

Project: Euclid Street and Westminster Avenue Intersection Improvement Project
Project No.: 7287-2017
APN: 099-181-01, 59 & 60

**RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY
INTEREST AND ESCROW INSTRUCTIONS**

THIS RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY INTEREST AND ESCROW INSTRUCTIONS ("**Agreement**"), dated and entered into for solely for reference purposes as of _____, 2018, by and between the CITY OF GARDEN GROVE, a California municipal corporation ("**Buyer**") and **HMZ Retail, L.P.** ("**Seller**"), with reference to the following facts:

RECITALS

- A. Seller is the owner of certain real property known as Assessor's Parcel No. 099-181-01, 59 & 60 (the "**Parcel**") and Buyer wishes to purchase a portion of such Parcel comprised of approximately (3,190) square feet, located in the City of Garden Grove (the "**City**"), the County of Orange (the "**County**"), State of California (the "**State**"), which portion is more particularly described on Exhibit A and shown on Exhibit B attached hereto (the "**Fee Area**").
- B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller Fee interest to the Fee Area, in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by Seller, Buyer and Seller (hereinafter collectively referred to as the "**parties**", or individually as a "**party**") hereby agree as follows:

1. PURCHASE AND SALE.

1.1. Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, a fee interest and right-of-way for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, over, under, along and across all that real property in the Fee Area as such area, scope and use is more particularly described in the Grant Deed attached hereto as Exhibit C(the "**Fee Interest**"), which Exhibits A and B attached hereto that define the Fee Area shall be made a part of.

1.2 Excluded Property. Seller shall have the right and option to remove any and all personal property and fixtures attached to the Fee Area, including but not limited to the

sign, irrigation and utilities lines.

1.3. Purchase Price. The purchase price ("**Purchase Price**") for the Fee Interest shall be **Three Hundred Seventy-Two Thousand Dollars and No Cents (\$372,000.00)** payable in cash at the Close of Escrow as defined and provided for herein.

1.4. Construction Contract Work. As part of the construction of the Euclid Street and Westminster Avenue Intersection Improvement Project, Project No. 7287-2017, (the "Project"), the City will remove, or caused to be removed the improvements within the Fee Area, including landscaping, irrigation, asphalt and parking spaces.

1.4.1. _The City will provide Seller with an offsite improvement plan starting from the back of the existing sidewalk to the new right of way line within 60 day from offer acceptance.

1.5. Certificate of Compliance. Seller's obligation to sell the Fee Area shall also be contingent on Buyer, at Buyer's sole cost, to prepare a legal description and plat map for the purposes of recording a Certificate of Compliance for the Remainder Parcel(s). As such, Escrow Holder is, and shall be, instructed that Escrow shall not close unless and until the certificate of compliance process has been completed. Buyer, at its sole cost, agrees to prepare the survey and legal description for both the Fee Area and the Remainder Parcel and record the Certificate of Compliance concurrently with the Grant Deed through Escrow.

2. ESCROW AND CLOSING.

2.1. Opening of Escrow. Within fourteen (14) business days after execution of this Agreement by the last of Seller or Buyer, Buyer shall open an escrow (the "**Escrow**") with First American Title Company at the address set forth in Section 7.12 ("**Escrow Holder**"), by depositing with Escrow Holder this Agreement fully executed, or executed counterparts hereof. The date this fully executed Agreement is signed and accepted by Escrow Holder on the last page hereof shall be deemed the "**Opening of Escrow**" and Escrow Holder shall advise Buyer and Seller of such date in writing. The escrow instructions shall incorporate this Agreement as part thereof and shall contain such other standard and usual provisions as may be required by Escrow Holder, provided, however, that no escrow instructions shall modify or amend any provision of this Agreement, unless such escrow instruction is expressly identified and set forth in writing by mutual consent of Buyer and Seller. In the event there is an inconsistency or conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

2.2. Escrow Fees and Other Charges. At the Close of Escrow, Buyer agrees to pay all of Seller's and Buyer's usual fees, charges and costs in connection with and incidental to the conveyance of the Fee Area and Close of Escrow that may arise in this Escrow, including, but not limited to, any costs for the Standard Coverage Policy (defined below) or if elected, an ALTA Extended Coverage Owner's Policy and \$3,000 of Seller's

attorney's fees in connection with revising this Agreement.

2.3. Closing Date; Conditions Precedent to Close of Escrow. Provided all of the conditions set forth in this Section 2.3 have been satisfied (or are in a position to be satisfied concurrently with the Close of Escrow), the Close of Escrow shall occur on or before October 31, 2018 (the "**Closing Date**"). As used in this Agreement, the "**Close of Escrow**" shall mean the date the Grant Deed, as provided in Section 2.4.2(a) hereof ("**Grant Deed**"), is recorded in the Official Records of the County.

2.3.1 Conditions of Buyer for Close of Escrow. The Close of Escrow and Buyer's obligation to purchase the Fee Interest are subject to the satisfaction of the following conditions or Buyer's written waiver of such conditions, on or before the Closing Date. Buyer may waive in writing any or all of such conditions in its sole and absolute discretion.

- (a) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Seller setting forth the Purchase Price and any adjustments thereto;
- (b) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement;
- (c) No event or circumstance shall have occurred, which, in the sole opinion of Buyer, would make any of Seller's representations, warranties and covenants set forth herein untrue as of the Close of Escrow, including, but not limited to, those warranties and representations of Seller set forth in Sections 3.4 and 4.1 of this Agreement;
- (d) There shall have occurred no material adverse change in the physical condition of the Fee Area (such as those caused by natural disasters), which, in the sole opinion of Buyer, would render the Fee Area unsuitable for Buyer's intended use, materially increase the cost, or cause a material delay in the schedule for the development of the Fee Area;
- (e) The Title Company shall be committed to issue to Buyer, as of the Closing Date, the Title Policy (defined below) covering the Fee Area, subject only to the Permitted Exceptions as set forth and determined in Section 3.1.
- (f) Seller shall have executed and submitted to Escrow Holder the Affidavit of Non-Foreign Status by Transferor (Exhibit E)
- (g) Seller shall have caused any lien or charge of any deed of trust that encumbers the Fee Area to be subordinated to the rights of Buyer under the terms of the Fee Interest.

2.3.2 Conditions of Seller for Close of Escrow. The Close of Escrow and Seller's obligation to sell and convey the Fee Interest are subject to the satisfaction of the following conditions or Seller's written waiver of such conditions on or before the

Closing Date. Seller may waive in writing any or all of such conditions as a condition to the Close of Escrow in its sole and absolute discretion.

- (a) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Buyer setting forth the Purchase Price and any adjustments thereto;
- (b) Buyer shall have performed all obligations to be performed by Buyer pursuant to this Agreement;
- (c) No event or circumstance shall have occurred which would make any of Buyer's representations, warranties, and covenants set forth herein untrue as of the Close of Escrow including, but not limited to, those warranties and representations of Buyer set forth in Section 4.2 of this Agreement.

2.3.3 Waiver of a Condition Excuses Performance. If any condition precedent to the Close of Escrow is expressly waived, in writing, as a condition to the Close of Escrow by the party for whose benefit such condition exists, such waiver shall excuse performance by the party whose performance is required to satisfy such condition.

2.4. Closing Documents. The respective parties shall deposit the following with Escrow Holder prior to the Close of Escrow:

2.4.1 Buyer's Deposits. Buyer shall deposit:

- (a) The Purchase Price together with Buyer's escrow and other cash charges; and
- (b) A Certificate of Acceptance for the Grant Deed executed by the City Manager of the City of Garden Grove (See, Exhibit C).

2.4.2 Seller's Deposits. Seller shall deposit:

- (a) The Grant Deed in the form of Exhibit C attached hereto, appropriately executed to convey the Fee Interest subject only to the Permitted Exceptions (defined below);
- (b) Subject to Section 2.5.1 below, an executed Affidavit of Non-foreign Status in the form of Exhibit D attached hereto and such other documentation necessary to exempt Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and
- (c) Subject to Section 2.5.1 below, a Withholding Exemption Certificate Form 593 as contemplated by California Revenue and Taxation Code §18662 (the "Withholding Affidavit") duly executed by Seller.

2.4.3 Deposits of Additional Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to

proceed to the Close of Escrow and consummate the grant of the Fee Interest in accordance with the terms of this Agreement.

2.5. Closing.

2.5.1 Withholding. In the event that, pursuant to Section 2.4.2(b) above, Seller fails to deposit with Escrow Holder the executed Affidavit of Non-foreign Taxpayer Status which exempts Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, Seller hereby authorizes Escrow Holder to withhold ten percent (10%) of the Purchase Price less any applicable closing costs and to report and transmit the withheld amount to the Internal Revenue Service. Additionally, in the event that, pursuant to Section 2.4.2(c) above, Seller fails to deposit with Escrow Holder any applicable tax document which exempts Buyer from California withholding requirements, if any, Seller hereby authorizes Escrow Holder to withhold such additional percentage of the Purchase Price of the Fee Interest as is required by California law, and Escrow Holder shall report and transmit the withheld amount in the manner required by California law. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and under any similar provisions of California law, and shall defend, indemnify and hold Buyer harmless in connection with such obligations.

2.5.2 Necessary Actions of Escrow Holder. On the Close of Escrow, Escrow Holder shall in the following order: (i) record the Grant Deed and Certificate of Acceptance in the Office of the County Recorder of the County; (ii) pay any transfer taxes; (iii) instruct the County Recorder to return the Grant Deed to Buyer; (iv) distribute to Seller the Purchase Price; and (v) deliver to Buyer the Title Policy covering the Fee Area subject only to the Permitted Exceptions, the Affidavit of Non-foreign Status, and the applicable California withholding exemption form, if any.

2.5.3 Real Estate Taxes. The parties acknowledge that Buyer is a public entity and exempt from payment of any real property taxes and assessments and thus, there will be no proration of such taxes or assessments. If required by Buyer, Seller will be responsible for payment of any real property taxes and assessments due and unpaid prior to Close of Escrow and recording of the Grant Deed. Seller may seek a reduction or reimbursement from the Orange County Tax Assessor's office for any property taxes that have been or will be assessed for a period after the Close of Escrow as Buyer is a public agency exempt from payment of such taxes. Buyer further agrees to cooperate with Seller to provide any necessary information to the Assessor's office in connection with such request for refund.

2.6. Failure to Close; Termination.

2.6.1 Neither Party in Default. In the event that any condition set forth in Section 2.3 (and its subdivisions) is not satisfied or waived, in writing, and the Close of

Escrow does not occur within the time required herein due to the failure of such condition or the Close of Escrow does not occur within the time frame required herein for any reason other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then Escrow Holder, with no further instructions from the parties hereto, shall return to the depositor thereof any funds, or other materials previously delivered to Escrow Holder, the Escrow shall be automatically terminated and of no force and effect, Buyer shall pay any Escrow termination fees, and except as otherwise provided herein, the parties will have no further obligation to one another.

3. ACTIONS PENDING CLOSING.

3.1. Title Review.

3.1.1 Title Report. Within three (3) business days after the Opening of Escrow, First American Title Company (the "**Title Company**") will furnish Buyer and Seller with an updated Title Commitment on the Fee Area together with legible copies of all underlying documents referenced therein and a plot plan for the Fee Area showing all the locations of all easements referenced therein (collectively, the "**Title Commitment**").

3.1.2 Title Notices. Buyer shall have ten (10) business days after its actual receipt of the Title Commitment to deliver to Escrow Holder written notice (the "**Preliminary Title Notice**") of Buyer's approval, conditional approval, or disapproval of the title exceptions and other matters disclosed in the Title Commitment. All title exceptions not timely approved by Buyer will be deemed disapproved. All such exceptions and other matters disapproved by Buyer are referred to herein as "**Disapproved Exceptions**". It shall be the sole responsibility of Buyer to work with the Title Company to remove any Disapproved Exceptions, and if unsuccessful shall either purchase the Fee Interest subject to the Disapproved Exceptions or terminate the Agreement.

3.1.3 Permitted Exceptions. "**Permitted Exceptions**" shall mean all exceptions appearing on the Title Commitment which are: (i) standard printed exceptions in the Title Policy issued by Title Company; (ii) general and special real property taxes and assessments, a lien not yet due and payable; and (iii) any other liens, easements, encumbrances, covenants, conditions and restrictions of record approved, or expressly waived by Buyer pursuant to this Section 3.1.

3.2. Title Policy. Buyer's obligation to proceed to the Close of Escrow shall be conditioned upon the commitment by Title Company to issue an ALTA Standard Coverage Owner's Policy of Title Insurance (the "**Standard Coverage Policy**"), showing title to the Fee Area vested in Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At Buyer's option, Buyer may require an ALTA Extended Coverage Owner's Policy instead of the Standard Coverage Policy provided that Buyer pays any additional premium on account thereof. The form of title policy selected by Buyer shall be referred to herein as the "**Title Policy**". City will assist Seller

with the cost to obtain an ALTA Survey on the remainder parcel up to a cost of \$5,000.

3.3. Possession and Use. It is mutually understood and agreed by and between the parties hereto that the right of possession and use of the Fee Area by the Buyer, subject to Seller's right to remove and dispose of improvements, shall commence upon the Close of Escrow. The Purchase Price includes, but is not limited to, full payment for any improvements located within the Fee Area not removed by Seller and possession and use of the Fee Area upon the Close of Escrow.

3.4. Seller's Covenant Not to Further Encumber the Fee Area. Seller shall not, directly or indirectly, alienate, encumber, transfer, option, lease, assign, sell, transfer or convey its interest or any portion of its interest in the Fee Area, or any portion thereof, or enter into any agreement to do so, so long as this Agreement is in force. Seller shall timely discharge, prior to the Closing, any and all obligations relating to work performed on or conducted at or materials delivered to or for the Fee Area from time to time by Seller, or at Seller's direction or on its behalf, in order to prevent the filing of any claim or mechanic's lien with respect to such work or materials.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

4.1. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties, and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer as follows, all of which shall survive the Close of Escrow:

4.1.1 Seller's Authority. Seller has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Seller, and upon delivery to and execution by Buyer, shall be a valid and binding agreement of Seller.

4.1.2 Leases. There are no leases, rental agreements, or other such contracts of any kind or nature affecting possession or occupancy of the Fee Area, and Seller shall not enter into any such contracts affecting possession or occupancy of the Fee Area during the terms of this Agreement without the prior consent of Buyer.

4.1.3 No Liens and Subordination. Seller warrants that at the time of the Close of Escrow, Seller shall have caused any mechanics', laborers', materialmen's or service liens and charge of any deed of trust that encumbers the Fee Area to be subordinated to the rights of Buyer under the terms of the Grant Deed.

4.1.4 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Seller in this Agreement, or in any exhibit, or on any document or instrument delivered pursuant hereto shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and

warranties, and the performance of all covenants of Seller contained in this Agreement, are conditions precedent to the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance which becomes known to Seller which would make any of the representations or warranties in this Agreement untrue.

4.2. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows, all of which shall survive the Close of Escrow:

4.2.1 Buyer's Authority. Buyer has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Buyer and, upon delivery to and execution by Seller, shall be a valid and binding Agreement of Buyer.

4.2.2 Buyer's Investigation; "As Is" Purchase. Except as otherwise expressly provided in this Agreement:

- (a) Except as set forth herein, there are no representations or warranties of any kind whatsoever, express or implied, made by the Seller in connection with this Agreement, the purchase of the Fee Area by the Buyer, or the physical condition of the Fee Area;
- (b) On or before the Closing Date, the Buyer will have (or will have chosen not to have) fully investigated the Fee Area and all matters pertaining thereto;
- (c) The Buyer is not relying on any statement or representation of the Seller, its agents or its representatives nor on any information supplied by the Seller, its agents or its representatives, except as expressly provided in this Agreement;
- (d) The Buyer, in entering into this Agreement and in completing its purchase of the Fee Area, is relying entirely on its own investigation of the Fee Area based on its extensive experience in and knowledge of real property in Southern California;
- (e) On or before the Closing Date, the Buyer will be aware (or will have chosen not to be aware) of all title matters; zoning regulations; other governmental requirements; site and physical conditions; structural, mechanical or other physical conditions of the Fee Area; Hazardous Materials (defined below) or environmental condition of the Fee Area; soils conditions for the Fee Area; other matters affecting the use and condition of the Fee Area; and any other contingency or other matter whatsoever; and
- (f) The Buyer shall purchase the Fee Area in its "as is" condition as of the date of Closing Date.

4.2.3 No Untrue Statements or Omissions of Fact. Each of the representations and

warranties made by Buyer in this Agreement, or in any exhibit or on any document or instrument delivered pursuant hereto, shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement, are conditions precedent to the Close of Escrow. Buyer shall notify Seller immediately of any facts or circumstances which are contrary to the representations and warranties contained in this Agreement.

4.3 Release and Waiver.

4.3.1 Release and Waiver. If this transaction closes and the Buyer acquires title to the Fee Area, the Buyer, on behalf of itself and its successors, assigns and successors in interest, hereby releases the Seller from, and waives any right to pursue the Seller for, any and all Claims (as defined below) (including, but not limited to, Claims arising under any Environmental Law as defined below), arising out of, related in any way to, or resulting from or in connection with, in whole or in part, the Fee Area or any other matters relating to the Fee Area, including, without limitation, the actual or suspected presence, use, generation, storage, disposal, release or transport of Hazardous Materials (defined below) in, on, under, above, about, to, through or from the Fee Area.

(a) Waiver of California Civil Code Section 1542. In that connection, and in connection with any other release in this Agreement, the Buyer, on behalf of itself, its successors, assigns and successors in interest, waives the benefit of California Civil Code Section 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."

(b) Definitions.

(i) "Claims" means any and all claims, losses, costs, damages, injuries, penalties, enforcement actions, fines, taxes, remedial actions, removal and disposal costs, investigation and remediation costs and expenses (including, without limit, reasonable attorneys' fees, litigation, arbitration and administrative proceeding costs, expert and consultant fees and laboratory costs), sums paid in settlement of claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance's, malfeasance, cause or causes of action, debts, sums of money, accounts, compensations, contracts, controversies, promises, losses and expenses, of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether now existing, existing prior to the date of this

Agreement or arising after the date of this Agreement, or which could, might, or may be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth at length in this Agreement.

(ii) "**Hazardous Material**" means (1) petroleum or any petroleum product or fraction thereof, (2) asbestos, (3) any substance, product, waste or other material of any nature whatsoever which is or becomes regulated or listed by any local, state or federal governmental authority, entity or agency or pursuant to any Environmental Law (as defined below), including, without limitation, any substance defined as "hazardous substances," "hazardous materials," or "toxic materials" by any Environmental Law, and (4) any substance, product, waste or other material otherwise defined in this paragraph as a Hazardous Material which may give rise to any liability under any Environmental Law or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court.

(iii) "**Environmental Law**" means any federal, state or local law, regulation, guideline, code, ordinance, rule, resolution, order or decree regulating the use, generation, handling, storage, treatment, transport, decontamination, clean-up, removal, encapsulation, enclosure, abatement or disposal of any Hazardous Material, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time, including, without limitation: (1) *the Comprehensive Environmental Response, Compensation and Liability Act* (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Sections 9601 et seq.); (2) *the Resource Conservation and Recovery Act* (42 U.S.C. Sections 6901 et seq.); (3) *the Toxic Substances Control Act* (15 U.S.C. Sections 2601 et seq.); (4) *the Clean Water Act* (33 U.S.C. Sections 1251 et seq.); (5) *the Clean Air Act* (42 U.S.C. Sections 7401 et seq.); (6) *the Safe Drinking Water Act* (21 U.S.C. Sections 349, 42 U.S.C. Sections 201 and Section 300f et seq.); (7) *the National Environmental Policy Act* (42 U.S.C. Sections 4321 et seq.); (8) *the Superfund Amendments and Reauthorization Act of 1986* (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (9) *Title III of the Superfund Amendment and Reauthorization Act* (40 U.S.C. Sections 1101 et seq.); (10) *the Uranium Mill Tailings Radiation Control Act* (42 U.S.C. Sections 7901 et seq.); (11) *the Occupational Safety & Health Act* (29 U.S.C. Sections 651 et seq.); (12) *the Federal Insecticide, Fungicide and Rodenticide Act* (7 U.S.C. Sections 136 et seq.); (13) *the Emergency Planning and Community Right to Know Act* (42 U.S.C. Sections 11001 et seq.); (14) *the Oil Pollution Act of 1990* (33 U.S.C. Sections 2701 et seq.); (15) *the Hazardous Materials Transportation Act*, 49 U.S.C. § 1801, (16) *the California Hazardous Waste Control Act* (Health and Safety Code Sections 25100 et seq.); (17) *the California Hazardous Waste Management Act* (Health and Safety Code Sections 25170.1 et seq.); (18) *the California Safe Drinking Water and Toxic Enforcement Act* (Health and Safety Code Sections 25249.5 et seq.); (19) *California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances)*; (20) *the California Hazardous Substance Account Act* (Health and

Safety Code Sections 25330 et seq.); (21) *California Health and Safety Code* Section 25316; (22) *California Health and Safety Code* Sections 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); (23) the *California Porter-Cologne Water Quality Control Act* (Water Code Sections 13000 et seq.); (24) and any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, as now or at any time hereafter in effect, all as amended or hereafter amended and (25) any analogous present or future state or local statutes or laws.

4.4. **Mutual Indemnity.** Seller and Buyer shall defend, indemnify, and hold free and harmless the other from and against any losses, damages, costs and expenses (including attorneys' fees) resulting from any inaccuracy in or breach of any representation or warranty of the indemnifying party or any breach or default by such indemnifying party under any of such indemnifying party's covenants or agreements contained in this Agreement and Buyer further agrees to indemnify and hold harmless Seller from any liability arising out of Buyer's operations under this Agreement, its ownership of the Fee Area and agrees to assume responsibility for any damages proximately caused by reason of Buyer's operations under this Agreement or its ownership of the Fee Area and Buyer will, at its option, either repair or pay for such damage.

5. **CONDEMNATION.** Seller and Buyer acknowledge that this transaction is a negotiated settlement *in lieu* of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the City of Garden Grove, wherein the herein described Fee Area or Grant Deed is included, in whole or in part, and also waives any and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Seller (or Seller's tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's tenant) is a named defendant, upon the Close of Escrow, Seller agrees and consents to Buyer taking a default in the action. Moreover, the total compensation to be paid by Buyer to Seller is for all of Seller's interest in the Fee Area or as described and set forth in the Grant Deed and any rights which exist or may arise out of the acquisition of the Grant Deed for public purposes, including without limitation, Seller's interest in the land and any improvements to the land, severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Fee Area or Grant Deed by the Buyer. The compensation paid under this Agreement does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which Seller may be entitled to receive, if any. Relocation assistance, if any, will be handled via separate Agreement.

6. **BROKERS.** Seller and Buyer each represents and warrants to the other that they have not dealt with or been represented by any brokers or finders in connection with the purchase and sale of the Grant Deed and that no commissions or finder's fees are payable in connection with this transaction. Buyer and Seller each agree to indemnify

and hold harmless the other against any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of breach of the foregoing representation by the indemnifying party. Notwithstanding anything to the contrary contained herein, the representations, warranties, indemnities and agreements contained in this Section 6 shall survive the Close of Escrow or earlier termination of this Agreement.

7. GENERAL PROVISIONS.

7.1. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by email, facsimile transmission with the same effect as if an originally executed counterpart had been delivered. Facsimile and electronic signatures shall be binding as originals.

7.2. Further Assurances. Each of the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be appropriate or necessary to effectuate the agreements of the parties, whether the same occurs before or after the Close of Escrow.

7.3. Entire Agreement. This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

7.4. Headings. Headings used in this Agreement are for convenience of reference only and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

7.5. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

7.6. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

7.7. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

7.8. Legal Advice and Construction. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. There shall be no presumption in the interpretation of this Agreement that any ambiguity is to be resolved against any party hereto. The parties waive expressly each and all provisions of California Civil Code Section 1654, which provides: "IN CASES OF UNCERTAINTY NOT REMOVED BY THE PRECEDING RULES, THE LANGUAGE OF A CONTRACT SHOULD BE INTERPRETED MOST STRONGLY AGAINST THE PARTY WHO CAUSED THE UNCERTAINTY TO EXIST."

7.9. Relationship of Parties. The parties agree that their relationship is that of Seller and Buyer, and that nothing contained herein shall constitute either party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

7.10. Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its reasonable attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

7.11. Assignment. Neither Seller nor Buyer shall assign its rights or delegate its obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

7.12. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to

the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), delivered by air courier next-day delivery (e.g. Federal Express), delivered by mail or sent by registered or certified mail, return receipt requested, or sent via facsimile, as follows:

If to Buyer, to: Scott C. Stiles, City Manager
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Telephone No.: (714) 741-5100
[sstiles@ci.garden-grove.ca.us](mailto:ssstiles@ci.garden-grove.ca.us)

With a copy to: Omar Sandoval, City Attorney
c/o Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626
Telephone No.: (714) 558-7000
osandoval@wss-law.com

If to Seller, to: HMZ Retail, L.P.
Attn: Joseph Bernhard
c/o 3p Professional
P.O. Box 584
Yorba Linda, CA 92885
Telephone No.: (844) 693-7776

With a copy to: Kevin J. Lamb, Esq.
Lamb & Kawakami, LLP
333 S. Grand Ave, Suite 4200
Los Angeles, CA 90071

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second business day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third business day following deposit in any such post office box other than in the state to which the notice is addressed, certified mail return receipt requested, postage prepaid, addressed as set forth above. Notices sent via electronic mail shall be deemed delivered the same business day transmitted if done so before 4:00 p.m., otherwise delivery shall be considered to be on the next business day; provided that confirmation of receipt is confirmed. The addresses, addressees, and facsimile numbers for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address, addressee, and telecopy number stated by written notice, or provided

herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

7.13. Survivability. All covenants of Buyer or Seller which are intended hereunder to be performed in whole or in part after Close of Escrow and all representations, warranties, and indemnities by either Party to the other, shall survive Close of Escrow and delivery of the Grant Deed, and be binding upon and inure to the benefit of the respective Parties.

7.14. Release. The total compensation to be paid by Buyer for the Grant Deed is the Purchase Price, which consideration covers any and all land and improvements, attached or detached furniture, fixtures and equipment, loss of business goodwill, and is the full and complete acquisition cost of the Grant Deed. Buyer shall have no obligation to Seller under the California Relocation Assistance and Real Property Acquisition statutes and guidelines. Except for any breach of terms or conditions contained in this Agreement, Seller waives and forever releases Buyer, including its successors, officers, employees, attorneys, agents, representatives and anyone else acting on Buyer's behalf, of and from any and all claims, demands, actions or causes of action, obligations, liabilities, or claims for further compensation, known or unknown, based upon or relating to the facts or allegations and circumstances arising from Buyer's acquisition of the Grant Deed. By such release, Seller expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"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 HIS SETTLEMENT WITH THE DEBTOR."

7.15 City Council Approval of Agreement. This Agreement is subject to the approval of the Buyer's City Council. If this Agreement remains unapproved by the Buyer's City Council thirty (30) days following the date first written above, then the parties will have no further obligation under this Agreement. If Buyer's City Council approves this Agreement within less than thirty (30) days of the Closing Date set forth herein, the parties agree to extend the Closing Date for an additional thirty (30) days.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall only become effective as of the day and year the last of the parties set forth below signs this Agreement.

[SIGNATURE PAGE FOLLOWS]

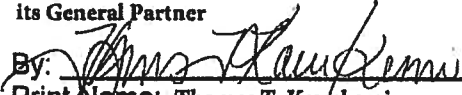
BUYER

SELLER

CITY OF GARDEN GROVE, a California municipal corporation

HMZ Retail, L.P. a California Limited Partnership
By: HMZ GPCO, LLC, a California limited liability company its General Partner

City Manager Dated:

By: 
Print Name: Thomas T. Kawakami

Attest:

Its: Manager
Dated: August 30, 2018

City Clerk Dated:

Approved as to form by:

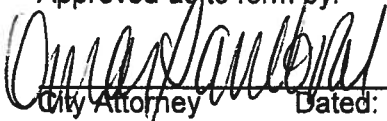
 9-5-18
City Attorney Dated:

Exhibit List

- Exhibit A -- Legal Description of the Fee Interest
- Exhibit B -- Depiction of the Fee Interest
- Exhibit C -- Grant Deed
- Exhibit D -- Affidavit of Non-Foreign Taxpayer Status

ACCEPTANCE BY ESCROW HOLDER:

_____ hereby acknowledges that it has received a fully executed counterpart of the foregoing Right-of-Way Agreement for Acquisition of Real Property and Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

Date: _____

By: _____
Name: _____
Its: _____

RIGHT OF WAY ACQUISITION
APN 099-181-01

EXHIBIT A

THAT PORTION OF PARCEL 2 OF PARCEL MAP NO. 88-190, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 258 PAGE(S) 5 TO 8 INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

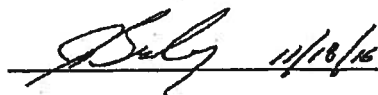
COMMENCING AT THE CENTERLINE INTERSECTION OF WESTMINSTER AVENUE AND EUCLID STREET AS SHOWN ON SAID PARCEL MAP; THENCE ALONG THE CENTERLINE OF SAID WESTMINSTER AVENUE SOUTH 89°29'54" WEST 187.00 FEET; THENCE SOUTH 00°38'06" EAST 50.00 FEET TO THE NORTHWEST CORNER OF PARCEL 2 OF SAID PARCEL MAP, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING:

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2, NORTH 89°29'54" EAST 117.00 FEET TO AN ANGLE POINT IN SAID PARCEL 2; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 2, SOUTH 45°34'06" EAST 28.32 FEET TO AN ANGLE POINT IN SAID PARCEL 2; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 2, SOUTH 00°38'06" EAST 18.94 FEET; THENCE DEPARTING SAID EASTERLY LINE, NORTH 45°34'06" WEST 38.14 FEET; THENCE SOUTH 89°29'54" WEST 110.06 FEET TO THE WESTERLY LINE OF SAID PARCEL 2; THENCE ALONG SAID WESTERLY LINE NORTH 00°38'06" WEST 12.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING: 1,807 SQUARE FEET (0.041 ACRES), MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHTS OF WAY AND EASEMENTS OF RECORD, IF ANY.

 11/18/16

J BRALEY, P.L.S. 8446



RIGHT OF WAY ACQUISITION
APN 099-181-59

EXHIBIT A

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 88-190, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 258 PAGE(S) 5 TO 8 INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF WESTMINSTER AVENUE AND EUCLID STREET AS SHOWN ON SAID PARCEL MAP; THENCE ALONG THE CENTERLINE OF SAID WESTMINSTER AVENUE SOUTH 89°29'54" WEST 187.00 FEET; THENCE SOUTH 00°38'06" EAST 50.00 FEET TO THE NORTHWEST CORNER OF PARCEL 2 OF SAID PARCEL MAP, SAID POINT BEING ALSO THE MOST NORTHERLY NORTHEAST CORNER OF SAID PARCEL 1, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING:

THENCE ALONG THAT PORTION OF EASTERLY LINE OF SAID PARCEL 1 COMMON TO THE WESTERLY LINE OF SAID PARCEL 2, SOUTH 00°38'06" EAST 12.00 FEET; THENCE DEPARTING SAID LINE SOUTH 89°29'54" WEST 69.11 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 183.00 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 48.06 FEET THROUGH A CENTRAL ANGLE OF 15°02'48" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 167.00 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 43.86 FEET THROUGH A CENTRAL ANGLE OF 15°02'48" TO THE NORTHERLY LINE OF SAID PARCEL 1, SAID LINE BEING ALSO THE SOUTHERLY LINE OF WESTMINSTER AVENUE AS SHOWN ON SAID PARCEL MAP; THENCE ALONG SAID LINE NORTH 89°29'54" EAST 159.94 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING: 1,383 SQUARE FEET (0.032 ACRES), MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHTS OF WAY AND EASEMENTS OF RECORD, IF ANY.

 11/18/16

J BRALEY, P.L.S. 8446

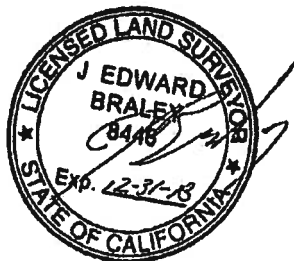
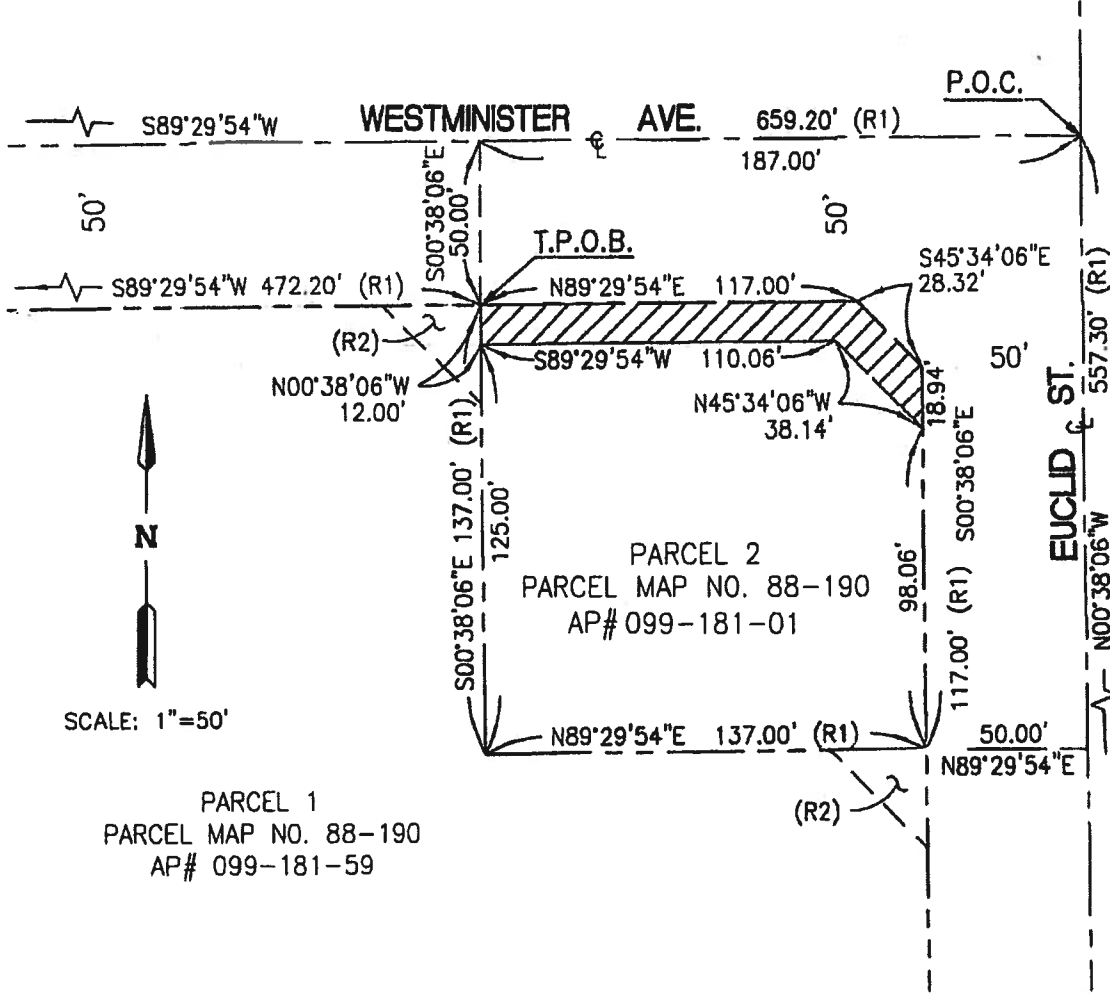


EXHIBIT 'B'

SHEET 1 OF 1



N
SCALE: 1"=50'

PARCEL 1
PARCEL MAP NO. 88-190
AP# 099-181-59

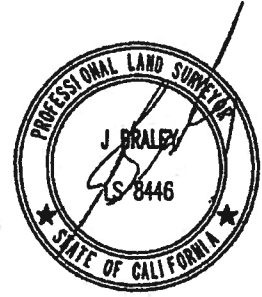
PARCEL 2
PARCEL MAP NO. 88-190
AP# 099-181-01

LEGEND

- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- (R1) PARCEL MAP NO. 88-190 BK. 258 PGS. 5-8 OF PARCEL MAPS
- (R2) EASEMENT FOR ACCESS & INCIDENTAL PURPOSES PER DOC. 10632/856 O.R. & 10835/325 O.R.

PROPOSED ACQUISITION
(1,807 SQ. FT. MORE OR LESS)

J. Braley 11/18/16
J. BRALEY DATE
P.L.S. NO. 8446



PENCO ENGINEERING, INC.
Civil Engineering 16842 Von Karman Ave.
Planning Suite 150
Surveying Irvine, California 92606
(949) 753-8111

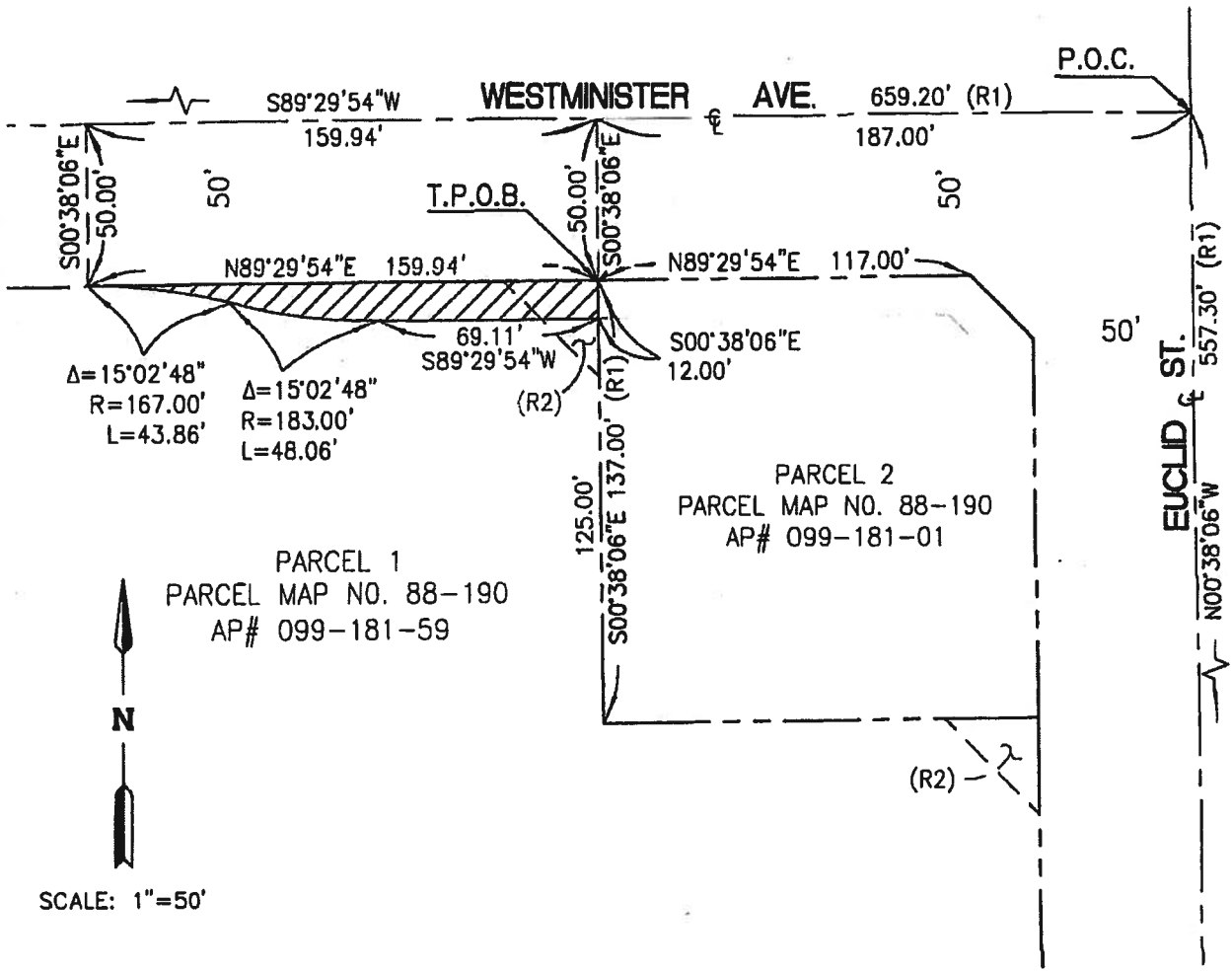
SKETCH TO ACCOMPANY
A LEGAL DESCRIPTION

APN# 099-181-01
WESTMINISTER AVENUE AND EUCLID STREET

SCALE: AS-SHOWN
DRAWN BY: JK
CHECKED BY: JB
DATE: 11-16-16
JOB No. 16044.02

EXHIBIT 'B'

SHEET 1 OF 1



$\Delta = 15^{\circ}02'48''$
 $R = 167.00'$
 $L = 43.86'$

$\Delta = 15^{\circ}02'48''$
 $R = 183.00'$
 $L = 48.06'$

PARCEL 1
 PARCEL MAP NO. 88-190
 AP# 099-181-59

PARCEL 2
 PARCEL MAP NO. 88-190
 AP# 099-181-01



SCALE: 1" = 50'

LEGEND

- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- (R1) PARCEL MAP NO. 88-190 BK. 258 PGS. 5-8 OF PARCEL MAPS
- (R2) EASEMENT FOR ACCESS & INCIDENTAL PURPOSES PER DOC. 10632/856 O.R. & 10835/325 O.R.

PROPOSED ACQUISITION
 (1,383 SQ. FT. MORE OR LESS)

11/18/16
 J BRALEY DATE
 P.L.S. NO. 8446



PENCO ENGINEERING, INC.
 Civil Engineering 16842 Van Korman Ave.
 Planning Suite 150
 Surveying Irvine, California 92606
 (949) 753-8111

SKETCH TO ACCOMPANY
 A LEGAL DESCRIPTION
CITY OF GARDEN GROVE
DEPT OF PUBLIC WORKS
 APN# 099-181-59
 WESTMINISTER AVENUE AND EUCLID STREET

SCALE: AS-SHOWN
DRAWN BY: JK
CHECKED BY: JB
DATE: 11-16-16
JOB No. 16044.02

EXHIBIT C

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

City of Garden Grove
Attn: Dan Candelaria
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, CA 92842

MAIL TAX STATEMENTS TO:

City of Garden Grove
Attn: Dan Candelaria
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, CA 92842

The undersigned Grantor(s) declare(s):

Documentary transfer tax is -0-

This document is exempt from Documentary Transfer Tax pursuant to Section 11922 of the Revenue and Taxation Code.

City of Garden Grove

Portions of Assessor's Parcel Number: 099-181-01 & 099-181-59

Free recording requested, essential to acquisition by The City of Garden Grove, see Gov't Code 6103.

This Grant Deed is being recorded in order to perfect the Lot Line Adjustment that was filed as a Certificate of Compliance for the Euclid Street and Westminster Avenue Intersection Improvement Project, Project No. 7287-2017 and recorded on _____, _____, 20____, as Instrument No _____, Official Records.

GRANT DEED

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

HMZ RETAIL, L.P., a California limited liability company

hereby **GRANTS** to:

The City of Garden Grove, a municipal corporation

MAIL TAX STATEMENTS AS SET FORTH ABOVE

Exhibit "A"
Legal Description

Certificate of Acceptance
of Grant Deed
HMZ Retail, LP, a California limited partnership
To
City of Garden Grove

(to be attached by City of Garden Grove)

EXHIBIT D

AFFIDAVIT OF NON-FOREIGN ENTITY

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person or foreign entity.

To inform the transferee that withholding a tax is not required upon disposition of a United States real property interest by HMZ Retail, LP, the undersigned hereby certifies the following:

1. HMZ Retail, LP is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. The U. S. Employer Identification Number of HMZ Retail, LP is:
_____;
3. The business/office address of HMZ Retail, LP is: 2029 Verdugo Blvd, Suite 703, Montrose, California 91020.

The undersigned declares that he has examined this certification, and to the best of his knowledge and belief it is true, correct and complete.

Date: _____

Thomas T. Kawakami, Manager
IIMZ GPCO, LLC, General Partner of
HMZ Retail, LP