seller and Escrow Holder), in whole or in part, by Purchaser of each of the following conditions precedent:

- (a) Escrow Holder is in a position to deliver to Purchaser the instruments and funds, if any, accruing to Purchaser pursuant to the provisions of this Agreement;
- (b) Title Company delivers to Purchaser a copy of the Preliminary Title Report or Title Commitment, with all exceptions listed in the Preliminary Title Report or Title Commitment;

(c) Seller delivers of all Due Diligence Materials and disclosures relevant to the Property, including a Natural Hazard Disclosure Statement;

(d) Seller cures any objectionable conditions on the property that is raised by the Purchaser;

(e) Purchaser approves of the condition of the property after review of the Due Diligence Materials and physical inspection;

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

(g) Seller terminates of any existing vacancy at the Property;

(h) There is no existing uncured material breach of any of the covenants, representations, warranties or obligations of Seller set forth in this Agreement that has not been waived by Purchaser; and

(i) The sale by the City of Garden Grove of the Bahia Village Mobile Home Park and the Emerald Isle Mobile Home Park shall have closed (unless the failure to close is the result of a breach or default of any obligation of the City of Garden Grove).

The foregoing conditions contained in this Section 7.2 are intended solely for the benefit of Purchaser. Purchaser shall at all times have the right to waive any condition precedent, provided that such waiver is in writing and delivered to Seller and Purchaser.

7.3 Failure of Conditions to Close of Escrow. Escrow Holder shall be responsible for confirming, on or before the Close of Escrow, that the conditions to the Close of Escrow set forth in Sections 7.1 and 7.2 hereof, and as set forth elsewhere in this Agreement, have been satisfied. Purchaser and Seller hereby agree to deliver their Notices to Escrow Holder, on or before the Close of Escrow, of the satisfaction or waiver of all other conditions to the Close of Escrow hereunder, and, in the event that both Purchaser and Seller specifically notify and instruct Escrow Holder, in writing, to proceed to the Close of Escrow hereunder, all such other conditions to the Close of Escrow hereunder that are not otherwise satisfied shall be deemed to have been waived by both Purchaser and Seller. Escrow Holder shall not proceed to the Close of Escrow hereunder unless both Purchaser and Seller specifically notify and instruct Escrow Holder to do so.

VIII.

DEFAULT AND REMEDIES

8.1 Default by Purchaser. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF PURCHASER, PURCHASER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY

SUFFER. THEREFORE, PURCHASER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT SELLER WOULD SUFFER IN THE EVENT THAT PURCHASER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT. SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE FAILURE OF PURCHASER TO CLOSE AND CONSUMMATE THE TRANSACTIONS HEREIN CONTEMPLATED. ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES IN CONNECTION WITH PURCHASER'S FAILURE TO CLOSE AND CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREIN ARE EXPRESSLY WAIVED BY SELLER; HOWEVER, SELLER RESERVES ITS RIGHTS TO LEGAL AND EQUITABLE DAMAGES AND REMEDIES FOR ANY OTHER DEFAULT BY PURCHASER HEREUNDER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON DEFAULT BY PURCHASER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT ANY INDEMNIFICATION OBLIGATIONS, THE RIGHTS OF SELLER RESERVED HEREIN, AND FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM PURCHASER AND ESCROW HOLDER. IN THE EVENT PURCHASER FAILS TO AUTHORIZE ESCROW HOLDER TO RELEASE THE EARNEST MONEY DEPOSIT WITHIN FIVE (5) BUSINESS DAYS OF THE DEMAND OF SELLER WHEREIN SELLER ALLEGES THE DEFAULT AND NONPERFORMANCE BY PURCHASER, THEN, WITH RESPECT TO SUCH ALLEGED DEFAULT AND NONPERFORMANCE BY PURCHASER, THE PROVISIONS OF THIS ARTICLE IX SHALL BE VOIDABLE AT THE ELECTION OF SELLER.

SELLER'S INITIALS

PURCHASER'S INITIALS

Default by Seller. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF SELLER, PURCHASER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH PURCHASER MAY SUFFER. THEREFORE, PURCHASER AND SELLER DO HEREBY AGREE THAT, IN THE EVENT OF SUCH DEFAULT, IN ADDITION TO ATTORNEYS' FEES AND COSTS PURSUANT TO SECTION 11.2 HEREOF, PURCHASER MAY, AS ITS SOLE RECOURSE AND REMEDY (AT LAW OR IN EQUITY), EITHER: (a) PURSUE AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE; OR (b) RECEIVE (i) THE RETURN OF THE EARNEST MONEY DEPOSIT, AND (ii) REIMBURSEMENT OF OUT-OF-POCKET EXPENSES ACCORDING TO PROOF NOT TO EXCEED AN AGGREGATE OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES IN CONNECTION WITH SELLER'S FAILURE TO CLOSE AND

CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREIN (OTHER THAN AS SPECIFIED IN (a) AND (b) HEREOF) ARE EXPRESSLY WAIVED BY PURCHASER. THE REFUND OF THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO PURCHASER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671. PURCHASER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON DEFAULT BY SELLER, IF THIS AGREEMENT IS TERMINATED BY PURCHASER, NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT ANY INDEMNIFICATION OBLIGATIONS, THE RIGHTS OF PURCHASER RESERVED HEREIN, AND FOR THE RIGHT OF PURCHASER TO COLLECT SUCH LIQUIDATED DAMAGES FROM SELLER.

SELLER'S INITIALS

IX.

BROKERS

Seller and Purchaser each agree to indemnify, protect, defend and hold the other harmless from and against any claims, actions, suits or demands for payment of any commission, finder's fee or other sum initiated by any broker, commission agent or other person which such party or its representatives has engaged or retained or with which it has had discussions concerning, in connection with the transaction contemplated by this Agreement or the sale of the Property by Seller.

X.

NOTICES

Except as otherwise expressly provided in this Agreement, all notices, requests, demands and other communications hereunder ("Notice") shall be in writing and shall be deemed delivered by (i) hand delivery upon receipt, (ii) registered mail or certified mail, return receipt requested, postage prepaid, upon delivery to the address indicated in the Notice, (iii) by confirmed telecopy or facsimile transmission when sent, or (iv) overnight courier (next business day delivery) on the next business day at 12:00 noon, whichever shall occur first, as follows:

To Seller:

MELROSS, LLC
Attention: Renee Molloy
620 Newport Center Drive
Fourteenth Floor
Newport Beach, CA 92660
Telecopier: (949) 610-8216

With a Copy to:

TARSADIA HOTELS
Attention: Edward G. Coss, Esq.
620 Newport Center Drive
Fourteenth Floor
Newport Beach, CA 92660
Telecopier: (949) 610-8222

To Purchaser:

GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT

Telecopier: _____

With a Copy to:

Woodruff, Spradlin & Smart
Attention: Thomas F. Nixon, Esq.
555 Anton Blvd., Suite 1200
Costa Mesa, CA
Telecopier: (714) 835-7787

Any correctly addressed Notice that is refused, unclaimed or undelivered because of an act or omission of the party to be notified shall be considered to be effective as of the first day that the Notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger or overnight delivery service. The parties hereto shall have the right from time to time, and at any time, to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America, by giving to the other party at least thirty (30) days prior Notice thereof, in the manner prescribed herein; provided, however, that to be effective, any such change of address must be actually received (as evidenced by a return receipt). Telephone numbers and email addresses, if listed, are listed for convenience purposes only and not for the purposes of giving Notice pursuant to this Agreement.

XI.

MISCELLANEOUS

11.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement, the parties hereby agree that the Superior Court of California, County of Orange, shall be the sole jurisdiction and venue for the bringing of the action.

11.2 Professional Fees and Costs. If a lawsuit, arbitration or other proceedings are instituted by any party to enforce any of the terms or conditions of this Agreement against any other party hereto, the prevailing party in such litigation, arbitration or proceedings shall be entitled, as an additional item of damages, to such reasonable attorneys' and other professional fees and costs (including, but not limited to, witness fees), court costs, arbitrators' fees,

arbitration administrative fees, travel expenses, and other out-of-pocket expenses or costs of such other proceedings, as may be fixed by any court of competent jurisdiction, arbitrator or other judicial or quasi-judicial body having jurisdiction thereof, whether or not such litigation or proceedings proceed to a final judgment or award. For the purposes of this section, any party receiving an arbitration award or a judgment for damages or other amounts shall be deemed to be the prevailing party, regardless of amount of the damage awarded or whether the award or judgment was based on all or some of such party's claims or causes of action, and any party against whom a lawsuit, arbitration or other proceeding is instituted and later voluntarily dismissed by the instituting party shall be deemed to be the prevailing party.

11.3 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement shall become effective upon the due execution and delivery of this Agreement to the parties hereto.

11.4 Electronic and Facsimile Signatures. The execution of this Agreement and all Notices given hereunder and all amendments hereto, may be effected by facsimile and/or electronically transmitted signatures, all of which shall be treated as originals; provided, however, that the party receiving a copy hereof with a facsimile and/or electronically transmitted signature may, by written notice to the other, require the prompt delivery of an original signature to evidence and confirm the delivery of the facsimile and/or electronically transmitted signature. Purchaser and Seller each intend to be bound by its respective facsimile and/or electronically transmitted signature, and is aware that the other party will rely thereon, and each party waives any defenses to the enforcement of the Agreement delivered by facsimile and/or electronic transmission.

11.5 Assignment. Purchaser shall have the right to assign all of Purchaser's rights and to delegate all of Purchaser's duties and obligations hereunder without obtaining Seller's consent.

11.6 IRS - Form 1099-S. For purposes of complying with Section 6045 of the Internal Revenue Code of 1986, as amended, Escrow Holder shall be deemed the "person responsible for closing the transaction" and shall be responsible for obtaining the information necessary to file with the Internal Revenue Service Form 1099-S, "Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions."

11.7 Successors and Assigns. Subject to the provisions of Section 11.5 hereof, this Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.

11.8 Time is of the Essence. Time is of the essence of this Agreement.

11.9 Entire Agreement. This Agreement, and Exhibits and Schedules and other documents and instruments attached to or referenced herein, contain all representations and the

entire understanding and agreement between the parties hereto with respect to the purchase and sale of the Property, and all prior and contemporaneous understandings, letters of intent, agreements and representations, whether oral or written, are entirely superseded. In executing this Agreement, each of Seller and Purchaser expressly disclaim any reliance on any oral or written representations, warranties, comments, statements or assurances made by Seller, Purchaser, and any of their respective affiliates, and their respective agents, employees, representatives, attorneys or brokers, as an inducement or otherwise, to Purchaser's and Seller's respective execution hereof. No amendment of this Agreement shall be binding unless in writing and executed by the parties hereto.

11.10 Further Assurances. Whenever and so often as requested by a party, the other party will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully vest in such requesting party all rights, interests, powers, benefits privileges and advantages conferred or intended to be conferred upon it by this Agreement, or to effectuate the termination of this Agreement and cancellation of the Escrow (if otherwise permitted hereunder). The terms of this section shall survive the Close of Escrow and/or termination of this Agreement.

11.11 Waiver. The failure or delay (without regard to the length of time of such failure or delay) by either party to enforce or insist on the strict performance of any covenant, term, obligation, provision, right, option or condition hereunder, or to pursue any action, claim or right arising from any breach, default, or non-performance of any term, obligation or provision of this Agreement, shall not constitute or be construed as a waiver or forgiveness of such covenant, term, obligation, provision, right, option, condition, breach, default or non-performance. To be binding upon and against a party, any waiver must (a) be in writing, (b) be delivered to the party in whose favor the waiver is made (in accordance with the provisions of Article XI hereof), and (c) identify and specify, in reasonable detail, the covenant, term, obligation, provision, right, option, condition, breach, default or non-performance being waived; any purported waiver not complying therewith shall not be effective or binding on the parties hereto. In addition, any previous waiver for the benefit of a party may not be relied upon or be enforced by such party's successors and assigns, and shall not be binding on the waiving party. Under no circumstances shall a waiver by either party complying with the provisions hereof constitute or be construed as a continuing waiver of any subsequent failure, default, breach or non-performance of any covenant, term, obligation, provision, right, option or condition under this Agreement.

11.12 Headings. The headings of this Agreement are for purposes of convenience only and shall not limit or define the meaning of the provisions of this Agreement.

11.13 Risk of Loss.

11.13.1 Risk of Loss. Until the Closing Date, Seller shall bear the risk of loss should there be damage to any of the Improvements by fire or other casualty (collectively "Casualty"). If, prior to the Closing Date, any of the Improvements shall be damaged by any Casualty, Seller shall promptly deliver to Purchaser a Notice ("Casualty Notice") of such event. Upon Purchaser's receipt of a Casualty Notice, Seller and Purchaser shall meet promptly to

estimate the cost to repair and restore the Improvements to good condition and to replace the damaged Personal Property (the "Casualty Renovation Cost"). If the parties are unable to agree on the cost of restoration, the matter will be submitted to an engineer designated by Seller and an engineer designated by Purchaser, each licensed to practice in the state in which the Land is located, and the engineers shall resolve the dispute. Each party hereto shall bear the costs and expenses of its own engineer.

11.13.2 Material Loss. If the Casualty Renovation Cost exceeds (i) ten percent (10%) of the Purchase Price in the event the Casualty is insured against, or (ii) five percent (5%) of the Purchase Price in the event the Casualty is not insured against, either party hereto may, at its option, elect to terminate this Agreement by Notice to the other party within five (5) days after the date that the Casualty Renovation Cost is determined, in which case the Earnest Money Deposit shall be delivered to Purchaser, and neither party shall have any further rights or obligations hereunder, except for any continuing confidentiality and indemnity obligations as provided in this Agreement. If both parties hereto fail to timely make its election to terminate this Agreement, then the Close of Escrow shall take place as provided herein without reduction of the Purchase Price, and Seller shall assign the insurance proceeds to Purchaser.

11.13.3 Nonmaterial Loss. If the Casualty Renovation Cost is (i) ten percent (10%) or less of the Purchase Price in the event the Casualty is insured against, or (ii) five percent (5%) or less of the Purchase Price in the event the Casualty is not insured against, then, in any such event, neither party hereto shall have any right to terminate this Agreement, but the Closing shall take place as provided herein without reduction of the Purchase Price, and Seller shall assign the insurance proceeds to Purchaser.

11.13.4 Eminent Domain. If, prior to the Close of Escrow, (i) all or substantially all of the Land and Improvements, (ii) any portion of the parking areas on the Land which results in there being insufficient parking for the Real Property as established by applicable governmental codes and regulations, or (iii) any access-way to the Land or any building with guest rooms is taken by condemnation or eminent domain, at the election of Purchaser, (A) this Agreement shall, upon the giving of Notice of such event or of the condemning authorities' intention so to take the Land and/or Improvements, terminate, and Purchaser shall receive a full and prompt refund of all sums deposited by them with Escrow Holder and/or Seller, or (B) the transaction contemplated herein shall proceed to close and Purchaser shall be entitled to, and Seller shall assign to Purchaser, all awards and proceeds paid or to be paid for such taking. If, prior to the Close of Escrow, less than all or substantially all of the Land and/or Improvements shall be taken by condemnation or eminent domain, then Purchaser shall accept title to the Real Property subject to such taking, in which event at the Close of Escrow all of the proceeds of any award or payment made or to be made by reason of such taking shall be assigned by Seller to Purchaser, and any money theretofore received by Seller in connection with such taking shall be paid over to Purchaser, whereupon Purchaser shall pay the Purchase Price without abatement by reason of such taking. Seller shall not settle, agree to, or accept any award or payment in connection with a taking of less than all of the Land and/or Improvements without obtaining Purchaser's prior written consent in each case, which consent shall not be unreasonably withheld or delayed.

11.14 Construction of Agreement. The parties hereto have negotiated this Agreement at length, and have had the opportunity to consult with, and be represented by, their own competent counsel. This Agreement is, therefore, deemed to have been jointly prepared. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against any party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement.

The words “herein,” “hereof,” “hereunder” and words of similar reference shall mean this Agreement. The words “this Agreement” include the exhibits, schedules addenda and any future written modifications, unless otherwise indicated by the context. All words in this Agreement shall be deemed to include any number or gender as the context or sense of the Agreement requires. The words “will,” “shall” and “must” in this Agreement indicate a mandatory obligation. The use of the words “include,” “includes” and “including” followed by one or more examples is intended to be illustrative and is not a limitation on the scope of the description or term for which the examples are provided. All dollar amounts set forth in this Agreement are stated in United States Dollars, unless otherwise specified. The words “day” and “days” refer to calendar days unless otherwise stated. The words “business day” refers to a day other than a Saturday, Sunday or legal holiday on which banking institutions are closed. The words “month” and “months” refer to calendar months unless otherwise stated. The words “year” and “years” refer to calendar years unless otherwise stated.

11.15 Tax Deferred Exchange. Seller and Purchaser (the “Cooperating Party”) each agree to fully cooperate with the other (and any owner of such other party) (the “Exchangor”) (including cooperation with any Intermediary (as defined herein) selected by Exchangor) to structure the acquisition of the Property and/or the Real Property as an exchange of property held for productive use in a trade or business or for investment within the meaning of Section 1031 of the Internal Revenue Code of 1986 (as amended), and upon request, Cooperating Party agrees to execute additional escrow instructions, documents, agreements or instruments to effect the exchange; provided, however, that Cooperating Party shall incur no additional costs or expenses in this transaction, or be required to incur any additional liability, acquire, accept or hold title to any property (other than the Property) or to agree to the extension of the Closing Date, as a result of or in connection with any such exchange, unless because of Cooperating Party’s default hereunder or under any agreement executed by reason of this Section 11.15.

Exchangor agrees to indemnify, defend or hold Cooperating Party harmless from and against any and all additional costs, expenses, claims, demands, liabilities, losses, obligations, damages, recoveries, and deficiencies (such categories being collectively referred to herein as “Liabilities”) in excess of those Liabilities that Cooperating Party would otherwise have if the transaction contemplated in this Agreement closes as a sale transaction, and that Cooperating Party may incur or suffer, as a result of or in connection with (i) the structuring of the transaction contemplated in this Agreement as an exchange under Internal Revenue Code Section 1031 and/or (ii) the execution of any documents in connection with the exchange. Exchangor’s foregoing indemnity shall not indemnify Cooperating Party for any Liabilities arising as a result of or in connection with any default by Cooperating Party under this Agreement or any default by Cooperating Party under any of the documents or agreements entered into by Cooperating Party in connection with the exchange or for any negligence or

willful misconduct on the part of Cooperating Party. Implementation of the exchange(s) contemplated in this Section 11.15 shall not be a condition to the Close of Escrow.

Exchangor, at its election, may substitute for any one or more of them, one or more persons or entities ("Intermediary") as a party(ies) to the Escrow and this Agreement, in which event the Intermediary shall assume and perform the obligations of Exchangor under this Agreement (but without the release of liability of Exchangor for such performance), and Cooperating Party agrees to accept the performance by Intermediary and shall tender its performance to Intermediary.

11.16 No Public Disclosure. To the extent permitted by law, Purchaser shall make no public disclosure of the terms of this transaction. If, under state law, Purchaser must disclose any terms of this transaction, Purchaser shall give written notice to Seller.

11.17 Covenants, Representations and Warranties. Except as otherwise set forth in this Agreement, all of the covenants, representations and agreements of Seller and Purchaser set forth in this Agreement shall survive the Close of Escrow.

11.18 Limitation on Liability. In consideration of the benefits accruing hereunder, Seller and Purchaser agree that, in the event of any actual or alleged failure, breach or default of this Agreement by Seller or Purchaser:

- (a) The sole and exclusive remedy shall be against the defaulting party and its assets;
- (b) No owner of the defaulting party shall be sued or named as a party in any suit or action;
- (c) No service of process shall be made against any owner or employee of the defaulting party (except as may be necessary to secure jurisdiction of the defaulting party);
- (d) No owner or employee of the defaulting party shall be required to answer or otherwise plead to any service of process;
- (e) No judgment may be taken against any owner or employee of the defaulting party;
- (f) Any judgment taken against any owner or employee of the defaulting party may be vacated and set-aside at any time without hearing;
- (g) No claims shall be made against Tarsadia Hotels;
- (h) No writ of execution will ever be levied against the assets of any owner or employee of the defaulting party; and
- (i) These covenants and agreements are enforceable both by the defaulting party and also by any owner or employee of the defaulting party.

11.19 No Third-Party Beneficiaries. Seller and Purchaser agree that there are no third parties who are intended to benefit from or who are entitled to rely on any of the provisions of this Agreement. No third party shall be entitled to assert any claims or to enforce any rights whatsoever pursuant to this Agreement. The covenants and agreements provided in this Agreement are solely for the benefit of Seller and Purchaser and their permitted successors and assigns respectively.

11.20 Waiver of Jury Trial. ALL DISPUTES WITH RESPECT TO THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, CONNECTED WITH, OR RELATED OR INCIDENTAL TO, THE TRANSACTION GIVING RISE TO THIS AGREEMENT, SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION AS PROVIDED HEREIN, WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES. BY EXECUTING THIS AGREEMENT, EACH PARTY HEREBY WAIVES AND COVENANTS NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES RELATING TO THIS AGREEMENT AND/OR THE ACTS OR OMISSIONS OF A PARTY HERETO THEREUNDER, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, CONNECTED WITH, OR RELATED OR INCIDENTAL TO, THE TRANSACTION GIVING RISE TO THIS AGREEMENT. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF A PARTY AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

11.21 Exclusivity. From the date of the last to occur of (a) the mutual execution of this Agreement by Seller and Purchaser, and (b) the deposit by Purchaser of the Earnest Money Deposit into the Escrow, until the earlier of (i) the termination of this Agreement, or (ii) the default by Purchaser hereunder and subsequent termination of this Agreement by Seller as a result thereof, Seller shall cease all negotiations with third parties for the sale of the Property.

[The remainder of this page is intentionally left blank]

[Signatures on following page]

XII.

EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the ____ day of July, 2010.

SELLER:

MELROSS, LLC
a California limited liability company

By: _____
Name: _____
Title: _____

PURCHASER:

GARDEN GROVE AGENCY FOR
COMMUNITY DEVELOPMENT

By: _____
Name: _____
Title: _____

ESCROW HOLDER HEREBY ACKNOWLEDGES
AND AGREES TO THE ESCROW INSTRUCTIONS
SET FORTH IN THIS AGREEMENT.

FIDELITY NATIONAL TITLE COMPANY

BY: _____
Valerie Rapp, Escrow Officer

Dated: _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "A"

EXHIBIT "B"

NOTE

EXHIBIT "B"

SCHEDULE "C"

DUE DILIGENCE MATERIALS

Seller shall provide complete, true, and legible copies the following items:

- I. Copies of tax bills, including assessments, if any.
- II. Proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Purchaser and the Title Company.
- III. Each and every contract or agreement relating to the Property that will be binding on Purchaser or the Property following the Close of Escrow, if any, with the exception of the Title Documents which shall be handled as set forth in this Agreement.
- IV. Any Lease on the Property.
- V. Spousal Consent, if necessary.
- VI. Any and all documentation regarding the Property which have been prepared by or at Seller's direction, or which are in Seller's possession or control regarding the Property, including, without limitation, copies of any surveys, engineering plans, preliminary and/or final plats, soil, studies, wetland reports, environmental studies, improvement plans, all other consultant materials, and any other documents that would benefit Purchaser in its due diligence review of the Property, and complete copies of all leases, conditions, covenants, easements, and copies of all agreements with Governmental Authorities that affect the Property.
- VII. Natural Hazard Disclosure.

SCHEDULE "C"

EXHIBIT "D"

DEED

EXHIBIT "D"

EXHIBIT "E"

BILL OF SALE

EXHIBIT "E"

EXHIBIT "F"

ASSIGNMENT OF INTANGIBLE PROPERTY

EXHIBIT "F"