

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: 1/13/2015
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SUBJECT: Sale of City-owned land in City Heights to New Creation Church of San Diego

PRIMARY CONTACT (NAME, PHONE): Barry Slotten, 619-236-6724, MS 51A	SECONDARY CONTACT (NAME, PHONE): April McCusker, 619-236-6987, MS 51A
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
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
Public Utilities	Park and Recreation	ORIG DEPT.	Thompson, Cybele
Financial Management		CFO	
Comptroller		DEPUTY CHIEF	
Liaison Office		COO	
Environmental Analysis		CITY ATTORNEY	
		COUNCIL PRESIDENTS OFFICE	

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

1. Authorize the Mayor or his designee to execute and deliver a purchase and sale agreement and all other instruments to effect and complete the transaction to sell a 14,503 square foot portion of the City-owned open space known as Chollas Parkway (portion of Assessor's Parcel Number 477-240-11), located adjacent to 3115 Altadena Avenue in City Heights, to the New Creation Church of San Diego for \$46,000.

2. Authorize the Chief Financial Officer to accept and deposit the proceeds of the sale of the property, net of escrow costs related to the sale, into the Capital Outlay Fund 400002.

3. Determine that the sale is exempt from CEQA in accordance with State CEQA Guidelines section 15312 (Surplus Government Property Sales).	
STAFF RECOMMENDATIONS: Adopt the Resolution.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	9
COMMUNITY AREA(S):	City Heights
ENVIRONMENTAL IMPACT:	The sale is exempt from CEQA in accordance with State CEQA Guidelines section 15312 (Surplus Government Property Sales).
CITY CLERK INSTRUCTIONS:	DO NOT RECORD. Return documents to Real Estate Assets Department, Attention: Barry Slotten, M.S. 51A, for further handling.

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

DATE: 1/13/2015

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Sale of City-owned land in City Heights to New Creation Church of San Diego

COUNCIL DISTRICT(S): 9

CONTACT/PHONE NUMBER: Barry Slotten/619-236-6724, MS 51A

DESCRIPTIVE SUMMARY OF ITEM:

This action is to authorize the sale of a 14,503 square foot portion of City-owned open space known as Chollas Parkway to the New Creation Church of San Diego for \$46,000. This portion of land, which is at the top of the canyon's high slope, has been encroached upon by a part of the church's parking lot for several decades, preventing the City from eventually dedicating the Parkway.

STAFF RECOMMENDATION:

Adopt the Resolution.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: The City has owned the Chollas Parkway open space since April 1, 1953. In 2012, the City's Park & Recreation Department requested dedication status of the Chollas Parkway as Open Space Parkland. However, the City's Real Estate Assets Department then identified an encroachment on the Parkway, requiring further investigation, thus removing it from the list of open spaces to be dedicated.

It was determined that the encroached portion of the Parkway had been incorporated into the large parking lot belonging to the New Creation Church of San Diego (NCCSD). NCCSD acquired the property in 1993 from a previous church entity who originally developed the property, and who inadvertently incorporated the City's property into their parking lot.

In discussions with the City's Park & Recreation Department, a determination was made that the most prudent way to cure the encroachment and allow for the eventual dedication of the Parkway, was to sell the affected portion to the NCCSD. The City then engaged an independent MAI Appraiser to appraise this portion of land and determine its fair market value. NCCSD has now accepted this offer of \$46,000 to purchase the property.

Dedication of the Parkway is not concurrent with this action due to issues raised by Transportation & Stormwater (T&SW) regarding possible future installation of stormwater treatment facilities, which are presently under discussion with T&SW.

FISCAL CONSIDERATIONS: The \$46,000 proceeds from the sale of the property, net of escrow costs and expenses in IO 13001746, 3115 Altadena Avenue, related to the sale, will be deposited into the Capital Outlay Fund 400002 as per City Charter Article VII.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee): None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders are the City of San Diego and the New Creation Church of San Diego. The projected impacts are the curing of a several decades long encroachment, and enabling the City to move forward with an eventual dedication of the Chollas Parkway open space.

Thompson, Cybele
Originating Department

Deputy Chief/Chief Operating Officer

REAL ESTATE PURCHASE AND SALE AGREEMENT

[Chollas Parkway Park & 3115 Altadena Avenue, a portion of APN 477-240-11]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and NEW CREATION CHURCH OF SAN DIEGO, a California corporation ("BUYER"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY owns that certain real property (the "Property"), a portion of Assessor's Parcel Number 477-240-11, consisting of approximately 14,503 square feet of land located at an adjoining area of Chollas Parkway Park and 3115 Altadena Avenue, 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.

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 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.
 - 1.2. Council Hearing Deadline. If a request for the Council Authorization is not heard by the City Council on or before July 30, 2015, BUYER may at any time thereafter, by written notice, terminate this Agreement and the Deposit (defined below) shall be returned to BUYER.
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 Forty-Six Thousand Dollars (\$46,000). BUYER acknowledges that the size of the Property set forth above is an approximation, and agrees that any difference between the approximation of the

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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 fifteen (15) 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. Escrow Holder shall produce, at CITY's request and cost, a Preliminary Title Report. If BUYER disapproves the Preliminary Title Report, then BUYER shall deliver to CITY a written notice of such disapproval to CITY within ten (10) calendar days after its receipt of the Preliminary Title Report. BUYER's failure to deliver such notice within the ten (10) calendar days shall be deemed approval of the Preliminary Title Report.
 - 5.4. Natural Hazard Disclosure Report. BUYER shall retain, at its cost, a qualified third party (e.g., a disclosure company, licensed engineer, land surveyor, geologist, or expert in natural hazard discovery) to prepare a Natural Hazard Disclosure Report for the Property. The cost of the Natural Hazard Disclosure Report shall be a credit against the Purchase Price at the Closing.
6. Entry. After at least forty-eight (48) hours prior notice to CITY in each instance, 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,

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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.

6.1. If No Closing. If Escrow does not close and title to the Property does not transfer pursuant to this Agreement by reason of BUYER's election to terminate this Agreement or BUYER's default, 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; provided, however, BUYER shall not be obligated to deliver to CITY any information established to be proprietary or confidential. The rights and obligations of BUYER and CITY pursuant to this section shall survive the termination of this Agreement.

7. Deposit.

7.1. Deposit. Upon opening of the Escrow, BUYER shall deliver to Escrow Holder Two Thousand Five Hundred Dollars (\$2,500) 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.

7.2. 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.

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

8.1. 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.

9. 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 effective date of a City Council resolution granting the Council Authorization.

9.1. 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 or by cashier's check.

9.2. 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.

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- 9.3. 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.
10. 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.
11. Escrow Costs.
- 11.1. 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; (d) all charges for CITY's document drafting and recording; and (e) one half of the Escrow Holder's fee.
- 11.2. 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; (b) all charges for BUYER's document drafting and recording; (c) the cost of the lot consolidation or merger to complete a Joinder transaction to merge the newly acquired parcel into BUYER's existing and adjacent parcel (Assessor's Parcel Number 476-343-01), if necessary; and (d) one half of the Escrow Holder's fee.
- 11.3. Escrow Holder shall prorate fees and costs between the parties at the Closing.
12. 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.
13. 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,

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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.

- 13.1. “Hazardous Substances”. “Hazardous Substances” shall mean any hazardous liquid, solid, or gaseous material or other 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.
- 13.2. 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 resulting from BUYER’s use and occupancy of the Property at any and all times prior to the Closing; however, the foregoing shall not apply to BUYER’s discovery of any pre-existing Hazardous Materials or other environmental liabilities in connection with BUYER’s inspections of the Property. Should any such discovery be made, Buyer shall immediately notify City of the discovery and make all such related information and relevant personnel available to City. The rights and obligations in this subsection (Indemnity and Hold Harmless) shall survive the termination of this Agreement.
- 13.3. 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 and all right to bring an action or proceeding against CITY, its agents, employees, or brokers regarding the representation or warranty.
- 13.4. 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.
- 13.5. Sufficiency of Due Diligence Period. BUYER agrees that the BUYER’S Due Diligence Period will provide BUYER adequate opportunity to complete all physical, economic and other examinations of the Property and its operation as BUYER requires.

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14. 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.

14.1. 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: NEW CREATION CHURCH OF SAN DIEGO, a
California corporation

BY Carla Farley

Name: Carla Farley

Title: PRESIDENT, Ex. Board

Caralyn Louie
CAROLYN LOUIE
Finance Director

15. Real Estate Brokers.

15.1. No Brokers. Neither CITY nor BUYER has retained a real estate broker to represent it in the purchase of the Property.

or

- 15.2. No Other Commissions. 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 paragraph shall survive the Closing or termination of this Agreement.
16. 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.
17. Default and Remedies.
- 17.1. CITY Default. 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.
- 17.2. BUYER Default. 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.
- 17.3. 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.
18. Time of Essence. Time is of the essence to the performance of each and every obligation under this Agreement.
19. 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.

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20. 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.
21. Amendments. The terms and provisions of this Agreement may only be modified or amended pursuant to a written instrument signed by all parties hereto.
22. Successors and Assigns. This Agreement shall inure to and bind the successors and assigns of the parties.
23. Assignment. This Agreement may not be assigned in whole or in part by BUYER without CITY's prior written consent.
24. 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: NEW CREATION CHURCH OF SAN DIEGO
Attention: Bill Moss, Church Business Administrator
3115 Altadena Avenue
San Diego, CA 92105

25. 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.
26. 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.
27. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create

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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.

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

29. 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.

30. 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. **ADDENDUM No. 1**, attached hereto, identifies Buyer's signing authority.

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

Date: 1-14-15

NEW CREATION CHURCH OF SAN DIEGO, a California corporation

BY: Carla Farley | Christyn Lowe
Name: Carla Farley | Christyn Lowe
Title: President, Ex. Board | Finance Director

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

Approved as to form and legality:

JAN I. GOLDSMITH, San Diego City Attorney

BY: _____
Name: _____
Title: _____
Date: _____

Exhibit A: Property Description

That portion of Section 33, Township 15 South, Range 2 West, San Bernardino Meridian, according to the official plat thereof, all being in the City of San Diego, County of San Diego, State of California, being more particularly described as follows:

Beginning at the southwest corner of the north half of the southwest quarter of the southeast quarter of the northeast quarter of said Section 33, also being an angle point in the subdivision boundary of Ridgeview Acres Unit No. 2, according to the map thereof No. 4296 filed in the office of the County Recorder of said San Diego County on August 7, 1959; Thence along the said subdivision boundary North $89^{\circ}47'40''$ East 148.87 feet to a point on the northwesterly right of way of Chollas Parkway as shown on said Map 4296; Thence leaving the said subdivision boundary South $36^{\circ}57'00''$ West 244.46 feet along the said right of way of Chollas Parkway to an angle point on the said subdivision boundary; Thence leaving the said right of way of Chollas Parkway North $00^{\circ}33'50''$ West 194.84 feet along the said subdivision boundary to the point of beginning.

The above described property containing 14502.55 square feet, 0.3329 acres.



The following terms and conditions are hereby incorporated in and made a part of the: [] Residential Purchase Agreement, [] Manufactured Home Purchase Agreement, [] Business Purchase Agreement, [] Residential Lease or Month-to-Month Rental Agreement, [] Vacant Land Purchase Agreement, [] Residential Income Property Purchase Agreement, [] Commercial Property Purchase Agreement, [X] Other REAL ESTATE PURCHASE AND SALE AGREEMENT

dated January 14, 2015, on property known as APN 477-240-11-00 SAN DIEGO, CA 92105

in which _____ is referred to as ("Buyer/Tenant") and _____ is referred to as ("Seller/Landlord").

REF: Chollas Parkway Park & 3115 Altadena Avenue, a portion of APN 477-240-11-00

1. LICENSING AND RELATIONSHIP DISCLOSURE

Carla Farley Lic. #01188101 and Corban Realty Group Lic. #01919156 are licensed by the California State Department of Real Estate. The undersigned acknowledges that Corban Realty Group, its brokers, sales persons, agents and affiliates, may provide services relating to the negotiation and act of selling, offering to sell, buy, or offering to buy real estate, as authorized by California law.

IF THERE ARE ANY LEGAL, TAX, INVESTMENT, APPRAISAL OR OTHER QUESTIONS REGARDING THIS TRANSACTION outside of the scope of service, The service of a competent Attorney, Certified Public Account, Appraiser, Financial Advisor, and or other appropriately licensed professional should be sought.

Carla Farley, Broker #01188101 of Corban Realty Group currently serves as President and a Signing Officer of the New Creation Church Executive Board of Directors

2. Carla Farley will serve as a Buyers Signer and not a hired broker for a fee for purposes of this transaction.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date 1-14-15

Date _____

Buyer/Tenant [Signature]

Seller/Landlord _____

Buyer/Tenant _____

Seller/Landlord _____

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ADM REVISED 4/12 (PAGE 1 OF 1)

Reviewed by _____ Date _____



ADDENDUM (ADM PAGE 1 OF 1)

Agent: Carla Farley Phone: (619)966-4536 Fax: (619)241-7874 Prepared using zipForm® software Broker: Corban Realty Group 7317 El Cajon Blvd La Mesa, CA 91942

EXHIBIT B

Recording Requested by:
City Real Estate Assets Dept.
After recording mail to:

**Real Estate Assets Department
City of San Diego
Mail Station 51A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

NO DOCUMENTARY TAX DUE – R & T 11922 (amended)
Presented for record by the CITY OF SAN DIEGO

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

THE CITY OF SAN DIEGO, a municipal corporation (“Grantor”)

HEREBY GRANTS to **NEW CREATION CHURCH OF SAN DIEGO, a California corporation (“Grantee”)**, in the County of San Diego, State of California, all of their interest in that real property situated in the City of San Diego, County of San Diego, State of California, described as follows:

See Exhibit “A” attached hereto, and by this reference incorporated herein.

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: _____

Name: _____

Title: _____

GRANTEE:

NEW CREATION CHURCH OF SAN DIEGO, a California corporation

BY: _____

Name: _____

Title: _____

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: _____

Name: _____

Title: _____

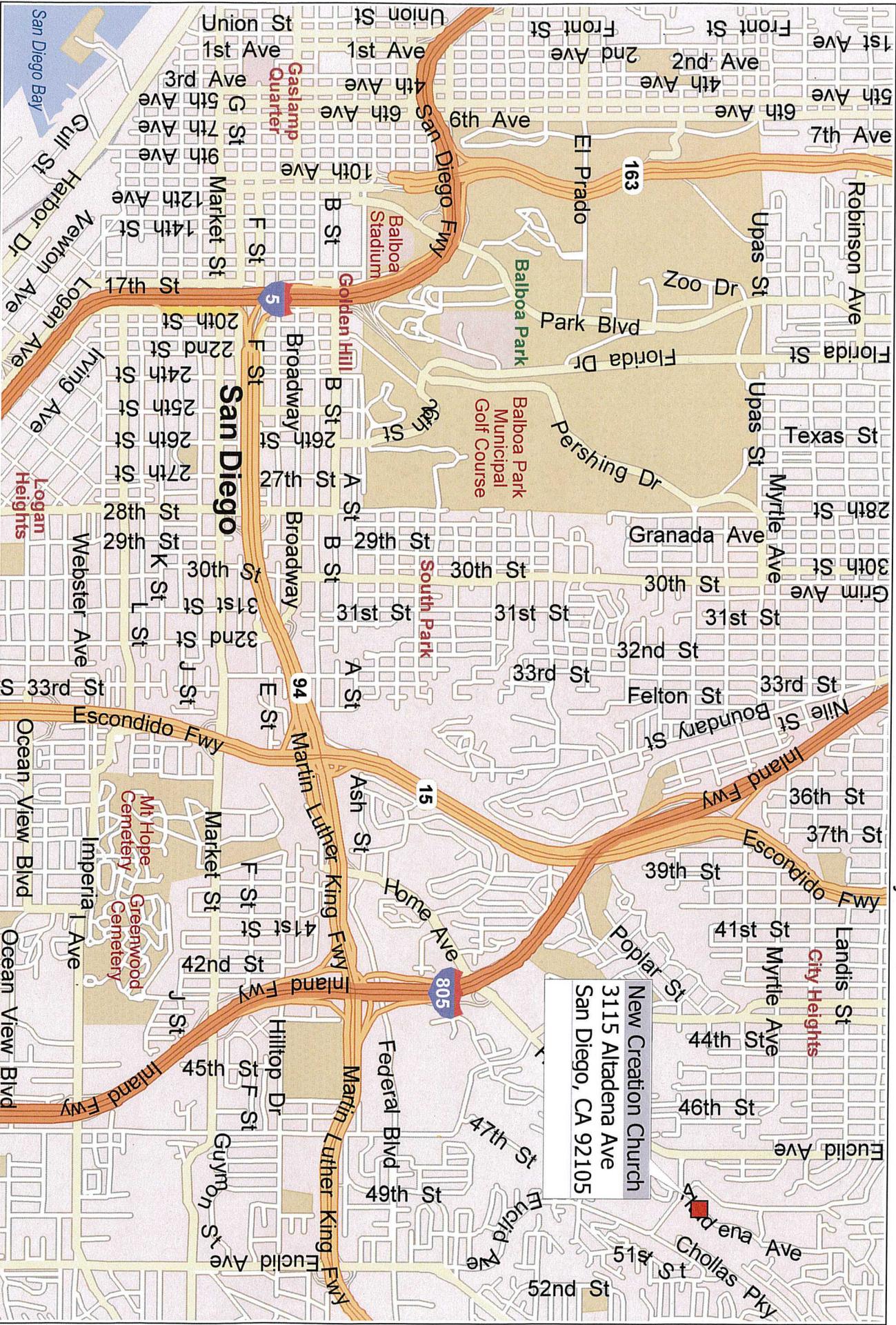
Exhibit "A" to Grant Deed: Legal Description

That portion of Section 33, Township 15 South, Range 2 West, San Bernardino Meridian, according to the official plat thereof, all being in the City of San Diego, County of San Diego, State of California, being more particularly described as follows:

Beginning at the southwest corner of the north half of the southwest quarter of the southeast quarter of the northeast quarter of said Section 33, also being an angle point in the subdivision boundary of Ridgeview Acres Unit No. 2, according to the map thereof No. 4296 filed in the office of the County Recorder of said San Diego County on August 7, 1959; Thence along the said subdivision boundary North $89^{\circ}47'40''$ East 148.87 feet to a point on the northwesterly right of way of Chollas Parkway as shown on said Map 4296; Thence leaving the said subdivision boundary South $36^{\circ}57'00''$ West 244.46 feet along the said right of way of Chollas Parkway to an angle point on the said subdivision boundary; Thence leaving the said right of way of Chollas Parkway North $00^{\circ}33'50''$ West 194.84 feet along the said subdivision boundary to the point of beginning.

The above described property containing 14502.55 square feet, 0.3329 acres.

New Creation Church - Chollas Parkway



New Creation Church
3115 Altadena Ave
San Diego, CA 92105



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Legend



1:1937

Vicinity Map



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Print Date: 11/27/03



San Diego Canyonlands

◆ 3552 Bancroft Street San Diego, CA 92104 ◆ 619-284-9399 ◆
◆www.sdcanyonlands.org◆

February 3, 2015

City Council Committee on Smart Growth & Land Use
202 "C" Street, 12th Floor Committee Room
San Diego, CA 92101

Re: February 4th, Agenda, Item 1, Dealing with Illegal Encroachment in City Open Space
Sale of City-Owned Land as a Potential Remedy

Dear City Council Committee on Smart Growth and Land Use,

I've spoken with Barry Slotten in Real Estate Assets, and with Chris Zirkle, Deputy Director of the Open Space Division of the Park and Recreation Department, about the proposed land sale to New Creation Church of San Diego (NCCSD), where the church parking lot was developed on top of City-owned open space at Chollas Creek.

It may be that in some cases, and perhaps in this case, requiring the encroacher to purchase the portion of the land that is illegally encroached upon is an appropriate remedy, but it is critical that we establish clear criteria for when this remedy would be used and the circumstances under which the City would be made whole. If this is precedent -setting, we could find other encroachers insisting upon this same remedy, when the land should clearly remain with the City and the violation should be reversed.

1) All costs associated with investigating the encroachment, and any costs associated with "carving out" a new parcel to sell and otherwise facilitating this sale, should also be recovered by the City from the "encroacher". I'm told the encroachment existed before the NCCSD bought the property, but the violation was baggage that came with the purchase.

2) Only the portion of the land that is encroached upon should be considered for sale. **The portion of the land that is impacted by the parking lot encroachment is about 5000 Sq.Ft., but the area proposed for sale is 14,503 Sq.Ft..** The ease of drawing the line as it is, helped to facilitate a "desk-top" parcel creation and avoided expensive surveys... but the Chollas Creek Open space loses another 9500 sq.ft..

- If the City sells the entire 14,503 Sq.Ft., the undeveloped portion should have an iron clad conservation easement and public access easement for habitat maintenance or other purpose as needed.
- While the land may be steep and difficult to develop, our Land Use Code does provide for development out onto steep manufactured slopes beyond the ridgelines. Also, if these are manufactured slopes, it would likely be due to the illegal encroachment.
- Please see attached map.

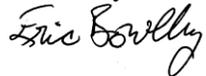
3) Because this land is so close to, and borders the MHPA, the land should be brought into compliance with all MHPA adjacency guidelines.

I don't think the content of this letter exhausts our discussion on what criteria should exist for us to consider selling the land where an illegal encroachment has taken place, but here are some other thoughts:

- If/when "sale" is being considered as a remedy, the managing department should be consulted, and if/when the case is made that there are important resource values or public access values, or any public benefit values etc., then the City should not consider this option;
- If it's in the MHPA, it should not be an option to sell the land, and the land should be restored.

Thank you for your time considering these comments.

Sincerely,



Executive Director
619-284-9399
eric@sdcanyonlands.org

