

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (“**Effective Date**”), by and between CHARLES H. MANH FAMILY TRUST (“**Buyer**”), and the CITY OF SANTA ANA, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“**Seller**” or “**City**”). As used herein, Buyer and Seller may be referred to collectively as the “**Parties**,” and each individually as a “**Party**.”

### **RECITALS**

A. City is the fee simple owner of that certain real property consisting of approximately 8,965 square feet, located at 515 N. Bristol Street (APN Nos. 008-081-26), and 517 N. Bristol Street (APN No. 008-081-28) Santa Ana, California, legally described in **Exhibit “A”** attached to this Agreement and incorporated into this Agreement in its entirety by this reference (the “**Property**”).

B. On March 5, 2019, the Property was approved by the City for disposition through direct negotiations, without competitive bidding, in accordance with Santa Ana Municipal Code sections 2-706 and 2-709.

C. On April 21, 2020, the Santa Ana City Council adopted Resolution No. 2020-032 declaring the Property as surplus land and directing the City Manager to comply with the requirements of California Government Code Section 54220 et seq. (“**Surplus Land Act**”) for the disposition of the Property.

D. On April 27, 2020, the City released a Notice of Availability (“**NOA**”) of surplus property for the Property for a period of sixty days. This NOA was sent out to all “**local public entities**,” as defined in Health and Safety Code section 50079, within whose jurisdiction the surplus land was located, and to “**Housing Sponsors**” that had notified the California Department of Housing and Community Development (“**HCD**”) of their interest in surplus land. The NOA was also sent to local parks agencies and school districts.

E. The Property was among those for which either no responses were received by entities receiving the notices of availability or for which responses were received and good faith negotiations ended after a period of not less than 90 days without agreement to price and terms.

F. City staff proceeded with direct negotiations to sell the Property to Buyer.

G. City now desires to sell the Property to Buyer, and Buyer desires to purchase the Property from City, in accordance with the provisions of this Agreement.

### **AGREEMENT**

NOW THEREFORE, incorporating the foregoing Recitals and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. The recitals of fact set forth above are true and correct and are incorporated into this Agreement in their entirety by this reference.

2. Purchase and Sale; Purchase Price.

2.1 Purchase and Sale. Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller, subject to the terms and conditions set forth in this Agreement.

2.2 Purchase Price. The purchase price of the Property shall be Two Hundred Fifty Thousand Dollars (\$250,000.00).

3. Escrow.

3.1 Escrow Instructions. Escrow Instructions. Within seven (7) days following the execution of this Agreement by the Parties, Buyer will open an escrow ("**Escrow**") with Fidelity National Title, 4400 MacArthur Blvd., Suite 200, Newport Beach, CA 92660, Attn: Justin VanderVeen ("**Escrow Holder**") for the purchase and sale of the Property. The "**Opening of Escrow**" shall mean the date on which a fully executed copy of this Agreement has been delivered to Escrow Holder. Escrow Holder shall confirm the Opening of Escrow to the Parties in writing. This Agreement constitutes joint escrow instructions to Escrow Holder. The Parties agree to execute such additional instructions consistent with the provisions of this Agreement, which may be required by Escrow Holder. As between the Parties, Buyer and Seller agree that, if there is any conflict between the terms of this Agreement and any Escrow Instructions required by Escrow Holder, the terms of this Agreement shall control. Buyer and Seller shall each furnish Escrow Holder with their respective Federal Tax Identification Numbers and such other information as is reasonably required by Escrow Holder.

3.2 Payment of Purchase Price. The Purchase Price for the Property shall be payable at Closing. If Seller has deposited into Escrow all documents and amounts required of Seller to close Escrow, including without limitation, the "**Grant Deed**" (as defined in Section 3.10 below), and complied with all of Seller's other obligations under this Agreement, then on or before the "**Closing Date**" (as defined Section 3.3 below) so as not to delay the "**Close of Escrow**" (as defined Section 3.3 below), Buyer shall deposit into Escrow the following in Acceptable Funds: (a) the Purchase Price and (b) the Escrow closing costs pursuant to the preliminary Escrow Closing statement furnished by Escrow Holder as provided below.

3.3 Close of Escrow. Subject to Sections 3.3.1 and 3.3.2, Escrow for the sale of the Property shall close on a date that is no later than thirty (30) days after the opening of Escrow ("**Closing Date**"), subject to reasonable extension as necessary in order to satisfy the conditions precedent and other requirements for the Close of Escrow. As used in this Agreement, "**Close of Escrow**" shall mean the date on-which the "**Grant Deed**" conveying fee title to the Property to Buyer is recorded in the Orange County Recorder's Office.

3.3.1 Conditions Precedent to Buyer Obligation to Close. Buyer's obligation to close Escrow and purchase the Property is expressly conditioned on the satisfaction of the conditions listed in this Section 3.3.1. If any such condition is not satisfied or waived by Buyer at or prior to the Close of Escrow, for any reason other than a default by Buyer, Buyer

may, in its sole discretion and without limiting any of Buyer's legal remedies or remedies under this Agreement, terminate this Agreement by written notice to Seller.

(1) Title Policy. Escrow Holder has issued or is irrevocably committed to issue to Buyer the "**Title Policy**" (as defined in Section 3.6 below) showing fee title vested in Buyer subject only to "**Permitted Exceptions**" (as defined in Section 3.5 below).

(2) Representations and Warranties. Each of Seller's representations and warranties in this Agreement are materially true and accurate as of the Close of Escrow.

(3) Seller Obligations. Seller is not in material default under this Agreement and each material obligation of Seller to be performed prior to the Close of Escrow, has been performed as required, including, without limitation the delivery of all documents required of Seller under this Agreement.

(4) Possession. Seller is able, at the Close of Escrow to deliver exclusive possession of the Property to Buyer in accordance with this Agreement and does so.

3.3.2 Conditions Precedent to Seller Obligation to Close. Seller's obligation to close Escrow and sell the Property is expressly conditioned upon the satisfaction of the conditions listed in this Section 3.3.2. If any such condition is not satisfied or waived by Seller prior to the Close of Escrow for any reason other than a default by Seller, Seller may, in its sole discretion and without limiting any of Seller's legal remedies or remedies under this Agreement, terminate this Agreement by written notice to Buyer.

(1) Representations and Warranties. Each of Buyer's representations and warranties set forth in this Agreement are materially true and accurate as of the Close of Escrow.

(2) Buyer's Obligations. Buyer is not in material default under this Agreement, and each material obligation of Buyer to be performed prior to the Close of Escrow hereunder has been performed as required.

### 3.4 Escrow Cancellation.

#### 3.4.1 Charges.

(1) Seller's Default. If Escrow fails to close due to Seller's default, Seller shall pay all Escrow cancellation charges. "**Escrow cancellation charges**" means all fees, charges and expenses charged or passed on to the Parties by Escrow Holder, including all title expenses. Buyer shall be entitled to terminate this Agreement or bring an action against Seller for specific performance as its sole and exclusive remedies.

(2) Buyer's Default. If Escrow fails to close due to Buyer's default, Buyer shall pay all Escrow cancellation charges and Seller shall be entitled to terminate this Agreement as its sole and exclusive remedy.

(3) No Default. If Escrow fails to close and this Agreement is terminated for any reason other than a default by one of the Parties, Buyer and Seller shall evenly split any Escrow cancellation charges.

3.5 Permitted Exceptions to Title. As soon reasonably possible after the Opening of Escrow, Escrow Holder shall cause Fidelity National Title, in its capacity as title insurer ("**Title Company**"), to deliver to Buyer and Seller a current preliminary title report ("**Title Report**") together with legible copies of all underlying documents referenced therein (together with the Title Report, the "**Title Documents**"). The term "**Permitted Exceptions**" as used in this Agreement shall mean all of the following: (a) the Grant Deed; (b) the Affordable Housing Covenant; (c) non-delinquent real property taxes and assessments; (d) items and exceptions created by or with the written consent of Buyer, including documents to be recorded pursuant to this Agreement, and (e) the title exceptions shown on the Title Report but excluding any (i) "**Disapproved Exceptions**" as defined below that Seller, in its sole discretion, agrees to remove prior to the Close of Escrow as provided below and (ii) all monetary liens and monetary encumbrances on the Property, other than non-delinquent real property taxes and assessments which will be removed (meaning removal from title and not the issuance of an endorsement in connection therewith by the Title Company) from title by Seller at its sole cost and expense prior to the Close of Escrow. If Buyer objects to any title exceptions in its sole and absolute discretion ("**Disapproved Exceptions**"), Buyer shall deliver written notice ("**Objection Notice**") of same to Seller within ten (10) business days of delivery of the initial Title Report to Buyer. Seller shall act in good faith and reasonably to resolve any title exception in the Objection Notice. If Buyer fails to deliver an Objection Notice but delivers a "**Notice of Approval**", Buyer shall be deemed to have approved title to the Property subject to the Permitted Exceptions. If Buyer delivers an Objection Notice regarding a title exception and Seller, by delivery of written notice to Buyer within five (5) business days following receipt of the Objection Notice elects not to remove a material Disapproved Exception (Seller's failure to respond to a Buyer Objection Notice shall be deemed such an election), Buyer's sole remedies shall be with respect to the delivery of a Notice of Approval or delivery or deemed delivery of a Notice of Termination.

3.6 Title Insurance. Seller shall cause the Title Company to commit to issue to Buyer at the Close of Escrow a standard coverage ALTA Owner's policy of title insurance with mechanics lien endorsement (Seller shall provide, any indemnity or other agreement required by the Title Company as a condition to the issuance of the mechanics lien endorsement) ("**Title Policy**") insuring fee title to the Property vested in Buyer subject only to the Permitted Exceptions, with coverage in an amount equal to the Purchase Price. If Buyer requires an extended coverage ALTA Owners policy of title insurance, Buyer shall pay the difference in cost between the standard and extended coverage and the cost of any endorsements (other than a mechanics lien endorsement issued in connection with the standard coverage Title Policy which shall be at the cost of Seller) ("**Buyer Title Costs**").

3.7 Possession. Seller shall deliver possession of the Property to Buyer at the Close of Escrow subject only to the Permitted Exceptions and free of any tenancies and/or third party claims of use or ownership.

3.8 Taxes, Assessments and Prorations.

3.8.1 Taxes. Only to the extent the Seller pays any property taxes or assessments on the Property, all current general and special taxes and assessments on the Property shall be prorated by Escrow Holder based upon the latest available information as shown in the tax statements provided to Escrow Holder by Seller, using customary escrow procedures in Orange County. Seller shall provide Buyer with written evidence of the payment or satisfaction of such taxes. Should the Property be part of a larger tax parcel (“**Assessment Parcel**”) which as of the Close of Escrow remains unsegregated on the County Tax Assessor’s Roll for the ensuing fiscal year, Escrow Holder shall charge Buyer and credit Seller for taxes and assessments allocated to the Property (based on unimproved value) based on the percentage of the total acreage of the Assessment Parcel located on the Property, which acreage figures for allocation purposes shall be fairly and equitably determined and supplied to Escrow Holder by Buyer and Seller. Buyer and Seller shall cooperate in good faith to cause the Property to be separately assessed and segregated in Buyer’s name on the current tax roll. Any real property taxes or assessments levied under the Supplemental Tax Roll as a result of the sale of the Property to Buyer, shall be the responsibility of Buyer. Any real property taxes or assessments levied under the Supplemental Tax Roll as a result of transfers, improvements or other occurrences before the Close of Escrow shall be the responsibility of Seller.

3.8.2 General. All pro rations provided for herein shall be on an “**actual day**” basis and a three hundred sixty-five (365) day year. The provisions of this Section shall survive Close of Escrow. If either Party fails to pay its pro rata share of taxes or other expenses by the times herein provided, interest shall accrue on all unpaid amounts from when owing until paid at the maximum rate allowed by law. Any errors or omissions made in calculating adjustments and prorations shall be corrected promptly upon the discovery thereof. If any estimations are made at the Close of Escrow regarding adjustments or prorations, the Parties shall make the appropriate collection promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid to the Party entitled thereto within thirty (30) days after written request therefor and if not so paid interest shall accrue and be payable on same at the maximum rate allowed by law.

3.9 Closing Costs. Buyer shall pay the cost of the Title Policy, the Escrow Fees and any applicable documentary transfer fees (considering Seller is a City) and recording fees, and all other costs and expenses incurred related to the purchase of the Property by Buyer. If required by Buyer’s lender, Buyer shall also pay for the appraisal cost of the Property (collectively, “**Closing Costs**”). As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to Buyer and Seller.

3.10 Grant Deed. The transfer of ownership of the Property shall be documented through a Grant Deed in the form attached hereto as **Exhibit “B”** and incorporated herein by reference, conveying the Property to Buyer (“**Grant Deed**”).

3.10.1 Affordable Housing Covenant in the Event of Residential Development. In accordance with California Government Code Section 54233, if 10 or more residential units are developed on the Property, not less than 15 percent of the total number of residential units developed on the Property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of Section 65915 of the Government Code. Buyer expressly agrees and consents that the requirements of this section shall be contained in a covenant or restriction recorded against the Property prior to land use entitlement of the project, and the covenant or restriction shall run with the land and shall be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the Government Code.

3.11 Recordation and Delivery of Documents. No later than the business day immediately prior to the Closing Date, Buyer and Seller, as applicable, will deposit into Escrow the following documents (with the documents that are to be recorded in the following order and delivered as provided below):

3.11.1 Grant Deed. One (1) fully executed and acknowledged copy of the Grant Deed conveying the Property to Buyer. Conformed copies of the recorded Grant Deed shall be returned to Buyer and Seller as soon as possible.

3.11.2 Withholding Exemption Certificates. One (1) completed and executed copy of the following: Non-foreign Transferor Declaration; Preliminary Change in Ownership Report, Internal Revenue Service Form 1099-S, and California Franchise Tax Board Form 593 and any other applicable state tax withholding forms, as applicable.

3.11.3 Disbursement of Closing Documents. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver copies of all closing documents, including, without limitation, those listed above, the Title Policy, any additional escrow instructions and the final Escrow closing statement, to Seller’s counsel and Buyer or Buyer’s counsel.

3.12 Seller's Proceeds. At the Close of Escrow, subject to Section 3.13 below, Escrow Holder is directed to wire funds representing Seller's cash proceeds through Escrow to Seller's account as directed in separate written instructions to be provided by Seller.

3.13 Cal-FIRPTA Withholding. Unless this transaction is exempt under California Revenue and Taxation Code Sections 18805 and 26131, Escrow Holder shall be the "**withholding agent**" and withhold from proceeds due Seller any amounts required under the above code sections to be withheld by Buyer and pay same to the California Franchise Tax Board or Internal Revenue Service in accordance with applicable law.

3.14 Additional Documents. Seller and Buyer shall execute and deliver to Escrow any other documents reasonably required by Escrow Holder including, without limitation, Seller's affidavits or statements regarding mechanics liens and /or tenants or parties in possession.

3.15 Termination of Property Contracts. Seller shall terminate any service contracts or similar agreement relating to the Property that the Buyer does not expressly elect in writing to assume which termination shall be effective as of the Close of Escrow.

4. Real Estate Brokerage Commission. Buyer and Seller each represent and warrant to each other that they have not employed, dealt with or incurred any obligation to any broker, agent or finder in connection with the Property, and that they have not incurred any obligation to pay any other real estate brokerage or other commission or fee in connection with the conveyance of the Property to Buyer. Buyer and Seller agree to indemnify, defend and hold each other free and harmless from and against all costs and liabilities, including without limitation reasonable attorneys' fees and the costs and expenses of litigation, for causes of action or proceedings in any way related to or resulting from a breach of the foregoing representation and warranty or arising out of any action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying Party, respectively, in connection with this transaction.

5. Inspections; AS-IS Condition of Property.

5.1 Waiver of Inspections. Buyer and Seller agree that Buyer unequivocally waives any right to conduct independent investigations concerning (i) Buyer's proposed use, sale, development or suitability for development of the Property; (ii) the condition and all other attributes of the Property, including, without limitation all improvements located thereon; (iii) applicable laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Property or any existing or proposed development or condition thereof, including but not limited to zoning, subdivision and other regulations; (iv) the necessity or availability of any specific plan or general amendments, rezoning, zone variances, conditional use permits, building permits, environmental impact reports, subdivision maps, public reports issued by the California Bureau of Real Estate and all other governmental permits, approvals or acts; (v) the necessity and existence of all dedications, fees, charges, costs or assessments which may be imposed by any Governmental Authority in connection with the proposed development of the Property; (vi) the value of the Property; (vii) the availability or adequacy of access to the Property, or of water, sewage, gas, electrical or other

utilities serving the Property and (viii) the presence or adequacy of infrastructure or other improvements on, near or concerning the Property.

5.2 No Representations or Warranties. Seller makes no representation or warranty, express or implied, to the Buyer relating to the condition of the Property or suitability of the Property for any intended use or development by the Buyer.

5.3 Acceptance of Property "AS-IS." Buyer shall accept all conditions of the Property, without any liability of the Seller whatsoever, AS-IS, WHERE-IS, SUBJECT TO ALL FAULTS CONDITION, WITHOUT WARRANTY AS TO QUALITY, CHARACTER, PERFORMANCE OR CONDITION, and with full knowledge of the physical condition of the Property, the nature of the Seller's interest in and use of the Property, all laws applicable to the Property and of any and all conditions, restrictions, encumbrances and all matters of record relating to the Property. The Property is being acquired by Buyer as a result of its own knowledge of the Property and not as a result of any representation(s) made by the Seller or any employee, official, consultant or agent of the Seller relating to the condition of the Property, unless such statement or representation is expressly and specifically set forth in this Agreement. Seller hereby expressly and specifically disclaims any express or implied.

## 6. Warranties.

6.1 Seller's Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, Seller makes the following representations and warranties which shall be true and correct as of the Effective Date and the Close of Escrow and each of which is material and being relied upon by Buyer. For all purposes of this Agreement, including Seller's representations and warranties contained herein, the phrase "to the best of Seller's knowledge" shall mean the current actual knowledge of Seller. If prior to the Close of Escrow, Buyer has actual knowledge that any representation or warranty of Seller is untrue, inaccurate or incomplete in any material respect (and without waiving any of Buyer's rights or remedies hereunder at law or in equity with respect to any material untruth, incompleteness or inaccuracy existing on the Effective Date, that was known of or should have been known of by Seller), Buyer may give Seller written notice of same and Seller shall have seven (7) days from the date of receipt of Buyer's notice (and the Closing Date shall be extended to permit the running of such seven (7) day period) ("Seller Cure Period") to correct any factor or circumstance that makes such representation or warranty materially untrue or inaccurate to Buyer's reasonable satisfaction. If Seller fails to make such correction within the Seller Cure Period, then Buyer by written notice to Seller within three (3) days after the expiration of the Seller Cure Period (and the Closing Date shall be extended to permit the running of such three (3) day period) shall be entitled (a) to terminate this Agreement, or (b) continue this Agreement in full force and effect with no change in terms, but without waiving any legal, equitable or other remedies it may have against Seller. The foregoing is not a waiver or release of any of Buyer's rights or remedies for any material untruth, incompleteness or inaccuracy in a representation or warranty of Seller of which Buyer obtains knowledge after the Close of Escrow.

6.1.1 Authorization. Seller has full power and authority to enter into this Agreement and to perform all its obligations hereunder, and has taken all action required by law, its governing instruments or otherwise to authorize the execution, delivery and performance of this Agreement by Seller. Each individual or entity who has executed this Agreement on behalf of Seller has the right, power, legal capacity and authority to execute, deliver and perform this Agreement on behalf of Seller.

6.1.2 Conflicting Agreements. Neither the execution or delivery of this Agreement, nor the consummation of the transaction contemplated herein, will conflict with, or result in a breach of, any contract, license or undertaking to which Seller is a party or by which Seller or any of the Property is bound, or constitute a default thereunder. In addition, with respect to any agreements that affect the Property, neither Seller nor any other party or parties to such agreements are in default thereunder nor are there any facts that currently exist which with the passage of time would result in any such default. To the best of Seller's knowledge, the Property is not subject to any prescriptive easements, claims of adverse possession, encroachments or similar rights or claims. The Property is not subject to any leases, options or other similar rights or claims in favor of any third parties. The Property is not subject to a Williamson Act contract or any similar agricultural agreement.

6.1.3 Proceedings. To the best of Seller's knowledge, no legal or administrative proceeding is pending or threatened against Seller or the Property nor are there any other facts or circumstances which would adversely affect (i) Seller's right to convey title to the Property to Buyer as contemplated in this Agreement, or (ii) Buyer's ability to own, develop and/or market the Property in the manner disclosed by Buyer to Seller. To the best of Seller's knowledge, there are no condemnation or eminent domain proceedings pending or threatened with respect to the Property.

6.1.4 Binding Agreement. This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

6.1.5 Violations of Law. On the Effective Date and Close of Escrow, neither this Agreement nor the Property shall be in violation of any law, ordinance, rule regulation, or administrative or judicial order.

6.1.6 Hazardous Materials. Seller has not stored or released, caused to be stored or released or approved the storage or release on the Property, of any "**hazardous materials**" (as defined below). To the best of Seller's knowledge, (a) no prior owner of the Property has stored or caused to be stored any hazardous materials on the Property; (b) no hazardous materials now exist in, on or under the Property in violation of any "**environmental law**"

(as defined below); (c) there are no underground tanks on the Property; (d) no use of or operations on the Property have occurred which use or operation has violated any applicable environmental law; and (e) the Property is not on any **“Superfund”** list under any applicable environmental law. As used herein, **“environmental law”** shall mean any and all present federal, state or local laws (whether common law, statute, rule, regulation or otherwise), permits, orders and any other requirements of Governmental Authorities relating to the environment to any **“hazardous materials”** (as defined below) (including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) as amended from time to time and the applicable provisions of the California Health and Safety Code and California Water Code). As used herein, **“hazardous materials”** shall mean any (a) chemical, compound, material, mixture or substance that is now defined or listed in, or otherwise classified pursuant to any environmental law as a **“hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic waste,” “toxic pollutant”** or any other formulation intended to define, list or classify substances by reason of deleterious properties or effect and (b) petroleum, petroleum by-products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, municipal solid waste steam, drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal resources.

6.1.7 No Assumed Obligations. There are no obligations or responsibilities of Seller with respect to the Property or otherwise of any kind that are assumed by Buyer.

6.1.8 Endangered Species. To the best of Seller’s knowledge, (a) there are no endangered or threatened species of animals, plants or insects on the Property, and (b) there are no environmental or biological characteristics of the Property or adjacent property, which under existing law will adversely affect Buyer’s ability to own, develop and/or market the Property or the cost thereof.

6.1.9 Ownership of Property. Seller is the sole and only party that owns or holds any interest in the Property.

6.1.10 Property Documents. To the best of Seller’s knowledge, the Property Documents and all other documents and information provided by Seller or its agents or consultants to Buyer are complete, true and accurate and do not omit any material fact, and there are no other documents, materials, studies, surveys or other information in the possession or control of Seller that would have a material and adverse effect on Buyer’s ability to own, develop and/or market the Property.

6.1.11 Other Agreements. Except as set forth in the Property Documents and this Agreement, Seller has not made any commitment or representation to or entered into any agreement of any kind with any government authority, or any adjoining or surrounding property owner, group or other third party, which would in any way be binding on Buyer or all or any portion of the Property or would interfere in any way with Buyer's ability to own, develop, improve and/or market the Property, and will not make any such representations or warranties or enter into any such agreements which would affect the Property or any portion thereof prior to the Close of Escrow, without Buyer's written consent.

6.1.12 Access. There is full and unobstructed direct access to the Property from public streets, highways or roads that are adjacent to the Property.

6.1.13 Bankruptcy. No "**Bankruptcy Event**" (as defined below) has occurred with respect to Seller nor any member or manager of Seller. There is not pending or threatened any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or re-composition of Seller or any member or manager of Seller or seeking appointment of a receiver, trustee, custodian or similar official for Seller or any member or manager of Seller for all or any substantial part of its or their assets. "**Bankruptcy Event**" means (a) the making by a person of a general assignment for the benefit of such person's creditors, (b) the admission in writing by a person of its inability to pay its or their debts as they mature, (c) an attachment, execution or other judicial seizure of any property interest which remains in effect, or (d) the failure to have taken or submission to any action indicating a general inability by a person to meet its financial obligations as they accrue.

6.1.14 Material Change. Seller shall promptly notify Buyer if Seller obtains information that would make any of the representations or warranties contained herein materially inaccurate or misleading.

6.2 Buyer's Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations and warranties which shall be true and correct as of the Effective Date and the Close of Escrow and each of which is material and being relied upon by Seller. For all purposes of this Agreement, including Buyer's representations and warranties contained herein, the phrase "**to the best of Buyer's knowledge**" shall mean the current actual knowledge of Buyer. If prior to the Close of Escrow Seller determines that any representation or warranty of Buyer is untrue, inaccurate or incomplete in any material respect (and without waiving any of Seller's rights or remedies hereunder at law or in equity with respect to any material untruth, incompleteness or inaccuracy existing on the Effective Date, that was known of or should have been known of by Buyer), Seller may give Buyer written notice of same and Buyer shall have seven (7) days from the date of receipt of Seller's notice (and the Closing Date shall be extended to permit the running of such seven (7) day period) ("**Buyer Cure Period**") to correct any fact or circumstance that makes such representation or warranty materially untrue or inaccurate to Seller's reasonable

satisfaction. If Buyer fails to make such correction within the Buyer Cure Period, then Seller by written notice to Buyer within three (3) days after the expiration of the Buyer Cure Period (and the Closing Date shall be extended to permit the running of such three (3) day period) shall be entitled (a) to terminate this Agreement or (b) continue this Agreement in full force and effect with no change in terms, but without waiving any legal, equitable or other remedies it may have against Buyer. The foregoing is not a waiver or release of any of Seller's rights or remedies for any material untruth, incompleteness or inaccuracy in a representation or warranty of Buyer of which Seller obtains knowledge after the Close of Escrow.

6.2.1 Authorization. Buyer has full power and authority to enter into this Agreement and to perform all of its obligations hereunder, and has taken all action required by law, its governing instruments or otherwise to authorize the execution, delivery and performance of this Agreement. Each individual who has executed this Agreement on behalf of Buyer has the right, power, legal capacity and authority to execute, deliver and perform this Agreement on behalf of Buyer.

6.2.2 Binding Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

6.2.3 Compliance with Law. Buyer is required to carry out the development of the Project in conformity with all applicable laws, including all applicable building, planning and zoning laws, including any historic property regulations and environmental laws.

6.2.4 Development of Property. Buyer hereby represents and guarantees that it will own the land in fee simple located at 1248 W. 6<sup>th</sup> Street in Santa Ana within twenty-four (24) months following the approval of this Purchase and Sale Agreement. Buyer hereby represents and guarantees that it will complete construction and development of the Property for the uses permitted by City's Bristol Street Specific Plan within 24 months following the Close of Escrow of the 1248 W. 6<sup>th</sup> Street property. These timeframes shall be tolled by any delays directly attributable to the actions or inactions of the City, by any natural causes outside the control of either party ("Force Majeure"), or by mutual agreement of the parties. If Buyer does not comply with these guarantees within the timeframes provided, the City shall have the right to repurchase the Property, including any and all improvements to the Property then completed by Buyer, in exchange for payment by the City to Buyer of eighty percent (80%) of the Purchase Price paid by Buyer under this Agreement. City shall provide written notice of its exercise to purchase the Property within sixty (60) days following the development deadline in this section. The repurchase deed shall be identical in form to the deed by which title to the Property was conveyed by Seller to Buyer and shall be free and clear of any and all mortgages, liens, or other evidence of indebtedness.

6.3 Natural Hazard Zone Disclosure. No later than seven (7) business days prior to the Property Approval Date, the Seller will, at its sole cost and expense, provide Buyer with a Natural Hazard Zone Disclosure required by applicable law.

6.4 Buyer and Seller Cooperation. Buyer shall submit plans for the development of the Property to Seller, and Seller, in its capacity as the City within which the project is located, will make the determination as to the required entitlements based upon Buyer's proposed plans. Buyer may then process and obtain the Project Entitlements through Seller in its capacity as the City within which the Project Entitlements is located. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to exercise of governmental discretion with regard to such items, nor a guarantee that such approvals or permits will be granted at all or within any particular time or with or without any particular conditions.

7. Destruction/Condemnation of Property; Other Notices. In the event that all or any portion of the Property is damaged or destroyed by any casualty under the provisions of applicable law after the Effective Date but prior to the date of Closing, Seller shall give Buyer immediate written notice of the same.

8. Indemnification.

8.1 Obligations. Seller shall indemnify Buyer and Buyer shall indemnify Seller against any wrongful intentional act or negligence of the Indemnitor. Buyer shall also indemnify Seller against any and all of the following: (a) any damage to the Property caused by the Investigations of the Property by Buyer; and (b) any accident, injury or damage whatsoever caused to any person in or on the Property by Buyer prior to the Closing. Notwithstanding anything to the contrary in this Agreement, no Indemnitor shall be required to indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence.

8.2 Limitation on Liability of the Seller. Following the Close of Escrow, the Buyer is and shall be responsible for operation of the Property, and the Seller shall not be liable for any injury or damage to any property (of the Buyer or any other person) or to any person occurring on or about the Property, except to the extent caused by the Seller's wrongful intentional act or negligence.

8.3 Strict Liability. The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees.

8.4 Independent of Insurance Obligations. Buyer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Buyer's insurance or other obligations under this Agreement and is independent of the Buyer's insurance and other obligations under this Agreement. Buyer's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Buyer's indemnification obligations under this Agreement and are independent of the Buyer's indemnification and other obligations under this Agreement.

8.5 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations under this Agreement shall survive the expiration or earlier termination of this

Agreement, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, absolutely and completely barred by applicable statutes of limitations.

8.6 Independent Duty to Defend. The duty to defend under this Agreement is separate and independent of the duty to indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies immediately upon notice of a claim, regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any amounts or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee, at any stage of any claim or suit, within the scope of the Indemnitor's indemnity obligations under this Agreement.

8.7 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

8.7.1 Prompt Notice. The Indemnitee shall promptly notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnitee fails to give prompt Notice of a Claim and such failure materially prejudices the Indemnitor in providing indemnity for such claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

8.7.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such claim.

9. Miscellaneous.

9.1 Notices. Any notice, request, demand, instruction or other document required or permitted to be given or served hereunder or under any document or instrument executed pursuant hereto will be in writing and will be delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid or by overnight express courier, postage prepaid and addressed to the parties at their perspective addresses set forth below, and the same will be effective upon the date of confirmed dispatch, if by electronic communication receipt if delivered personally or via overnight express courier or on the third Business Day after deposit if mailed. A party may change its address for receipt of notices by service of a notice to such change in accordance herewith. Buyer and Seller hereby agree that notices may be given hereunder by the parties' respective counsel and that, if any communication is to be given

hereunder by Buyer's or Seller's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Section.

If to Buyer:                Danny Manh Esq  
                                     8990 Westminster Blvd.  
                                     Westminster, CA 92683  
                                     Attn: Charles Mahn

If to Seller:                City of Santa Ana  
                                     20 Civic Center Plaza M-30  
                                     Santa Ana, CA 92702  
                                     Attn: Clerk of the Council

with a copy to:            City of Santa Ana  
                                     20 Civic Center Plaza M-21  
                                     Santa Ana, CA 92702  
                                     Attn: Executive Director of Public Works

9.2     No Third Party Beneficiaries. Notwithstanding any provision contained in this Agreement to the contrary, this Agreement is intended as and shall be deemed to be an agreement for the sale of assets and none of the provisions hereof shall be deemed to create any obligation or liability of any person that is not a Party, whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise. Buyer shall not assume and shall not be obligated to discharge or be liable for any debts, liabilities or obligations of Seller including, but not limited to, any (a) liabilities or obligations of Seller to its creditors, shareholders, members, partners, managers, or owners, (b) liabilities or obligations of Seller with respect to any acts, events or transactions occurring prior to, on or after the Close of Escrow, (c) liabilities or obligations of Seller for any federal, state, county or local taxes, or (d) any contingent liabilities or obligations of Seller, whether known or unknown by Seller or Buyer. Buyer shall have no duty whatsoever to take any action or receive or make any payment or credit arising from or related to any services provided or costs incurred in connection with the Property prior to the Close of Escrow, including, but not limited to, any matters relating to cost reports, collections, audits, hearings, or legal action arising therefrom.

9.3     Further Instruments. Each Party will, whenever and as often as it shall be reasonably requested to do so by the other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Agreement.

9.4     Calculation of Time Periods; Business Day; Time of Essence. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. local time in the state in which the Property is located. As used herein, the term "**Business Day**" means any day excluding

Saturdays, Sundays and State and National holidays and any day the City is closed. Subject to the foregoing provisions, time is of the essence of this Agreement.

9.5 Entire Agreement; Amendments. This Agreement (including the documents delivered pursuant to this Agreement), constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements or letters of intent of the Parties. This Agreement may not be amended, modified, or supplemented except by a written instrument signed by an authorized representative of each of the Parties.

9.6 Survival. All covenants, agreements, representations, warranties and indemnities contained in this Agreement shall survive the execution and delivery of this Agreement and the Close of Escrow and the delivery and recordation of all documents or instruments in connection therewith.

9.7 Binding Effect; Enforcement. The covenants, agreements, representations, and warranties contained herein will be binding upon, be enforceable by and inure to the benefit of the representatives, successors, and permitted assigns of the respective parties hereto.

9.8 Applicable Law. This Agreement will be construed and interpreted under, and governed and enforced according to, the laws of the State of California applicable to contracts made and to be performed entirely therein.

9.9 Venue. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be the Superior Court of Orange County, and the Parties hereby agree to and do hereby submit to the jurisdiction of such court.

9.10 Attorneys' Fees. If any Party to this Agreement shall bring any action or proceeding for any relief against the other, declaratory or otherwise, in any way arising out of or in connection this Agreement and/or the Property, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs (including without limitation expert witness fees) incurred in bringing or defending such action or proceeding or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing Party shall be determined by the trier of fact based upon an assessment of which Party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other Party's major arguments or positions on major disputed issues. For the purposes of this Section, attorneys' fees shall include, without limitation, fees incurred in the following: (1) post-judgment motions; (2) contempt proceedings; (3) garnishment, levy and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation.

9.11 Construction. The provisions of this Agreement shall not be construed in favor of or against either Party, but shall be construed as if both Parties prepared this Agreement.

9.12 Interpretation. The paragraph and section headings in this Agreement are solely for convenience and will not be deemed to limit or otherwise affect the meaning or

construction of any part of this Agreement. Any pronoun used in this Agreement will be deemed to cover all genders. The terms “**include**,” “**including**,” and similar terms will be construed as if followed by the phrase “**without being limited to**.” The term “**or**” has, except where otherwise indicated, the inclusive meaning represented by the phrase “**and/or**.” The words “**hereof**,” “**herein**,” “**hereby**,” “**hereunder**,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision or section of this Agreement. Words in this Agreement importing the singular number will mean and include the plural number, and vice versa.

9.13 No Waiver. No waiver by a Party of a breach of any of the terms, covenants, or conditions of this Agreement by the other shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition contained herein. No waiver of any default by a Party shall be implied from any omission by the other Party to take any action on account of such default if such default persists or is repeated and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by either Party to or of any act by the other requiring the first Party’s consent or approval shall not be deemed to waive or render unnecessary the consenting Party’s consent or approval to or of any subsequent similar acts by the other Party.

9.14 Severability of Provisions. Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement will be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.15 Incorporation of Exhibits. Except as intentionally omitted, all exhibits attached hereto and referred to herein are incorporated into the Agreement as though fully set forth herein.

9.16 Counterparts. This Agreement may be executed in any number of counterparts and by different Parties to this Agreement in separate counterparts, each of which when so executed and delivered will be deemed original, but all such counterparts, together, will constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement will become effective upon the execution and delivery of a counterpart hereof by each Party to this Agreement. A signature of a Party to this Agreement sent by facsimile, electronic mail (including a scanned portable document format copy sent by electronic mail), or other electronic transmission will have the same force and effect as delivery of an original signature of such Party.

9.17 Amendments. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, except by written instrument signed by the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

ATTEST

CITY OF SANTA ANA

\_\_\_\_\_  
Clerk of the Council

\_\_\_\_\_  
Kristine Ridge  
City Manager

APPROVED AS TO FORM

Sonia R. Carvalho  
City Attorney

By: John M. Funk  
John M. Funk  
Chief Assistant City Attorney

RECOMMENDED FOR APPROVAL

\_\_\_\_\_  
Nabil Saba Executive  
Director Public Works  
Agency

CHARLES H. MANH, AS TRUSTEE FOR  
THE CHARLES H. MAHN FAMILY TRUST

By: [Signature] Name:  
Title: CHARLES MANH  
TRUSTEE

Exhibits:

**Exhibit "A"** – Legal Description of the Property

**Exhibit "B"** – Form of Grant Deed

# EXHIBIT "A"

## LEGAL DESCRIPTION PROPERTY

IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA

THE EAST 125.35 FEET OF THE SOUTH 43.60 FEET OF LOT 3 OF TRACT NO. 271, AS PER MAP RECORDED IN BOOK 14, PAGE 9 OF MISCELLANEOUS MAPS OF SAID COUNTY.

TOGETHER WITH:

THE EAST 125.35 FEET OF THE NORTH 2.35 FEET OF LOT 4 OF SAID TRACT NO. 271.

TOGETHER WITH:

THE EAST 65.35 FEET OF THE WEST 85.35 FEET OF LOT 24 OF TRACT NO. 474 OF COCHEMS' WEST SIXTH STREET ADDITION, AS PER MAP RECORDED IN BOOK 17, PAGE 18 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE PORTION DESCRIBED AS FOLLOWS:

**BEGINNING** AT A POINT ON THE NORTH LINE OF SAID LOT 24, SAID POINT BEING THE INTERSECTION OF THE NORTH LINE OF SAID LOT 24 AND THE EAST LINE OF THE WEST 85.35 FEET OF SAID LOT 24; THENCE WEST ALONG SAID NORTH LINE A DISTANCE OF 62.58 FEET TO THE **TRUE POINT OF BEGINNING**, SAID POINT ALSO BEING THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10° 39' 17" AN ARC LENGTH OF 2.79 FEET TO A LINE PARALLEL WITH AND DISTANT 50.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF BRISTOL STREET; THENCE NORTHERLY ALONG SAID PARALLEL LINE A DISTANCE OF 0.26 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 24; THENCE EAST ALONG SAID NORTH LINE A DISTANCE OF 2.77 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING A TOTAL AREA OF 8,964.62 SQUARE FEET.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS, AND ANY OTHER RIGHTS OF RECORD.

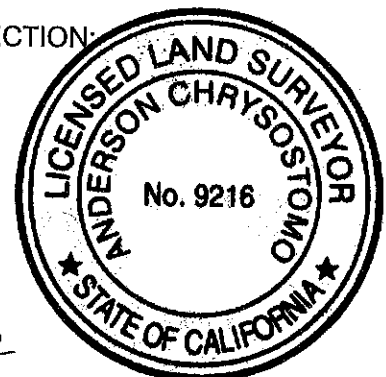
EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION:



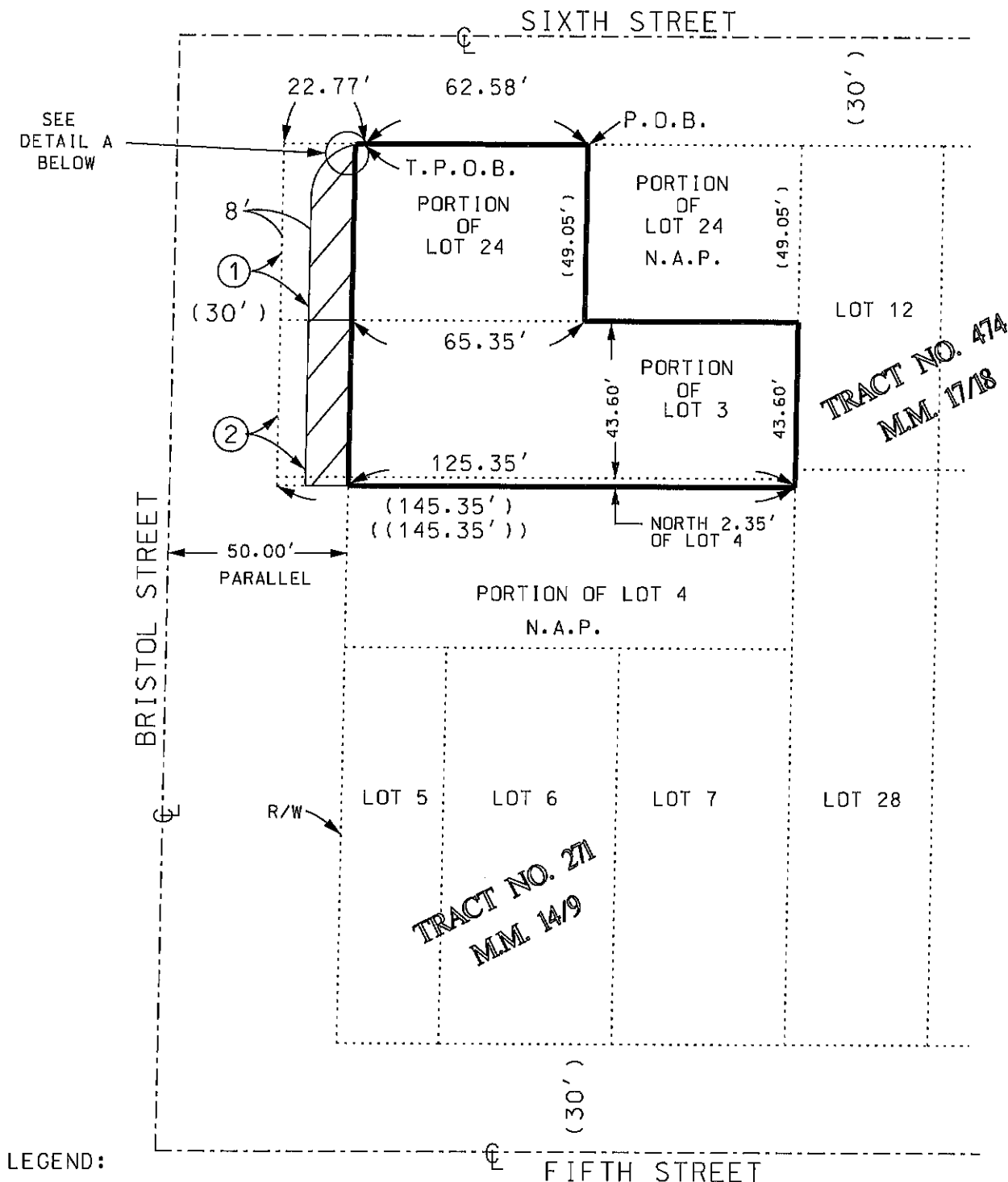
ANDERSON CHRYSOSTOMO, L.S. 9216

08/25/2022  
DATE



# EXHIBIT "B"

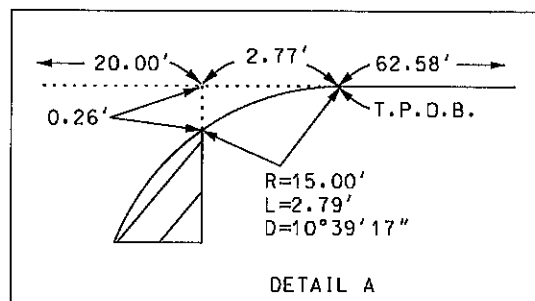
## PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR PROPERTY



### LEGEND:

- PROPERTY
- PUBLIC STREET R/W TO BE RECORDED PER SEPARATE INSTRUMENT.
- ① PUBLIC STREET EASEMENT, DEED BK 4397, PG 571 O.R.
- ② PUBLIC STREET EASEMENT, DEED BK 3314, PG 544 O.R.

( ) = RECORD PER TRACT NO. 474, M.M. 17/18  
 (( )) = RECORD PER TRACT NO. 271, M.M. 14/9



WHEN RECORDED PLEASE MAIL THIS INSTRUMENT AND TAX STATEMENT TO:

CHARLES H. MANH  
ATT: DANNY MANH ESQ.  
8990 WESTMINSTER BLVD. 2<sup>ND</sup> FLOOR  
WESTMINBSTER, CA 92683

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TAXES	APPROVED AS TO FORM BY ATTY.	APPROVED BY DIRECTOR	DESCRIPTION WRITTEN BY	DISCRIPTION CHECKED O.K.	A.P. NUMBER <b>008-081-26 &amp; 008-081-28</b>	R/W MAP NUMBER	PROJECT NUMBER
							DEED NUMBER

### ***GRANT DEED***

I Hereby Declare the documentary Transfer Tax is \$ **250,000**

☒ Computed on full value of property conveyed, or

☐ Computed on full value less liens and encumbrances remaining at time of sale

☐ Unincorporated Area ☒ City of Santa Ana

**FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,**

**City of Santa Ana**, a Charter City and Municipal; Corporation duly organized under the Constitution and laws of the State of California hereby GRANT(s) to:

**CHARLES MANH & ANH MANH as Trustees of MANH FAMILY TRUST**, all that real property in the City of Santa Ana, Orange County, State of California, described as follows:

SEE EXHIBITS "A" & "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF;

Dated: \_\_\_\_\_

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

City of Santa Ana, Kristine Ridge  
City Manager

Dated: \_\_\_\_\_

Attested by:

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

City Clerk