

CODORNICES CREEK RESTORATION PROJECT,

CLOSE ESCROW ACCOUNT AGREEMENT

THIS CLOSE ESCROW ACCOUNT AGREEMENT ("Agreement") is made and entered into this 13th day of November, 2018, by and between the City of Berkeley, the City of Albany, and the Regents of the University of California. The City of Berkeley, City of Albany, and The Regents of the University of California are collectively referred to herein as the "Parties."

WHEREAS:

1. The City of Berkeley, the City of Albany, and the Regents of the University of California Berkeley executed the agreement dated August 5, 2004 to restore portions of Lower Codornices Creek between San Pablo Avenue and the Union Pacific railroad tracks; and
2. The cities of Berkeley and Albany, and The Regents of the University of California have completed creek restoration projects on portions of Lower Codornices Creek between San Pablo Avenue and the Union Pacific railroad tracks; and
3. A holding escrow account was established in an agreement dated March 30, 2000 between the City of Berkeley and The Regents of the University of California and this account has remaining funds;

NOW, THEREFORE, in consideration of the mutual promises herein, the Parties agree as follows:

1. The escrow account defined in Paragraph 4.7 of the Purchase Agreement and Escrow Instructions, between the City of Berkeley and The Regents of the University of California dated March 30, 2000 (attached as Attachment A) has a value of \$451,147.77 plus interest (FUNDS).
2. Paragraph 8 of the Side Agreement (SIDE AGREEMENT) by and Between the City of Berkeley and The Regents of the University of California dated March 30, 2000 (attached as Attachment A) defines the TERM of the FUNDS.
3. The Use of Escrow Account Funds Agreement between the City of Berkeley and The Regents of the University of California dated July 23, 2004 (contained in the Memorandum of Understanding Between the City of Berkeley, the City of Albany and The University of California for the Lower Codornices Creek Restoration and Trail Project Located Between the Union Pacific Railroad and San Pablo Avenue, or MOU, dated August 5, 2004, and attached as Attachment B) amends the SIDE AGREEMENT.
4. To close the escrow account defined in Paragraph 4.7 of the Purchase Agreement and Escrow Instructions, City of Berkeley and The Regents of the University of California dated March 30, 2000 (Attachment A) and instruct the escrow agent to transfer the funds in the amount of \$451,147.77 plus interest to the City of Albany.
5. That when executed by the Parties, The FINAL PAYMENT REQUEST Form Holdback No: 00-0256-H provided by Exchange Resources, Inc. (Attachment C) will direct Exchange Resources, Inc. to transfer the FUNDS to Albany.

6. Albany shall establish and administer a "Creek Account" in accordance with the MOU (Attachment B), particularly Paragraph 5—Agency Cost Allocations and Reimbursement Procedures, unless specifically modified below.
7. Albany shall deposit the FUNDS to the "Creek Account".
8. The Parties understand that the maintenance activities defined in 2004 and covered by the MOU do not adequately address maintenance activities that have developed since 2004.
9. The Parties are working together to update the scope of maintenance activities and responsibilities to conduct the maintenance activities with the intent of amending the MOU to cover current conditions.
10. Payments to the Parties for any maintenance activities shall follow the protocols and processes defined in the MOU.
11. The City of Albany is authorized to use the FUNDS to contract with RDG (Restoration Design Group, Inc.) to perform creek monitoring and annual reporting for 2019 and 2020, prepare a creek map with property lines, and provide maintenance plan development support (see Attachment D) for a not to exceed amount of \$31,580.00.

City of Berkeley

Dee Williams-Ridley
Authorized Signature

Dee Williams-Ridley
Printed Name

City Manager
Title

City of Albany

Jeff Bond
Authorized Signature

JEFF BOND
Printed Name

COMMUNITY DEVELOPMENT DIRECTOR
Title

University of California, Berkeley

Rosemarie Rae
Authorized Signature

Rosemarie Rae
Printed Name

VC Finance, CFO
Title

CODORNICES CREEK RESTORATION PROJECT
CLOSE ESCROW ACCOUNT AGREEMENT
ATTACHMENT A

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

CITY OF BERKELEY

AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

MARCH 30, 2008

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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.

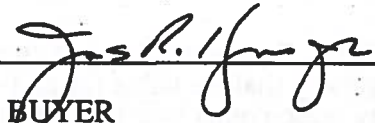
5.1.1 Except as specifically described in the City's letter dated February 3, 2000, attached hereto as Exhibit H, Seller shall convey the Property free of any fixtures, artwork, construction or demolition debris from the University Village Step 1 housing project or equipment and materials by Closing 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.

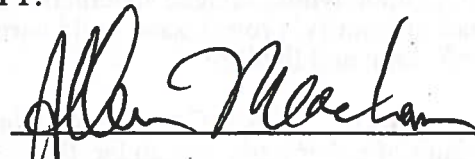
5.1.2 The Property shall be delivered at Closing in the condition set forth in section 5.1.1 above, unoccupied except for the portion of the Property leased to BOSS. If it is not delivered in this condition and is not ready for occupancy by the Buyer or its agents immediately upon Closing, the Seller 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.

///

///

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


SELLER:

BUYER

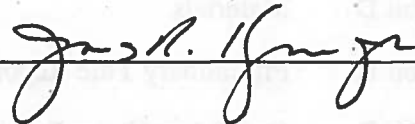
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

THE CITY OF BERKELEY

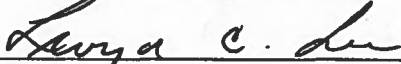
By



By



APPROVED AS TO LEGAL FORM

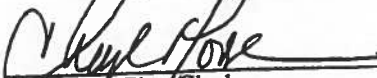


Lloyd C. Lee
University Counsel of The Regents of the
University of California

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

(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.

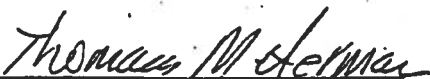

Thomas M. Herman, P.L.S. 4805
License Expires 9-30-00



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:

- 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.
- 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.

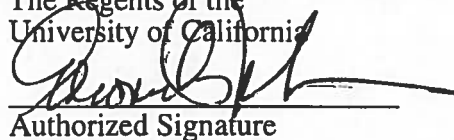
City of Berkeley


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

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

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: _____

TAX STATEMENTS AS DIRECTED ABOVE

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

Office of Environment, Health & Safety (EH&S) files in the County and Jackson
County. Berkeley property for disclosure to Dept of the County is listed below.

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

1. Coauthor: Great Water Quality Assessment Report, 1992, John J. Bregli,
senior thesis for University of California, Berkeley, Environmental Science 100
class. There is no record of this being submitted to City of Berkeley. It is
retained in the May 1994 Jones and Associates soil investigation report. It is
currently available in a campus library.

2. Phase I Environmental Assessment for Jackson County Report by Dale G.
Jones of Coauthor Related Property, 1991, prepared by EEP. The EH&S file copy
has a date of August 2, 1994 but it is an unnumbered file and is a version of
the 1991 assessment completed by EEP. The reference in the May 21, 1994
Jones and Associates soil investigation report. There are no records indicating
that this report was ever submitted to the City of Berkeley.

3. Flood Studies and Site Planning Guidelines and Visual Effects of Albany
Nexus March 24, 1993. Philip Winters & Associates. In report of this being
submitted to the City of Berkeley.

4. Memorandum from Fred Remington, Berkeley Wood Products dated
November 4, 1991.

5. Soil Investigation Report Albany Village Redevelopment Study, Fourth and
Fifth, May 31, 1994, Jones and Associates. Prepared for UC Berkeley.
Submitted to City of Berkeley Toxic Management Division June 13, 1994. This
contains copies of 1988 tank fill reports.

6. Results of Well Sampling and Assessment for Berkeley Wood Products
1. 1988. Color Analytical. Submitted to the City of Berkeley Toxic
Management Division on January 8, 1991 as an attachment to the UST closure
request.

7. Laboratory Storage Tank Closure Report, Fourth and Fifth
Berkeley, CA January 1991, University of California, Office of Environment,

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



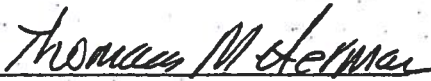
EXHIBIT A
(Commonly known as 4th Street and Harrison Street Property)

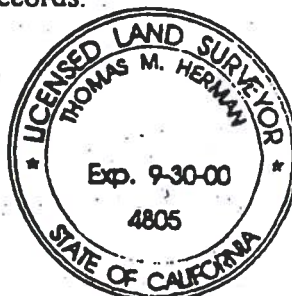
All that certain real property situated in the City of Berkeley, County of Alameda, State of California, more particularly described as follows:

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 85

Codornices Creek

Berkeley City Line

6-4-1924

JRO STREET

1100 Ordinance 2995
(4TH STREET) Amendment

5TH STREET

2382

Subject

2385

Subject

306'

155'

240'

2362

HARRISON

2361

STREET

2360

2359

Subject

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, 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

To whom THE CITY OF BERKELEY, a political subdivision of the State of California ("Berkeley"), has conveyed or may hereafter convey its interest in certain real property in Berkeley, California, the following information is being furnished to you in accordance with the provisions of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), as amended, and the Regulations thereunder.

A. The property is a lighted street corner and is not a foreign-owned corporation, partnership, foreign partnership, foreign trust, or foreign estate as defined in the Code and the Income Tax Regulations promulgated thereunder.

B. The Transferor's U.S. taxpayer identification number is 94-7057853, and the Transferor's office address is University of California, Real Estate Services Group, Room 1111, Terman Street, Oakland, California 94607. Attention: Director of Real Estate.

C. The Transferor understands that the California tax will be disclosed to the Internal Revenue Service by the Transferor and that any other relevant information will be furnished by the Transferor or both.

D. The Transferor certifies that it has examined the Certificate and to the best of its knowledge and belief it is true, correct and complete, and it further certifies that it has authority to sign the document on behalf of the Transferor.

Date: _____ 1998

THE SECRETARY OF THE
UNIVERSITY OF CALIFORNIA
A California Corporation

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.

Declaration of Restrictions
Exhibit G to Purchase Agreement and Escrow Instructions

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:

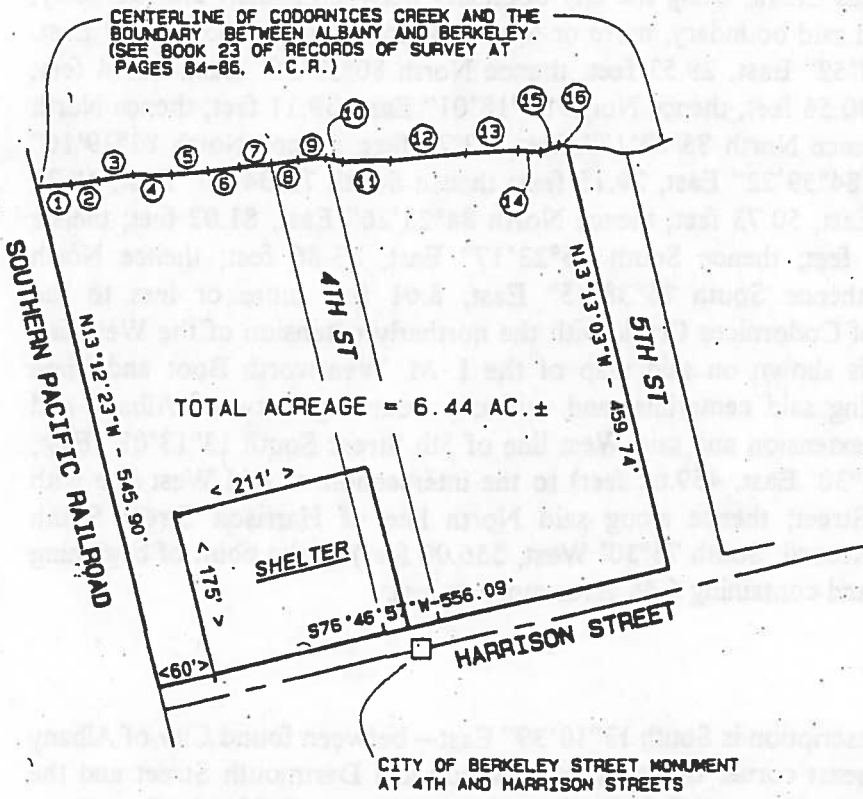
Lloyd C. Lee
University Counsel of The Regents of the
University of California

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 - 35.14' | 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

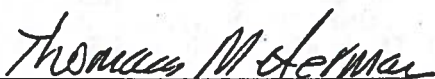
(Commonly known as 4th Street and Harrison Street Property)

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

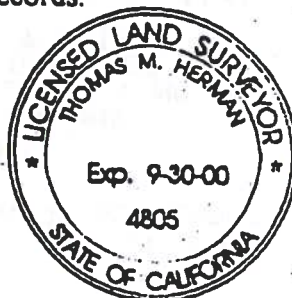


EXHIBIT B

U.S.D.A.

S88°08'37"W - 256.51'

S10°27'15"E - 112.63'

DOWLING

SOUTHERN PACIFIC RAILROAD

Δ = 2°45'08"
 Δ = 17188.80'
 Δ = 825.71'

PARK

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' |

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 - 281.17'

4TH STREET

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

CALIFORNIA COORDINATE SYSTEM
NAD '83 ZONE III

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.

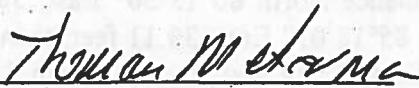

Thomas M. Herman, P.L.S. 4805
License Expires 9-30-00



EXHIBIT C

(Commonly known as Dowling Park)

All that certain real property situated in the City of Albany, 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; 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 and the POINT OF BEGINNING of this description; 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, 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 $75^{\circ}34'00''$ East, 16.67 feet; thence North $87^{\circ}58'34''$ 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 $13^{\circ}13'03''$ West, 288.67 feet to an intersection with an existing fenceline; thence along said existing fenceline South $76^{\circ}34'56''$ 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 $12^{\circ}42'43''$ 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 $88^{\circ}08'37''$ West, 256.51 feet (Record: South $86^{\circ}55'$ West) to said East line of said Southern Pacific Railroad; thence leaving said South line and along said East line South $10^{\circ}27'15''$ East, 112.63 feet (Record per Southern Pacific Railroad right-of-way map SBE Map No. 872-1-13P: South $11^{\circ}34'01''$ 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 $2^{\circ}45'08''$ and a length of 825.71 feet; thence along said East line South $13^{\circ}12'23''$ 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 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.

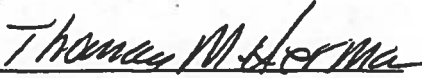

Thomas M. Herman, P.L.S. 4805
License Expires 9-30-00



EXHIBIT 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,

Ed Murphy
Project Manager

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

g/marins/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.

CODORNICES CREEK RESTORATION PROJECT

CLOSE ESCROW ACCOUNT AGREEMENT

ATTACHMENT B

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE CITIES OF BERKELEY AND ALBANY
AND THE UNIVERSITY OF CALIFORNIA FOR
THE LOWER CODORNICES CREEK RESTORATION AND TRAIL PROJECT
LOCATED BETWEEN THE UNION PACIFIC RAILROAD
AND SAN PABLO AVENUE**

This Memorandum of Understanding ("Agreement"), dated ^{August} ~~July~~ 5, 2004 is by and among the CITY OF ALBANY ("Albany"), the CITY OF BERKELEY ("Berkeley") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of the University of California Berkeley ("UCB") (collectively "Agencies").

WHEREAS, the Agencies have worked cooperatively since 1999 to develop a project to restore that portion of Codornices Creek between the Union Pacific Railroad ("UPRR") tracks and San Pablo Avenue ("Lower Codornices Creek" or the "Creek") to a more natural configuration with improved meanders, high flow channels, creek banks, landscaping and public access trails; and

WHEREAS, Albany has received and will dedicate various grant funds and City Assessment District funds to pay for costs related to the planning, design and construction of the Lower Codornices Creek restoration and trail project ("Project"), as delineated in Attachment 1-Project Plan; and

WHEREAS, Berkeley has made financial and other contributions to the Project including toward the purchase and development of adjacent property to replace the playing fields that were lost as a result of the Project;

WHEREAS, UCB has made financial, property, planning, engineering, maintenance and other contributions to the Project throughout the process; and

WHEREAS, the Project boundaries ("Project Boundaries") include areas within both Berkeley and Albany as shown and described in Attachment 1; and

WHEREAS, the property owner on the north side of the Creek is UCB and on the south side is Berkeley and various private owners; and

WHEREAS, UCB's maintenance staff at University Village has historically maintained, for flood control, that portion of the Creek located between 5th Street and San Pablo Avenue and the Agencies desire to continue and extend this arrangement whereby UCB administers Creek routine flood control maintenance; and

WHEREAS, the Agencies have entered into certain access agreements to permit soils analysis and related testing in order to facilitate the Project, in the forms attached hereto as Attachment 2 – Right to Access Agreement; and

WHEREAS, in order to construct and maintain the Project effectively it is necessary for the three Agencies to develop an Agreement regarding construction of the Project, maintenance of the completed Project, rights of public access, allocation and funding of and reimbursement for ongoing project and maintenance costs, and allocation of liability;

NOW, THEREFORE, THE AGENCIES AGREE AS FOLLOWS:

1. Demolition and Construction License Agreements. Berkeley and UCB will each grant temporary licenses to Albany for access within their respective properties containing or bordering the Creek to allow demolition of the existing Creek and construction of the restored Creek for the period from approximately May 2004 through October 2007. Such licenses are attached hereto as Attachment 3. Berkeley will use best reasonable efforts to obtain similar licenses from the private property owners along the south side of Lower Codornices Creek.

2. Conservation and Maintenance Easements. Berkeley and UCB will grant easements to the Agencies, within ninety (90) days after the date hereof, for conservation, high flow channel maintenance and other maintenance within the Project area, and will extend such easements as each Phase of the project is completed. Such grants of easements shall be in substantially the form attached hereto as Attachment 4 – Conservation and Maintenance Easement Agreement. Berkeley will use best reasonable efforts to obtain similar easements from the private property owners along the south side of Lower Codornices Creek.

3. Public Access Easements. Berkeley and UCB agree to grant easements within their respective properties to the Agencies for: a) public access and maintenance along the multi-use trail extending from Sixth Street to San Pablo Avenue; b) the pedestrian trail extending from Fifth Street to Sixth Street; and c) the two pedestrian bridge crossings at Fourth and Fifth Streets. Such grants of easements shall be substantially in the form attached hereto as Attachment 5 – Public Access Easement. Berkeley will use best reasonable efforts to obtain similar easements from the private property owners along the south side of Lower Codornices Creek.

4. Monitoring and Maintenance: The Agencies shall, respectively, assume the following responsibilities with respect to monitoring and maintaining the restored Lower Codornices Creek and associated improvements:

a) Creek Monitoring and Landscape Maintenance: Albany will be responsible for fulfilling the requirements of the Grant Agreement between the City of Albany, Waterways Restoration Institute (“WRI”) and the California Department of Water Resources (“DWR”). This will include any Creek monitoring activities, such as geomorphic, stream flow, biological monitoring, and/or monitoring of stream discharge measurement gauges which are specifically required by the DWR Grant Agreement, and also includes landscape and vegetation management such as revegetation, removal of invasive species and maintenance of temporary irrigation, as shown in Attachment 6, Creek Management Plan. This does not pertain to regular channel monitoring for

flood control. Albany will provide UCB with a copy of each monitoring field report and note any maintenance issues observed during the monitoring.

b) Creek Maintenance: UCB will provide flood control creek maintenance within the Project Boundaries which UCB owns or for which UCB is granted easements for access or maintenance, including but not limited to, the following activities: removal of debris; periodic clearing of undergrowth; clearance of creek flow obstructions at culverts and bridges, and routine repairs related to flood control. These activities shall be in substantial conformance with the standards and requirements applicable to such activities as shown in Attachment 6 - "Creek Management Plan."

c) Trails Maintenance: The Cities of Albany and Berkeley will equally share the cost and will jointly provide trail maintenance, with the exception that UCB will provide litter control and empty trash cans. Trail maintenance activities shall be in substantial conformance with the standards and requirements applicable to such activities as shown in Attachment 6, and Attachment 7 - Trail Maintenance Activities. Volunteer activities to assist with trail maintenance shall be encouraged and utilized whenever appropriate.

d) Culverts, Bridges and Street Crossings Maintenance: Berkeley will continue its existing maintenance responsibilities to maintain and repair all the culverts, bridges, roadway surfaces and related structures and facilities west of San Pablo Avenue to the western boundary of the Project area. Maintenance of new improvements which are constructed as a part of the Codornices Creek project, such as bridges or culverts, will also be considered to be eligible for reimbursement from the joint Creek account per the provisions of Section 5 of this Agreement.

e) Emergency Expenditures: In addition to the foregoing allocation of responsibility, any Agency may undertake any work that must be done immediately to avoid or mitigate existing or imminent flooding, or other immediate public safety hazards, including, but not limited to damage from unusually heavy rains, fallen trees, lightning, or other naturally occurring events, or vandalism, upon reasonable notice to the other Agencies, to the extent such notice is feasible under the circumstances.

5. Agency Cost Allocations and Reimbursement Procedures: The City of Albany shall establish and administer a "Creek Account" into which funds shall be held and from which funds may be disbursed per the provisions of this Agreement. Responsibilities and cost allocations for Items 4(a) through 4(e) above shall be as follows:

a) Monitoring and Landscape Management: Monitoring shall be reimbursable from the Creek Account established per this Agreement. The City of Albany and the City of Berkeley will administer this task, and share equally in the costs, which will include landscape management, such as removal of invasives, revegetation and other landscaping needs. The use of volunteers will be encouraged as is appropriate.

b) Creek Maintenance:

UCB will provide flood control creek maintenance for the project area, including but not limited to, the following activities: removal of debris; periodic clearing of undergrowth; clearance of creek flow obstructions at culverts and bridges, and routine

repairs related to flood control. These activities are not reimbursable from the Creek Account, and UCB will not be required to put funds into the Creek Account for these items.

- c) **Trail Maintenance:** Trail maintenance shall be reimbursable from the Creek Account established per this Agreement. The Cities of Albany and Berkeley will share equally in the cost and will jointly provide trail maintenance, with the exception that UCB will provide litter and debris control and empty trash cans. UCB litter and debris control and emptying of trash cans are not reimbursable from the Creek Account, and UCB will not be required to put funds into the Creek Account for these items.
- d) **Culverts, Bridges and Street crossings:** Maintenance of culverts, bridges and street crossings shall be administered by City of Berkeley. This shall be reimbursable from the Creek Account. All three agencies shall share in costs related to this task.
- e) **Emergency Expenditures:** This item will be administered by whichever agency responds to the emergency. This shall be reimbursable from the Creek Account. All three agencies shall share in costs related to this task.
- f) Within sixty (60) days after the date of this Agreement, and no later than January 31st of each subsequent year, the Agencies shall confer to estimate the annual costs for carrying out the activities in Items 4(a), (c), (d) and (e), above, as well as Albany's administrative costs. Such annual costs shall be based on the costs related to the creek Project, but shall not include costs related to maintenance of any portion of the project related to ball field modifications or the UC Village project. Albany shall call to order the annual meeting for final Agency approval of the annual estimated budget and scope of work.
- g) Within 30 days thereafter each Agency shall contribute funds into a separately maintained Creek Account, to be established and administered by the City of Albany. Interest that accrues on the funds in the Creek Account shall be restricted to the purposes for which the principal sum is restricted.
 - i. An initial sum shall be deposited by the City of Berkeley, based upon the letter attached to this Agreement as Attachment 8.
 - ii. Once this initial deposit has been drawn down to the sum of \$50,000, the City of Berkeley and the City of Albany shall meet to determine the amounts required to be deposited in the Account for Items (a) and (c) above. The cost of these items shall be shared equally. The intent is not to let the balance of the account drop below \$50,000.
 - iii. The three Agencies shall deposit equal shares of the costs of items (d) and (e) above, based upon costs incurred for those items, as approved by all Agencies. These amounts shall not be used for items (a), (b) or (c) above, and shall be tracked separately.
 - iv. The City of Berkeley and the University of California shall also annually deposit \$1200 each into the Account for City of Albany annual administrative costs. The City of Albany shall then receive reimbursement from this account.

- h) Beginning on the date of completion of the first phase of the Creek construction, each party may seek reimbursement for its eligible expenses under this Section 5 by submitting an invoice to Albany for each calendar quarter, together with such documentation as Albany shall require. Albany shall provide written notice to the other Agencies within 15 days of the completion of the first phase of the Creek construction and their quarterly billing submittal deadline.
- i) To the extent possible, quarterly invoices shall reflect only reimbursable expenditures incurred during that quarter. Eligible reimbursable expenses are defined as costs that (i) are related to the activities per Sections 4 and 5 above within the Project Boundaries, (ii) are out-of-pocket costs to third party vendors, (iii) are supported by appropriate invoices. Eligible reimbursable expenses shall not include Agency administrative overhead on expenses such as contractors, labor, volunteer organizations, general project meeting attendance, and maintenance or implementation of measures outside the limits of the current Project or public safety costs. Construction costs related to construction of new improvements within the Project Boundaries may only be included subject to written agreement by all agencies.
- j) The City of Albany shall receive up to \$600 per quarter from the Creek Account for the administrative costs of administering the Creek Account. This amount may be adjusted on an annual basis, with documentation for review and approval by the other Agencies as a part of the annual meeting.
- k) The City of Albany shall distribute funds due from submitted invoices in a timely manner, but no later than 30 days from the close of each quarter.
- l) Within 45 days of the end of each fiscal year, Albany shall provide to Berkeley and UCB a report that details contributions to and expenditures and reimbursements from the Creek Account, as well as all information submitted by the Agencies on which any expenditure or reimbursement was based ("Creek Account Report"). In the case of emergency expenditures, Albany shall inform the other Agencies of related costs as soon as possible, but no later than 15 days.
- m) Within 30 days after receiving the Creek Account Report, any Agency may require reasonable information justifying any expenditure or reimbursement.
- n) The parties agree that the reimbursement provisions of this Agreement do not create any immediate indebtedness for the aggregate amount of reimbursements that may be required over the term of this Agreement. Rather, each year's reimbursement obligation is intended solely to reimburse each Agency's expenditures under this Agreement for services performed during that year. Reimbursements under this Agreement are to be paid out of the ordinary revenue and income of the Agencies, subject to the requirement that the governing entity of each Agency determine that any reimbursement, when coupled with each Agency's other expenditures, does not exceed its yearly income.

6. **Public Safety:** This Agreement does not affect the Agencies' respective public safety responsibilities for the Project area, which are determined independently of this Agreement.

7. **Construction Phasing:** The Agencies will apply those provisions of this Agreement pertaining to access for demolition and construction only during the term of the construction license.

8. **Indemnification:** Each Agency shall defend, indemnify and hold harmless each other Agency and each other Agency's employees, officers and agents against any claim, suit, damage, cost or liability, including reasonable defense costs (collectively, "Claims"), arising out of, or resulting from, the performance or failure to perform the indemnifying Agency's obligations under this Agreement, but only in proportion to and to the extent that such Claim arose from the negligence, willful misconduct or breach of this Agreement by such Agency, its officers, employees, or agents, provided that an Agency seeking defense and indemnification hereunder shall furnish to the Agency from which indemnification is sought prompt written notice of the Claim and authority, information and assistance reasonably required to defend.

9. **Cooperation.** The Agencies acknowledge that the planning, funding, construction and operation of the Project is a complex matter that will require ongoing cooperation and good faith on the part of each Agency. Accordingly, the Agencies agree to cooperate with one another in good faith in the timely performance of this Agreement.

10. **Remedies:** If an Agency defaults in the performance of any of its obligations under this Agreement, the remedies of the other Agencies shall be either: (a) to seek specific performance against the defaulting Agency or (b) to obtain money damages. This Agreement shall not be terminated without the written consent of all Agencies.

11. **Term; Termination:** This Agreement becomes effective as of the date first above written upon execution by the Agencies to the Agreement and shall continue in effect until terminated in writing by the mutual consent of the Agencies.

12. **Amendment:** This Agreement may only be amended in writing executed by all of the Agencies to this Agreement.

13. **Severability:** If any part of this Agreement is determined to be invalid or in violation of the law, all other parts not so determined shall remain in full force and effect.

14. **Force Majeure:** No Agency shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such Agency. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failure(s), earthquakes or other disasters.

15. **Notices:** Any notice permitted or required by this Agreement shall be in writing and shall be addressed as follows:

Albany: City of Albany
 1000 San Pablo Avenue

Albany, CA 94706

Attention: Community Development Director

Berkeley: City of Berkeley

2180 Milvia Street

Berkeley, CA 94704

Attention: Director of Parks Recreation and Waterfront

UC: University of California, Berkeley

2610 Channing Way

Berkeley, CA 94720

Attention: RSSP, Executive Director, Housing and Dining

An Agency, by written notice to the others may change its address.

IN WITNESS WHEREOF, the Agencies have executed this Agreement in duplicate originals on the date first above written.

CITY OF ALBANY:

By: [Signature]
Print Name: Jon Ely
Title: Mayor

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

By: [Signature]
Print Name: JOSEPH P. MULLINIX
SENIOR VICE PRESIDENT
BUSINESS AND FINANCE
Title: _____

CITY OF BERKELEY:

By: [Signature]
Print Name: LISA CARONNA
Title: Deputy City Manager

RECEIVED AS TO FORM
[Signature]
LOYD C. LEE
CITY COUNSEL OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA

ATTACHMENTS

Attachment 1: Project Plan and Project Survey.

Attachment 2: Right to Access Agreements to permit soils analysis and related testing.

Attachment 3: Agreements for Access Rights from University of California and City of Berkeley to City of Albany for construction access; Right to Access from the City of Berkeley to the University of California for maintenance.

Attachment 4: Draft Conservation and Maintenance Easement

Attachment 5: Draft Public Access Easement

Attachment 6: Creek Management Plan

Attachment 7: Trail Maintenance Activities

Attachment 8: Letter between City of Berkeley and University regarding use of funds for Creek Account.

**ATTACHMENT 6
CREEK MANAGEMENT PLAN**

This project occurs on publicly-owned property which the Agencies have agreed to protect and maintain. The Agencies have agreed to share in the management of these activities, per the responsibilities and cost allocations in this Memorandum of Understanding. The project includes a three-phase management plan, as follows:

Phase 1:

The first one to two years after installation of each reach, management practices will include, as necessary:

- a. the replacement of any losses in plant material,
- b. the manual removal of invasive species, and
- c. the addition of shade-requiring understory species.

Regular maintenance activities shall include:

- a. repairing site improvements,
- b. removing graffiti,
- c. monitoring for erosion control,
- d. removing debris from creek,
- e. repair of damage to the creek bed or bank.
- f. clearance of creek flow obstructions at culverts and bridges.

Part of the Project also involves installing stream discharge measurement gauges to monitor the performance of the flood damage reduction measures.

Phase 2:

The second phase will occur during the period from three to five years after the installation of each reach. The maintenance shall include all items noted in Phase 1, as well as increasing the species diversity by planting container plants that require the shade created by the first phase planting.

Phase 3:

The third phase of management shall include ongoing maintenance, as noted in Phase 1.

**ATTACHMENT 7
TRAIL MAINTENANCE ACTIVITIES**

The following are typical trail maintenance activities which shall be provided on an on-going, periodic, or as needed basis.

1. Sign replacement and repair
2. Maintain trail pavement marking
3. Tree, shrub or grass trimming
4. Pavement sealing/potholes
5. Trash disposal (University)
6. Graffiti removal
7. Maintain and repair any furnishings.
8. Pruning for vertical clearance along trail
9. Remove fallen trees or branches on trail
10. Invasive species control
11. Maintain temporary irrigation lines for creek bank vegetation.

ATTACHMENTS

Attachment 1: Project Plan and Project Survey.

Attachment 2: Right to Access Agreements to permit soils analysis and related testing.

Attachment 3: Agreements for Access Rights from University of California (Exhibit A) and City of Berkeley (Exhibit B) to City of Albany for construction

Attachment 4: Draft Conservation and Maintenance Easement

Attachment 5: Draft Public Access Easement

Attachment 6: Creek Management Plan

Attachment 7: Trail Maintenance Activities

Attachment 8: Letter between City of Berkeley and University regarding use of funds for Creek Account.

Attachment 1

Project Plan and Project Survey

LEGAL DESCRIPTION

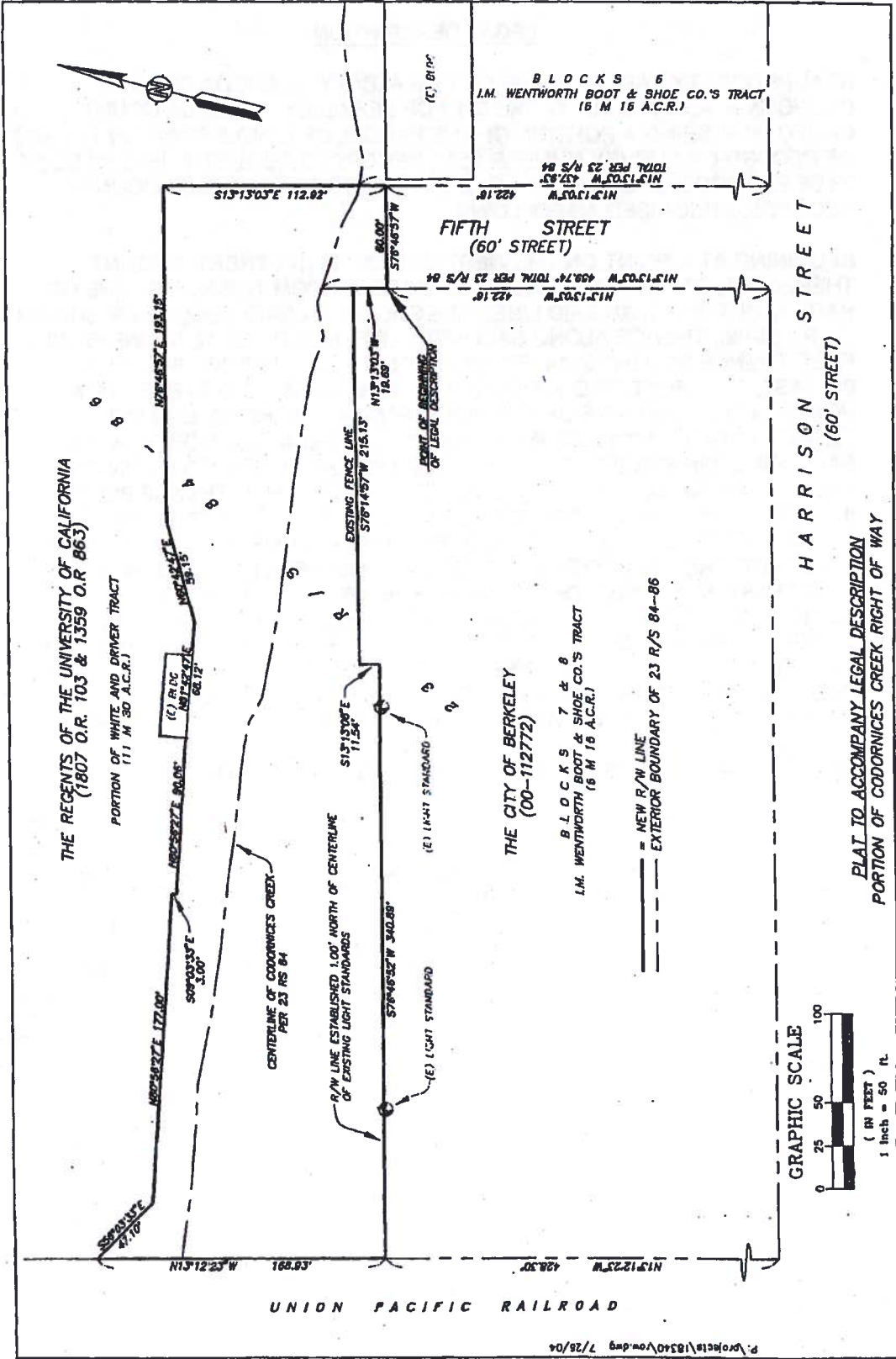
REAL PROPERTY PARTLY IN THE CITY OF ALBANY, ALAMEDA COUNTY, CALIFORNIA, AND PARTLY IN THE CITY OF BERKELEY, ALAMEDA COUNTY, CALIFORNIA, BEING A PORTION OF THE PARCEL OF LAND SHOWN ON THE MAP OF RECORD OF SURVEY NUMBER 1583, RECORDED AUGUST 5, 1999, IN BOOK 23 OF RECORDS OF SURVEY, PAGES 84 THROUGH 86, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF FIFTH STREET, DISTANT THEREON NORTH 13° 13' 03" WEST, 422.16 FEET FROM THE NORTH LINE OF HARRISON STREET, AS SAID LINES ARE SHOWN ON SAID RECORD OF SURVEY (23 RS 84-86), THENCE ALONG SAID WEST LINE, NORTH 13° 13' 03" WEST, 19.69 FEET; THENCE SOUTH 76° 14' 57" WEST, 215.13 FEET; THENCE SOUTH 13° 13' 08" EAST, 11.54 FEET; THENCE SOUTH 76° 46' 52" WEST, 340.89 FEET TO A POINT ON THE EAST LINE OF THE UNION PACIFIC RAILROAD, DISTANT THEREON NORTH 13° 12' 23" WEST, 428.30 FEET FROM THE NORTH LINE OF SAID HARRISON STREET; THENCE ALONG THE EAST LINE OF SAID UNION PACIFIC RAILROAD, NORTH 13° 12' 23" WEST, 168.93 FEET; THENCE SOUTH 56° 03' 33" EAST, 47.10 FEET; THENCE NORTH 80° 56' 27" EAST, 177.00 FEET; THENCE SOUTH 9° 03' 33" EAST, 3.00 FEET; THENCE NORTH 80° 56' 27" EAST, 90.06 FEET; THENCE NORTH 81° 42' 27" EAST, 68.12 FEET; THENCE NORTH 60° 42' 47" EAST, 59.15 FEET; THENCE NORTH 76° 46' 57" EAST, 193.15 FEET TO A POINT ON THE NORTHERLY EXTENSION OF THE EAST LINE OF SAID FIFTH STREET; THENCE ALONG SAID NORTHERLY EXTENSION AND SAID EAST LINE SOUTH 13° 13' 03" EAST, 112.92 FEET TO A POINT DISTANT NORTH 13° 13' 03" WEST, 422.16 FEET FROM THE NORTH LINE OF SAID HARRISON STREET; THENCE SOUTH 76° 46' 57" WEST, 60.00 FEET TO THE POINT OF BEGINNING.

THE ATTACHED PLAT IS MADE A PART OF THIS DESCRIPTION.

Matthew L. Rei 7/26/04
MATTHEW L. REI, DATE
L.S. NO. 7115
REGISTRATION EXPIRES: 12/31/06





THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
(1807 O.R. 103 & 1359 O.R. 863)

PORTION OF WHITE AND DRIVER TRACT
(111 M 30 A.C.R.)

(C) R/W
N15°13'03\"/>

CENTRELINE OF CODORNICES CREEK
PER 23 R/S 84

R/W LINE ESTABLISHED 1.00' NORTH OF CENTRELINE
OF EXISTING LIGHT STANDARDS

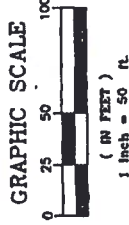
(E) LIGHT STANDARD

(E) LIGHT STANDARD

THE CITY OF BERKELEY
(00-112772)

BLOCKS 7 & 8
I.M. WENTWORTH BOOT & SHOE CO.'S TRACT
(16 M 16 A.C.R.)

— NEW R/W LINE
- - - EXTERIOR BOUNDARY OF 23 R/S 84-86



PLAT TO ACCOMPANY LEGAL DESCRIPTION
PORTION OF CODORNICES CREEK RIGHT OF WAY

Attachment 2

Right to Access Agreements to permit soils analysis and related testing.

THIS ACCESS AGREEMENT (hereinafter "Agreement") is made and entered into this 1st day of April, 2004, by and between THE CITY OF BERKELEY (hereinafter "City") and THE UNIVERSITY OF CALIFORNIA (hereinafter "University").

1. The University is conducting an investigation of the property located at 1000 University Avenue, Berkeley, California 94720 (the "Property") for the purpose of determining the extent of contamination of the Property and the need for remediation. The University is conducting this investigation in accordance with the provisions of the California Environmental Quality Act ("CEQA") and the California Public Resources Code ("CPRC").

2. The University is conducting this investigation in accordance with the provisions of CEQA and CPRC. The University is conducting this investigation in accordance with the provisions of CEQA and CPRC. The University is conducting this investigation in accordance with the provisions of CEQA and CPRC.

THE UNIVERSITY OF CALIFORNIA

CITY OF BERKELEY

[Signature]
Vice President, University of California

[Signature]
City Manager

Real Estate Services Manager

Assistant City Manager

ATT: Jeff Lippincott
Tel: 415 232-2114



| | |
|--------------------------------|-----------------|
| Project No. | 12810A |
| Original to Master File - Code | 4.3 |
| To Proj. Mgr. <i>J.L.</i> | to Working File |
| (initials) | |
| cc: _____ | CAAN # _____ |
| _____ | |
| _____ | |

Department of Public Works
Engineering Division

AGREEMENT FOR ACCESS RIGHTS

THIS ACCESS AGREEMENT, dated April ____, 2004 is by and between THE CITY OF BERKELEY ("City") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("University").

1. Upon reasonable prior written notice from the University, not to be less than twenty-four (24) hours, the City shall permit the University, its employees, agents, contractors, and representatives, the right to enter onto the City's property adjoining Codornices Creek as outlined on the map attached as Exhibit A ("Property") during the period from April 1, 2004 through April 30, 2004, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, in order to conduct such soils testing, geological, surveying, environmental investigations and assessments, and other tests as the University deems appropriate to support the stream improvement project affecting the Property as summarized on the attached Exhibit B.
2. With respect to the University's entry as provided herein, the University shall: (i) indemnify and hold the City 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) promptly repair any damage to the Property caused by the University's entry.
3. The University will contact and obtain from the City's Toxics Management Division any additional permits required for excavations or borings needed for the investigations described above.

THE CITY OF BERKELEY

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

[Signature]
 Jeffrey L. Egeberg
 Manager of Engineering

[Signature]
 Thomas Lottini, Assistant Vice Chancellor
 UC Berkeley, Physical & Environmental Planning

Attachments: Soils Sampling Location Plan
Soils Sampling Work Plan

Helen Levay
Real Estate Services Manager

ATT: Judy Lieberman

one page

FAX No. 510.528.5797



Department of Public Works
Engineering Division

AGREEMENT FOR ACCESS RIGHTS

THIS ACCESS AGREEMENT, dated April 9, 2004 is by and between THE CITY OF BERKELEY ("City") and RESTORATION DESIGN GROUP, LLC ("RDG").

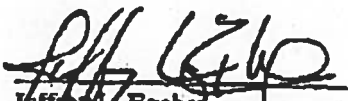
1. Upon reasonable prior written notice from RDG, not to be less than twenty-four (24) hours, the City shall permit RDG, its employees, agents, contractors, and representatives, the right to enter onto the City's property adjoining Codornices Creek as outlined on the map attached as Exhibit A ("Property") during the period from April 6, 2004 through May 6, 2004, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, in order to conduct such soils testing, geological, surveying, and assessments, and other tests as RDG deems appropriate to support the stream improvement project affecting the Property.

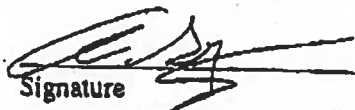
2. With respect to RDG's entry as provided herein, RDG shall: (i) indemnify and hold the City harmless from and against any losses, costs (including reasonable attorneys' fees), damages, actions or expenses arising out of such entry and/or such activities on the Property, and (ii) promptly repair any damage to the Property caused by RDG's entry.

3. RDG will contact and obtain from the City's Toxics Management Division any additional permits required for excavations or borings needed for the investigations described above.

THE CITY OF BERKELEY

RESTORATION DESIGN GROUP, LLC


Jeffrey L. Egeberg
Manager of Engineering

 4/9/04
Signature Date

DAVID GOETTING R.D.
Print Name Title

Attachments: Location Map

Attachment 3
Agreements for Access Rights from University of California and City of Berkeley
to City of Albany for construction access

AGREEMENT FOR ACCESS RIGHTS

THIS ACCESS AGREEMENT, dated 7/27/04 is by and between THE CITY OF ALBANY ("Albany") and THE CITY OF BERKELEY ("Berkeley")

1. Upon reasonable prior written notice from Albany, not to be less than seventy-two (72) hours, Berkeley shall permit the Albany, its employees, agents, contractors, and representatives, the right to enter onto Berkeley's property adjoining Codornices Creek lying within the area outlined on the map entitled Plat to Accompany Legal Description attached as Exhibit A ("Property") during the period from August 1, 2004 through June 1, 2006, for the purpose of constructing the improvements identified as Lower Codornices Creek Restoration, Contract #04-07 of Albany. Construction activity shall comply with Albany and Berkeley requirements (i.e., noise, hours of operation, etc).
2. With respect to the Albany's entry as provided herein, the Albany shall: (i) indemnify and hold Berkeley 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) promptly repair any damage to the Property caused by the Albany's entry.
3. Albany will contact and obtain from Berkeley any additional permits required for improvements described above.

THE CITY OF ALBANY

THE CITY OF BERKELEY

Ann Chaney ^{7/27/04}
City of Albany

Glen
City of Berkeley

Attachments: Exhibit A - Plat to Accompany Legal Description
Exhibit B - Legal Description
Location Plan
Work Plan

LEGAL DESCRIPTION

REAL PROPERTY PARTLY IN THE CITY OF ALBANY, ALAMEDA COUNTY, CALIFORNIA, AND PARTLY IN THE CITY OF BERKELEY, ALAMEDA COUNTY, CALIFORNIA, BEING A PORTION OF THE PARCEL OF LAND SHOWN ON THE MAP OF RECORD OF SURVEY NUMBER 1583, RECORDED AUGUST 5, 1999, IN BOOK 23 OF RECORDS OF SURVEY, PAGES 84 THROUGH 86, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF FIFTH STREET, DISTANT THEREON NORTH 13° 13' 03" WEST, 422.16 FEET FROM THE NORTH LINE OF HARRISON STREET, AS SAID LINES ARE SHOWN ON SAID RECORD OF SURVEY (23 RS 84-86), THENCE ALONG SAID WEST LINE, NORTH 13° 13' 03" WEST, 19.69 FEET; THENCE SOUTH 76° 14' 57" WEST, 215.13 FEET; THENCE SOUTH 13° 13' 08" EAST, 11.54 FEET; THENCE SOUTH 76° 46' 52" WEST, 340.89 FEET TO A POINT ON THE EAST LINE OF THE UNION PACIFIC RAILROAD, DISTANT THEREON NORTH 13° 12' 23" WEST, 428.30 FEET FROM THE NORTH LINE OF SAID HARRISON STREET; THENCE ALONG THE EAST LINE OF SAID UNION PACIFIC RAILROAD, NORTH 13° 12' 23" WEST, 168.93 FEET; THENCE SOUTH 56° 03' 33" EAST, 47.10 FEET; THENCE NORTH 80° 56' 27" EAST, 177.00 FEET; THENCE SOUTH 9° 03' 33" EAST, 3.00 FEET; THENCE NORTH 80° 56' 27" EAST, 90.06 FEET; THENCE NORTH 81° 42' 27" EAST, 68.12 FEET; THENCE NORTH 60° 42' 47" EAST, 59.15 FEET; THENCE NORTH 76° 46' 57" EAST, 193.15 FEET TO A POINT ON THE NORTHERLY EXTENSION OF THE EAST LINE OF SAID FIFTH STREET; THENCE ALONG SAID NORTHERLY EXTENSION AND SAID EAST LINE SOUTH 13° 13' 03" EAST, 112.92 FEET TO A POINT DISTANT NORTH 13° 13' 03" WEST, 422.16 FEET FROM THE NORTH LINE OF SAID HARRISON STREET; THENCE SOUTH 76° 46' 57" WEST, 60.00 FEET TO THE POINT OF BEGINNING.

THE ATTACHED PLAT IS MADE A PART OF THIS DESCRIPTION.

MATTHEW L. REI, DATE
L.S. NO. 7115
REGISTRATION EXPIRES: 12/31/06

Attachment 3, Exhibit

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

FACILITIES SERVICES
PHYSICAL AND ENVIRONMENTAL PLANNING
300 A & E BUILDING, # 1382

BERKELEY, CALIFORNIA 94720-1382

AGREEMENT FOR ACCESS RIGHTS

THIS ACCESS AGREEMENT, dated Aug. 12, 2004 is by and between THE CITY OF ALBANY ("City") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("University")

1. Upon reasonable prior written notice from the City, not to be less than seventy-two (72) hours, the University shall permit the City, its employees, agents, contractors, and representatives, the right to enter onto the University's property adjoining Codornices Creek as outlined on the map attached as Exhibit A ("Property") during the period from August 1, 2004 through June 1, 2006, for the purpose of constructing the improvements identified as Lower Codornices Creek Restoration, Contract #04-07 of the City of Albany. Construction activity shall comply with City and University requirements (i.e., noise, hours of operation, etc).
2. The City is aware that a portion of the Property is subject to a license agreement between the Regents and the Alameda Contra Costa Youth Soccer League (ACCYSL). The City shall be responsible for providing notice of construction activities to ACCYSL and coordinating construction to minimize interruption of the use of the fields.
3. With respect to the City's entry as provided herein, the City shall: (i) indemnify and hold the University 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) promptly repair any damage to the Property caused by the City's entry.
4. The City will contact and obtain from the University any additional permits required for improvements described above.
5. At the termination of this agreement, City shall immediately cease construction on the property, return the premises to a clean and orderly condition, and replace in kind any existing improvements that may have been disturbed or removed during the course of the work.

THE CITY OF ALBANY

City of Albany

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

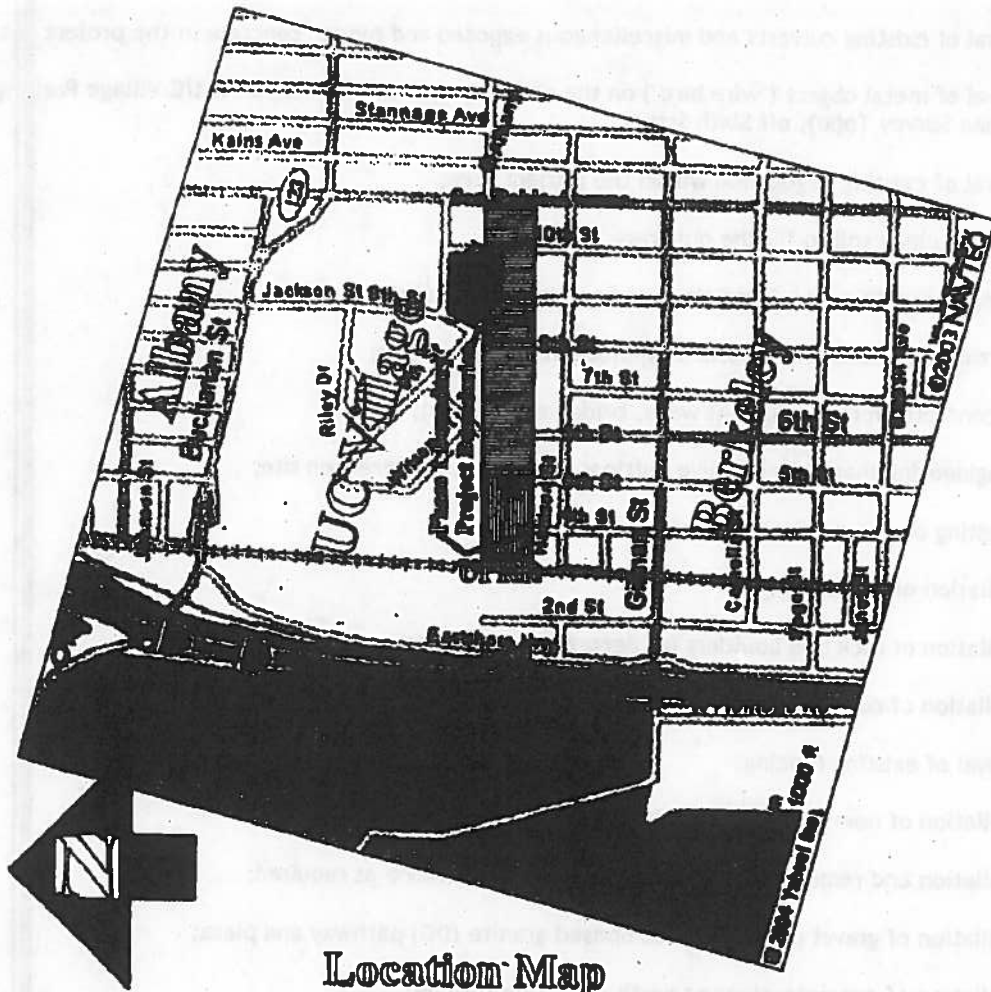
Helen Levay
UC Berkeley, Real Estate Services Manager

Recommended for Approval
Assistant Vice Chancellor, Physical & Environmental Planning

Attachments: Location Plan (one page)
Work Plan (one page)

Attachment 3, Exhibit A, p2

Attachment 1: Location Plan



Location Map
Lower Codornices Creek
Restoration - Contract #04-07
City of Albany, CA

Attachment 3, Exh. b, A, p3

Attachment 2: Work Plan

The City's work plan consists of the following elements:

- dewatering the creek, Fifth Street to the UPRR, including the construction and operation of a cofferdam above (east of) Fifth Street and bypass pumps and piping (temporary by-pass piping to be moved to inside the north Project Limits line in lieu of the locations shown on the project plans to accommodate requirements of permitting agencies);
- clearing and grubbing the entire project site area;
- removal of existing culverts and miscellaneous exposed and hidden concrete in the project reach;
- removal of metal object ("wire bird") on the property area and relocation to UC Village Parking Lot Q (Herman Survey Topo), off Sixth Street;
- removal of existing vegetation within the project area;
- importing clean soil to fill the old creek channel;
- grading to create a new flood plain and active channel area;
- export of local soils for disposal at appropriate land fill sites;
- new concrete work (deck, seat walls, bridge abutments);
- bioengineering (harvesting of live cuttings from trees that grew on site);
- harvesting of live cuttings from off site;
- Installation of live cuttings;
- installation of rock and boulders for decoration and control of drainage and erosion;
- Installation of container plants and temporary irrigation therefore;
- removal of existing fencing;
- installation of new permanent chain link fencing;
- installation and removal of temporary construction fencing as required;
- installation of gravel pathway, decomposed granite (DG) pathway and plaza;
- installation of concrete plaza at north end of footbridge;
- new prefabricated, painted steel footbridge at approximately the existing Fourth Street culvert crossing;
- relocation of existing 4" irrigation piping onto the bridge underside;
- relocation and modification of the existing "Fielding West" and "Fielding East" sports fields including and skinned infield, backstop, batting cage, backstops, irrigation and utility systems, and associated work.

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Attachment 4

Draft Conservation and Maintenance Easement

DRAFT



City of Albany
1010 State Street
Albany, CA 94710
City of Albany
1010 State Street
Albany, CA 94710
City of Albany
1010 State Street
Albany, CA 94710

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made this _____ day of _____, 2001, by THE ALBANY ASSOCIATES, LP, a California limited liability partnership, to THE CITY OF ALBANY (City), a California municipal corporation.

WITNESSETH

WHEREAS Grant owns in fee simple property located at 1010 State Street, Albany, California, consisting of a total of approximately 10.12 acres, as more fully described on Exhibit A (the "Property"), which includes two drainage canals that cross the site east to west, Village Creek to the north and Columbia Creek to the south, the entire drainage area is described as Parcel A, the Creek Management Plan (the "Creek Management Plan") which is attached hereto and incorporated herein by reference; and

WHEREAS Grant is a California municipal corporation and is a qualified organization within the provisions of Section 5153 of the California Civil Code and Section 5005 of the United States Internal Revenue Code, entitled to receive and hold conservation easements; and

WHEREAS Grant and Grant seek to establish the Conservation Easement, as defined in Section 51 of the California Civil Code, for the development of the Property as approved by the City of Albany Planning Commission and recorded in 2001 by Resolution No. 01-01 (the "Resolution") in a portion of the Property as shown on Exhibit

Recorded at the request
of and when recorded
return to:

City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attn: Planning Manager

with a conformed copy to:

TMG Albany Associates, LP
100 Bush Street, 26th Floor
San Francisco, CA 94104
Attn: Denise Pinkston

DRAFT

SAMPLE
ONLY

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made this ____ day of _____, 2001, by TMG ALBANY ASSOCIATES, LP, a California limited partnership ("Grantor") to THE CITY OF ALBANY ("Grantee"), a California municipal corporation.

WITNESSETH:

WHEREAS, Grantor owns in fee simple, property located at 1055 Eastshore Road, previously occupied by aluminum smelting facilities, automobile repair businesses, and construction equipment storage facilities consisting of a total of approximately 10.12 acres, as further described on Exhibit A (the "Property"), which includes two drainages that traverse the site east to west, Village Creek to the north and Codornices Creek to the south, as further described in Exhibit B, the Creek Management Plan for Village and Codornices Creeks (the "Creek Management Plan") attached hereto and incorporated herein by reference; and

WHEREAS, Grantee is a California municipal corporation, and is a "qualified organization" within the provisions of Section 815.3 of the California Civil Code and Section 170(h) of the United States Internal Revenue Code, qualified to acquire and hold conservation easements; and

WHEREAS, Grantor and Grantee desire to establish this Conservation Easement, as required by Condition G-2 of the Conditions of Approval for the redevelopment of the Property as approved by the City of Albany Planning Commission on December 12, 2000 by Resolution No. 00-01 (the "Project"), on a portion of the Property as shown on Exhibit

C, (the "Conservation Easement Area") attached hereto and incorporated herein by reference; and

WHEREAS, Grantor and Grantee desire to establish this Conservation Easement on the Conservation Easement Area for water quality, habitat, recreation, conservation, open space, creek enhancement, and flood control purposes, as described in the Creek Management Plan, attached as Exhibit B; and

WHEREAS, although the City is surrounded on all sides by urban development, the Conservation Easement Area possesses potential jurisdictional waters of the United States and potential habitat values for the Western pond turtle (*Clemmys marmorata*), a California species of concern and Steelhead trout (*Oncorhynchus mykiss*), a federally listed endangered species, as well as other natural, scenic, wildlife, open space, and other conservation values (collectively "Conservation Values"); and

WHEREAS, protection and preservation of the Conservation Easement Area will assure that this area and its existing features will continue to be available for its natural habitat values and will provide a significant public benefit by preserving open space against development pressure and provide recreational opportunities and protection for wildlife and scenic qualities unique to the area; and

WHEREAS, in order to establish the present condition of the Conservation Easement Area, Grantee has examined the Conservation Easement Area and prepared a report as part of the Creek Management Plan (which functions as the "Easement Documentation Report") which contains an inventory of the relevant features and conditions, its improvements and its natural resources (the "Baseline Data"), and a map (the "Baseline Documentation Map"). A copy of the Easement Documentation Report has been provided to Grantor as part of the Creek Management Plan, and another shall be placed with and remain on file with Grantee. The Easement Documentation Report has been signed by Grantor and Grantee; and thus acknowledged to accurately represent the condition of the Mitigation Property at the date of the conveyance of this Easement, in accordance with Treasury regulation Section 1.170A-14(g)(5)(i). The parties intend that the Baseline Data and Baseline Documentation Map shall be used by Grantee to monitor Grantee and Grantor's future uses of the Conservation Easement Area and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Conservation Easement Area or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in resolution of the controversy; and

WHEREAS, the parties desire that the Conservation Easement Area be used and managed in a manner compatible with the Conservation Values; and

WHEREAS, to accomplish all of the aforementioned purposes, Grantor hereby intends to convey to the Grantee and the Grantee intends to obtain a Conservation Easement restricting the use which may be made of the Conservation Easement Area, to manage the Conservation Values of the Property in accordance with the Creek Management Plan.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and in particular, inter alia, Sections 815 *et. seq.* of the California Civil Code, Grantor hereby grants to Grantee, its successors and assigns, a Conservation Easement (the "Easement") as follows:

1. Purpose.

- (a) This Easement is to assure that the Conservation Easement Area will be retained in perpetuity to protect the Conservation Values in accordance with the Creek Management Plan and to prevent any use of the Conservation Easement Area that will significantly impair or interfere with its Conservation Values. Accordingly, this Easement restricts the use of the Conservation Easement Area to activities involving flood control, recreation, nature study, enjoyment of views, open space, natural habitat and environmental protection, and related uses which are consistent with this Easement, as detailed in the Creek Management Plan.
- (b) Grantor and Grantee acknowledge that this Easement satisfies the Condition G-2 of the Conditions of Approval for the redevelopment of 1055 Eastshore Road as approved by the City of Albany Planning Commission on December 12, 2000 by Resolution No. 00-01.
- (c) Grantor agrees that it shall consider and negotiate in good faith any change in use of the Conservation Easement Area if requested by Grantee provided that the Conservation Values are not degraded and the change in use is not inconsistent with the Conservation Values. Grantee further agrees that Grantor shall not be obligated to pay for any such change in use (including any cost related to any remediation of soil or groundwater contamination which would be required by the use or change in use proposed by the Grantor) if the change would result in an additional cost to Grantor (and Grantor promptly notifies Grantee that the change will result in an additional cost), unless the change in use is caused by a violation of one or more of the terms of this Easement by the Grantor.

2. Rights of Grantee. To accomplish the purposes of this Easement, Grantor conveys to Grantee the right:

- (a) To identify, preserve and protect the Conservation Values of the Conservation Easement Area, without any obligation of Grantor to pay any cost (unless the action is caused by Grantor's violation of this Conservation Easement or otherwise provided in the Creek Management Plan or otherwise set forth herein); and
- (b) To fulfill the objectives of the Creek Management Plan; and

- (c) Pursuant to Section 7 hereof ("Disputes and Remedies"), to prevent any activity on or use of the Conservation Easement Area which is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use.

3. **Prohibited Uses.** Any activity on or use of the Conservation Easement Area which is inconsistent with the purposes of this Easement or the Creek Management Plan is prohibited.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited on the Conservation Easement Area:

- (a) **Commercial or Industrial Use.** Any commercial, agricultural or industrial development, use of, or activity on the Conservation Easement Area.
- (b) **Tree/Shrub Cutting.** Removing, destroying, or cutting of live trees, shrubs or other vegetation, except as required for (1) fire breaks consistent with all applicable laws and regulations, (2) maintenance of existing foot trails or emergency access roads, (3) prevention or treatment of disease, or (4) other purposes with the permission of the Grantee.
- (c) **Dumping.** The dumping or other disposal of wastes, refuse, or debris into creek channels, water bodies or anywhere else on the Conservation Easement Area.
- (d) **Signs and Billboards.** The placement of any signs or billboards on the Conservation Easement Area, except those signs that serve the purpose of identifying or protecting the Conservation Easement Area, including but not limited to signs displayed to state the name and address of the Conservation Easement Area, to provide public education, or to control unauthorized entry or use.
- (e) **Sale or Transfer of Water Rights.** Sale or transfer of any water rights belonging to the Conservation Easement Area to any other property, or use of any water rights appurtenant to the Conservation Easement Area. This Easement shall not sever or impair any riparian water rights appurtenant to the Property.
- (f) **Off Road Vehicles.** Use of off-road or all-terrain vehicles or motorcycles is prohibited, except with the written permission of the Grantee.
- (g) **Hunting or Shooting.** No commercial hunting, trapping or shooting is permitted.

- (h) Archeological Resources. The excavation, removal, destruction, or sale of any archeological artifacts or remains which may be found on the property, except as part of any future archeological investigation approved by Grantee. All excavation plans shall be reviewed by an archaeologist prior to the start of, and during, the excavation.
- (i) Junk Yards or Storage of Materials. Storage or disassembly of inoperable automobiles, trucks or appliances, or other storage of materials.

4. Development Rights.

- (a) Except as expressly permitted by terms of this Conservation Easement, including specifically the inclusion of the Conservation Easement Area in the calculation of the Floor Area Ratio for the Project (and any future development) on the Property, all remaining rights in any present or future development rights associated with the Conservation Easement Area are hereby conveyed by Grantor to Grantee and shall not be applied to or utilized by Grantee for development or for any other purpose on the Conservation Easement Area. No development rights shall be transferred by Grantor to the Conservation Easement Area from any other property. Grantee covenants that it will not use, sell or transfer these development rights to any other property.

5. Reserved Rights. Grantor reserves unto itself and to its successors and assigns all rights accruing from its ownership of the Conservation Easement Area which are not transferred, conveyed, or granted to Grantee, or which are not prohibited herein and are not inconsistent with the purposes of this Easement. Grantor expressly reserves the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Area which are not transferred, conveyed, or granted to Grantee, nor expressly prohibited herein and which are not inconsistent with the purposes of this Easement.

Without limiting the generality of the foregoing, the following rights relating to the Conservation Easement Area are expressly reserved by Grantor and its successors in interest:

- (a) Project To construct, maintain, and repair any and all elements and features of the Project, as approved by the City of Albany Planning Commission on December 12, 2000 by Resolution No. 00-01 together with any and all amendments approved by Grantee.
- (b) Recreational Uses. To engage in and permit guests and invitees to engage in recreational uses of the Conservation Easement which do not result in degradation of Conservation Values.

- (c) Roads. To install any necessary emergency vehicle access required by the City of Albany, provided that grading is minimized and that adequate drainage is provided to prevent erosion. Grantor may relocate the emergency access if damage from a natural cause makes a road impassable in its existing right-of-way.
 - (d) Fencing. To repair, and maintain fencing and gates, as necessary, along within the Conservation Easement Area. However, the materials, style and location of new fencing and gates to be constructed are subject to the approval of Grantee. Said approval shall not be unreasonably withheld. Grantor will pay all costs of new fencing it requests; however Grantor shall not pay for fencing requested by Grantee.
 - (e) General Maintenance. Grantor may maintain the Conservation Easement Area in accordance with the terms of the Creek Management Plan.
6. Notification or Approval. Where Grantee approval is required in accordance with this instrument, Grantor shall seek approval in the manner described in Section 6(a) and 6(b).
-

- (a) Notice of Certain Permitted Actions. Other than the notice provisions for access, as set forth in Section 8(a), whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit Grantee (or the Resource Agencies, if appropriate) to make an informed judgment of the activity as to its consistency with the purposes of this Easement.
- (b) Grantee's Approval: Whenever Grantee approval is required in accordance with this instrument, the authorized representative of the Grantee shall grant or withhold its approval in writing within forty-five (45) days after receipt of Grantor's written request therefor. Notification of Grantee shall be as provided in Section 15. The request shall describe the nature, scope, design, location, timetable, and other material aspects of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Easement.

Approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement. If Grantee fails to respond in writing within forty-five (45) days, the request shall automatically be deemed to be granted.

- (c) Grantor's Notification and Approval. Unless otherwise specified herein, where Grantor's approval is required in accordance with this instrument, Grantee shall notify Grantor in writing not less than forty-five (45) days prior to the date Grantee intends to undertake the activity in question. The request shall describe the nature, scope, design, location, timetable, and other material aspects of the proposed activity in sufficient detail to permit Grantor to make an informed judgment. Whenever Grantor's approval is required in accordance with this instrument, Grantor shall grant or withhold its approval in writing within forty-five (45) days after receipt of Grantee's written request therefor. Grantor shall not unreasonably withhold approval of activities consistent with the purposes of this Easement.

7. Disputes and Remedies. If Grantee determines that Grantor or Grantor's successors in interest or any occupant of the Conservation Easement Area is conducting or allowing a use, activity, or condition on the Conservation Easement Area which is prohibited by the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. Grantee shall also notify any appropriate federal or state regulatory agency with jurisdiction over the resource at issue. Where the violation involves injury to the Conservation Easement Area resulting from any use or activity inconsistent with the purposes of this Easement, Grantee shall demand corrective action sufficient to restore the portion of the Conservation Easement Area so injured.

- (a) Consultations Regarding Interpretation and Enforcement of Easement. When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to this Easement, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue without resorting to arbitration or legal action.
- (b) Grantee's Other Remedies. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot be cured within the thirty (30) day period, Grantor fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Conservation Easement Area to the condition that existed prior to injury.

Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Easement Area. If Grantee, in its

sole and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conservation Easement Area, Grantee may pursue its remedies under this section without waiting for the period provided for cure to expire, however, Grantee shall notify Grantor in the manner set forth in Section 8(a). Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity.

- (c) Costs of Enforcement. In the event any action or proceeding is brought by either Grantor or Grantee to enforce or to interpret the terms of this Easement, the prevailing party in such action or proceeding shall be entitled to recover its attorneys fees and costs of suit.
- (d) Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- (e) Waiver of Certain Defenses. Grantor agrees that no statute of limitations shall start to run and no estoppel or similar defense shall arise against any action brought by Grantee to enforce or interpret this Easement, unless and until Grantee is actually aware of a violation or is aware of a dispute regarding the interpretation of the provisions of the Easement. Grantee waives any right to assert any defense contrary to the provisions of this section.
- (f) Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Easement Area resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant

injury to the Conservation Easement Area or to human life or other real or personal property resulting from such causes.

- (g) State of California and Resource Agency Right of Enforcement. In the event that Grantee or any successor holder of this Easement fails to enforce the terms of this Easement, the State of California and each regulatory agency with jurisdiction over some or all of the Conservation Easement Area shall have the rights to enforce the easement as agent of Grantee or such successor holder.

8. Access.

- (a) Grantor acknowledges and agrees that upon 24 hours phone or fax notification to Grantor (or less with the consent of Grantor), Grantee or its respective agents or contractors may enter the Conservation Easement Area as described by Creek Management Plan to take certain actions to protect and enhance the Conservation Values on the Conservation Easement Area consistent with the actions described in the Creek Management Plan attached hereto as Exhibit B. Where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, Grantee may enter with at least concurrent phone or fax notification to Grantor.
- (b) Rights of access to the Conservation Easement Area shall include use of appurtenant easements and rights of way, if any, to enter upon the Conservation Easement Area and rights of access across the Property, including without limitation vehicular access at reasonable times in order to monitor Grantor's compliance with the terms of this Easement and to enforce such terms; provided, that access by Grantee its respective authorized designees shall not be more than is necessary to monitor this Easement and implement the Creek Management Plan and shall not unreasonably interfere with the use and quiet enjoyment of the Property or Conservation Easement Area by the Grantor or its successors in interest or by any tenants of Property.
- (c) Nothing herein is intended to set any monitoring standard for Grantee, nor to create any obligation that Grantee access the property more than Grantee deems necessary, in its sole judgment.
- (d) No right of access by the general public to any portion of the Conservation Easement Area is conveyed by this Easement; although access to the general public may be provided with the mutual consent of Grantee and Grantor if it is not inconsistent with the protection of the Conservation Values.

9. **Costs and Responsibilities.** Grantor retains the responsibility for ownership, operation, upkeep, and general maintenance of the Conservation Easement Area as provided in the Creek Management Plan, provided that Grantor shall not incur any costs for Conservation Values enhancement actions performed or requested by Grantee and their designees pursuant the Creek Management Plan, unless caused by a violation of this Conservation Easement. Grantor, Grantee, and their respective designees shall use all reasonable efforts to keep Grantee's interest in the property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor acknowledges that Grantee is not responsible for any actions or omissions of Grantee or its agents or contractors, and Grantee acknowledges that Grantor is not responsible for any actions or omissions of the Grantee or its agents or contractors.
- (a) **Taxes.** Grantor shall pay or cause to be paid before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Area by competent authority (collectively "taxes"), including any such taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.
10. **Extinguishment.** It is the intention of the parties that the conservation purposes of this Conservation Easement shall be carried out forever. Liberal construction is expressly required for purposes of effectuating this Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. Notwithstanding the foregoing, if circumstances arise in the future which render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after satisfaction of claims prior in right to Grantee, from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Easement Area subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 10(a). Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Easement.
- (a) **Compensation or Proceeds.** This Easement shall have a fair market value determined by multiplying (i) the fair market value of the Conservation Easement Area unencumbered by the Easement (minus any increase in value attributable to improvements made after the date of this easement) by (ii) the ratio of the value of the Easement at time of grant of the Easement to the value of the Conservation Easement Area unencumbered by the Easement, at the time of this grant. The values at the time of recording of this Easement are agreed by the parties to be _____ [need to establish the value and ratio] the values established by the Grantor's qualified appraisal. The ratio established by this section shall remain constant, and on a subsequent sale, exchange or involuntary conversion of

all or any portion of the Conservation Easement Area which extinguishes or terminates all or a portion of this Easement, Grantee shall be entitled to a portion of the proceeds equal to such proceeds (minus any portion attributable to improvements made after the date of this Easement) multiplied by the ratio established in this section. However, Grantor may retain all proceeds from a sale of its interest in the Property if this Easement remains in full force and effect.

(b) Condemnation. If the Conservation Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, for purposes of a public park, open space, watershed or public trail or for any other reason, to the extent that the Conservation Easement shall be extinguished for those portions taken, compensation from the condemning agency or entity shall go to the Grantor and Grantee in the ratio established in section 10(a).

11. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend this Easement provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 815 *et. seq.* of the California Civil Code, or Section 170(h) of the Internal Revenue Code, as amended, and any amendment shall be consistent with the purposes of this Easement. Any such amendment shall be in writing, shall refer to this Easement by reference to its recordation data, and shall be recorded in the Official Records of Alameda, California.
12. Conveyance. Grantee may not convey this Easement in whole or in part without the prior written approval of Grantor, which approval shall not be unreasonably withheld. After prior written approval from Grantor, Grantee may convey this easement, but only to an entity qualified at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended, or California Civil Code Section 815.3 (or any successor provision then applicable) and the applicable regulations promulgated thereunder, authorized to acquire and hold conservation easements under Section 815.3 of the California Civil Code (or any successor provision then applicable), and demonstrated, to Grantee's reasonable satisfaction, to be an entity that has the experience and ability to manage a conservation easement. Grantee acknowledges that governmental agencies are qualified entities and may be transferees of Grantee's interest hereunder. As a condition of such transfer, Grantee shall require the transferee to expressly agree in writing to assume Grantee's obligations hereunder in order that the purposes of this Easement will continue to be carried out and shall obtain Grantor's prior consent, which shall not be unreasonably withheld. In the event of a conveyance of the Conservation Easement, upon accepting the assignment of this Easement, the entity receiving the assignment may be released from the Indemnification obligations set forth in Section 17(b), only if it has provided Grantor with a written release of Grantor's indemnification obligations under Section 17(a).

- (a) **Executory Limitation.** If a subsequent transferee (other than the State) of Grantee shall cease to exist or to be qualified to hold conservation easements under California Civil Code Section 815.3, then the Easement shall vest in the State of California upon the State's acceptance, or in a qualified entity then designated by the Grantee with prior written notice to Grantor, with due regard to the requirements of Section 12.
13. **Subsequent Conveyance of the Conservation Easement Area.** Grantor retains the right to sell the Conservation Easement Area. Each Grantor shall incorporate by reference hereto the terms of this Easement in any deed or other legal instrument by which any Grantor divests itself of any interest in the Property or the Conservation Easement Area, including, without limitation, a leasehold interest, and all obligations of Grantor under this Easement shall be assumed by any assignee or transferee of any Grantor. Grantor shall provide a complete copy of this Easement to its transferee prior to any such transfer. Grantor shall give written notice that the prospective transferee has received a copy of this Easement to Grantee at least 5 days prior to the date of any transfer or intended transfer of any interest in the Conservation Easement Area, except as provided below. Grantee shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Easement. The failure of Grantor to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way. Grantee approval shall not be necessary for Grantor to transfer any interest in the Property or the Conservation Easement Area. However, Grantor shall notify Grantee of such transfer no later than 20 days after the transfer is effective.
14. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within 30 days after receipt of such request execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement as may be reasonably requested by Grantor. Such certification shall be limited to Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within 30 days of receipt of Grantor's written request therefore, provided that in no event shall Grantee be required to conduct an inspection for this purpose more than two (2) times per any calendar year.
15. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall be deemed delivered upon receipt and either served personally or sent by first class mail - postage prepaid, certified mail, or overnight delivery by a reputable carrier, addressed as follows:

To Grantor: TMG Albany Associates, LP

100 Bush Street, 26th Floor
San Francisco, CA 94104
Attn: Denise Pinkston
(415) 772-5900 telephone
(415) 772-5911 fax

with a copy to (not to constitute notice):

Beveridge & Diamond, P.C
456 Montgomery Street, Suite 1800
San Francisco, CA 94104
Attn: Tamsen Plume
(415) 262-4012 telephone
(415) 262-4040 fax

To Grantee: City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Attn: Planning Manager
(510) 528-5760 telephone
(510) 524-9359 fax

with a copy to (not to constitute notice):

Robert Zweben
City Attorney
City of Albany
1730 Solano Avenue
Berkeley, California 94707
(510) 524-9205 telephone
(510) 526-9190 fax

or to such other address as either party from time to time shall designate by written notice to the other.

16. Recordation. Grantor shall cause this instrument to be recorded in the Official Records of the County of Contra Costa, California. Grantee may re-record this Easement whenever re-recording is required to preserve Grantee's rights in this Easement.
- (a) Notice of Recordation. Within ten (10) business days of recording the Conservation Easement, Grantor shall send Grantee written notice of the recording date, addressed as follows:

TMG Albany Associates, LP

100 Bush Street, 26th Floor
San Francisco, CA 94104
Attn: Denise Pinkston

With a copy to (not to constitute notice)

Beveridge & Diamond, P.C
456 Montgomery Street, Suite 1800
San Francisco, CA 94104-1251
Attn: Tamsen Plume

17. Indemnification

- (a) Indemnification by Grantor. Notwithstanding any other provision herein to the contrary, but subject to Section 19(g), Grantor hereby agrees to indemnify, defend, and hold harmless Grantee and its successors and assigns, employees, agents, and contractors (the "Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including reasonable attorneys' fees) which the Indemnified Parties may suffer or incur as a result of or arising out of the activities of Grantor on the Property or any breach of this Conservation Easement by Grantor or its guests or invitees. Section 12 further discusses the indemnification obligations of the parties upon assignment of this Easement. Without limiting the foregoing, Grantor shall indemnify, defend, and hold harmless the Indemnified Parties for all of the following:
- (i) Approvals. Approvals requested by Grantor or given or withheld by the Grantee hereunder, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against Grantor or any other person or entity, except as such claim, liability, damage, or expense is the result of the Grantee's gross negligence or intentional misconduct or that of its successors, assigns, agents, representatives, or invitees.
 - (ii) Taxes. Any real property taxes, insurance, utilities or assessments that are levied against the Property (other than to the extent directly resulting from the actions or omissions of Grantee), including those for which exemption cannot be obtained, or any other costs of maintaining the Property.
 - (iii) Hazardous Materials. Any Hazardous Material, as that term is defined in Section 18, which is present, alleged to be present, or otherwise connected in any way to the Property, whether by or after the date of this Conservation Easement, unless put there by Grantee or its successors, assigns, agents, employees, representatives, guests, or invitees or are related to a use or change

in use by the Grantee which would necessitate a higher level or standard of clean up for any existing Hazardous Materials than would otherwise be required by Environmental Laws.

- (b) Indemnification by Grantee. Grantee shall indemnify, defend, and hold harmless Grantor, its successors and assigns, from any costs, liabilities, penalties, damages, claims or expenses (including reasonable attorneys' fees) which Grantor (and its successors and assigns) and its employees, agents, and contractors may suffer or incur as a result of or arising out of the respective activities of the Grantee and its successors, assigns, employees, agents, representatives, guests and invitees of any type on the Conservation Easement Area and any breach of this Conservation Easement by Grantee, except damages caused solely by the gross negligence or willful misconduct or any breach of this Conservation Easement by Grantor or its employees, agents, contractors, guests, or invitees. Section 12 further discusses the indemnification obligations of the parties upon assignment of this Easement.

18. Hazardous Materials Liability. Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives to the Grantee:

- (a) the obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 et seq. and hereinafter "CERCLA"); the obligations or liabilities of a person described in 42 USC Section 9607(a)(3), except as to Hazardous Materials put on the Conservation Easement Area by Grantee or its successors, assigns, agents, employees, representatives, guests, or invitees or liability for a higher level or standard of clean up for any existing Hazardous Materials than would otherwise be required by Environmental Laws related to Grantee related to or necessitated by a use or change in use by the Grantee;
- (b) the obligations of a responsible person under any applicable Environmental Laws, as defined below, unless the Grantee is applying for authorization pursuant to an Environmental Law to achieve the purposes of the Creek Management Plan or is using or changing the use of the Conservation Easement Area so as to necessitate a higher level or standard of clean up for any existing Hazardous Materials than would otherwise be required by Environmental Laws;
- (c) the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property without prior approval of Grantor; or

- (d) control Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC Section 9601 *et seq.*), the Hazardous Materials Transportation Act (49 USC Section 6901 *et seq.*), the Hazardous Waste Control Law (Cal. Health & Safety Code Section 25100 *et seq.*), the Hazardous Substance Account Act (Cal. Health & Safety Code Section 25300 *et seq.*), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment or Hazardous Materials.

19. General Provisions.

- (a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.
- (b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of Grantee to effect the purposes of this Easement and the policy and purpose of Section 815 *et seq.* of the California Civil Code. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. This instrument shall be construed in accordance with its fair meaning and it shall not be construed against either party on the basis that that party prepared this instrument.
- (c) Severability. If any provision of this Easement, or the application thereof, is found to be invalid to any person or circumstance, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby so long as the purposes of this Easement can still be carried out.
- (d) Third Party Rights. This instrument is made and entered into for the sole benefit and protection of Grantor and Grantee and their respective successors and assigns. No person or entity other than the parties hereto shall have any right of action under this Easement or the Creek

Management Plan, or any right to enforce the terms and provisions thereof, except as provided in Section 8(g).

- (e) No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's fee title in any respect. Grantor specifically reserves the right at any time, to convey fee title to the Conservation Easement Area subject to the terms of this Easement.
- (f) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Conservation Easement Area.
- (g) Termination of Rights and Obligations. Except as expressly provided otherwise in this instrument, a party's rights and obligations under this Easement shall terminate upon the transfer of the party's interest in this Easement or the fee title to the Conservation Easement Area, as the case may be, except that rights, obligations, and liability relating to acts or omissions occurring prior to transfer shall survive transfer.
- (h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (i) Counterparts. Grantor may execute this instrument in two or more counterparts. Each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has set its hand on the day and year first written above.

GRANTOR
TMG ALBANY ASSOCIATES, LP.

Date: _____

By: _____

Name: _____

Title: _____

GRANTEE
CITY OF ALBANY

Date: _____

Approved as to Form

By: _____

Name: _____

Title: City Attorney

Date: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

PROPERTY
MAP

EXHIBIT C

**LEGAL DESCRIPTION AND
MAP OF CONSERVATION EASEMENT AREA**

Attachment 5

Public Access Easement

DRAFT

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

Attention: _____

THIS SPACE ABOVE FOR RECORDER'S USE

THIS EASEMENT AGREEMENT IS RECORDED AT THE REQUEST OF THE CITY OF BERKELEY, A CALIFORNIA MUNICIPAL CORPORATION, AND IS EXEMPT FROM RECORDING FEE PURSUANT TO GOVERNMENT CODE § 6103 AND § 27383 AND FROM THE PAYMENT OF A DOCUMENTARY TRANSFER TAX PURSUANT TO REVENUE AND TAXATION CODE § 11922.

EASEMENT AGREEMENT

This Easement Agreement ("Agreement"), is made and entered into as of _____, 2004, by and between _____ ("Grantor") and the CITY OF BERKELEY, a California municipal corporation ("City").

RECITALS

A. _____ is the owner of the real property described on Exhibit A hereto (the "Grantor's Property").

B. In connection with City's development of a bicycle and pedestrian path along Codornices Creek, commonly known as the "Codornices Creek Trail" and subject to the terms and conditions contained herein, Grantor has agreed to grant to City certain easements and related rights in the land described on Exhibit B hereto ("Easement Area").

AGREEMENT

In consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Grant of Easements.**

1.1 **Right-of-Way.** Subject to the terms and conditions of this Agreement, Grantor grants to City a non-exclusive easement over and across the Easement Area for public use as a section of the Codornices Creek Trail. ("Right of Way").

1.2 **Utility Easement.** Grantor grants to City a non-exclusive easement ("Utility Easement") on, across and under the Easement Area, for the installation, use,

maintenance, repair, restoration, relocation and removal of (i) storm sewers, (ii) electricity, and (iii) and water mains or conduits (collectively the "Utilities"): The Utilities must serve only the Path Improvements (as defined below). All improvements, fixtures and equipment relating to the Utilities must be located underground with the exception of customary above-ground fixtures and equipment incidental to such underground utilities.

2. **Installation of Path Improvements and Maintenance Obligations.**

2.1 City, at its sole cost and expense, may install, within the Easement Area, the improvements listed on Exhibit C hereto (collectively, the "Path Improvements") and related Utilities. City shall carry out such installation so as to cause as little disturbance as possible to Grantor and Grantor's use of the Grantor's Property and the improvements now or hereafter located thereon. Thereafter, City shall, at all times, and at its sole cost and expense, (i) keep and maintain the Right of Way in good condition and repair, and (ii) be responsible for the maintenance, repair of the Path Improvements.

2.2 **Standards of Installation and Maintenance.** Upon City's construction, maintenance or of the Path Improvements, as the case may be, City shall, at its sole cost and expense, and in a timely manner, remove any scars to the surface and restore all disturbed areas of the Grantor's Property and any improvements thereon utilizing industry standard workmanship and materials, including without limitation re-seeding, re-sodding or repaving where necessary. Trenches shall be backfilled and compacted to density equal to that of the adjacent undisturbed soil. In addition, such repair and maintenance includes, but is not limited to: (a) providing for the maintenance of paved surfaces in a smooth and evenly covered condition with the type of surfacing material originally installed or a substitute equal or superior in quality, use and durability to such original material; (b) providing for the maintenance of the Right of Way in clean and orderly condition; (c) providing for the repair, repainting or replacement of any necessary or appropriate signs, markers and lines; (d) providing for the operation, maintenance, repair and replacement of lighting facilities; (e) providing for the pruning, cultivation, watering, fertilization, fumigation and other maintenance of all landscaped areas and the repair of sprinkler systems and water lines; (f) providing for the replacement of plants and other landscaping as necessary or appropriate; and (g) providing for the construction, repair and maintenance of any subsequent upgrades that may be required by any governmental entity.

3. **Use of Right of Way.** City shall use reasonable efforts to ensure that the Right of Way is only used as a _____ ("Intended Use"), including, without limitation, (i) posting signage in the Easement Area stating the Intended Use and (ii) the removal of persons who engage in activities that are outside the scope of the Intended Use.

4. **Nonexclusive.** Grantor retains the right to use and grant to others the nonexclusive right to use the real property encumbered by the Right of Way and the Utility Easement for any lawful purpose to the extent that such uses do not unreasonably

interfere with the use of the Right of Way or the Utility Easement by City. Notwithstanding anything contained herein to the contrary, in the event that any governmental or quasi-governmental entity or public or private utility company requests a specific non-exclusive easement over the Right of Way for such entity or utility by separate recordable document, and upon Grantor's written request, City shall execute such easement agreement (on such entity's standard form for such easements, with any adjustments reasonably required by City). Such entity shall pay all applicable City fees and expenses associated with granting easements and shall obtain pay all required permits as may be required by local ordinance and pay all City fees for permits including all fees needed for engineering review of proposed improvements.

5. **Continuing Effect.** Except as otherwise set forth herein, this Agreement shall bind, and inure to the benefit of, the successors and assigns of City and Grantor, and the rights and easements granted hereunder shall run with the land and continue in perpetuity except to the extent any are terminated pursuant to the terms of this Agreement; provided however that, if any rule of law or equitable principle would prevent any covenant or other right or interest set forth herein from existing in perpetuity, then the same shall continue for 99 years from the date this Agreement is recorded.

6. **Compliance with Laws.** With respect to (i) City's installation and maintenance obligations set forth in Section 2 above, and (ii) City's use and enjoyment of any of the Right of Way, Utility Easement and/or the related rights granted herein, City shall comply in all respects with all statutes, ordinances, rules and regulations of the United States, the State of California, the City of Berkeley and all political subdivisions of any thereof with jurisdiction or claiming jurisdiction over any of the Right of way or the Utility Easement.

7. **Nature of Available Remedies.** In the event of any breach or attempted or threatened breach of this Agreement by City or Grantor, each shall be entitled to full and adequate relief by injunction and/or any other available legal or equitable remedy with respect to such breach.

8. **Modification, Amendment and Termination.** This Agreement may be amended, modified, terminated or canceled, in whole or in part, only by the agreement of City and Grantor (each a "Party" and, collectively, the "Parties"). No such amendment, modification, termination or cancellation is effective until a written instrument setting forth its terms has been executed, acknowledged and recorded by the Parties in the Official Records of Alameda County, California. No such amendment, modification, termination or cancellation affects the rights of any mortgagee under a mortgage or any trustee or beneficiary under a deed of trust constituting a lien on the Grantor's Property, or any portion thereof, and recorded in the Official Records of Alameda County, California, at the time of such amendment, modification, termination or cancellation unless such mortgagee, trustee or beneficiary consents thereto. No person other than a Party and any such mortgagee, trustee or beneficiary, is required to join in the execution of or consent to any such amendment, modification, termination or cancellation.

9. **Mortgagee Protection.** Breach of any restriction or other provision of this Agreement does not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the restrictions and other provisions of this Agreement are binding and effective against any owner of the Grantor's Property whose title is acquired by foreclosure, trustee's sale or otherwise.

10. **Indemnification.** City shall indemnify, defend and hold Grantor, and its officers, directors, shareholders, employees and agents (hereinafter collectively called "Indemnified Parties") harmless from all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation reasonable attorneys fees) (collectively, "Indemnified Claims"), resulting from injury or the death of any person (including without limitation any Indemnified Party) or physical damage to property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by an Indemnified Party), which injury, death or physical damage arises out of or is connected with City's (or its officers', employees', agents', contractors', licensees', or invitees') use or occupancy of any of the easements created herein.

11. **Notice.** Any notice, request, demand, instruction or other communication to be given to any party under this Agreement must be in writing and sent by registered or certified mail as follows:

CITY

Director, Parks, Recreation &
Waterfront Department
2180 Milvia Street, Third Floor
Berkeley, CA 94704
Telephone: (510) 981-6700
Facsimile: (510) 981-6710

Berkeley, CA
Telephone:
Facsimile:

Notice is deemed to be given upon receipt. The addresses and addressees for the purpose of this Section may be changed by giving written notice of such change in a manner provided herein for giving notice. However, until such written notice is actually received, the last address and addressee for such addressee continues in effect for all purposes hereunder.

12. **Miscellaneous.** This Agreement, including all exhibits, represents the entire agreement between the parties with respect to the subject matter hereof, and to the extent inconsistent herewith, supersedes all prior agreements, representations and convents, oral or written. This Agreement may be executed in counterparts with the same

force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Agreement that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Agreement. This Agreement shall be governed by the laws of the State of California (without regard to any choice of law provisions thereof).

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

_____:

By: _____
Name: _____
Title: _____

CITY:

**CITY OF BERKELEY,
a California municipal corporation**

**By: Phil Kamlarz
City Manager**

Approved as to form and legality:

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said County and State, 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 capacit(-y/-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 of Notary Public

[SEAL]

EXHIBIT A

(Grantor's Property)

All that certain real property, together with all appurtenances thereto and all improvements now or hereafter located thereon, situated in the City of Berkeley, County of Alameda, State of California, and described as follows:

[Insert Legal]

EXHIBIT B

(Easement Area)

[Insert Description]

EXHIBIT C

(Path Improvements)

[Describe landscaping and lighting]

Attachment 6

Creek Management Plan

**ATTACHMENT 6
CREEK MANAGEMENT PLAN**

This project occurs on publicly-owned property which the Agencies have agreed to protect and maintain. The Agencies have agreed to share in the management of these activities, per the responsibilities and cost allocations in this Memorandum of Understanding. The project includes a three-phase management plan, as follows:

Phase 1:

The first one to two years after installation of each reach, management practices will include, as necessary:

- a. the replacement of any losses in plant material,
- b. the manual removal of invasive species, and
- c. the addition of shade-requiring understory species.

Regular maintenance activities shall include:

- a. repairing site improvements,
- b. removing graffiti,
- c. monitoring for erosion control,
- d. removing debris from creek,
- e. repair of damage to the creek bed or bank.
- f. clearance of creek flow obstructions at culverts and bridges.

Part of the Project also involves installing stream discharge measurement gauges to monitor the performance of the flood damage reduction measures.

Phase 2:

The second phase will occur during the period from three to five years after the installation of each reach. The maintenance shall include all items noted in Phase 1, as well as increasing the species diversity by planting container plants that require the shade created by the first phase planting.

Phase 3:

The third phase of management shall include ongoing maintenance, as noted in Phase 1.

Attachment 7

Trail Maintenance Activities

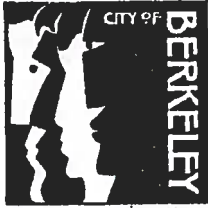
**ATTACHMENT 7
TRAIL MAINTENANCE ACTIVITIES**

The following are typical trail maintenance activities which shall be provided on an on-going, periodic, or as needed basis.

1. Sign replacement and repair
2. Maintain trail pavement marking
3. Tree, shrub or grass trimming
4. Pavement sealing/potholes
5. Trash disposal (University)
6. Graffiti removal
7. Maintain and repair any furnishings.
8. Pruning for vertical clearance along trail
9. Remove fallen trees or branches on trail
10. Invasive species control
11. Maintain temporary irrigation lines for creek bank vegetation.

Attachment 8

**Letter between City of Berkeley and University regarding use of funds for Creek
Account.**



Office of the City Manager

USE OF ESCROW ACCOUNT FUNDS

The purpose of this letter, dated July 23, 2004, is to set forth our agreement concerning the use of funds retained in an escrow account pursuant to the March 30, 2000, "Side Agreement" between the City of Berkeley and The Regents of the University of California.

As you know, the cities of Albany and Berkeley, and the University, have been discussing a three-party agreement that will define the parties' obligations with respect to the Codornices Creek improvements that all parties have agreed to and that Albany will be undertaking soon. The Berkeley City Council approved that agreement on July 20th, and the Albany City Council is expected to do likewise on July 26th. The three-party agreement and this one are interdependent. The three-party agreement is the context of our discussions and agreement concerning the use of the escrow funds.

By this letter agreement, the City and The Regents agree that the funds held in escrow under the Side Agreement, as well as interest on those funds, may be used to pay for the following construction-related improvements related to the improvement of Codornices Creek by the cities of Albany and Berkeley, and the University of California:

1. Easement-related costs (i.e., surveys, reasonable compensation to property owners, and similar costs);
2. Relocation of sculpture south of creek; and
3. Pre-construction soil testing.

The remaining balance, after the above expenditures, will be transferred into an account maintained by the City of Albany pursuant to the three-party agreement for maintenance of the Lower Codornices Creek and Site Improvement Project. The City estimates this balance will be approximately \$400,000.

The Creek Account will be administered by the City of Albany, as set forth in the three-party agreement.

CITY OF BERKELEY

Lisa Caronna, Deputy City Manager

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Edward Denton, Vice Chancellor Facilities
Services

CODORNICES CREEK RESTORATION PROJECT

CLOSE ESCROW ACCOUNT AGREEMENT

ATTACHMENT C



FINAL PAYMENT REQUEST
The check for \$125,000.00

Date: 10/15/2014
City of Albany, Oregon
1000 1st Street SW
Albany, Oregon 97321

Escrow Agreement for the restoration project
is hereby terminated as follows:

By: City of Albany

Amount to be paid: \$125,000.00

Mail payment to:

These amounts listed, all payments will be made by check and mailed via
US mail. It is the intent of the parties to the escrow agreement to provide a
final payment. All parties agree that funds cannot be retained until the
instruction has been signed by all parties as shown below.

Approved for payment:
City of Albany

By: _____
John Joseph
Deputy City Manager

City of Albany

By: _____
Ernest J. Johnson
Interim Financial Director

The Mayor of the City of Albany

By: _____
Vice-Chairman of the Board of Directors
or authorized signatory



Headquarters:
3570 Camino Del Rio North, Ste. 100
San Diego, CA 92108

(619) 528-1031 Main
(877) 799-1031 Toll Free
(619) 528-4290 Fax

FINAL PAYMENT REQUEST

Holdback No: 00-0256-H

Date: July 9, 2018

Exchange Resources, Inc.
Attn: Shelene Nordstrom-Vaka, Esq.
27451 Los Altos, Suite 210
Mission Viejo, CA 92691

Exchange Resources, Inc. is instructed and authorized to close the above-referenced holdback and release funds as follows:

Payee: City of Albany

Amount to be paid: \$451,147.77 + current interest

Mail payment to: _____

Unless otherwise directed, all payments will be issued by corporate check and mailed via US mail. If a wire transfer is the preferred method of payment please provide wiring instructions. **All parties acknowledge that funds cannot be released until this instruction has been signed by all designated parties below.**

Approved for payment:
City of Berkeley

By: _____
Jovan Grogan
Deputy City Manager

City of Albany

By: _____
Elizabeth Hudson
Interim Financial Director

The Regents of the University of California

By: _____
Vice Chancellor of Facilities Services
or Authorized Signatory



Restoration Design Group
SINCE 2003

SCOPE OF SERVICES Amendment Lower Codornices Creek Monitoring and Maintenance Plan Assistance

Project Understanding

As part of the Lower Codornices Creek restoration projects (Phases I-III), the City of Albany has contracted with the Restoration Design Group to complete the post-project monitoring required by the various state and federal permitting agencies. To date, RDG has completed years 1-7 (2011-2017) and is in the process of completing year 8 (2018). This scope amendment covers the final two years of creek monitoring (2019-2020) and is focused on Phase III only. A full monitoring schedule is shown on page 4.

The City of Albany and its partners are also interested in developing a maintenance plan for Codornices Creek from San Pablo Avenue to the Union Pacific Railroad that will document the expected maintenance activities for submittal and approval by the relevant permitting agencies. RDG has been asked to assist in this effort as described in tasks 5 and 6. Initial tasks focus on the development of the plan and not the permitting.

The existing contract for Codornices Creek Monitoring (#C13-19) will be amended to include these new tasks as described below.

Task 1. 2019 Creek Monitoring

RDG will perform creek morphology and stability monitoring of Phase III in 2019, related data reduction and analysis, and photo-monitoring. Monitoring activities will include:

- Longitudinal Profile
- Cross Sections; resurvey existing cross sections
- Visual inspections of creek

Task deliverable: All field work, data entry, reduction, analysis, and photo-monitoring to be included in the annual supplement (Task 2).

Task 2. 2019 Annual Monitoring Supplement

RDG will compile and prepare the annual monitoring supplement for submission to the Regional Water Quality Control Board and Army Corps of Engineers. The supplement will update the previous report with the results of the recent monitoring efforts.

Task deliverable: 2018 Monitoring Supplement

Task 3. 2020 Creek Monitoring

RDG will perform creek morphology and stability monitoring, related data reduction and analysis, and photo-monitoring. Monitoring activities will include:

RESTORATION
DESIGN
GROUP, INC

BERKELEY
2612B 8th Street
Berkeley
California 94710
510.644.2798

MEDFORD
1495 S Oakdale Avenue
Medford
Oregon 97501
541.238.2812

RestorationDesignGroup.com

- Longitudinal Profile
- Cross Sections; resurvey existing cross sections
- Visual inspections of creek

RDG will conduct the vegetation portion of the annual monitoring as detailed in the *Monitoring Plan*. The goal of monitoring restoration vegetation is to assess the success of riparian habitat and to determine if the performance criteria outlined in the *Monitoring Plan* are met. This monitoring will fulfill permit conditions for the Regional Water Quality Control Board.

The California Stream Bioassessment Procedure (CSBP, CDFG 1999) will be used to collect and analyze benthic macroinvertebrates in Codornices Creek. Taxonomic richness and the EPT index, in particular, will be used to assess conditions at the reaches of Codornices Creek.

The project fisheries biologist Jeff Hagar of Hagar Environmental Science (HES) will conduct a qualitative assessment of the creek aquatic habitat to assess the following questions:

- Estimate the frequency and relative extent of pool and riffle habitat types in the study reach and measure pool depths;
- Evaluate the extent of cover in the study reach and characterize the habitat in terms of ability to support steelhead in comparison to other Central Coast streams;
- Note the presence of any fish migration passage obstacles;
- Provide a qualitative assessment of macro-invertebrate populations that are visible at the time of the survey; and
- Record any observations of trout or steelhead (*Oncorhynchus mykiss*), California red-legged frog (CRLF), or other aquatic life visible during the time of the survey.

Task deliverable: All field work, data entry, reduction, analysis, and photo-monitoring to be included in the annual report (Task 4).

Task 4. 2020 Annual Monitoring Report

RDG will compile and prepare the annual monitoring report for submission to the Regional Water Quality Control Board and Army Corps of Engineers. The complete reports will provide a comprehensive summary of the monitoring performed to date.

Task deliverable: 2020 Monitoring Report

Task 5. Creek Map with Property Lines - \$2,800

RDG will develop a creek map with property lines and approximate channel boundaries overlaid on a faded aerial photograph. The creek map will extend from San Pablo Avenue to the UPRR. The client will review a draft with

interested parties and return written comments to RDG. Based on these comments, RDG will develop a final version of the creek map.

Deliverables:

- Draft creek map (PDF)
- Final creek map (PDF)

Task 6. Maintenance Plan Development Support - \$6,500

RDG (two staff members) will attend a site walk scheduled by the City of Albany with any partners the City would like to include. The site walk will focus on identifying a laundry list of maintenance activities and locations that will be developed into a “plan”. RDG will draft the list along with a brief memo describing the actions that will serve as the foundation of the maintenance plan. The client will review a draft with interested parties and return written comments to RDG. Based on these comments, RDG will develop a final version of the list and memo. Once complete, the City, its partners, and RDG will determine the next appropriate step.

Deliverables:

- Draft maintenance list and memo (PDF)
- Final maintenance list and memo (PDF)

FEE

| Task | Fee |
|---|-----------------|
| 1. 2019 Creek Monitoring | \$3,200 |
| 2. 2019 Annual Monitoring Supplement | \$1,800 |
| 3. 2020 Creek Monitoring | \$12,480 |
| 4. 2020 Annual Monitoring Report | \$4,800 |
| 5. Creek Map with Property Lines | \$2,800 |
| 6. Maintenance Plan Development Support - \$6,500 | \$6,500 |
| TOTAL | \$31,580 |

PROJECT SCHEDULE

| Completed Items | | | | | |
|----------------------------|--------------------------------------|--------------------------------------|-------------------------------|--------------------------------|---------------------------|
| Calendar Year 2011 | | | | | |
| <i>Project Phase</i> | <i>Task 1: Geomorphic Survey</i> | <i>Task 2: Vegetation Survey</i> | <i>Task 3: BMI Survey</i> | <i>Task 4: Fish Survey</i> | <i>Task 5: Report</i> |
| I | None (Yr. 7) | None (Yr. 7) | None | None | Supplement |
| II | None (Yr. 4) | Fall 2011 (Yr. 5) | None | None | |
| III | Summer 2011 (Yr. 1) | None (as-built) | None | None | |
| Calendar Year 2012 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| I | January (Yr. 8) | None (Yr. 8) | Spring 2012 | Spring 2012 | Report |
| II | January 2012 (Yr. 5)* | None (Yr. 6) | Spring 2012 | Spring 2012 | |
| III | Spring 2012 (Yr. 2) | Spring 2012 (Yr. 2) | Spring 2012 | Spring 2012 | |
| Calendar Year 2013 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| I | None (Yr. 9) | None (Yr. 9) | None | None | Supplement |
| II | None (Yr. 6) | None (Yr. 7) | None | None | |
| III | Summer (Yr. 3) | Summer (Yr. 3) | None | None | |
| Calendar Year 2014 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| I | None (Yr. 10) | None (Yr. 10) | Spring 2014 | Spring 2014 | Report |
| II | None (Yr. 7) | None (Yr. 8) | Spring 2014 | Spring 2014 | |
| III | Summer (Yr. 4)* | Spring (Yr. 4) | Spring 2014 | Spring 2014 | |
| Calendar Year 2015 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| I | Complete | Complete | None | None | Supplement |
| II | None (Yr. 8) | None (Yr. 9) | None | None | |
| III | Summer (Yr. 5) | Spring (Yr. 5) | None | None | |
| Calendar Year 2016 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| I | Complete | Complete | Fall 2016 | Fall 2016 | Report |
| II | None (Yr. 9) | None (Yr. 10) | Fall 2016 | Fall 2016 | |
| III | Summer (Yr. 6) | Summer (Yr. 6) | Fall 2016 | Fall 2016 | |
| Calendar Year 2017 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| I | Complete | Complete | None | None | Supplement |
| II | January (Yr. 10) | Complete | None | None | |
| III | None (Yr. 7) | None (Yr. 7) | None | None | |
| Calendar Year 2018 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| III | None (Yr. 8) | Spring (Yr. 8) | None | None | None |
| Current Scope Items | | | | | |
| Calendar Year 2019 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| III | Summer (Yr. 9) | None (Yr. 9) | None | None | Supplement |
| Calendar Year 2020 | | | | | |
| <i>Phase</i> | <i>Geomorphic Survey</i> | <i>Vegetation Survey</i> | <i>BMI Survey</i> | <i>Fish Survey</i> | <i>Report</i> |
| III | Summer (Yr. 10) | Spring (Yr. 10) | Spring 2020 | Spring 2020 | None |

