

CONTRACT REVIEW FORM

(For contract amendments, use Contract Amendment Review Form; for guidance on completing this form, refer to "Contract Processing Instructions")

Contractor name: University of Calif. Forum
 This contract package contains: A Real estate purchase contract

Contract # 4880
CMS # NCV8B
 Waiver *Not Attached Required

	Yes	Waiver Attached	Not Required
Three signed, blue/yellow-backed contracts.....	X	/	/
Exhibits:			
1. Scope of Services	X	/	/
2. Payment Provisions	X	/	/
3. Evidence of Competitive Solicitation			X
4. AA/Workforce Composition			
5. Nuclear Free Berkeley Disclosure	N/A	/	/
6. Burma Disclosure	N/A	/	/
7. Certificate/s of Insurance	N/A	/	/
8. Insurance Endorsement (construction contracts only)	N/A	/	/
9. Resolution or Ordinance *	Yes	/	/
One copy of contract, scope of services, payment provisions and list of exhibits	Yes	/	/
Form 730, Statement of Economic Interests	N/A	/	/

The requisition number for funds under this contract is: # 58292

Budget code: 658-5850-450-71-99 Contract amount: \$ 2,835,000.00

* For Council-authorized contracts, date of such authorization: Ord. # 6521-N.S.
 (The contract package should leave your department for routing to the Risk Manager within 15 working days of Council approval.)
effective 1/13/2000

Routing and signatures:

1. I have reviewed all elements of the contract package and certify that it is complete and accurate.

[Signature] _____ Date 5/3/2000
 Project Manager

4-6970 X231 _____
 Telephone No. Department & Division Pd W/ Admin.

2. [Signature] _____ Date 5-11-2000
 Dept. Admin. Officer or Accounting

3. [Signature] _____ Date 5-11-00
 Department Head

4. N/A _____ Date _____
 Risk Manager

5. N/A _____ Date _____
 Contract Compliance Officer

Routing continues to the following persons, who sign directly on the contract:

6. City Manager (who will not sign the contract unless all signatures and dates appear above.)

7. City Auditor

8. City Clerk

RECEIVED

MAY 11 2000

AUDITOR'S OFFICE

purchase contract by the City. Please place the contract number in the p.o. freight field and distribute the purchase order as usual. Please provide a copy of the purchase order to Dorothy Knaak to support transmittal of a wire transfer of funds to Chicago Title Co. Ed Murphy is to be contacted by Dorothy for the ACH account numbers for Chicago Title. Time is of the essence, and Ed has requested that the money be transferred as soon as possible. Thanks.

ENTITY - CITY

ORDINANCE # - 6521-N.S. in effect 1/13/2000

REQ# - 58292

PO# 31783

CONTRACT# - 4880

CMS# - NLW8B

VENDOR NAME - The Regents of the University of California through Chicago Title Co.escrow agent

4880
NLW8A

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

CITY OF BERKELEY

AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

March 30, 2000

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

CHICAGO TITLE COMPANY
388 Market Street, Suite 1300
San Francisco, CA 94111

THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is dated for reference as of March 30, 2000 ("Reference Date"), and is entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("Seller"), and THE CITY OF BERKELEY, a political subdivision of the State of California ("Buyer").

WHEREAS, Seller is the owner of certain real property located in the City of Berkeley, County of Alameda, State of California, more particularly described in Exhibit A attached hereto and incorporated herein in full by this reference (the "Property"); and

WHEREAS, a portion of the Property is leased to the City of Berkeley and occupied by Berkeley Oakland Support Services ("BOSS") also known as Building Opportunities for Self Sufficiency; and

WHEREAS, Seller desires to sell and Buyer desires to buy the Property as described in Exhibit A in one transaction; and

WHEREAS, Buyer and Seller have executed a side agreement, dated as of the Reference Date, with respect to a portion of the purchase price of the Property, a copy of which agreement is attached hereto as Exhibit B ("Side Agreement"); and

WHEREAS, Buyer and Seller entered into an option agreement approved by the City Council of Berkeley on February 11, 1997, pursuant to which Buyer paid \$ 84,000 to Seller in exchange for an option to purchase the Property.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

1. SALE AND PURCHASE.

1.1 Sale and Purchase. Seller will sell to Buyer and Buyer will purchase from Seller the Property as described in Exhibit A attached hereto, for the price, at the time, and upon the terms and conditions set forth herein.

1.2 Purchase Price. The purchase price of the Property shall be Two Million Eight Hundred and Twenty-Seven Thousand Dollars (\$2,827,000.00).

1.3 Payment of Purchase Price.

1.3.1 Payment. Buyer shall pay the purchase price in cash or by wire transfer ("Immediately Available Funds") one day prior to the Close of Escrow as provided in Article 4, or at such other time as the parties agree to in writing.

1.3.2 In-Kind Credits. Buyer shall be credited with an amount against the purchase price, not to exceed Six Hundred and Seventy-Seven Thousand Dollars (\$677,000.00), for "in-kind" services and/or improvements provided to or for The University by the City in lieu of cash payment. The credit for "in-kind" services and/or improvements shall be applied in the manner set forth in paragraph 4.7 and in conformance with the Side Agreement attached hereto as Exhibit B.

1.4 Payment of Additional Amounts. Buyer shall deposit into Escrow and pay at Close of Escrow Buyer's share of closing costs, prorated items, and adjustments.

2. TITLE

2.1 Conveyance. Title to the Property shall be conveyed by a Grant Deed in the form of Exhibit C, attached hereto (the "Deed"), and shall be insured by a CLTA Owner's Policy of Title Insurance ("Title Policy") issued by Chicago Title Company ("Title Company"), with liability in the full amount of the Purchase Price, insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters affecting title to the Property except:

(a) Any easement for water course over that portion of premises lying within the lines of Codornices Creek and any changes in the boundary lines of premises that have occurred or may hereafter occur from natural causes and by imperceptible degrees.

(b) Easement granted to Great Western Power Company recorded July 23, 1910, Book 4834, Page 257, for distribution of electricity.

(c) Easement granted to Great Western Power Company recorded April 16, 1917, Book 2560, Page 138, for distribution of electricity.

(d) Easement granted to Great Western Power Company recorded September 19, 1923, Book 494, Page 439, for distribution of electricity.

(e) Easement granted to Great Western Power Company recorded September 19, 1923, for distribution of electricity recorded in Book 516, Page 267.

(f) Easement granted to Great Western Power Company recorded December 20, 1929, Book 2242, Page 383, for distribution of electricity.

(g) Easement granted to Pacific Gas and Electric Company recorded February 24, 1944, Book 4484, Page 352, for distribution of electricity.

(h) Easement granted to Pacific Gas and Electric Company recorded January 31, 1952, Book 6647, Page 39, for distribution of electricity.

(i) Any rights or easements over and across those portions of said land lying within the abandoned street, or road as described in Resolution of Abandonment or Vacations Nos. 2427, 1665 and 2993.

(j) Unrecorded Spur Track Agreement dated November 21, 1951, executed by Southern Pacific Company and between Consolidated Western Steel Corporation as disclosed by the Grant Deed from United States Steel Corporation, a New Jersey Corporation to The Regents of the University of California Corporation recorded on November 6, 1964 as Reel 1359, Image 863, Series No. AW-179467.

(k) A reservation to Seller, its successors and assigns of the mineral interest and not as a royalty interest, all oil, gas, other minerals and hydrocarbon substances, and accompanying fluids including, but not by way of limitation, all geothermal resources in, under, or produced and saved from the real property granted thereby, together with any of the foregoing which may be allocated thereto pursuant to any pooling or unitization agreement or ratable takings program to which Seller may subscribe, and together with the sole and exclusive right to prospect for, drill for, produce, and remove such oil, gas, other minerals and hydrocarbon substances and geothermal resources, from the Property below the depth of five hundred feet (500') from the surface of said real property, without the right of surface entry, but including the right to slant drill from adjacent property, the right to utilize subsurface storage for natural substances, and the right to maintain subsurface pressures.

(l) Lease of a portion of the Property with the City of Berkeley as Lessee which portion is used by Berkeley Oakland Support Services ("BOSS").

(m) Any and all unrecorded leases.

(n) Declaration of Restrictions substantially in the form attached as Exhibit G.

(o) Such other matters affecting title to or use of the Property as have been approved by Buyer as provided in paragraph 2.2.

2.2 Procedure for Approval of Title.

2.2.1 Buyer has received and reviewed a preliminary title report number 9560104 – SW dated January 19, 1999 by Chicago Title Company, a copy of which is attached hereto as Exhibit E. Buyer, by execution of this Agreement, confirms that it has approved each and every condition of title disclosed by said Report as such conditions apply to the Property.

2.2.2 Seller will procure and deliver to Buyer an updated preliminary title report covering the Property within five (5) days after the opening of Escrow. Buyer shall have five (5) days following receipt of the updated preliminary title report to object to any condition of title disclosed in such updated preliminary title report which was not previously disclosed in the preliminary title report attached as Exhibit E. If Buyer fails to object to any such newly revealed condition of title prior to such date, it shall be deemed approved under this Section 2.2.

2.2.3 If Buyer notifies Seller that it objects to any such newly revealed condition of title within the period set forth in Subparagraph 2.2.2, Seller shall have ten (10) business days after receipt of Buyer's notice to give Buyer notice:

(i) that Seller will remove any objectionable exceptions from title and provide Buyer with evidence satisfactory to Buyer of such removal, on or before Closing Date; or

- (ii) that Seller elects not to cause such exceptions to be removed.

If Seller fails to give notice within the ten (10) day limit or gives Buyer notice under clause (ii), Buyer shall have the election, without limiting Buyer's rights and remedies against Seller of: (a) terminating the Agreement without liability on Buyer's part, (b) removing the defect, in which event the Purchase Price shall be reduced by an amount equal to Buyer's reasonable cost of correcting those matters, or (c) taking title subject to said defect(s). If the cost of removing said defect exceeds \$25,000, then Buyer shall only be entitled to elect alternatives (a) or (c). If Buyer makes no election, Buyer's silence shall be considered an election of alternative (a) of this same Subparagraph. Nothing in this Subparagraph shall defeat or diminish buyer's remedies at law or in equity relating to Seller's representations and warranties as set forth in Article 5 hereof.

2.3 Option for ALTA Coverage. Buyer shall have the option of obtaining an ALTA Extended Coverage Form Policy of Title Insurance in lieu of a CLTA Standard Coverage Form Owners Policy of Title Insurance. In such event, Buyer shall, at its expense, procure the ALTA Extended Coverage Survey. The cost of an ALTA Extended Coverage Form Policy of Title Insurance in excess of the CLTA Standard Coverage Form Policy shall be borne by Buyer. The escrow closing date described in paragraph 4.3 below will not be delayed in the event that such coverage is not yet available.

3. MATERIALS, REVIEW, APPROVAL AND ACCESS.

3.1 Materials. Since 1990 a number of environmental, planning, infrastructure and financial studies of the Property have been prepared including a "Phase I" environmental study ("Materials"). All such Materials known to Seller either have been delivered to Buyer or were either prepared by or for Buyer. The Materials which Seller has delivered to Buyer are listed on Exhibit D. Seller has relied upon the expertise of the consultants who have prepared the Materials with respect to their accuracy, completeness and sufficiency. Seller makes no representation, however, regarding the accuracy or correctness of the matters described in the Materials. Seller has relied solely upon its own expertise and the expertise of those consultants who have prepared the Materials with respect to their accuracy, completeness and sufficiency.

3.2 Access. Upon reasonable prior written notice, not to be less than twenty-four (24) hours, Seller shall permit Buyer, its employees, agents, contractors, representatives and nominees the right to enter onto the Property during the period this Agreement is in effect between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday in order to conduct such engineering soils, geological, surveying, environmental investigation and assessment, and other tests as Buyer deems appropriate. With respect to Buyer's entry as provided for herein, Buyer shall: (i) indemnify and hold Seller and the Property harmless from and against any losses, costs (including reasonable attorneys' fees), damages, actions or expenses arising out of such entry and/or such activities on the Property, and (ii) in the event this Agreement is terminated by Buyer or by reason of Buyer's default, promptly thereafter repair any damage to the Property caused by Buyer's entry.

4. ESCROW.

4.1 Agreement to Constitute Escrow Instructions. This Agreement shall constitute escrow instructions for the Property and a copy hereof shall be deposited with the Escrow Holder at the address set forth on the first page of this Agreement for this purpose.

4.2 Escrow Holder. The Escrow Holder shall be Chicago Title Company, National Business Office, 388 Market Street, Suite 1300, San Francisco, CA 94111. Escrow shall be

opened with Escrow Holder within three (3) business days after the Reference Date by depositing executed counterparts of this Agreement with the Escrow Holder; provided however, Seller shall not be required to deposit an executed counterpart of the Agreement with Escrow Holder prior to approval of the transaction by Seller's Board of Regents, or its delegated authority. If Escrow Holder shall require further escrow instructions, Escrow Holder shall promptly prepare such escrow instructions on its usual form for the purchase and sale of the Property in accordance herewith. Provided said further escrow instructions are consistent with this Agreement, they shall be promptly signed by Buyer and Seller within three (3) business days after delivery thereof to each party. The further escrow instructions shall incorporate each and every term of this Agreement and shall provide that in the event of any conflict between the terms and conditions of this Agreement and said further escrow instructions, the terms and conditions of this Agreement shall control.

4.3 Close of Escrow. The "Close of Escrow" with respect to the Property shall occur on or before the close of business on or before April 15, 2000, unless extended by mutual agreement. Time is specifically of the essence of this Agreement.

4.4 Buyer Required to Deliver.

4.4.1 On or before the day prior to the Close of Escrow for the Property, Buyer shall have deposited into Escrow the Purchase Price in cash or by wire transfer ("Immediately Available Funds").

4.4.2 On or before the Close of Escrow for the Property, Buyer shall deposit into Escrow (properly executed by Buyer and acknowledged, if applicable) all other documents and funds contemplated by this Agreement and required by the Escrow Holder to be deposited by Buyer to carry out this Escrow with respect to the Property.

4.5 Seller Required to Deliver.

Before the Close of Escrow with respect to the Property, Seller shall deposit into the Escrow the following (properly executed by Seller and acknowledged, if applicable):

- (a) Grant Deed substantially in the form attached as Exhibit C.
- (b) a non-foreign affidavit with respect to Seller substantially in the form attached hereto as Exhibit F; and
- (c) all other documents required by this Agreement or as reasonably required by the Escrow Holder to be provided by Seller.

4.6 Conditions to the Close of Escrow. Escrow with respect to the Property shall not close until the following conditions have been satisfied:

- (a) Both parties have deposited with the Escrow Holder all sums and documents required to be deposited with respect to the Property, as provided in this Agreement;
- (b) Both parties have executed the Side Agreement substantially in the form attached as Exhibit B;

(c) Both parties have executed the Declarations of Restrictions attached hereto as Exhibit G; and

(d) Buyer's and Seller's obligations hereunder are expressly conditioned upon their respective representations and warranties contained in this Agreement being true and correct as of the close of Escrow.

4.7 Recordation of Documents and Delivery of Funds. Upon the Close of Escrow with respect to the Property, the Escrow Holder shall cause the Grant Deed for the Property being conveyed to be recorded in the Official Records of the Recorder's Office for the County of Alameda (the "Recorder's Office"), and the balance of the Purchase Price in Escrow, which is then required to be paid to Seller, shall be paid to Seller. The sum of \$677,000.00 shall be deposited into a holding escrow at Exchange Resources, Inc., San Francisco office ("Holding Escrow"). These funds are to be retained in said Holding Escrow and paid as required by the Side Agreement attached hereto as Exhibit B.

4.8 Prorations. Any assessments relating to the Property shall be prorated between Buyer and Seller as of the Close of Escrow based upon the latest available information; provided, however, that Seller shall be responsible for all assessments which appear on a supplemental tax bill for the Property by reason of any event occurring with respect to the Property prior to the Close of Escrow. If any assessments come to the attention of either party, following the Close of Escrow, which should have been prorated as of the Close of Escrow, the parties agree to make the necessary adjustments and pay the differences in such sums within ten (10) days of the calculation of such assessments. Said prorations shall be based upon a thirty (30) day month and a three hundred sixty (360) day year.

4.9 Costs of Escrow.

4.9.1 Seller shall pay the following costs of Escrow as to the Property:

- (a) The cost of a CLTA Standard Coverage Form Owner's Policy of Title Insurance;
- (b) one half (50%) of the Escrow fee;
- (c) the transfer tax imposed by the County of Alameda, if any;
- (d) recording fees for any documents needed to clear title; and

4.9.2 Buyer shall pay the following costs of Escrow as to the Property:

- (a) The cost of an ALTA Extended Coverage Form Policy of Title Insurance in excess of the CLTA Policy, if such Extended coverage is elected pursuant to Paragraph 2.3;
- (b) one-half (50%) of the Escrow fee;
- (c) recording fees related to the Grant Deed, if any; and
- (d) the service fee, if any, on the amount retained in the Holding Escrow.

4.10 Fees and Commissions. Buyer and Seller each represent and warrant to the other that no broker, agent or finder, licensed or otherwise, has been engaged by either party in connection with the transaction contemplated by this Agreement. In the event of any claim for

broker's, agent's or finder's fees or commissions in connection with the transaction, the party hereto upon whose alleged statement, representation or agreement such claim or liability arises shall indemnify, protect, save, hold harmless and defend the other party hereto from and against such claim and liability.

4.11 Escrow Cancellation Charges. If this Escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all Escrow cancellation charges. If the Escrow shall fail to close for any reason other than the default of a party, each party shall pay one-half (1/2) of all Escrow cancellation charges.

4.12 Return of Documents and Funds Upon Cancellation. Except as otherwise set forth herein, if Escrow fails to close because of Buyer's default Seller shall be entitled to One Hundred and Fifty Thousand Dollars (\$150,000.00), and all documents deposited into Escrow shall be returned to the party which so deposited them.

5. REPRESENTATIONS AND WARRANTIES/CONDITION OF PROPERTY.

5.1 Condition of Property. Other than as specifically represented and warranted in section 5.2, below, Seller shall convey and Buyer shall accept the Property, including all soils and existing foundations on the Property as of the Reference Date, "As Is" without any representation, warranty or guarantee by Seller as to quality, quantity, condition or that the Property is fit or in condition to be used for any purpose. Seller shall have no obligation to make any repair, alteration or adjustment to, or because of the Property, and Seller shall not be liable for any patent or latent defects in the Property except as stated in sections 5.1.1 and 5.1.2. Seller shall not import any soil or other material onto the Property from and after the Reference Date without the prior written consent of Buyer.

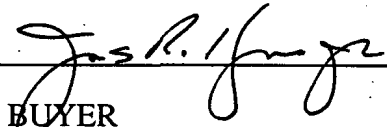
5.1.1 Except as specifically described in the City's letter dated February 3, 2000, attached hereto as Exhibit H, Seller shall convey the Property free of any fixtures, artwork, construction or demolition debris from the University Village Step 1 housing project or equipment and materials by Closing or April 15, 2000 whichever is later. Seller does not represent or warrant that it owns or has the right to transfer those items described in Exhibit H. Buyer shall be responsible for any trespasser on or about the Property as of and after the Closing.

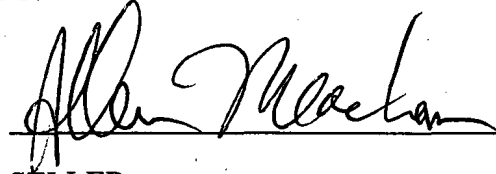
5.1.2 The Property shall be delivered at Closing in the condition set forth in section 5.1.1 above, unoccupied except for the portion of the Property leased to BOSS. If it is not delivered in this condition and is not ready for occupancy by the Buyer or its agents immediately upon Closing, the Seller shall pay to Buyer the sum of five hundred dollars (\$500.00) per day as liquidated damages until Seller shall place the Property in the condition described in Section 5.1.1 above. Such sum shall be liquidated damages for Seller's failure to perform. Because time is of the essence in this regard, even a one-day delay in delivery of the Property as set forth above shall trigger the requirement herein that the Seller pay such sums.

THE PARTIES AGREE THAT IT IS DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES THAT THE BUYER WILL SUSTAIN IN THE EVENT OF AND BY REASON OF SELLER'S FAILURE TO DELIVER THE PROPERTY IN THE CONDITION SO DESCRIBED. ACCORDINGLY, THE PARTIES AGREE THAT THE AMOUNT OF FIVE HUNDRED DOLLARS (\$500.00) PER DAY IS THE BEST REASONABLE ESTIMATE OF SUCH DAMAGES. THE PARTIES HAVE INITIALLED BELOW TO ESTABLISH THEIR INTENT AS TO LIQUIDATED DAMAGES PURSUANT TO THE PROVISIONS OF THE CALIFORNIA CIVIL CODE, AND THE PARTIES

EXPRESSLY AGREE THAT SUCH LIQUIDATED DAMAGES WILL NOT BE DEEMED A FORFEITURE OR A PENALTY.

ACCEPTED:


BUYER


SELLER

5.2 Seller's Representations. Seller represents that the matters set forth in this paragraph 5 are true and correct to the best of Seller's knowledge as of the date hereof and shall be true and correct as of the date of the close of Escrow for the Property. If Seller discovers facts or events occurring after the date hereof which make any of said representations and warranties false or misleading in any material respect as of the close of Escrow, Seller shall promptly disclose the same in writing to Buyer, and Buyer shall have the right to terminate this Agreement.

5.2.1 Seller has no knowledge (i) of the release of any Hazardous Substance in or about the Property except for those matters disclosed in conformance with paragraph 3, and (ii) of any pending or threatened proceedings regarding the presence, release, threat of release, placement, generation, transportation, storage, treatment or disposal of Hazardous Substances on the Property. "Hazardous Substance" as used herein means any matter which has been determined by any existing regulations, order or rule promulgated by a governmental authority of appropriate jurisdiction, to constitute a hazardous or toxic waste, substance or material under any federal, state or local statute, law, rule, regulation, ordinance or enactment of any governmental authority. By disclosing the matters included in the Materials described in paragraph 3, Seller has complied fully with 25359.7 of the California Health and Safety Code.

5.2.2 Seller is the sole owner of the Property and, except as limited in the next sentence and in paragraph 4.2 above, has the full right and authority to enter into this Agreement and consummate the transaction contemplated herein, and the person signing this Agreement on behalf of Seller is authorized to so sign. Seller's obligation to consummate the transaction is contingent upon approval of the transaction by The Regents or its delegated authority.

5.2.3 Seller is a California corporation, duly formed and validly existing under Article IX, Section 9 of the California Constitution and is qualified to do business in the State of California.

5.2.4 Entry into this Agreement and the performance by Seller of its obligations hereunder does not contravene or constitute a breach of any agreement, contract or indenture to which Seller is a party.

5.2.5 All documents delivered by Seller to Buyer pursuant to this Agreement are true, correct and complete originals or copies of the originals thereof.

5.2.6 Seller has no knowledge regarding any unrecorded leases, liens, easements or encumbrances which may affect title to the Property and is not aware of any other matter than as disclosed in paragraph 2.1(l) above, or other parties in possession of the Property or any portion thereof, or any person or entity having any right thereto, except for any and all trespassers.

5.2.7 Other than the Agreement of Restrictions to be executed by Buyer and Seller pursuant to this Agreement, to the best of Seller's actual knowledge, there are no contracts

or other agreements for services, supplies or materials affecting the use, operation or management of the Property which are unrecorded and which would be binding upon the Property following the close of Escrow.

5.2.8 To the best of Seller's actual knowledge, there are no suits or claims pending or threatened with respect to, or in any manner affecting, the Property, and Seller has no knowledge of any circumstances which should or could reasonably form the basis for any such suits or claims which have not been disclosed in writing to Buyer by Seller.

5.2.9 Other than as disclosed in the Preliminary Title Report Exhibit E and the BOSS lease, Seller has not entered into, and there is none existing as of the date of this Agreement, any other agreement, written or oral, under which Seller is or could become obligated to sell the Property or any portion thereof, to a third party.

5.2.10 Seller will cooperate with Buyer, but at no expense to Seller, in any action or proceeding to enforce Hazardous Substance Laws (as defined in paragraph 6.3, below) or other claims based upon the presence of Hazardous Substances in, on, or under the Property.

5.2.11 Seller has undertaken and/or plans to undertake certain development projects on property along the north side of Codornices Creek as described in the University Village and Albany/Northwest Berkeley Properties Master Plan dated December 1997, which development project might affect the drainage of Codornices Creek. Seller shall not conduct any grading or other activity that would result in raising the water surface elevation of Codornices Creek on and over the Property at any rate of flow or in any manner adverse to the Property.

All of the above representations are made to the best of Seller's knowledge after due investigation. All of Seller's representations set forth in this Agreement shall survive the execution and delivery of this Agreement, the execution, delivery and recordation of the Grant Deed as to the Property, and the close of Escrow. Seller shall and does hereby agree to indemnify, defend and protect Buyer against and hold Buyer harmless from any loss, damage, obligation, liability and expense, together with all court costs and all reasonable attorneys' fees, which Buyer may incur by reason of any misrepresentation made by Seller or any breach of Seller's representations or warranties set forth in this Agreement.

5.3 Buyer's Representations and Warranties. Buyer warrants and represents that the facts set forth in this paragraph 5.3 are true and correct as of the date of the close of Escrow for the Property.

5.3.1 Buyer has the full right and authority to enter into this Agreement and consummate the transaction contemplated herein. Each of the persons signing this Agreement on behalf of Buyer is authorized to so sign. The execution, consent or acknowledgment of no other person or entity is necessary in order to validate the execution of this Agreement by Buyer or permit the consummation of the transaction contemplated herein.

5.3.2 Buyer is a political subdivision of the State of California, duly formed and validly existing under the laws of, and qualified to do business in, the State of California.

5.3.3 Entry into this Agreement, and the performance by Buyer of its obligations hereunder, does not contravene or constitute a breach of any agreement, contract or indenture to which Buyer is a party or any statute, ordinance, judicial decision or order. Any action required pursuant to the California Environmental Quality Act as a result of the sale and purchase

contemplated by this Agreement will be carried out by Buyer, which shall be the "lead agency" for any such action.

5.3.4 It is the intention of the parties that the uses to which Buyer shall dedicate the Property shall constitute public use, subject to the terms and conditions as stated in Declaration of Restrictions, as it may from time to time hereafter be amended and as permitted by California law; consequently, Buyer represents and warrants that it will dedicate the Property to public use and honor the terms and conditions in the Declaration of Restrictions.

5.3.5 Buyer intends to regrade the Property following Closing which activity might affect the drainage of Codornices Creek which forms the northern boundary of the Property. Buyer shall not conduct any grading or other activity that would result in raising the water surface elevation of Codornices Creek on and over Grantor's adjoining property at any rate of flow or in any manner adverse to Grantor's adjoining property.

5.3.6 All of Buyer's representations and warranties set forth in this Agreement shall survive the execution and delivery of this Agreement; the execution, delivery and recordation of the Grant Deed as to the Property; and the close of Escrow. Buyer shall and does hereby agree to indemnify, defend and protect Seller against, and hold Seller harmless from, any loss, damage, obligation, liability and expense, together with all court costs and all reasonable attorneys' fees, which Seller may incur by reasons of any material and intentional misrepresentation made by Buyer or any breach of any of Buyer's representations or warranties set forth in this Agreement.

6. RELEASE AND INDEMNITY.

6.1 Release. Buyer fully releases and discharges Seller from and relinquishes all rights, claims and actions that Buyer may have or acquire against Seller which arise out of or are in any way connected with (i) the presence of Hazardous Substances on, under or about the Property (including but not limited to any undiscovered Hazardous Substances located beneath the surface of the Property) other than Hazardous Substances as to which, (a) Seller had actual knowledge as of the Closing which was not disclosed pursuant to paragraph 3 above, and (b) the presence of which was caused by the actions of Seller, (ii) violations of any Hazardous Substances Laws pertaining to the Property or the activities thereon and (iii) the sale or transfer (including, without limitation, any and all state or local sales or use tax thereon) of the Personal Property. This release applies to all described rights, claims and actions, whether known or unknown, foreseen or unforeseen, present or future. Buyer specifically waives application 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

6.2 Indemnity. Buyer shall defend, indemnify and hold harmless Seller from and against all claims, damages, losses, costs, expenses and liabilities, including, but not limited to all attorneys' fees and court costs and expert witness fees paid or incurred by Seller, (collectively, "Claims") which arise out of or are in any way connected with (i) violations of any Hazardous Substances Laws applicable to the Property or the activities thereon after the Closing; (ii) the use, maintenance, operation, ownership or possession of the Property after Closing; and (iii) the sale or transfer (including, without limitation, any and all state or local sales or use tax thereon) of the Personal Property. Such indemnity shall not extend to claims arising out of the presence of Hazardous Substance in, on, or under the Property as to which Seller had actual knowledge as of

the closing, which was not disclosed pursuant to paragraph 3 above and which was caused by the actions of Seller.

6.3 Meaning. For purposes of this Section 6, all references to "Seller" shall include: (i) Seller's Regents, officers, employees and agents, and (ii) the heirs, successors, personal representatives and assigns of Seller's Regents, officers, employees and agents. The term "Hazardous Substances Laws" shall mean all current and future laws, statutes, ordinance, judgments, decrees or governmental regulations relating to control of Hazardous Substances or the effect of Hazardous Substances on the environment.

6.4 Non-Waiver Provision. By signing this Agreement and purchasing the Property, Buyer is not waiving any claim, action or cause of action, past, present or future, which it may have against Seller as a result of flooding of Codornices Creek downstream from 10th Street.

6.5 Effectiveness. The provisions of this Section 6 shall be effective upon the Closing and shall survive the Closing or termination of this Agreement.

7. GENERAL PROVISIONS.

7.1 Appurtenant Rights and Documents. The conveyance of the Property to Buyer shall include the transfer to Buyer of all of Seller's right, title and interest in and to the Materials, and any and all plans, engineering surveys, reports, maps, permits, development rights, appurtenant easements and rights of way and all sewer and utility rights connected with the Property.

7.2 Possession. Possession of the Property shall be delivered to Buyer at close of Escrow free and clear of any rights of others to occupancy or use thereof; except for those reservations set forth in Paragraph 2 and subject to Paragraph 5.1.

7.3 Incorporation of Exhibits. All exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

7.4 Attorneys' Fees. In any action between Buyer and Seller seeking enforcement of any of the terms and provisions of this Agreement or a declaration as to the meaning hereof, or otherwise in connection with the Property, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys' fees and reasonable fees of expert witnesses.

7.5 Notices. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered or sent by United States registered or certified mail, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

If to Seller: Real Estate Services Group
The University of California Office of the President
1111 Franklin Street, 6th Floor
Oakland, California 94607-5200

With Copies to: Lloyd C. Lee, Esquire
The Regents of the University of California
1111 Franklin Street, 8th Floor
Oakland, California 94607-5200

If to Buyer: City of Berkeley
Office of the City Manager
1900 Addison Street, 3rd Floor
Berkeley, CA 94704

With Copy to: City Attorney
City of Berkeley
1947 Center Street, 1st Floor
Berkeley, CA 94704

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt records as the date of delivery or as of the date of first attempted delivery to the address of the addressee, if sent by mail. Any party may change its address for purposes of this paragraph by giving notice to the other party and to the Escrow Holder as herein provided.

7.6 Assignment. Buyer may not assign its rights and obligations under this Agreement.

7.7 Binding Effect. Subject to the provision of paragraph 6.6 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

7.8 Entire Agreement; Amendments. This Agreement and the Exhibits thereto contain all of the agreements of the parties. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

7.9 Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

7.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

7.11 Survival. Each of the covenants, agreements, indemnifications, representations and warranties herein shall survive the closing of Escrow and the transfer of title to the Property to Buyer.

7.12 Time of the Essence. Time is of the essence of this Agreement and each and every provision hereof. Failure of either Escrow to close on the date set forth in paragraph 4.3 above through no fault of Seller will constitute, at Seller's election, a default hereunder.

7.13 Further Assurances. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.

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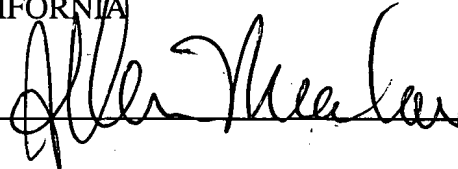
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

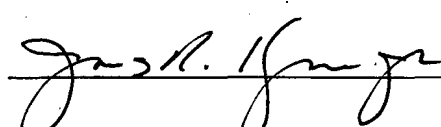
SELLER:

BUYER

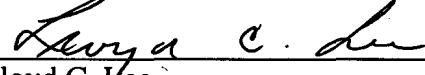
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

THE CITY OF BERKELEY

By 

By 

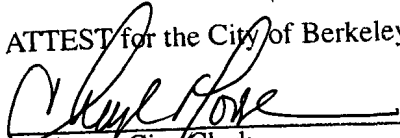
APPROVED AS TO LEGAL FORM


Lloyd C. Lee
University Counsel of The Regents of the University of California

Approved as to form


City Attorney.

ATTEST for the City of Berkeley


Assistant City Clerk

Registered by:


City Auditor

LIST OF EXHIBITS

- Exhibit A Legal Description
- Exhibit B Side Agreement
- Exhibit C Grant Deed
- Exhibit D Materials
- Exhibit E Preliminary Title Report
- Exhibit F Certificate Under Foreign Investment In Real Property Tax Act
- Exhibit G Declaration of Restrictions
- Exhibit H Letter of 2/3/00 from Buyer

EXHIBIT A

EXHIBIT A

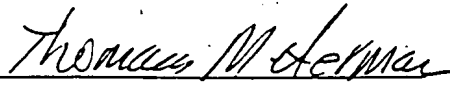
(Commonly known as 4th Street and Harrison Street Property)

All that certain real property situated in the City of Berkeley, County of Alameda, State of California, more particularly described as follows:

Commencing at a City of Berkeley street monument at the intersection of 4th Street and Harrison Street as shown on a Record of Survey map filed in Book 23 of Records of Survey, Pages 84-86, Alameda County Records; thence South $81^{\circ}51'54''$ West, 282.19 feet to the intersection of the North line of said Harrison Street (formerly Durant Street) with the East line of Third Street, being the East line of the Southern Pacific Railroad, as said streets are shown on the "Map of the I. M. Wentworth Boot and Shoe Company's Tract" filed May 11, 1878 in Book 6 of Maps, Page 16, in the office of the County Recorder of Alameda County and the POINT OF BEGINNING of this description; thence along said East line of said Southern Pacific Railroad (Third Street) North $13^{\circ}12'23''$ West (Record: North $14^{\circ}30'$ West), 545.90 feet to the intersection of said East line with the centerline of Codornices Creek, being the city boundary between Albany and Berkeley; thence along said centerline and said boundary, more or less, as follows: North $85^{\circ}28'03''$ East, 36.09 feet; thence North $82^{\circ}43'52''$ East, 29.53 feet; thence North $80^{\circ}13'56''$ East, 36.14 feet; thence North $88^{\circ}29'45''$ East, 40.56 feet; thence North $85^{\circ}18'01''$ East, 39.11 feet; thence North $83^{\circ}31'23''$ East, 34.07 feet; thence North $85^{\circ}03'17''$ East, 33.79 feet; thence North $83^{\circ}19'16''$ East, 29.16 feet; thence North $84^{\circ}59'22''$ East, 29.15 feet; thence South $75^{\circ}34'00''$ East, 18.20 feet; thence North $87^{\circ}58'34''$ East, 50.73 feet; thence North $84^{\circ}23'26''$ East, 81.02 feet; thence North $86^{\circ}29'33''$ East, 55.43 feet; thence South $85^{\circ}23'17''$ East, 23.86 feet; thence North $67^{\circ}36'03''$ East, 19.87 feet; thence South $85^{\circ}38'45''$ East, 8.61 feet more or less to the intersection of said centerline of Codornices Creek with the northerly extension of the West line of 5th Street, as said street is shown on said map of the I. M. Wentworth Boot and Shoe Company's Tract; thence leaving said centerline, and said city boundary between Albany and Berkeley, along said northerly extension and said West line of 5th Street South $13^{\circ}13'03''$ East, 459.74 feet (Record: South $14^{\circ}30'$ East, 459.62 feet) to the intersection of said West line with said North line of Harrison Street; thence along said North line of Harrison Street South $76^{\circ}46'57''$ West, 556.09 feet (Record: South $75^{\circ}30'$ West, 556.00 feet) to the point of beginning and the end of this description and containing 6.44 acres more or less.

A.P.N. 060-2383-001-01

The basis of bearings for this description is South $13^{\circ}10'39''$ East – between found City of Albany street monuments at the Northeast corner of San Pablo Avenue and Dartmouth Street and the Northeast corner of San Pablo Avenue and Solano Avenue based on the California Coordinate System NAD '83 Zone III as shown on a map filed August 5, 1999 in Book 23 of Records of Survey, Pages 84-86, Alameda County Records.


Thomas M. Herman, P.L.S. 4805
License Expires 9-30-00

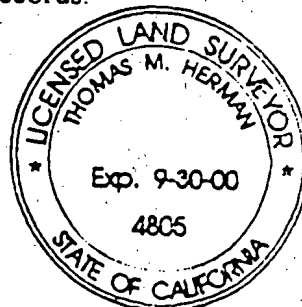


EXHIBIT B
SIDE AGREEMENT

By and Between

The City of Berkeley and The Regents of the University of California

SIDE AGREEMENT

By and Between

The City of Berkeley and The Regents of the University of California

This Agreement ("Agreement"), dated March 30, 2000, is by and between the CITY OF BERKELEY, (the "City"), a political subdivision of the State of California, and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, (the "Regents"), a California corporation, on behalf of the University of California, Berkeley ("UCB").

RECITALS

WHEREAS, the City wishes to purchase from the Regents certain real property (the "Property") which is located at Fourth and Harrison Streets in the City of Berkeley, and

WHEREAS, the Regents is willing to consent to the sale, provided the future uses of the Property are restricted; and

WHEREAS, the parties intend, pursuant to the terms of a Purchase Agreement and Escrow Instructions ("Purchase Agreement"), dated of even date herewith, to permit the City to offset a portion of the purchase price of the Property by providing certain services.

WHEREAS, the City, the Regents and the City of Albany have commenced a study to design improvements to the Codornices Creek channel. Such improvements may include those items referred to in Paragraph 5, below, and may also alter the course of Codornices Creek by introducing a so-called "meandering" course.

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

1. **Services Credit.** The Regents will allow the City a dollar for dollar credit of up to \$677,000 toward the Property's purchase price by providing certain services ("Services") which conform to Paragraph 5, below. However, notwithstanding any language or implication to the contrary in this Agreement, nothing in this Agreement shall require the City to provide any of the services described herein, and the City may elect not to undertake any of said Services. The Parties hereto each jointly designate Exchange Resources, Inc. as the escrow holder to retain \$677,000 of the purchase price, after the closing of the purchase, in an interest bearing account, with the interest accruing to the benefit of The Regents ("Holding Escrow"). Exchange Resources, Inc. shall be instructed to release portions of the retained funds to the City as Services are performed, in accordance with the provisions of Paragraph 2, provided, however, that in no event shall such escrow company release to City an accumulative amount in excess of \$677,000. The City shall be responsible for payment of all fees for the Holding Escrow.
2. **Acceptance of Services.** The City shall provide The Regents with written notice of the City's intention to provide a Service (as defined in paragraph 5, below) and the City's estimate of the value of the Service. Upon receipt of such notice, Regents shall either accept or reject performance of such Service and the value proposed by the City for such

Service. The Regents shall not unreasonably reject either the Service or the proposed value for the Service. The Regents shall provide the City with written notice of its acceptance or rejection within ten (10) business days of City's notice.

If The Regents rejects the proposed Service or the City's proposed valuation, responsible officers of each party shall meet and confer within ten (10) business days in a good faith effort to resolve the issue. If no agreement is reached, the City shall be under no obligation to render the Service, and there shall be no release of funds from the Holding Escrow as a result of any action of the City with respect thereto.

If The Regents accepts the City's proposal, the City shall complete the Service and provide written notice of completion thereof. The Regents shall, if the Service has been duly completed, issue a written notice of acceptance within ten (10) days after receipt of the City's notice.

If The Regents accepts the Service, it shall provide a copy of its notice to Exchange Resources, Inc., together with instructions to release to City from the Holding Escrow account an amount equal to the agreed upon value of the Service.

3. **Requirements for Services.** The City's provision of all Services shall (1) be coordinated with UCB's designated representative to ensure that they do not interfere with operations and development of any campus functions and do not adversely affect the City's ability to manage the Property; (2) not violate any applicable federal, state, county or city statute, ordinance or regulation; (3) be among the items listed in paragraph 5, below; and (4) be compatible with the University Village and Albany/Northwest Berkeley Properties Master Plan and the Associated Environmental Impact Report.
4. **Indemnification.** The Regents and City shall each indemnify, defend and hold harmless the other and their respective officers, agents and employees from and against any claims, damages, expenses (including an amount equal to reasonable attorneys' fees) or liabilities arising out of or in any way connected with this Side Agreement, including, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property or for death or injury to any person or persons in proportion to and to the extent that such claims, damages, expenses, or liabilities arise from the negligence or intentional wrongful acts or omissions of the indemnifying party or its respective officers, agents, or employees.
5. **Description of Services.** Subject to satisfaction of the requirements of paragraphs 2 and 3 above, the following shall be considered to be Services for purposes of release of funds from the Holding Escrow:
 - (a) Construction and/or funding of improvements to Codornices Creek that The Regents would otherwise be required to construct and/or fund under a Creek Agreement as described in Paragraph 7, below.
 - (b) The design and construction of an emergency access bridge at 6th Street, connecting University Village to 6th Street in Berkeley, if The Regents determine that a bridge is required, or the design and construction of an emergency access bridge at 8th Street if: (i) Step 2 planning requires removal of an existing culvert for flood control at that location, or (ii) if the Regents determines that removal of the culvert is a better solution for Step 1 flood control.


- (c) The design and construction of a bridge over Codornices Creek at 10th Street, if requested and approved by the Regents in support of commercial development on San Pablo Avenue.
 - (d) Installation of a traffic light at Harrison Street and San Pablo Avenue if it is identified as a mitigation measure for commercial development of Regents' property on San Pablo Avenue.
 - (e) Maintenance of the Codornices Creek flood control improvements between San Pablo and the western end of the Regents' adjacent property on the northern side of the Creek for a period not to exceed twenty (20) years from the date of completion of such improvements.
 - (f) The use by The Regents of the facilities as described in 2.6 Declaration of Restrictions (Exhibit G to the Purchase Agreement).
6. **Creek Maintenance.** The City's obligation (exclusive of liability) to maintain the portion of Codornices Creek referred to in paragraph 5(e), above, should the City elect to provide that Service, shall conform with all applicable environmental requirements and shall not exceed twenty (20) years from the date the credit is taken. At the end of the twenty (20) year period, The Regents shall assume its pro rata share of maintaining this portion of the Creek. The Regents' portion of such creek maintenance will apply to trimming, debris removal, and such activities required to keep the creek in an open and flowing state, but will not include the additional cost of trail and other maintenance related to the creek as a public asset. An Agreement governing the provision of such maintenance shall be executed by the City and UCB prior to commencement of such maintenance.
7. **Boundary Adjustments and Creek Modifications.**
- (a) The parties intend that construction of any restoration improvements to Codornices Creek west of 5th Street and/or alteration of the existing course of the Creek west of 5th Street shall be undertaken only upon a written agreement between the parties and the City of Albany ("Creek Agreement"). Such Creek Agreement shall describe such improvements and/or altered course; shall specify each party's responsibility for funding, construction, and maintenance of such improvements and/or alteration; and shall allocate liability arising from such improvements and/or course alteration.
 - (b) The City and The Regents shall cooperate in executing such documents as are reasonably required to effectuate a lot line adjustment for the Property to reflect the change, if any, in the size of the Property and/or the alignment of the northern boundary thereof as a result of such improvements and/or course alteration, and shall share equitably the costs of documenting any such adjustment. The City shall be responsible to assure that any changes in the boundary of the Property will be undertaken in conformance with applicable law regarding the political boundary between the City of Berkeley and the City of Albany.
 - (c) Unless and until a Creek Agreement is executed by the parties, neither party shall construct improvements to the existing course of Codornices Creek west of 5th Street, or alter the course of the Creek west of 5th Street, without the written consent of the other party.

(d) No provision of this Paragraph 7 shall be construed as relieving either party from its obligation to maintain the Creek, or to prohibit the construction of temporary devices to relieve emergency flooding conditions.

8. **Term.** Except with respect to subparagraph 5(e) and paragraph 6 above, all Services must be completed and accepted on or before December 31, 2005 to qualify for a credit toward the Property's purchase price. All funds remaining in escrow after December 31, 2005 shall be paid to the Regents. This Agreement will remain in effect until December 31, 2005 or until terminated by written mutual agreement, if earlier, or unless extended by mutual agreement of the parties, which agreement shall not be unreasonably withheld.

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

City of Berkeley


Authorized Signature

James R. Keene, Jr.
Printed Name

CITY MANAGER
Title

The Regents of the
University of California


Authorized Signature

Edward J. Denton
Printed Name

VICE CHANCELLOR
Title

EXHIBIT C
GRANT DEED

TITLE ORDER NO. _____ ESCROW NO. _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The Undersigned Grantor declares that the Documentary transfer tax is \$0 - exempt under Revenue & Taxation code 11922

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("GRANTOR"), hereby GRANT(S) to:

THE CITY OF BERKELEY, a political subdivision of the State of California ("GRANTEE"),

the real property situated in the City of Berkeley, County of Alameda, State of California as further described in attached Exhibit 'A' attached hereto and made a part hereof and excepting there from:

A reservation to Seller, its successors and assigns of the mineral interest and not as a royalty interest, all oil, gas, other minerals and hydrocarbon substances, and accompanying fluids including, but not by way of limitation, all geothermal resources in, under, or produced and saved from the real property granted thereby, together with any of the forgoing which may be allocated thereto pursuant to any pooling or unitization agreement or ratable takings program to which Seller may subscribe, and together with the sole and exclusive right to prospect for, drill for, produce, and remove such oil, gas, other minerals and hydrocarbon substances and geothermal resources, from the Property below the depth of five hundred feet (500') from the surface of said real property, without the right of surface entry, but including the right to slant drill from adjacent property, the right to utilize subsurface storage for natural substances, and the right to maintain subsurface pressures.

Subject, however, to that certain Declaration of Restrictions previously recorded.

GRANTOR:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____
Leigh Trivette, Secretary of The Regents

Dated: _____

Accepted by GRANTEE:

CITY OF BERKELEY

By: _____
(Name & Title)

Dated: _____

State of _____

County of _____

On _____ before me _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (seal)

EXHIBIT D
MATERIALS

EXHIBIT D

MATERIALS

Office of Environment, Health & Safety (EH&S) files on the Fourth and Harrison Streets, Berkeley property for disclosure to Buyer of the property is listed below.

With the exception of the first three reports (numbers 1, 2 and 3 below), EH&S files indicate that copies of these reports have been submitted to the City of Berkeley Toxics Management Division (TMD) and should be on file in its office.

1. *Codomices Creek Water Quality Restoration*. Spring 1990, John J. Brault, senior thesis for University of California, Berkeley, Environmental Sciences 196 class. There is no record of this being submitted to City of Berkeley. It is referenced in the May 1994 Jonas and Associates soil investigation report. It is probably available in a campus library.
2. *Phase I Environmental Assessment Due Diligence Report for the Sale or Lease of Campus Related Property*. 1991. Prepared by PEP. The EH&S file copy has a date of August 2, 1994 but it is our understanding that this is a version of the 1991 assessment completed by PEP and referenced in the May 31, 1994 Jonas and Associates soil investigation report. There are no records indicating that this phase I report was ever submitted to the City of Berkeley.
3. *Flood Studies and Site Planning: Codomices and Village Creeks at Albany Village*. March 24, 1993. Phillip Williams & Associates. No record of this being submitted to the City of Berkeley.
4. Memorandum from Fred Remington, Recycled Wood Products dated November 4, 1991.
5. *Soil Investigation Report Albany Village Redevelopment Study, Fourth and Harrison*. May 31, 1994 Jonas and Associate. Prepared for UC Berkeley. Submitted to City of Berkeley Toxics Management Division June 13, 1994. This contains copies of 1986 tank pull reports.
6. *Results of Well Sampling and Abandonment, 4th and Harrison*. November 11, 1996, Golder Associates. Submitted to the City of Berkeley Toxics Management Division on January 9, 1997 as an attachment to the UST closure request.
7. *Underground Storage Tanks Closure Report, Fourth and Harrison, Berkeley, CA*, January 1997, University of California Office of Environment,

Health & Safety (EH&S). This was submitted to the City of Berkeley Toxics Management Division on January 9, 1997.

8. *Request for Closure on Underground Storage Tank Removals, Harrison and Fourth Streets*, January 9, 1997. This is a submission to City of Berkeley Toxics Management Division by EH&S. This submission includes the 11/11/96 Golder Associates well abandonment report *Results of Well Sampling and Abandonment, 4th and Harrison*, the *1/97 Underground Storage Tanks Closure Report, Fourth and Harrison, Berkeley, CA* prepared by UC Berkeley EH&S, Forms A & B for the USTs, and the RWQCB Site Closure Summary

9. *Case Closure File No. 2198.17 (KLG)*, January 30, 1997 letter from Steve Morse, California Regional Water Quality Control Board to UC Regents, closing the UST site. Note that this letter states "If a change in land use is proposed, the owner must promptly notify this agency." RWQCB contact: Kevin Graves (510) 286-0435.

10. *Soil and Ground Water Investigation Report for Fourth and Harrison Streets Site*, July 9, 1997 Ogden Environmental and Energy Services.

11. In addition to these reports, there have been numerous letters of correspondence with the TMD about the subjects of these reports and some other, more minor, characterization and waste disposal issues. These, too, should be on file at the TMD office.

EXHIBIT E
PRELIMINARY TITLE REPORT

SCHEDULE A

Order No: 9560104 SW

Your Ref:

1. The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE

2. Title to said estate or interest at the date hereof is vested in:

REGENTS OF THE UNIVERSITY OF CALIFORNIA

3. The land referred to in this report is situated in the State of California, County of Alameda and is described as follows:

SEE ATTACHED DESCRIPTION

EXHIBIT A

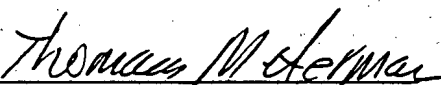
(Commonly known as 4th Street and Harrison Street Property)

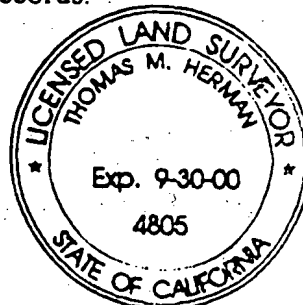
All that certain real property situated in the City of Berkeley, County of Alameda, State of California, more particularly described as follows:

Commencing at a City of Berkeley street monument at the intersection of 4th Street and Harrison Street as shown on a Record of Survey map filed in Book 23 of Records of Survey, Pages 84-86, Alameda County Records; thence South $81^{\circ}51'54''$ West, 282.19 feet to the intersection of the North line of said Harrison Street (formerly Durant Street) with the East line of Third Street, being the East line of the Southern Pacific Railroad, as said streets are shown on the "Map of the I. M. Wentworth Boot and Shoe Company's Tract" filed May 11, 1878 in Book 6 of Maps, Page 16, in the office of the County Recorder of Alameda County and the POINT OF BEGINNING of this description; thence along said East line of said Southern Pacific Railroad (Third Street) North $13^{\circ}12'23''$ West (Record: North $14^{\circ}30'$ West), 545.90 feet to the intersection of said East line with the centerline of Codornices Creek, being the city boundary between Albany and Berkeley; thence along said centerline and said boundary, more or less, as follows: North $85^{\circ}28'03''$ East, 36.09 feet; thence North $82^{\circ}43'52''$ East, 29.53 feet; thence North $80^{\circ}13'56''$ East, 36.14 feet; thence North $88^{\circ}29'45''$ East, 40.56 feet; thence North $85^{\circ}18'01''$ East, 39.11 feet; thence North $83^{\circ}31'23''$ East, 34.07 feet; thence North $85^{\circ}03'17''$ East, 33.79 feet; thence North $83^{\circ}19'16''$ East, 29.16 feet; thence North $84^{\circ}59'22''$ East, 29.15 feet; thence South $75^{\circ}34'00''$ East, 18.20 feet; thence North $87^{\circ}58'34''$ East, 50.73 feet; thence North $84^{\circ}23'26''$ East, 81.02 feet; thence North $86^{\circ}29'33''$ East, 55.43 feet; thence South $85^{\circ}23'17''$ East, 23.86 feet; thence North $67^{\circ}36'03''$ East, 19.87 feet; thence South $85^{\circ}38'45''$ East, 8.61 feet more or less to the intersection of said centerline of Codornices Creek with the northerly extension of the West line of 5th Street, as said street is shown on said map of the I. M. Wentworth Boot and Shoe Company's Tract; thence leaving said centerline, and said city boundary between Albany and Berkeley, along said northerly extension and said West line of 5th Street South $13^{\circ}13'03''$ East, 459.74 feet (Record: South $14^{\circ}30'$ East, 459.62 feet) to the intersection of said West line with said North line of Harrison Street; thence along said North line of Harrison Street South $76^{\circ}46'57''$ West, 556.09 feet (Record: South $75^{\circ}30'$ West, 556.00 feet) to the point of beginning and the end of this description and containing 6.44 acres more or less.

A.P.N. 060-2383-001-01

The basis of bearings for this description is South $13^{\circ}10'39''$ East – between found City of Albany street monuments at the Northeast corner of San Pablo Avenue and Dartmouth Street and the Northeast corner of San Pablo Avenue and Solano Avenue based on the California Coordinate System NAD '83 Zone III as shown on a map filed August 5, 1999 in Book 23 of Records of Survey, Pages 84-86, Alameda County Records.


Thomas M. Herman, P.L.S. 4805
License Expires 9-30-00



SCHEDULE B

Page 1

Order No: 9560104 SW

Your Ref:

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in the policy form designated on the face page of this Report would be as follows:

- A 1. Property not taxable - University of California, Regents of.
- B 2. Any easement for water course over that portion of premises lying within the lines of CODORNICES CREEK and any changes in the boundary lines of premises that have occurred or may hereafter occur from natural causes and by imperceptible degrees.
- C 3. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument
Recorded : JULY 23, 1910, BOOK 4834 OF DEEDS, PAGE 257
Granted to : GREAT WESTERN POWER COMPANY
Purpose : DISTRIBUTION OF ELECTRICITY
Affects : PORTION
- D 4. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument
Recorded : APRIL 16, 1917, BOOK 2560 OF DEEDS, PAGE 138
Granted to : GREAT WESTERN POWER COMPANY
Purpose : DISTRIBUTION OF ELECTRICITY
Affects : PORTION
- E 5. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument
Recorded : SEPTEMBER 19, 1923, BOOK 494, PAGE 439, OFFICIAL RECORDS
Granted to : GREAT WESTERN POWER COMPANY
Purpose : DISTRIBUTION OF ELECTRICITY
Affects : PORTION
- P 6. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument
Recorded : SEPTEMBER 19, 1923, BOOK 516, PAGE 267, OFFICIAL RECORDS
Granted to : GREAT WESTERN POWER COMPANY
Purpose : DISTRIBUTION OF ELECTRICITY
Affects : PORTION
- F 7. Easement, upon the terms, covenants and conditions thereof, for the

SCHEDULE B (continued)

Order No: 9560104 SW

Your Ref:

purposes stated herein and incidental purposes created in that certain instrument

Recorded : DECEMBER 20, 1929, BOOK 2242, PAGE 383, OFFICIAL RECORDS
 Granted to : GREAT WESTERN POWER COMPANY
 Purpose : DISTRIBUTION OF ELECTRICITY
 Affects : PORTION

- c 8. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded : FEBRUARY 24, 1944, BOOK 4484, PAGE 352, OFFICIAL RECORDS
 Granted to : PACIFIC GAS AND ELECTRIC COMPANY
 Purpose : DISTRIBUTION OF ELECTRICITY
 Affects : PORTION

- # 9. Any private rights or easements over and across those portions of said land lying within the abandoned street or road, as described in Resolution of Abandonment or Vacations Nos. 2427, 1665 and 2993.

- r 10. Easement, upon the terms, covenants and conditions thereof, for the purposes stated herein and incidental purposes created in that certain instrument

Recorded : JANUARY 31, 1952, BOOK 6647, PAGE 39, OFFICIAL RECORDS
 Granted to : PACIFIC GAS AND ELECTRIC COMPANY
 Purpose : DISTRIBUTION OF ELECTRICITY
 Affects : PORTION

- J 11. Unrecorded Spur Track Agreement

Dated : NOVEMBER 21, 1951
 Executed By : SOUTHERN PACIFIC COMPANY
 And Between : CONSOLIDATED WESTERN STEEL CORPORATION
 As disclosed by the Grant Deed
 From : UNITED STATES STEEL CORPORATION, A NEW JERSEY CORPORATION
 To : THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, A CALIFORNIA CORPORATION
 Recorded : NOVEMBER 6, 1964, REEL 1359, IMAGE 863, SERIES NO. AW-179467, OFFICIAL RECORDS

- x 12. Any and all unrecorded leases.

- L 13. If extended coverage title insurance will be requested, or if this report has been issued to facilitate a request for extended coverage title

SCHEDULE B
(continued)

Order No: 9560104 SW

Your Ref:

insurance, then the following would also be exceptions to coverage:

- N Any facts, rights, interests or claims which are not disclosed by the public records but which could be ascertained by making inquiry of the parties or persons in possession of the herein described land.
- N Any easements, liens (including but not limited to any Statutory Liens for labor or materials arising from any on-going or recently completed works of improvement), encumbrances, facts, rights, interest or claims which are not shown by the public records but which could be ascertained by an inspection of the herein described land.
- O Discrepancies, conflicts in boundary lines, shortages in area, encroachments or any other facts which a correct survey of the herein described land would disclose which are not shown by the public records and the requirement that said survey meets with the minimum standards for ALTA/ACSM land title surveys.

O NOTE:

According to the Public Records, no Deed conveying the property described in this Report has been recorded within a period of five years prior to the date of this Report, except as shown herein:

None

R BC/kh
02/16/99

**SCHEDULE B
(continued)**

Order No: 9560104

SW

Your Ref:

CREDITORS' RIGHTS NOTE

NOTE: If a 1970 ALTA Owner's or Lender's or 1975 ALTA Leasehold Owner's or Lender's policy form has been requested, the policy, when approved for issuance, will be endorsed to add the following to the Exclusions From Coverage contained therein:

Loan Policy Exclusion:

Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

- (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
- (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or a judgment or lien creditor

Owner's Policy Exclusion:

Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

ASSESSOR'S PARCEL MAP

ASSESSOR'S MAP 60

Code Area No. 13-000

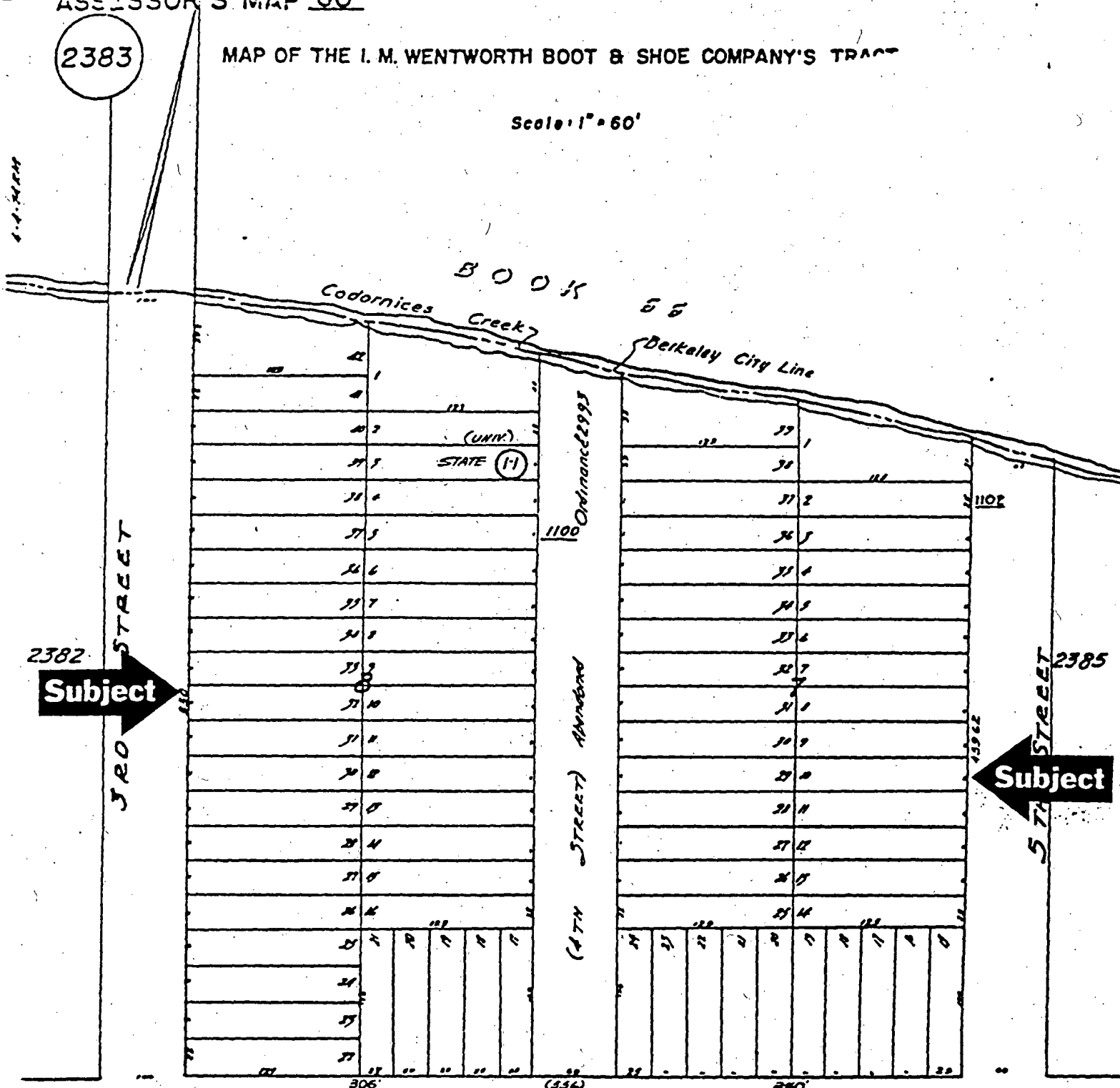
2383

MAP OF THE I. M. WENTWORTH BOOT & SHOE COMPANY'S TRACT

Scale: 1" = 60'

BOOK 55
Codornices Creek

Berkeley City Line



2382

Subject

3RD STREET

Ordinance 2993
(4TH STREET) Amendment

Subject

5TH STREET

2385

HARRISON STREET

2362

2361

Subject

STREET

2360

2359

As part of the settlement of a class action lawsuit, we are required to place this notification in all preliminary reports:

IF YOU BOUGHT, SOLD OR REFINANCED A HOME (RESIDENTIAL REAL PROPERTY) IN CALIFORNIA BETWEEN JULY 1, 1989 AND FEBRUARY 28, 1997, PLEASE READ THE FOLLOWING:

Pursuant to a Settlement Agreement in a class action lawsuit filed in the Superior Court for Los Angeles County, a settlement agreement has been entered into that provides persons who bought, sold or refinanced residential real property in the State of California between July 1, 1989 and February 28, 1997, with certain rights. If you are such a person and you are now engaged in an escrow transaction with Chicago Title Company, Gateway Title Company, Benefit Land Title Company or Fidelity National Title Insurance Company, you have the following rights:

If one of these companies previously handled a residential escrow transaction for you that involved residential real property in which a mortgage, promissory note, or similar debt instrument, repayment of which was secured by a duly recorded deed of trust, was fully paid, satisfied or discharged and a reconveyance of that deed of trust was executed and was delivered to one of those title companies for recording but was inadvertently not recorded, you have the right to request that a release of obligation or reconveyance be recorded in accordance with the terms of the Settlement Agreement.

To obtain this right you must:

(1) Establish to the satisfaction of the title company that you actually closed an escrow between July 1, 1989 and February 28, 1997, which was handled by one of the above-listed title insurance companies, in which a mortgage, promissory note, or similar debt instrument secured by a duly recorded deed of trust was fully paid, satisfied or discharged and a reconveyance of that deed of trust was executed and was delivered for recordation to the title company that handled the prior transaction. Proof of said transaction shall be made by presenting a closing statement, preliminary report, title insurance policy or a paid escrow invoice which identifies you and the prior deed of trust; and

(2) Request in writing the recording of a reconveyance or release of obligation in the event that one inadvertently had not been previously recorded in the escrow transaction previously handled by one of the above-named title companies.

LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
 - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy
 2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
 3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or the estate or interest insured by this policy
 4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
 5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
 6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.
-

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

EXCLUSIONS

In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorney's fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - * land use
 - * improvements on the land
 - * land division
 - * environmental protection

This exclusion does not apply to the violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
 - * a notice of exercising the right appears in the public records on the Policy Date
 - * the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
 - * that are created, allowed, or agreed to by you
 - * that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
 - * that result in no loss to you
 - * that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
 - * to any land outside the area specifically described and referred to in item 3 of Schedule A, or
 - * in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Someone claiming an interest in your land by reason of:
 - A. Easements not shown in the public records
 - B. Boundary disputes not shown in the public records
 - C. Improvements owned by your neighbor placed on your land
2. If, in addition to a single family residence, your existing structure consists of one or more Additional Dwelling Units, Item 12 of Covered Title Risks does not insure you against loss, costs, attorneys' fees, and expenses resulting from:
 - A. The forced removal of any Additional Dwelling Unit, or,
 - B. The forced conversion of any Additional Dwelling Unit back to its original use,

if said Additional Dwelling Unit was either constructed or converted to use as a dwelling unit in violation of any law or government regulation.

EXHIBIT F

CERTIFICATE UNDER FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

EXHIBIT F

**CERTIFICATE UNDER FOREIGN INVESTMENT
IN REAL PROPERTY TAX ACT (IRC § 1445)**

To inform THE CITY OF BERKELEY, a political subdivision of the State of California, ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required upon the transfer of certain real property to the Transferee by THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, ("Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

A. That Transferor is a United States person and is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

B. The Transferor's U.S. employer identification number is 94-3067788; and

C. The Transferor's office address is University of California, Real Estate Services Group, 6th Floor, 1111 Franklin Street, Oakland, California 94607, Attention: Director of Real Estate.

The Transferor understands that this Certificate may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

Date: _____, 1999

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA
A California Corporation

By: _____

Its: _____

EXHIBIT G

DECLARATION OF RESTRICTIONS

Recording requested by:

When recorded mail to:

PREAMBLE

The intent and purpose of this document is to restrict the use of the Property while fostering responsible community recreational use.

**DECLARATION AND ESTABLISHMENT OF PROTECTIVE
COVENANTS AND RESTRICTIONS**

This Declaration, dated _____, 2000, is made by THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("Declarant").

WHEREAS, Declarant owns certain real property described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Declarant intends by this agreement to establish restrictions, limitations and covenants that run with the Property and will be binding on all parties (and their successors) having or acquiring any right, title or interest in the Property; and

WHEREAS, it is the desire and intention of Declarant to sell the Property to the City of Berkeley and to impose on it mutually beneficial restrictions for the benefit of (a) the Property; (b) all real property adjacent to the Property which is owned, as of the date of this Agreement, by Declarant, as described in Exhibit B and C attached hereto, ("Adjacent Property") and (c) the present and future owners of the Property and the Adjacent Property;

NOW, THEREFORE, Declarant declares that all of the Property is held and will be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, covenants, and reservations, all of which are declared to be in furtherance of a plan for the sale and use of the Property, and are established for the purpose of enhancing and protecting the value, desirability, and aesthetic qualities of the Property and the Adjacent Property. All of the limitations, restrictions and covenants will run with the Property and will be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and will inure to the benefit of all the Property and the Adjacent Property and the future owners thereof. Each grantee of a conveyance or purchaser under a contract of sale covering any right, title or interest in the Property, by accepting a deed or contract of sale or agreement of purchase, accepts such document subject to, and agrees to be bound by, any and all of the limitations, restrictions, covenants, and reservations set forth in this Agreement.

Section 1 DEFINITIONS

1.1 “Adjacent Property” means all or any part of that real property located in the County of Alameda, State of California, lying within the boundaries shown on Exhibit B which is attached hereto.

1.2 “Games” means any form of group activity for recreation, sport or play (i.e., soccer, baseball), including related ceremonies.

1.3 “Facilities” means the area(s) designated for recreation, sport, or play and related support structures.

1.4 “Property” means all or any part of that real property lying within the boundaries as shown on Exhibit A, which is attached hereto.

1.5 “Shelter” means all or any part of the homeless shelter located on the Property as of the date hereof in the area designed as “Shelter Area” on Exhibit A.

Section 2 COVENANTS AND RESTRICTIONS

2.1 The Property shall be used exclusively and solely for (a) operation of the Shelter within the Shelter Area, and (b) recreation, including without limitation, Games; provided that such recreational use of the Property shall not start before 8:00 A.M. and shall end no later than 9:30 P.M. local time.

2.2 All Facilities at the Property shall be cleared of users and locked by 10:00 P.M. and shall remain locked until 7:00 A.M. and all lights, except for security lights, shall be turned off no later than 10:00 P.M.

2.3 Noise-generating maintenance equipment shall not be operated on the Property between the hours of 8:00 P.M. until 8:00 A.M.

2.4 Field lighting shall be low noise-generating, recreational level, and focused on the recreational facilities only. All reasonable measures shall be used by the Grantee to reduce glare onto that portion of the Adjacent Property designated as University Village in Exhibit B.

2.5 Grantee shall not install or permit the installation of a permanent, amplified sound system. Temporary sound systems may be used no more than two days per month for one hour each day but at no time used for a musical or sporting event. The sound of such systems when used shall not exceed the standards adopted by the City of Berkeley and in effect as of the date of this Declaration.

2.6 The playing fields shall be available for use by residents of University Village each year for two weeks during the period from June 15th through August 31st. The user fees and specific hours of such use shall be agreed to by Declarant and the owner of the Property on or before March 1st of each year.

2.7 The owner of the Property shall monitor and patrol the operational use of the facilities and shall meet and confer with Declarant as necessary to ensure the goals of both parties.

2.8 The size of the Shelter Area shall not be expanded, but the number of residents may be modified, provided that such modification shall not reduce the availability of the Property for Games.

Section 3 SCOPE AND DURATION

3.1 All the covenants and restrictions of this Declaration are imposed on the Property for the direct benefit of the Property, the owners of the Property, and the owners of the Adjacent Property as part of a general plan of improvement, development, use, occupation, and maintenance. The covenants and restrictions established in this Declaration will run with the land and will be binding on all parties (and their successors) having or acquiring any right, title, or interest in the Property.

Section 4 BREACH AND RIGHT OF ENFORCEMENT

4.1 Breach. Declarant, any owner of any of the Adjacent Property, or any owner of the Property, may, in the event of a breach of any restriction or covenant in this Declaration or a continuance of any such breach by appropriate legal proceedings take steps to enjoin, abate, or remedy the breach. It is agreed that damages are not an adequate remedy for breach, provided that no such legal proceedings shall be commenced unless and until the owner of the Property shall have received written notice of the breach and been afforded reasonable opportunity to cure the breach.

Every act or omission that violates in whole or in part any of the covenants and restrictions contained in this Declaration is declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, will be applicable and may be exercised by Declarant, the owner of any Adjacent Property, or any owner of the Property.

The remedies provided in this agreement for the breach of the covenants contained in this Declaration are cumulative; none of the remedies will be deemed exclusive.

A breach of the covenants and restrictions contained in this Declaration will not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value of any building site provided that any subsequent owner of such property will be bound by the covenants, whether that owner's title was acquired by foreclosure or in a trustee's sale or otherwise. A lender who acquired title by foreclosure or deed in lieu of foreclosure or trustee's sale will be obligated to cure any breach of the covenants or restrictions that occurred before that acquisition of title but will be bound by the covenants of this Declaration.

4.2 Right of Enforcement. The provisions in this Declaration will inure to the benefit of and be enforceable by Declarant, Declarant's successors or assigns, and the owner of any portion of the Property or Adjacent Property, and each of their legal representatives, heirs, successors, or assigns. The failure to enforce any covenant or restriction in this Declaration will not be deemed a waiver of the right to enforce thereafter. In any legal proceeding begun by anyone entitled to enforce or restrain a violation of any provision of this Declaration, the losing party or parties must pay the attorneys' fees of the winning party or parties in the amount fixed by the court in the proceeding. Any right reserved by Declarant in this Agreement is also reserved to Declarant's successors or any entity designated by Declarant in writing, the designation may be recorded with the Alameda County Recorder.

Section 5 INTERPRETATION

5.1 Interpretation or construction of any of the terms or covenants or restrictions in this Declaration will be in accordance with their plain meaning. The singular includes the plural whenever the context of this requires. The headings are not a part of this Declaration, and will not affect the interpretation of any provision.

5.2 SEVERABILITY

5.3 If any of the provisions of the Declaration are held to be invalid or unlawful by the final judgment of a Court of competent jurisdiction, that invalidity or illegality will not affect the validity of any other provisions of this Declaration.

Section 6 MODIFICATIONS, CHANGES, OR AMENDMENTS

6.1 Any modification, change, or amendment to any provision of this Declaration must be in writing duly executed and acknowledged by the owner or owners of the Property and Declarant, its successors and assigns in the Adjacent Property. Declarant, its successors and assigns shall negotiate in good faith any proposed amendments hereto and shall not unreasonably withhold consent thereto.

6.2 This Declaration and the equitable servitudes it creates may be terminated using the procedure for amendment as provided in Section 6.1, above.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first above written.

DECLARANT:

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

By: _____

APPROVED AS TO FORM:

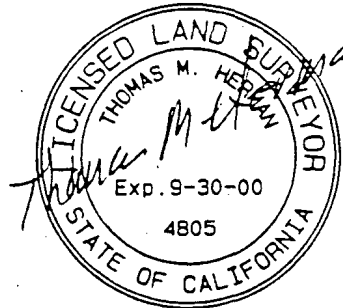
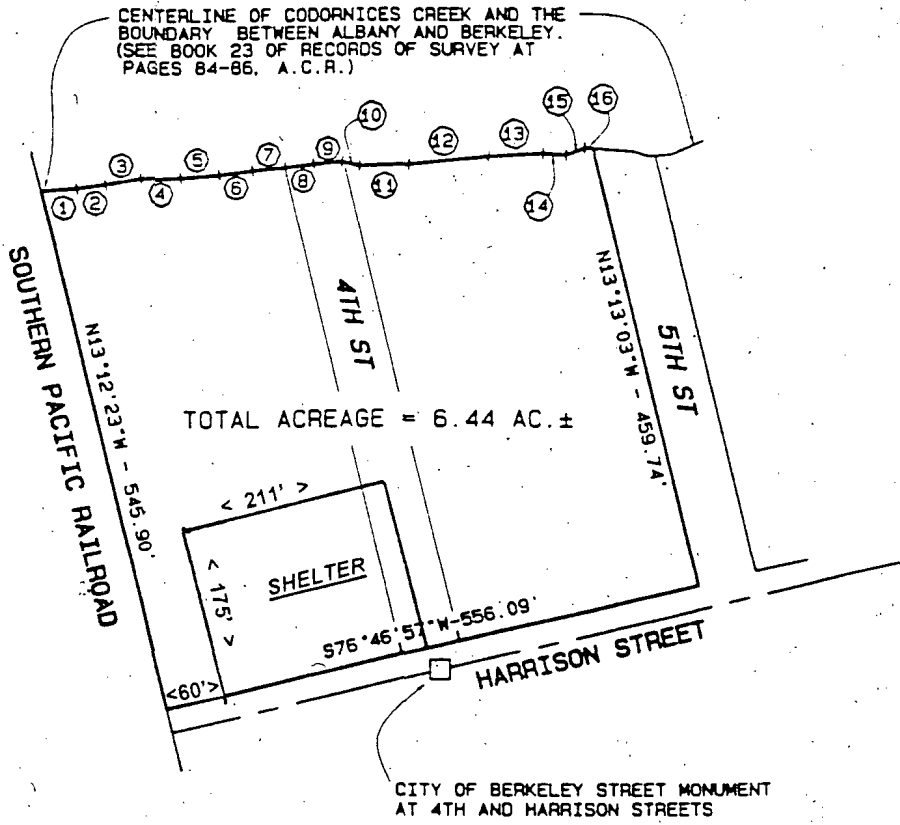
Lloyd C. Lee
University Counsel of The Regents of the
University of California

EXHIBIT A

CENTERLINE DATA FOR CODORNICES CREEK

① N85°28'03"E - 36.09'	⑦ N85°03'17"E - 33.79'	⑬ N86°29'33"E - 55.43'
② N82°43'52"E - 29.53'	⑧ N83°19'16"E - 29.16'	⑭ S85°23'17"E - 23.86'
③ N80°13'56"E - 36.14'	⑨ N84°59'22"E - 29.15'	⑮ N67°36'03"E - 19.87'
④ N88°29'45"E - 40.56'	⑩ S75°34'00"E - 18.20'	⑯ S85°38'45"E - 8.61'
⑤ N85°18'01"E - 39.11'	⑪ N87°58'34"E - 50.73'	
⑥ N83°31'23"E - 34.07'	⑫ N84°23'26"E - 81.02'	

CALIFORNIA COORDINATE SYSTEM
NAD '83 ZONE III



PLAT
OF THE
4TH AND HARRISON STREETS PROPERTY
BEING A PORTION OF THE I.M. WENTWORTH
BOOT AND SHOE COMPANY'S TRACT AS SHOWN
ON A MAP FILED IN BOOK 6 OF MAPS, PAGE 16,
ALAMEDA COUNTY RECORDS AND LYING WITHIN
THE CITY LIMITS OF BERKELEY

COUNTY OF ALAMEDA,
SCALE: 1" = 200'

CALIFORNIA
DECEMBER, 1999

EXHIBIT A


(Commonly known as 4th Street and Harrison Street Property)

All that certain real property situated in the City of Berkeley, County of Alameda, State of California, more particularly described as follows:

Commencing at a City of Berkeley street monument at the intersection of 4th Street and Harrison Street as shown on a Record of Survey map filed in Book 23 of Records of Survey, Pages 84-86, Alameda County Records; thence South $81^{\circ}51'54''$ West, 282.19 feet to the intersection of the North line of said Harrison Street (formerly Durant Street) with the East line of Third Street, being the East line of the Southern Pacific Railroad, as said streets are shown on the "Map of the I. M. Wentworth Boot and Shoe Company's Tract" filed May 11, 1878 in Book 6 of Maps, Page 16, in the office of the County Recorder of Alameda County and the POINT OF BEGINNING of this description; thence along said East line of said Southern Pacific Railroad (Third Street) North $13^{\circ}12'23''$ West (Record: North $14^{\circ}30'$ West), 545.90 feet to the intersection of said East line with the centerline of Codornices Creek, being the city boundary between Albany and Berkeley; thence along said centerline and said boundary, more or less, as follows: North $85^{\circ}28'03''$ East, 36.09 feet; thence North $82^{\circ}43'52''$ East, 29.53 feet; thence North $80^{\circ}13'56''$ East, 36.14 feet; thence North $88^{\circ}29'45''$ East, 40.56 feet; thence North $85^{\circ}18'01''$ East, 39.11 feet; thence North $83^{\circ}31'23''$ East, 34.07 feet; thence North $85^{\circ}03'17''$ East, 33.79 feet; thence North $83^{\circ}19'16''$ East, 29.16 feet; thence North $84^{\circ}59'22''$ East, 29.15 feet; thence South $75^{\circ}34'00''$ East, 18.20 feet; thence North $87^{\circ}58'34''$ East, 50.73 feet; thence North $84^{\circ}23'26''$ East, 81.02 feet; thence North $86^{\circ}29'33''$ East, 55.43 feet; thence South $85^{\circ}23'17''$ East, 23.86 feet; thence North $67^{\circ}36'03''$ East, 19.87 feet; thence South $85^{\circ}38'45''$ East, 8.61 feet more or less to the intersection of said centerline of Codornices Creek with the northerly extension of the West line of 5th Street, as said street is shown on said map of the I. M. Wentworth Boot and Shoe Company's Tract; thence leaving said centerline, and said city boundary between Albany and Berkeley, along said northerly extension and said West line of 5th Street South $13^{\circ}13'03''$ East, 459.74 feet (Record: South $14^{\circ}30'$ East, 459.62 feet) to the intersection of said West line with said North line of Harrison Street; thence along said North line of Harrison Street South $76^{\circ}46'57''$ West, 556.09 feet (Record: South $75^{\circ}30'$ West, 556.00 feet) to the point of beginning and the end of this description and containing 6.44 acres more or less.

A.P.N. 060-2383-001-01

The basis of bearings for this description is South $13^{\circ}10'39''$ East – between found City of Albany street monuments at the Northeast corner of San Pablo Avenue and Dartmouth Street and the Northeast corner of San Pablo Avenue and Solano Avenue based on the California Coordinate System NAD '83 Zone III as shown on a map filed August 5, 1999 in Book 23 of Records of Survey, Pages 84-86, Alameda County Records.


Thomas M. Herman, P.L.S. 4805
License Expires 9-30-00

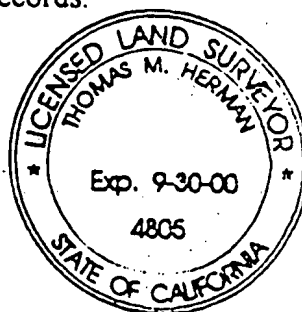


EXHIBIT B

U.S.D.A.

S88°08'37"W - 256.51'

S10°27'15"E - 112.63'

DOWLING

AREA
= 2°45'08"
= 17188.80'
= 825.71'

SOUTHERN PACIFIC RAILROAD

PARK

UNIVERSITY VILLAGE

EXISTING CYCLONE FENCE (TYPICAL)

TOTAL ACREAGE
7.89 ACRES±

S75°34'56"W - 67.34' (EXISTING CYCLONE FENCE)

NORTHERLY EXTENSION
OF 4TH STREET

N13°13'03"W - 288.67'

S13°12'23"E - 291.17'

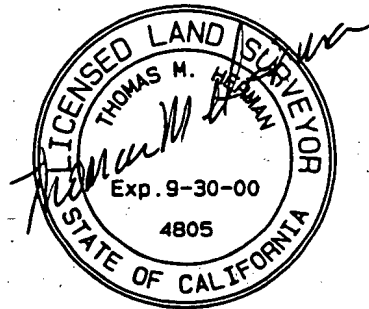
4TH STREET

- ①
- ②
- ③
- ④
- ⑤
- ⑥
- ⑦
- ⑧
- ⑨
- ⑩
- ⑪
- ⑫

CENTERLINE DATA FOR CODORNICES CREEK

- | | |
|------------------------|------------------------|
| ① N85°28'03"E - 36.09' | ⑦ N85°03'17"E - 33.79' |
| ② N82°43'52"E - 29.53' | ⑧ N83°19'16"E - 29.16' |
| ③ N80°13'56"E - 36.14' | ⑨ N84°59'22"E - 29.15' |
| ④ N88°29'45"E - 40.56' | ⑩ S75°34'00"E - 1.53' |
| ⑤ N85°18'01"E - 39.11' | ⑪ S75°34'00"E - 16.67' |
| ⑥ N83°31'23"E - 34.07' | ⑫ N87°58'34"E - 15.53' |

CALIFORNIA COORDINATE SYSTEM
NAD 83 ZONE III



CENTERLINE OF CODORNICES CREEK AND THE
BOUNDARY BETWEEN ALBANY AND BERKELEY.
(SEE BOOK 23 OF RECORDS OF SURVEY AT
PAGES 84-86, A.C.R.)

PLAT

OF THE

DOWLING PARK PARCEL

BEING A PORTION OF THE WHITE & DRIVER TRACT
AS SHOWN ON A MAP FILED IN BOOK 11 OF MAPS,
PAGE 30, ALAMEDA COUNTY RECORDS AND LYING
WITHIN THE CITY LIMITS OF ALBANY

COUNTY OF ALAMEDA,
SCALE: 1" = 200'

CALIFORNIA
DECEMBER, 1999

EXHIBIT 'B'

ALBANY VILLAGE

All that certain real property situated in the City of Albany, County of Alameda, State of California, more particularly described as follows:

Being portions of the following described parcels of land:

- a) Book 1807 of Official Records, Page 103, Alameda County Records, recorded February 18, 1928.
- b) Reel 1359, Image 863 of Official Records, Alameda County Records, recorded November 6, 1964.

Commencing at the most westerly corner of Plot "H" as shown on the "Map of the White & Driver Tract" filed in Book 11 of Maps, Page 30, Alameda County Records, being the intersection of the South line of Buchanan Street with the East line of the Southern Pacific Railroad as shown on a Record of Survey map filed in Book 23 of Records of Survey, Pages 84-86, Alameda County Records; thence along said East line South $10^{\circ}27'15''$ East, 752.00 feet (Record: South $11^{\circ}42'$ East, 752.04 feet) to the Southwest corner of that parcel of land as described in the deed to the United States of America recorded May 22, 1939 in Book 3780 of Official Records, Pages 81-84, Alameda County Records and the POINT OF BEGINNING of this description; thence leaving said East line and along the boundary of said parcel North $88^{\circ}08'37''$ East, 917.58 feet (Record: North $86^{\circ}55'$ East, 917.33 feet); thence North $1^{\circ}51'23''$ West, 147.43 feet (Record: North $3^{\circ}05'$ West) to the Southwest corner of that parcel of land as described in the deed to the City of Albany recorded July 3, 1975 on Reel 4024, Image 44 of Official Records, Alameda County Records; thence along the boundary of said parcel North $79^{\circ}28'19''$ East, 266.218 feet (Record: North $78^{\circ}27'44''$ East) to the Southwest corner of that parcel of land as described in the deed to the Albany Unified School District recorded June 19, 1974 on Reel 3708, Image 866 of Official Records, Alameda County Records; thence along the boundary of said parcel North $79^{\circ}28'19''$ East, 545.525 feet (Record: 545.792 feet) to the West line of Jackson Street; thence along said West line North $13^{\circ}10'53''$ West, 448.467 feet (Record: North $14^{\circ}11'00''$ West) to a line being parallel with and 34.00 feet southerly of and perpendicular to the South line of Buchanan Street, as said street existed prior to the widening thereof, as described in the deed to the City of Albany recorded February 25, 1964 on Reel 1132, Image 844 of Official Records, Alameda County Records; thence along the South line as described in the last mentioned deed North $88^{\circ}08'37''$ East, 112.47 feet (Record: North $87^{\circ}08'30''$ East); thence through the arc of a curve to the right with a radius of 667.00 feet, a central angle of $38^{\circ}40'30''$ and an arc length of 450.23 feet; thence South $53^{\circ}10'53''$ East, 226.51 feet (Record: South $54^{\circ}11'$ East); thence through the arc of a curve to the left with a radius of 357.00 feet, a central angle of $25^{\circ}17'45''$ (Record: $25^{\circ}09'30''$) and an arc length of 157.61 feet (Record: 156.76 feet) to point on the West line of San Pablo Avenue; thence leaving said South line and along said West line of San Pablo Avenue South $13^{\circ}10'39''$ East, 1208.28 feet (Record: South $14^{\circ}11'$ East) to the intersection with the centerline of Codornices Creek, said centerline being the city boundary between Albany and Berkeley; thence leaving said West line and along said centerline as shown on a Record of Survey map filed in Book 23 of Records of Survey, Pages 84-86, Alameda County Records as follows: South $64^{\circ}46'47''$ West, 50.17 feet; thence South $61^{\circ}05'36''$ West, 45.88 feet; thence South $69^{\circ}27'49''$ West, 56.77 feet; thence South $85^{\circ}28'17''$ West, 23.39 feet; thence South $77^{\circ}03'38''$ West, 36.28 feet; thence South $59^{\circ}46'22''$

West, 22.90 feet; thence South 3°28'53" East, 10.95 feet; thence South 63°34'36" West, 112.25 feet; thence South 78°55'23" West, 17.10 feet; thence North 87°18'45" West, 64.16 feet; thence South 67° 41'11" West, 43.88 feet; thence South 59°39'54" West, 35.32 feet; thence South 71°49'50" West, 19.23 feet; thence South 21°12'55" West, 25.95 feet; thence South 30°16'14" West, 22.38 feet; thence South 48°00'45" West, 18.28 feet; thence South 72°17'10" West, 43.91 feet; thence North 59°58'03" West, 34.11 feet; thence North 63°19'29" West, 39.90 feet; thence North 46° 38'43" West, 26.65 feet; thence North 50°45'42" West, 37.94 feet; thence North 73°25'59" West, 15.08 feet; thence South 68°49'44" West, 67.87 feet; thence South 79°03'41" West, 43.16 feet; thence North 88°04'09" West, 24.87 feet; thence North 80°25'06" West, 52.16 feet; thence South 72°39'20" West, 32.47 feet; thence North 82°54'37" West, 67.92 feet; thence South 76°32'14" West, 105.52 feet; thence South 64°36'11" West, 40.45 feet; thence South 73°08'07" West, 36.79 feet; thence South 80°37'21" West, 53.73 feet; thence South 73°59'43" West, 87.53 feet; thence South 69°06'05" West, 59.97 feet; thence South 75°41'58" West 53.50 feet; thence North 85°12'20" West, 35.99 feet; thence South 84°54'35" West, 51.87 feet; thence South 64°51'38" West, 126.11 feet; thence South 79°02'34" West, 52.78 feet; thence South 89° 29'01" West, 37.09 feet; thence South 84°07'25" West, 90.80 feet; thence South 71°03'29" West, 27.09 feet; thence South 67°16'23" West, 51.49 feet; thence South 85°40'09" West, 21.16 feet; thence North 74°19'39" West, 18.22 feet; thence North 85°38'45" West, 40.06 feet to the intersection of said centerline of Codornices Creek with the northerly extension of the West line of 5th Street, as said street is shown on the "Map of the I. M. Wentworth Boot and Shoe Company's Tract" filed May 11, 1878 in Book 6 of Maps, Page 16, in the office of the County Recorder of Alameda County; thence leaving said centerline, and said city boundary between Albany and Berkeley, along said northerly extension and said West line of 5th Street South 13°13'03" East, 459.74 feet (Record: South 14°30' East, 459.62 feet) to the intersection of said West line with the North line of Harrison Street (formerly Durant Street as shown on the last mentioned map); thence along said North line South 76°46'57" West, 556.09 feet (Record: South 75°30' West, 556.00 feet) to the intersection of said North line with the East line of Third Street, being the East line of said Southern Pacific Railroad as shown on said map; thence along said East line North 13°12'23" West, 837.08 feet (Record: North 14°30'01" West); thence through the arc of a curve to the right with a radius of 17188.80 feet, a central angle of 2°45'08" and an arc length of 825.71 feet; thence North 10°27'15" West, 112.63 feet (Record: North 11°42' West) to the point of beginning and the end of this description and containing 84.16 acres more or less.

SAVING and EXCEPTING THEREFROM the following described parcels of land:

Tract One:

Commencing at a City of Berkeley street monument at the intersection of 4th Street and Harrison Street as shown on a Record of Survey map filed in Book 23 of Records of Survey, Pages 84-86, Alameda County Records; thence South 81°51'54" West, 282.19 feet to the intersection of the North line of said Harrison Street (formerly Durant Street) with the East line of Third Street, being the East line of the Southern Pacific Railroad, as said streets are shown on the "Map of the I. M. Wentworth Boot and Shoe Company's Tract" filed May 11, 1878 in Book 6 of Maps, Page 16, in the office of the County Recorder of Alameda County and the POINT OF BEGINNING of this description; thence along said East line of said Southern Pacific Railroad (Third Street)

North 13°12'23" West (Record: North 14°30' West), 545.90 feet to the intersection of said East line with the centerline of Codornices Creek, being the city boundary between Albany and Berkeley; thence along said centerline and said boundary, more or less, as follows: North 85°28'03" East, 36.09 feet; thence North 82°43'52" East, 29.53 feet; thence North 80°13'56" East, 36.14 feet; thence North 88°29'45" East, 40.56 feet; thence North 85°18'01" East, 39.11 feet; thence North 83°31'23" East, 34.07 feet; thence North 85°03'17" East, 33.79 feet; thence North 83°19'16" East, 29.16 feet; thence North 84°59'22" East, 29.15 feet; thence South 75°34'00" East, 18.20 feet; thence North 87°58'34" East, 50.73 feet; thence North 84°23'26" East, 81.02 feet; thence North 86°29'33" East, 55.43 feet; thence South 85°23'17" East, 23.86 feet; thence North 67°36'03" East, 19.87 feet; thence South 85°38'45" East, 8.61 feet more or less to the intersection of said centerline of Codornices Creek with the northerly extension of the West line of 5th Street, as said street is shown on said map of the I. M. Wentworth Boot and Shoe Company's Tract; thence leaving said centerline, and said city boundary between Albany and Berkeley, along said northerly extension and said West line of 5th Street South 13°13'03" East, 459.74 feet (Record: South 14°30' East, 459.62 feet) to the intersection of said West line with said North line of Harrison Street; thence along said North line of Harrison Street South 76°46'57" West, 556.09 feet (Record: South 75°30' West, 556.00 feet) to the point of beginning and the end of this description and containing 6.44 acres more or less.

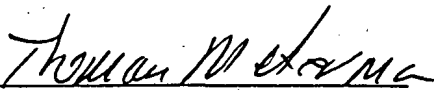
Tract Two:

Commencing at a City of Berkeley street monument at the intersection of 4th Street and Harrison Street as shown on a Record of Survey map filed in Book 23 of Records of Survey, Pages 84-86, Alameda County Records; thence South 81°51'54" West, 282.19 feet to the intersection of the North line of said Harrison Street (formerly Durant Street) with the East line of Third Street, being the East line of the Southern Pacific Railroad, as said streets are shown on the "Map of the I. M. Wentworth Boot and Shoe Company's Tract" filed May 11, 1878 in Book 6 of Maps, Page 16, in the office of the County Recorder of Alameda County; thence along said East line of said Southern Pacific Railroad (Third Street) North 13°12'23" West (Record: North 14°30' West), 545.90 feet to the intersection of said East line with the centerline of Codornices Creek, being the city boundary between Albany and Berkeley and the POINT OF BEGINNING of this description; thence along said centerline and said boundary, more or less, as follows: North 85°28'03" East, 36.09 feet; thence North 82°43'52" East, 29.53 feet; thence North 80°13'56" East, 36.14 feet; thence North 88°29'45" East, 40.56 feet; thence North 85°18'01" East, 39.11 feet; thence North 83°31'23" East, 34.07 feet; thence North 85°03'17" East, 33.79 feet; thence North 83°19'16" East, 29.16 feet; thence North 84°59'22" East, 29.15 feet; thence South 75°34'00" East, 1.53 feet to an intersection with the northerly extension of the East line of 4th Street, as said street is shown on said map of the I. M. Wentworth Boot and Shoe Company's Tract; thence continuing along said centerline and said city boundary South 75°34'00" East, 16.67 feet; thence North 87°58'34" East, 15.53 feet to a point being 30 feet easterly of and perpendicular to said northerly extension; thence leaving said centerline and said city boundary and along a line parallel with said northerly extension North 13°13'03" West, 288.67 feet to an intersection with an existing fenceline; thence along said existing fenceline South 76°34'56" West, 67.34 feet to an intersection with the southerly extension of an existing fence; thence along said southerly extension and said existing fenceline North 12°42'43" West, 942.65 feet to the South line of that certain parcel of land conveyed to the United States of America by deed

recorded May 22, 1939 in Book 3780 of Official Records, Pages 81-84, Alameda County Records; thence leaving said existing fence and along said South line South 88°08'37" West, 256.51 feet (Record: South 86°55' West) to said East line of said Southern Pacific Railroad; thence leaving said South line and along said East line South 10°27'15" East, 112.63 feet (Record per Southern Pacific Railroad right-of-way map SBE Map No. 872-1-13P: South 11°34'01" East); thence continuing along said East line through the arc of a curve to the left with a radius of 17188.80 feet, a central angle of 2°45'08" and a length of 825.71 feet; thence along said East line South 13°12'23" East, 291.17 feet to the point of beginning and the end of this description and containing 7.89 acres more or less.

A.P.N. 060-2692-002-006x

The basis of bearings for these descriptions is South 13°10'39" East, between found City of Albany street monuments at the Northeast corner of San Pablo Avenue and Dartmouth Street and the Northeast corner of San Pablo Avenue and Solano Avenue based on the California Coordinate System NAD '83 Zone III as shown on a map filed August 5, 1999 in Book 23 of Records of Survey, Pages 84-86, Alameda County Records.


Thomas M. Herman, P.L.S. 4805
License Expires 9-30-00

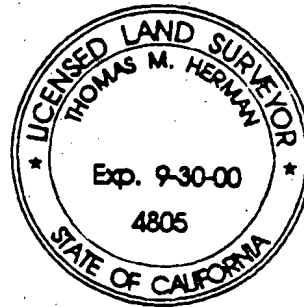


EXHIBIT C

(Commonly known as Dowling Park)

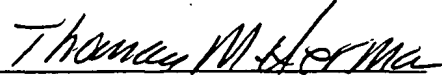
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A.P.N. 060-2692-002-006x

The basis of bearings for this description is South $13^{\circ}10'39''$ East, between found City of Albany street monuments at the Northeast corner of San Pablo Avenue and Dartmouth Street and the

Northeast corner of San Pablo Avenue and Solano Avenue based on the California Coordinate System NAD '83 Zone III as shown on a map filed August 5, 1999 in Book 23 of Records of Survey, Pages 84-86, Alameda County Records.


Thomas M. Herman, P.L.S. 4805
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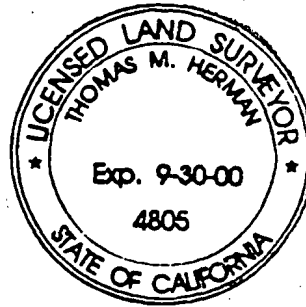


EXHIBIT H

Letter of February 3, 2000 from Buyer



Parks and Waterfront Department

February 3, 2000

Jacki Bernier, Senior Planner
University of California, Berkeley
CP/PEP 300 A&E Building
Berkeley, CA 94720-1382

RE: DECISION ON ART WORK AT HARRISON STREET SITE

Jacki:

This letter will confirm that the City only wants the following three pieces of art to remain on the subject site: 1) the large piece created by Mr. Wagner; 2) the piece created by Mr. Groom; and 3) the large block of granite, ownership of which is unknown. All the other pieces that are on the site should be removed prior to the close of escrow. If it is acceptable to you, we will work directly with the two artists to discuss further details of final location, etc.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Murphy".

Ed Murphy
Project Manager

cc: Connie Miller, Office of the President, UC
Doug Fielding, ASFU

g/marina/harart.doc

ORDINANCE NO. 6521-N.S.

AUTHORIZING THE PURCHASE OF REAL PROPERTY LOCATED AT 5TH AND HARRISON STREETS IN AN AMOUNT NOT TO EXCEED \$2,875,000 FOR A RECREATIONAL FACILITY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS

The Council finds as follows:

- a. In order to provide public recreational facilities for its residents, the City Council has amended the West Berkeley Plan and the Zoning Ordinance to permit development of such facilities on the 6.4 acre site located at the northwest corner of 5th and Harrison Streets.
- b. The Department of Parks and Waterfront has prepared a development plan for a project which includes purchasing the 6.4 acre site from the University of California; creating two multi-purpose playing fields and a skate park; improving Codornices Creek in terms of flood control and public access; making improvements to the Harrison House Homeless Shelter; improving both 5th and Harrison Streets; and preparing a schematic master plan for Codornices Creek from San Pablo Avenue to the Union Pacific Railroad.
- c. Pursuant to the California Environmental Quality Act (CEQA), the City Council has adopted a Mitigated Negative Declaration and a Mitigation and Monitoring Program for this project.
- d. The purchase price of the property has been determined by an independent valuation performed by a qualified appraisal firm.
- e. The City has evaluated the condition of the property and determined that it is suitable for development of recreational facilities.

Section 2. COMPLIANCE WITH BERKELEY MUNICIPAL CODE, SECTION 12.90.070

- a. On November 1, 1999, the proposed agreement was presented to the Berkeley Peace and Justice Commission; however, no final action was taken and the public interest requires that this transaction be consummated without undue delay.
- b. Taking into consideration the factors set forth in Section 12.90.070 of the Berkeley Municipal Code, there exists no reasonable alternative to entering an agreement to purchase the site from the University of California because it owns the site.

Section 3. AUTHORIZATION FOR CITY MANAGER TO EXECUTE ESCROW AND RELATED DOCUMENTS TO PURCHASE THE 6.4 ACRE PROPERTY AT 5TH AND HARRISON STREETS

That the City Manager is hereby authorized to execute a purchase agreement (in substantial conformity with the form of agreement attached hereto as Exhibit A) with the University of California, along with escrow instructions and all other documents required to purchase the real property located at the northwest corner of 5th and Harrison Streets, and bounded by Codornices Creek, 5th Street, Harrison Street, and the Union Pacific Railroad, in an amount not to exceed \$2,875,000 (including all related escrow fees and closing costs) for development of public recreational facilities and to make improvements to the Harrison House Homeless Shelter, as required by such recreational facilities. A copy of the executed purchase agreement and the original grant deed to be on file at the City Clerk's office.

Section 4. ALLOCATION OF FUNDS NOT TO EXCEED \$2,875,000

That an allocation of \$2,875,000 in Lease Revenue Bonds is hereby authorized to fund the purchase of the property and all related escrow fees and closing costs.

Section 5. Copies of this bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen (15) days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley, held on December 7, 1999, this Bill was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Abstain: None

Absent: Councilmember Olds.
