

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 10, 2010

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM GREG RAMIREZ, CITY MANAGER

BY: AMY BRINK, DIRECTOR OF COMMUNITY SERVICES

SUBJECT: APPROVAL OF RESOLUTION NO. 10-1605; A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS APPROVING A PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN THE CITY AND RELIANCE TRUST FOR THE CITY'S PURCHASE OF REAL PROPERTY LOCATED AT 29900 LADYFACE COURT

The existing Agoura Hills Recreation/Senior Center ("Center") is a 3,500 square foot facility that serves thousands of individuals each year. Built in 1991, it sits on a piece of property with a land lease that will expire in 2014.

Tots, youth, teens, adults, and seniors visit the Center daily to seek a variety of community services. Residents and visiting community members include seniors who need help in preparing their taxes, adults who desire to sign up a toddler for their first class, or a young student who is looking for volunteer opportunities. Some individuals utilize the Center simply as a gateway into a new community, as they need to familiarize themselves with the local services offered in their new place of residence.

The Center is also where the City of Agoura Hills' full-time Department of Community Services staff work daily to administer these services to the residents of Agoura Hills. The department is responsible for a range of services that include: recreational classes, afterschool activities, community special events, volunteer programs, Community Concert Band, Healthy City and One City/One Book programs, senior social services, Senior Advisory Committee, Youth Council, cultural arts programs, summer day camp programs, city transportation services, school holiday programs, adult sports programs, park playground facilities and landscapes, the Old Agoura Equestrian Arena, the Agoura High School Tennis Courts, and the Reyes Adobe Historical Site, which includes administering public tours, collecting artifacts, managing a docent program, transportation services, offering special events, and maintaining the beautiful grounds. The department is also responsible for implementing many critical City services.

Several months ago, City officials were contacted by a commercial real estate broker regarding allowable uses at 29900 Ladyface Court, and were informed the property would be available for sale at some point in the future. At that time, the property was the home of Temple Beth Haverim, but due to unfortunate circumstances, the temple was unable to financially sustain its

function at this location. As of June 30, 2010, Temple Beth Haverim had no further rights to the property and the property came under full control of a trustee. After receiving confirmation from the President of the Temple's Board of Trustees that the Temple was no longer considering the property for its own use, City staff began evaluating the site as a potential location for a recreation/senior center and found it to be very conducive.

City staff had multiple discussions with representatives of the property prior to any formal offer, which was eventually made in late August of this year. After several weeks of negotiations, both parties came to agreement as to a price, at \$4.4 million. Staff spent a great deal of effort evaluating the property, commissioned a certified, independent appraisal and recognizes the offer for this property is very competitive. This piece of property is an opportunity for the City, both from a price and location perspective. The proximity would complete a true Civic Center, joining the Agoura Hills Library and City Hall with the Recreation/Senior Center. However, the sale of the property is a bit unusual in the sense it is under the authority of a Trustee, and must go through court process prior to being final.

The Trustee's obligation to close the transaction is contingent on the Trustee obtaining a non-appealable court order approving the sale from the Superior Court in Fulton County, Georgia (the Trustee's principal business location), or the Trustee's formal waiver of the court approval requirement by a specified date. This is necessary because the Trustee holds title on behalf of a large number of bondholders who provided financing to the prior owner and then foreclosed on the property. Although the Trustee may waive the court approval process, we do not consider it likely that they will do so.

The attached Purchase and Sale Agreement makes closing of escrow contingent on certain actions and approvals by each side. First, the City must complete its normal public processes for the approval of a purchase of real property. In addition, the City's contingencies include: 1) approval of a title report provided by the seller; 2) acquisition of an ALTA land survey; 3) approval of a satisfactory "Phase 1" physical condition/hazmat study; 4) review and approval of all documents and disclosure in the seller's possession; and 5) receipt of the formal documentation evidencing the Trustee's authority to convey the property for the agreed-upon price.

In conclusion, this is very much a bittersweet prospect for the City. Although the Temple itself is no longer operates from this location, Temple Beth Haverim is, and continues to be, a valued member of the community. The City is moving forward with the full knowledge and approval of the Temple's President and would be remiss not to at least attempt to acquire the property for critical community services provided by a Recreation/Senior Center.

RECOMMENDATION

Staff respectfully recommends the City Council discuss the item and direct staff to adopt Resolution No. 10-1605 and approve a Purchase and Sale Agreement and Joint Escrow instructions.

Attachments: Resolution No. 10-1605
Purchase and Sale Agreement

RESOLUTION NO. 10-1605

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, APPROVING A PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN THE CITY OF AGOURA HILLS AND RELIANCE TRUST, TRUSTEE, FOR THE CITY'S PURCHASE OF REAL PROPERTY LOCATED AT 29900 LADYFACE COURT

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES RESOLVE AS FOLLOWS:

1. Findings.

A. The City of Agoura Hills has offered to purchase certain real property located at 29900 Ladyface Court, in the vicinity of City Hall, together with the improvements located thereon. The property is identified as Assessor's Parcel Number 2061-005-031 (the "Property"). The Property consists of approximately 5.97 acres, with building improvements of approximately 15,600 square feet and 118 parking spaces, along with other appurtenant facilities.

B. The City's offer to Reliance Trust, the trustee for the property owner, is to purchase the subject property for the sum of \$4,400,000.00, which is the agreed upon fair market value of the property based on an appraisal prepared by the City's independent appraiser and the advice of experienced real estate advisor. The trustee accepted the City's offer, subject to certain conditions

C. The City Council finds that there is a public purpose for the acquisition of the Property in that it is located adjacent to the City Hall and Library and it is already improved with significant physical improvements and infrastructure. The City intends to acquire the Property for future community uses, to be determined, that are appropriate to the site and consistent with the General Plan and applicable Specific Plans.

2. **Approval of Purchase and Sale Agreement.** The City Council of the City of Agoura Hills hereby approves that certain agreement entitled "Purchase and Sale Agreement Between the City of Agoura Hills and Reliance Trust, Trustee and Joint Escrow Instructions (29900 Ladyface Court) (the "Agreement"), subject to such changes in the Agreement as may be mutually agreed upon by Reliance Trust and the City Manager, so long as the same are in substantial conformance with the form of such Agreement presented to the City Council for approval, except that the City Manager is not authorized to alter the purchase price for the property without the prior approval of the City Council. The Mayor is hereby authorized to execute the Agreement, on behalf of the City. A copy of the final Agreement when executed by the Mayor shall be placed on file in the Office of the City Clerk. This approval of the Agreement is not an announcement or authorization of the City's intent to develop any project on the Property or to acquire any other real property interest.

3. **City Manager's Authority.** The City Manager (or his designee), is hereby authorized, on behalf of the City, to take all actions necessary and convenient to carry out and implement the Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the said Agreement, including but not limited to, approval and execution on behalf of the City of grant deeds, acceptances, escrow instructions, certificates, estoppel letters, and other similar agreements and documents as contemplated by, or described in, the Agreement, or as necessary and convenient to implement the Agreement. The City Manager and City Attorney are directed and authorized to monitor the Trustee's process of obtaining approval of the Agreement as they deem necessary and to report back to the City Council on an as-needed basis prior to the closing of escrow. The City Manager is authorized to cause to be deposited in escrow the amounts specified in the agreement as a deposit and the full purchase price in compliance with the time schedule specified in the Agreement.

4. **Environmental Review.** The City's acquisition of the Property is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the acquisition of a graded, improved property for uses consistent with the General Plan and applicable Specific Plans, where there is no physical change in the environment proposed, has no potential for causing a significant effect on the environment.

5. **Certification.** The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Agoura Hills this 10th day of November, 2010, by the following vote to wit:

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

William D. Koehler, Mayor

ATTEST:

Kimberly Rodrigues, MMC, City Clerk

**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(29900 LADYFACE COURT)**

This Purchase and Sale Agreement and Joint Escrow Instructions (“Agreement”) is dated and entered into as of _____, 2010 (“Effective Date”) by and between RELIANCE TRUST, AS TRUSTEE FOR TEMPLE BETH HAVERIM, Agoura Hills, California, First Mortgage Bonds, 2004 Series, dated February 1, 2004 (“Seller”) and the CITY OF AGOURA HILLS, a municipal corporation (“Buyer” or “City”) (Buyer and Seller are referred to collectively herein as the “Parties”), and constitutes an agreement to purchase and sell real property between the Parties and the Parties’ joint escrow instructions directed to Chicago Title Company (“Escrow Holder”).

RECITALS

A. Seller is the record fee owner of certain real property, which is commonly known as 29900 Ladyface Court, Agoura Hills, County of Los Angeles, California, and identified as Assessor’s Parcel Number 2061-005-031 and being more particularly described on Exhibit “A” and depicted on Exhibit “B” to this Agreement. Exhibits “A” and “B” are incorporated herein by this reference (the “Property”).

B. Buyer has presented to Seller a written offer to purchase the Property, together with all fixtures and improvements located thereon.

C. Buyer seeks to acquire the Property for future uses to be determined in the discretion of the City Council.

D. Seller desires to sell, and Buyer desires to buy, the Property on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, and for other valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree to the following:

1. **Purchase and Sale.** On the Close of Escrow (as defined in Section 7), Seller agrees to sell the Property to Buyer, and Buyer agrees to buy the Property in fee simple absolute from Seller, on the terms and conditions set forth in this Agreement.

2. **Purchase Price.** The total purchase price that Buyer will pay to Seller for the Property is the sum of Four Million, Four Hundred Thousand Dollars (\$4,400,000.00), which is referred to herein as the “Purchase Price.” The Purchase Price represents a fair market value for the Property, and has been determined by Buyer based on an MAI appraisal that was considered by Buyers’ City Council in approving the offer to purchase the Property that has been accepted by Seller. No additional price is to be charged or paid for any fixture or improvement on the Property, or for any lesser interests in the Property. Thus, the Purchase Price is the total price for the Property without distinction or separation for various interests that may be held in the Property. Seller will be responsible for any apportionment or allocation of the Purchase Price if required for

any separately held interests that may exist, and for delivering title clear of any such encumbrances and/or interests.

3. **Title and Title Insurance.** Upon the Opening of Escrow, Escrow Holder will obtain and issue a title commitment for the Property. Escrow Holder will also request two copies each of all instruments identified as exceptions on said title commitment. Upon receipt of the foregoing, Escrow Holder will deliver these instruments and the title commitment to Buyer and Seller. Escrow Holder will insure Buyer's fee title to the Property, which is described above in Section A and in Exhibits "A" and "B" to this Agreement, at the Close of Escrow by a CLTA Owner's Standard Coverage Policy of Title Insurance in the amount of the Purchase Price (the "Policy"). The Policy of title insurance provided for pursuant to this Section will insure Buyer's interest in the Property free and clear of all liens, encumbrances, restrictions, and rights-of-way of record, subject only to the following permitted conditions of title ("Permitted Title Exceptions"):

a. The applicable zoning, building and development regulations of any municipality, county, state or federal jurisdiction affecting the Property; and

b. Those non-monetary exceptions approved by Buyer within fourteen (14) calendar days after the date Buyer receives the title commitment and legible copies of all instruments noted as exceptions therein. If Buyer unconditionally disapproves any such exceptions, Escrow will thereupon terminate, all funds deposited therein will be refunded to Buyer (less Buyer's share of escrow cancellation charges), and this Agreement will be of no further force or effect. If Buyer conditionally disapproves any such exceptions, then Seller may attempt to cause such exceptions to be removed by the Close of Escrow, but shall not be obligated to do so. If such conditionally disapproved non-monetary exceptions are not removed by the Close of Escrow, Buyer may, at Buyer's option, either accept the Property subject to such encumbrances, or terminate the Escrow and receive a refund of all funds deposited into Escrow (less Buyer's share of escrow cancellation charges), if any, and this Agreement will thereupon be of no further force or effect. At the Close of Escrow, Buyer's fee interest in the Property will be free and clear of all monetary encumbrances.

4. **Deposit.** Buyer covenants and agrees to deposit the sum of One Hundred Thirty Two Thousand Dollars (\$132,000.00) as an earnest money deposit with Escrow Holder within fifteen (15) business days after the date this Agreement is approved by Buyer's City Council.

5. **Grant Deed.** Seller covenants and agrees to deposit with Escrow Holder within fifteen (15) business days after the date this Agreement is fully executed by the parties, the Grant Deed ("Grant Deed") duly executed and acknowledged by Seller, granting and conveying to Buyer the Property in fee simple absolute. The form of the Grant Deed is attached as Exhibit "C" to this Agreement and is incorporated in this Agreement by this reference. Buyer will accept in writing said executed Grant Deed prior to recording. The conveyance of the Property as well as the personal property

located thereon is made [**AS IS WITHOUT WARRANTY AS TO CONDITION OR FITNESS FOR ANY PURPOSE**].

6. **Authorization to Record Documents and Disburse Funds.** Escrow Holder is hereby authorized to record the documents and disburse the funds and documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

a. Escrow Holder has obtained in favor of Buyer the Policy, showing the Property vested in Buyer subject only to the Permitted Title Exceptions. With the prior written consent of Seller, Escrow Holder may use the proceeds of the Purchase Price to obtain partial reconveyance, if necessary, of any monetary liens encumbering the Property, so that the Property will be free and clear of monetary liens and encumbrances at the Close of Escrow. Seller agrees to contact any beneficiary of a monetary lien and to use its good faith efforts to negotiate a partial reconveyance for the Property.

b. Escrow Holder will have received Buyer's notice of approval or satisfaction or waiver of all of the contingencies to Buyer's obligations hereunder, as provided for in Section 12.

c. Seller will have deposited in Escrow the executed Grant Deed as required by Section 5.

d. Escrow Holder will have received Seller's notice of approval or satisfaction or waiver of all of the contingencies to Seller's obligations hereunder, as provided for in Section 12.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered through this Escrow if necessary or proper for issuance of the Policies, including the Grant Deed.

7. **Escrow.** The parties hereby establish an escrow account ("Escrow") to accommodate the transaction contemplated by this Agreement. For purposes of this Agreement, Opening of Escrow means the date on which Escrow Holder receives a fully executed original of this Agreement from Buyer and Seller. The parties shall open an escrow within five (5) business days following the Effective Date. Close of Escrow means the date on which the Grant Deed is delivered and recorded in the Official Records of the County of Los Angeles. The Close of Escrow will be on the first business day following **the earlier of** (i) the date that is one hundred and eighty (180) calendar days following the Effective Date, or (ii) (a) a date, mutually agreed upon between the Parties, that is within 10 calendar days following the date of entry of a final, non-appealable, order approving the sale of the Property pursuant to this Agreement by the Superior Court of Fulton County, Georgia ("Order"), which Seller shall use its reasonable best efforts to obtain as soon as practicable following the Effective Date, or (b) if Seller, in its sole discretion, waives the requirement of obtaining such an Order, such earlier date as may be mutually agreed upon by the Parties. Before the Close of Escrow, all risk of loss and

damage to the Property from any source whatsoever will be solely that of Seller. If the Close of Escrow does not occur through no fault of either party within one hundred and eighty (180) calendar days following the Effective Date, and is not extended in writing by the parties, this Agreement shall terminate and the deposit shall be refunded to the Buyer.

8. **Escrow Charges and Prorations.**

a. Buyer will pay for the cost of the CLTA Owner's Standard Coverage Policy of Title Insurance, Escrow Costs and Escrow Holder's customary out-of-pocket expenses for messenger services, long distance telephone, etc. Buyer will pay for recording the Grant Deed and any documentary or other local transfer taxes, and any other recording fees. If the Escrow fails to close through no fault of either party, Buyer will pay all Escrow cancellation charges.

b. Taxes and assessments will be apportioned and prorated with respect to the Property as of 12:01 a.m., on the day on which the Close of Escrow occurs, as if Buyer were vested with fee title to the Property during the entire day upon which Close of Escrow occurs. If taxes and assessments for the current year have not been paid before the Close of Escrow, Seller will be charged at the Close of Escrow an amount equal to that portion of such taxes and assessments that relates to the period before the Close of Escrow and Buyer will pay the taxes and assessments prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed will be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at the Close of Escrow, the parties will make all necessary adjustments by appropriate payments between themselves following the Close of Escrow. Seller will pay all delinquent taxes and assessments (and any penalties therein) for periods prior to the Close of Escrow, if any, affecting the Property.

c. All prorations will be determined on the basis of a 365-day year.

9. **License to Enter.** Seller hereby grants to Buyer and Buyer's authorized agents, contractors, consultants, assigns, attorneys, accountants and other representatives a license to enter upon the Property for the purpose of making inspections and other examinations of the Property, including, but not limited to, the right to perform measurements, planning, soil and geological tests of the Property and an environmental site assessment thereof. Buyer will give Seller, through Seller's broker, reasonable notice before going on the Property. Buyer does hereby indemnify and forever save Seller, Seller's heirs, successors and assigns, and the Property, free and harmless from and against any and all liability, loss, damages and costs and expenses, demands, causes of action, claims or judgments, whether or not arising from or occurring out of any damage to the Property as a result of any accident or other occurrence at the Property that is in any way connected with Buyer's inspections or non-permanent improvements involving entrance onto the Property pursuant to this Section. If Buyer fails to acquire the Property due to Buyer's default, this license will terminate upon the termination of Buyer's right to purchase the Property. In such event, Buyer will remove or cause to be removed all

Buyer's personal property, facilities, tools and equipment from the Property.

10. **Warranties and Representations of Seller.** To the best of its knowledge, Seller hereby represents and warrants to Buyer the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow for a period of six (6) months:

a. That Seller has no notice of any pending or threatened action or proceeding arising out of the condition of the Property or alleged violation of environmental, health or safety statutes, ordinance or regulations.

b. That Seller is the sole owner of the Property free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Property onto adjacent property, or rights of way of any nature, other than those that may appear on the title commitment or would be revealed by visual inspection of the Property or by a current ALTA survey prepared by a licensed surveyor. Seller will not further encumber the Property or allow the Property or to be further encumbered prior to the Close of Escrow.

c. That neither this Agreement nor anything provided to be done hereunder, including the transfer of the Property to Buyer, violates or will violate any contract, agreement or instrument to which Seller is a party, or which affects the Property, and the sale of the Property herein contemplated does not require the consent of any party not a signatory hereto other than the Superior Court of Fulton County, Georgia.

d. That there are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Property for work performed or commenced prior to the date of this Agreement.

e. That there are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights or interest of any nature in and to the Property or any part thereof, and no persons have any right of possession to the Property or any part thereof.

f. That other than the proceedings to be filed in the Superior Court of Fulton County, Georgia to obtain the Order, Seller has no knowledge of any pending, threatened or potential litigation, action or proceeding against Seller or any other Party before any court or administrative tribunal that is in any way related to the Property.

g. That Seller shall not remove any personal property including pews, chairs, tables, furnishings, window dressings, kitchen equipment, electronic equipment, wiring or other personal properties from the Property.

11. **Buyer's Full Payment of All Obligations.**

a. It is understood and agreed between Seller and Buyer that the payment consisting of the Purchase Price made to Seller as set forth in this Agreement represents an all-inclusive price and is full and complete payment of compensation for the acquisition of all real and personal property interests pertaining to the Property. The parties acknowledge that although the Property is partially improved, Buyer's acquisition and future use of the Property will not result in the displacement of any person. Accordingly, it is further understood and agreed by Seller that Buyer will have no further obligation to Seller under any federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations).

b. This Agreement is a voluntary agreement and Seller, on behalf of Seller, the bondholders for whom Seller serves as Trustee, Seller's successors and assigns, hereby fully releases Buyer, its officials, counsel, employees, and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of Buyer's acts or omission prior to the Effective Date in connection with Buyer's efforts to acquire the Property or any preliminary steps thereto.

c. This Section will survive the Close of Escrow.

12. **Contingencies.** For the benefit of Buyer, the Closing of Escrow and the Buyer's obligation to consummate the purchase of the Property will be contingent upon and subject to the occurrence of all of the following (or Buyer's written waiver thereof, it being agreed that Buyer can waive any or all such contingencies) on or before the Close of Escrow:

a. As of the Close of Escrow the representations and warranties of Seller contained in this Agreement are all true and correct.

b. The delivery by Seller, and Buyer's approval (which shall not be unreasonably withheld) of all documents pursuant to Section 5 hereof.

c. Buyer's approval or conditional approval of the Preliminary Title Report provided by Seller within fourteen (14) calendar days of Buyer's receipt of such report.

d. Title Company's commitment to issue in favor of Buyer CLTA Standard Coverage Owner's Policy of Title Insurance with liability equal to the Purchase Price showing Buyer's fee interest in the Property subject only to the Permitted Title Exceptions.

e. Buyer's approval prior to the Close of Escrow of any environmental site assessment, building inspections, soils or geological reports, or other physical inspections of the Property that Buyer might perform prior to the Close of Escrow.

f. Seller's delivery to Buyer and Escrow Agent a conformed copy of the Order or Seller's written waiver of the requirement to obtain an Order.

g. For the benefit of Seller, the Closing of Escrow and Seller's obligation to consummate the sale of the Property will be contingent upon and subject to Seller's delivery to Buyer and Escrow Agent a conformed copy of the Order or Seller's written waiver of the requirement to obtain the Order.

13. **Certification of Non-Foreign Status.** Seller agrees to deliver to Escrow a certification of Non-Foreign Status in accordance with I.R.C. Section 1445, and a similar notice pursuant to California Revenue and Taxation Code Sections 18805 and 26131, prior to the Close of Escrow.

14. **Certification of Trust.** Seller covenants to deliver to Escrow the following items:

a. Any certification of trustee's authority required by applicable California law.

b. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in this transaction.

c. A conformed copy of the Order, if one is obtained.

15. **Default.** In the event of a breach or default under this Agreement by either Buyer or Seller, the non-defaulting party will have, in addition to all rights available at law or equity, the right to terminate this Agreement and the Escrow for the purchase and sale of the Property, by delivering written notice thereof to the defaulting party and to Escrow Holder; and, if Buyer is the non-defaulting party, Buyer will thereupon promptly receive a refund of all prior deposits into Escrow; and, if Seller is the non-defaulting party, Seller will thereupon promptly receive as liquidated damages and not as a penalty and as its sole and exclusive remedy, all deposits held in Escrow, the parties agreeing that if such circumstance occurs, Seller's damages would be difficult, if not impossible, to ascertain and that the deposit is a reasonable estimate of such damages. Such termination of the Escrow by a non-defaulting party will be without prejudice to the non-defaulting party's rights and remedies at law or equity relative to the default; however, notwithstanding anything to the contrary contained herein, Buyer's available remedies shall be solely limited to termination of this Agreement or to specific performance.

16. **Notices.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices will

be considered given upon the earlier of (a) personal delivery, (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day following deposit with an overnight carrier service. A copy of all notices will be sent to Escrow Holder. The parties will address such notices as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party will thereafter be given as demanded in that notice:

BUYER: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attn: Greg Ramirez, City Manager

COPY TO: Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Attn: Craig A. Steele

SELLER: Reliance Trust Company, as Trustee
1100 Abernathy Road
500 Northpark Building, Suite 400
Atlanta, Georgia 30328
Attn: Kerrie K. Bernardo, Senior Vice President

ESCROW HOLDER: Chicago Title Company
Escrow Division
2801 Townsgate Road, Suite 120
Westlake Village, California 91361
Attn: Kim Keith

17. **Further Instructions.** Each party agrees to execute such other and further escrow instructions as may be necessary or proper in order to consummate the transaction contemplated by this Agreement.

18. **Amendments.** Any amendments to this Agreement will be effective only when duly executed by both Buyer and Seller and deposited with Escrow Holder.

19. **Miscellaneous.**

a. **Applicable Law.** This Agreement will be construed and interpreted under, and governed and enforced according to the laws of the State of California. Venue for the resolution of any disputes arising under this Agreement shall be in the Superior Court of Los Angeles County, California.

b. **Entire Agreement.** This Agreement supersedes any prior agreement, oral or written, and together with the Exhibits hereto and any agreements delivered

pursuant hereto, contains the entire agreement between Buyer and Seller on the subject matter of this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to any employee, officer, agent or representative of either party, will be of any effect unless it is in writing and executed by the party to be bound thereby. No person is authorized to make, and by execution hereof Seller and Buyer acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no agreement, statement, representation or promise made by any such person which is not contained herein will be valid or binding on Seller or Buyer.

c. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

d. **Time of Essence.** The parties acknowledge that time is of the essence in this Agreement, notwithstanding anything to the contrary in the Escrow company's general Escrow instructions.

e. **Remedies Not Exclusive and Waivers.** No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

f. **Interpretation and Construction.** The parties agree that each party has reviewed this Agreement and that each have had the opportunity to have their counsel and real estate advisors review and revise this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association wherever the context so requires. The parties agree that any terms defined in the recitals are incorporated herein by this reference. The captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

20. **Attorneys' Fees.** If either party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this Agreement or because of a breach of this Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement will be entitled to recover reasonable attorneys' fees from the other party.

21. **Brokerage Commissions.** Buyer is not represented by a broker. Notwithstanding anything in this Agreement to the contrary, Seller shall have no

obligation to pay any brokerage commission unless and until the sale contemplated hereby closes.

22. **Severability.** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

23. **Assignment.** Buyer may assign its rights under this Agreement or may designate a nominee to acquire title to the Property, provided, however, that any such assignment or designation will not relieve Buyer of any of its obligations under this Agreement.

24. **Escrow Holder Need Not Be Concerned.** Escrow Holder is not to be concerned with Section 9 above, and Buyer and Seller release Escrow Holder from liability or obligation as to Section 9 above.

25. **Seller's Capacity.** Buyer acknowledges and agrees that Reliance Trust Company is not a party to this Agreement in its corporate capacity. Reliance Trust Company is a party to this Agreement solely in its capacity as Trustee for the Benefit of Temple Beth Haverim, Agoura Hills, California, First Mortgage Bonds, 2004 Series dated February 1, 2004 and Reliance Trust Company's liability is limited solely to the assets of said trust.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Dated: _____

SELLER

RELIANCE TRUST COMPANY, as
Trustee for the Temple Beth Haverim

By: _____
Name: _____
Title: _____

Dated: _____

BUYER

CITY OF AGOURA HILLS,
a Municipal Corporation

By: _____
William D. Koehler, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

Approved as to form:
RICHARDS, WATSON & GERSHON

Craig Steele, City Attorney

EXHIBIT A

ASSESSORS PARCEL NUMBER 2061-005-031

LEGAL DESCRIPTION OF PROPERTY

LOT 3 OF TRACT 40477, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1062 PAGES 91 THROUGH 95 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREFORE AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HERINABOVE DESCRIBED, OIL OR GAS WELLS TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES WTIHOUT, HOWEVER, THE RIGHT TO DRILL, MAIN, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE RIGHT TO GRANT AND TRANSFER ALL OR A PORTION OF SAME, AS PROVIDED IN DEED RECORDED JUNE 12, 1979 AS INSTRUMENT NO. 79-629585.

TOGETHER WITH THAT PORTION OF LADYFACE CIRCLE ADJOINING SAID LAND, AS VACATED BY RESOLUTION NO. 98-1076 OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, A CERTIFIED COPY OF WHICH WAS RECORDED OCTOBER 23, 1998 AS INSTRUMENT NO. 98-1950127, WHICH WOULD PASS BY OPERATION OF LAW.

EXHIBIT B

ASSESSORS PARCEL NUMBER 2061-005-031

SURVEY/PLAT OF PROPERTY

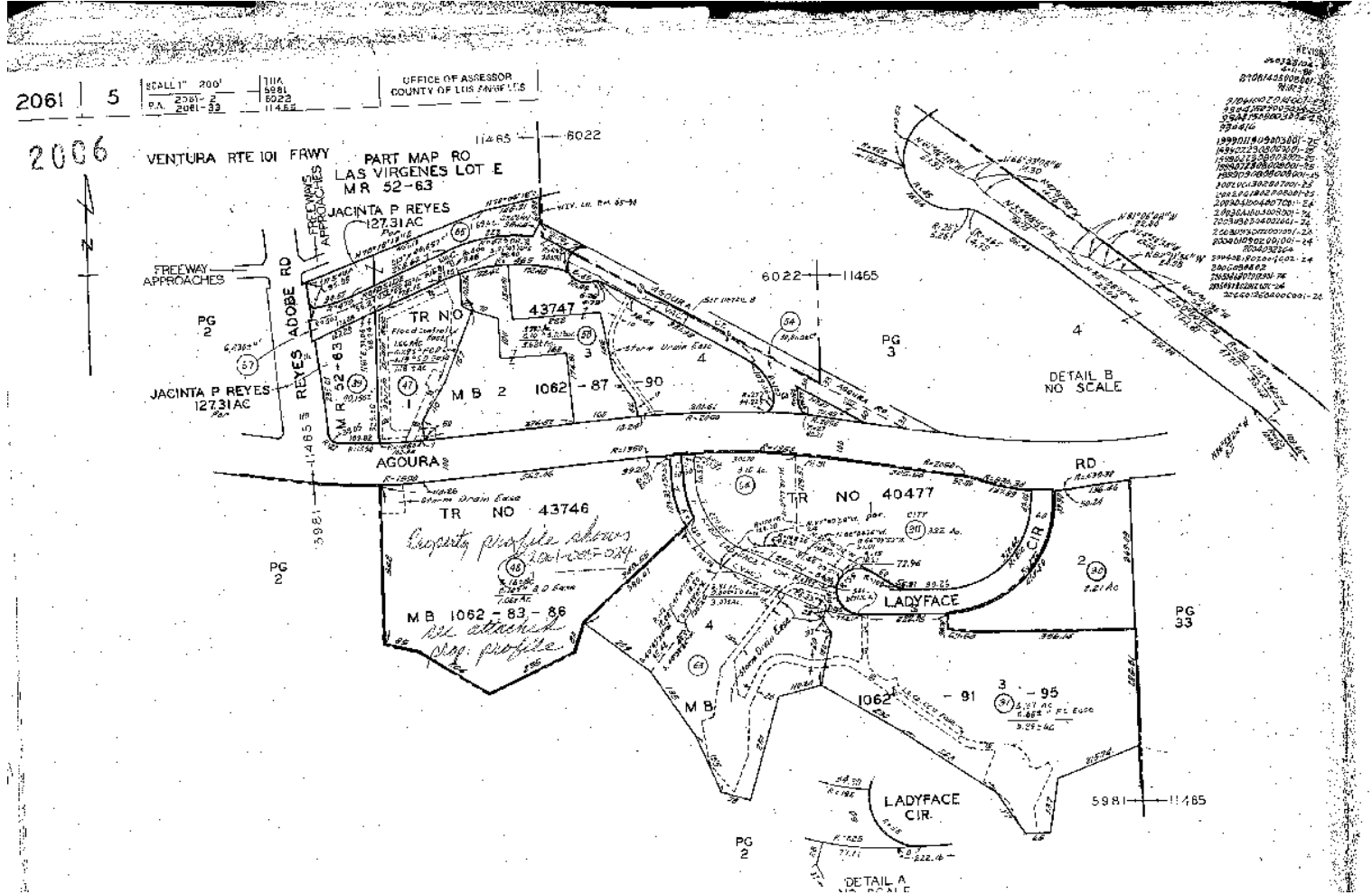




EXHIBIT C
FORM OF GRANT DEED

(Document to be provided)