

RECONSIDERATION AND CLARIFICATION OF COOPERATION, PURCHASE AND
SALE AGREEMENT

March 13, 2013

Page 2

ROPS III, as approved by both the Oversight Board and DOF, includes a line item of \$2,550,000 for the acquisition of the Properties pursuant to the DDA. These funds were received from the County Auditor-Controller on January 2, 2013.

On January 17, 2013, the Successor Agency received a letter from the DOF (Attachment 1) stating that the Purchase Agreement is not permitted pursuant to Health & Safety Code Section 34163(e), which purports to prohibit an Agency from acquiring real property by any means for any purpose. The January 17 letter further states that the original DDA for the Site B2 Hotel Project does not obligate the Agency to acquire the properties. In response to the January 17 letter, Successor Agency staff requested Tom Clark, General Counsel to the former Garden Grove Agency for Community Development and Special Counsel to the Successor Agency, to evaluate and analyze the merits of DOF's disapproval of the Purchase Agreement and specifically the reasoning set forth for the disapproval in the January 17 letter.

The attached memorandum (Attachment 2) evaluates the various statutes enacted by AB1x 26 and AB 1484 (specifically, Parts 1.8 and 1.85 of Division 24 of the Health & Safety Code, collectively referred to herein as the Dissolution Act), including Health & Safety Code Section 34163(e), which govern the activities of the former Agency (from June 28, 2011 through February 1, 2012) and the Successor Agency (commencing with its creation on February 1, 2012). The memorandum also evaluates the express language of the DDA relating to the Successor Agency's obligation to acquire the Properties and various cases interpreting the concept of "good faith" contractual obligations. The memorandum concludes that (1) the Dissolution Act does not prohibit the Successor Agency from acquiring the Properties and (2) the DDA is most reasonably interpreted to permit, and in this case to require, the Successor Agency to acquire the Properties.

The Agency was in negotiations with the owner of the Properties intermittently for several years until the property owner decided to sell last year. The property owner remained reluctant to sell, but after months of intense negotiations she finally agreed to sell the Properties. Due to the delay and uncertainty caused by the dissolution of redevelopment and timing issues resulting from the statutory ROPS review process, the seller threatened to back out of the escrow and cancel the transaction. To avoid delays that could jeopardize the Successor Agency's ability to eventually acquire the Properties, the City purchased the Properties. Because the DDA, specifically including the acquisition of properties as required by the DDA, was an approved line item on ROPS III, the City reasonably expected that the Successor Agency would promptly purchase the Properties from the City and reimburse the City for the purchase price during the ROPS III period using monies received from the Redevelopment Property Tax Trust Fund.

FINANCIAL IMPACT

None.

RECOMMENDATION

Staff recommends that the Oversight Board:

- Adopt the attached Resolution approving and reaffirming the Purchase Agreement; and
- Transmit the attached Resolution, Purchase Agreement, and Memorandum to the Department of Finance.



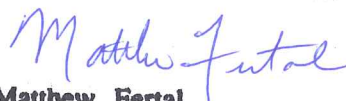
KINGSLEY OKEREKE
Finance Director



By: Jim DellaLunga
Senior Project Manager

Attachment 1: Department of Finance Letter
Attachment 2: Memorandum
Attachment 3: Site Map
Attachment 4: Oversight Board Resolution
Attachment 5: Purchase and Sale Agreement and Joint Escrow Instructions

Recommended for Approval



Matthew Fertal
Director



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

January 17, 2013

Mr. Jim DellaLonga, Senior Project Manager/Administrative Officer
Economic Development Department
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Dear Mr. DellaLonga:

Subject: Objection to Oversight Board Action

The City of Garden Grove Successor Agency (Agency) notified the California Department of Finance (Finance) of its December 12, 2012 oversight board (OB) resolution on December 13, 2012. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, the Agency's OB Resolution 13-12 related to the Purchase and Sale Agreement for certain property located at 12291 and 12311 Harbor Boulevard, and 12292 and 12312 Thackery Drive, is not permitted.

HSC section 34163 (e) prohibits an Agency from acquiring real property by any means for any purpose. According to Section 201.2 of the Disposition and Development Agreement (DDA) between the Agency and Palm Court Lodging (Developer), the Agency and the Developer acknowledged that the DDA did not obligate the Agency to acquire the properties. Further, no obligation for the acquisition of these properties was in place prior to June 28, 2011.

As authorized by HSC section 34179 (h), Finance is returning your OB action to the board for reconsideration.

Please direct inquiries to Nichelle Thomas, Supervisor, or Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Szalay".

STEVE SZALAY
Local Government Consultant

cc: Mr. Matthew J. Fertal, City Manager, City of Garden Grove
Mr. Frank Davies Property Tax Manager, County of Orange

STRADLING YOCCA CARLSON & RAUTH, P.C.

MEMORANDUM

TO: Matthew Fertal,
Successor Agency Director

FILE NUMBER: 200392.0010

FROM: Thomas P. Clark Jr.,
Successor Agency Counsel

DATE: March 7, 2013

SUBJECT: Action of the Oversight Board to the Successor Agency to the Garden Grove Agency for Community Development Approving, Ratifying, and Reapproving the Approval by the Successor Agency of a Purchase and Sale Agreement for the Purchase of Certain Property located at 12291 and 12311 Harbor Boulevard and 12292 and 12312 Thackery Drive, in furtherance of the terms of a Disposition and Development Agreement dated June 4, 2001 between the Garden Grove Agency for Community Development and Palm Court Lodging, LLC

Disposition and Development Agreement as Enforceable Obligation

By way of background, the Garden Grove Agency for Community Development (“Agency”)¹ entered into that certain Disposition and Development Agreement (“Original DDA”) dated June 4, 2001 with Palm Court Lodging, LLC (“Original Developer”). The Original DDA was assigned by the Original Developer to Kam Sang Company, Inc. (“Developer”) and certain provisions of the Original DDA were amended by that certain Assignment and Assumption Agreement dated April 27, 2004 (“Assignment Agreement”); the Original DDA and Assignment Agreement are referred to collectively herein as the “DDA”).

The DDA is included on the Recognized Obligation Payment Schedules (“ROPS”) prepared by the Successor Agency for July 1, 2012 through December 31, 2012 (“ROPS II”) and January 1, 2013 through June 30, 2013 (“ROPS III”). The Oversight Board to the Successor Agency (“Oversight Board”) and the State Department of Finance (“Finance”) both approved ROPS II and ROPS III, including in each case the DDA. Further, ROPS III, as approved by the Oversight Board and Finance, includes a line item for the acquisition of the Properties and related expenses and the

¹ The Agency was dissolved on February 1, 2012, pursuant to Part 1.85 of Division 24 of the Health & Safety Code. The Successor Agency was concurrently formed to fulfill enforceable obligations and wind down the affairs of the Agency.

Matthew Fertal, Director
Successor Agency to the Garden Grove Agency for COmmuntiy Development
*Memorandum re Successor Agency Enforceable Obligation; Purchase and Sale Agreement for
12291 and 12311 Harbor Boulevard; 12292 and 12312 Thackery Drive*
March 7, 2013
Page Two

Successor Agency received \$2,550,000 in Redevelopment Property Tax Trust Fund moneys for this expenditure.

Pursuant to the DDA, among other things, the Agency was required to consider, in good faith, the acquisition of certain parcels of real property comprising the "Site" as described in the DDA. In this regard, Section 201.2 of the Original DDA provides, in relevant part, as follows:

The Agency agrees to consider in good faith, the acquisition of the parcels comprising the Site, and, to the extent Agency decides to acquire the Site, to diligently pursue such acquisition in accordance with all applicable laws, including without limitation, and to the extent applicable, the California Eminent Domain Law (Code of Civil Procedure Section 1230.010 et seq.).

Based on clear case law discussed below, the Successor Agency and Developer interpret the foregoing language to impose an obligation on the Successor Agency to reasonably and in good faith pursue the acquisition of the Site, with the understanding that the DDA does not obligate the Successor Agency to use eminent domain authority to acquire the Site. To this end, the Successor Agency approved a Purchase and Sale Agreement on December 11, 2012 ("Purchase Agreement") pursuant to which the Successor Agency agreed to acquire certain properties located at 12291 and 12311 Harbor Boulevard and 12292 and 12312 Thackery Drive in the City of Garden Grove ("Properties"), which Properties constitute a portion of the Site.

Purchase Agreement as Enforceable Obligation

The Purchase Agreement was submitted to and approved by resolution of the Oversight Board and was included on ROPS III. Upon receiving notice of the Oversight Board's action approving the Purchase Agreement, Finance determined that the resolution of the Oversight Board approving the Purchase Agreement was not permitted. In its letter dated January 17, 2013, Finance stated the following rationale for disapproving the Purchase Agreement as an enforceable obligation on [ROPS III]:

HSC section 34163(e) prohibits an Agency from acquiring real property by any means for any purpose. According to Section 201.2 of the Disposition and Development Agreement (DDA) between the Agency

Matthew Fertal, Director
Successor Agency to the Garden Grove Agency for COmmuntiy Development
***Memorandum re Successor Agency Enforceable Obligation; Purchase and Sale Agreement for
12291 and 12311 Harbor Boulevard; 12292 and 12312 Thackery Drive***
March 7, 2013
Page Three

and Palm Court Lodging (Developer), the Agency and the Developer acknowledged that the DDA did not obligate the Agency to acquire the properties. Further, no obligation for the acquisition of these properties was in place prior to June 28, 2011.

As an initial matter, Finance's reference to Health & Safety Code² Section 34163(e) does not apply to the actions of the Successor Agency. In this regard, except for limited exceptions (which are not pertinent to this discussion), the Successor Agency is not governed by Part 1.8 of Division 24 of the Health & Safety Code. Specifically, Sections 34163 and 34167 expressly govern the activities of the Agency but not the Successor Agency. Rather, the Successor Agency's activities are generally governed by Part 1.85 of Division 24 of the Health & Safety Code ("Part 1.85"). As it relates to the Purchase Agreement and the DDA, Section 34177(c) expressly and broadly requires the Successor Agency to "perform obligations required pursuant to any enforceable obligation."

Further, Section 34163(e) does not impose a blanket prohibition against the acquisition of real property by either the Agency or the Successor Agency. Although Section 34163(e) purports to generally prohibit the Agency from acquiring real property "by any means for any purpose," this prohibition must be read together with the language of Section 34167(f), which provides that "nothing in [Part 1.8 of Division 24 of the Health & Safety Code] shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) *perform its obligations.*" (Emphasis added.) Thus, although the Agency was generally prohibited by Section 34163(e) from acquiring real property, Section 34167(f) required the Agency to do so if required by an enforceable obligation.

The broad language of Section 34177(c) requires the Successor Agency to acquire real property if required to do so by an enforceable obligation such as the DDA. This interpretation of the Successor Agency's authority under Part 1.85 and Section 34177(c) is supported by the language of Section 34177.3(a), which states that "successor agencies shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law ... or

² Statutory references are to the Health & Safety Code unless otherwise noted.

Matthew Fertal, Director
Successor Agency to the Garden Grove Agency for COmmuntiy Development
Memorandum re Successor Agency Enforceable Obligation; Purchase and Sale Agreement for 12291 and 12311 Harbor Boulevard; 12292 and 12312 Thackery Drive
March 7, 2013
Page Four

begin new redevelopment work, *except in compliance with an enforceable obligation that existed prior to June 28, 2011.*” (Emphasis added.) The DDA is an enforceable obligation that existed long before June 28, 2011. As discussed below, the DDA requires the Successor Agency to consider, *in good faith*, whether to acquire the Properties; the DDA further provides that once the Successor Agency decides to acquire the Properties, *the Successor Agency is required to proceed with diligence to complete the acquisition of the Properties.*

Good Faith Requirement to Consider Acquiring (and Actually Acquire) the Properties

In its January 17, 2013 letter to Mr. Jim DellaLonga, quoted above, Finance also asserted that, in Section 201.2 of the DDA, the Agency and Developer “acknowledged that the DDA did not obligate the Agency to acquire the properties.” This interpretation of the DDA is far too simplistic and ignores the plain language of Section 201.2 and the purposes of the DDA as a whole.

As quoted above, Section 201.2 of the DDA requires the Successor Agency to “consider in good faith, the acquisition of the parcels comprising the Site.” Thus, while the Successor Agency would not be in breach if it failed to acquire the Site if a reason for failing to acquire the Site was because of facts such as an unwilling seller or unacceptable terms, the Successor Agency is required to *consider acquiring the Site, in good faith* (i.e. the Successor Agency must attempt to acquire the Site, if the seller is willing and the terms are reasonable). This is a tangible, enforceable obligation of the Successor Agency and the language selected to describe the obligation is rational when the context of the DDA and the legal framework within which the DDA was drafted are considered.

The DDA contemplates that the Successor Agency and Developer will work together to achieve the ultimate goal of developing the Site with two Hotels (defined in the DDA). The DDA describes the various obligations of both the Successor Agency and the Developer to accomplish this goal. One of the Successor Agency’s obligations is to assist the Developer with the acquisition of the Site. The Agency and Developer knew that actually acquiring the various parcels of real property that comprise the Site from the various persons and entities that owned those properties *through negotiations alone* could have become impracticable or even impossible. Therefore, the DDA, in Section 201.2, contemplates that the Successor Agency might ultimately decide to acquire the Site

(or portions thereof) through the exercise of eminent domain authority.

When drafting the DDA, the parties were aware that the Agency could not legally agree, in advance, to exercise eminent domain authority to acquire the Site without prejudicing the future condemnation action. To this end, the language in Section 201.2 of the DDA was carefully crafted to ensure that the Agency would not be deemed to have pre-determined the outcome of an eminent domain action without first satisfying the legal requirements to (1) hold a public hearing to consider whether the legal prerequisites for a condemnation action were met³ and (2) adopt a resolution of necessity (see *Redevelopment Agency of the City of Huntington Park v. Norm's Slauson* (1985) 173 Cal. App. 3d 1121). The DDA was drafted with this legal framework in mind—the Agency retained its discretion to determine whether acquisition of the Site through a negotiated transaction would be reasonably feasible and, if not, the Agency retained the discretion to determine whether an eminent domain action was appropriate, based on the criteria described in Code of Civil Procedure Section 1240.030, which is quoted in footnote 3.

The analysis set forth above is supported by the fact that Section 201.2 of the DDA expressly provides that, if the Successor Agency actually decides to acquire the Site, the Successor Agency is then required to “diligently pursue such acquisition in accordance with all applicable laws, including without limitation, and to the extent applicable, the California Eminent Domain Law.” The Successor Agency, in fact, determined that it had an opportunity to acquire the Properties for a reasonable price, and that acquiring the Properties would help to fulfill the purposes of the DDA. Having made that determination, the Successor Agency negotiated the terms of the Purchase Agreement and is now required by the DDA to move forward with the acquisition of the Properties with due diligence. The Successor Agency is ready and willing to fulfill this obligation under the DDA, and is only being prevented from doing so by Finance’s rejection of the Purchase Agreement.

³ Code of Civil Procedure Section 1240.030 permits the taking of property pursuant to eminent domain authority only if the following criteria are met: (a) The public interest and necessity require the project; (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (c) The property sought to be acquired is necessary for the project.

Covenant of Good Faith and Fair Dealing

Although the DDA does not expressly require the Successor Agency to actually acquire the Site, the DDA does require the Successor Agency to consider acquiring the Site in “good faith.” This language means what it says: The Successor Agency is contractually required to consider, in good faith, whether to acquire the Site. Every contract in California contains an implied covenant of good faith and fair dealing⁴; therefore, even if the DDA merely stated that the Agency was required to “consider acquiring the Site,” the DDA would be interpreted to require the Agency to use good faith when undertaking that obligation.

The obligation to act in good faith requires each contracting party to “refrain from doing anything to injure the right of the other to receive the agreement's benefits.”⁵ The concept of good faith is often discussed in cases relating to the obligations of insurance companies to indemnify, protect and defend insured parties. Case law regarding the implied covenant of good faith and fair dealing describes an insurer's good faith obligation as follows: “To fulfill its implied obligation [of good faith and fair dealing], an insurer must give at least as much consideration to the interests of the insured as it gives to its own interests.”⁶ Further, “the law does not merely prohibit a contracting party from actively interfering with the other's performance of a condition; it may also impose a duty to *affirmatively cooperate in that performance*. If one party's cooperation is “necessary for successful performance” by the other, the contract will generally be held to include an implied obligation to “give that cooperation,” as well as to refrain from doing “anything that prevents realization of the fruits of performance”⁷ (Emphasis added.) Stated another way, the covenant of good faith and fair dealing “not only imposes upon each contracting party the duty to refrain from doing anything which would render performance of the contract impossible by any act of his own, but also the duty to do

⁴ *Murphy v. Allstate Ins. Co.*(1976) 17 Cal. 3d 937, 940-941.

⁵ *Wilson v. 21st Century Ins. Co.*(2007) 42 Cal. 4th 713, 720.

⁶ *Id.*

⁷ *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal. App. 4th 455, 490.

everything that the contract presupposes that he will do to accomplish its purpose.”⁸

As applied to the Successor Agency’s obligation under the DDA to consider whether to acquire the Properties, the covenant of good faith and fair dealing requires the Successor Agency to consider the goals and obligations of the Developer under the DDA and to acquire the Properties if possible (i.e. based on negotiations with a willing seller for a reasonable price and terms), to assist the Developer in the successful performance of its obligations under the DDA: The Developer needs the Properties to construct the second Hotel as required by the DDA; therefore, the Successor Agency is required to take reasonable steps to facilitate this goal, expressly including the affirmative step of acquiring the Properties, if possible. Because the Successor Agency is, in fact, able to acquire the Properties through a negotiated purchase, the Successor Agency is legally required by the covenant of good faith and fair dealing (and the express terms of the DDA) to do so.

Past Performance under the DDA

As noted above, the DDA contemplated that the Agency would acquire certain real property and convey such property to the Developer for the construction, development and operation by the Developer of two Hotels at the Site. In fact, the Agency acquired various properties designated in the DDA and conveyed such properties to the Developer. The Developer then constructed the first Hotel at that portion of the Site; the Sheraton Hotel has been in operation at the Site since July 2008. The Properties are needed for the development of the second Hotel. The past performance of the Agency and Developer under the DDA clearly shows that the parties actually intend for the Successor Agency to acquire the Properties and convey the Properties and other real property to the Developer for development and operation of the second Hotel thereon.

Affirmative Agreement to Acquire the Properties

The Assignment Agreement provides, among other things, that the Developer would make a loan to the Agency to enable the Agency to repay certain Certificates of Participation that the Agency

⁸ *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal. App. 4th 455, 491 (quoting *Pasadena Live v. City of Pasadena* (2004) 114 Cal.App.4th 1089, 1093).

previously owed to U.S. Bank.⁹ A condition to the Developer's obligation to advance this money to the Agency was the Agency's acknowledgement and agreement to acquire certain portions of the Site, including the Properties, as well as three additional properties that were not previously included within the "Site" as defined by the Original DDA.¹⁰ Section 6(c) contemplates that the Agency would send a letter confirming its agreement to include such properties within the Project. Although the Successor Agency's files do not include this letter, the Developer actually made the required advance to the Agency and the Agency actually repaid such advance as required by the Assignment Agreement. Thus, the terms of the Assignment Agreement and the past performance of the parties further indicate that the Successor Agency is actually required to acquire the Properties.

Conclusion

Finance's rejection of the Purchase Agreement is not supported by the language of the DDA or the law. The DDA imposes an enforceable obligation on the Successor Agency to acquire the Properties, and the Successor Agency is ready, willing and able to perform this obligation. The law requires the Successor Agency to perform all enforceable obligations, including the obligation under the DDA to acquire the Properties. Thus, the Purchase Agreement should be approved by the Successor Agency, the Oversight Board, and Finance because it is required to implement the Successor Agency's enforceable obligation to acquire the Properties under the DDA.

⁹ Assignment Agreement Section 6(b).

¹⁰ Assignment Agreement Section 6(c).

**HARBOR/THACKERY
ACQUISITIONS**
CITY OF GARDEN GROVE, CA

Points of Interest

Base Layers

Parcels

City Limits

Garden Grove

Other Cities

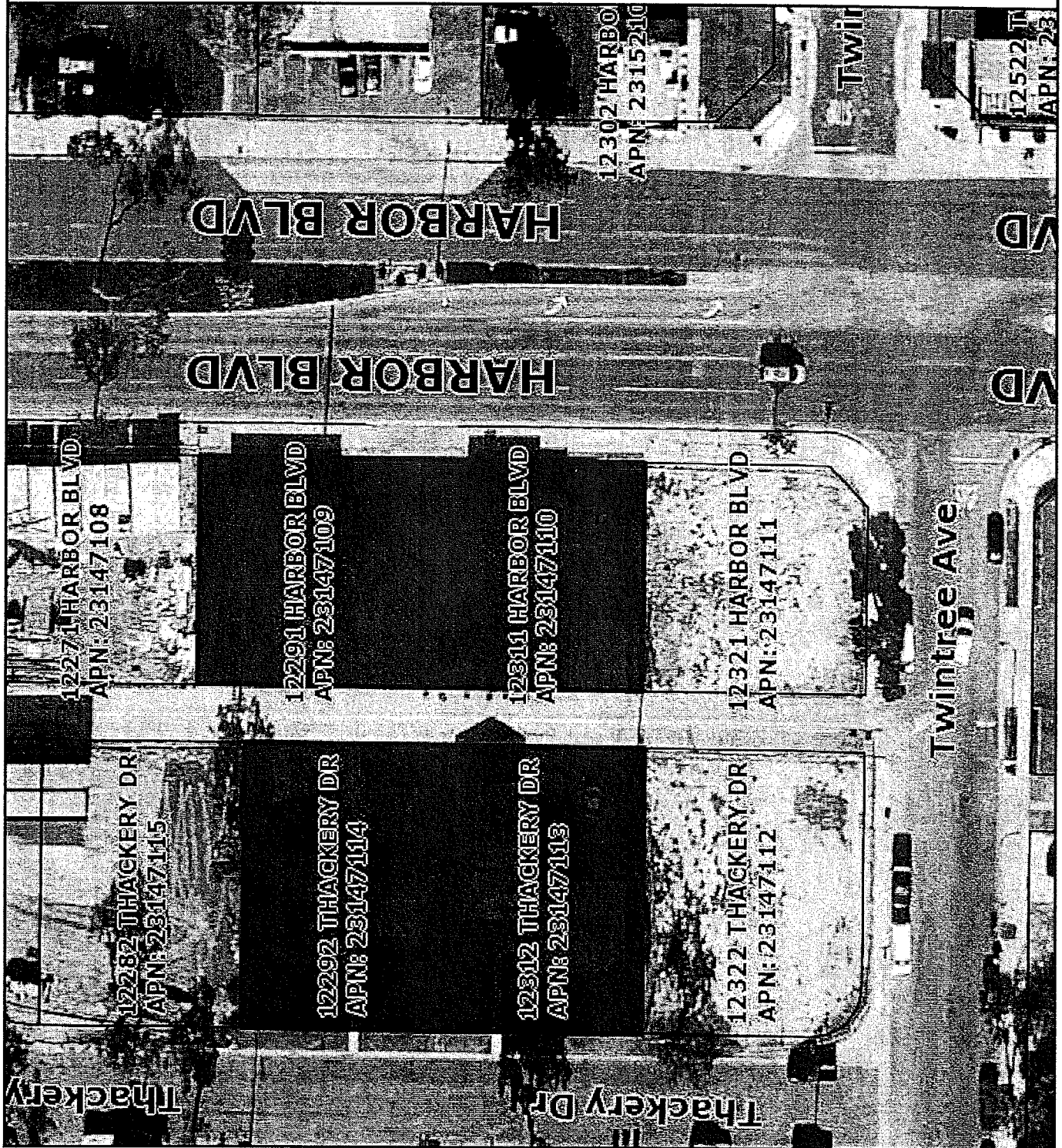
2006 Aerial Photo

Streets

Street Names



GARDEN GROVE



OVERSIGHT BOARD

RESOLUTION NO.

A RESOLUTION OF THE OVERSIGHT BOARD TO THE CITY OF THE GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT APPROVING, RATIFYING, AND RE-AFFIRMING THE APPROVAL BY THE SUCCESSOR AGENCY OF A PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR THE PURCHASE OF CERTAIN PROPERTY LOCATED AT 12291 AND 12311 HARBOR BOULEVARD, GARDEN GROVE, AND 12292 AND 12312 THACKERY DRIVE, GARDEN GROVE; AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, The City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is acting as Successor Agency to the Garden Grove Agency for Community Development ("Former Agency") pursuant to ABx1 26, which added Parts 1.8 and 1.85 to Division 24 of the Health & Safety Code ("Dissolution Act");

WHEREAS, the Former Agency entered into that certain Disposition and Development Agreement dated as of June 4, 2001 ("DDA") with Palm Court Lodging, LLC ("Previous Developer"), which was subsequently assigned to Kam Sang Company ("Developer") on April 27, 2004, relating to a proposed redevelopment project in the Project Area on a site ("Proposed Project Site") that includes certain property located at 12291 and 12311 Harbor Boulevard, Garden Grove, and 12292 and 12312 Thackery Drive, Garden Grove (collectively, "Property");

WHEREAS, the project proposed for the Proposed Project Site includes development of a hotel with 225 rooms ("Proposed Project");

WHEREAS, the Successor Agency is responsible for administering the enforceable obligations of the Former Agency;

WHEREAS, the DDA has been included as an Enforceable Obligation under each of the Recognized Obligation Payment Schedules filed by the Successor Agency and approved by the Oversight Board of the Successor Agency ("Oversight Board");

WHEREAS, acquisition of the Property by the Successor Agency is essential in order for the Successor Agency to discharge its responsibilities with respect to the implementation of the DDA;

WHEREAS, due to delays caused by ABx1-26 and AB-1484, and the seller threatening to withdraw from escrow, the City of Garden Grove, a municipal corporation (in such capacity, "City"), purchased the property to prevent the termination of the transaction and further support the Successor Agency's obligations under the DDA;

WHEREAS, the City, a municipal corporation, is the current fee owner of the Property;

WHEREAS, the City has agreed to sell the Property to the Successor Agency for the sum of Two Million Five Hundred Fifty-Five Thousand Dollars (\$2,555,000), which sum (the "Purchase Price") represents an amount equal to the City's cost to acquire the Property from the previous owner of the Property, all as more fully set forth in an agreement between the Successor Agency and the City entitled "Purchase and Sale Agreement and Joint Escrow Instructions" substantially in the form submitted herewith ("Purchase Agreement");

WHEREAS, Health & Safety Code Section 34173(b), added by the Dissolution Act, provides that, "[e]xcept for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to [the Dissolution Act], *all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.*" (emphasis added);

WHEREAS, Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E), added by ABx1 26, define "enforceable obligation" to include "[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy";

WHEREAS, Health & Safety Code Section 34177(c), added by ABx1 26, requires the Successor Agency to "[p]erform obligations required pursuant to any enforceable obligation";

WHEREAS, the DDA was duly approved and fully executed prior to the effective date of the Dissolution Act;

WHEREAS, the DDA is a legally binding and enforceable agreement that does not violate the debt limit or public policy;

WHEREAS, pursuant to Health & Safety Code Section 34179(i), the Oversight Board has a fiduciary responsibility to holders of enforceable obligations, such as the Developer;

WHEREAS, the implementation of the DDA is in the best interests of the Successor Agency and the Oversight Board by promoting compliance with the terms of an enforceable obligation and by facilitating the consummation of the project described in the DDA;

WHEREAS, on December 12, 2012, the Oversight Board adopted Resolution No. 13-12 Approving and Ratifying the Purchase Agreement and transmitted said Resolution to the Department of Finance (DOF);

WHEREAS, in a letter dated January 17, 2013, the Department of Finance (DOF) objected to the Oversight Board Action approving the Purchase Agreement and returned it to the Oversight Board for reconsideration; and

WHEREAS, the DOF interpreted certain language in the DDA to mean that the Successor Agency is not obligated to acquire certain properties for the project; however, such language is meant to express that the Successor Agency is not obligated to acquire parcels for the project through eminent domain, but must make a good faith effort to acquire the parcel on a voluntary seller basis.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:

Section 1. The foregoing recitals are true and correct and constitute a substantive part of this Resolution.

Section 2. The Oversight Board hereby re-affirms that the DDA is an "enforceable obligation" within the meaning of Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E). The Oversight Board hereby further approves, ratifies and re-affirms the Purchase Agreement. The funds needed to execute the Purchase Agreement were included on ROPS III, approved by the DOF, and disbursed to the Successor Agency on January 2, 2013, by the County Auditor Controller.

Section 3. This Resolution shall be effective immediately upon adoption.

Section 4. The Secretary on behalf of the Oversight Board shall certify to the adoption of this Resolution.

**PURCHASE AND SALE AGREEMENT
AND
JOINT ESCROW INSTRUCTIONS**

SELLER: City of Garden Grove, a California municipal corporation

BUYER: City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development, as designated pursuant to Parts 1.8 and 1.85 of Division 24 of the Health & Safety Code

DATED: December 11, 2012

BASIC TERMS

Effective Date: The effective date shall be deemed to be December 11, 2012

Property: Real property generally known as:
12291 and 12311 Harbor Blvd. and
12292 and 12312 Thackery Dr.
Garden Grove, California 92840
APN: 231-471-10, 09, 13, and 14

Seller: City of Garden Grove, a municipal corporation

Seller's Address: 11222 Acacia Parkway
Garden Grove, California 92840
Attention: Matthew Fertal, Chief Executive Officer
Tel. (714) 741-5100; Fax No.: (714) 741-5044

Buyer: City of Garden Grove as Successor Agency to the Garden
Grove Agency for Community Development, as designated
pursuant to Parts 1.8 and 1.85 to Division 24 of the Health &
Safety Code ("Dissolution Act")

Buyer's Address: 11222 Acacia Parkway
Garden Grove, California 92840
Attention: Matthew Fertal, Chief Executive Officer
Tel. (714) 741-5100; Fax No.: (714) 741-5044

Buyer's Attorney: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr., Esq.

Purchase Price: \$2,555,000.00

Outside Closing Date (or Closing): Sixty (60) calendar days from the Effective Date (unless
extended by Seller)

Closing Date: The date the Property is conveyed by Seller to Buyer or
Buyer's Nominee

Title Company*:

Lawyers Title
1920 Main Street, Suite 500
Irvine, California 92614
Contact: Doug Thomson
Email: dougt@douglasthompson.com
Telephone No. (800) 409-9761 office
Telephone No. (714) 726-5321 cell

Escrow Holder*:

Talbrook Escrow II
451 W. Lambert, Suite 213
Brea, California 92821
Contact: Gloria Berkey
Email: Gloria@talbrookescrow.com
Telephone No. (714) 529-9200
Fax No. (714) 529-9219

*or such other provider as may be designated by City

**PURCHASE AND SALE AGREEMENT
AND
JOINT ESCROW INSTRUCTIONS**

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made and entered into this 11th day of December, 2012 ("Effective Date"), by and between the **CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT** ("Successor Agency" or "Buyer"), and the **CITY OF GARDEN GROVE**, a California municipal corporation ("Seller" or "City") for acquisition by Buyer of all of Seller's interests, tangible and intangible, in that certain Property defined and described below.

RECITALS

A. Seller is the fee owner of certain real property located in the City of Garden Grove, California, commonly known as 12291 and 12311 Harbor Blvd. and 12292 and 12312 Thackery Dr., Garden Gove, CA 92840 and legally described on Exhibit "A" attached hereto and made a part hereof ("Property" as more fully defined in Section 1 below). The Property is improved with four single family residences, three of which are occupied by residential tenants pursuant to rental agreements ("Tenant Leases") and one of which was occupied by a business conducted by Martha Reis, as Trustee of the Martha Reis Trust U/D/T dated February 10, 2004 (the "Prior Owner"). Seller previously purchased the Property from the Prior Owner.

B. Buyer desires to acquire the Property from Seller and Seller desires to sell the Property to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Purchase and Sale. Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. Seller shall convey to Buyer fee simple, marketable title with the condition of title for the Property meeting the requirements of Section 3 herein for which Seller is responsible. The term "Property" is defined inclusively and collectively for and under this Agreement as the following:

- (a) The fee interest in the Property;
- (b) All improvements, if any, to the Property;
- (c) All rights, privileges, easements, licenses and interests, both tangible and intangible, appurtenant to the Property. "Property" shall be deemed to include, without limitation, all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) derived from the Property that are owned by Seller;
- (d) All moveable and immovable personal property, equipment, supplies, furniture, and fixtures owned by Seller and located at the Property, if any, as set forth in Section 2(d) below, as of the Closing Date; and

(e) All licenses, permits, authorizations and approvals issued by governmental authorities with respect to the Property and the improvements thereon.

2. Payment of Purchase Price; Settlement, Release and Waiver: FF&E; Delivery of Possession of Property.

(a) **All Inclusive Purchase Price.** The Purchase Price for the Property is the sum of Two Million Five Hundred Fifty-Five Thousand Dollars (\$2,555,000.00), payable by Buyer to Seller. The purchase price to be paid by Buyer pursuant to this section is hereinafter referred to as the "Purchase Price."

(b) **Deposit of Purchase Price in Escrow.** As consideration for the sale of the Property from Seller to Buyer, Buyer shall, one business day prior to Closing, deposit with the escrow officer ("Escrow Holder") immediately available funds in the amount of the Purchase Price, together with funds necessary to cover all of the Buyer's Charges described in Section 11(b) and any Prorations described in Section 11(c), below.

(c) **Full and Complete Settlement.** The Purchase Price is all-inclusive and shall remain total compensation paid by Buyer to Seller for all of Seller's interests in the Property, inclusive of any and all rights or obligations which exist or may arise out of Buyer's acquisition of the Property, including without limitation, Seller's fee interest in the land, all improvements pertaining to the realty, all other improvements, furnishings, fixtures, and equipment located thereon, severance damages, if any, alleged pre-condemnation damages, if any, alleged loss of business goodwill, if any, eligible costs directly attributed to the development of the Property, relocation benefits and assistance, if any, costs, interest, attorney's fees, and any claim whatsoever of, by, or through Seller that may arise out of or relate in any respect to Buyer's acquisition of the Property from Seller. In this regard Seller acknowledges that based on the advice and counsel, as and if Seller elects to obtain the advice of counsel, Seller is and will be fully satisfied that the Purchase Price is fair and adequate consideration for all interests in the Property and that it is all-inclusive compensation for the Property.

(d) **Possession and Disposition of Seller's FF&E.** Upon the Closing Date, possession of the Property, including land, improvements, furniture, fixtures and equipment, whether immovable or moveable ("FF&E"), if any, on, upon, or about the Property shall be deemed to be the property of Buyer. Seller may, but shall not be required to, remove or otherwise dispose of any or all of the moveable FF&E, if any, at the Property owned by Seller prior to the Closing Date; provided, Seller shall not remove any personal property or FF&E owned by tenants or occupants of the Property or otherwise if not owned by Seller. After the Closing Date, Seller acknowledges and agrees that Buyer has the right to and may dispose of FF&E, if any, remaining at any portion of the Property as Buyer alone sees fit without further notice or any liability whatsoever to Seller. Seller shall provide a list of moveable FF&E Seller intends to remove, if any, at least five (5) business days prior to the Closing Date.

(e) **Relocation Obligations.** The parties acknowledge and agree that, pursuant to California law, Buyer bears certain statutory duties and obligations and will incur costs associated with compensating the tenants currently occupying the Property for relocation, loss of goodwill, etc. (collectively, "Relocation Obligations"). The parties further acknowledge that Buyer has and will fulfill any and all of the Relocation Obligations in accordance with law, including, as appropriate,

assisting the residential tenants of the Property to apply for Section 8 Housing Choice Vouchers or other rental assistance.

3. **Escrow and Title Matters.**

(a) **Escrow and Closing.**

(i) **Escrow.** Escrow No. _____ (“Escrow”) has been opened with the Escrow Holder. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental Escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no instrument shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of an instrument and the terms of this Agreement, then the terms of this Agreement shall control. Without limiting the generality of the foregoing, no instrument shall extinguish any obligations imposed by this Agreement or any other contract between Seller and Buyer.

(ii) **Closing.** For purposes of this Agreement, the “Closing” or “Closing Date” shall be the date the Grant Deed (as defined below) is recorded pursuant to applicable law in the Official Records of Orange County. Unless changed in writing by mutual agreement of Buyer and Seller, the Closing shall occur within sixty (60) calendar days following the Effective Date (“Outside Closing Date”). If the Closing has not, for any reason, occurred by the Outside Closing Date, then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the Outside Closing Date; provided, however, that if there is a Seller Default or a Buyer Default under this Agreement at the time of the termination, then the termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party. If neither party so elects to terminate this Agreement and the Escrow, Escrow Holder shall close the Escrow as soon thereafter as Buyer’s and Seller’s Conditions Precedent to Closing are satisfied pursuant to Sections 7(a) and 7(b) of this Agreement.

(b) **Title Matters.**

(i) **Title Review.** Buyer hereby conditionally approves the condition of title to the Property described in that certain preliminary report for Order No. 997-23008835-B-DJ1, dated as of May 3, 2012 (“Title Report”), which is attached hereto as Exhibit F and incorporated herein by this reference; provided that the Title Company shall issue, as a condition precedent to the Closing, an endorsement to the Buyer’s Title Policy (defined below) in substantially the form set forth in Exhibit G and incorporated herein, that insures against damages resulting from Exception No. 6 shown on Schedule B of the Title Report. Buyer hereby expressly disapproves any and all exceptions to title to the Property not shown on the Title Report. Buyer and Seller will cooperate in obtaining an updated preliminary title report and will reasonably review modifications, if any, to the condition to title which result from actions taken after the conveyance of the Property from the Prior Owner to the Seller.

(ii) **No New Liens or Exceptions.** During the period from the Effective Date to the Closing, Seller agrees it shall not cause any new or modified lien or encumbrance to title to become of record against the Property, unless such lien or encumbrance is approved in writing by Buyer. Each and every new lien or encumbrance created by or through Seller shall be subject to

Buyer's prior written consent and unless and until approved by Buyer shall be deemed a disapproved exception to title that shall be removed by Seller at Seller's sole cost as a condition to Closing.

(iii) Buyer's Title Policy. On or before the Closing, the Title Company shall, upon payment of the Title Company's premium, have agreed to issue to Buyer, a CLTA or ALTA, at the option of Buyer, owner's policy of title insurance ("Buyer's Title Policy") in the amount of the Purchase Price, showing fee title to the Property vested solely in Buyer and subject only to the exceptions shown on the Title Report. The premium for the Title Policy and any endorsements required by Buyer shall be paid by Buyer. In the event the Title Company is unable to issue the Buyer's Title Policy to Buyer at Closing, Buyer shall have the right, at Buyer's sole and absolute option, to either (a) terminate this Agreement or (b) proceed to Closing notwithstanding the condition of title to the Property. At Buyer's election, its rights to buy the Property pursuant to this Agreement may be assigned to an entity of Buyer's choosing ("Buyer's Nominee") in which event title shall vest at closing in Buyer's Nominee and the Title Policy shall, in such event, insure a fee ownership of Buyer's Nominee. In the event Buyer notifies the Seller and Title Company that title is to be vested in Buyer's Nominee, the remaining provisions of this Agreement which refer to Buyer shall, excepting with respect to the obligation to pay the Purchase Price (which shall remain the obligation of Buyer) and unless the context otherwise requires, provisions describing duties and rights of Buyer shall be deemed to refer to Buyer's Nominee.

4. Seller's Delivery of Property Documents; Natural Hazard Disclosure Report.

(a) **Seller's Delivery of Property Documents.** Seller represents and warrants that, prior to the Effective Date, Seller has delivered to Buyer complete, true, and legible copies of the following items (collectively, "Property Documents"):

- (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 Buyer and the Title Company.
- (iii) Each and every contract, agreement, license and lease (including all Tenant Leases) relating to and/or affecting the Property, specifying which of such contracts, agreements, licenses, and/or leases are anticipated to bind Buyer or affect the Property following the Closing, if any, with the exception of the Title Documents which shall be handled as set forth in Section 3(b).

(b) **Natural Hazard Disclosure.** Buyer 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. Buyer 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 Buyer 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) calendar days prior to the Closing Date. 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.

5. **Buyer's Right of Entry and Tests of Property.** From and after the Effective Date through the earlier to occur of the termination of this Agreement or the Closing Date, Seller hereby grants to and agrees that Buyer and Buyer's employees, agents, consultants and contractors shall have the right to enter upon the Property during normal business hours, provided 24 hours prior notice has been given to Seller, for the purpose of conducting any physical and legal inspections, investigations, assessments, tests, and studies as Buyer in its sole discretion elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; surveying; soils, seismic and geologic reports; environmental audits, inspections and studies; environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations, including without limitation the presence, release, and/or absence of adverse soils conditions, adverse groundwater conditions, asbestos, lead based paint, and/or Hazardous Materials, as hereinafter more fully defined and described (collectively, "Tests"). Seller shall provide notice to tenants of the Property as required under the Tenant Leases and/or as required by Law, and obtain tenant consent, as necessary to permit Buyer and/or Buyer's agents to enter onto the Property for the purpose of performing the Tests.

(a) **Conditions to Right of Entry for Tests.** As a condition to conducting any Tests, Buyer shall (i) prior to entry, notify Seller not less than 24 hours in advance of the purpose of the intended entry and provide to Seller the names and affiliations of the entity or person(s) entering the Property; (ii) conduct all Tests in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property; (iii) comply with applicable laws and governmental regulations in conducting such Tests; (iv) keep the Property free and clear of materialmen's liens, lis pendens and other liens arising out of entry onto the Property for such Tests performed by or on behalf of Buyer; (v) Buyer to maintain, or Buyer to cause to be maintained by Buyer's contractor(s), workers' compensation insurance on all persons entering the Property for such Tests in the amounts required by the State of California; (vi) Buyer to maintain, or Buyer to cause to be maintained by Buyer's contractor who will be entering the Property, commercial general liability insurance policy with a financially responsible insurance company (or as to Buyer its membership in a joint powers insurance authority with comparable coverage) covering any and all liability of Buyer and its agents, contractors, consultants and employees, with respect to or arising out of the Tests conducted at the Property, written on a per occurrence and not claims made basis in a combined single limit of not less than One Million Dollars (\$1,000,000); and (vii) promptly repair any and all damage to the Property from such Tests caused by Buyer, its agents, employees, contractors, or consultants and return the Property to its original condition (subject to the Tests conducted) following Buyer's entry. Buyer shall indemnify, defend, and hold harmless Seller and its agents from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) arising from the entry(ies) of Buyer, its agents, contractors, consultants, and employees upon the Property for and related to such entry and Tests or from Buyer's failure to comply with the conditions to Buyer's entry onto the Property for such Tests. Such indemnity shall survive the

Closing or the termination of this Agreement for any reason, but shall be limited to actions and inactions arising from and related to such entry onto the Property and/or the Tests.

6. **Final Inspection.** Pursuant to Section 5, Buyer is entitled to inspect the physical condition of the Property prior to Closing. In the event Buyer discovers any material change in the physical or environmental condition of the Property, including evidence that persons occupy the Property for residential and/or commercial purposes (other than tenants occupying the Property pursuant to Tenant Leases disclosed to Buyer by Seller prior to the Effective Date), then Buyer shall have the right, at Buyer's sole and absolute option, to either (a) terminate this Agreement or (b) proceed to Closing notwithstanding the physical or environmental changes and/or additional occupants discovered at the Property.

7. **Conditions Precedent to Closing and Termination Rights.**

(a) **Buyer's Conditions Precedent.** The Closing and Buyer's obligation to buy the Property and to consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Buyer's Conditions Precedent") on or before the Closing Date or such earlier time as provided for herein, which are for Buyer's benefit only.

(i) **No Termination as a Result of Buyer's Due Diligence Review.** This Agreement shall not have terminated pursuant to Sections 3(b) or 6 as a result of Buyer's review and inspection of title to, the Property Documents relating to, and the Tests on the Property.

(ii) **Buyer's Title Policy.** The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide Buyer's Title Policy for the Property upon the Closing, in accordance with Section 3(b).

(iii) **Natural Hazard Disclosure Statement.** If required by Government Code Sections 8589.3, 8589.4, 51183.5, or Public Resources Code Sections 2621.9, 2694, or 4136, Seller shall deliver to Buyer a Natural Hazard Disclosure Statement pursuant to AB 1195 on or before the date that is ten (10) calendar days after the Effective Date.

(iv) **Delivery of Documents.** Seller's delivery of (A) all items and documents described in Section 8 and Section 17, (B) the list of contracts, leases, licenses, or other contractual rights or options to lease, purchase, or otherwise enjoy possession of the Property, and the length of time during which each occupant, lessee, tenant, licensee, or other person or entity with an interest in the Property held such interest (with Seller's warranty and representation that such list and information is accurate to the best of Seller's knowledge), in substantially the form attached hereto as Exhibit E, and (C) full, complete, correct and legible copies of all contracts, leases, licenses or other contractual rights required to be listed and described by Seller in the form attached hereto as Exhibit E. Seller acknowledges that full, complete, correct and legible copies of any and all contracts, agreements, licenses and leases affecting the Property must be provided to Buyer pursuant to Section 4(a) and that Buyer shall have full right to review and approve or disapprove any and all such Property Documents as a Buyer's Condition Precedent to the Closing.

(v) **Representations and Warranties.** 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. Seller's representations and warranties shall be deemed to terminate as of the Closing.

(vi) No Seller Default. As of the Closing, there shall be no Seller Default under this Agreement.

(vii) Termination of Agreements; Vacancy of Property. Except to the extent expressly disclosed in writing to Buyer (and approved by Buyer), Seller shall have terminated any and all contracts affecting and/or relating to the Property and any and all leases and licenses for space at the Property. Except to the extent expressly disclosed in writing to Buyer (and approved by Buyer), all tenants, licensees, or other occupants shall have permanently vacated the Property. Seller shall cause to be removed and/or terminated, at Seller's sole cost and expense, any and all contracts, agreements, leases, licenses and easements relating to and/or affecting the Property, except to the extent such instruments are permitted and approved by Buyer pursuant to Sections 3(b) and 6 above.

(viii) No Material Changes. No material changes to the physical or environmental condition of the Property shall have occurred since the Effective Date.

(b) **Seller's Conditions Precedent.** The Closing and Seller's obligation to sell the Property and consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Seller's Conditions Precedent") on or before the Closing Date or such earlier time as provided for herein, which are for Seller's benefit only:

(i) No Termination as a Result of Buyer's Due Diligence Review. This Agreement shall not have terminated pursuant to Section 3(b) or 6 as a result of Buyer's review and inspection of title, the Property Documents, and the Property.

(ii) No Buyer Default. As of the Closing, there shall be no Buyer Default under this Agreement.

(iii) Representations and Warranties. All representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects as of the Effective Date and as of the Closing.

(iv) Delivery of Funds and Documents. Buyer shall have delivered all funds and documents and other items described in Section 9.

(c) **Waiver.** Buyer may at any time or times, at its election in its sole and absolute discretion, waive any of the Buyer's Conditions Precedent set forth in Section 7(a), but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller and Escrow Holder. Seller may at any time or times, at its election in its sole and absolute discretion, waive any of the Seller's Conditions Precedent set forth in Section 7(b) above, but any such waiver shall be effective only if contained in a writing signed by Seller and delivered to Buyer and Escrow Holder.

(d) **Termination.** In the event that each of the Buyer's Conditions Precedent set forth in Section 7(a) is not fulfilled by the Outside Closing Date, or such earlier time period as provided for herein or waived by Buyer pursuant to Section 7(c), and provided there is no Buyer

Default under this Agreement, Buyer may at its option terminate this Agreement and the Escrow opened hereunder. In the event each of the Seller's Conditions Precedent set forth in Section 7(b) is not fulfilled by the Outside Closing Date, or such earlier time period as provided for herein or waived by Seller pursuant to Section 7(c), and provided there is no Seller Default under this Agreement, Seller may at its option terminate this Agreement and the Escrow opened hereunder. Notwithstanding the foregoing, if Escrow is not in a position to close due to a party's failure to deposit into Escrow any documents or funds required for the Closing of Escrow, the non-defaulting party shall not have the right to terminate this Agreement without first having given the defaulting party notice of the default and five (5) business days to cure the default, with the understanding that it is the parties' desire that this Agreement not terminate as a result of a technicality such as a party's inadvertent failure to timely make a deposit of a document or money into Escrow. No termination under this Agreement shall release either party then in default from liability for such default. In the event this Agreement is terminated, (i) all documents and funds delivered by Seller to Buyer or Escrow Holder shall be returned immediately to Seller, provided there is no Seller Default, and likewise (ii) all documents and funds delivered by Buyer to Seller or Escrow Holder shall be returned immediately to Buyer.

(i) If Escrow fails to close due to a party's default or breach, the defaulting or breaching party shall pay all Escrow Cancellation Charges. If Escrow fails to close for any other reason, Buyer shall pay all Escrow Cancellation Charges. The term "Escrow Cancellation Charges" shall mean all fees, charges and expenses actually charged by Escrow Holder and the Title Company to the parties in connection with the cancellation of the Escrow and the title order, if any.

8. Seller's Deliveries to Escrow Holder. At least two (2) business days prior to the Closing Date, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged:

(a) **Tenant Deposits.** Seller shall deposit into Escrow all security or other deposits held by Seller pursuant to the Tenant Leases ("Tenant Deposits"); such Tenant Deposits shall be paid to the Buyer at Closing.

(b) **Grant Deed.** A Grant Deed substantially in the form attached hereto as Exhibit B ("Grant Deed"), duly executed by Seller and acknowledged.

(c) **Licenses, Certificates, and Permits.** To the extent the same are within the actual or constructive knowledge of, or in the possession, custody or control of, Seller and are applicable and/or transferable to Buyer, all original licenses, certificates and permits pertaining to the Property and beneficial for, or necessary for, or affecting the use or occupancy thereof.

(d) **Keys.** Keys, if any, to all entrance doors and equipment and utility rooms, and any other keys relating to, the Property, including mailbox keys, to the extent such keys are in the possession, custody or control of Seller.

(e) **FIRPTA/Tax Exemption Forms.** Transferor's Certification of Non Foreign Status in the form attached hereto as Exhibit C ("FIRPTA Certificate") (unless Seller is a "foreign person," as defined in Section 1445 in the Internal Revenue Code of 1986), together with any necessary tax withholding forms, and a duly executed California Form 593-C, as applicable ("California Exemption Certificate").

(f) **Possession of Property.** At Closing, possession of the Property (subject to Tenant Leases specifically approved by Buyer) shall be delivered to Buyer. Seller shall remove from title any encumbrances that Seller is required to remove pursuant to Section 3(b).

(g) **Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.

(h) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Holder.

9. **Buyer's Deliveries to Escrow.** At least two (2) business days prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, as appropriate, by Buyer:

(a) **Purchase Price.** The Purchase Price and additional funds necessary to pay Buyer's Charges set forth in Section 11(b) herein and Buyer's share of the Prorations set forth in Section 11(c). In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Title Company shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 11(d) hereof if and only to the extent the Title Company is required by law to do so. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 597 to Title Company at or immediately after Closing.

(b) **Certificate of Acceptance.** One (1) original Certificate of Acceptance executed by Buyer to be attached to the Grant Deed.

(c) **Final Escrow Instructions.** Buyer's final written Escrow instructions to close Escrow in accordance with the terms of this Agreement.

(d) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Holder.

10. **Tax Adjustment Procedure.** Escrow Holder is authorized and is instructed to comply with the following tax adjustment procedure:

(a) **Delinquent Taxes.** Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.

(b) **Proration.** Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller's prorata portion of taxes due at Closing, shall be cleared and paid by Seller, outside Escrow, pursuant to provisions of Section 5082 through 5090 of the Revenue and Taxation Code of the State of California.

(c) **Refund of Taxes.** After the Closing of the Escrow, Seller shall have the right in Seller's sole discretion to apply to the Orange County Tax Collector for refund of any excess property taxes paid by Seller with respect to the Property, and Seller and Buyer acknowledge that no proration or credit for property taxes will be provided to Seller through the Escrow. This refund would apply to the period after the Closing Date and Buyer's acquisition of the Property pursuant to Revenue and Taxation Code Section 5096.7.

11. **Escrow Holder Authorization.** Escrow Holder is authorized to and shall pay, charge and perform the following:

(a) **Tenant Deposits.** Receive the Tenant Deposits from Seller and pay the Tenant Deposits to Buyer at the Closing.

(b) **Buyer Charges.** Pay and charge Buyer for all Escrow fees, all charges for recording the Grant Deed, all title insurance premiums for the Buyer's Title Policy and endorsements requested by Buyer (collectively, "Buyer's Charges").

(c) **Prorate Revenues and Expenses.** All revenues (if any) and expenses relating to the Property (including, but not limited to, utility costs and expenses, water charges and sewer rents and refuse collection charges) shall be prorated as of the Closing Date (collectively, the "Prorations"). Not less than five (5) business days prior to the Closing, Escrow Holder shall deliver to Buyer and Seller a tentative schedule of prorations for Buyer's and Seller's approval ("Proration and Expense Schedule"). If any prorations made under this Section 11(c) shall require final adjustment after the Closing, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same. Any corrected or adjusted proration shall be paid promptly in cash to the party entitled thereto.

(d) **Tax Requirements.** Escrow Holder shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099 S form, and be responsible for withholding taxes, if any such forms and/or withholding is provided for or required by law.

(i) **California Withholding.** Unless Seller qualifies for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code ("Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Escrow Holder shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer at Closing for payment to the California Franchise Tax Board in accordance with the Tax Code, (ii) Buyer shall deliver three (3) duly executed originals of California Form 597 to Escrow Holder at or immediately after Closing, (iii) two (2) executed originals of California Form 597 shall be delivered by Escrow Holder to Seller, and (iv) on or before the 20th day of the month following the month title to the Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Escrow Holder shall remit such funds withheld from the Purchase Price, together with one (1) executed original of California Form 597 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Escrow Holder as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 597), to the California Franchise Tax Board.

(ii) **FIRPTA Withholding.** If Seller is a “foreign person” under the Foreign Investment in Real Property Transfer Act or an exemption applies, the Escrow Holder shall deduct and withhold from Seller’s proceeds ten percent (10%) of the gross sales price and shall otherwise comply with all applicable provisions of the Foreign Investment in Real Property Act and any similar state act. Seller agrees to execute and deliver Exhibit C, as directed by Escrow Holder, or any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of the Foreign Investment in Real Property Act and any similar state act and regulation promulgated thereunder.

(e) **Closing Statement.** Escrow Holder is instructed to prepare and provide copies of a proposed closing statement and thereafter the final closing statement (“Closing Statement”) to both Seller and Buyer. Escrow Holder shall deliver the estimated Closing Statement to Seller and Buyer no later than three (3) business days prior to the Closing Date.

(f) **Escrow Holder Responsibility.** The responsibility of the Escrow Holder under this Agreement is limited to Sections 1 through 12, and 19(b) and (c), and to its liability under any policy of title insurance issued in regard to this transaction.

12. Closing Procedure. On the Closing Date, and provided all of the Buyer’s Conditions Precedent and Seller’s Conditions Precedent set forth in Sections 7(a) and 7(b) of this Agreement have been satisfied or waived in writing by the appropriate party (per Section 7(c)), Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) **Recording.** Escrow Holder shall cause the Grant Deed to be recorded pursuant to applicable law in Orange County and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) **Disburse Funds.** Escrow Holder shall debit or credit (as provided herein) all charges and Prorations to Buyer and Seller and withhold funds pursuant to Section 11. The Purchase Price (less any amounts required to be withheld as provided in Section 11(d)) shall be distributed by check payable to Seller unless Escrow Holder is instructed otherwise in writing signed by Seller (and, in such event, in accordance with such instructions).

(c) **Documents to Seller.** Escrow Holder shall deliver to Seller a conformed copy of the Grant Deed and a copy of each other document deposited into Escrow by Buyer pursuant hereto.

(d) **Documents to Buyer.** Escrow Holder shall deliver to Buyer the original FIRPTA Certificate, the original California Exemption Certificate (as applicable), a conformed copy of the Grant Deed, the Title Report, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 8.

(e) **Title Company.** Escrow Holder shall cause the Title Company to issue the Buyer’s Title Policy to Buyer.

(f) **Closing Statement.** Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party in the form of the Closing Statement prepared pursuant to Section 11(e).

(g) **Informational Reports.** Escrow Holder shall file any informational reports required by Internal Revenue Code Section 6045(e), as amended.

(h) **Possession.** Possession of the Property (subject to Tenant Leases specifically approved by Buyer) shall be delivered to Buyer at the Closing.

13. Representations and Warranties.

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

(i) To the best of Seller's actual knowledge, 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.

(ii) 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 Buyer to consummate the transaction contemplated by this Agreement.

(A) In this regard, if applicable, Seller shall deliver or cause delivery to Buyer 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.

(iii) 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.

(iv) 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.

(v) To the best of Seller's actual 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 Buyer 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.

(vi) To the best of Seller's actual knowledge, 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 Effective Date of this Agreement. Seller agrees to indemnify, defend, and hold Buyer 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.

(vii) Except as may be revealed in the Title Report and the Property Documents delivered to Buyer by Seller, there are no undisclosed contracts, licenses, commitments, undertakings or other written or oral agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Property that will be binding upon Buyer or which will constitute liens or encumbrances 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 and/or constructive knowledge.

(viii) Except as revealed in the Title Report and the Property Documents delivered to Buyer by Seller, or as listed in Exhibit D attached hereto, to Seller's actual knowledge, there are not any written or oral contracts, leases, licenses, 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 except to the extent expressly otherwise agreed by Buyer, no person other than Buyer shall have any right of possession to the Property or any part thereof as of the Closing.

(A) As of the Effective Date, Seller agrees not to enter into any leases, licenses or easements in the Property (or any part thereof), or grant any other rights of access, use or occupancy to the Property (or any part thereof) without the prior written approval of Buyer, which may be granted or denied in Buyer's sole and complete discretion.

(ix) Except as revealed in the Title Report and the Property Documents delivered to Buyer by Seller pursuant to Section 4(a), 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 Buyer in its sole and absolute discretion.

(x) 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.

(xi) 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 Closing, immediately give written notice of such fact or condition to Buyer.

(xii) Seller represents to Buyer, and Buyer acknowledges the representation of Seller that Seller has never operated, occupied or developed the Property.

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 to 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.

(b) Subsequent Changes to Seller's Representations and Warranties. If, prior to the Closing, Buyer 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. Buyer shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Buyer reasonably disapproves any such change; provided, however Seller shall first have the opportunity to cure the Seller Representation Matter. If Buyer 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 Buyer for such Seller Representation Matter.

(c) Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property, Buyer 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:

(i) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby, subject to this representation not becoming effective unless, until, and subject to this Agreement being placed on an agenda of the Buyer's governing board for consideration and action at a duly noticed, open public meeting of the Buyer's governing board, and, if approved, then such representation shall be effective as of the Effective Date. Buyer's execution of this Agreement after the Effective Date shall be conclusive evidence that Buyer's governing board has approved this Agreement at a duly noticed, open public meeting.

(ii) Subject to (c)(i) above, as of the Effective Date, all requisite governmental action has been taken by Buyer 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. Subject to (c)(i) above, by the Closing Date, no additional consent of any individual, judicial or administrative body, governmental authority or other party shall be required for Seller to consummate the transaction contemplated by this Agreement, provided that there shall have been no material change in the terms or provisions hereof.

(iii) Subject to (c)(i) above, as of the Effective Date, the individuals executing and attesting this Agreement and the instruments referenced herein on behalf of Buyer

have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(iv) 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 Buyer is a party or by which Buyer is bound.

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

14. Environmental Condition of the Property; Hazardous Materials.

(a) **Hazardous Materials Disclosure.** Neither Seller nor, to the best of Seller's knowledge, any current or previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any Hazardous Materials, toxic substances, or related materials on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property. Seller has not received any order or notice from any governmental agency with jurisdiction over the Property informing Seller of the presence of any Hazardous Materials in, on, under, or about the Property. As used in this Agreement, the term "Hazardous Materials" 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.*

(b) **“As is” Conveyance.** Buyer acknowledges and agrees that the Property shall be conveyed in an “as is” condition, with no warranties as to the physical or environmental condition of the Property except as specifically set forth herein. Nothing in this Section 14(c) shall be construed as a waiver by Buyer of any liability or responsibility that may be imposed on Seller by Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery, and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environmental Quality Act, and the rules, regulations, and ordinances of the City of Garden Grove, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus (collectively, “Environmental Regulations”) applicable to the Property

15. Seller’s Covenants during Escrow Period.

(a) **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 Buyer in its sole and complete discretion. Further, if the Buyer 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 Buyer which consent may be withheld by Buyer in its sole and complete discretion.

(b) **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.

16. Default and Remedies.

(a) **Seller Default.** The term “Seller Default” shall mean Seller’s failure to timely perform a material obligation of Seller under this Agreement within five (5) business days following written notice from Buyer describing Seller’s failure to perform. In the event of a Seller Default, Buyer, as its sole and exclusive remedies: (i) may terminate this Agreement, or (ii) shall be entitled to the remedy of specific performance.

(b) **Buyer Default.** The term “Buyer Default” shall mean Buyer’s failure to timely perform a material obligation of Buyer under this Agreement within five (5) business days following written notice from Seller describing Buyer’s failure to perform. In the event of a Buyer Default, Seller, as its sole and exclusive remedy, may terminate this Agreement.

17. [Reserved].

18. [Reserved].

19. General Provisions.

(a) **Loss or Damage to Improvements.** Loss or damage to the Property including any improvements thereon, by fire, other casualty, or acts of God, occurring at any time prior to the Closing of Escrow shall be at the sole risk of Seller.

(b) **Notices.** All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), or sent by certified mail, postage prepaid, return receipt requested, to the address listed below:

If to Seller: City of Garden Grove
 11222 Acacia Parkway
 Garden Grove, California 92840
 Attention: Real Property Division
 Tel. (714) 741-5100
 Fax No.: (714) 741-5044

If to Buyer: City of Garden Grove as Successor Agency
 11222 Acacia Parkway
 Garden Grove, California 92840
 Attention: Real Property Division
 Tel. (714) 741-5100
 Fax No.: (714) 741-5044

With a copy to: Stradling Yocca Carlson & Rauth
 660 Newport Center Drive, Suite 1600
 Newport Beach, California 92660
 Attention: Thomas P. Clark, Jr., Esq.
 Tel. (949) 725-4140
 Fax No.: (949) 823-5141

All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written Notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the parties' respective counsels is for information only, is not required for valid Notice and does not alone constitute Notice hereunder.

(c) **Brokers.** Buyer and Seller each represent to the other that no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Each party agrees to and does hereby indemnify and hold the other free and harmless from and against any and all costs, liabilities or causes of action or proceedings

which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in connection with this Agreement.

(d) Waivers and Consents. Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder; provided however that failure of a condition hereunder shall not be deemed or determined to be a default unless such condition is also a covenant. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other.

(e) Construction. The parties acknowledge and agree that (a) each party is of equal bargaining strength; (b) each party has actively participated in the drafting, preparation and negotiation of this Agreement; (c) each party has consulted with such party's own independent counsel and such other professional advisors, if at all, as each party has deemed appropriate, relating to any and all matters contemplated under this Agreement; (d) each party and such party's counsel and advisors, if so elected by the party, have reviewed this Agreement; (e) each party has agreed to enter into this Agreement following such review and the rendering of such advice, if so elected by the party; and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

(f) Cooperation. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof.

(g) Attorney's Fees. In the event any declaratory or other legal or equitable action is instituted between Seller, Buyer and/or Escrow Holder in connection with this Agreement, then as between Buyer and Seller each party shall pay its own attorney's fees.

(h) Time. Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

(i) Counterparts; Facsimile Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall

constitute but one and the same instrument. A facsimile signature shall be deemed an original signature.

(j) **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(k) **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.

(l) **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

(m) **Chief Executive Officer Authority.** The City Manager of the City, acting in his capacity as the chief executive officer of the Successor Agency, or his or her designee shall have the authority to sign this Agreement, closing documents, issue interpretations, waive provisions, and enter into amendments of or supplements to this Agreement on behalf of Buyer, so long as such actions do not substantially or substantively change the terms and conditions of the purchase and sale of the Property as set forth herein and as agreed to by the Buyer in its approval of this Agreement. All other waivers or amendments shall require the consideration and written consent of Buyer's governing board.

(n) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(o) **Exhibits and Schedules.** The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

(p) **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement is executed without reliance on any oral or written statements, representations or promises of any kind which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(q) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(r) **Assignment.** Buyer may, upon giving notice to Seller, assign its rights under this Agreement without obtaining any further consent by Seller.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the day and year first written above.

"SELLER"

CITY OF GARDEN GROVE, a municipal corporation

By: Matthew Fertal
Matthew Fertal, City Manager

"BUYER"

CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public entity

By: Matthew Fertal
Matthew Fertal, City Manager

ATTEST:

Deush Pomeroy, Deputy City Clerk
City Clerk

APPROVED AS TO FORM:

vsorklin
Stradling Yocca Carlson & Rauth,
Special Counsel to Buyer

Acceptance by Escrow Holder:

_____, on behalf of Escrow Holder, hereby acknowledges that Escrow Holder has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between the City of Garden Grove, a California municipal corporation, as Seller, and the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development, an entity designated pursuant to Parts 1.8 and 1.85 of the Dissolution Act, as Buyer, and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: _____, 2012

Escrow Holder, Talbrook Escrow II

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 20, 21, 26 AND 27 OF TRACT 2148 IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 58, PAGES 46, 47 AND 48 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 231-471-10, 09, 13 AND 14

EXHIBIT B

GRANT DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attn: City Clerk

APN: 231-471-10, 09, 13 and 14

(Space above this line for Recorder's Use Only)

This document is exempt from the payment of a recording
fee pursuant to Government Code Section 27383.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **CITY OF GARDEN GROVE**, a California municipal corporation ("Grantor"), hereby grants to the **CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT** that certain real property located in the County of Orange, State of California, more particularly described on **Schedule 1** attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of _____, 2012.

CITY OF GARDEN GROVE, a California
municipal corporation

By: _____
Matthew Fertal, City Manager

EXHIBIT B-1
GRANT DEED

SCHEDULE 1 TO GRANT DEED

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 20, 21, 26 AND 27 OF TRACT 2148 IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 58, PAGES 46, 47 AND 48 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 231-471-10, 09, 13 AND 14

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

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.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

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.

Notary Public

[SEAL]

SCHEDULE 2 TO GRANT DEED

**CERTIFICATE OF ACCEPTANCE
(Grant Deed)**

This is to certify that the interest in real property conveyed by the foregoing Grant Deed dated _____, 2012, executed by the **CITY OF GARDEN GROVE**, a California municipal corporation ("Seller") to and for the benefit of the **CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, as grantee ("Successor Agency"), is hereby accepted by the undersigned officer on behalf of the Successor Agency pursuant to authority conferred by Resolution of the Successor Agency adopted on _____, and the Successor Agency consents to recordation thereof by its duly authorized officer.

Dated: _____

**CITY OF GARDEN GROVE AS SUCCESSOR
AGENCY TO THE GARDEN GROVE AGENCY
FOR COMMUNITY DEVELOPMENT**

Kathleen Bailor, Successor Agency Secretary

EXHIBIT C

FIRPTA CERTIFICATE

TRANSFEROR'S CERTIFICATE OF NON FOREIGN STATUS

To inform the **CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT** ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required upon the transfer of that certain real property to the Transferee by the **CITY OF GARDEN GROVE**, a California municipal corporation ("Transferor"), the undersigned hereby certifies the following:

1. The Transferor is not a foreign person or citizen, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. The Transferor's social security number [or U.S. employer identification number] is as follows: _____

3. The Transferor's home or office address is:

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document.

CITY OF GARDEN GROVE, a California
municipal corporation

By: _____
Matthew Fertal, City Manager

EXHIBIT D

LIST OF CURRENT CONTRACTS, LEASES AND LICENSES

Pursuant to Section 13(a)(xii) of that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of December 11, 2012 (“Agreement”), **CITY OF GARDEN GROVE**, a municipal corporation (“Seller”), hereby represents to the **CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT** (“Buyer”), that, to the best of the knowledge of the undersigned, the following is a true, correct, and complete list of all contracts, leases, licenses, or other contractual rights or options to lease, purchase, or otherwise enjoy possession of the Property as of the Effective Date (as those terms are defined in the Agreement) and that prior to the times required by Sections 3(b) and 4(a) of the Agreement, Seller shall deliver true, complete, and legible copies of all documents described on the list set forth below. Buyer shall have full right and authority to review and approve or disapprove all documents described below as set forth in the Agreement and, in the event Buyer disapproves (or is deemed to have disapproved) such documents, Buyer shall have no obligation to purchase the Property unless and until Seller has caused such disapproved documents to be cancelled, terminated, or otherwise rendered inapplicable to Buyer and the Property, at Seller’s sole cost and expense, as provided in the Agreement.

[Insert list of contracts, leases, and licenses existing as of the Effective Date.]

[This must be filled in BEFORE the agreement is executed.]

CITY OF GARDEN GROVE, a municipal
corporation

By: _____
Matthew Fertal, City Manager

EXHIBIT D-1

LIST OF CURRENT LEASES AND LICENSES

EXHIBIT E

CLOSING LIST OF CONTRACTS, LEASES AND LICENSES

Pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of December 11, 2012 ("Agreement"), the **CITY OF GARDEN GROVE**, a municipal corporation ("Seller") hereby represents to the **CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a successor agency established pursuant to Part 1.8 and Part 1.85 of Division 24 of the California Health & Safety Code ("Buyer"), that, to the best of the actual knowledge of the undersigned, the following is a true, correct, and complete list of all contracts, leases, licenses, or other contractual rights or options to lease, purchase, or otherwise enjoy possession of the Property (defined in the Agreement), and that the length of time during which each occupant, lessee, tenant, licensee, or other person or entity with an interest in the Property held such interest, as stated below, is accurate to the best knowledge of Seller, as of _____, 2012 [**insert actual Closing Date**]. Full, complete, correct and legible copies of all documents listed below have been delivered to Buyer as required by the Agreement.

[Insert list of contracts, leases, and licenses existing as of the actual Closing Date.]

[This should be filled in just prior to Closing.]

CITY OF GARDEN GROVE, a municipal
corporation

By: _____
Matthew Fertal, City Manager

EXHIBIT E-1

CLOSING LIST OF LEASES AND LICENSES

EXHIBIT F

TITLE REPORT

[Attached on following pages.]

**EXHIBIT F-1
TITLE REPORT**

EXHIBIT G

FORM OF ENDORSEMENT

[Attached on following pages.]

**EXHIBIT G-1
FORM OF ENDORSEMENT**