

STAFF REPORT



ITEM NO. 23

CITY OF OCEANSIDE

DATE: June 21, 2006

TO: Honorable Mayor and City Councilmembers
Chairman and Members of the Community Development Commission

FROM: Public Works Department

SUBJECT: **APPROVAL TO ENTER INTO A PURCHASE AND SALE AGREEMENT WITH MAJ HOLDINGS L.P./THE ROY P. AND ROBERTA B. JOSEPHO FAMILY TRUST FOR APPROXIMATELY 14.47 ACRES ON MISSION AVENUE AND THE RESIDENTIAL PROPERTY AT 3206 CAROLINE CIRCLE; ADOPTION OF A RESOLUTION OF THE COMMUNITY DEVELOPMENT COMMISSION FOR THE USE OF LOW & MODERATE INCOME HOUSING FUNDS; AND APPROVAL OF A BUDGET TRANSFER OF \$8,000,000 FROM THE LOW & MODERATE HOUSING 20% REDEVELOPMENT SET-ASIDE FUND AND THE INCLUSIONARY HOUSING IN-LIEU TRUST FUND FOR THE ACQUISITION AND TO PAY ASSOCIATED COSTS**

SYNOPSIS

Staff recommends that the City Council and the Community Development Commission approve a purchase and sale agreement and joint escrow instructions with MAJ Holdings L.P. and the Roy P. Josepho and Roberta B. Josepho Family Trust (collectively "Sellers") for the purchase of approximately 14.47 acres located on Mission Avenue (APN 160-270-12) and the residential property at 3206 Caroline Circle (APN 146-061-03), in the amount of \$7,964,000, for future redevelopment into a mixed-use affordable multifamily residential rental complex and commercial/retail development; authorize the Mayor to execute the agreement, the City Clerk to accept the deed conveying the property to the City, and staff to open escrow and conclude the transaction; adopt a resolution of the Community Development Commission for the use of Low & Moderate Income Housing Funds to increase, improve and preserve the community's supply of low- and moderate-income housing availability; and approve a budget transfer in the amount of \$8,000,000 from the Low & Moderate Housing 20% Redevelopment Set-Aside Fund and the Inclusionary Housing In-Lieu Trust Fund for the property purchase, acquisition cost reimbursements and associated closing costs.

BACKGROUND

On June 11, 2003, the City Council adopted Resolution No. 03-R380-1 declaring an affordable housing crisis in the City of Oceanside, and established an Affordable Housing Taskforce. The Taskforce's mission was to review the City's inclusionary

housing ordinance, examine policy options, and make recommendations to the City Council on strategies and solutions for meeting the affordable housing goals. On March 3, 2004, the City Council received the task force's final report, which included topics addressing Oceanside's housing needs, compliance with standards and procedures, sound investment and financial management of City resources, location of affordable housing, including the need to consider mixed-income and mixed-use projects to provide for a better balance of employment and housing Citywide.

One of the locations identified by the Affordable Housing Taskforce was the 14.47 acres located on Mission Avenue. The Housing and Neighborhood Services Department asked the Property Management Section of the Public Works Department to contact the owners of the property to determine if they were interested in selling the property. Once contacted, the owners indicated that they would be willing to sell the property, together with the 3206 Caroline Circle residential property, which they had acquired in contemplating the development of the 14.47 acres (collectively, both properties are hereinafter referred to as the "Property").

ANALYSIS

Staff has negotiated the terms and conditions of a purchase and sale agreement with the Sellers to buy the Property. The purchase price for the Property is conditioned upon support by an independent appraisal to ascertain the fair market value of the Property. Inasmuch as the City is acquiring the Property for the purpose of developing a mixed-use affordable multifamily residential rental complex and commercial/retail project, the parties have agreed that the appraisal of the Property can be based upon such a proposed highest and best use. A summary of the pertinent terms of the proposed purchase of the Property is as follows:

- | | | |
|----|------------------------|--|
| 1. | Purchase Price | \$7,964,000 - (subject to appraisal verification) |
| 2. | Earnest Money Deposits | \$25,000 - upon opening of escrow
\$25,000 - upon completion and approval of the feasibility review |
| 3. | Contingency Period | 30 days from approval of the agreement |
| 4. | Contingencies | Title, environmental and physical inspection |
| 5. | Close of Escrow | Within 30 days of end of contingency period |
| 6. | Extensions | One 15-day extension with payment of \$25,000 (applicable to the purchase price) |

Although the City Council may approve the purchase of the property for such a proposed project at this time, the City Council is not obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the proposed project. Discretionary action includes, but is not limited to, rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals that may be required for the development and operation of the Property.

In order to utilize the Redevelopment 20% Low & Moderate Income Set-aside Funds in acquiring the property, the Community Development Commission must make a finding that utilizing these funds has a direct benefit to the Redevelopment Project Area. Because there is a great need for affordable housing throughout the City, the development of affordable housing in the Project Area is currently cost prohibitive, and the property acquisition will benefit the Project Area by improving the supply of affordable housing near the Project Area, a finding can be made to justify use of these funds.

FISCAL IMPACT

Staff is recommending approval of a budget appropriation in the amount of \$8,000,000 for the purchase of the property, \$4,899,186 from the Low & Moderate Income Housing Fund unallocated fund balance (594.3301) and \$3,100,814 from the Inclusionary Housing In Lieu Trust Account (284.2510.03565) to the 14.47 Acres on Mission account (284.29XXXX.5706). The approximate available balance in the Low & Moderate Income Housing Fund, as of April 30, 2006, is \$4,899,186. and in the Inclusionary Housing In Lieu Trust account is \$17,310,289.

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

Since direction was received from the City Council to pursue the acquisition of the Property, the Housing Commission has not considered the item. However, the Commission is supportive of mixed-use affordable housing in locations convenient to public transportation and employment centers.

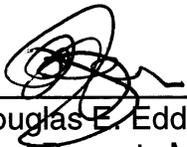
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council and the Community Development Commission approve a purchase and sale agreement and joint escrow instructions with MAJ Holdings L.P. and the Roy P. Josepho and Roberta B. Josepho Family Trust (collectively "Sellers") for the purchase of approximately 14.47 acres located on Mission Avenue (APN 160-270-12) and the residential property at 3206 Caroline Circle (APN 146-061-03), in the amount of \$7,964,000, for future redevelopment into a mixed-use affordable multifamily residential rental complex and commercial/retail development; authorize the Mayor to execute the agreement, the City Clerk to accept the deed conveying the property to the City, and staff to open escrow and conclude the transaction; adoption of a resolution of the Community Development Commission for the use of low- and moderate-income housing funds, and approve a budget transfer in the amount of \$8,000,000 from the Low & Moderate Housing 20% Redevelopment Set-Aside Fund and the Inclusionary Housing In-Lieu Trust Fund for the property purchase, acquisition cost reimbursements and associated closing costs.

PREPARED BY:



Douglas E. Eddow
Real Property Manager

SUBMITTED BY:



Barry E. Martin
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager



Peter A. Weiss, Public Works Director



Margery M. Pierce, Neighborhood Services Director



Nita McKay, Financial Services Director



Kathy Baker, Redevelopment Manager



PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of October 5, 2005 by and between MAJ Investors, L.P., a California limited partnership ("MAJ Investors"), MAJ Holdings, L.P., a California limited partnership ("MAJ Holdings") and Roy P. Josepho and Roberta B. Josepho, Trustees of the Roy P. Josepho and Roberta B. Josepho Family Trust, dated March 19, 1982 (the "Roy and Roberta Josepho Family Trust") (MAJ Investors, MAJ Holdings and the Roy and Roberta Josepho Family Trust are collectively referred to as "Seller"), and the City of Oceanside, a California municipal corporation ("Buyer"). The Effective Date shall be the date this Agreement is approved by the Oceanside City Council and signed by Buyer. Accordingly, prior to the date this Agreement is approved by the Oceanside City Council, either party may terminate the negotiations and not proceed with the transaction contemplated by this Agreement.

WHEREAS, Seller is the owner of that certain real property in the 3200 Block of Mission Avenue, Oceanside, California and 3206 Carolyn Circle, Oceanside, California, as more particularly described herein below; and

WHEREAS, Buyer desires to purchase that certain real property described herein and has determined that purchasing the real property would be a benefit to the public; and

WHEREAS, Seller and Buyer are desirous of entering into this Agreement to consummate the purchase and sale of that certain real property described herein;

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions 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, consisting of approximately 14.47 acres (Assessor Parcel Number ("APN") 160-270-12) and the approximate 0.138 acre residential property located at 3206 Carolyn Circle (APN 146-061-03), which are more particularly described in Exhibit "A" and as illustrated and delineated on a sketch thereof marked Exhibit "B", respectively incorporated herein and made a part hereof. MAJ Investors is the owner of an undivided 50% interest in the residential portion of the Property, and its obligations under this Agreement are limited to that portion of the Property. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the "Property".

102. Status and Powers of Buyer. Buyer 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 Seller. Seller is comprised of two California limited partnerships and a family trust organized under the laws of the State of California and is authorized by the laws of the State of California to sell the Property to Buyer and perform the actions and duties of the Seller more particularly described in this Agreement.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions in this Agreement.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Buyer.

ARTICLE II

DEFINITIONS AND GENERAL PROVISIONS

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

202. Definitions in General. The terms defined in Exhibit "C" 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 Exhibit "C", unless the context clearly requires some other meaning.

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 the terms and conditions in this Agreement.

302. Purchase Price.

(a) The purchase price of the Property is Seven Million Nine Hundred Sixty-Four Thousand and No/100 Dollars (\$7,964,000.00) the "Purchase Price". Said Purchase Price is the sum of Seven Million Five Hundred Sixty-Four Thousand and No/100 Dollars (\$7,564,000.00) based on the per square foot price of Twelve and No/100 Dollars (\$12.00) for the 14.47 acre APN 160-270-12 parcel and the amount of Four Hundred Thousand (\$400,000.00) for the 0.138 acre APN 146-061-03 parcel.

(b) Said Purchase Price shall be subject to verification of the exact gross acreage of the 14.47 acre APN 160-270-12 parcel and validation of the market value of the 14.47 gross acre parcel by an MAI appraisal as more specifically set forth below. In the event the exact acreage of the 14.47 acre APN 160-270-12 parcel is more than or less than said 14.47 gross acres, the Purchase Price shall be adjusted accordingly based on said Twelve and No/100 Dollars (\$12.00) per square foot price.

(c) In the event the appraisal as hereinafter described is less than the Twelve and No/100 Dollars (\$12.00) per square foot amount of the Purchase Price for the 14.47 acre APN 160-270-12 parcel, the Seller shall not be obligated to sell the Property to Buyer for less than Twelve and No/100 Dollars (\$12.00) per square foot. Conversely, if said appraisal is more than the said Twelve and No/100 Dollars (\$12.00) per square foot amount, the Purchase Price for the 14.47 acre APN 160-270-12 parcel shall not otherwise be adjusted.

ARTICLE IV

CONDITIONS PRECEDENT

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in Sections 402 through 410 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, matter for which Buyer's approval is required, Buyer may:

(a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price; or

(b) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, subject to the following: Seller will provide Buyer with access to all documents in its possession regarding 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 the

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.

403. Preliminary Title Report. Upon the opening of Escrow, Seller shall request and deliver to Buyer within ten (10) days from the opening of said Escrow, a preliminary title report for the Property ("Preliminary Report") issued by LandAmerica Commonwealth Title Company or another title insurance company mutually approved by Seller and Buyer ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance (or, provided Buyer so requests in writing, as the Title Company would specify in an American Land Title Association ("ALTA") extended owner's policy of title insurance), together with copies of all exceptions and plotted easements and the documents supporting the exceptions (hereinafter collectively called "Supporting Documents").

Within ten (10) days after receipt of legible copies of the Preliminary Report and supporting documents, Buyer shall give written notice to Seller of its disapproval of the Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the Supporting Documents. In the event Buyer fails to give notice to Seller of its disapproval or approval, such failure shall be deemed to be disapproval thereof. If Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the close of escrow. The right of Buyer to disapprove the condition of title shall apply only to exceptions, which materially and adversely limit or affect the use of the Property. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within seven (7) days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within seven (7) days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances. Although it is recognized that Buyer is a tax-exempt governmental agency, Seller shall be obligated to pay any property taxes and assessments to the date of the Close of Escrow. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens (e.g. a lien upon the Property for the failure to pay a prior year's tax and/or assessment), and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policies. On or before the Close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium a California Land Title Association (CLTA)

standard policy of title insurance, or, if requested by Buyer, an American Land Title Association (ALTA) extended owner's policy of title insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

(a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow, except as set forth pursuant to Section 502 herein; and

(b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and

(c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and

(d) Any lien voluntarily imposed by Buyer as of the Close of Escrow.

405. Physical Condition of the Property. Within thirty (30) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 801 herein, review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein.

406. Property Documents. Within seven (7) calendar days after the date of this Agreement, Seller shall deliver to Buyer, to the extent in Seller's possession or control ("control" shall mean and refer to any of the following items described known to Seller to exist and in the possession of Seller's consultants, attorneys or agents) current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other documents pertaining to the Property ("Property Documents"). Prior to the close of the Feasibility Period pursuant to Section 801 herein, Buyer shall review and approve or disapprove the Property Documents. Seller shall use commercially reasonable efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Documents designated by Buyer as authorized by the Property Documents, by delivering notices to the other party under the Property Documents in sufficient time to terminate the Property Documents prior to the Close of Escrow.

407. Appraisal of Property. Within thirty (30) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 801 herein, obtain a MAI appraisal ("Appraisal") setting forth the market value of the 14.47-acre (APN 160-270-12) portion of the Property and review and approve or disapprove of the Appraisal. Buyer agrees to have the 14.47-acre (APN 160-270-12) portion of the Property appraised as a

mixed-use residential/commercial parcel of real property with respect to the determination of the market value thereof.

408. Non-foreign Affidavit. If applicable, on or before the Close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

409. Seller's Obligations. The performance by Seller 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.

410. Seller's Representations. 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.

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 Close of Escrow and will survive the Close of Escrow and the recording of the Grant Deed for a period of two (2) years thereafter.

502. Title. As of the date of this Agreement, Seller is or will be the legal and equitable owner of the Property, with full right to convey. Unless this Agreement is terminated pursuant to the Section 401, as of the Close of Escrow, Seller is the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. 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 Seller has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title 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. To the best of Seller's knowledge Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal notice alleging that conditions on the Property is or has 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, or state, or local law, code, ordinance, or regulation.

505. Litigation. There is no pending or threatened (except as indicated herein) 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 subject to the provisions of Section 902 herein.

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. To the best of Seller's knowledge Seller is not in default of Seller's obligations or liabilities pertaining to the Property. To the best of Seller's knowledge there are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. To the best of Seller's knowledge 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. Seller will provide Buyer with a zone hazard disclosure report as to the Property with respect to the 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 Buyer may disclose the certification made in this section to the Internal Revenue Service 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 report that Seller has delivered to Buyer either directly or through Seller's agents, contractors or employees, is shall be a complete and accurate copy of such report. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has knowledge.

511. Residential Lease. Pursuant to a written lease, the Seller has leased the residential property located at 3206 Carolyn Circle (APN 164-061-03) to a tenant. Upon Buyer's completion of its feasibility review of the Property and approval thereof, but no later than the time provided for in Section 801 herein and at the time Buyer deposits the additional Twenty-Five Thousand and No/100 Dollars (\$25,000.00) as set forth in Section 702 below, Seller shall promptly terminate said written lease and deliver, at the close of escrow, the Property free and clear of said lease.

512. Assignment. Except as set forth in Article V, Seller represents that there are no contracts, warranties, guarantees, and other intangible property applicable to the Property, which require an assignment to the Buyer.

513. Knowledge Standard. As used in the Agreement, the phrase "to the best of Seller's knowledge" means and refers to the knowledge of Roy Josepho and Stevan Josepho. Further, the representations and warranties of Seller in this Article are made by each entity comprising Seller (i.e., MAJ Investors, MAJ Holdings and the Roy and Roberta Josepho Family Trust) as to itself (as opposed to any other entity comprising Seller) and as to the portion of the Property owned by it (e.g., MAJ Investors, which only owns an undivided interest in the residential portion of the Property, represents and warrants solely as to that portion of the Property).

ARTICLE VI

COVENANTS

601. Power to Enter into Agreements.

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

(b) Buyer is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Buyer 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. Payment of Seller's Obligations. To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the Close of Escrow with respect to the Property.

604. Brokers. Colliers International represents Seller and Buyer is self-represented in the transaction contemplated by this Agreement. Any broker's commission shall be paid by Seller pursuant to a separate agreement between Seller and its broker. Seller and Buyer agree that there are no other brokers or real estate agents involved in this transaction that would be entitled to a fee or commission. Each party

shall hold the other harmless from any claims for such fees or commissions claimed by any other broker, real estate agent or other third party.

605. 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.

ARTICLE VII

ESCROW

701. Establishment of Escrow. Within seven (7) days after the date this Agreement is approved by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller and Buyer shall mutually designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute the general instructions, or propose changes thereto, within five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

702. Deposits. Concurrent with the execution of this Agreement, but no later than the establishment of Escrow pursuant to Section 701 herein Buyer shall deposit with the Escrow Agent, the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00). Said sum shall represent Buyer's good faith deposit for the transaction contemplated under this Agreement. Furthermore, upon Buyer's completion of its feasibility review of the Property and approval thereof, but no later than the time provided for in Section 801 herein, Buyer shall deposit an additional Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for a total of Fifty Thousand and No/100 Dollars. Said deposits shall be applied towards the Purchase Price for the Property and are non-refundable to Buyer, except in the event of Seller's default or failure of a Condition Precedent under this Agreement. In the event that Buyer otherwise fails to consummate the transaction contemplated under this Agreement or defaults hereunder said deposit shall be considered as Liquidated Damages due Seller pursuant to Section 901 herein and in either event Escrow Agent is hereby instructed to release the total of Buyer's opening deposit to Seller.

703. Closing. No later than thirty (30) days ("Closing Deadline"), after Buyer has either approved or waived in writing, each Condition Precedent set forth in Article IV above, the Grant Deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow").

Buyer shall have the right to purchase one fifteen (15) day extension ("Extension Period") by releasing to Seller through the Escrow Agent the non-refundable amount of Twenty-five Thousand and No/100 Dollars (\$25,000.00) the "Extension Payment". The Extension Payment, if made, shall be applicable to the Purchase Price and non-refundable to Buyer and shall be considered as Liquidated Damages pursuant to Section 901 herein, except in the event of Seller's default. Except as set forth herein or unless the Close of Escrow is extended by written agreement of the parties, Escrow shall close no later than the Closing Deadline.

704. Closing Deposits. On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

- (i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer;
- (ii) The original Non-Foreign Affidavit executed by Seller;
- (iii) The originals of all Property Documents, except for those documents, which by law, Seller must keep in its custody;
- (iv) A certificate acknowledging that all conditions to the Close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the Close of Escrow;
- (v) Any other documents or funds required of Seller to close Escrow in accordance with this Agreement;

(b) Buyer shall deposit with Escrow Agent the following:

- (i) The balance of the Purchase Price for the Property in cash;
- (ii) Additional cash in the amount necessary to pay Buyer's share of closing costs as set forth in this Agreement or the escrow instructions and that portion of the Title Policy in excess of the premium for a CLTA Standard Policy of Title Insurance;
- (iii) A certificate executed by Buyer providing that all conditions to Close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the Close of Escrow;
- (iv) Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

705. Closing Costs. Seller shall pay the premium for a CLTA Standard Policy of Title Insurance premium, all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property, and any sales, use or ad valorem taxes connected with the Close of Escrow for the Property. If Buyer request an ALTA extended owner's policy, Buyer shall pay the that portion of the premium for the title policy in excess of the premium for a CLTA Standard Policy. Buyer and Seller shall each pay one-half of the Escrow Agent's fees.

706. Property Taxes and Prorations. Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of taxes. It is recognized that Buyer is a tax-exempt governmental agency. To the extent that Seller is obligated to pay for gas, electricity, water or other utility charges Seller will cause all utility meters to be read as of Close of Escrow and will be responsible for the cost of all utilities used before Close of Escrow.

707. Possession. Right to possession of the Property, or the applicable parcel, shall transfer at Close of Escrow free of all tenancies.

ARTICLE VIII

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the close of Escrow. Buyer shall have thirty (30) days from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections, testing and feasibility studies of the Property, including but not limited to, inspection and examination of soils, environmental factor, Hazardous Substances, if any, and archeological information relating to the Property; a review of the Appraisal of a portion of the Property; and a review and investigation of the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting the Property. Buyer shall obtain Seller's prior written approval before Buyer performs any invasive testing on the Property. Within ten (10) days from the Effective Date of this Agreement, Seller shall deliver to Buyer copies of all architectural plans, surveys, specifications, and other documents pertaining to the Property that are owned by or in the possession of Seller.

Buyer acknowledges and agrees that it is being afforded an opportunity to conduct its own investigation and evaluation of the Property, and Buyer will investigate and evaluate the Property as it determines is prudent or appropriate to do so. Any decision by Buyer to proceed with the purchase of the Property will be based on the results of its own investigation and evaluation. Except as to the specific representations and warranties contained in Article V, Buyer is not relying upon any representations, warranties or other statements of Seller or of Seller's agents in connection with the Buyer's purchase of the Property.

If Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period, to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period and the Opening Deposit, together with all interest, if any, shall be returned to Buyer, less Escrow cancellation charges. If Buyer fails to properly notify Seller of the intent to approve the inspection of the Property, Buyer shall be deemed to be dissatisfied with the results of the inspection and this Agreement shall be considered terminated pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting from Buyer's or its officers', employees', contractors' or agents' inspections and tests. If Buyer alters the physical conditions of the Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

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. 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.

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 delivered or deposited in the United States mail in registered form with postage fully prepaid:

If to Buyer:

CITY OF OCEANSIDE
Property Management
ATTN: Real Property Manager
300 North Coast Highway
Oceanside, CA 92054

Copy to:

City Attorney
CITY OF OCEANSIDE
ATTN: Pam Walls
300 North Coast Highway
Oceanside, CA 92054

If to Seller:

Mr. and Mrs. Roy P. Josepho
LLP
Post Office Box 12567
La Jolla, CA 92039-2567

Copy to:

DLA Piper Rudnick Gray Cary US
Attn: Joseph A. Delaney, Esq.
401 B Street, Suite 1700
San Diego, CA 92101-4297

and

The Josepho Group
Attn: Stevan Josepho
3122 San Luis Rey Road
Oceanside, CA 92054

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices; certificates or other communications will be sent.

808. Binding Effect. Without waiver of section 803, 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. 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 an Authorized Officer/Representative of Seller and for Buyer by an Authorized Officer of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

813. Signatory Authority. Seller, as to being a limited partnership (i.e., MAJ Investors and MAJ Holdings), limited liability company or corporation, will provide to Buyer prior to the Close of Escrow the following:

(a) A copy of its certificate of limited partnership, articles of organization or articles of incorporation, as applicable, certified by the Secretary of State of the state of formation;

(b) A good-standing certificate issued within sixty (60) days prior to the date of closing; and

(c) Documentation, to Buyer's satisfaction, which sets forth the authorized signatories for the entity as certified hereinabove.

Seller, as to being a trust (i.e., the Roy and Roberta Josepho Family Trust, will provide to Buyer prior to the Close of Escrow the following:

(a) A certification of trust from the trustee(s) of the trust, satisfying the requirements of California Probate Code Section 182000.5; and

(b) Documentation, to Buyer's satisfaction, which evidences the authorized signatories for the entity as certified hereinabove.

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

815. Counterpart. This Agreement may be executed in counterpart.

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

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

818. 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.

819. Attorney Fees, Litigation Costs and Related Matters. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

820. Exhibits. All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

821. Survival. Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after Close of Escrow, and indemnities shall survive the Close of Escrow and delivery and recordation of the Grant Deed.

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

ARTICLE IX

SPECIAL PROVISIONS

901. Liquidated Damages. IF BUYER FAILS TO COMPLETE THE PURCHASE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO BUYER AND MAY PROCEED AGAINST BUYER UPON ANY CLAIM OR REMEDY THAT SELLER MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION 901 BUYER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY BUYER, (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO

FIX ACTUAL DAMAGES; (B) AN AMOUNT EQUAL TO THE OPENING DEPOSITS MADE BY BUYER AND EXTENSION PERIOD PAYMENTS, IF ANY ARE MADE, SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER; (D) SELLER MAY RETAIN THAT PAYMENT ON ACCOUNT OF PURCHASE PRICE FOR THE PROPERTY AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

GM _____ [Initials of Buyer and Seller]

Buyer and Seller acknowledge that, pursuant to the terms of this Agreement, Seller is obligated to perform, and in the event Escrow fails to close by reason of default by Seller, Buyer shall be entitled to specific performance of Seller. Notwithstanding Seller's obligation herein, in the event Seller is prevented from closing the Escrow pursuant to the happening of an event, requirement or other impediment beyond the control of Seller, Buyer shall be entitled to the return of the Opening Deposit and Extension Period Payment, if any, are made, and all accrued interest, if any.

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902. Eminent Domain Stipulation. In the event that Seller does not voluntarily enter into this transaction as set forth in this Agreement, Buyer will use its powers of eminent domain to acquire the Property and that the threat of eminent domain by Buyer is an inducement for Seller to sell the Property to Buyer in accordance with the terms and conditions of this Agreement.

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 and/or legal signatories as of the date first above written.

"Buyer"

City of Oceanside, a
California municipal corporation

By: _____
Mayor

the

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: Richard A. Hamilton, DEPUTY
City Attorney

"Seller"

MAJ Investors, L.P.,
a California limited partnership

By: Stevan Josepho
Stevan Josepho, Trustee of

Stevan Josepho Gift Trust
Dated September 16, 1996

Its: General Partner

or

By: _____
Jean Josepho, Trustee

MAJ Holdings, L.P.
a California limited partnership

By: Stevan Josepho Gift Trust
dated September 16, 1996

Its: General Partner

By: Stevan Josepho
Stevan Josepho, Trustee

or

By: _____
Jean Josepho, Trustee

Roy P. Josepho and Roberta Josepho
Family Trust, dated March 19, 1982

By: _____

Roberta Josepho, Trustee

By: _____
Roy Josepho, Trustee

SELLER'S SIGNATURE(S) MUST BE NOTARIZED. NOTARY USE APPROPRIATE ACKNOWLEDGEMENT FORM

EXHIBIT "A"

Real property in the City of Oceanside, County of San Diego, State of California, described as follows:

Parcel "A":

That portion of the Southwest Quarter of Section 18, Township 11, South, Range 4 West, San Bernardino Meridian, in the City of Oceanside, County of San Diego, State of California, according to the Official Plat thereof, described as follows:

"Commencing at the most Northerly corner of Lot 20 of San Luis Rey Estates Unit No. 1 according to Map thereof No. 3907, filed in the Office of the County Recorder of San Diego County, June 11, 1958, being also a point on the Southeasterly line of San Luis Rey Road (Mission Avenue), as shown on said Map No. 3907; thence along said Southeasterly line North 50 degrees 23' 30" East, 125.00 feet to the True Point of Beginning, thence at right angles South 39 degrees 36' 30" East 125.00 feet; thence at right angles South 50 degrees 23' 30" West, 125.00 feet to the Northeasterly boundary of said Map No. 3907; thence along the boundary of said Map No. 3907 as follows: South 39 degrees 36' 30" East 90.95 feet to an angle point therein, and South 72 degrees 43' 45" East 288.54 feet to an angle point in the boundary of San Luis Rey Estates Unit No. 2, according to Map thereof No. 3989, filed in the Office of the County Recorder of San Diego County, October 9, 1958; thence along the Northeasterly line of said Map No. 3989, North 50 degrees 14' 21" East, 282.49 feet to a corner in the boundary of San Luis Rey Estates No. 3, according to Map thereof No. 4085, filed in the Office of the County Recorder of San Diego County, February 11, 1959; thence along the Northeasterly line of said Map No. 4085, North 50 degrees 14' 21" East 420 feet to a corner in the boundary of San Luis Rey Estates No. 4, according to Map thereof No. 4148, filed in the Office of the County Recorder of San Diego County, April 21, 1959, thence along the boundary of said Map No. 4148 as follows: North 50 degrees 14' 21" East, 349.69 feet; North 16 degrees 21' 26" East 407.73 feet; and North 39 degrees 45' 14" West, 225.83 feet to the southeasterly line of said Mission Avenue; thence along said Southeasterly line as follows: South 50 degrees 14' 46" West 480.89 feet; and South 50 degrees 23' 30" West, 941.25 feet to the True Point of Beginning."

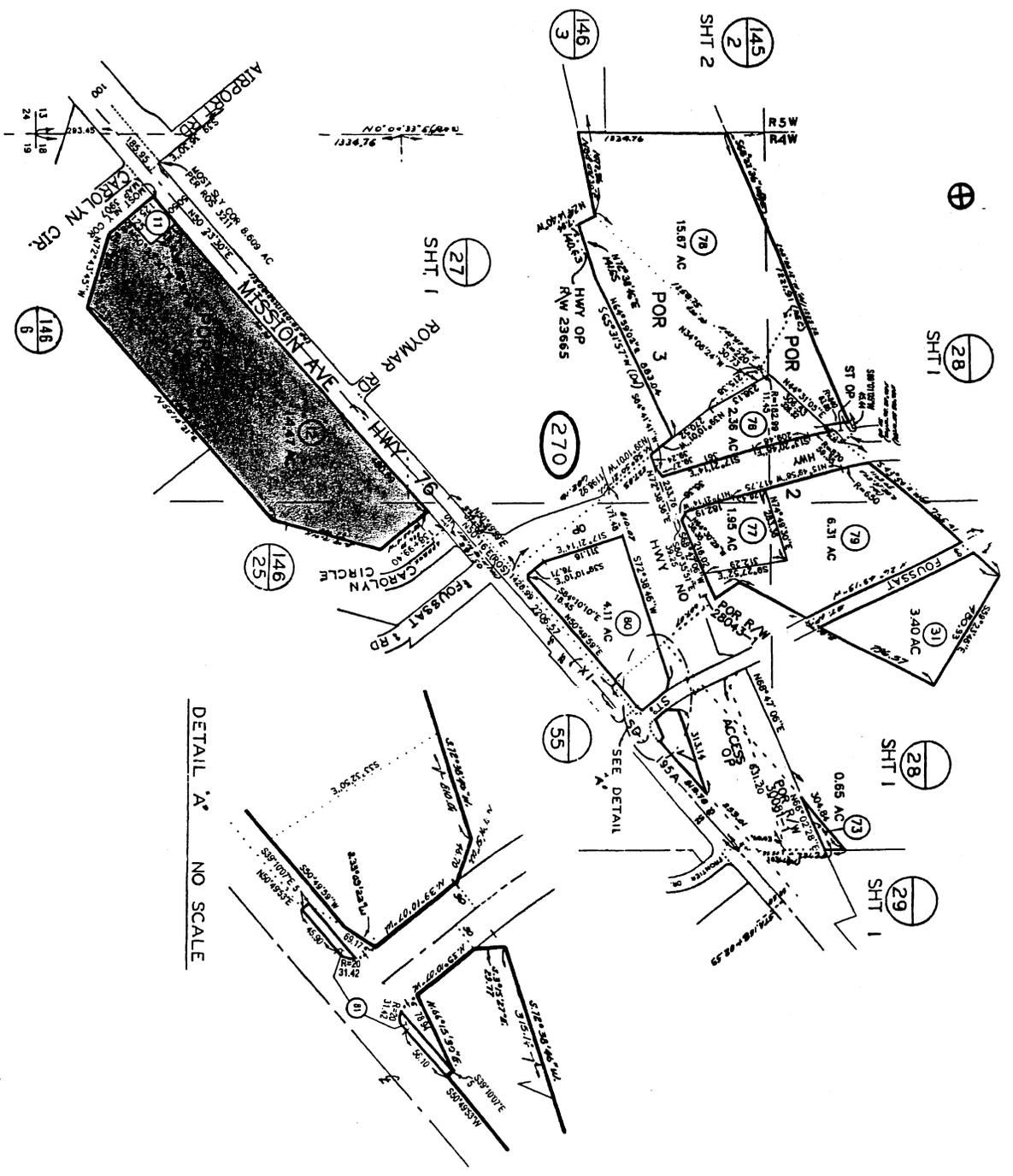
APN 160-270-12

Parcel "B":

"Lot 18 of San Luis Rey Estates Unit No. 1, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 3970, filed in the Office of the County Recorder of San Diego County, June 11, 1958."

APN 146-061-03

2003-03-27
 SAN DIEGO COUNTY ASSESSOR · MAP BK 160 PG 27 SHT. 2 OF 2



THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT CORRELATE WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

DETAIL 'A' NO SCALE

SEC 18-111S-RAW-POR W1/2
 ROS 3211,14996,16513

EXHIBIT "B"

CHANGES			
BLK	OLD	NEW	CUT
270	23	40-50	6
8	53	82	4807
40/82	82	4487	
40/82	53	82	2012
52	82	2532	
82	82	10109	
82	82	14605	
82	82	1130	
82	82	4787	
82	82	1811	
82	82	1271	
82	82	4748	
82	82	1710	
82	82	1722	
82	82	1067	
82	82	4439	
82	82	1438	

7/29/2003 ESW

160-27
 SHT 2 OF 2
 1"=400
 N

EXHIBIT "C"

DEFINITIONS

Buyer. The term "Buyer" means the City of Oceanside, California.

Seller. The term "Seller" means MAJ Holdings, L.P., a California limited partnership, by Stevan Josepho Gift Trust, dated September 16, 1996, its general partner, by Stevan Josepho, trustee or by Jean Josepho, trustee, MAJ Investors, L.P., a California limited partnership, by Stevan Josepho Gift Trust, dated September 16, 1996, its general partner, by Stevan Josepho, trustee or by Jean Josepho, trustee and the Roy P. Josepho and Roberta Josepho Family Trust, dated March 19, 1982, by Roberta Josepho, trustee and by Roy Josepho, trustee.

Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the Mayor, City Manager or any employee designated by the City Manager of Buyer 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 Qualify 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.

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

COUNCIL RESOLUTION NO. _____
CDC RESOLUTION NO. _____

A JOINT RESOLUTION OF THE CITY COUNCIL AND
COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF
OCEANSIDE APPROVING THE USE OF LOW AND MODERATE
INCOME HOUSING FUNDS (SET-ASIDE FUNDS) OUTSIDE THE
DOWNTOWN REDEVELOPMENT PROJECT AREA

WHEREAS, the City Council (the "City Council") is the legislative body of the City of Oceanside and the Community Development Commission of the City of Oceanside is a Community Development Agency (the "Agency") organized and existing under the Community Redevelopment Law, being §33000, et seq., of the California Health and Safety Code ("H&S Code");

WHEREAS, the Agency is engaged in activities necessary and appropriate to carry out and implement the Redevelopment Plan for the Downtown Redevelopment Project Area (the "Project" and/or "Project Area");

WHEREAS, H&S Code §33334.2(a) requires that not less than 20 percent of all taxes that are allocated to the Agency through tax increment shall be used for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income, lower income, very low income, and extremely low income (the "Low and Moderate Income Housing Funds");

WHEREAS, pursuant to H&S Code §33334.2(e) the Agency may exercise any and all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low- and moderate-income persons and families, including, but not limited to, the following:

- Acquire real property or building sites;
- Improve real property or building sites with onsite and offsite improvements;
- Donate real property to private or public persons or entities;

- 1 • Construct buildings or structures; and
- 2 • Provide subsidies to, or for the benefit of, extremely low income households,
- 3 very low income households, lower income households, or persons and families
- 4 of low- or moderate-income, to the extent those households cannot obtain
- 5 housing at affordable costs on the open market;

6 WHEREAS, pursuant to H&S Code §33334.2(g) the Agency may use its Low and

7 Moderate Income Housing Funds inside or outside the Project Area upon a resolution of the

8 Agency and City Council that the use will be of benefit to the Project;

9 WHEREAS, there is limited and insufficient housing stock within the Project Area to

10 meet the City and Agency affordable housing development goals for qualified persons or

11 families; and

12 WHEREAS, the City Council and Agency are required to make a determination in order

13 to use the Low and Moderate Income Housing Funds outside of the Project Area.

14 NOW, THEREFORE, the City Council of the City of Oceanside and the Community

15 Development Commission of the City of Oceanside do mutually resolve as follows:

16 SECTION 1. That, in order to increase, improve, and preserve the community's supply

17 of low- and moderate-income housing available at affordable housing cost to persons and

18 families of low or moderate income, lower income, very low income, and extremely low

19 income and to promote the City and Agency goals and satisfy specific requirements of the

20 Community Redevelopment Law to produce such housing opportunities, it is necessary to

21 expend the Low and Moderate Income Housing Funds outside of the Project Area.

22 SECTION 2. That the City Council and the Agency are making a final and conclusive

23 determination that the use of the Low and Moderate Income Housing Funds outside of the

24 Project Area will be of benefit to the Project based on the following findings:

- 25 a. The Project Area is comprised of a number of commercial and small retail
- 26 businesses and operations;
- 27 b. The affordable housing stock in the Project Area is very limited for qualified
- 28 persons or families;

1 c. Funding housing opportunities outside the Project Area with the Low and
2 Moderate Income Housing Funds will have a direct economic benefit to the
3 Project by increasing the number of persons utilizing and contributing to the
4 betterment and success of Project Area businesses.

5 SECTION 3. That this resolution shall take effect immediately.

6 PASSED AND ADOPTED by the City Council of the City of Oceanside and the
7 Community Development Commission of the City of Oceanside, California, this ____ day of
8 _____, 2006, by the following vote:

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

13 _____
14 Mayor/Chair

15 ATTEST:

16 APPROVED AS TO FORM:

17 _____
18 City Clerk/Secretary

19 *Barbara Hamilton*
20 _____
21 City Attorney/General Counsel
22
23
24
25
26
27
28