

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Real Estate Assets	DATE: 01/08/2013
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SUBJECT: Sale of City-owned land at terminus of West Quince Street, San Diego, CA 92103, to John D. Bols Separate Property Trust

PRIMARY CONTACT (NAME, PHONE): Mary Carlson, 619-236-6079, MS-51A	SECONDARY CONTACT (NAME, PHONE): Jim Barwick, 619-236-6145, MS-51A
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Liaison Office	ORIG DEPT.	Barwick, James	3/19/2013
Financial Management	CFO		
Environmental Analysis	DEPUTY CHIEF		
Comptroller	COO		
	CITY ATTORNEY	Fonseca, Jeremy	
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Determine that 16,858 square feet of City-owned land (APN's 451-643-01 and 451-672-10) located at the terminus of W. Quince Street San Diego, CA, is surplus property and may be sold.

2. Authorize the Mayor or his designee to execute and deliver a purchase and sale agreement for approximately 16,858 square feet of City-owned land (APN's 451-643-01 and 451-672-10) for \$90,000.
3. Authorize the Chief Financial Officer to accept and deposit the proceeds of the sale of the property, net of costs related to the sale, into the Capital Outlay Fund 400002.
4. Determine that the sale is exempt from CEQA in accordance with State CEQA Guidelines section 15312 (Surplus Government Property Sales).

STAFF RECOMMENDATIONS:
Approve the Resolution.

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S):	3
COMMUNITY AREA(S):	Uptown
ENVIRONMENTAL IMPACT:	This activity is categorically exempt from CEQA pursuant to Section 15312 of the State CEQA Guidelines.
CITY CLERK INSTRUCTIONS:	DO NOT RECORD – please deliver documents to Real Estate Assets Department, Attn: Mary Carlson, MS 51-A for further handling.

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 01/08/2013

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Sale of City-owned land at terminus of West Quince Street, San Diego, CA 92103, to John D. Bols Separate Property Trust

COUNCIL DISTRICT(S): 3

CONTACT/PHONE NUMBER: Mary Carlson/619-236-6079, MS-51A

DESCRIPTIVE SUMMARY OF ITEM:

Authorize the sale of approximately 16,858 square feet of remnant vacant land (Assessor's Parcel Numbers 451-643-01 and 451-672-10), located southeast of the eastern terminus of West Quince Street and west of Reynard Way in San Diego, California 92103.

STAFF RECOMMENDATION:

Approve the Resolution.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

In 1954, the City of San Diego ("City") acquired vacant land ("Property") from San Diego County as part of a tax deed sale. The Property consists of two approximately 16,858 square foot remnant parcels, located at the southeast corner of West Quince Street in San Diego, California 92103. The Property is designated as Open Space in the current 1988 Uptown Community Plan.

The Property is located on a steep slope and is effectively landlocked. The only access to the Property would be from Horton Avenue, which has not been vacated and exists only on a parcel map (i.e., it is a "paper street"). Horton Avenue is highly unlikely to be developed due to the site's steep topography. Such conditions create a site deficiency. City Council Policy 700-10 provides that fee-interest property may be sold to a contiguous owner when a sale to a contiguous owner would correct a site deficiency.

The City and the adjacent property owner have been spending funds to perform brush management, weed abatement, litter removal, and vagrancy abatement throughout the Property.

The adjacent property owner would like to purchase the Property. The sale would not result in any change in land use or zoning.

The Buyer's use of the Property would be limited by a deed restriction which limits use of the Property to a minimally-developed, park-like or open-space-like setting. Construction or installation of buildings or structures would be prohibited, however, the Buyer may install one gazebo, one greenhouse, perimeter fencing, and statues (see attached Purchase and Sale Agreement-Exhibit B). Any future private development regarding the Property would be subject to the deed restriction, as well as regulations in the Municipal Code and open space policies in the community plan, should discretionary action be required.

The Property has been cleared through the government clearance process. No City department has any current or foreseeable use for the Property.

The value of the Property was determined by an independent MAI appraiser to be \$90,000.

FISCAL CONSIDERATIONS:

All proceeds from the sale of the Property, net of costs related to its sale, will be deposited in the Capital Outlay Fund 400002.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

N/A - EOCP Memo of 11/14/11.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

This item will be heard at the Land Use & Housing Committee meeting on April 24, 2013.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The potential sale was presented to the Uptown Planners, the community planning group, on 2/5/13. The Uptown Planners voted to recommend approval of the sale and place an open-space easement on the property to keep it undeveloped. In an effort to balance the wishes of the community and still maintain the economic value of the property, City staff proposes that, if the property is authorized for sale, a deed restriction be placed on the use of the property to limit development on the property.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders would be the City of San Diego, Uptown community, and the Buyer.

Barwick, James

Originating Department

Deputy Chief/Chief Operating Officer

REAL ESTATE PURCHASE AND SALE AGREEMENT

[W. QUINCE; APN 451-643-01 and 451-672-10]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and the JOHN D. BOLS SEPARATE PROPERTY TRUST DATED SEPTEMBER 25, 2002 ("BUYER"), to be effective as of the date of execution by CITY, when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY owns that certain real property (the "Property"), Assessor's Parcel Numbers 451-643-01 and 451-672-10, consisting of approximately 16,858 square feet of land, located southeast of the eastern terminus of West Quince Street and west of Reynard Way in San Diego, California 92103, and more particularly described in **Exhibit A: Property Description**, attached hereto.
- B. BUYER wants to purchase the Property under the terms and conditions of this Agreement.
- C. The Property consists of two remnant parcels which do not have legal descriptions in an insurable format, which are required prior to conveyance of title to the Property. BUYER will be responsible for the preparation of the required legal description and a land sale plat.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. City Council Action Required. BUYER acknowledges that the closing of the transaction contemplated by this Agreement (the "Closing") is expressly conditioned on the San Diego City Council's (the "City Council's") prior authorization to sell the Property under this Agreement ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by BUYER as a result of the City Council's modification of the final terms and conditions of this Agreement, or the City Council's failure to grant the Council Authorization.
 - 1.1. BUYER's Waiver. BUYER expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which BUYER incurs as a result of the City Council's failure to grant the Council Authorization.
2. Purchase and Sale. Under the terms and conditions of this Agreement and subject to obtaining Council Authorization, CITY shall sell and convey the Property to BUYER, and BUYER shall purchase the Property from CITY.
3. Purchase Price. The purchase price of the Property (the "Purchase Price") shall be Ninety Thousand Dollars (\$90,000). BUYER acknowledges that the size of the property set forth above is an approximation, and agrees that any difference between the approximation of the

Property's size set forth above and the actual acreage of the Property shall have no effect on the Purchase Price.

4. Escrow. BUYER shall open an escrow (the "Escrow") with Chicago Title Company (the "Escrow Holder"), located at 701 B Street, Suite 760, San Diego, California 92101, within three (3) business days after the Effective Date. The Escrow shall be open as of the date (the "Open Date") BUYER delivers to Escrow Holder both this Agreement, signed by the parties, and the Deposit, defined below.

5. Due Diligence Period. BUYER shall have thirty (30) calendar days after the Open Date (the "Due Diligence Period") to conduct, at BUYER's expense, its due diligence to determine, in BUYER's sole discretion, the feasibility of purchasing the Property and to resolve any matters that, if not corrected, would cause BUYER to terminate this Agreement ("BUYER's Contingencies"). BUYER may waive the Due Diligence Period at any time.

5.1. Records Review. Upon reasonable prior notice to CITY, BUYER may review records in the possession and control of CITY's Real Estate Assets Department pertaining to the Property. CITY's Real Estate Assets Department shall make such records available to BUYER within a reasonable amount of time after BUYER's request. BUYER acknowledges that additional Property-related records may be in the possession and control of other CITY departments, including without limitation the Development Services Department. BUYER shall be solely responsible for contacting such other CITY departments to schedule a review of such additional records.

5.2. Notification Regarding BUYER's Contingencies. BUYER shall notify CITY in writing of any BUYER's Contingencies it will waive or which will not be satisfied within the Due Diligence Period. BUYER's failure to so notify CITY within the Due Diligence Period shall mean no BUYER's Contingencies exist.

5.3. Preliminary Title Report Approval. BUYER acknowledges receipt of a Preliminary Title Report for the Property. BUYER has approved the Preliminary Title Report without conditions or contingencies.

6. Required Documents. No later than thirty (30) days after Council Authorization, BUYER shall obtain, at BUYER's expense, an insurable legal description, a land sale plat and all associated documents required to legally convey title to the Property (the "Required Documents"). All Required Documents shall be CITY's property upon such delivery.

7. Entry. BUYER, or BUYER's agent(s), may enter upon the Property for the purpose of conducting visual observations, passive environmental studies, surveys, and other non-invasive examinations as BUYER reasonably deems necessary to complete BUYER's due diligence. BUYER shall not conduct any invasive geotechnical activity, including without limitation soils testing, digging or boring, without CITY's prior written approval in each instance, which may or may not be granted, in CITY's sole discretion. If CITY consents to any such invasive survey, test or activity, BUYER shall undertake and complete all appropriate restoration and remediation of the impacted portion of the Property. BUYER shall notify CITY at least 48 hours prior to each and every entry on the Property.

7.1. If No Closing. If Escrow does not close and title to the Property does not transfer pursuant to this Agreement, BUYER shall deliver to CITY at no charge copies of all surveys, engineering studies, assessments, maps, master plans, feasibility studies and other similar items prepared by or for BUYER and pertaining to the Property or any part thereof. The rights and obligations of BUYER and CITY pursuant to this section shall survive the termination of this Agreement.

8. Deposit.

8.1. Deposit. Upon opening of the Escrow, BUYER shall deliver to Escrow Holder Ten Thousand Dollars (\$10,000) either in cash, by cashier's check, or other readily available funds (the "Deposit"). Except as otherwise provided herein, the Deposit shall become non-refundable at the end of the Due Diligence Period and shall be applied to the Purchase Price at the Closing.

8.2. If at any time during the Due Diligence Period BUYER decides not to purchase the Property, the Deposit shall be returned to BUYER upon BUYER's request to Escrow Holder.

9. Council Authorization. CITY shall seek Council Authorization as soon as reasonably practicable after the Due Diligence Period and when no BUYER's Contingencies exist.

9.1. If No Council Authorization. If the City Council does not grant the Council Authorization, this Agreement shall terminate and the Deposit shall be returned to BUYER upon BUYER's request to Escrow Holder.

10. Close of Escrow. Unless otherwise agreed to by the parties, the Closing shall be held at Escrow Holder's offices within fifteen (15) calendar days after the later to occur of the date of final passage of a City Council resolution granting the Council Authorization and the date of CITY's written approval of the Required Documents, which shall not be unreasonably withheld or delayed.

10.1. Balance of Purchase Price. Prior to the Closing, BUYER shall deposit with Escrow Holder the balance of the Purchase Price (*i.e.*, the Purchase Price minus the Deposit), either in cash, by cashier's check, or other readily available funds.

10.2. Parties to Sign Documents. Prior to the Closing, the parties shall execute and deliver all instruments and documents reasonably required by the other party and the Escrow Holder to effect the Closing.

10.3. Taxes. All ad valorem taxes and special taxes or assessments levied or assessed against the Property for the year of the Closing, if any, shall be prorated at the Closing, effective as of the Closing Date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The

prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the year of Closing have been received, which agreement to re-prorate taxes shall survive the Closing. However, CITY shall not be responsible for any increase in ad valorem taxes resulting from improvements made to the Property by BUYER after the Closing Date.

11. Conveyance. At the Closing, CITY shall convey the Property to BUYER by a grant deed substantially in the form attached hereto as **Exhibit B: Grant Deed**, subject to all acts done or suffered by BUYER, or claims made by, through or under BUYER.
12. Escrow Costs.
 - 12.1. CITY shall pay: (a) Preliminary Title Report fees; (b) all San Diego County documentary transfer taxes; (c) the fee for a standard-coverage California Land Title Association ("CLTA") Title Insurance Policy; and all charges for CITY's document drafting and recording.
 - 12.2. BUYER shall pay: (a) the cost of any and all other title insurance policies, coverage, or endorsements in excess of a standard-coverage CLTA Title Insurance Policy; and (b) all charges for BUYER's document drafting and recording; and (c) one hundred percent (100%) of the Escrow Holder's fee.
 - 12.3. Escrow Holder shall prorate fees and costs between the parties at the Closing.
13. Back-Up Offers. CITY may solicit, entertain and accept back-up offers to purchase the Property (subject to the failure to close the transaction contemplated by this Agreement) at all times prior to the Closing.
14. Resale Limitation. If BUYER conveys the Property (separately and not as a conveyance combined with property owned by BUYER and adjacent to the Property) within thirty-six (36) months after the Closing, BUYER shall pay to SELLER the net profit from the sale. The "net profit from the sale" shall mean the gross consideration for the conveyance of the Property less the direct and usual and customary costs of sale, and less: (a) the Purchase Price under this Agreement; and (b) the actual reasonable costs other than such Purchase Price (and excluding attorney and consulting fees) incurred by BUYER in: (i) purchasing the Property (such as due diligence and closing costs, financing costs, survey expenses and entity-formation costs); (ii) owning, operating and managing the Property (such as, without duplication, interest and other financing costs, property taxes, insurance and maintenance to the extent not reimbursed by tenants, and usual and customary management fees); (iii) improving or planning for improvement of the Property (such as fees of architects and engineers, building permits and other governmental fees, direct and indirect construction costs, and usual and customary construction-management fees); and (iv) leasing the Property (such as brokerage commissions and other marketing costs). "Usual and customary costs of sale" shall be those costs typically reflected in a closing statement associated with a conveyance similar to BUYER'S subsequent sale, such as title and escrow fees, documentary transfer taxes, and brokerage fees.

15. Loss or Damage Prior to Closing. If BUYER is in possession of the Property, loss or damage to the Property prior to the Closing shall be at BUYER's risk and at BUYER'S sole expense with no liability to CITY unless such loss or damage is caused by CITY's negligence or intentional misconduct. If CITY is in possession of the Property, loss or damage to the Property prior to the Closing shall be at CITY's risk and at CITY's sole expense with no liability to BUYER unless such loss or damage is caused by BUYER's negligence or intentional misconduct.
16. Acceptance of Property "As-Is". BUYER acknowledges it is purchasing the Property "as-is," excepting any claims or liability arising from the established gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. BUYER is not relying on any representation or warranty of any kind, express or implied, oral or written, made by CITY or its elected officials, officers, employees, representatives, and agents with respect to the physical condition of the Property, or with respect to the existence or absence of Hazardous Substances in, on, under, or affecting the Property. CITY has not and does not make any warranty or representation regarding the fitness of the Property for any particular use, or as to its quality or merchantability. CITY shall not be liable or bound in any manner by any warranties, guarantees, promises, statements, representations, or information, either express or implied, pertaining to the Property and made or furnished by any real estate agent, broker, employee, servant, or other person representing or purporting to represent CITY, except as made in this Agreement.
- 16.1. "Hazardous Substances". "Hazardous Substances" shall mean any hazardous liquid, solid, or gaseous material or substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- 16.2. Indemnity and Hold Harmless. BUYER shall protect, defend, indemnify, and hold CITY and its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with Hazardous Substances or other environmental liabilities related to or resulting from BUYER's use and occupancy of the Property at any and all times prior to the Closing.
- 16.3. BUYER'S Waiver. Notwithstanding any provision of this Agreement to the contrary, if CITY makes any representation or warranty regarding the Property and BUYER learns that such representation or warranty is or might be untrue prior to the Closing and BUYER elects to purchase the Property anyway, then BUYER shall be deemed to have waived any right to bring an action or proceeding against CITY, its agents, employees, or brokers regarding the representation or warranty.
- 16.4. Property Information. Information regarding the Property and its operation provided to BUYER by CITY shall be deemed only an accommodation to BUYER. CITY will not and shall not be obligated to make any investigation or verification of any

information provided to BUYER, regardless of the source of such information. CITY makes no representation, and expressly disclaims any responsibility for the accuracy or completeness of such information.

- 16.5. Sufficiency of Due Diligence Period. BUYER agrees that the BUYER'S Due Diligence Period will provide BUYER adequate opportunity to complete all physical and economic examinations of the Property and its operation as BUYER requires.

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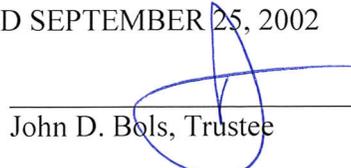
17. Release. With the exception of any claims arising from CITY'S fraud or intentional misrepresentation, effective from and after the Closing, BUYER, for itself, its successors, assignees, representatives, employees, officers, and agents, releases and forever discharges CITY, its elected officials, officers, representatives, agents, employees, successors in interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties, or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which BUYER now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Agreement, the Property, or the condition of the Property, including without limitation any and all known or unknown claims resulting from the alleged acts or omissions of CITY, its elected officials, officers, representatives, agents or employees.

17.1. Section 1542 Waiver. BUYER acknowledges and agrees that the release of liability provision set forth above is a general release, and with the exception of any claims that may arise from CITY'S fraud or intentional misrepresentation, further expressly waives and assumes the risk of any and all claims against CITY arising from this Agreement, the Property, or the condition of the Property, and which exist as of the Closing, but of which BUYER does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect BUYER'S decision to enter into this Agreement and complete the Closing. BUYER expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Waived by BUYER: JOHN D. BOLS SEPARATE PROPERTY TRUST
DATED SEPTEMBER 25, 2002

BY:



John D. Bols, Trustee

18. No Commissions/Fees. BUYER and CITY each represent, warrant and acknowledge that no brokerage commission or finder's fee has been or will be incurred or paid in connection with the purchase and sale of the Property under this Agreement. The rights and obligations of BUYER and CITY pursuant to this section shall survive the Closing or termination of this Agreement.

19. Mandatory Disclosure of Business Interests. Pursuant to San Diego City Charter section 225, BUYER shall make a full and complete disclosure of the name and identity of each person directly or indirectly involved in the transaction contemplated by this Agreement and the precise nature of their interest.
20. Default and Remedies. If CITY is in default of this Agreement prior to the Closing, BUYER may, at its sole option and as its exclusive remedy for such default either: (a) terminate this Agreement by written notice to CITY and the Escrow Holder; or (b) if the default resulted from a failure to transfer possession and title to the Property to BUYER at the Closing, seek and enforce specific performance of this Agreement. BUYER may seek and enforce any remedy available at law or in equity: (a) if CITY defaults on its obligations under this Agreement after the Closing; and (b) for any claim related to this Agreement arising from the established sole negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives and agents. If BUYER is in default of this Agreement at any time, CITY may terminate this Agreement by written notice to BUYER and the Escrow Holder, and/or seek and enforce any other remedy available at law or in equity.
- 20.1. Limited Liability. Excepting any claims or liability arising from the established gross negligence, recklessness or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents, CITY's liability for damages resulting from or under this Agreement shall be limited to either the Property or to the Purchase Price received by CITY, without any recourse to any other CITY assets.
21. Time of Essence. Time is of the essence to the performance of each and every obligation under this Agreement.
22. Interpretation. This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and shall not interpret, define or limit the scope or content of this Agreement. If any party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a party is provided for in this Agreement, the party shall exercise the right promptly and reasonably, unless this Agreement expressly gives such party the right to use its sole discretion. The term "business day" shall mean Monday through Friday, excluding holidays recognized by the State of California and the City of San Diego.
23. CITY's Consent, Approval. CITY's consent or approval under this Agreement shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
24. Amendments. The terms and provisions of this Agreement may only be modified or amended pursuant to a written instrument signed by all parties hereto.
25. Successors and Assigns. This Agreement shall inure to and bind the successors and assigns of the parties.

26. Assignment. This Agreement may not be assigned in whole or in part by BUYER without CITY's prior written consent.

27. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed as follows:

CITY: THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

BUYER: JOHN D. BOLS SEPARATE PROPERTY TRUST DATED
SEPTEMBER 25, 2002
Attn: John D. Bols, Trustee
136 Juniper St.
San Diego, CA 92101

28. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

29. Waiver. The Property is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of BUYER's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

30. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and BUYER, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of BUYER or any other party or entity.

31. Survival. Any obligation which accrues under this Agreement prior to the Closing or its termination shall survive the Closing or such termination.

32. Entire Agreement. This Agreement represents the entire agreement between the parties for

the purchase and sale of the Property, and supersedes all prior negotiations, representations or agreements, either oral or written.

33. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

Date: 12.10.12

JOHN D. BOLLS SEPARATE PROPERTY TRUST
DATED SEPTEMBER 25, 2002

BY: [Signature]
John D. Bols, Trustee

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
James F. Barwick, CCIM
Director, Real Estate Assets

Approved as to form and legality:
JAN I. GOLDSMITH, San Diego City Attorney

BY: _____
Name: _____
Title: _____

Exhibit A: Property Description
Exhibit B: Grant Deed

Exhibit B: Grant Deed

Recording requested by:
THE CITY OF SAN DIEGO

When Recorded Mail to:
OFFICE OF THE CITY CLERK
THE CITY OF SAN DIEGO
202 "C" ST., 2ND FLOOR, MS 2A
SAN DIEGO, CA 92101

APN 451-643-01 and 451-672-10

SPACE ABOVE FOR RECORDER'S USE.
NO RECORDING FEE DUE: CALIF. GOV. CODE §6103; §27383

GRANT DEED

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged,

THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION (“GRANTOR”),

HEREBY GRANTS TO

JOHN D. BOLS SEPARATE PROPERTY TRUST
DATED SEPTEMBER 25, 2002, (“GRANTEE”),

ALL THAT REAL PROPERTY (the “Property”) consisting of Assessor’s Parcel Number 451-643-01 and 451-672-10 comprising approximately 16,858 square feet of land, located in the City of San Diego, County of San Diego, State of California, and more particularly described in the attached **Exhibit A to Grant Deed: Legal Description**, and **Exhibit B to Grant Deed: Drawing**, together with all rights and appurtenances thereto, and subject to the following:

CONDITIONS AND RESTRICTIVE COVENANTS: GRANTOR’s conveyance of the Property to GRANTEE is strictly conditioned on the satisfaction of all conditions and restrictive covenants contained in this Grant Deed. GRANTEE hereby covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property, that the Property is restricted by the following conditions and restrictive covenants, and in addition, GRANTEE hereby covenants to honor and satisfy all said conditions:

RESTRICTED USE. Except as provided below, GRANTEE’s use of the Property shall be limited and restricted to maintaining a minimally-developed, park-like or open-space-like setting on the Property; **THE CONSTRUCTION OR INSTALLATION OF BUILDINGS OR STRUCTURES SHALL BE PROHIBITED.**

GRANTEE may construct and install the following on the Property: one (1) gazebo not to exceed one hundred fifty (150) square feet under roof; one (1) greenhouse not to exceed three hundred (300) square feet under roof; perimeter fencing; and statuary not to exceed eight (8) feet in height, provided such statuary does not visually detract from maintaining a minimally-developed, park-like or open-space-like setting on the Property.

Exhibit B: Grant Deed

The foregoing allowance of a gazebo, greenhouse, fencing and statuary shall be deemed conceptual authorization and is provided by GRANTOR only as the grantor of the real property interest transferred by this Grant Deed, and not in GRANTOR's capacity as a governmental entity. Any and all construction or installation allowed or made pursuant to this Grant Deed shall be subject to all applicable laws, rules, regulations and directives of competent governmental authorities.

Subject to the foregoing conditions and restrictive covenants, GRANTEE may use the Property for any purpose, subject further to applicable laws, rules, regulations and directives of competent governmental authorities.

If any condition or covenant in this Grant Deed is breached, GRANTOR and any of its executors, successors and assigns reserves and retains the right, at its option and at any time, to terminate GRANTEE's estate herein created, to re-enter and take possession of the Property, and exercise GRANTOR's reversionary interest in GRANTEE's forfeited estate. In such an event, no use or interest in the Property shall be deemed to have been acquired so as to divert or render ineffective the power of termination and reversionary interest hereby retained by GRANTOR.

It is the intent of GRANTOR and GRANTEE that failure by GRANTEE, or by its successors or assigns, to strictly comply with the conditions and restrictive covenants created herein shall subject the Property and GRANTEE's estate herein created to FORFEITURE at the expense of GRANTEE, or of its successors and assigns.

GRANTEE acknowledges that GRANTOR is a public entity that holds the power of termination and reversionary interest created herein in trust for the benefit of the citizens of the City of San Diego, and that any failure by GRANTOR to discover a breach or to take prompt action to enforce any of its rights under this Grant Deed, at law or in equity, shall not result in an equitable estoppel, but GRANTOR, or its executors, successors or assigns, shall at all times have the legal right to enforce such rights.

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Exhibit B: Grant Deed

GRANTOR and GRANTEE further agree as follows:

1. Grant. The use of the word “grant” herein shall not imply any warranty on the part of GRANTOR with respect to the Property.
2. Successors and Assigns. All rights and obligations specified in this Grant Deed shall run with the land and this Grant Deed shall bind and inure to the benefit of the GRANTOR’s and GRANTEE’s respective successors and assigns.
3. Partial Invalidity. If any term, covenant, condition or provision of this Grant Deed is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, this Grant Deed is executed to be effective upon its recordation in the Official Records of San Diego County, California.

*San Diego City Council Authorizing Resolution No. R-*_____

Date of Final Passage: _____

GRANTOR: THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
James F. Barwick, CCIM
Director, Real Estate Assets

GRANTEE: JOHN D. BOLS SEPARATE PROPERTY TRUST
DATED SEPTEMBER 25, 2002

BY: _____
John D. Bols, Trustee

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: _____
Title: _____

Exhibit A to Grant Deed: Legal Description
Exhibit B to Grant Deed: Drawing