

**Metro**Los Angeles County
Metropolitan Transportation AuthorityOne Gateway Plaza
Los Angeles, CA 90012-2952213.922.2000 Tel
metro.net**PLANNING AND PROGRAMMING COMMITTEE
JANUARY 16, 2013****SUBJECT: VICTORY & BALBOA – SALE OF SURPLUS PROPERTY****ACTION: AUTHORIZE THE SALE OF APPROXIMATELY 80,000 SQUARE FEET
OF SURPLUS PROPERTY ALONG THE ORANGE LINE RIGHT-OF-
WAY IN VAN NUYS****RECOMMENDATION**

Authorize the Chief Executive Officer to sell approximately 80,000 square feet of surplus property located adjacent to the Orange Line Right-of-Way, west of the Balboa Orange Line station, in Van Nuys ("Property") to George E. Moss ("Buyer"), or his assign, in accordance with the Purchase Term Sheet attached as Attachment A.

ISSUE

The Property has been determined to be surplus to Metro's needs and was offered for purchase or lease to public agencies in accordance with Metro's Disposition of Surplus Real Property policy. No public agencies accepted Metro's offer, clearing the Property for sale to adjacent property owners. A development entity created by Buyer is one of two adjacent property owners; the other is the federal government. According to the Disposition of Surplus Real Property policy, the proposed sale requires Board approval, since the recommended sales price is above \$200,000.

DISCUSSION

The Property is a narrow, irregularly-shaped portion of a larger, approximately 5.9-acre, Metro-owned parcel (APN 2230-24-901). It is sandwiched between the Orange Line operating right-of-way to the south and Victory Boulevard to the north, and is bounded to the west by federal land and to the east by the Developer's existing Encino Office Park development at the southwest corner of Balboa and Victory Boulevards. The Property is near the Orange Line's Balboa Station, but lies a block or more away to the west, being separated therefrom by Balboa Boulevard and the office park. Birmingham High School lies across Victory Boulevard to the north. The Property and the surrounding area are depicted on Attachment B.

The recommended sales price is \$2,300,000, based on a \$28.75 per square foot land value and an assumed 80,000 square foot Property. Since the Property is irregularly shaped, its 80,000 square foot area represents staff's estimate of its size. The actual size of the Property will be agreed to prior to closing after completion of a survey and determination of the Property's area by a licensed land surveyor. The final sales price will equal the actual square footage of the Property multiplied by the \$28.75 per square foot land value. At closing, Metro will receive the final sales price, less closing costs, as set forth on the Purchase Term Sheet.

The Property currently has a mixed PF (public facilities) and MR1 (manufacturing) zoning and is part of a larger, 5.9-acre Metro-owned parcel. To be suitable for development, the Property needs to be legally separated from the larger parcel. In addition, it needs to be rezoned for commercial use to be fully developed to its highest and best use (see the following paragraph). The Purchase Term Sheet obligates Buyer to change the zoning for the Property to either a C-2 or CM commercial zone, and to divide Metro's 5.9-acre parcel into two legal lots, one of which will be the Property. Processing this work through the City of Los Angeles is expected to take two years to complete and is a Buyer closing contingency. To accommodate this contingency, the Purchase Term Sheet contemplates an initial escrow term of two years, with options in favor of Buyer to extend the term for up to an additional year, in the event that this processing takes longer.

The Purchase Term Sheet provides for the removal of vegetation from the Property upon completion of the funding clearances noted above, and regular maintenance of the Property to keep the vegetation from growing back. The removal and maintenance work will be performed by either Buyer or Metro at Buyer's sole cost.

The \$2,300,000 recommended purchase price was calculated using an appraisal performed by Integra Realty Services in late 2011, and deducting certain costs therefrom. Integra's appraisal valued the Property at \$2,765,000, based on a commercial/retail development highest and best use, but did not factor in costs associated with re-zoning the Property to allow for such development or the lot split needed to make the Property a legal lot. These costs include City of Los Angeles application and filing fees, as well as third party costs for consultants, architects, engineers, and attorneys who contribute necessary technical information to the zone change and lot line adjustment process and the cost to remove existing vegetation and its associated irrigation system from the Property. Metro's economic advisor for the proposed sale, The Maxima Group, has estimated that the fair market cost to complete the zone change would value be between \$428,000 and \$442,500, but notes that these costs could vary significantly, depending on a number of factors. Processing the lot split at the same time as the zone change would not add significantly to these costs. Removing the existing vegetation and irrigation system would add an additional cost. In all, the costs associated with re-zoning the Property, creating a legal lot and removing the existing vegetation and irrigation system reduce the appraised value and support the \$2,300,000 purchase price.

The sale of the Property is contingent upon approval of the sale by the State, who participated in the original acquisition of the Property as part of the LACTC's purchase of the Burbank Branch rail right-of-way in March, 1991. The State funded 50% of the purchase price with Proposition 108 passenger rail bonds. Local funds were used to fund the remainder of the purchase price. To the extent bonds were used as part of the local match, staff will also need to confirm that the proposed sale does not violate the requirements and restrictions imposed on the Property and the Burbank Branch rail right-of-way by the bond funding, before the sale can be executed.

Background

The 5.9-acre larger parcel was acquired by Metro as part of the Los Angeles County Transportation Commission's purchase of certain railroad right-of-way from Southern Pacific along the Burbank Branch Line on March 13, 1991. During construction of the Orange Line, it was used as a construction staging area. The Property is no longer needed for Orange Line construction purposes, nor is it needed for Orange Line operations or for any other Metro purpose. The Property is separated from the Orange Line operating right-of-way by a block wall that was constructed as part of the project. At present, the Property is covered with overgrown vegetation.

Policy Implications

The recommended actions are consistent with Metro's Disposition of Surplus Real Property policy.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no impact on safety.

FINANCIAL IMPACT

Funding for joint development activities related to the sale is included in the FY13 budget in Cost Center 2210 (New Business Development), under Project 610011 (Economic Development).

Since the escrow for the sale is a multi-year contract, the Chief, Real Property Management & Development, will be accountable for budgeting any costs associated with the sale and the escrow, including any extension thereof, in future years.

Impact to Budget

The source of funds for this project is local right-of-way lease revenues, which are eligible for bus/rail operating and capital expenses. Proceeding with the recommended sale of surplus property will not impact ongoing bus and rail operating and capital costs,

the Proposition A and C and TDA administration budget or the Measure R administration budget.

ALTERNATIVES CONSIDERED

The Board could choose not to proceed with the recommended action and reject the sale of the Property. Staff does not recommend this alternative, because the Property has been deemed surplus to Metro's needs and is being sold in accordance with Metro's Disposition of Surplus Real Property policy.

NEXT STEPS

Upon approval of the recommended action, the CEO, or his designee, will execute a purchase & sale agreement with Buyer and will open escrow for the sale pursuant to the purchase & sale agreement. Thereafter, Buyer will commence pre-purchase due diligence and work necessary to complete the zone change and lot split. Staff will begin work on obtaining necessary funding clearances from the public agency funding partners that participated in the original acquisition of the 5.9-acre larger parcel.

ATTACHMENTS

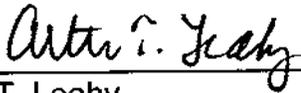
Attachment A – Purchase Term Sheet

Attachment B – Depiction of the Property and the Surrounding Area

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Roger S. Moliere
Chief, Real Property Management & Development



Arthur T. Leahy
Chief Executive Officer

PURCHASE TERM SHEET

(“Term Sheet”)

December 21, 2012

Buyer and Seller shall execute a purchase and sale agreement (the “Purchase and Sale Agreement”) subject to the following terms and conditions:

Buyer: George E. Moss, or his assign (“Buyer”)

Seller: Los Angeles County Metropolitan Transportation Authority (“LACMTA”)

Property: An approximate 80,000-square foot vacant portion (the “Property”) of a larger approximately 5.9-acre parcel (APN 2230-24-901) (the “LACMTA Parcel”. That portion of the LACMTA Parcel that is not the Property shall be referred to herein as the “LACMTA Transit Property.” The Property and the LACMTA Transit Property are shown on Exhibit A. The final square footage and legal description of the Property shall be determined by a licensed land surveyor and agreed upon by Buyer and LACMTA upon completion of the Lot Split Condition, as defined below.

Purchase Price: \$2,300,000 (“Purchase Price”) (based upon \$28.75 per square foot and 80,000 square feet) due and payable on the closing of Escrow in cash (i.e.; the sale is not contingent on Buyer obtaining any financing). If the final area of the Property is more or less than 80,000 square feet, the Purchase Price shall be adjusted and shall equal the amount of the actual final square footage (as determined and agreed upon pursuant to the Property section above) multiplied by \$28.75 per square foot.

Deposit: \$250,000 deposit (the “Initial Deposit”) due upon execution of the Purchase and Sale Agreement. If the sale closes, the Initial Deposit and any Additional Deposit received by LACMTA thereafter shall be applied to the Purchase Price. The Initial Deposit and all Additional Deposit shall be forwarded to the Escrow Holder to be deposited and held in an interest bearing account for the credit of Buyer.

Escrow Holder: Escrow shall be held at Orange Coast Title Company, 3536 Concourse Drive, #120, Ontario, Ca. 91764, Attn: Irene L. Genders,

Escrow Manager ("Escrow Holder"). The parties may change the Escrow Holder by mutual written agreement.

Escrow:

LACMTA and Buyer shall open escrow ("Escrow") with the Escrow Holder not more than five (5) business days after the Purchase and Sale Agreement is fully executed. The Escrow period shall expire two (2) years after LACMTA's delivery of written notice to Buyer that LACMTA has met or waived the LACMTA Contingency (as defined herein below). The period commencing with the opening of Escrow and ending two (2) years after LACMTA's delivery of written notice to Buyer that LACMTA has met or waived the LACMTA Contingency shall be the "Initial Escrow Period". If prior to expiration of the Initial Escrow Period, all Buyer Contingencies have been met or waived by Buyer, except for the Lot Split Condition and/or the Zone Change Condition, then Buyer shall have the option to extend the Initial Escrow Period for an additional six (6) months. If prior to expiration of the first six-month extension of the Initial Escrow Period, the Lot Split Condition and/or the Zone Change Condition have still not been met or waived by Buyer, then Buyer shall have the option to extend the Initial Escrow Period (as extended) an additional six (6) months. Each six (6) month extension shall be known as an "Escrow Extension" and each corresponding option to extend shall be known as an "Option to Extend." To exercise either Option to Extend, Buyer must (i) provide its election to exercise such Option to Extend no later than three (3) months prior to the end of the Initial Escrow Period (for the first Escrow Extension), and no later than three (3) months prior to the end of the first Escrow Extension (for the second Escrow Extension); (ii) demonstrate to LACMTA's reasonable satisfaction that the Lot Split Condition and the Zone Change Condition have progressed to the point where it is reasonably expected that each such condition could be met within the period of the relevant Escrow Extension; (iii) provide an additional deposit of \$50,000 per Option to Extend (each, an "Additional Deposit") prior to commencement of the relevant Escrow Extension; and (iv) confirm in writing that all Buyer's Contingencies other than the Lot Split Condition and/or the Zone Change Condition have been met or waived. If Escrow does not close by the end of the Initial Escrow Period (as extended by any Option to Extend exercised in accordance with this Term Sheet), then, at the end of the Initial Escrow Period (as extended by any Option to Extend exercised in accordance with this Term Sheet): (a) Escrow shall expire; (b) LACMTA shall have no further obligations to sell the Property to Buyer; (c) the deposit shall be distributed as specifically set forth below in the Expiration/Termination/Disposition of Deposit section; and (d) unless otherwise requested by LACMTA, Buyer shall

remove any zone changes or lot splits obtained by Buyer which affect the LACMTA Parcel (including, without limitation, any associated covenants, conditions, obligations or other matters affecting title to or use of the LACMTA Parcel) and shall restore the LACMTA Parcel to the zoning condition and lot configuration existing on the date that the Purchase and Sale Agreement is executed.

As-Is, Where-is: The sale of the Property shall be made on an as-Is, where-Is basis. Buyer shall purchase the Property subject to any pre-existing conditions.

Buyer's Covenants: After the execution of the Purchase and Sale Agreement, Buyer shall have the following obligations:

- (1) Buyer shall diligently and in good faith prosecute the completion and satisfaction of Buyer's Contingencies listed below.

LACMTA's Covenants: After the execution of the Purchase and Sale Agreement, LACMTA shall have the following obligations:

- (1) Remove all existing vegetation on the Property at Buyer's sole cost as follows:
 - a. LACMTA will deliver written notice (the "Notice") to Buyer that LACMTA has met or waived the LACMTA Contingency (as defined herein below). Upon receipt of the Notice, buyer shall inform LACMTA whether or not it will contract directly for the vegetation removal or would prefer that LACMTA perform or contract for such removal. Should Buyer choose to contract for the removal of the vegetation, Buyer shall, prior to any entry onto the Property for vegetation removal, enter into a right of entry with LACMTA allowing Buyer and its contractor to proceed with such work. This right of entry shall be added to the Right of Entry Agreement described below in paragraph 7 of Buyer's Contingencies.
 - b. If Buyer elects to have LACMTA remove the existing vegetation, LACMTA shall provide Buyer with an estimate for the cost to remove the existing vegetation. LACMTA shall cause all existing vegetation to be removed from the Property within

forty-five (45) days after Buyer's submittal of the full amount of the estimate to Escrow. LACMTA shall have no obligation to remove the vegetation prior to Buyer's submittal of these funds into Escrow. Upon completion of the work, LACMTA shall submit its invoice to Escrow for payment and Escrow shall release funds to LACMTA to cover its cost to remove the vegetation, as set forth on the invoice. To the extent the actual cost to remove the vegetation exceeds the estimate, Buyer will be required to submit to Escrow such additional amounts.

- (2) The parties acknowledge that an irrigation system exists on the Property. As part of the vegetation removal, the parties will coordinate and agree upon the work necessary to remove the irrigation system (if necessary) and the associated costs to be incurred by each party with respect to the same.
- (3) After the initial removal of the vegetation from the Property and subject to the same process set forth for the initial removal in paragraph 1 of this LACMTA's Covenants section, LACMTA shall keep the Property reasonably free of any vegetation upon Buyer's reasonable request and at Buyer's sole cost using the same process that was used for the initial vegetation removal.
- (4) LACMTA shall reasonably cooperate with Buyer to allow Buyer to complete items #1 and #2 of Buyer's Contingencies (i.e.; the Zone Change Condition and the Lot Split Condition) prior to the close of Escrow. Such cooperation shall include, without limitation, LACMTA's timely execution of documents and instruments necessary to accomplish the desired re-zone and lot split as required by the City of Los Angeles, provided that LACMTA's obligation to cooperate shall include only those actions that are at no cost to LACMTA. Notwithstanding anything to the contrary set forth herein, LACMTA's cooperation shall not include agreeing to any condition, obligation or requirement that the City of Los Angeles wishes to impose on LACMTA that would become effective prior to the Close of Escrow, as a result of Buyer's pursuit of the Zone Change Condition or the Lot Split Condition or for any other reason.

Buyer's
Contingencies: Buyer's obligation to purchase the Property shall be contingent on

the following (the "Buyer Contingencies") all of which Buyer shall perform at its sole cost and expense:

- (1) The Property has been re-zoned to a C-2 or CM zone (the "Zone Change Condition").
- (2) The LACMTA Parcel has been split into two legal lots consisting of (a) the Property and (b) a remaining lot consisting of the balance of LACMTA Parcel not included in the Property (the "Remainder Lot"). This condition is referred to herein as the "Lot Split Condition". Buyer understands that LACMTA uses and that LACMTA will continue to use the Remainder Lot for its transit operations.
- (3) Buyer's approval of all "Q" conditions and other City of Los Angeles requirements and conditions of the re-zone of the Property.
- (4) Buyer's receipt of approval by the lender of the neighboring Encino Office Park Project ("EOPP") (owned by a related entity of Buyer) of cross-easements and access agreements between the EOPP and Buyer to permit reciprocal ingress and egress, access and parking rights to, from and across the Property and the EOPP as is necessary for the development of the Property.
- (5) Buyer's approval of the condition of title to the Property and all conditions, covenants and restrictions affecting the Property (collectively, the "CC&Rs").
- (6) Buyer's approval of the environmental condition, soils condition and development feasibility of the Property.
- (7) Buyer's right to conduct physical testing of the Property and to enter the Property during the Escrow at no liability or cost to LACMTA, provided that such entry shall be pursuant to a Right of Entry Agreement to be entered into by Buyer and LACMTA.

LACMTA's
Contingencies:

LACMTA's obligation to sell the Property shall be contingent on the following (the "LACMTA Contingency"):

- (1) Approval of the sale of the Property on the terms and conditions set forth herein by the appropriate funding agency(ies) that participated in LACMTA's original

acquisition of the Property. In addition, to the extent local bonds were used to purchase the Property, LACMTA must find that the financial and legal risks associated with such bonds with respect to the sale of the Property are acceptable.

Costs
and Expenses:

The following costs shall be paid by LACMTA: (a) the cost of a CLTA Owner's Title Policy; (b) Documentary Transfer Taxes; and (c) fifty percent (50%) of all Escrow fees and charges. The following costs shall be paid by Buyer: (i) all recording costs (except for Documentary Transfer Taxes); (ii) all costs associated with Buyers' Contingencies (including, all costs associated with the Zone Change Condition and the Lot Split Condition); and (iii) fifty percent (50%) of all Escrow fees and charges.

Assignment:

Buyer shall have the right to assign its interests and rights to buy the Property through the Escrow.

Expiration/
Termination/
Disposition of
Deposit:

Buyer shall have the right to terminate the Escrow for any of the following reasons: (i) upon disapproval by Buyer of any of the Buyer Contingencies that require Buyer's approval; (ii) upon the death or disability of any of the principals of Buyer; (iii) upon the occurrence of a material adverse financial event affecting Buyer or any of its principals; (iv) upon the occurrence of a Force Majeure Event (defined below); or (v) upon the occurrence of an LACMTA Breach (defined below). To terminate Escrow for any of the reasons set forth in clauses (i)-(v) above, Buyer must provide LACMTA with a written termination notice within fourteen (14) days after the occurrence of the event giving rise to Buyer's right to terminate. Said notice must reference the reason for the termination and be accompanied with reasonable evidence of the event giving rise to Buyer's right to terminate.

If Buyer terminates the Escrow during the Initial Escrow Period for any of the reasons set forth in clauses (i)-(iii) of the foregoing paragraph, LACMTA shall return to Buyer the full Initial Deposit, unless Buyer terminates the Escrow after the occurrence of a Milestone Breach (defined below), in which case LACMTA shall return to Buyer the Unearned Portion of the Deposit (defined below) and shall keep the remainder of the Initial Deposit. If Buyer terminates the Escrow during the term of either Escrow Extension for any of the reasons set forth in clauses (i)-(iii) of the foregoing

paragraph, LACMTA shall return to Buyer the Unearned Portion of the Deposit (defined below) received by LACMTA, but LACMTA shall be entitled to keep the full amount of the Initial Deposit. If Buyer terminates the Escrow during the Initial Escrow Period or the term of either Escrow Extension for either of the reasons set forth in clauses (iv) and (v) of the forgoing paragraph, LACMTA shall return to Buyer the full amount of the Initial Deposit and any Additional Deposits received by LACMTA, irrespective of the occurrence of a Milestone Breach.

If Escrow does not close prior to the end of the Initial Escrow Period (as extended by any Option to Extend exercised in accordance with this Term Sheet) and if Escrow has not been terminated pursuant to this Expiration/Termination/Disposition of Deposit section of this Term Sheet, then LACMTA shall retain the Initial Deposit and any Additional Deposits received by LACMTA or due from Buyer.

The term "Force Majeure Event" shall mean and refer to any acts of God, strikes, lockouts, labor troubles or restrictive governmental laws, regulations or development moratoria that could reasonably prevent Buyer from completing the Zone Change Condition or the Lot Split Condition within the Initial Escrow Period and any extension thereof.

The term "LACMTA Breach" shall mean and refer to LACMTA's failure to meet or waive the LACMTA Contingency within one (1) year after the date on which the Escrow is opened.

The term "Milestone Breach" shall mean and refer to Buyer's failure to satisfy any of the following tasks (and to provide LACMTA with reasonable evidence of the same) on or before the date which is eight (8) months after the date upon which LACMTA delivers written notice to Buyer that LACMTA has met or waived the LACMTA Contingency:

- 1) Buyer shall file the necessary application materials and pay the fees required by the City of Los Angeles to receive City of Los Angeles approval of (A) a re-zone the Property to a C-2 or CM zone; and (B) a lot split of the LACMTA Parcel into the Property and the Remainder Lot.

- 2) Buyer shall approve, in writing, the condition of title to the Property and all CC&Rs.

- 3) Buyer shall approve, in writing, the environmental condition, soils condition and development feasibility of the Property.

- 4) Buyer shall have received approval by the lender of the EOPP of cross-easements and access agreements between the EOPP and Buyer to permit reciprocal ingress and egress, access and parking rights to, from and across the Property and the EOPP as is necessary for the development of the Property.

The term "Unearned Portion of the Deposit" means (a) with respect to a termination occurring during the Initial Escrow Period, the amount resulting from dividing the Initial Deposit by 730 (i.e.; the number of calendar days in the Initial Escrow Period) and then multiplying the resulting quotient by the number of calendar days lying between the date that Escrow is terminated and the expiration date of the Initial Escrow Period; and (b) with respect to a termination occurring during an Escrow Extension, the amount resulting from dividing the Additional Deposit relating to such Escrow Extension by the number of calendar days in such Extension Period and then multiplying the resulting quotient by the number of calendar days lying between the date that Escrow is terminated and the expiration date of such Escrow Extension.

Transit Proximity
Risks:

Buyer shall waive and include in all leases, sale agreements or other documents providing a third party with an interest in the Property a waiver of risks associated with being adjacent to a transit system in the form hereto attached as Exhibit B.

Exhibit A
(1 of 2)

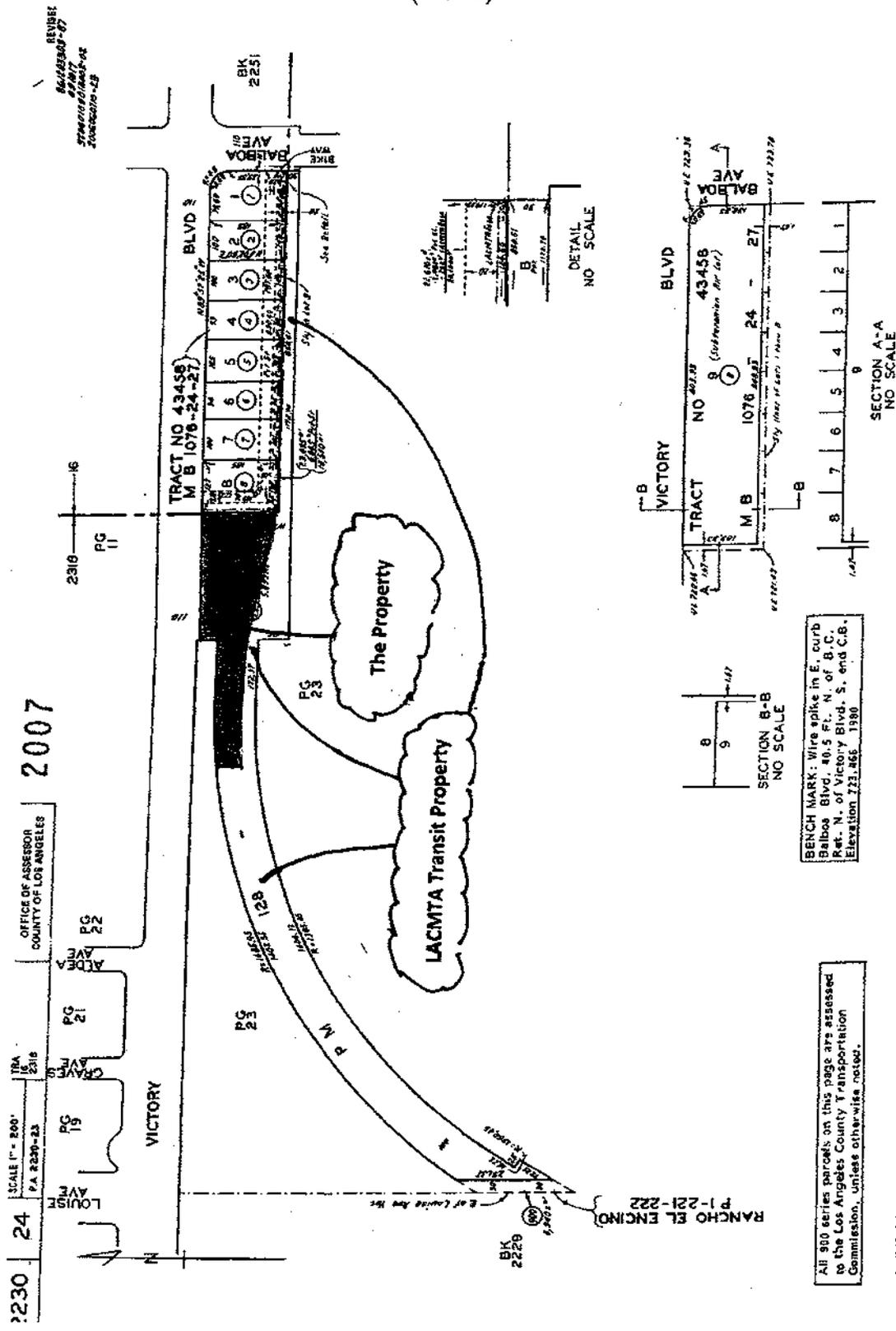


Exhibit A
(2 of 2)

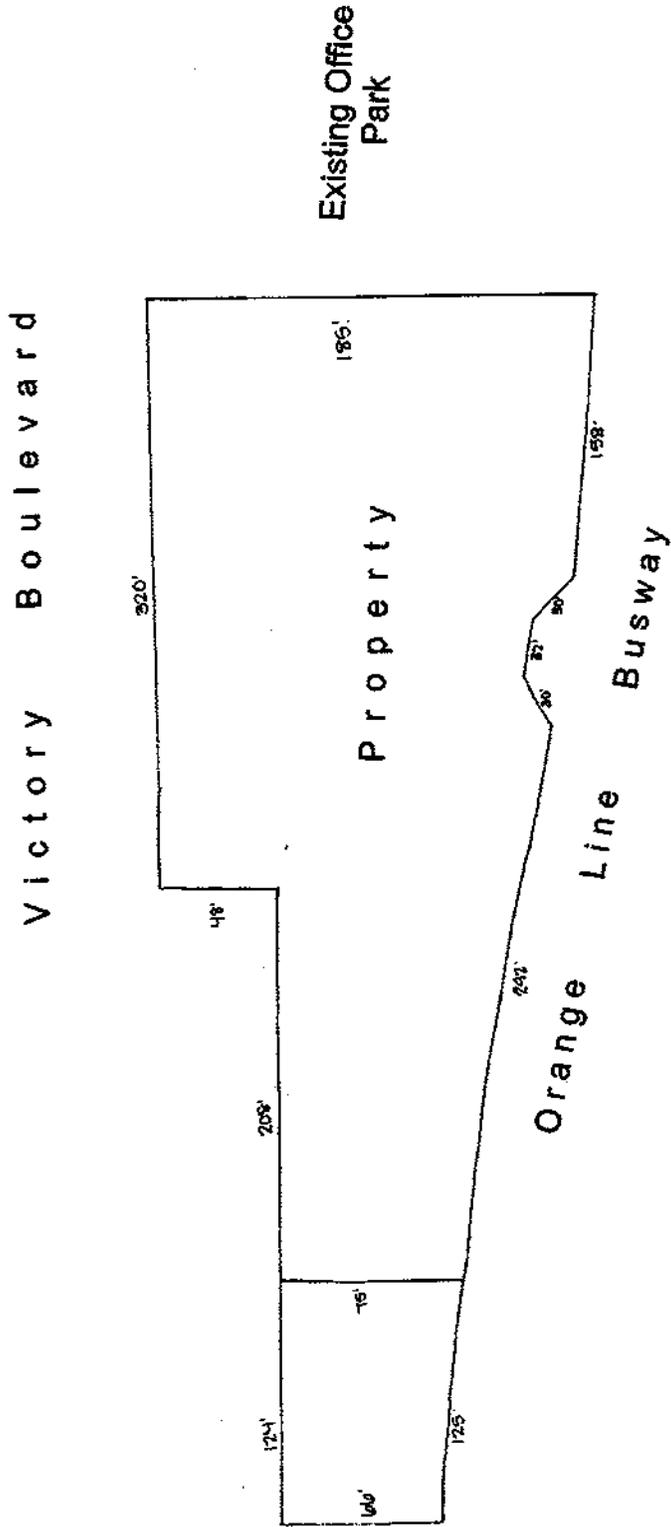


EXHIBIT B

1. Transit Proximity Risk. Buyer acknowledges that (A) the Property is adjacent and/or proximate to the LACMTA Transit Property and the Public Transit Facilities, and (B) Buyer and its tenants and other users of the Property may be subjected to disturbance, inconvenience, annoyance and nuisance associated with or related to (a) construction, operation, use, repair, maintenance, replacement or reconstruction activities on or from the LACMTA Transit Property or with respect to the Public Transit Facilities, (b) the operation of bus service and/or other public transit service in, on, under, or over the LACMTA Transit Property, and (c) the activities of LACMTA patrons, employees, contractors, consultants, or agents associated therewith (collectively, the "Transit Proximity Risks"). Transit Proximity Risks include: (i) vehicle exhaust, (ii) noise, vibration and odor, and (iii) lighting from the LACMTA Transit Property or Public Transit Facilities. Notwithstanding the foregoing, the Transit Proximity Risks do not include bodily injury or property damage directly caused by the gross negligence or intentional misconduct of LACMTA, its employees, contractors or agents in the course of operation, use, construction, repair, maintenance, reconstruction or replacement work related to the Public Transit Facilities and do not preclude Buyer from pursuing a claim directly against an LACMTA patron for bodily injury or property damage directly caused by the gross negligence or intentional misconduct of an LACMTA patron.

The following terms used in this Section 1 and in connection with Sections 2 and 3 shall have the following meanings:

"LACMTA" shall mean the Los Angeles County Metropolitan Transportation Authority, and its subsidiaries, successors and assigns, and anyone (a) validly operating, constructing, repairing, maintaining, replacing or reconstructing public transit service on the city streets surrounding the Property or on the LACMTA Transit Property, or (b) validly operating, constructing, repairing, maintaining, replacing or reconstructing any Public Transit Facilities.

"LACMTA Transit Property" shall have the meaning set forth on the Term Sheet to which this Exhibit B is attached.

"Property" shall have the meaning set forth on the Term Sheet to which this Exhibit B is attached.

"Public Transit Facilities" means the following, as located or operating from time to time on the LACMTA Transit Property or the streets, sidewalks or public rights-of-way adjoining the Property (a) LACMTA buses, rail vehicles (including construction and maintenance vehicles associated with bus or rail operations), (b) bicycles (including construction and maintenance vehicles associated with any bicycle use), (c) improvements, equipment and facilities related to bus, rail or bicycle uses or operations (including, railroad tracks, roadways, bikeways, signaling devices, bus stops

and shelters, bus or rail stations, automobile parking, bicycle facilities, public address systems, and construction or maintenance equipment).

2. Release. Buyer, on behalf of itself, its tenants and its or their respective owners, members, partners, stockholders, and contractors, hereby releases and waives all claims against LACMTA, and its successors and assigns, for any loss sustained by, or any damage to or injury of, Buyer, its tenants, or their respective contractors, and their respective property, arising out of the Transit Proximity Risks. In connection with and to the extent of the foregoing release and waiver, Buyer waives the benefit of California Civil Code § 1542, which 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.”

Buyer Initials

The release and waiver set forth in this Section 2 shall survive the termination of this Agreement.

3. Disclaimers and Waivers in Leases and other Use Agreements.

3.1 Waivers and Indemnity. Buyer shall include within each lease, license or other agreement allowing the use or occupancy of all or any portion of the Property or any improvement constructed thereon (“Use Agreement”), a description of the Property and a provision by which such tenant, licensee, user or occupier under such agreement (“Tenant”) shall make the same acknowledgements as set forth in Section 1 and the same releases and waivers as set forth in Section 2 (“Tenant’s Transit Proximity Risk Waiver”), which Tenant’s Transit Proximity Risk Waiver, shall, in each case, be in the following form (or in another form approved in writing by LACMTA and Buyer):

“Assumption of Risk. Tenant acknowledges that (A) the Property is adjacent and/or proximate to the LACMTA Transit Property and the Public Transit Facilities, and (B) Tenant and its subtenants and other users of the Property may be subjected to disturbance, inconvenience, annoyance and nuisance associated with or related to (a) construction, operation, use, repair, maintenance, replacement or reconstruction activities on or from the LACMTA Transit Property or with respect to the Public Transit Facilities, (b) the operation of bus service and/or other public transit service in, on, under, or over the LACMTA Transit Property, and (c) the activities of LACMTA patrons, employees, contractors, consultants, or agents associated therewith (collectively, the “Transit Proximity Risks”). The Transit Proximity Risks include: (i) vehicle exhaust, (ii) noise, vibration and odor, and (iii) lighting from the LACMTA Transit Property or Public Transit Facilities. Notwithstanding the foregoing, the Transit Proximity

Risks do not include bodily injury or property damage directly caused by the gross negligence or intentional misconduct of LACMTA, its employees, contractors or agents in the course of operation, use, construction, repair, maintenance, reconstruction or replacement work related to the Public Transit Facilities and do not preclude Buyer from pursuing a claim directly against an LACMTA patron for bodily injury or property damage directly caused by the gross negligence or intentional misconduct of an LACMTA patron..

Release and Waiver. Tenant, on behalf of itself, its subtenants and its or their respective owners, members, partners, stockholders, and contractors, hereby releases and waives all claims against LACMTA, and its successors and assigns, for any loss sustained by, or any damage to or injury of, Tenant, its subtenants, or their respective owners, members, partners, stockholders, contractors or their respective property, arising out of the Transit Proximity Risks. In connection with and to the extent of the foregoing release and waiver, Tenant waives the benefit of California Civil Code § 1542, which 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.'

Initials

The following terms shall have the following meanings for the purposes of this assumption of risk, release and waiver:

'LACMTA' shall mean the Los Angeles County Metropolitan Transportation Authority, and its subsidiaries, successors and assigns, and anyone (a) validly operating, constructing, repairing, maintaining, replacing or reconstructing public transit service on the city streets surrounding the Property or on the LACMTA Transit Property, or (b) validly operating, constructing, repairing, maintaining, replacing or reconstructing any Public Transit Facilities.

'LACMTA Transit Property' means that certain real property which is owned by the LACMTA or upon which public transit service is operated and is located adjacent to the Property.

'Property' means the property owned by [INSERT BUYER'S (OR ITS SUCCESSORS) NAME] and leased [permitted, licensed, etc.] to Tenant.

'Public Transit Facilities' means the following, as located or operating from time to time on the LACMTA Transit Property or the streets, sidewalks or public rights-of-way adjoining the Property (a) LACMTA buses, rail vehicles (including construction and maintenance vehicles associated with bus or rail

operations), (b) bicycles (including construction and maintenance vehicles associated with any bicycle use), (c) improvements, equipment and facilities related to bus, rail or bicycle uses or operations (including, railroad tracks, roadways, bikeways, signaling devices, bus stops and shelters, bus or rail stations, automobile parking, bicycle facilities, public address systems, and construction or maintenance equipment).

The provisions of this assumption of risk, release and waiver shall survive the termination of this Use Agreement.”

3.2 Failure to Include. In the event Buyer fails to include within any Use Agreement any of the language required to be included therein pursuant to Section 3.1 and a Tenant asserts or threatens any claim against LACMTA and its subsidiaries and their respective members, shareholders, attorneys, agents, trustees, successors, assigns and any individual (employee, officer, partner, director, commissioner or board member), employed by or acting on behalf of any of the above entities, as applicable (“LACMTA Indemnified Parties”) arising from, connected with, relating to, resulting from, or based on a Transit Proximity Risk, then Buyer shall indemnify, defend and hold LACMTA and the LACMTA Indemnified Parties harmless from and against such claims. The terms and indemnities included in this Section 3.2 shall survive the expiration or termination of this Use Agreement.

ATTACHMENT B

Depiction of the Sale Property and the Surrounding Area

