



Agenda Report

City Council

Date: December 13, 2022

To: Brian Saeki, City Manager

From: Kyle Cason, Public Works Director
Vicki L. Smith, Public Works Manager

Subject: Purchase of Property at 11280 First Avenue

RECOMMENDATION

- 1) Authorize the City Manager to execute an agreement for the acquisition of real property located at 11280 First Avenue for the park space along the Greenway Trail East Extension in substantially the form attached.
- 2) Adopt Resolution No. 2022-106, amending the Fiscal Year 2022-23 budget with a supplemental appropriation for the expenditure of \$2,323,575 for the purchase of real property located at 11280 First Avenue and an additional \$60,000 for related acquisition costs.

BACKGROUND

For over two decades, the property owners have attempted to process development plans for the 2.14-acre linear property located at 11280 First Avenue (the "Property," Assessor's Parcel Number 8232-028-020). A self-storage facility was previously declined years ago, and the most recently proposed development consisted of an 11-lot subdivision. The Property, shown on Attachments A, B, and C, extends eastward from First Avenue just north of the railroad tracks, which run north of Lambert Road. While the Property is large in total size, it is oddly shaped with dimensions of approximately 57 to 60 feet wide and 1,600 feet long.

In May and June 2021, the Property owner reached out several times to staff to offer the property for sale to the City, proposing that it may be better used as a park than a new private development.

On July 13, 2021, City Council authorized staff to contact the property owner to determine if acquisition was feasible.

On October 31, 2021, Curtis-Rosenthal, Inc. appraised the subject property at \$2,330,000.

A Letter of Intent to Purchase Real Property was prepared by the City and executed on June 23, 2022.

On October 11, 2022, City Council directed staff to prepare the agreement for the acquisition of real property.

DISCUSSION

The Property owners of the parcel signed a Letter of Intent agreeing to a sale price of \$2,323,575. This figure is \$6,425 lower than the appraised value. As a result, it is recommended that City Council authorize the City Manager to execute the agreement for acquisition of real property that has already been signed by the property owner (Attachment D).

This parcel runs along the Greenway Trail East Extension between First Avenue and Heathfield Drive. Although the long, narrow parcel (approximately 60 feet wide and 1,600 feet long) is not a traditional park space, it still provides opportunities for exercise equipment, playground equipment, pickleball courts, and potentially some parking spaces for park and Greenway Trail users.

A Phase I Environmental Site Assessment (ESA) Report by EFI Global, Inc. has been provided by the current Property owners. A Phase II ESA Report was done by EFI Global, Inc., as requested by the City. Based on the results of the ESA Phase II Report, semi volatile organic compounds (SVOCs) are not present in the vicinity of the Property at concentrations that represent an unacceptable risk to future residential site occupants or a threat to groundwater.

The agreement for the acquisition of real property calls for a 60-day escrow.

FISCAL IMPACT

Acquisition costs of the parcel are anticipated at approximately \$2,383,575 for due diligence, land acquisition, related closing cost, title, appraisal, and attorney/consultant fees. Development costs of the park are separate and have yet to be estimated, but would likely include design costs, fencing, hardscape, landscaping, irrigation, and lighting. There would also be an increase in ongoing operational expenses to maintain the new park.

Adoption of Resolution No. 2022-106 (Attachment E) will appropriate \$2,383,575 from the Park Land Acquisition Impact Fee Reserve into the Park CIP Fund's Parkland Acquisition – First Ave account (635-22-981-922 821012) to fund this property purchase.

STRATEGIC PLANNING GOAL

- Maintain & Enhance Quality of Life

ATTACHMENTS

- A. Property Aerial Map
- B. Property Assessor's Parcel Map
- C. Parcel Data
- D. Agreement for Acquisition of Real Property
- E. Resolution No. 2022-106



Planned GWT
Neighborhood
Connection

8232-028-020

	Subject Parcel
	GWT Right of Way
	City Parcels

400 Feet

200

0

Maybrook
Elementary School

Valley Home Ave

Cabo Dr

Larryln Dr

Lebo St

Jordan Rd

Leffingwell Rd

Grape Myrtle Ln

Raywood Ln

Pear Blossom Ct

Pear Blossom Ct

Sweet Gum Ln

Larryln Dr

Pounds Ave

Tigrina Ave

Newcomb Ave

Rutherglen St

Cullman Ave

Heathfield Dr

Flowering Plum Cir
Morningside Dr

Maybrook Ave

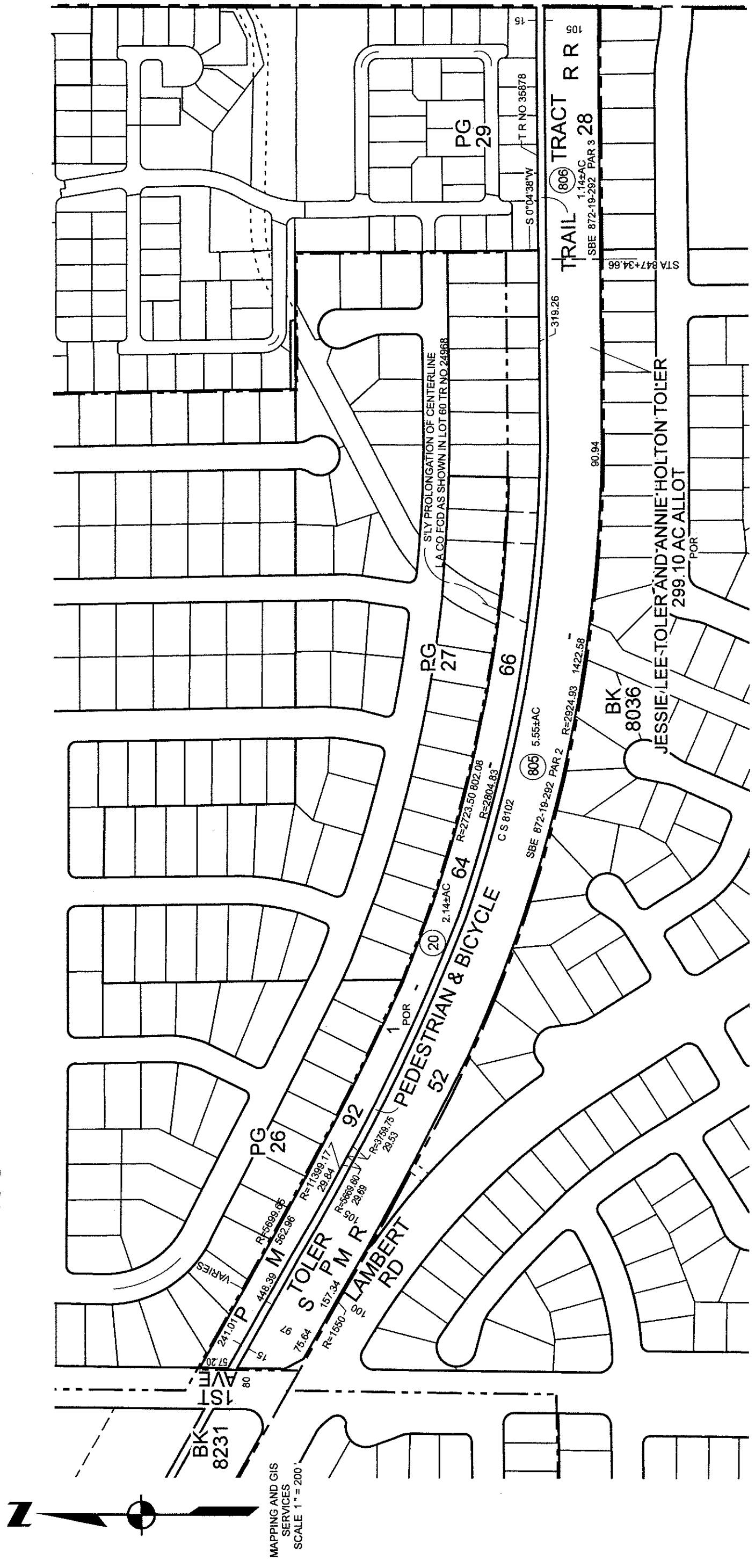
Lambert Rd

1st Ave

1st Ave

Attachment B

2018



MAPPING AND GIS SERVICES SCALE 1" = 200'



Assessment Detail Report

For Secured Assessment 8232-028-020
Date Created: 10-28-2022



Roll Year: 2022-23
Agency: The City Of Whittier
Owner: NIESNER FRANK / NIESNER ROBERT F
Owner as of Lien Date: NCN INVESTMENTS
DBA:
Situs Address: , WHITTIER CA 90601
Mail Name: NIESNER FRANK
Mail Address: 4929 LAS VIRGENES RD UNIT C, CALABASAS, CA 91302-2979
Use Code/Description: 010V Vacant Vacant Residential
TRA/Primary Agency: 06015 Taxing District #3
Parcel Type: Regular Parcel

Current Year Values

Taxable: yes
Land: \$504,999
Improvements: \$0
Fixtures: \$0
Personal Property: \$0
Total: \$504,999
Real Estate Exemption: \$0
Fixtures Exemption: \$0
Pers Prop Exemption: \$0
Total Exem (No HOX): \$0
Net Total Value: \$504,999
% Change From Prior Year: 1.9998%

Values not Included in Totals

Penalties: \$0
Homeowner Exem (HOX): \$0

Revenue

Gen. Fund Secured: \$371.59
Gen. Fund Unsecured: \$0.00
Gen. Fund Cross-reference: \$0.00
Gen. Fund Total: \$371.59
Gen. Fund Tax Dollar Ratio: 0.0735

Incremental Secured: \$0
Incremental Unsecured: \$0
Incremental Cross-reference: \$0
Incremental Total: \$0
Incremental Ratio: 0.0000

3 Sales

Sale Date	Sale Price	Document	Seller	Txn Type
05-12-2022	\$0	2022.0000520506	NCN INVESTMENTS	Non-Arms length transactions with valid TITLE COMPANY NAME (no accommodations)
01-31-2007	\$0	2007.0000207853	NUCCIO NIESNER INVESTMENTS	Non-Arms length transactions with valid TITLE COMPANY NAME (no accommodations)
08-01-1989	\$102,500	1989.0001225733		Resale

i No Associated Appeals.

i No Associated Unsecured Bills.

i No Associated Cross-Reference Bills.

i No Associated Direct Assessments.

General Parcel Information

Zoning:	WHR17200*	Building Square Feet:	0
Street Map Page Grid:		Lot Square Feet:	84458
Census Tract:	5034.01	Lot Acreage:	1.9389
Lot #/Tract #:	1 0001	Buildings:	0
Tax Bill:	\$5,604	Units:	0
Prop 8 Adjusted:	False	Rooms:	0
Absentee:	True	Beds/Baths:	0 / 0
		Original/Effective Year Built:	/

Other Assessment Characteristics/Descriptors

Recording Date:	20070131
Lot:	1
Situs Change Date:	00000000
Mailing Change Date:	20080511

Parcel Legal Description:

TR PARCEL MAP AS PER BK 92 P 64-66 OF P M LOT COM AT INTERSECTION OF NE LINE OF LOT 1 WITH E LINE OF 1ST AVE TH S ON SD E LINE 57.20 FT TH SE AND FOLLOWING BDRY LINE OF SD LOT TO S PROLONGATION OF

Map



Parcel Ownership and Value History

Year	Owners	Land	Improvements	Fixtures	Pers Prop	Real Estate Exem	Personal Exem	Fixtures Exem	Net Value	Home Exem	Taxable
2022	NIESNER FRANK	\$504,999	\$0	\$0	\$0	\$0	\$0	\$0	\$504,999	\$0	yes
2021	NIESNER FRANK	\$495,098	\$0	\$0	\$0	\$0	\$0	\$0	\$495,098	\$0	yes
2020	NCN INVESTMENTS	\$490,022	\$0	\$0	\$0	\$0	\$0	\$0	\$490,022	\$0	yes
2019	NCN INVESTMENTS	\$480,414	\$0	\$0	\$0	\$0	\$0	\$0	\$480,414	\$0	yes
2018	NCN INVESTMENTS	\$470,995	\$0	\$0	\$0	\$0	\$0	\$0	\$470,995	\$0	yes
2017	NCN INVESTMENTS	\$461,760	\$0	\$0	\$0	\$0	\$0	\$0	\$461,760	\$0	yes
2016	NCN INVESTMENTS	\$452,706	\$0	\$0	\$0	\$0	\$0	\$0	\$452,706	\$0	yes
2015	NCN INVESTMENTS	\$445,906	\$0	\$0	\$0	\$0	\$0	\$0	\$445,906	\$0	yes
2014	NCN INVESTMENTS	\$437,172	\$0	\$0	\$0	\$0	\$0	\$0	\$437,172	\$0	yes
2013	NCN INVESTMENTS	\$435,197	\$0	\$0	\$0	\$0	\$0	\$0	\$435,197	\$0	yes
2012	NCN INVESTMENTS	\$426,664	\$0	\$0	\$0	\$0	\$0	\$0	\$426,664	\$0	yes
2011	NCN INVESTMENTS	\$418,299	\$0	\$0	\$0	\$0	\$0	\$0	\$418,299	\$0	yes
2010	NCN INVESTMENTS	\$415,173	\$0	\$0	\$0	\$0	\$0	\$0	\$415,173	\$0	yes
2009	NCN INVESTMENTS	\$416,160	\$0	\$0	\$0	\$0	\$0	\$0	\$416,160	\$0	yes
2008	NCN INVESTMENTS	\$408,000	\$0	\$0	\$0	\$0	\$0	\$0	\$408,000	\$0	yes
2007	NCN INVESTMENTS	\$140,745	\$0	\$0	\$0	\$0	\$0	\$0	\$140,745	\$0	yes
2006	NCN INVESTMENTS	\$137,986	\$0	\$0	\$0	\$0	\$0	\$0	\$137,986	\$0	yes
2005	NUCCIO NIESNER INVESTMENTS	\$135,281	\$0	\$0	\$0	\$0	\$0	\$0	\$135,281	\$0	yes
2004	NUCCIO NIESNER INVESTMENTS	\$132,629	\$0	\$0	\$0	\$0	\$0	\$0	\$132,629	\$0	yes
2003	NUCCIO NIESNER INVESTMENTS	\$130,199	\$0	\$0	\$0	\$0	\$0	\$0	\$130,199	\$0	yes
2002	NUCCIO NIESNER INVESTMENTS	\$127,647	\$0	\$0	\$0	\$0	\$0	\$0	\$127,647	\$0	yes
2001	NUCCIO NIESNER INVESTMENTS	\$125,145	\$0	\$0	\$0	\$0	\$0	\$0	\$125,145	\$0	yes
2000	NUCCIO NIESNER INVESTMENTS	\$122,692	\$0	\$0	\$0	\$0	\$0	\$0	\$122,692	\$0	yes
1999	NUCCIO NIESNER INVESTMENTS	\$120,287	\$0	\$0	\$0	\$0	\$0	\$0	\$120,287	\$0	yes
1996	NUCCIO NIESNER INVESTMENTS	\$113,514	\$0	\$0	\$0	\$0	\$0	\$0	\$113,514	\$0	yes
1995	NUCCIO NIESNER INVESTMENTS	\$112,268	\$0	\$0	\$0	\$0	\$0	\$0	\$112,268	\$0	yes
1994	NUCCIO NIESNER INVESTMENTS	\$110,948	\$0	\$0	\$0	\$0	\$0	\$0	\$110,948	\$0	yes
1993	NUCCIO NIESNER INVESTMENTS	\$108,773	\$0	\$0	\$0	\$0	\$0	\$0	\$108,773	\$0	yes
1992	NUCCIO NIESNER INVESTMENTS	\$106,641	\$0	\$0	\$0	\$0	\$0	\$0	\$106,641	\$0	yes

ASSESSOR PARCEL NUMBER: 8232-028-020
TITLE REPORT NO.

AGREEMENT FOR ACQUISITION OF REAL PROPERTY
(ESCROW INSTRUCTIONS)

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, 2022 by and between the **City of Whittier**, a municipal corporation, (hereinafter called "**Buyer**"), and Frank Niesner, Robert F. Niesner, and Thomas Casey, tenants in common, (hereinafter called "**Seller**") for acquisition by Buyer of a portion of that certain real property identified as 11280 First Avenue, Whittier, CA 90603 also identified by APN: 8232-028-020 (hereinafter called "**Property**"). Buyer and Seller may collectively be referred to as the "Parties."

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS

1. AGREEMENT TO SELL AND PURCHASE. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement the fee interest in the following property situated in the City of Whittier, County of Los Angeles, State of California, more particularly described in the Grant Deed, **Exhibit "A"** attached hereto and hereinafter referred to as "Property":
2. PURCHASE PRICE. The total purchase price, payable in cash through escrow, shall be the sum of Two Million Three Hundred Twenty-Three Thousand Five Hundred Seventy-Five Dollars (**\$2,323,575**).
3. CONVEYANCE OF TITLE. Seller agrees to convey by Grant Deed to Buyer marketable title to the Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes EXCEPT:
 - A. All taxes for the current fiscal year prorated as per Section 5 hereinafter.
 - B. Quasi-public utility, public alley, public street easements, and rights of way of record.
 - C. Exceptions 8 through 11 appearing on Preliminary Title Report to be approved in Escrow.
4. TITLE INSURANCE POLICY. Escrow Agent shall, following recording of the Grant Deed to Buyer, provide evidence of delivery of fee simple title by the issuance by the Title Company to Buyer of an ALTA Extended Coverage Owner's Policy of Title Insurance (2006 Form) in the amount of \$2,323,575 (Fee Value), insuring fee simple title to the Property in Buyer, subject only to the Permitted Exceptions issued by First American Title Company showing the title to the Property vested in Buyer, subject only to the exceptions set forth in Section 3 and the printed exceptions and stipulations in said policy. Buyer agrees to pay the premium charged therefore.

5. ESCROW. Buyer agrees to open an escrow in accordance with this Agreement at First American Title Company, 207 Goode Ave., #410, Glendale, CA 91203. This Agreement constitutes the joint escrow instructions of Buyer and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The Parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

Seller agrees to deposit with Escrow Agent prior to the Close of Escrow original, fully executed and acknowledged deeds, and any other customary agreements, consents, or documents reasonably necessary to effectuate the purchase of the subject Property. Buyer agrees to deposit the purchase price and **certificate of acceptance** upon demand of Escrow Agent.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

ESCROW AGENT IS AUTHORIZED AND IS INSTRUCTED TO COMPLY WITH THE FOLLOWING TAX ADJUSTMENT PROCEDURE:

- A. Pay and charge Seller for any unpaid delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the Property.
- B. In the event this escrow closes between July 1 and November 1, and current tax information is not available from title insurer, Escrow Agent is instructed to withhold from Seller's proceeds an amount equal to 120% of the prorated amount due based upon the previous fiscal year's second half tax bill. At such time that the tax information is available, Escrow Agent shall make a check payable to the County Tax Collector for Seller's prorated portion of taxes and forward same to the Buyer and shall refund any difference to the Seller. In the event the amount withheld is not sufficient to pay Seller's prorated portion of taxes due, the Seller herein agrees to immediately pay the difference.

In the event said tax information is available, Seller's taxes shall be prorated in accordance with Paragraph "C" below.

- C. From the date that tax information is available, as per Paragraph "B" hereinabove, up to and including June 30th, Seller's current taxes, if unpaid, shall be prorated to date of Close of Escrow on the basis of a 365 day year in accordance with Tax Collector's proration requirements, together with penalties and interest, if said current taxes are unpaid after December 10 and/or April 10. At Close of Escrow, check payable to the Los Angeles County Office of the Assessor ("County Tax Collector") for Seller's *pro rata* portion of taxes shall be forwarded to Buyer with closing statement.
- D. Any taxes which have been paid by Seller, prior to opening of this escrow, shall not be prorated between Buyer and Seller, but Seller shall have the sole right, after Close of Escrow, to apply to the County Tax Collector of said county for

refund. This refund would apply to the period after Buyer's acquisition, pursuant to Revenue and Taxation Code Section 5096.7.

ESCROW AGENT IS AUTHORIZED TO, AND SHALL:

- E. Pay and charge Seller, upon Seller's written approval, for any amount necessary to place title in the condition necessary to satisfy Section 3 of this Agreement, excluding any penalty for prepayment to any lienholder in compliance with 1265.240 of the Eminent Domain Law;
- F. Pay and charge Buyer for any escrow fees, charges, and costs payable under Section 6 of this Agreement;
- G. Disburse funds and deliver Grant Deed when conditions of this escrow have been fulfilled by Buyer and Seller.

The term "Close of Escrow", where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the Los Angeles County Recorder. Recordation of instruments delivered through this escrow is authorized if necessary or proper in the issuance of said policy of title insurance.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the Parties hereto. Any amendment of, or supplement to, any instructions must be in writing.

TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE. If (except for deposit of money by Buyer, which shall be made by Buyer upon demand of Escrow Agent before Close of Escrow) this escrow is not in condition to close within 60 days from opening of escrow, any party who then shall have fully complied with his instructions may, in writing, demand the return of his money or property; but if none have complied no demand for return thereof shall be recognized until five (5) days after Escrow Agent shall have mailed copies of such demand to all other Parties at the respective addresses shown in these escrow instructions, and if any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or mutual instructions. If no demands are made, proceed with closing of this escrow as soon as possible.

Responsibility for Escrow Agent under this Agreement is expressly limited to Sections 1, 2, 3, 4, 5, 6, 7, 9, 10, and 17 and to its liability under any policy of title insurance issued in regard to this transaction.

6. ESCROW FEES, CHARGES AND COSTS. Buyer agrees to pay all Buyer's and Seller's usual fees, charges, and costs which arise in this escrow.

7. RENTS AND SECURITY DEPOSIT.

Seller warrants that there are no tenants or written or oral leases on all or any portion of the Property and Seller further agrees to hold Buyer harmless and reimburse Buyer for any and

all of its losses and expenses, including relocation assistance costs, occasioned by reason of any undisclosed lease of said Property held by any undisclosed tenant of Seller.

8. PERMISSION TO ENTER ON PREMISES. Seller hereby grants to Buyer, or its authorized agents, permission to enter upon the Property at all reasonable times prior to Close of Escrow for the purpose of making necessary or appropriate inspections. It is understood that Buyer and its contractors will indemnify the undersigned and hold them harmless from any and all liability for bodily injury, death and property damage arising out of or in any way connected with Buyer's negligent acts or omissions while on the Property, and reimburse the Seller for all costs, expenses and loss, including attorney's fees, incurred by them in consequence of any claims, demands and causes of action which may be made or brought against them arising out of such use.

9. POSSESSION AND USE. It is agreed and confirmed by the Parties hereto that notwithstanding other provisions in this Agreement, the right of possession and use of the Property by Buyer, including the right to remove and dispose of improvements, shall commence on the date this Agreement is fully executed by the Parties.

10. CLOSING STATEMENT. Seller instructs Escrow Agent to release a copy of Seller's statement to Buyer and to their agent, Property Specialists, Inc. for the purpose of ascertaining if any reimbursements are due to Seller.

11. LOSS OR DAMAGE TO IMPROVEMENTS. Loss or damage to the Property or any improvements thereon, by fire or other casualty, occurring prior to the recordation of the Deed shall be at the risk of Seller. In the event that loss or damage to the Property or any improvements thereon, by fire or other casualty, occurs prior to the recordation of the Deed, Buyer may elect to require that the Seller pay to Buyer the proceeds of any insurance which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the total price by an amount equal to the diminution in value of said Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.

12. WARRANTIES, REPRESENTATIONS, AND COVENANTS OF SELLER. Seller hereby warrants, represents, and/or covenants to Buyer that:

- A. No consent, approval or authorization of any governmental authority or private party is required in connection with the execution, delivery and performance of this Agreement by Seller.
- B. As of the date hereof, Seller has not received any written notice of any actions, suits, material claims, legal proceedings or arbitrations pending and to the best of Seller's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.
- C. There are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements encroach on other

properties. Additionally, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers, and, other than as may be reflected in the title commitment, no party has been granted by Seller any license, lease, or other right relating to use or possession of the Property that would be binding on Buyer after Close of Escrow.

- D. Until the Close of Escrow, Seller shall maintain the Property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the Property.
- E. Until the Close of Escrow, Seller shall not do anything which would impair Seller's title to any of the Property.
- F. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument to which Seller's Property may be bound.
- G. Until the Close of Escrow, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 13 entitled "Warranties, Representations, and Covenants of Seller" not to be true as of the Close of Escrow, immediately give written notice of such fact or condition to Buyer.

13. HAZARDOUS WASTE. Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as a "hazardous substances" pursuant to Section 311

of the Clean Water Act, (33 U.S.C. S1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. S6901 et seq. (42 U.S.C. S6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, as amended by Liability Act, 42. U.S.C. S9601 et seq. (42 U.S.C. S9601).

14. COMPLIANCE WITH ENVIRONMENTAL LAWS. To the best of Seller's knowledge the Property complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environment Quality Act, and the rules, regulations, and ordinances of the city within which the subject Property is located, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.

15. INDEMNITY. Seller agrees to indemnify, defend and hold Buyer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in or about, or the transportation of any such materials to or from, the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in, or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment). This indemnity extends only to liability created prior to or up to the Close of Escrow. Seller shall not be responsible for acts or omissions occurring after the Close of Escrow.

16. CONTINGENCY. It is understood and agreed between the Parties hereto that the purchase of the Property by Buyer, and the escrow created hereby, is contingent upon the specific acceptance and approval of the Buyer herein.

The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the Parties hereto.

This Agreement contains the entire agreement between both Parties, neither party relies upon any warranty or representation not contained in this Agreement.

17. SETTLEMENT, WAIVER AND RELEASE. Excepting those obligations on Buyer's part as set forth herein, Seller for itself and for its agents, successors and assigns fully waives, releases, acquits and discharges Buyer and its officers, officials, council members,

employees, attorneys, accountants, other professionals, insurers, and agents, and all entities, boards, commissions, and bodies related to any of them (collectively, the "Released Parties") from all claims that Seller and its agents, successors and assigns has or may have against the Released Parties arising out of or related to Buyer's acquisition of the Property, including, without limitation, compensation for the loss of improvements, including improvements pertaining to the realty, furniture, fixture, and equipment; compensation for business goodwill, or lost income (past or future); compensation for damages to the remainder (i.e., severance damages); economic or consequential damages; professional consultant fees and attorney's fees and costs; precondemnation damages; any right to repurchase, leaseback from Buyer, or receive any financial gain from, the sale of any portion of the Interests; any right to enforce obligation(s) placed upon Buyer pursuant to Code of Civil Procedure sections 1245.245 and 1263.615; any rights conferred upon Seller pursuant to Code of Civil Procedure sections 1245.245 and 1263.615 and 1263.025; and all other costs, and any and all compensable interests, and/or damages, and/or claims, of any kind and nature, claimed or to be claimed, suffered or to be suffered, by Seller, its agents, successors and assigns by reason of the Buyer's acquisition of the Property, provided that nothing herein shall release claims of Seller for any liability resulting from the Buyer's breach of of the terms of this Agreement. This waiver does not apply to any claims for damage or injury to any person or property arising from the construction of the Project due to the negligence or willful misconduct of the Buyer's agents or contractors constructing the Project. This paragraph shall survive the Close of Escrow.

Seller, on behalf of itself and its agents, successors and assigns, expressly waives all rights under Section 1542 of the Civil Code of the State of California ("Section 1542"), or any other federal or state statutory rights or rules, or principles of common law or equity, or those of any jurisdiction, government, or political subdivision thereof, similar to Section 1542 (hereinafter referred to as a "Similar Provision"). Thus, Seller and its agents, successors and assigns, and any business, enterprise, or venture in which they are involved, may not invoke the benefits of Section 1542 or any similar provision in order to prosecute or assert in any manner the matters released in Section 14 above. Section 1542 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."

Seller's Initials: _____, _____, _____

18. MISCELLENAOUS

A. Survival. Any warranties, representations, promises, covenants, agreements, and indemnifications that this Agreement does not require to be fully performed prior to Close of Escrow shall survive Close of Escrow and shall be fully enforceable after Close of Escrow in accordance with their terms.

B. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by the Buyer and Seller shall be deemed both a covenant and a condition and

shall be a material consideration for Seller' and the Buyer's performance hereunder, as appropriate, and any breach thereof by the Buyer or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

C. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, three business days after the date of posting by the United States post office; or (iii) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day. Notice of change of address shall be given by written notice in the manner described in this Section 20. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller: Frank Niesner, Robert F. Niesner & Thomas Casey
4929 Las Virgenes Road
Calabasas, CA 913902-2979

with a copy to: David Olson
David Olson Law Group
23586 Calabasas Road, Suite 200
Calabasas, CA 91302

If to the Buyer: CITY OF WHITTIER
Attn: City Manager
13230 Penn Street
Whittier, CA 90602

with a copy to: Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92832
Attn: Russell Hildebrand

D. Default. Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten (10) days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten-day period.

E. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

F. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by the Buyer and Seller.

G. Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document. This Agreement may be executed by signatures transmitted by facsimile, adobe acrobat or other electronic image files and these signatures shall be valid, binding and admissible as though they were ink originals.

H. Time of Essence. Time is of the essence of each provision of this Agreement.

I. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

J. Cooperation. Each Party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

K. Effective Date. This Agreement shall become effective upon the full execution by the Parties (the "**Effective Date**").

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year set forth hereinabove.

BUYER

CITY OF WHITTIER

BY: _____

PRINT NAME: Brian Saeki

TITLE: City Manager

DATE: _____

ATTEST

BY: _____
Rigoberto Garcia, Jr., City Clerk

DATE: _____

APPROVED AS TO FORM:

BY: Richard D. Jones, City Attorney

DATE: _____

SELLERS

BY: _____

PRINT NAME: Frank Niesner

DATE: _____

BY: _____

PRINT NAME: Robert F Niesner

DATE: _____

BY: _____

PRINT NAME: Thomas Casey

DATE: _____

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

THE PORTION OF PARCEL 1 IN THE CITY OF WHITTIER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 5629, FILED IN BOOK 92 PAGE 64 TO 66 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION LYING EASTER OF THE SOUTHERLY PROLONGATION OF THAT CERTAIN COURSE SHOWN AS NORTH 23° 07' 13" EAST AND HAVING A LENGTH OF 30.38 FEET IN LOT 60 TRACT NO. 24968, AS SAID TRACT IS SHOWN ON A MAP RECORDED IN BOOK 676 PAGES 38 TO 40 INCLUSIVE OF MAPS RECORDS OF SAID COUNTY

EXCEPT THEREFROM ALL OIL, GAS, MINERALS, AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID PROPERTY, BUT WITH NO RIGHT OF SURFACE ENTRY AS PROVIDED IN DEED RECORDED IN BOOK D2465 PAGE 207, OFFICE RECORDS.

APN: 8232-028-020

END OF LEGAL DESCRIPTION

RESOLUTION NO. 2022-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2022-23 BUDGET WITH A SUPPLEMENTAL APPROPRIATION FOR EXPENDITURE OF \$2,383,575 FOR PURCHASE OF REAL PROPERTY LOCATED AT 11280 FIRST AVENUE AND APPROVING AN ACQUISITION OF REAL PROPERTY AGREEMENT

RECITALS

- A. The City received an unsolicited offer for sale of the 2.14-acre vacant property located at 11280 First Avenue in the City of Whittier, Los Angeles County, California (the "Property").
- B. The City of Whittier desires to acquire the Property and the City Council has determined this purchase is in the best interest of the City.
- C. Available funds are necessary from the Park Impact Fee Reserve Fund.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER DOES RESOLVE AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are a substantial part of this resolution.

SECTION 2. The following appropriations shall be added to the following account in the City's FY 2022-23 Budget.

Account No.	Account Name	Amount
635-22-981-922 821012	Park CIP Fund - Parkland	\$2,383,575
	Acquisition – First Ave	
100-245021	Reserved for Park Land	(\$2,383,575)
	Acquisition Impact Fees	

SECTION 3. The City Council of the City of Whittier hereby approves the acquisition of real property agreement for the purchase of the Property from Frank Niesner, Robert F. Niesner and Thomas Casey, and execute all other necessary and related documents between the City of Whittier and Frank Niesner, Robert F. Niesner and Thomas Casey, in substantially the form attached to the December 13, 2022, City Council Agenda report and by this reference incorporated herein.

SECTION 4. Upon the close of escrow of the purchase and sale agreement referenced in Section 2, the City Council of the City of Whittier approves and accepts the Property, and directs the City Manager to execute on its behalf a Certificate of Acceptance for the Grant Deed in a form approved by the City Attorney.

SECTION 5. The City Clerk is hereby authorized and directed to have the Grant Deed, and all other related and necessary documents recorded in the Office of the Los Angeles County Recorder when fully executed and notarized.

SECTION 6. The City Clerk shall certify to the passage and adoption hereof.

APPROVED AND ADOPTED this 13th day of December 2022.

JOSEPH A. VINATIERI, Mayor

ATTEST:

RIGOBERTO GARCIA JR., City Clerk
(seal)