

The parties acknowledge and agree that at such time that the Agency, the owner of the subject property, is authorized to enter into additional agreements, all rights and obligations under the contract shall be assigned by the City, to the Agency.

- The financial impact of this transaction is limited to payment of a sales commission at the time of either the sale or lease of the property, as described in the attached Agreement.

RECOMMENDATION

Staff recommends that the City Council:

- Approve the attached Exclusive Authorization of Sale and Lease Agreement with Grubb & Ellis Company, Inc.
- Authorize the City Manager to execute the Exclusive Authorization of Sale and Lease Agreement.
- Authorize the City Manager to make minor modifications to the Agreement as appropriate.

GREG BROWN
Senior Project Manager



Attachment: EXCLUSIVE AUTHORIZATION OF SALE AND LEASE

mm(h:Staff/Real Property/Grubb & Ellis Agreement sr 082311v1.doc)

Recommended for Approval


Matthew Ferial
City Manager

EXCLUSIVE AUTHORIZATION OF SALE AND LEASE

OWNER hereby grants to GRUBB & ELLIS COMPANY ("Broker"), the exclusive right to negotiate a sale and lease(s) with respect to the real property described below (the "Property") for a period commencing on June 20, 2011 and ending at midnight on December 31, 2011 (the "Listing Period"), unless this Authorization is extended in writing and signed by both Owner and Broker.

The Property is located at 12361 Chapman Ave, Garden Grove

The price and terms of the sale shall be as follows: _____

The Lease(s) shall be for a rental of \$ 2.25 per sq ft / mo for a minimum term of 5 years and/or a sales price to be negotiated, or such other terms and conditions acceptable to the Owner of the Property.

Broker represents and warrants that it is licensed as a real estate broker in the State of California, License Number 00812184.

Broker will assign the following individuals to act on its behalf in the performance of services under this agreement:

Jan Brown Real Estate broker/salesperson license number 00775650

Vanessa Brown Real Estate broker/salesperson license number 01311341

If during the Listing Period an option or right of first refusal to purchase the Property or any interest therein is granted or an escrow is opened or negotiations involving the sale, transfer, conveyance or lease of the Property have commenced and are continuing, then the term of the Listing Period shall be extended with respect to such transaction(s) and negotiations for a period through the exercise of such option or right of first refusal, the closing of such escrow, the final termination of all efforts to complete a transaction or the consummation of such transaction. The term of Listing Period shall be extended one day for each day the Property is off the market during the Listing Period, not to exceed six months. The Property shall be considered off the market for any time period after a purchase and sale agreement, letter of intent or other agreement is executed by Owner and a buyer and before the transaction contemplated by such agreement is terminated by the parties thereto.

In consideration of this Authorization and Broker's agreement diligently to pursue the procurement of a purchaser and tenant(s) for the Property, Owner agrees to pay Broker commissions in cash as follows:

A. SALES, EXCHANGES AND OTHER TRANSFERS

- Improved Property:** 6% if there is a cooperating Broker or 5% if there are no cooperating brokers.
- Joint Venture/Exchange:** If an exchange or joint venture is effected in lieu of a sale, a full sales commission shall be paid in accordance with this Schedule, computed on the basis of the type and fair market value of the property contributed to the joint venture or properties exchanged. The listing price stated herein shall be prima facie evidence of the fair market value of the subject Property.

B. LEASES

GROSS LEASE

6% of the rent for the first 12 months;
6% of the rent for the second 12 months;
5% of the rent for the third 12 months;
4% of the rent for the fourth 12 months;
4% of the rent for the fifth 12 months;
3% of the rent for the next 60 months; and
2% of the rent for the balance of the term.

NET LEASE

(where tenant pays all real property taxes)

7% of the rent for the first 12 months;
7% of the rent for the second 12 months;
6% of the rent for the third 12 months;
5% of the rent for the fourth 12 months;
5% of the rent for the fifth 12 months;
4% of the rent for the next 60 months; and

- Commencement of Rent:** For the purpose of computing the amount of the commission due on a leasing transaction, the first month when the base or minimum rental commences shall be deemed to be the first month of the lease.
- Month-to-Month Tenancy:** The commission shall be fifty percent (50%) of the first month's rent but in no event less than \$1,000. In the event that a month-to-month tenant subsequently executes a lease, either direct with Owner or through Broker, within 24 months from the date of first occupancy of the month-to-month tenant, then Broker shall receive a leasing commission with respect to such lease in accordance with the provisions hereof.
- Purchase of Property by Tenant:** Owner shall pay to Broker a sales commission in the event that a tenant procured by or through Broker during the Listing Period, its successors or assigns, purchases the Property during the term of the lease or any extensions thereof or within 180 days after the expiration thereof, whether pursuant to an option or a right of first refusal in the lease or whether pursuant to any other agreement between the owner of the Property and such tenant, its successors or assigns. Said sales commission shall be reduced by the amount of any leasing commissions previously paid by Owner to Broker relating to that portion of the lease term ending beyond the effective date of such purchase.

Commissions shall be paid through escrow upon the closing of sales or exchange transactions; absent an escrow, commissions shall be paid upon recordation of a deed or upon delivery of such deed or other instrument of conveyance if recordation is deferred more than one month thereafter. In the event of a contract or agreement of sale, joint venture agreement, business opportunity or other transaction not involving the delivery of a deed, commissions shall be paid upon the mutual execution of the agreement evidencing the transaction.

One-half of the leasing commission shall be paid upon the mutual execution of a lease by lessor and tenant, and the balance shall be paid on the date specified in the lease for the commencement of the term.

Broker is hereby authorized to deduct its commission from any deposits, payments or other funds paid by a tenant or purchaser in connection with such transaction.

Owner shall pay said commissions to Broker if during the Listing Period: (a) the Property or any interest therein is sold, transferred, conveyed or leased by or through Broker; Owner or any other person or entity or (b) a purchaser or tenant is procured by or through Broker, Owner or any other person or entity who is ready, willing and able to purchase or lease the Property or any interest therein on the terms above stated or other terms acceptable to the owner of the Property; or (c) any contract for the sale, lease, transfer or conveyance of the Property or any interest therein is made directly or indirectly by the owner of the Property; or (d) this Authorization is terminated or the property is withdrawn from sale or lease without the written consent of Broker or the Property is made unmarketable by Owner's voluntary act. Owner shall also pay said commission to Broker if within one hundred eighty (180) days after the expiration of the Listing Period: (1) the owner of the Property or any affiliate thereof enters into a contract for the sale, transfer, conveyance or lease of the Property to any person or entity with whom Broker has negotiated or to whom Broker has submitted the Property in an effort to effect a transaction during the Listing Period and whose name appears on any list of such persons or entities (the "Registration List"), or any affiliate thereof. Broker shall mail the Registration List to Owner at the address below stated within thirty (30) days following such expiration. In the event title to the Property is transferred pursuant to foreclosure proceedings or by a deed in lieu of foreclosure during the Listing Period, and within one hundred eighty (180) days thereafter the Property or any interest therein is sold, transferred, conveyed or leased to any person or entity which during the term of the Listing Period made a written offer to purchase or lease the Property or which is named on the Registration List or any affiliate of either, Owner shall pay Broker said commission with respect to such transaction. Where the Property is owned by a partnership or a corporation, not publicly traded, the transfer of a partnership interest in or any of the capital stock of such entity shall be deemed to be a sale of the Property or of any interest in the Property.

Owner agrees to cooperate with Broker in effecting a sale and/or lease(s) of the Property and immediately to refer to Broker all inquiries of any person or entity interested in purchasing or leasing the Property. All negotiations are to be through Broker. Owner agrees to pay all customary escrow, title and revenue charges, to furnish good title and to execute and deliver such documents as may be necessary to effect a sale of the Property. Broker is authorized to execute such documents as may be necessary to effect a sale of the Property. Broker is authorized to accept a deposit from any prospective purchaser or tenant. In sales and exchange transactions, Broker is authorized, upon the opening of escrow, to transfer such deposit to the escrow agent for the account of the purchaser. In the event a transaction is not consummated, any deposits, payments, including payments for options, liquidated damages and other amounts retained by Owner shall be equally divided between Owner and Broker, except that Broker's portion thereof shall not exceed the amount of the commission otherwise payable upon the consummation of such transaction by the terms of this Authorization. Broker is further authorized to advertise the Property and shall have the exclusive right to place a sign or signs on the Property if, in Broker's opinion, such would facilitate the sale or leasing thereof.

It is understood that it is illegal for either Owner or Broker to refuse to present, sell or lease real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

Except as disclosed in an addendum hereto signed by both Owner and an officer of Broker, Owner hereby warrants and represents to Broker that (1) Owner is the owner of record of the Property or has the legal authority to execute this Authorization on behalf of such owner, (2) no person or entity has any right to purchase or lease the Property or to acquire any interest therein by virtue of option or right of first refusal, (3) there are no delinquencies or defaults under any deed of trust, mortgage or other encumbrance on the property, (4) the Property is not subject to the jurisdiction of any court in any bankruptcy, insolvency, conservatorship or probate proceeding, and (5) neither Broker nor any salesperson affiliated with Broker has made any promise or representations to or agreements with Owner not contained herein which in any manner affect Owner's and Broker's rights and obligations under this Authorization.

Owner agrees to defend, indemnify and hold Broker harmless from any and all claims, liabilities, demands and damages arising from incorrect information supplied by Owner or any information which Owner fails to supply.

In the event an escrow is opened during the term of this Authorization or any extension hereof with respect to the sale, transfer or conveyance of the Property or any interest therein, Owner hereby irrevocably assigns to Broker and authorizes and instructs the escrow agent to disburse to Broker the amount of the compensation provided for herein from the funds payable to Owner.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MAY POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTOOD THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

OWNER _____ BROKER _____

Arbitration of Disputes. In the event a claim or controversy arises concerning any failure to pay Broker all or any portion of the amounts provided herein, Owner and Broker hereby agree that such claim or controversy shall be settled by final, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, which rules are incorporated herein by reference, provided, however, that all persons nominated to act as arbitrators of such claim or controversy shall be attorneys at law duly licensed to practice before the courts of the State where the arbitration is conducted. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Depositions may be taken and other discovery may be obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings. The unsuccessful party shall pay the costs of conducting the arbitration. In the event any arbitration proceeding or legal action to enforce an arbitration award is commenced to recover compensation hereunder, the prevailing party shall be entitled to recover its expenses and reasonable attorneys' fees incurred therein from the unsuccessful party.

In the event that Owner and Broker have not elected to resolve commission disputes by arbitration as provided above, if a claim or controversy arises concerning any failure to pay Broker all or any portion of the amounts provided herein, the each party shall bear its own costs and attorneys' fees in any legal action regarding the collection of a commission due hereunder.

The liability of the parties caused by a breach of this Agreement will be limited to direct damages, and in no event will either party be liable to the other for any loss of or damage to revenues, profits, goodwill or other special, incidental, exemplary, punitive, indirect or consequential damages of any kind resulting from the performance or failure to perform pursuant to the terms of this Agreement or from the provision of services hereunder, even if such party has been advised of the possibility of such damages. In no event shall the total liability of Broker to Owner for damages in connection with all claims made under the terms of this Agreement exceed the amount of compensation received by broker under the terms of this Agreement.

If there is a failure to make any payment to Broker at the time required herein, the delinquent sum(s) shall bear interest at the rate of 10% per year or the maximum rate permitted by law, whichever is lower.

Owner hereby authorizes Broker to represent and serve as agent for any purchaser or tenant, or prospective purchaser or tenant, of the Property or of any interest therein, and Owner hereby waives any conflict of interests which might arise as a result thereof.

The heirs, transferees, successors and assigns of the parties hereto are duly bound by the provisions hereof. The parties acknowledge and agree that at such time that the Garden Grove Agency for Community Development, the owner of the subject property, is

authorized to enter into additional agreements, all rights and obligations under the contract shall be assigned by the City to the Garden Grove Agency for Community Development.

**CALIFORNIA SALE/LEASE AMERICANS WITH DISABILITIES ACT,
HAZARDOUS MATERIALS AND TAX DISCLOSURE**

The Americans With Disabilities Act is intended to make many business establishments equally accessible to persons with a variety of disabilities; modifications to real property may be required. State and local laws also may mandate changes. The real estate brokers in this transaction are not qualified to advise you as to what, if any, changes may be required now, or in the future. Owners and tenants should consult the attorneys and qualified design professionals of their choice for information regarding these matters. Real estate brokers cannot determine which attorneys or design professionals have the appropriate expertise in this area.

Various construction materials may contain items that have been or may in the future be determined to be hazardous (toxic) or undesirable and may need to be specifically treated/handled or removed. For example, some transformers and other electrical components contain PCBs, and asbestos has been used in components such as fire-proofing, heating and cooling systems, air duct insulation, spray-on and tile acoustical materials, linoleum, floor tiles, roofing, dry wall and plaster. Due to prior or current uses of the Property or in the area, the Property may have hazardous or undesirable metals (including lead-based paint), minerals, chemicals, hydrocarbons, or biological hazards (including, but not limited to, mold) or radioactive items (including electrical and magnetic fields) in soils, water, building components, above or belowground containers or elsewhere in areas that may or may not be accessible or noticeable. Such items may leak or otherwise be released. Real estate agents have no expertise in the detection or correction of hazardous or undesirable items. Expert inspections are necessary. Current or future laws may require clean up by past, present and/or future owners and/or operators. It is the responsibility of the Seller/Lessor and Buyer/Tenant to retain qualified experts to detect and correct such matters and to consult with legal counsel of their choice to determine what provisions, if any, they may include in transaction documents regarding the Property.

Sellers/Lessors are required under California Health and Safety Code Section 25915 et seq. to disclose reports and surveys regarding asbestos to certain persons, including their employees, contractors, co-owners, purchasers and tenants. Buyers/Tenants have similar disclosure obligations. Sellers/Lessors and Buyers/Tenants have additional hazardous materials disclosure responsibilities to each other under California Health and Safety Code Section 25359.7 and other California laws. Consult your attorney regarding this matter, and make proper disclosures. Grubb & Ellis Company is not qualified to assist you in this matter or provide you with other legal or tax advice.

Sale, lease and other transactions can have local, state and federal tax consequences for the seller/lessor and/or buyer/tenant. In the event of a sale, Internal Revenue Code Section 1445 requires that all buyers of an interest in any real property located in the United States must withhold and pay over to the Internal Revenue Service (IRS) an amount equal to ten percent (10%) of the gross sales price within ten (10) days of the date of the sale unless the buyer can adequately establish that the seller was not a foreigner, generally by having the seller sign a Non-Foreign Seller Certificate. Note that depending upon the structure of the transaction, the tax withholding liability could exceed the net cash proceeds to be paid to the seller at closing. California poses an additional withholding requirement equal to three and one-third percent (3-1/3%) of the gross sales price on all individuals (California residents and non-residents alike) and on entities with a last known street address outside of the State of California if the sale price exceeds \$100,000. Consult your tax and legal advisor. Real estate brokers are not qualified to give legal or tax advice or to determine whether any other person is properly qualified to provide legal or tax advice.

NO AMENDMENTS TO OR MODIFICATIONS OF THIS AUTHORIZATION NOR THE TERMINATION OF THIS AUTHORIZATION SHALL BE VALID OR BINDING UNLESS MADE IN WRITING AND SIGNED BY BOTH OWNER AND AN OFFICER OF BROKER. OWNER HEREBY ACKNOWLEDGES THAT SALESPERSONS AFFILIATED WITH BROKER ARE NOT AUTHORIZED TO MAKE OR APPROVE ANY ADDITIONS TO, DELETIONS FROM OR ALTERATIONS OF THE PRINTED PROVISIONS OF THIS AUTHORIZATION OR TERMINATE THIS AUTHORIZATION. ANY PURPORTED AMENDMENT, MODIFICATION OR TERMINATION OF THIS AUTHORIZATION WHICH IS ORAL, OR WHICH IS IN WRITING BUT NOT SIGNED BY BOTH OWNER AND AN OFFICER OF BROKER, SHALL BE VOID AND OF NO EFFECT WHATSOEVER.

Owner hereby acknowledges that neither Broker nor any salesperson associated with Broker is qualified or authorized to give legal or tax advice; if Owner desires such advice he shall consult with an attorney or accountant.

The undersigned hereby authorizes Broker to publicize any transactions that occur involving the subject property during the time of this Agreement. Broker shall have the right to name the parties to the transaction, and the size of the space, but shall not disclose any financial aspects of the transaction.

Owner acknowledges receipt of a copy of this Authorization which Owner has read and understands.

DATED: _____ 20 _____ OWNER _____ City of Garden Grove _____
By: _____
GRUBB & ELLIS COMPANY By: _____
4675 MacArthur Court, Suite 1600 Address: _____
Newport Beach, CA 92660 _____
949.608.2000 _____
Garden Grove, CA 92840
By: _____ Telephone: (714) 741-5124
Gregory P. May
Executive Vice President, Managing Director
CA Salesperson License # 00946118