



---

DATE: April 7, 2010

TO: Honorable Mayor and City Councilmembers and  
Chairman and Community Development Commissioners

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF A PURCHASE AND SALE AGREEMENT FOR THE SALE  
OF THE EASTSIDE COMMUNITY GARDEN SITE FOR FUTURE  
AFFORDABLE HOUSING DEVELOPMENT**

**SYNOPSIS**

Staff recommends that the City Council and Community Development Commission approve a Purchase and Sale Agreement [Land Sales Contract] for the purchase of City-owned real property commonly referred to as the Eastside Community Garden, located in the 400 Block of Weitzel Street, APN 147-230-58, by the Community Development Commission for a purchase price of \$621,000 for the future development of an affordable multi-family housing project; adopt a joint resolution authorizing the use of a Land Sales Contract for the sale and purchase of the property; approve a budget appropriation in the amount of \$121,000 for the down payment on the purchase; and authorize the Mayor and Executive Director to execute the agreement and related instruments.

**BACKGROUND**

In late 1989 through fall of 1990 the City, using the general fund, acquired and assembled the lots on the east side of Horne Street between Civic Center Drive and Sportfisher Way as a site to relocate Fire Station 1. Preliminary designs of the station revealed that the configuration of the site was inadequate to accommodate the facilities required for the station and personnel.

Response criteria at that time required maintaining Fire Station 1 at a location west of Interstate 5 ("I-5"). A search for an alternate to the Horne Street location and site analyses were conducted and negotiations with the owner of property lying north of Civic Center Drive and east of Weitzel Street were initiated, resulting in an exchange of the properties in July 1994. The site sat empty for some years and eventually was put to use as a temporary site for the Eastside Community Garden.

In the fall 2003 the City was approached by the broker representing the owner of the property at 602 Civic Center Drive inquiring as to whether the City would be interested in

acquiring the site of the former adult daycare center. The Fire Department showed an interest in this site for the relocation of Fire Station 1 due to its location across from City Hall and potential use for Fire Department and other City administrative offices. With a potential use of the property, staff sought and received direction to negotiate a purchase and closed escrow on the acquisition in May 2004.

With the Weitzel Street site being replaced by the property at 602 Civic Center Drive for the relocation of Fire Station 1, the site became available for other public uses. The Neighborhood Services Department proposed the possibility of buying the site with the use of Inclusionary Housing In-Lieu Funds and building an affordable housing development through a non-profit or for-profit developer. This suggestion was presented to the City Council on October 21, 2009, which directed staff to proceed with the transaction and return for formal action.

The sale of the site for affordable housing would provide 2 benefits: 1) further the City's efforts in meeting its affordable housing goals by increasing, improving, and preserving affordable and decent housing opportunities for low- and moderate-income persons and families; and 2) bring unanticipated revenues to the general fund.

## **ANALYSIS**

An independent appraisal was conducted to ascertain the market value of the 0.95 acre site. The value based on the appraisal came in at \$621,000.

The structure of the deal proposed by the Housing and Code Enforcement Division of Neighborhood Services is a land sales contract transaction with the Community Development Commission ("Commission") being the buyer. Upon entering into the contract a \$121,000 down payment will be made with the \$500,000 balance of the purchase price, bearing zero percent (0%) interest, being paid over a 5 year period with annual payments of \$100,000 each commencing July 15, 2010 and continuing until July 15, 2014, when the principal balance is due and payable.

The Commission will be issuing a promissory note in favor of the City setting forth the Commission's obligation to pay the purchase price and fulfillment of all other obligations contained in the contract. The City will hold title to the property until the purchase price is paid in full, which is the typical practice with a land sales contract. The note will be canceled and returned to the Commission, together with the executed grant deed conveying the property, upon payment of the purchase price.

Should the Commission sell, transfer or convey any interest in the property before paying off the principal balance, the City may declare all sums due under the contract immediately due and payable.

After the property is conveyed, the Commission shall use its best efforts to lease or sell the property as soon and in such manner as the Commission finds feasible and consistent with

the objectives of the Oceanside Comprehensive Affordable Housing Strategy for an affordable multi-family housing development.

The Property shall be used for development of affordable housing and not for speculation in undeveloped land. Notwithstanding the foregoing, the property may continue to be used as a community garden site until such time the property is developed into housing, and at that time an alternate site for the garden will be sought.

Upon the lease or sale of the property by the Commission for residential uses, the property will be restricted as affordable housing for the longest feasible time.

### **FISCAL IMPACT**

The purchase price of \$621,000 will be paid from the Inclusionary Housing In-Lieu Fund. A budget appropriation of \$121,000 is needed in order to fund the down payment required upon entering into the purchase contract. Thereafter, \$100,000 will need to be appropriated annually from FY 2010-2011 through FY 2014-2015 to cover the annual installments due under the promissory note.

The Inclusionary Housing In-Lieu Fund (278.3100.0001) has an approximate unassigned fund balance of \$3,528,129 as of January 31, 2010. Therefore, sufficient funds are available for down payment on the purchase price. The \$121,000 appropriation from (278.3100.0001) will be transferred to (278.900010278.5701).

Proceeds from the sale of the property shall be credited to the general fund (1101.4501.100365) which funded the purchase of the Horne Street site, which was subsequently traded for the Weitzel Street site.

### **CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

### **COMMISSION OR COMMITTEE REPORT**

Does not apply.

### **RECOMMENDATION**

Staff recommends that the City Council and the Community Development Commission:

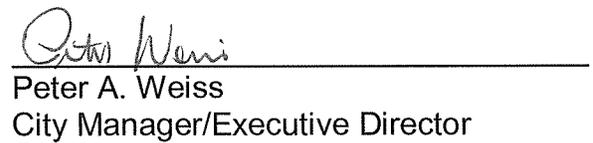
1. Approve the Purchase and Sale Agreement [Land Sales Contract] for the purchase of City-owned real property commonly referred to as the Eastside Community Garden, located in the 400 Block of Weitzel Street, APN 147-230-58, by the Community Development Commission for a purchase price of \$621,000 for the future development of an affordable multi-family housing project;

2. Adopt a joint resolution authorizing the use of a Land Sales Contract for the sale and purchase of the property;
3. Approve a budget appropriation in the amount of \$121,000 from (278.3100.0001) and transferred to (278.900010278.5701) for the down payment on the purchase; and
4. Authorize the Mayor and Executive Director to execute the agreement and related instruments.

PREPARED BY:

  
 William F. Marquis  
 Senior Property Agent

SUBMITTED BY:

  
 Peter A. Weiss  
 City Manager/Executive Director

REVIEWED BY:

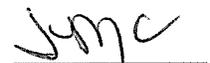
Michelle Skaggs Lawrence, Deputy City Manager



Margery M. Pierce, Neighborhood Services Director



Jane McVey, Economic and Community Development Director



Douglas E. Eddow, Real Property Manager



Teri Ferro, Financial Services Director



PURCHASE AND SALE AGREEMENT  
[Land Sales Contract]

This PURCHASE AND SALE AGREEMENT ("Agreement") dated March 10, 2010, solely for identification purposes, is made and entered into by and between the City of Oceanside, a California municipal corporation, ("Seller") and the Community development Commission of the City of Oceanside, a public body corporate and politic, ("Buyer"). The Effective Date hereof shall be the date this Agreement is approved by the Oceanside City Council ("Effective Date").

WHEREAS, Seller as owner of that certain real property described as the property more particularly described in Exhibit "A" to Attachment No. 1 (the "Grant Deed") and as shown on a sketch thereof marked Attachment No. 2 ("Sketch of Site"), both attached hereto and incorporated herein by reference (the "Property"), has determined that selling the Property for purposes set forth herein would be a benefit to the public;

WHEREAS, Buyer desires to purchase the Property on a Land Sales Contract basis for the purpose of developing an affordable housing project compatible with the Oceanside Comprehensive Affordable Housing Strategy and uses permitted and in compliance with the standards set forth by the Oceanside City Code, the Downtown Redevelopment Project Area and Redevelopment Plan, and the Oceanside General Plan and Zoning Ordinance;

WHEREAS, the Property is currently being used as a community garden over which Buyer has oversight and control, and it is anticipated that the Property will continue to be used as such until such time as it is developed into an affordable multifamily housing project.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

ARTICLE I

RECITALS

**101. Description of Property.** Seller is the owner of a fee interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which is more particularly described in Exhibit "A" of the Grant Deed (Attachment No. 1), which is incorporated herein and made a part hereof. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the ("Property"). Buyer acknowledges that the Property is situated in the Downtown Redevelopment Project Area and its uses controlled by the Redevelopment Plan.

**102. Status and Powers of Seller.** Seller is a California municipal corporation organized and existing pursuant to the Constitution and statutes of the State of California and is authorized to enter into this Agreement.

**103. Status and Powers of Buyer.** Buyer is a public body corporate and politic of the State of California and is authorized by the laws of the State of California to purchase the

Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement.

**104. Purpose of Agreement.** The purpose of this Agreement is to provide for the sale of the Property from Seller to Buyer on a Land Sales Contract basis for the purpose of future development of the Property as a safe and affordable multi-family housing project compatible with the Oceanside Comprehensive Affordable Housing Strategy and uses permitted and in compliance with the standards set forth by the Oceanside City Code, the Downtown Redevelopment Project Area and Redevelopment Plan, and the Oceanside General Plan and Zoning Ordinance.

**105. Public Benefit.** This Agreement is for the benefit of the public and is in furtherance of the public purposes of Seller and Buyer. The sale and development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Oceanside and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local law, regulations and requirements.

## ARTICLE II

### DEFINITIONS AND GENERAL PROVISIONS

**201. Agreement.** For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

**202. Definitions in General.** The terms defined in Attachment No. 3 (the "Definitions") attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Definitions (Attachment No. 3), unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

**203. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

## ARTICLE III

### PURCHASE AND SALE OF PROPERTY

**301. Sale of Property.** Seller agrees to sell and Buyer agrees to purchase the Property on a Land Sale Contract base on the terms and conditions in this Agreement.

**302. Purchase Price.** The purchase price of the Property is **Six Hundred Twenty-one Thousand Dollars (\$621,000.00)** (the "Purchase Price") and shall be paid by Buyer to Seller as follows:

(a) The Cash Down Payment on the Purchase Price on entering into this Agreement in the amount of **One Hundred Twenty-one Dollars (\$121,000.00)**.

(b) The balance of the Purchase Price in the sum of **Five Hundred Thousand Dollars (\$500,000.00)** ("Principal Balance") bearing interest from the Effective Date of this Agreement on unpaid Principal Balance at the annual rate of zero percent (0%), payable in installments of **One Hundred Thousand Dollars (\$100,000.00)**, or more, on the 15<sup>th</sup> day of July of each consecutive fiscal year, i.e. July 1<sup>st</sup> through June 30<sup>th</sup>, beginning on the 15<sup>th</sup> day of July 2010, and continuing until July 15, 2014, when the Principal Balance is due and payable in full.

**303. Security for the Payment of the Purchase Price.** Seller shall retain title in the Property as security of Buyer's obligation to pay the Purchase Price and performance of other obligations set forth in this Agreement and the Promissory Note in the form of Attachment No. 4 (the "Note") attached hereto, and by this reference incorporated herein and made a part hereof. The Note shall be for a term of six (6) years from the Effective Date of this Agreement, and shall bear simple interest at the rate of zero percent (0%) per annum commencing upon the Effective Date of this Agreement. At such time as the Purchase Price is paid in full, the Seller shall cancel and deliver the Note to Buyer and shall execute and deliver the Grant Deed to Buyer, as set forth in Article VII of this Agreement.

**304. Due-on-Sale.** Should Buyer sell, transfer or convey any interest in the Property, legal or equitable, either voluntarily or by operation of law, Seller may, at Seller's option, declare all sums owed under this Agreement and the Note immediately due and payable.

#### ARTICLE IV

#### CONDITIONS PRECEDENT

**401. Title.** Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by the Grant Deed, free and clear of all liens and encumbrances, subject to the following: any and all easements and encumbrances of record. Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property to its own satisfaction and expressly agrees that in entering into this Agreement it is relying on its own investigation as to the condition of the Property and condition of title to the Property, except as expressly provided herein.

**402. Physical Condition of the Property.** Buyer, being in physical control of the Property as of the date of this Agreement, shall not cause the physical condition of the Property to deteriorate or change after the Effective Date hereof, except normal wear and tear, without the prior written consent of Seller. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein. Buyer is relying on its own investigations as to the condition of the Property and the suitability of the Property for its intended use.

**403. Seller's Obligations.** Seller is obligated to the performance of every material covenant, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

**404. Seller's Representations.** Buyer's obligations under this Agreement are conditioned upon the truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement.

**405. Buyer's Obligations.** Buyer is obligated to the performance of every material covenant, agreement, and promise to be performed by Buyer pursuant to this Agreement and the related documents executed or to be executed by Buyer. Seller shall retain title in the Property to secure payment of the Purchase Price and any other sums due and the performance of all other obligations of Buyer under this Agreement or the Note (the "Secured Obligations").

**406. Buyer's Representations.** Seller's obligations under this Agreement are conditioned upon the truth and accuracy of all Buyer's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement.

**407. Entitlements.** Buyer acknowledges that the Property consists of vacant land and that Buyer shall, at its sole responsibility and expense, obtain any and all building and use approvals and entitlements required for the development of the Property as an affordable multi-family residential project.

## ARTICLE V

### SELLER'S REPRESENTATIONS AND WARRANTIES

**501. Time.** The representations and warranties by Seller in this Article are made as of the Effective Date of this Agreement and as of the execution of the Gant Deed and will survive the recording of the Grant Deed.

**502. Title.** As of the Effective Date of this Agreement, Seller is or will be the legal and equitable owner of the Property, with full right to convey. Seller has not previously conveyed title to the Property to any other person. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property. To the best of Seller's knowledge the Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for agreements or licenses with individuals using and occupying community garden plots. Seller has obtained (or will obtain) all required consents, permissions or releases to convey good and marketable title in the Property to Buyer.

**503. Hazardous Substances.** To the best of Seller's knowledge the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

**504. Violation of Law.** To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environmental, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

**505. Litigation.** There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement.

**506. Bankruptcy.** No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

**507. No Defaults.** Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Seller's obligations or liabilities pertaining to the Property.

**508. Special Studies Zone.** The Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

**509. Foreign Investment Real Property Tax Act.** Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Seller understands and agrees that the certification made in this section may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

**510. Disclosure.** Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

## ARTICLE VI

### COVENANTS

**601. Power to Enter into Agreements.**

(a) Buyer is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Buyer in accordance with their terms and the terms of this Agreement.

(b) Seller is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Seller has duly authorized and executed this Agreement.

**602. No Violation of Other Agreements.**

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

**603. Brokers.** Seller and Buyer agree that there are no brokers or real estate agents involved in this transaction that would be entitled to a fee or commission. Buyer shall hold Seller harmless from any claims for such fees or commissions claimed by another broker, real estate agent or other third party claiming through Buyer.

**604. Litigation.** Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

**605. Indemnification.** Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Seller or Seller's officers or employees.

The provisions of this Section 605 shall survive the recordation of the Grant Deed with respect to the Property.

## ARTICLE VII

### CONVEYANCE OF TITLE

**701. Transaction Outside of Escrow.** The transaction contemplated under this Agreement shall be handled outside of escrow and directly between Buyer and Seller, as principals.

**702. Execution and Delivery of Promissory Note.**

(a) Buyer shall upon the Effective Date of this Agreement execute and deliver the Note, in substantial form as said Attachment No. 4, to Seller.

(b) Concurrent with the delivery of the Grant Deed from Seller to Buyer as set forth in Section 703, below, Seller shall cancel and deliver the Note to Buyer.

**703. Execution and Delivery of Grant Deed.** Within seven (7) days after the Purchase Price and all other sums due under this Agreement or the Note has been paid in full and all

Secured Obligations have been fulfilled by Buyer, Seller shall properly execute the Grant Deed (in recordable form) conveying title in the Property to Buyer and deliver the Grant Deed to Buyer for its acceptance and filing with the County Recorder.

**704. Property Taxes and Prorations.** Although it is recognized that Seller is a tax-exempt governmental agency, Seller shall be solely responsible for bringing the Property's real property taxes current as of the recordation of the Grant Deed and Buyer shall have no liability for payment of said taxes, if any.

**705. Possession.** Right to possession of the Property shall transfer to Buyer upon the recordation of the Grant Deed, subject to all tenancies.

## ARTICLE VIII

### MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

**801. Inspection and Feasibility Period.** Buyer, being in physical control of the Property with oversight and control of its current use as a community garden, hereby holds Seller, its officers, employees, contractors and agents harmless from any and all claims of defect in the Property revealed through any inspections, testing and feasibility studies of the Property, including but not limited to soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Property; and the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property.

**802. Further Assurances.** Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

**803. Seller and Buyer Representatives.** Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by the City Manager or designee and for Buyer by the Director of Neighborhood Services or designee, and any party hereto shall be authorized to rely upon any such approval or request.

**804. Preservation and Inspection of Documents.** Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

**805. Parties of Interest.** Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

**806. No Recourse under Agreement.** All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to

be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

**807. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when made in writing and hand delivered to the respective party at 300 North Coast Highway, Oceanside, California. Notices to Seller shall be delivered to the Property Management Division of Economic and Community Development Department and notices to Buyer shall be delivered to Director of Housing and Neighborhood Services Department.

**808. Binding Effect.** Without waiver of Section 805, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

**809. Severability.** If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

**810. Headings.** Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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

**812. Assignment.** Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer. Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval. Neither party shall unreasonably withhold approval to any assignment.

**813. Amendment.** This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

**814. Counterpart.** This Agreement may be executed in counterparts.

**815. Time of the Essence.** Time is of the essence in this Agreement and every provision contained in this Agreement.

**816. Integration.** This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or written agreements, which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

**817. Waivers.** No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

**818. Attachments and Exhibits.** All attachments and exhibits referred to in this Agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

**819. Survival.** Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after the Effective Date of this Agreement, and indemnities shall survive the delivery and recordation of the Grant Deed.

**820. Merger.** All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the recordation of the Grant Deed and shall not be merged in the Grant Deed or other documents.

## ARTICLE IX

### LAND SALES CONTRACT PROVISIONS

**901. Payment of Purchase Price.** Buyer shall pay Seller the Purchase Price as set forth in Section 302, above, and in accordance with the terms of this Agreement and the Note.

**902. Acceleration.** If payment of any indebtedness or performance of this Agreement is in default, then Seller may at Seller's option, without notice, declare all sums secured by the Note immediately due and payable by delivering to Buyer a written notice declaring default with demand for payment of the sums due or the reconveyance of title in the Property to that of Seller.

**903. Prepayment of Principal.** Buyer may at any time after the Effective date of this Agreement prepay the Principal Balance or any portion thereof, without penalty. Any prepayment will be applied to and reduce the Principal Balance by the amount so prepaid.

**904. Condition of Property.** Buyer, for itself and all others occupying or using the Property, agrees to keep the Property in a safe, neat, decent and good condition and repair; not to remove or demolish any improvements thereon without Seller's prior written approval; to complete and restore any improvements which may be constructed, damaged or destroyed; to comply with all laws affecting the Property or requiring any alterations or improvements to be made; not to commit or permit waste; to cultivate, irrigate, fertilize, fumigate, prune and do all acts which from the character and use of the Property may be reasonably necessary.

**905. Eminent Domain.** In the event the Property or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain whether through a total take or a partial take during the term of the Note, then, as between the Seller and Buyer the award and proceeds received from said taking shall first apply to and be used to pay Seller the outstanding principle balance then due on the Purchase Price and second any amounts remaining after satisfaction of the Purchase Price shall be that of Buyer. Seller reserves the right to, if during the term of the Note any action or proceeding in eminent domain is commenced to take the Property or any portion thereof, sale the Property or any portion thereof to be taken through condemnation by negotiated sale and settlement with the

condemning agency. In such event, Buyer's obligations with respect to the portion of the Property so taken shall terminate upon the transfer of title to the condemning party.

**906. Events of Default.** Failure or delay by Buyer to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of this Agreement or of the Note constitutes a default under this Agreement. The Buyer must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The Seller shall give written notice of default to the Buyer, specifying the default complained of by the Seller. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the date of default.

For purposes of this Agreement, an Event of Default shall be defined as a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms, covenants or representations contained in this Agreement or the Note, and such failure having continued uncured or without the Buyer commencing to diligently cure for thirty (30) days, or in the event of nonpayment of the Purchase Price after fifteen (15) days when due, after notice thereof in writing is delivered by the Seller to Buyer; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement or of the Note, the specific provision shall control.

In furtherance of the foregoing and by way of specific example, each of the following shall constitute an "Event of Default" by the Buyer under this Agreement:

(a) **Liens Against The Property.** A lien (other than liens approved in writing by the Seller) shall have been recorded against the Property or any part thereof, or any interest or right appurtenant thereto, without discharge or satisfaction thereof or provision therefor satisfactory to the Seller.

(b) **Prohibited Transfer.** There is a sale or other transfer in violation of this Agreement or the Note.

(c) **Condition of the Property.** The Property is allowed to fall into such a condition of disrepair as to become an eyesore or nuisance.

**907. Remedies for Default.** A failure by either party to perform any action or covenant required by this Agreement or the Note, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days if the claimed Default is a failure to pay amounts due pursuant to the Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder, unless a longer cure period is provided in the Note, or other applicable document. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter. In the event Seller expends any costs for the remedy of any such default, the Seller shall be entitled to reimbursement from the Buyer of all costs and

expenses actually incurred by the Seller in curing such default, plus interest at the rate of twelve percent (12%) per annum. The Seller shall be entitled to add such amount to the amounts owing pursuant to the Note. In the event Buyer fails to make payment on the Purchase Price where and when due the Seller may elect to terminate this Agreement and reenter upon and repossess the Property and revest title in the Property to that of Seller.

**908. Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party.

**909. Waiver.** By accepting payment of any sum due after its due date, Seller does not waive Seller's right either to require prompt payment when due of all other sums or to declare default for failure to pay. Seller may waive a default of any provision of this Agreement, by consent or acquiescence, without waiving any prior or subsequent default.

**910. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

IN WITNESS WHEREOF, this Agreement constitutes an offer to purchase the Property on the terms and conditions contained in this Agreement and the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers as of, but not necessarily on, the date first above written.

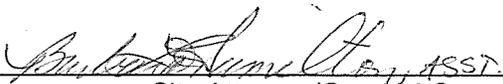
**SELLER:**  
City of Oceanside, a  
California municipal corporation

**BUYER:**  
Community Development Commission  
of the City of Oceanside, a public body  
corporate and politic

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

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By:   
City Attorney/General Counsel

ATTACHMENT NO. 1

Recording Requested by:

COMMUNITY DEVELOPMENT COMMISSION OF THE  
CITY OF OCEANSIDE

When Recorded Return to and  
Mail Tax Statements to:

Community Development Commission  
of the City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054

SPACE ABOVE THIS LINE FOR RECORDING USE \_\_\_\_\_  
CITY DOCUMENT NO.

A.P.N. 147-230-58

THE UNDERSIGNED DECLARES THAT:  
NO DOCUMENTARY TRANSFER TAX DUE R&T CODE §11922  
FOR BENEFIT OF PUBLIC AGENCY – NO FEES DUE GOV'T CODE §27383

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged the **CITY OF OCEANSIDE**, a municipal corporation in and of the State of California (herein called "Grantor"), hereby grants to **COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE**, a public body, corporate and politic of the State of California, (herein called "Grantee"), the real property, (hereinafter referred to as the "Property"), more particularly described in a legal description thereof, marked Exhibit "A", attached hereto and incorporated herein by this reference.

(1) Grantor excepts and reserves the underlying fee to any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

(2) Said Property is conveyed subject to the covenants, conditions and restrictions and other obligations of Grantee as set forth herein.

(3) The Property is conveyed to Grantee at a purchase price (herein called "Purchase Price"), determined in accordance with the uses permitted. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Grantee, such successors and such assigns, shall develop, maintain, and use the Property only as an affordable multi-family housing development, either as rental units of homeownership housing. Notwithstanding the foregoing, the Property may continue to be used as a community garden until such time as the property is either developed or sold for the development of an affordable multi-family housing development.

(4) After the date hereof, Grantee shall use its best efforts to lease or sell the Property, or any part thereof, as soon and in such manner as the Grantee shall find feasible and consistent with the objectives of the Oceanside Comprehensive Affordable Housing Strategy, or superseding document, for an affordable multi-family housing development to a qualified and responsible party or parties (as determined by the Grantor), who will assume the obligation of making or completing

the improvements, or such other improvements in their stead, as shall be satisfactory to the Grantor and in accordance with the uses specified for the Property, or part thereof.

(5) Grantee, its successors or assigns, shall only sell, transfer, convey or assign the Property as a whole (except for the letting of residential housing units, if developed as rental property) and is not permitted to subdivide the Property (except if developed as single family attached or detached homes) without the prior approval of the Grantor.

(6) Grantor hereby reserves a lien on the Property as security for the fulfillment by Grantee of its obligations under this Grant Deed.

(7) Prior to the occupancy of the Property or any portion thereof for residential uses, Grantee, its successors or assigns, shall restrict the sale and occupancy of the Property for the "longest feasible time," as defined in California Health & Safety Code §§ 33334.3 and 33413, which sections define the "longest feasible time" to include "unlimited duration."

(8) The Property is being conveyed to the Grantee for development of affordable housing and not for speculation in undeveloped land.

(9) Grantee covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property, or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property (or portion thereof), nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property (or portion thereof). The foregoing covenants shall run with the land.

(10) All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall lessee itself,

or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

(11) All conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, and the City of Oceanside and its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

(12) The covenants against discrimination set forth in paragraphs (9) and (10) of this Grant Deed shall remain in perpetuity.

(13) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

(14) No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by Grantor; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(15) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing in other instruments between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property or any part thereof after this conveyance of said Property shall be deemed to be merged with this Grant Deed.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of, but not necessarily on, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Grantor – City

CITY OF OCEANSIDE, a municipal corporation in  
and of the State of California

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

The Grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

Grantee-Commission:

COMMUNITY DEVELOPMENT COMMISSION OF  
THE CITY OF OCEANSIDE, a public body corporate  
and politic of the State of California

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney/General Counsel

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

That portion of Weitzel Street along with that portion of Acre Lot 5 of Annex to Mc Neil's Addition, in the City of Oceanside, County of San Diego, State of California, according to Amended Map thereof No. 164, filed in the County Recorder's Office July 29, 1887 described as follows:

Beginning at the most easterly corner of Lot 6 in Block 91 of said Annex to Mc Neil's Addition per map No. 164; thence along the Northwesterly line of Fourth Street as shown on said Map No. 164 North 54°45'00" East (record North 54°45' East) 207.88 feet to the Southeasterly line of that parcel of land described as Parcel 1 in that deed to Maurice Zekaria, et.al, recorded October 19, 1987 as Document No. 87-586806 of Official Records of San Diego County; thence along the boundary of those parcels described as Parcels 1 and 2 of said Document No. 87-586806 the following courses:

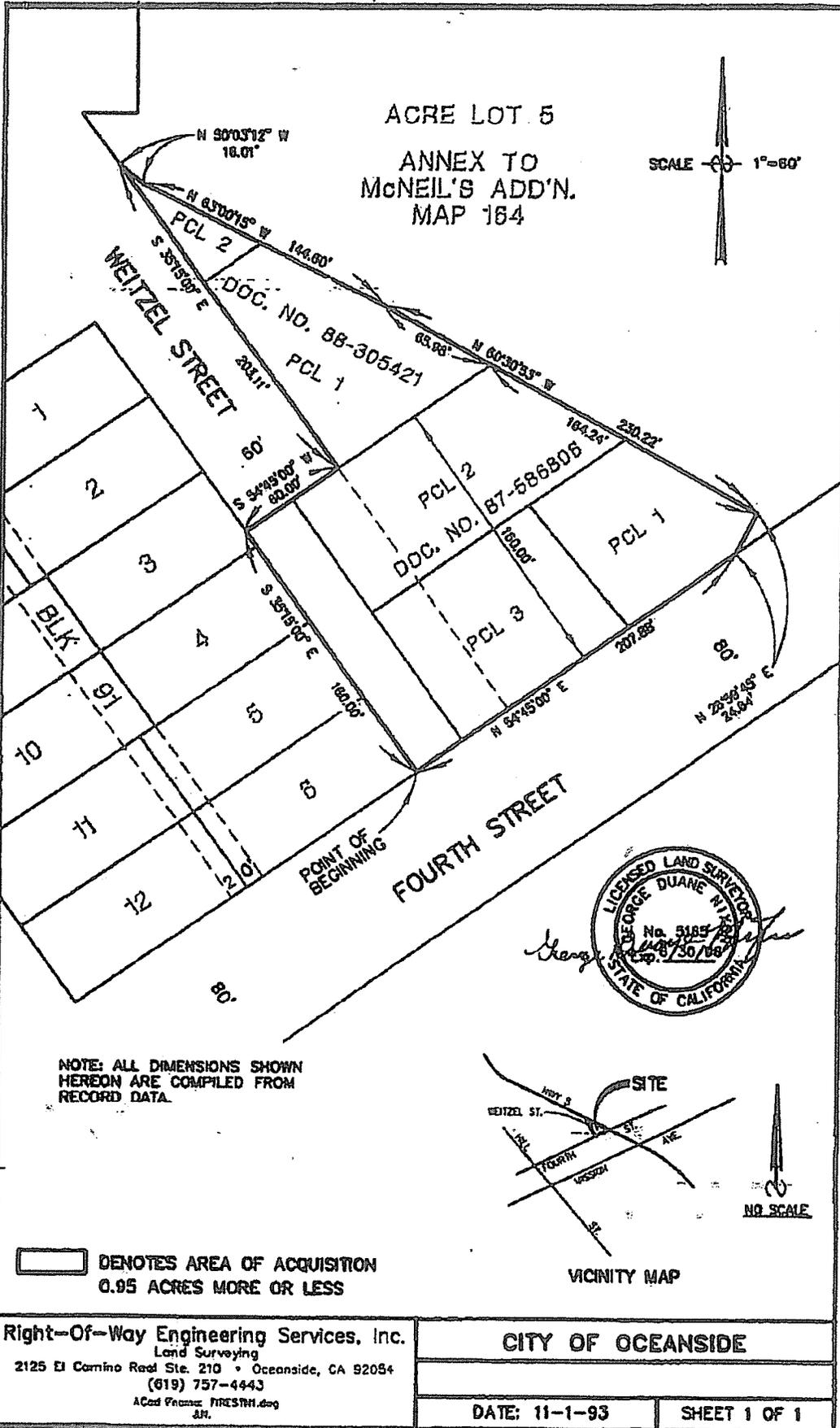
North 26°59'45" East (record North 27°36'44" East) 24.64 feet; thence North 60°30'53" West (record North 59°53'54" West) 164.24 feet to the most Easterly corner of that parcel described as Parcel 1 in that deed to Zekaria Development recorded June 24, 1988 as Document No. 88-305421 of Official Records of San Diego County; thence along the Northeasterly line of those Parcels described as Parcels 1 and 2 in said Document No. 88-305421 the following courses:

North 60°30'53" West (record North 59°53'54" West) 65.98 feet; thence North 63°00'15" West (record North 62°23'16" West) 144.60 feet; thence North 50°03'12" West (record North 49°26'13" West) 16.01 feet more or less to the Southwesterly line of said Acre Lot 5 of Map No. 164; thence along said Southwesterly line South 35°15'00" East (record South 35°15' East) 203.11 feet to a line which is parallel with and 160.00 feet Northwesterly of, measured at right angles to, the Northwesterly line of Fourth Street as said street is shown on said Map No. 164; thence along said parallel line South 54°45'00" West (record South 54°45' West) 60.00 feet to the Southwesterly line of Weitzel Street as shown on said Map No. 164; thence along said Southwesterly line South 35°15'00" East 160.00 feet (record South 35°15' East 200.00 feet) to the Point of Beginning.

Containing 0.950 acres more or less

APN: 147-230-58

ATTACHMENT NO. 2



Right-Of-Way Engineering Services, Inc.  
 Land Surveying  
 2125 El Camino Road Ste. 210 • Oceanside, CA 92054  
 (619) 757-4443  
 ACad Pname: FIRESTH.dwg  
 J.N.

CITY OF OCEANSIDE

DATE: 11-1-93      SHEET 1 OF 1

ATTACHMENT NO. 3

DEFINITIONS

**Seller.** The term "Seller" means the City of Oceanside, California.

**Buyer.** The term "Buyer" means Community Development Commission of the City of Oceanside.

**Authorized Officer.** The term "Authorized Officer", when used with respect to Seller, means the Mayor, City Manager or any employee designated by the City Manager as an Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the Chairperson, Executive Director, Director of Neighborhood Services or any employee designated by its Executive Director as an Authorized Officer.

**Environmental Laws.** The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

**Hazardous Substances.** The term "Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

**Land Sales Contract.** The term "Land Sales Contract" means an installment contract for the sale of the Property. The Seller (vendor) has legal title until paid in full. The Buyer (vendee) has equitable title during the contract term.

**Property.** The term "Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), as more fully described in Exhibit "A" attached hereto.

**State.** The term "State" means the State of California.

ATTACHMENT NO. 4

PROMISSORY NOTE

\$621,000.00  
March 10, 2010

Oceanside, California

**FOR VALUE RECEIVED, COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE**, a public body corporate and politic (the "Commission"), promises to pay to the **CITY OF OCEANSIDE**, a municipal corporation (the "City"), or order, at the City's office at 300 North Coast Highway, Oceanside, California, or such other place as the City may designate in writing, the unsecured sum of Six Hundred Twenty-one Thousand Dollars (\$621,000.00) (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

**1. Agreement.** This Promissory Note (the "Note") is given in accordance with that certain Purchase and Sale Agreement executed by the City and Commission, of equal date herewith (the "Agreement"). The term of this Note shall be for six (6) years commencing upon the Effective Date of the Agreement. The rights and obligations of the Commission and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement

**2. Interest.** The Note Amount shall bear interest at the rate of zero percent (0%) per annum. In the Event of Default, interest shall accrue on the unpaid Principal balance of the Note at the rate of twelve percent (12%) per annum compounded annually from the date of default as determined by the City until the Note is paid in full; provided however, that if such rate of interest may not be collected under applicable law, interest shall accrue on the unpaid Principal Balance of the Note at the highest rate permitted under the laws of the State of California.

**3. Repayment of Note Amount.** The Commission shall, concurrent with the delivery of this Note to Seller, make a Cash Down Payment on the Purchase Price in the amount of **One Hundred Twenty-one Dollars (\$121,000.00)**. The balance of the Purchase Price in the sum of **Five Hundred Thousand Dollars (\$500,000.00)** bearing interest from the Effective Date of the Agreement on unpaid principal at the annual rate of zero percent (0%), payable in installments of **One Hundred Thousand Dollars (\$100,000.00)**, or more, on the 15<sup>th</sup> day of July of each consecutive fiscal year, i.e. July 1<sup>st</sup> through June 30<sup>th</sup>, beginning on the 15<sup>th</sup> day of July 2010, and continuing until July 15, 2014, when the principal is due and payable. The Commission must repay the City principal plus accrued interest upon the occurrence of an Event of Default by Commission, as defined in the Agreement, during the term of this Note.

**4. Waivers**

**a.** Commission expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion, all without in any way affecting the liability of Commission.

b. No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Commission under this Note, either in whole or in part.

c. Subject to the Provisions of Section 16 of this Note, the obligations of Commission under this Note shall be absolute and Commission waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Commission waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure or condition under this Note or the obligations secured thereby. A waiver of any term of this Note or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

**5. Attorneys' Fees and Costs.** Commission agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

**6. Joint and Several Obligation.** This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

**7. Amendments and Modifications.** This Note may not be changed orally, but only by an amendment in writing signed by Commission and by the City.

**8. City May Assign.** City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Commission.

**9. Commission Assignment Prohibited.** In no event shall Commission assign or transfer any portion of the Property or this Note without the prior express written consent of the City, which consent shall not unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement.

**10. Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

**11. Events of Default.** Failure or delay by either party to perform, comply with or observe any of the conditions, provisions, terms, covenants or representations of the Agreement constitutes a default under the Agreement and this Note. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in

giving such notice shall not constitute a waiver of any default, nor shall it change the date of default.

Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until an Event of Default (as such term is hereinafter defined) has occurred. For purposes of this Note, an Event of Default for purposes of instituting legal proceedings by a non-defaulting party against the defaulting party shall be defined as a failure to satisfy, perform, comply with or observe any of the conditions, provisions, terms, covenants or representations contained in the Agreement and this Note, and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) days after notice thereof in writing is delivered by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of the Agreement or this Note, the specific provision shall control.

In furtherance of the foregoing and by way of specific example, each of the following shall constitute an "Event of Default" by the Commission under this Agreement:

a. **Liens Against The Property.** A lien (other than liens approved in writing by the City) shall have been recorded against the Property or any part thereof, or any interest or right appurtenant thereto, without discharge or satisfaction thereof or provision therefore satisfactory to the City.

b. **Prohibited Transfer.** There is a sale or other transfer in violation of this Agreement or the Note.

c. **Condition of the Property.** The Property is allowed to fall into such a condition of disrepair as to become an eyesore or nuisance.

**12. Acceleration and Other Remedies.** Upon: (a) the occurrence of an event of Default as defined in the Agreement, or (b) Commission selling, contracting to sell, giving an option to purchase, conveying, leasing, further encumbering, mortgaging, assigning or alienating the Commission's equitable interest in the Property or any portion thereof, whether directly or indirectly, whether voluntarily or involuntarily or by operation of law, or any interest in the Property, or suffering its title, or any interest in the Property to be divested, whether voluntarily or involuntarily, without the consent of the City or as otherwise permitted under the Agreement, City may, at City's option, declare the outstanding Principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Note, may be added to the Principal hereunder, and shall accrue interest as provided herein. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment. In the event Commission fails to make payment on the Principal Balance of the Purchase Price where and when due the City may elect to terminate the Agreement and this Note and reenter upon and repossess the Property and title in the Property shall revert to that of City.

**13. Consents.** Commission hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof, (c) the granting of any other indulgences to Commission, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Commission or to any endorser, guarantor or surety hereof, and without affecting the liability of said parties hereunder.

**14. Successors and Assigns.** Whenever "City" is referred to in this Note, such reference shall be deemed to include its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Commission, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

**15. Usury.** It is the intention of Commission and City to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- a. the provisions of this paragraph shall govern and control;
- b. neither Commission nor Commission's legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;
- c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Note by City or, if this Note shall have been paid in full, refunded to Commission; and
- d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Note. For purposes of this Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that City may from time to time charge Commission, and under which Commission would have no claim or defense of usury under the Interest Law.

**16. Miscellaneous.** Time is of the essence hereof. This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Commission irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego, North County Branch or the United States District Court of the Southern District of California, as City hereof may deem appropriate, or, if required, the Municipal Court of the State of California for the County of San Diego, in connection with any legal action or proceeding arising out of or relating to this Note. Commission also waives any objection regarding personal or in rem jurisdiction or venue.

**17. No Personal Liability.** In the event of any default under the terms of this Note, the sole recourse of the City for any and all such defaults shall be by judicial foreclosure or by the exercise of the reversion of title to that of City, and Commission and its officers, representatives or employees shall not be personally liable for the payment of this Note; provided, however, that the foregoing shall not in any way affect any rights the City may have (as a secured party or otherwise) hereunder or under the Agreement to recover directly from Commission any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, misrepresentation or waste, and any costs and expenses incurred by the City in connection thereof (including without limitation reasonable attorneys' fees and costs).

**COMMISSION:**

**Community Development Commission of the City of Oceanside**, a public body corporate and politic

By: \_\_\_\_\_  
Executive Director

1 COUNCIL RESOLUTION NO. \_\_\_\_\_  
2 CDC RESOLUTION NO. \_\_\_\_\_

3 A JOINT RESOLUTION OF THE CITY COUNCIL AND  
4 COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF  
5 OCEANSIDE APPROVING THE USE OF A LAND SALES  
6 CONTRACT FOR THE PURCHASE OF CITY-OWNED REAL  
7 PROPERTY FOR AFFORDABLE MULTI-FAMILY HOUSING

8 WHEREAS, the City is the legal and equitable owner of that certain real property,  
9 commonly referred to as the Eastside Community Garden, located in the 400 Block of  
10 Weitzel Street, as more particularly described in a legal description thereof marked Exhibit  
11 "A" and as shown on a sketch thereof marked Exhibit "B", both attached hereto and  
12 incorporated herein by reference (the "Property");

13 WHEREAS, the Commission desires to acquire Property from the City and proposes to  
14 purchase the Property through a Land Sales Contract for the future use as a safe and  
15 affordable multi-family housing development compatible with the Oceanside Comprehensive  
16 Affordable Housing Strategy;

17 WHEREAS, the City is willing to sell the Property to the Commission for said purpose  
18 under the terms and conditions set forth herein and in that certain Purchase and Sale  
19 Agreement [Land Sales Contract] dated as of March 10, 2010 (the "Land Sales Contract"),  
20 which is made a part hereof and incorporated herein as if set forth herein in its entirety; and

21 WHEREAS, the sale of the Property for affordable housing purposes is for the benefit  
22 of the public and is in furtherance of the public purposes of the City and Commission.

23 NOW, THEREFORE, the City Council of the City of Oceanside and the Community  
24 Development Commission of the City of Oceanside do mutually resolve as follows:

25 SECTION 1. That, in order to increase, improve, and preserve the community's supply  
26 of low- and moderate-income housing available at affordable housing cost to persons and  
27 families of low or moderate income, lower income, very low income, and extremely low  
28 income and to promote the City and Commission goals and satisfy specific requirements to

1 produce such housing opportunities, this City Council and Commission finds and determines  
2 that selling the Property to the Commission for said purpose is for the benefit of the public  
3 and is in furtherance of the public purposes of the City and Commission.

4 SECTION 2. That the City Council hereby authorizes the Mayor, and the Commission  
5 authorizes its Executive Director, to enter into the Land Sales Contract for the sale of the  
6 Property from the City to the Commission at a purchase price of Six Hundred Twenty-one  
7 Thousand Dollars (\$621,000.00) (the "Purchase Price"), said price being the market value of  
8 the Property as determined by an independent appraisal thereof.

9 SECTION 3. That the Commission shall execute and issue a promissory note in favor  
10 of the City setting forth Commission's obligation to pay the Purchase Price and the  
11 fulfillment of all other obligations set forth herein and in the Land Sales Contract.

12 SECTION 4. That under the terms and conditions of the Land Sales Contract the  
13 Commission shall upon entering into the Land Sales Contract make a down payment of One  
14 Hundred Twenty-one Thousand Dollars (\$121,000.00), the unpaid principal balance of Five  
15 Hundred Thousand Dollars (\$500,000.00) shall bear an annual interest rate of zero percent  
16 (0%), payable in five (5) equal annual installments of One Hundred Thousand Dollars  
17 (\$100,000.00), or more, beginning on July 15, 2010, and continuing until July 15, 2014,  
18 when the principal balance is due and payable in full.

19 SECTION 5. That the principal balance or any portion thereof may be prepaid at any  
20 time, without penalty.

21 SECTION 6. That the City shall retain title in the Property as security of Commission's  
22 obligation to pay the Purchase Price and performance of other obligations set forth in the  
23 Land Sales Contract.

24 SECTION 7. That should the Commission sell, transfer or convey any interest in the  
25 Property prior to paying the Purchase Price in full, the City may, at City's option, declare all  
26 sums owed under the Land Sales Contract immediately due and payable.

27 SECTION 8. That the Property shall be conveyed and used solely for the development  
28 of affordable housing and not for speculation in undeveloped land.

1 SECTION 9. That notwithstanding the foregoing, the current use of the Property as a  
2 community garden shall be permitted until such time as the Property is developed into an  
3 affordable housing project.

4 SECTION 10. That this resolution shall take effect immediately.

5 PASSED AND ADOPTED by the City Council of the City of Oceanside and the  
6 Community Development Commission of the City of Oceanside, California, this \_\_\_\_ day of  
7 \_\_\_\_\_, 2010, by the following vote:

8 AYES:  
9 NAYS:  
10 ABSENT:  
11 ABSTAIN:

12 \_\_\_\_\_  
13 Mayor/Chair

14 ATTEST:

15 APPROVED AS TO FORM:

16 \_\_\_\_\_  
17 City Clerk/Secretary

18   
19 \_\_\_\_\_  
20 City Attorney/General Counsel

21 JOINT RESOLUTION OF THE CITY COUNCIL AND COMMUNITY  
22 DEVELOPMENT COMMISSION APPROVING THE USE OF A  
23 LAND SALES CONTRACT FOR THE PURCHASE OF CITY-  
24 OWNED REAL PROPERTY FOR AFFORDABLE MULTI-FAMILY  
25 HOUSING  
26  
27  
28

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

That portion of Weitzel Street along with that portion of Acre Lot 5 of Annex to Mc Neil's Addition, in the City of Oceanside, County of San Diego, State of California, according to Amended Map thereof No. 164, filed in the County Recorder's Office July 29, 1887 described as follows:

Beginning at the most easterly corner of Lot 6 in Block 91 of said Annex to Mc Neil's Addition per map No. 164; thence along the Northwesterly line of Fourth Street as shown on said Map No. 164 North  $54^{\circ}45'00''$  East (record North  $54^{\circ}45'$  East) 207.88 feet to the Southeasterly line of that parcel of land described as Parcel 1 in that deed to Maurice Zekaria, et.al, recorded October 19, 1987 as Document No. 87-586806 of Official Records of San Diego County; thence along the boundary of those parcels described as Parcels 1 and 2 of said Document No. 87-586806 the following courses:

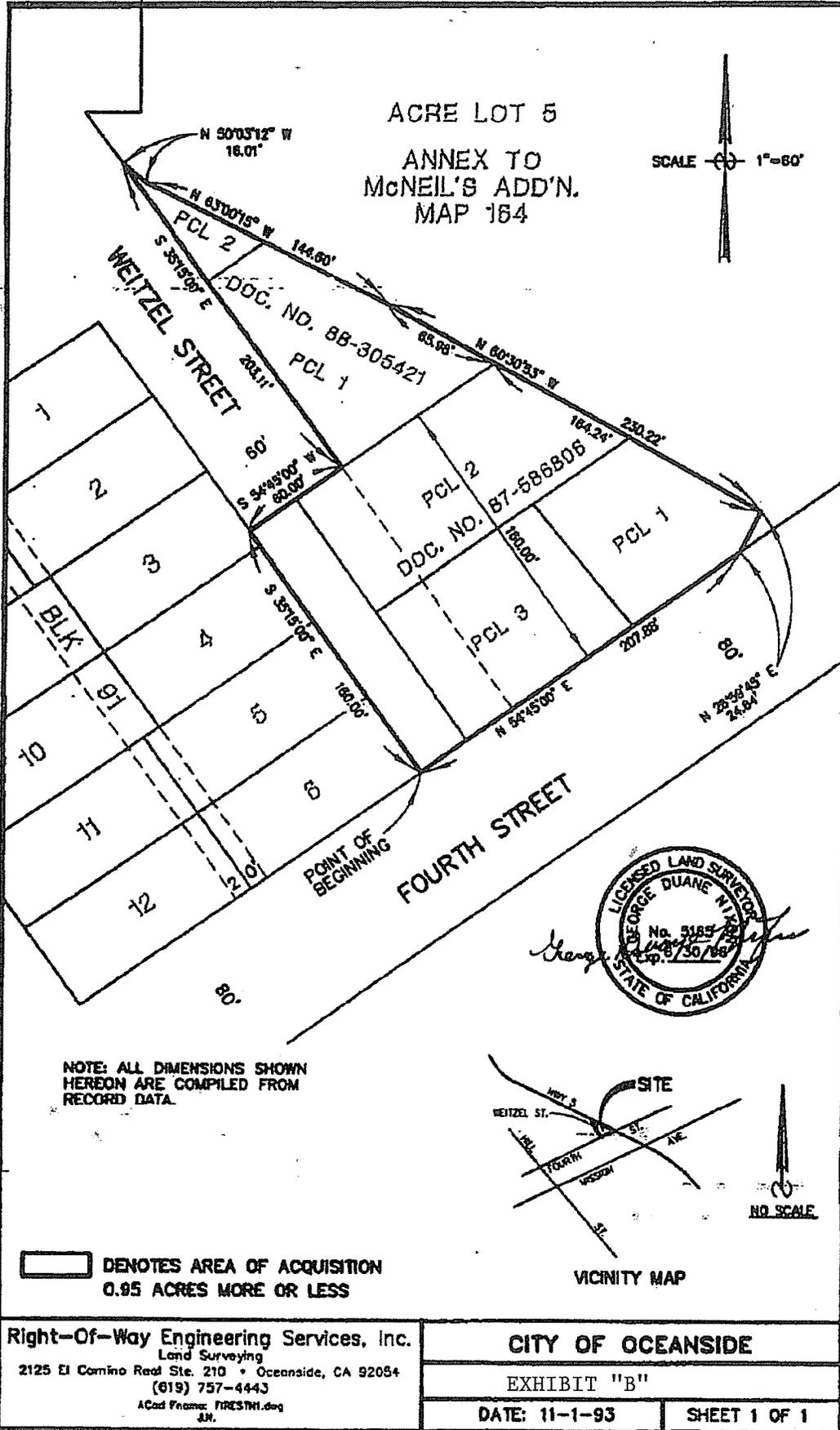
North  $26^{\circ}59'45''$  East (record North  $27^{\circ}36'44''$  East) 24.64 feet; thence North  $60^{\circ}30'53''$  West (record North  $59^{\circ}53'54''$  West) 164.24 feet to the most Easterly corner of that parcel described as Parcel 1 in that deed to Zekaria Development recorded June 24, 1988 as Document No. 88-305421 of Official Records of San Diego County; thence along the Northeasterly line of those Parcels described as Parcels 1 and 2 in said Document No. 88-305421 the following courses:

North  $60^{\circ}30'53''$  West (record North  $59^{\circ}53'54''$  West) 65.98 feet; thence North  $63^{\circ}00'15''$  West (record North  $62^{\circ}23'16''$  West) 144.60 feet; thence North  $50^{\circ}03'12''$  West (record North  $49^{\circ}26'13''$  West) 16.01 feet more or less to the Southwesterly line of said Acre Lot 5 of Map No. 164; thence along said Southwesterly line South  $35^{\circ}15'00''$  East (record South  $35^{\circ}15'$  East) 203.11 feet to a line which is parallel with and 160.00 feet Northwesterly of, measured at right angles to, the Northwesterly line of Fourth Street as said street is shown on said Map No. 164; thence along said parallel line South  $54^{\circ}45'00''$  West (record South  $54^{\circ}45'$  West) 60.00 feet to the Southwesterly line of Weitzel Street as shown on said Map No. 164; thence along said Southwesterly line South  $35^{\circ}15'00''$  East 160.00 feet (record South  $35^{\circ}15'$  East 200.00 feet) to the Point of Beginning.

Containing 0.950 acres more or less

APN: 147-230-58

ATTACHMENT NO. 2



Right-Of-Way Engineering Services, Inc.  
Land Surveying  
2125 El Comino Road Ste. 210 • Oceanside, CA 92054  
(619) 757-4443  
ACad Format: FIRESTW1.dwg  
JN.

**CITY OF OCEANSIDE**

EXHIBIT "B"

DATE: 11-1-93      SHEET 1 OF 1

