

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Susan Emery	
Dept:	City Manager	Dept:	Community Development	
Subject:	AGREEMENT WITH ALINA INVESTMENTS, LLC, FOR MODIFICATION OF MAINTENANCE AGREEMENT AND DECLARATION REGARDING THE EXPIRATION OF DEVELOPMENT AGREEMENT FOR 9841 GARDEN GROVE BOULEVARD, GARDEN GROVE		Date:	July 24, 2012

OBJECTIVE

To obtain approval and ratification of the City Manager's execution of a modification agreement with Alina Investments LLC (Agreement), and a declaration regarding the expiration of a Development Agreement to facilitate a Small Business Administration Loan against the property at 9841 Garden Grove Boulevard, Garden Grove.

BACKGROUND/DISCUSSION

In 1991, the City of Garden Grove (City) approved land use entitlements for the property at 9841 Garden Grove Boulevard (Property) and subsequently entered into a Development Agreement and a Maintenance Agreement pertaining to the property. Both agreements are recorded against the Property and contain indemnity provisions requiring all successor owners of the Property to indemnify the City under certain circumstances. All obligations under the 1991 Development Agreement have been satisfied, and it has expired according to its terms.

Alina Investments, LLC, which is purchasing the Property to open a business and plans to use the location as their administrative offices for their manufacturing and packaging beauty product business, has applied for a loan through the United States Small Business Administration (SBA). Federal law prohibits the SBA from indemnifying a party for which no federal appropriations have been made, and the SBA typically requires borrowers to obtain modifications exempting the SBA from all indemnity obligations under agreements recorded against the property as a condition to funding small business loans. In order to facilitate closing of the real property purchase and SBA loan, the City Manager executed the attached Agreement exempting the SBA from the indemnity obligations under the Maintenance Agreement and the attached Declaration affirming that the Development Agreement has expired.

FINANCIAL IMPACT

None.

RECOMMENDATION

It is recommended that the City Council:

- Approve and ratify the City Manager's execution of the attached Modification to Covenants and Conditions of a Maintenance Agreement Regarding Indemnification, Upon and Subject to Terms and Conditions Therein between the City and Alina Investments, LLC; and
- Approve and ratify the City Manager's execution of the attached Declaration by the City of Garden Grove Regarding the Expiration of the Development Agreement Between the City of Garden Grove and Dai R. Lee, Recorded in the Official Records of Orange County As Instrument No. 92-710893.


SUSAN EMERY
Community Development Director


By: Paul Guerrero
Associate Planner

- Attachment 1: Modification to Covenants and Conditions of Maintenance Agreement
Attachment 2: Declaration Regarding Expiration of Development Agreement
Attachment 3: February 2, 1992 Maintenance Agreement
Attachment 4: October 22, 1991 Development Agreement

Recommended for Approval


Matthew Fertal
City Manager

When Recorded, Return To:

Los Angeles County Small Business Development
Corporation dba Business Finance Center
1055 W. 7th Street, Suite 650
Los Angeles, CA 90017

Re: SBA 504 Loan #: 529-299-5010
SBA Loan Name: Purorganic Products, Inc.

SPACE ABOVE THE LINE IS FOR RECORDER'S USE

**MODIFICATION TO COVENANTS AND CONDITIONS OF A MAINTENANCE
AGREEMENT REGARDING INDEMNIFICATION, UPON AND SUBJECT TO THE
TERMS AND CONDITIONS THEREIN**

This Agreement ("Agreement") is made and entered into on July 13, 2012 and modifies a prior Covenants and Conditions of a Maintenance Agreement ("Agreement") recorded February 27, 1992 in favor of the City of Garden Grove ("City") and binding upon its successors, including but not limited to Alina Investment, LLC, (hereinafter referred to as ("Owner")).

RECITALS

WHEREAS, Owner, its successors and assigns, are bound by the terms of the Original Agreement; and

WHEREAS, the Original Notice was recorded in the official records of Orange County, California on February 27, 1992 as Instrument Number 92-115882; and

WHEREAS, Owner has, or is about to, execute a deed of trust and note in the sum of \$640,000.00 in favor of the Los Angeles County Small Business Development Corporation dba Business Finance Center, a Certified Development Company, and which Deed of Trust will be immediately assigned to U.S. Small Business Administration, an Agency of the United States Government ("SBA"); and

WHEREAS, it is a condition precedent to obtaining said loan that the SBA be specifically excluded from and against any and all indemnity obligations imposed on the Owner as set forth in the Original Agreement due to the Federal Anti-Deficiency Act (USC Title 31, Subtitle II, Chapter 13, Subchapter III, Section 1341 ("Act")).

NOW THEREFORE, Owner and the City of Garden Grove, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, and in order to induce SBA to make the loan above-referred to, it is hereby declared, understood and agreed as follows:

1. EFFECT OF FEDERAL ANTI-DEFICIENCY ACT: The parties desire to modify the Original Agreement to specifically agree that SBA, and only the SBA, shall not be obligated to perform, and shall be completely relieved from, any obligation under the Original Agreement to the extent, and only to the extent, that such performance would constitute a violation of the Act. SBA shall be deemed a third party beneficiary of this Agreement.

2. RECORDING: This Agreement shall be recorded in the official records of Orange County, California.

3. COVENANTS RUN WITH THE LAND: The parties agree that all agreements and obligations contained in the Original Agreement are covenants which benefit and run with the property described in Exhibit "A", in accordance with Section 1468 of the California Civil Code and such agreements, and obligations shall be binding upon subsequent purchasers, constituents, transferee, successors and assigns, as provided in the Original Agreement, including, without limitation, any and all subsequent purchasers, constituents, transferees, successors and assignees of SBA; provided that, consistent with the modifications of the Original Agreement set forth above, any indemnity obligations shall not be binding on SBA.

4. COUNTERPARTS: This Agreement may be executed in counterparts.

5. Except as modified herein, all terms of the Original Agreement shall remain unchanged and shall remain in full force and effect.

Dated: _____

"OWNER"
Alina Investment, LLC

By: _____
Name: _____
Title: _____

Dated: 7/17/12

"CITY"
City of Garden Grove

ATTEST:

Teresa Pomeroy
Name: Teresa Pomeroy
Title: Deputy City Clerk

By: Matthew Ferial
Name: Matthew Ferial
Title: City Manager

APPROVED AS TO FORM:

Thomas F. Nixon
Name: Thomas F. Nixon
Title: City Attorney

ALL-PURPOSE CERTIFICATE

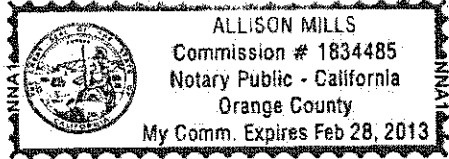
State of California)
County of Orange) ss

On July 17, 2012, before me, Allison Mills, notary public, personally appeared Matthew Ferial

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

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

WITNESS my hand and official seal.



Signature Allison Mills (Seal)

ALL-PURPOSE CERTIFICATE

State of California)
County of _____) ss

On _____, before me, _____, notary public, personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

DECLARATION BY THE CITY OF GARDEN GROVE REGARDING THE EXPIRATION OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GARDEN GROVE AND DAI R. LEE, RECORDED IN THE OFFICIAL RECORDS OF ORANGE COUNTY AS INSTRUMENT NO. 92-710683

This Declaration ("Declaration") is made on July 13, 2012 by the City of Garden Grove ("City") regarding the expiration of the Development Agreement ("Agreement") recorded March 20, 1992 between the City and Dai R. Lee, and recorded as Instrument No. 92-710683 in the Official Records of Orange County.

RECITALS

WHEREAS, the current owner of the Property subject to the Agreement has, or is about to, execute a deed of trust and note in the sum of \$640,000.00 in favor of the Los Angeles County Small Business Development Corporation dba Business Finance Center, a Certified Development Company, and which Deed of Trust will be immediately assigned to U.S. Small Business Administration, an Agency of the United States Government ("SBA"); and

WHEREAS, it is a condition precedent to obtaining said loan that the SBA be specifically excluded from and against any and all indemnity obligations imposed on the Owner as set forth in the Original Agreement due to the Federal Anti-Deficiency Act (USC Title 31, Subtitle II, Chapter 13, Subchapter III, Section 1341 ("Act")).

WHEREAS, the Agreement was entered into, and became effective on, October 22, 1991; and

WHEREAS, Recital 1 of the Agreement indicates that the duration of the agreement shall expire four years from its effective date; and

WHEREAS, more than twenty years have passed since the effective date of October 22, 1991 and the current date of July 13, 2012; and

WHEREAS, Recital 2 through 4 of the Agreement indicate that the City desired to enter into the Agreement with former Developer, Dai R. Lee, to complete the Project at Site Plan No. SP-110-91 on the property located at 9841 Garden Grove Boulevard, Garden Grove, CA; and

WHEREAS, former Developer, Dai R. Lee, completed said project and has fully satisfied his obligations under the Agreement;

NOW THEREFORE, the City declares and affirms that the Agreement has expired according to the terms therein and it is hereby declared, affirmed, understood and stated as follows:

1. EFFECT OF EXPIRATION: The Agreement is no longer in full force and effect.

2. EFFECT OF EXPIRATION ON AGREEMENT PROVISIONS: The expiration of the Agreement renders the provisions of the agreement, including the insurance requirements and all indemnity obligations, null and void and without force and effect on all future owners of the property located at 9841 Garden Grove Boulevard, Garden Grove, CA.

3. EFFECT OF EXPIRATION ON SBA: The SBA shall not be obligated to perform, and shall be completely relieved from, any obligation under the Original Agreement. SBA shall be deemed a third party beneficiary of this Agreement.

“CITY”
City of Garden Grove

Dated: 7-17-12

By: Matthew J. Fertal
Matthew J. Fertal
City Manager

ATTEST:

By: Teresa Pomeroy
Name: Teresa Pomeroy
Title: Deputy City Clerk

APPROVED AS TO FORM:

By: Thomas F. Nixon
Thomas F. Nixon
City Attorney

ALL-PURPOSE CERTIFICATE

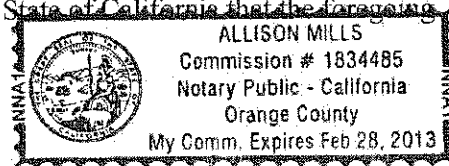
State of California)
County of Orange) ss

On July 17, 2012, before me, Allison Mills, notary public, personally appeared Matthew Fertal

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

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

WITNESS my hand and official seal.



Signature Allison Mills

(Seal)

92-115882

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

City of Garden Grove
Development Services Dept.
11391 Acacia Pkwy
Garden Grove, CA. 92640

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

-11:05 AM FEB 27 '92

Lee A. Branch RECORDER

@ \$	5.-	5.-
q	Add.	\$
Pg @ \$	3 -	27.-
Lien Ni	\$	
@ \$		
Other	\$	
Total Rec. Fees	\$	32.-
D.T.T.	\$	
PCOR	\$	
SMF	\$	
RCE-12		

(Space above for Recorder.)

This document is exempt from pay-
ment of a recording fee pursuant
to Government Code Section 6103.

GARDEN GROVE DEVELOPMENT
SERVICES DEPARTMENT

By: _____

Its: _____

Dated: _____, 1992

MAINTENANCE AGREEMENT

RECITALS

The following recitals are a substantive part of this Agreement:

A. THIS AGREEMENT is made this 2nd day of February, 1992, by the City of Garden Grove ("CITY"), a municipal corporation, and Dai R. Lee, a property owner ("DEVELOPER"), approved August 8, 1991, by the Planning Commission, for the development of a project located on what commonly is known as 9841 Garden Grove Boulevard, which is more particularly and legally described in Exhibit "A" attached hereto and incorporated herein (the "DEVELOPMENT PARCEL").

B. CITY and DEVELOPER desire to set forth herein their respective rights and obligations and the maintenance standards (including, without limitation the definition of "CITY standards") concerning the maintenance of all the improvements, on-site and off-site, in the public right-of-way to the sidewalk(s) abutting the boundary of the DEVELOPMENT PARCEL ("improvements to the sidewalk").

4

C. The following types of improvements are included in this Agreement: Maintenance of landscaping, parking areas, building facades, block walls and all provisions of Site Plan No. SP-11091 and Conditional Use Permit No. CUP-120-91.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Purpose Of This Agreement. The purpose of this Agreement is to set forth general maintenance standards and obligations of DEVELOPER in its maintenance of the private and public improvements on and within the DEVELOPMENT PARCEL to the sidewalk.
2. Parties To The Agreement.
 - 2.1 CITY as defined previously, including its various departments or its successors in interest, and
 - 2.2 DEVELOPER, as defined previously, is a limited partnership duly operating and doing business under the laws of the State of California.
3. Representatives Of The Parties And Services Of Notices.
 - 3.1 The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:
 - A. CITY: CITY OF GARDEN GROVE
Development Services Department
11391 Acacia Parkway
Garden Grove, California 92642
Attn: Director of Development Services
 - B. DEVELOPER: Dai R. Lee
9841 Garden Grove Boulevard
Garden Grove, CA 92644
Attn: Dai R. Lee
 - 3.2 Formal notices, demands and communications to be given by any party shall be made in writing and may be effected by first class mail or personal delivery, or by registered or certified mail, postage prepaid, return receipt requested. Notices which are mailed shall be deemed communicated forty-eight (48) hours after the date of mailing.
 - 3.3 If the name of the person designated to receive the notices, demands or communications or the address is changed, written notice shall be given, in accord with this section within five (5) working days of this change.

4. Performance of Maintenance.

- 4.1 DEVELOPER shall maintain in accordance with CITY standards, as defined, the private improvements and public improvements and landscaping to the sidewalk(s) on and abutting the DEVELOPMENT PARCEL. Said improvements shall include, but not be limited to (LIST WORK TO BE COMPLETED), and any and all other improvements on the DEVELOPMENT PARCEL and in the public right-of-way to the nearest sidewalk(s) abutting the DEVELOPMENT PARCEL.
- 4.2 To accomplish the maintenance, DEVELOPER shall either provide licensed and qualified personnel to perform the maintenance work or contract with licensed, qualified companies for same, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.
- 4.3 CITY Standards. The following CITY standards ("CITY standards") shall be complied with by DEVELOPER and its maintenance staff, contractors or subcontractors:
- A. Landscape maintenance shall include, but not be limited to: all landscaping on the site to sidewalk or where there is no sidewalk to curb.
 - B. Cleanup maintenance shall include, but not be limited to: the entire site.
 - C. All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.
 - D. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and strictly following all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.
 - E. Developer Improvements (as the term is defined in the site plan) shall be maintained in conformance and in compliance with the approved DEVELOPMENT PARCEL construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of CITY and reasonable commercial development maintenance standards, including but not limited to: the items listed in the site plan.

- F. The DEVELOPMENT PARCEL private improvements shall be maintained as required by this Section 4.3 c in good condition and in accordance with the custom and practice generally applicable to comparable commercial developments located within Orange County, California. The public right-of-way improvements to the sidewalk(s) shall be maintained as required by this Section 4.3 in good condition and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Garden Grove, California.

5. Failure To Maintain Improvements.

- 5.1 In the event DEVELOPER does not maintain the DEVELOPMENT PARCEL private improvements and the public improvements to the sidewalk(s) in the manner set forth herein and in accordance with CITY standards, CITY shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to DEVELOPER. However, prior to taking any such action, CITY agrees to notify DEVELOPER in writing if the condition of the improvements does not meet with CITY's standards and to specify the deficiencies and the actions required to be taken by DEVELOPER to cure the deficiencies. Upon notification of any maintenance deficiency, DEVELOPER shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification from CITY states the problem is urgent relating to public health and safety, then DEVELOPER shall have forty-eight (48) hours to rectify the problem.
- 5.2 In the event DEVELOPER fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then CITY shall have the right to maintain such improvements. DEVELOPER agrees to pay CITY any charges or costs incurred. Until paid, CITY shall have a lien on the DEVELOPMENT PARCEL for the amount of such charges or costs, the lien may be perfected by the recordation of a "Notice of Claim of Lien" against the DEVELOPMENT PARCEL. Upon recordation of a Notice of a Claim of Lien against the DEVELOPMENT PARCEL, the lien shall constitute a lien on the fee estate in and to the DEVELOPMENT PARCEL prior and superior to all other monetary liens except:
- A. All taxes, bonds, assessments, and other levies which, by law would be superior thereto.
- B. The lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with this Agreement shall date from the date of the recordation of the Notice of Claim of Lien.

- C. Any lien shall be subject and subordinate to any lease or sublease of interest of DEVELOPER in DEVELOPMENT PARCEL or any portion thereof and to any easement affecting DEVELOPMENT PARCEL or any portion thereof entered into at any time (before or after) the date of recordation of such a Notice.
- D. Any lien in favor of CITY created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien describing such lien as aforesaid, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgage or beneficiary thereunder expressly subordinates its interest, of record, to such lien. No lien in favor of CITY created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien. Upon foreclosure of any mortgage or deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied Notice of Claim of Lien, the foreclosure-purchaser shall take title to the DEVELOPMENT PARCEL free of any lien imposed by CITY that has accrued up to the time of the foreclosure sale, and upon taking title to the DEVELOPMENT PARCEL, such foreclosure-purchaser shall only be obligated to pay costs associated with this Agreement accruing after foreclosure-purchaser acquires title to the DEVELOPMENT PARCEL. If the DEVELOPMENT PARCEL is ever legally divided with the written approval of CITY and fee title to various portions of the DEVELOPMENT PARCEL is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in this Agreement and the charges levied by CITY to reimburse CITY for the cost of undertaking such maintenance obligations of DEVELOPER and its successors and the lien for such charges shall be apportioned among the fee owners of the various portions of the DEVELOPMENT PARCEL under different ownerships according to the square footage of the land contained in the respective portions of the DEVELOPMENT PARCEL owned by them. Upon apportionment, no separate owner of a portion of the DEVELOPMENT PARCEL shall have any liability for the apportioned liabilities of any other separate owner of another portion of the DEVELOPMENT PARCEL, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the DEVELOPMENT PARCEL owned in fee by the owner who is liable for the apportioned charges levied by CITY and secured by the apportioned lien and against no other portion of the DEVELOPMENT PARCEL. DEVELOPER acknowledges and agrees CITY may also pursue any and all other remedies available in law or equity. DEVELOPER shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collection said maintenance costs.

6. Compliance With Law. DEVELOPER shall comply with all local, state and federal laws relating to the uses of or condition of the DEVELOPMENT PARCEL private improvements and public improvements to the sidewalk(s). Local laws for the purposes of this section shall include only those ordinances which are nondiscriminatory in nature and applicable to the public welfare, health, safety and aesthetics. If any new local laws relating to uses of or condition of the improvements create a condition or situation that constitutes a lawful nonconforming use as defined by local ordinance with respect to the DEVELOPMENT PARCEL or any portion thereof, then as long as the lawful nonconforming use status remains in effect (i.e., until such lawful status is properly terminated by amortization as provided for in the new local law or otherwise), DEVELOPER shall be entitled to enjoy the benefits of such lawful nonconforming use pursuant to the lawful nonconforming use ordinances.
7. Covenants Run With The Land. The DEVELOPMENT PARCEL private improvements and public improvements to the sidewalk(s) and the maintenance thereof touch and concern the DEVELOPMENT PARCEL and inure to the benefit of any and all present or successive owners of the DEVELOPMENT PARCEL. Therefore, whenever the word "DEVELOPER" is used herein, it shall include the owner as of date of execution of this Agreement, and any and all successive owners or assigns of the DEVELOPMENT PARCEL, and the provisions hereof are expressly binding upon all such successive owners or assigns, and the parties agree all such provisions shall run with the land. CITY shall cause a fully executed copy of this Agreement to be recorded in the Office of the Orange County Recorder. Notwithstanding the foregoing, in the event DEVELOPER or its successors or assigns, shall convey its fee interest in all or any portion of the DEVELOPMENT PARCEL, the conveying owner shall be free from and after the date of recording, such conveyance of all liabilities, respecting the performance of the restrictions, covenants or conditions contained in this Agreement, thereafter to be performed with respect to the DEVELOPMENT PARCEL, or any part thereof, it being intended that the restrictions, covenants and conditions shall be binding upon the record owners of the DEVELOPMENT PARCEL only during such time as they own the same, provided that the conveying owner shall remain liable for any actions prior to the date of the conveyance.
8. Insurance Requirements.
- 8.1 DEVELOPER shall not commence work under this Agreement until it has obtained all insurance required herein and this insurance has been approved by CITY as to form, amount, and carrier; nor shall DEVELOPER allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved;
- 8.2 During the duration of this Agreement, DEVELOPER shall obtain and maintain Workers' Compensation Insurance when and if applicable. DEVELOPER shall also require all subcontractors similarly to provide Workers' Compensation Insurance where applicable.

The Workers' Compensation Insurance shall provide that the insurance may not be cancelled until thirty (30) days after written notice of cancellation is provided to CITY.

8.3 DEVELOPER shall maintain the following insurance for the duration of this Agreement:

- A. Comprehensive general liability, automobile liability, professional liability, or other types of liability coverage, as deemed necessary by CITY; and
- B. Endorsements for the policies providing the above insurance designating the CITY as additional insured and providing for thirty (30) days' advance notice of cancellation to CITY; and
- C. DEVELOPER shall provide to CITY proof satisfactory to CITY showing the required insurance. Any certificate of insurance must be in a form, content, and with companies approved by the CITY.

8.4 Indemnification.

- A. DEVELOPER agrees to protect, defend, and hold harmless CITY and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, resulting therefrom, arising out of, or in any way connected with performance of the Agreement by DEVELOPER, DEVELOPER's agents, officers or employees, subcontractors, or independent contractors hired by DEVELOPER. The only exception to DEVELOPER's responsibility to protect, defend, indemnify and hold harmless CITY, is due to the sole negligence of the CITY, or any of their elective or appointive boards, officers, agents or employees.
- B. CITY does not, and shall not, waive any rights against DEVELOPER which it may have by reason of this hold harmless agreement. This hold harmless agreement shall apply to all liability regardless of whether or not any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DEVELOPER in the event of loss, claim, damage, or expense.

8.5 Waiver. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY and DEVELOPER.

9. Non-Discrimination. DEVELOPER covenants that there shall be no discrimination against or segregation of any person, group, or employee on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any action or activity pursuant to this Agreement.

- 10. **Modification.** This Agreement may be modified only by subsequent mutual written agreement executed by CITY and DEVELOPER.
- 11. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California.
- 12. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
- 13. **Partnership Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of the parties, and that by executing this Agreement, the parties are formally bound to the provisions of this Agreement.
- 14. **Preservation of Agreement.** Should any paragraph, clause or provision of this Agreement be found invalid or unenforceable, such decision shall affect only the paragraph, clause, or provision construed and interpreted, and all remaining provisions shall remain valid and enforceable.

DATE: 2-13-92

"CITY"
CITY OF GARDEN GROVE, a municipal corporation

By: *Walt Donovan*
Mayor

ATTEST:

Dorothy Morris
City Clerk
Date: Feb 14, 1992

"DEVELOPER"
DAI R. LEE Date: 1/24/92
Dai R. Lee
Signature (notarized)

By: _____
Its: _____

APPROVED AS TO FORM:

[Signature]
City Attorney
Date: 2/12/92

6799T/2168A

(General)

STATE OF CALIFORNIA }
COUNTY OF Los Angeles } SS.

LTC

On January 24, 1992 before me, the undersigned, a Notary Public in and for said State,
personally appeared ****Dai R. Lee***

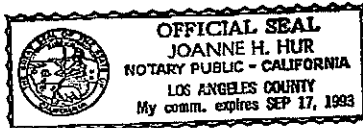
_____ personally known to me (or proved to me on the basis of satisfactory evidence)
to be the person whose name is subscribed
to the within instrument and acknowledged that he
executed the same.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

Joanne H. Hur

Name (Typed or Printed)



(This area for official notarial seal)

LTC - 14

EXHIBIT A

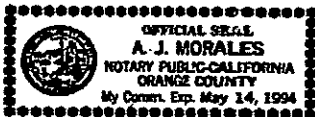
THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THE EAST 132 FEET OF THE WEST 594 FEET OF THE SOUTH 660 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE RANCHO LOS ALAMITOS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 10, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE NORTH 330.00 FEET.

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS

On this 13th day of FEBRUARY in the year 1992 before me personally appeared WALTER DONOVAN and CAROLYN MORRIS known to me to be the MAYOR and CITY CLERK of the City of Garden Grove, and known to me to be the persons who executed the within instrument on the behalf of said public corporation, and acknowledged to me that such public corporation executed the same.



Witness my hand and official seal.

Orange Coast Title

Order: 1353340

Comment:

Monday, July 09, 2012 11:30 AM

<u>State</u>	<u>County</u>	<u>Type</u>	<u>Document Information</u>	<u>Print Description</u>
CA	Orange	Document-Year.Do	1992.115882	Complete 10 Page(s)

92-170683

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

1:30
P.M. MAR 20 1992

Lee R. Lee

Title	
Doc. No.	92-170683
Page	1 of 1
Other	
Fee	
Book	
Page	
REC'D	
DATE	
BY	
OFFICE	

RECORDING REQUESTED
BY AND MAIL TO:

CITY OF GARDEN GROVE
11391 ACACIA PARKWAY
P. O. BOX 3070
GARDEN GROVE, CA 92642

This is to certify that this document covers City Business within the meaning
of Section 6103 of the Government Code. Recordation fee paid under protest.



CITY OF GARDEN GROVE, CALIFORNIA
11391 ACACIA PARKWAY, P.O. BOX 3070, GARDEN GROVE, CALIFORNIA 92642
DEVELOPMENT AGREEMENT
(DA) R. LEE)

THIS AGREEMENT is made this 22nd day of October, 1991, by the
CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and DA) R. LEE, an
individual ("DEVELOPER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Ordinance No. 2154, adopted July 2, 1991.
2. CITY desires to enter into this DEVELOPMENT AGREEMENT for the construction of a 12,897 square foot, 2 story office building located at 9841 Garden Grove Boulevard.
3. DEVELOPER is qualified by virtue of experience, training, education, and expertise to accomplish the requirements listed herein to the satisfaction of CITY.
4. DEVELOPER owns the property located at 9841 Garden Grove Boulevard location for the proposed Site Plan No. SP-110-91.
5. The PROJECT is a development requiring certain discretionary approvals by CITY before it may be constructed.
6. Government Code Section 65864 et seq. provides the authority for CITY to enter into binding development agreements with a developer having a legal and equitable interest in real property.
7. CITY has adopted rules and regulations establishing procedures and requirements for implementing and approving development agreements.
8. Garden Grove Planning Commission approved this project via Resolution No. 4183 approving Site Plan No. SP-110-91 and Conditional Use Permit No. CUP-120-91.
9. CITY granted approval in contemplation of this Agreement.
10. On October 1, 1991, after a public hearing, the City Council adopted Ordinance # 2262 implementing this Agreement.

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AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Duration. This Agreement shall expire four (4) years from its effective date, unless any duty specified remains executory, in which case this Agreement may be renewed for successive one year terms at discretion of CITY, pursuant to law, until all duties are performed. This renewal shall not be unreasonably withheld.
2. Permitted Uses. The following uses are permitted at the PROJECT: general office uses, car sales, and uses normally associated in the OP, C-1, C-2 zones provided the use complies with parking required for the number of spaces provided.
3. Density/Intensity. The density or intensity of this project is as follows: to allow the construction of a 12,897 square foot 2 story office building with required landscaping and required parking of 52 parking spaces.
4. Maximum Height and Building Size. The maximum height and building size are as follows: Height of building is thirty five (35') feet, maximum floor area is 12,897 square feet.
5. Reservation or Dedication. The reservation of easements or dedication of property to City is as follows: No reservations or dedications are required at this time for the public right-of-way at the time of this Agreement.
6. Improvements. The improvements described in Resolution shall be constructed as follows: Modify existing landscape and sign along the street frontage, remove existing signs, remove existing building and construct new vehicle sales facilities.
7. Scope of Project. The Project scope shall consist of those uses indicated in paragraph number (2), intensity stated in paragraph number (3) and height limitation stated in paragraph number (4).
8. Resolution/Material Terms. All Conditions of Approval found in Resolution No. 418-7 attached hereto and incorporated herein as exhibit "1", are material terms of this Agreement. Breach of any Condition of Approval shall be deemed to be a breach of this Development Agreement.
9. Reimbursement. DEVELOPER shall pay CITY as follows:
 - 9.1 Amount. One (1%) percent of the building permit valuation.
 - 9.2 Not to Exceed. Payment under this Agreement shall not exceed \$7,450.00.

9.3 Payment Method. Payment shall be made prior to the issuance of building permits or within one year of site plan approval date, August 8, 1991.

10. Records of Expenses. DEVELOPER shall keep records in which complete and correct entries will be made of construction costs. These records will be made available at reasonable times to CITY.
11. City Agreement. CITY hereby agrees that DEVELOPER will be entitled to develop the project in accordance with the approvals and other matters mentioned herein.
12. Reimbursement. DEVELOPER agrees that the sum of one (1%) percent of the cost of the construction will reimburse CITY for the cost of certain city services required by the proposed development that are not otherwise being reimbursed to CITY.
13. Payment Due Date. The reimbursement amount shall be due and payable prior to the issuance of the building permit for the project or one year from the date of approval of this Agreement by the City Council, whichever shall occur first.
14. Termination Provisions. This Agreement may be terminated upon the happening of any of the following events:
 - A. Failure of Developer to perform any of the provisions of this Agreement, or
 - B. Mutual agreement of the parties.
15. Periodic Review. CITY shall review DEVELOPER'S performance every twelve (12) months at the anniversary of the adoption of this Agreement. DEVELOPER shall demonstrate good faith compliance with the terms of this Agreement. If as a result of the review CITY finds and determines, based upon substantial evidence, that DEVELOPER has not complied in good faith with terms or conditions of this Agreement, CITY may terminate the Agreement. This review shall be conducted by the Director of Development Services.
16. City Discretion. CITY retains its right and discretion, under all applicable Codes, to approve or disapprove any item related to this PROJECT which it has not specifically agreed to via this Agreement. DEVELOPER acknowledges that it shall comply with all CITY requirements for applications and permits of any nature and that this Agreement does not relieve DEVELOPER of the necessity of filing appropriate applications and permits.
17. Improvement Schedule. The following improvements shall be constructed by the stated dates: All improvements stated in Planning Commission Resolution No. 4183 shall be completed prior to the issuance of first occupancy of the new two story office building.

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18. Developer Breach. Failure of DEVELOPER to construct improvements as specified, or to pay amounts specified in a timely fashion, shall result in the withholding of building permits, any other permit or certificate of occupancy until the breach is remedied to satisfaction of CITY.
19. Insurance Requirements.
- 19.1 Commencement of Work. DEVELOPER shall not commence work under this Agreement until it has obtained all insurance required and this insurance has been approved by CITY; nor shall DEVELOPER allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify CITY of any material change, cancellation or termination at least thirty (30) days in advance.
- 19.2 Workers' Compensation Insurance. During the duration of this Agreement, DEVELOPER shall maintain Workers' Compensation Insurance if applicable. DEVELOPER shall also require all subcontractors to provide Workers' Compensation Insurance.
- 19.3 Insurance Amounts. DEVELOPER shall maintain the following insurance for the duration of this Agreement. Comprehensive general liability, automobile liability, professional liability, or other types of liability coverage, in an amount of \$1,000,000.00 per occurrence for bodily injury or property damage.
- 19.4 Endorsements For The Policies Designating CITY As Additional Insured. DEVELOPER shall provide to CITY proof showing the required insurance. Any certificate of insurance must be in a form, content, and with companies approved by CITY.
20. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable to DEVELOPER in the event of any default or breach by CITY, or for any amount which may become due to DEVELOPER, or any obligation under the terms of this Agreement.
21. Non-Discrimination. DEVELOPER covenants there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any action or activity pursuant to this Agreement.
22. General Provisions. It is mutually agreed as follows:
- 22.1 Independent Contractor. It is agreed that in the performance of the services to be performed by DEVELOPER, DEVELOPER shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.

- 22.2 Compliance with Law. DEVELOPER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
- 22.3 Conflict of Interest and Reporting. DEVELOPER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
- 22.4 Notices. All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.
- A. Address of DEVELOPER is as follows:
DAI R. LEE
9841 Garden Grove Blvd.
Garden Grove, Ca. 92644
- B. Address of CITY is as follows:
City of Garden Grove
11391 Acacia Parkway
Garden Grove, California 92640
- 22.5 DEVELOPER'S Proposal. The Project shall include DEVELOPER'S proposal, as modified by Planning Commission and City Council, which shall be incorporated herein by this reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
- 22.6 Licenses, Permits, Fees and Assessments. At its sole expense, DEVELOPER shall obtain all licenses, permits, and approvals as may be required by this Agreement, or by the nature of the PROJECT.
- 22.7 Familiarity with PROJECT. By executing this Agreement, DEVELOPER warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; (3) it has considered how the work should be performed; and (4) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should DEVELOPER discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at DEVELOPER'S risk, until written instructions are received from CITY.
- 22.8 Time of Essence. Time is of the essence in the performance of this Agreement.
- 22.9 Limitations Upon Subcontracting and Assignment. The experience, knowledge, capability, and reputation of DEVELOPER, its principals and employees were a substantial inducement for CITY to enter into

this Agreement. DEVELOPER shall not contract with any other entity to perform the services required without the written approval of CITY. Neither this Agreement nor any interest may be assigned voluntarily or by operation of law, without the prior written approval of CITY. If DEVELOPER is permitted to subcontract any part of this Agreement, DEVELOPER shall be fully responsible to CITY for the acts and omissions of its subcontractor as it is for the acts and omissions of persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work, including subcontractors, will be considered employees of DEVELOPER. CITY will deal directly with and will make all payments to DEVELOPER. CITY agrees to not unreasonably withhold consent to assignment.

- 22.10 Successor's Interest. The provisions of this Agreement shall be binding upon and inure to successors in interest of the parties and shall be specifically binding upon any future lessees or other owners of an interest in PROJECT.
- 22.11 Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
- 22.12 Indemnification. DEVELOPER agrees to protect, defend, and hold harmless CITY and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by DEVELOPER, DEVELOPER'S agents, officers or employees, subcontractors, or independent contractors hired by DEVELOPER. The only exception to DEVELOPER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY, or any of their elective or appointive boards, officers, agents or employees.
- This hold-harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DEVELOPER.
- 22.13 Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and DEVELOPER.
- 22.14 Waiver. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY and DEVELOPER.

22.15 California Law. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this Agreement shall be initiated in the central or main Branch of the Orange County Superior Court.

22.16 Interpretation. This Agreement shall be interpreted as though prepared by both parties.

23. Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

24. Fees. This Agreement shall bind the DEVELOPER to pay all applicable development fees as per City Council Resolution No. 7363-91 up to maximum fees listed (i.e., building permits, street trees, sanitation fees, water fees, etc.).

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IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown below.

"CITY"
CITY OF GARDEN GROVE

Date: 10-7-91

By [Signature]

ATTEST:
[Signature]
City Clerk
Date: 10-8-91

"DEVELOPER"
DAI B. LEE

DATE: JUL. 31, 1991

By [Signature]
Its

APPROVED AS TO FORM:
[Signature]
Garden Grove City Attorney
Date: 10/7/91

If DEVELOPER is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to City.

6652T/2123A
07/29/91



RECORDED AND INDEXED
ON 31 1991
[Signature]

(Over)

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.



On JANUARY 24, 1992 before me, the undersigned, a Notary Public in and for said State,
personally appeared Sheepal B. Looana

_____ personally known to me (or proved to me on the basis of satisfactory evidence)
to be the person whose name is subscribed
to the within instrument and acknowledged that he
executed the same.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Joanne H. Mir
Name (Typed or Printed)



LTC-14

STATE OF CALIFORNIA) SS
COUNTY OF ORANGE

On this 7th day of OCTOBER in the year 1991 before me personally appeared WALT E. BRADY and CAROLYN MORRIS known to me to be the MEMBER and CITY CLERK of the City of Garden Grove, and known to me to be the persons who executed the within instrument on the behalf of said public corporation, and acknowledged to me that such public corporation executed the same.



Witness my hand and official seal.

A handwritten signature in dark ink, appearing to be "A. J. McQuade", written over a horizontal line.

Orange Coast Title

Order: 1353340

Comment:

Monday, July 09, 2012 11:30 AM

<i>State</i>	<i>County</i>	<i>Type</i>	<i>Document Information</i>	<i>Print Description</i>
CA	Orange	Document-Year.Do	1992.170683	Complete 10 Page(s)