

## STAFF REPORT

SUCCESSOR AGENCY  
CITY OF OCEANSIDE

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DATE: June 24, 2014

TO: The Oversight Board of the City of Oceanside Successor Agency

FROM: Property Management

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT WITH THE CITY OF OCEANSIDE FOR REAL PROPERTY IN THE 300 BLOCK OF NORTH CLEVELAND STREET**

**SYNOPSIS**

Staff recommends that the Oversight Board of the Oceanside Successor Agency adopt a resolution approving the sale of real property in the 300 Block of Cleveland Street (APN 147-161-11) in the amount of \$800,000 to the City of Oceanside; authorize the Chair of the Oversight Board to execute the real property disposition and acquisition agreement and grant deed conveying the property; and authorize staff to open escrow and consummate the contemplated transaction subject to the approval of the California Department of Finance.

**BACKGROUND**

The Successor Agency to the former Oceanside Redevelopment Agency ("Successor Agency") is the owner of that certain real property in the 300 Block of Cleveland Street (APN 147-161-11) consisting of approximately 1.61 acres ("Property"). The Property is currently being used as an improved surface public parking lot with 181 spaces.

As part of the plan for the disposition of real property owned by the Successor Agency, the Oversight Board of the Successor Agency ("Oversight Board") approved and submitted a Long Range Property Management Plan ("LRPMP") to the California Department of Finance ("DOF") for their approval. In 2013 the DOF approved the LRPMP, which included a sale of the Property for economic development purposes including a parking structure with a residential and/or commercial component.

**ANALYSIS**

The approval of the LRPMP by the DOF allows the Successor Agency to sell the Property to a willing buyer. Accordingly, staff is requesting approval of the Oversight Board to sell the Property to the City of Oceanside ("City"). The City is interested in acquiring the Property for the purpose of constructing a public parking lot structure and for a future mixed-use development project. The salient provisions of the

proposed real property disposition and acquisition agreement ("Purchase and Sale Agreement") with the City are summarized as follows:

**Purchase Price:** \$800,000 – all cash transaction.

**Opening of Escrow:** Escrow is to be opened with the Escrow Department of Stewart Title Company within seven days after the Oversight Board's approval of the Purchase and Sale Agreement.

**Close of Escrow:** Escrow is to close no later than thirty days after receipt of approval or conditional approval of the Purchase and Sale Agreement by the DOF and by the Oceanside City Council ("City Council").

**Approval by DOF and the City Council:** Close of Escrow is contingent upon approval from the DOF and the City Council. In the event the DOF and/or the City Council rejects or disapproves the transaction contemplated under the Purchase and Sale Agreement the transaction shall become null and void. In the event that the DOF conditionally approves the sale and within ten days of receipt of such notice of said conditional approval either party determines that such condition(s) is/are overly burdensome to fulfill, then with the giving of seven days written notice by the objecting party to the other party the Purchase and Sale Agreement shall become null and void.

**Closing Costs:** Buyer is responsible for all closing costs including, but not limited to: payment of the premium for a Policy of Title Insurance, real property and documentary transfer taxes, recording fees, and Escrow Agent charges.

**Condition of Property:** The property is being sold and bought in its "As-Is", "Where-Is" condition.

Should the Oversight Board approve selling the Property as proposed it would be appropriate and in accordance with State law that it adopt a resolution authorizing the sale.

### **FISCAL IMPACT**

The Property was purchased with tax-exempt bond proceeds. In order to comply with the bond's Indenture of Trust and Tax Certificate and maintain the tax-exempt status of the bond, any income derived from the sale of the Property must be used to redeem outstanding bonds.

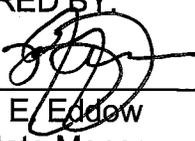
### **CITY ATTORNEY'S ANALYSIS**

The agreement and resolution have been approved as to form by the City Attorney, acting as Counsel to the Successor Agency.

**RECOMMENDATION**

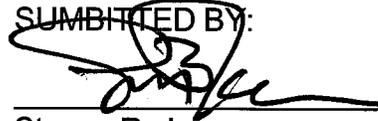
Staff recommends that the Oversight Board of the City of Oceanside Successor Agency adopt a resolution approving the sale of real property in the 300 Block of Cleveland Street (APN 147-161-11) in the amount of \$800,000 to the City of Oceanside; authorize the Chair of the Oversight Board to execute the real property disposition and acquisition agreement and grant deed conveying the property; and authorize staff to open escrow and consummate the contemplated transaction subject to the approval of the California Department of Finance.

PREPARED BY:



\_\_\_\_\_  
Douglas E. Eddow  
Real Estate Manager

SUBMITTED BY:

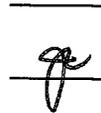


\_\_\_\_\_  
Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence

James R. Riley, Financial Services Director



ATTACHMENTS:

- 1) Resolution
- 2) Real Property Disposition and Acquisition Agreement

1 RESOLUTION NO.

2 A RESOLUTION OF THE OVERSIGHT BOARD FOR THE  
3 SUCCESSOR AGENCY OF THE CITY OF OCEANSIDE  
4 APPROVING AN AGREEMENT TO SELL SUCCESSOR  
5 AGENCY OWNED REAL PROPERTY LOCATED IN THE 300  
6 BLOCK OF CLEVELAND ST TO THE CITY OF OCEANSIDE  
FOR \$800,000 (APN-147-161-11)

7 WHEREAS, on February 1, 2012, in accordance with the provisions of California  
8 Health and Safety Code Section 34179(a)(1) the Oceanside Redevelopment Agency was  
9 dissolved; and

10 WHEREAS, the Oversight Board to the Successor Agency of the former Oceanside  
11 Redevelopment Agency (Successor Agency) has been appointed pursuant to the provisions of  
12 Health and Safety Code Section 34179; and

13 WHEREAS, on May 10, 2013 and May 15, 2013, the California Department of Finance  
14 issued to the Successor Agency a Finding of Completion pursuant to Health and Safety Code  
15 Section 34179.7; and

16 WHEREAS, staff for the Oceanside Successor Agency prepared a Long-Range Property  
17 Management Plan in accordance with Health and Safety Code Section 34191.5 and the  
18 Oversight Board approved the Long-Range Property Management Plan on June 11, 2013; and

19 WHEREAS, on October 30, 2013, the Department of Finance issued a letter to the City  
20 of Oceanside making certain findings concerning the Long-Range Property Management Plan  
21 (LRPMP) previously approved by the Oversight Board; and

22 WHEREAS, the Oversight Board approved a Revised LRPMP on November 19, 2013;  
23 and

24 WHEREAS, the Department of Finance approved the Revised LRPMP on November  
25 22, 2013; and

26 WHEREAS, consistent with the Revised LRPMP, staff has negotiated a Real Property  
27 Disposition and Acquisition Agreement (“Agreement”) to sell the Successor Agency-owned  
28 real property located in the 300 Block of Cleveland St. Street (APN 147-161-11) (“the  
Property”), to the City of Oceanside (Buyer) for the purchase price of \$800,000; and

1           WHEREAS, the purchase price is based upon an appraisal prepared for the Successor  
2 Agency;

3           WHEREAS, the proposed sale implements the LRPMP which calls for the property to  
4 be sold “for economic development purposes with a condition that future uses be consistent  
5 with the City’s Local Coastal Plan and the Nine Block Master Plan. Future uses include a  
6 parking structure with a commercial and/or residential component.”

7           NOW, THEREFORE, the Oversight Board to the Successor Agency of the City  
8 Oceanside does resolve as follows:

9           1.       The foregoing Oversight Board recitals are true and correct and are a substantive  
10 part of this Resolution.

11           2.       The Oversight Board hereby approves the Agreement, attached to the staff report  
12 dated June 24, 2014, to sell the Successor Agency-owned real property located in the 300 Block  
13 of Cleveland St. to the City of Oceanside for the purchase price of \$800,000 and the Chair of  
14 the Oversight Board is authorized to execute the Agreement.

15           3.       Staff is authorized to open escrow and take all actions necessary to consummate  
16 the transaction subject to the approval of the California Department of Finance.

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4. Staff shall utilize the sales proceeds in accordance with the Revised LRPMP.

BE IT FURTHER RESOLVED that, a copy of this resolution will be transmitted to the California State Department of Finance.

PASSED AND ADOPTED by the Oversight Board to the Successor Agency of the City of Oceanside, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

CHAIRMAN \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SECRETARY

# DRAFT

## REAL PROPERTY DISPOSITION AND ACQUISITION AGREEMENT [And Joint Escrow Instructions]

This Real Property Disposition and Acquisition Agreement ("Agreement") dated \_\_\_\_\_, 2014 solely for identification purposes, is made and entered into by and between the **Successor Agency to the former Oceanside Redevelopment Agency** in accordance with California Health and Safety Code Section 34170, *et seq.*, hereinafter referred to as "Seller", and the **City of Oceanside**, a municipal corporation, hereinafter referred to as "Buyer". **THIS AGREEMENT SHALL BE EFFECTIVE AS OF THE DATE THIS AGREEMENT IS APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCE (the "Effective Date")**.

### WITNESSETH THAT:

WHEREAS, Seller is the owner of that certain real property, consisting of approximately 1.61 acres located in the 300 Block of North Cleveland Street, City of Oceanside;

WHEREAS, Seller has developed a Long Range Property Management Plan in accordance with the provisions of Assembly Bill 1484 ("AB 1484") which states the Property will be use for development consistent with applicable zoning ordinances;

WHEREAS, Buyer is aware and understands that the sale of said 1.61 acre parcel contemplated under this Agreement is subject to the review and approval of the California Department of Finance; and

WHEREAS, Seller has determined that the disposition of said 1.61 acre parcel, in accordance with the terms and conditions set forth in this Agreement, would be a public benefit and is in the furtherance of the public purpose of Seller.

NOW THEREFORE, in consideration of which, and the other considerations hereinafter set forth, the parties hereto mutually covenant and agree as follows:

### ARTICLE I RECITALS

101. Description of Property. Seller is the owner of the fee simple interest in that certain real property described as a 1.61 acre parcel of real property in the 300 Block of North Cleveland Street, situated in the City of Oceanside, County of San Diego, State of California (APN 147-161-11), as more particularly in Exhibit "A" and as shown on a sketch marked as Exhibit "B", both attached hereto and incorporated herein by reference, (the "Property").

102. Status and Powers of Seller. Seller existing under the laws and statutes of the State of California and, subject to the California Department of Finance, is authorized to sell the Property to Buyer and perform the actions and duties of the Seller more particularly described in this Agreement.

103. Status and Powers of Buyer. Buyer is a municipal corporation and is authorized by the laws of the State of California to enter into this Agreement, purchase the Property from Seller and perform the actions and duties of Buyer as 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. The purchase of the Property is for the purpose of constructing a public parking structure and mixed-use project in compliance with the uses permitted and standards set forth in the Oceanside Zoning Ordinance and all other applicable federal, state and local laws, codes and regulations.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purpose of Seller.

## 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 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. 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 the terms and conditions in this Agreement.

302. Purchase Price. The purchase price of the Property is **Eight Hundred Thousand and No/100 Dollars (\$800,000.00)** the ("Purchase Price").

## 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 409 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII

"ESCROW", if any of the Conditions Precedent has not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, any 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;
- (b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure; or
- (c) 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 but makes no representations or warranties as to the accuracy or reliability thereof. 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 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 ordering the Escrow, Seller shall request a preliminary title report for the Property ("Preliminary Report") issued by Stewart 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 ("Supporting Documents").

Within fifteen (15) 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. 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 that 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 ten (10) 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 ten (10) 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 Seller 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, 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 Policy. 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 CLTA standard policy of title insurance, or, if requested by Seller, an 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 fifteen (15) 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", "Where-Is" "With-All-Faults" condition, except as expressly provided for elsewhere herein.

406. 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.

407. Approval of Transaction by California Department of Finance. Seller shall have received approval by the California Department of Finance to consummate the transaction contemplated under this Agreement.

- (a) Notwithstanding anything to the contrary herein, in the event that the California Department of Finance rejects or disapproves of the sale contemplated herein,

then in such event, this Agreement shall become null and void and of no further effect, and the parties hereto shall have no further obligation to the other party with regard to the transaction contemplated hereunder.

(b) In the event that the California Department of Finance conditionally approves the sale and within ten (10) days of receipt of such notice of said conditional approval and either party determines that such condition(s) is/are overly burdensome to fulfill, then with the giving of seven (7) days written notice by the objecting party to the other party this Agreement shall become null and void and of no further effect, and the parties hereto shall have no further obligation to the other party with regard to the transaction contemplated hereunder.

408. Seller's Obligations. Seller is obligated to 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.

409. Seller's Representations. Seller represents 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 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.

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. 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. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report and/or the Grant Deed. 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. 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 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, 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 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 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. Payment of Seller's Obligations. To the extent Seller is authorized by the Supporting Documents, Seller shall, to the best of its ability, discharge all obligations and liabilities under the Supporting Documents before the Close of Escrow with respect to the Property.

604. 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 any broker, real estate agent or other third party claiming through Buyer.

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.

606. Indemnification. Seller shall indemnify, defend and hold Buyer, its officers and employees, 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, its officers and employees, 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 606 shall survive the Close of Escrow with respect to the Property.

## ARTICLE VII ESCROW

701. Establishment of Escrow. Within seven (7) days after the date this Agreement is approved by Seller and Buyer, the parties shall establish an Escrow for the close of the sale of the Property with the escrow department of Stewart Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller shall 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. Concurrent with the establishment of Escrow, Seller shall notify and seek approval from the Department of Finance of the sale the Property contemplated under the terms of this Agreement.

702. Deposit. Concurrently with the establishment of Escrow pursuant to Section 701 herein, Buyer shall deposit with the Escrow Agent the sum of **Ten Thousand and No/100 Dollars (\$10,000.00)** which sum represents a down payment towards the Purchase Price ("Deposit"). Said down payment shall represent Buyer's initial good faith deposit for the transaction contemplated under this Agreement. Said Deposit shall bear no interest and be applied towards the Purchase Price for the Property and shall be non-refundable to Buyer and made available for the immediate release to Seller after expiration of the Feasibility Period, except in the event of Seller's default or failure of a Condition Precedent under this Agreement; and in such event the Deposit shall be returned to Buyer. 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 Buyer's Deposit held by it to Seller.

7.03 Closing. No later than the latter of **thirty (30) days** ("Closing Deadline") after receipt of approval or conditional approval of the transaction contemplated under this Agreement from the California Department of Finance or **thirty (30) days** after the date of

the Agreement is executed by both parties, and provided neither party has terminated this Agreement pursuant to Subsection 407(b), above, the Grant Deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent.

704. Closing Deposits. On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow Agent 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, if applicable;
- (iii) 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;
- (iv) 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 amount of the Purchase Price for the Property;
- (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;
- (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. Buyer shall pay the premium for a Policy of Title Insurance in an amount covering the Purchase Price, 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. Buyer shall also pay the Escrow Agent charges.

706. Property Taxes and Prorations. Buyer is purchasing the Property subject to the lien of taxes and assessments then current and unpaid, if any. To this regard there shall be no proration of taxes or assessments as of the Close of Escrow.

707. Possession. Right to possession of the Property shall transfer at Close of Escrow free of all tenancies and subject to the exceptions and reservations contain in the Grant Deed.

## 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 fifteen (15) calendar 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 factors, Hazardous Substances, if any, and archeological information relating to 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. 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. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes and Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. 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 certified form with postage fully prepaid:

If to Seller:

City of Oceanside  
Property Management Division  
ATTN: Real Estate Manager  
300 North Coast Highway  
Oceanside, CA 92054

Phone: (760) 435-5012  
Fax: (760) 435-5169

If to Buyer:

City of Oceanside  
Property Management Division  
ATTN: Real Estate Manager  
300 North Coast Highway  
Oceanside, CA 92054

Phone: (760) 435-5012  
Fax: (760) 435-5169

Copy to:

City Attorney  
City of Oceanside  
ATTN: Barbara Hamilton  
300 North Coast Highway  
Oceanside, CA 92054

Phone: (760) 435-3986  
Fax: (760) 435-3970

Copy to:

City Attorney  
City of Oceanside  
ATTN: Barbara Hamilton  
300 North Coast Highway  
Oceanside, CA 92054

Phone: (760) 435-3986  
Fax: (760) 435-3970

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. Form of Certificate of Officers. Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

- (a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;
- (b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;
- (c) A statement that, in the opinion of the signer, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as its relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons provided the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

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 multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

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 written agreements, which are not expressly set forth in this 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 Deed or other documents.

823. Drafting Ambiguities. Each party to the Agreement and its counsel have reviewed and revised this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

**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 DEPOSIT MADE BY BUYER 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 THE 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.**

\_\_\_\_\_/\_\_\_\_\_  
Initials of Buyer

\_\_\_\_\_/\_\_\_\_\_  
Initials of 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 Escrow pursuant to the happening of an event, requirement or other impediment beyond the control of Seller, including, but not limited to, the provisions of Section 407 herein, Buyer shall be entitled to the return of the Deposit and all accrued interest, if any.

***Remainder of Page Left Blank Intentionally***

[SIGNATURES ON NEXT PAGE]

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**

Successor Agency to the former  
Oceanside Redevelopment Agency

By: \_\_\_\_\_  
Chair, Oversight Board

APPROVED AS TO FORM:  
COUNSEL TO SUCCESSOR AGENCY

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

**Buyer**

City of Oceanside  
a municipal corporation

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

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
City Attorney

**BUYER'S SIGNATURE(S) MUST BE NOTARIZED  
NOTARY USE CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

EXHIBIT "C"  
DEFINITIONS

Seller. The term "Seller" means the Successor Agency to the former Oceanside Redevelopment Agency.

Buyer. The term "Buyer" means \_\_\_\_\_, a \_\_\_\_ corporation, existing under California law with its principal place of business in San Diego County, California.

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 of Seller as an Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the President of Buyer or any other officer of Buyer designated by its Board of Directors 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.

Property. The term "Property" means that certain real property within the City of Oceanside, County of San Diego, State of California, as more fully described in Exhibit "A" attached hereto, together with the improvements (if any) located thereon.

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