CITY OF CLAYTON
Founded 1857 .. Incorporated 1964

AGENDA
SPECIAL MEETING
CLAYTON CITY COUNCIL
******

Thursday, January 31, 2013

4:30 p.m.

Hoyer Hall, Clayton Community Library
6125 Clayton Road, Clayton, CA 94517

Mayor: Julie K. Pierce
Vice Mayor: Hank Stratford

Council Members
Jim Diaz
Howard Geller
David T. Shuey

*Pursuant to CA Government Code Section 54956 and upon order of Mayor Julie K. Pierce, a special meeting is called for **January 31, 2013 at 4:30 p.m.***

Signed: Julie Pierce *Date: 1/30/13*
Julie K. Piece, Mayor

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail on Monday prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at **www.ci.clayton.ca.us**
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

* CLAYTON CITY COUNCIL *

January 31, 2013

4:30 P.M.

1. **CALL TO ORDER** – Mayor Pierce.

2. **CLOSED SESSION** - None.

3. **PUBLIC COMMENTS**

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

4. **ACTION ITEM**

(a) Consideration of a Resolution approving the Purchase and Sale Agreement between the City of Clayton and the Clayton Community Church for the City's acquisition of a generally unimproved parcel of real property (APN 118-560-010-1), comprised of approximately 1.66 acres and located to the north and west of the Church's office at 6055 Main Street, for the amount of one million dollars.
(City Manager)

Staff recommendation: Following staff report and public comment, that Council adopt the Resolution authorizing the City's purchase of this real property.

5. **ADJOURNMENT** - Special meetings of the City Council are scheduled for Monday, February 4, 2013 at 6:30 p.m. and on Tuesday, February 5, 2013 at 5:00 p.m.
Its next regularly scheduled meeting is Tuesday, February 5, 2013 at 7:00 p.m.

****

CITY OF CLAYTON
Founded 1857 .. Incorporated 1964

Approved:
Gary A. Napper City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 31 JANUARY 2013

SUBJECT: CONSIDERATION OF CITY PURCHASE OF UNIMPROVED REAL PROPERTY APPROXIMATELY 1.66 ACRE PARCEL IN THE CLAYTON TOWN CENTER

RECOMMENDATION

Following staff report and public comment, it is recommended the City Council adopt the attached Resolution approving and authorizing the City of Clayton's purchase of unimproved real property (APN 118-560-010-1), generally located adjacent to and north of Main Street in the Clayton Town Center, which real property is presently held in title by the Clayton Community Church.

BACKGROUND

In June 2012 representatives of the Clayton Community Church inquired of the City whether it would be interested in purchasing the church's real properties located on Main Street in the Clayton Town Center. By way of letter dated 20 June 2012 the Clayton City Council responded it did wish to explore such an option to purchase pending the procurement of an independent market value appraisal of both parcels. The City further encouraged the church to move ahead and list both of its parcels for private sale, which action did occur through the church's listing with Colliers International.

Subsequently the City retained the professional services of Thomas E. Dum Real Estate Appraisers, Inc. to perform market value appraisals of both real properties presently held in title by the Clayton Community Church (APN 118-560-010-1, approx. 1.66 acres; and APN 119-011-003-9, approx. 0.57 acre). For general identification purpose, the larger parcel is the unimproved land which fronts on Clayton Road and Main Street while the smaller parcel houses a wood building holding the Clayton Community Church offices and has a street address of 6055 Main Street. The vacant large parcel is zoned Planned Development (PD) and the smaller parcel is zoned Limited Commercial (L-C). The Thomas Dum appraisal firm had previously performed property appraisals for the City within the Clayton Town Center area (e.g. the Flora Square land site; vacant property now improved as the parking lot for Endeavor Hall).

The appraisal report was received by the City on 16 August 2012 and the City Council then held a series of subsequently-noticed closed sessions to discuss its options and consider potential terms and conditions of any real property acquisition. The City Council formed an ad-hoc committee of itself comprised of Mayor Julie Pierce and Council Member David Shuey which then met with church representatives (along with the City Manager) to discuss and negotiate any prospective purchase of one or both pieces of real property.

After a series of negotiation exchanges covering the span of several months, the parties have agreed to a mutually-acceptable price and terms for the City's purchase of the larger unimproved parcel (APN 118-560-010-1) from the Clayton Community Church. As is often the case with significant land purchases, the devil is in the details and it has finally reached the point wherein both parties are satisfied and in agreement with the written terms and conditions to the sale/purchase of this one piece of land.

NOTABLE TERMS AND CONDITIONS

Following the preliminary and tentative agreement to the key deal points, the City retained the firm of Fugro Consultants (Oakland) to perform a Phase I Environmental Site Assessment for the subject property. Shortly after authorization of the scope of work by the City, the church found its document of similar work conducted on the real property, dated October 2007, prepared by AEI Consultants in behalf of the church when it originally purchased the land. Consequently, the Fugro Consultant work was downscaled by the City to simple consultant services for review of the earlier Phase I Report and document their subsequent findings. Fugro identified no recognized environmental conditions for this assessment and recommends no further hazardous materials assessment is warranted at this time.

Attached to this Staff Report is a Resolution for the City Council's approval with the following documents covering the terms and conditions of the sale-purchase of this real property:

A. Real Property Purchase and Sale Agreement and Joint Escrow Instructions;
B. Grant Deed;
C. Access Easement Deed and Agreement;
D. Assignment and Assumption of Easement; and
E. Resolution of the Board of Directors of the Clayton Community Church.

Regarding significant terms and conditions of the Agreement, the outline below lists the major tenets of the real property transaction:

1. The purchase price will be $1,000,000.00 (one million dollars) cash paid into escrow by the City of Clayton. This amount is within the parameters of the market appraisal report procured by the City.

2. The church will provide, in the name of the City, a "floating" 20 feet to 24 feet wide easement across the church's smaller land parcel (APN 119-011-003-9) to be in the area generally located to the west of the existing wood building. The purpose of this easement is to improve traffic circulation across the front parcel on Main Street and to/from the City-purchased larger parcel. The exact location of the easement will be determined in the future development phase of either parcel.

3. The City obtains a First Right of Refusal to consider its additional purchase of the smaller parcel should/once the church identifies a bona fide purchaser. Once provided the details, should the City decline to exercise its priority right to purchase the smaller parcel, the City is given further right(s) to reconsider should the private sale purchase price be adjusted by fifteen percent (15%) or more from the last price notification given to the City by the church. The City has ten (10) days, or sooner, to respond to the church regarding its First (and any subsequent) Right of Refusal.

Escrow is to open within seven (7) days of approval by both parties and the escrow closing date is the earlier of: (a) on or before the fifth (5^{th}) business day following the Escrow Agent's receipt of written confirmation from both Seller and Buyer of the satisfaction or waiver of all conditions precedent to the close of escrow; or (b) March 15, 2013. The closing date may be extended for up to six (6) months without further City Council approval.

PUBLIC PURPOSES FOR THE LAND PURCHASE

As local pundits will recall, the City of Clayton has long held an interest in the commercial development of this particular parcel (ref. Town Center Specific Plan), and even in the potential public purchase of the land in order to control and manage its development land use. The 1.66 acre parcel is one of the last remaining unimproved parcels of land in the Clayton Town Center area, and it matches the City Council desire and objective to enhance its oversight and to determine the parcel's ultimate development opportunity by acquiring title to the property.

At a minimum, the real property land purchase provides the City with diversity in its investment portfolio since public title to the parcel offers an investment return other than interest earnings from cash deposits in the Local Agency Investment Fund (LAIF) or various certificates of deposit.

FISCAL IMPACT

With the state of California's abrupt and ill-advised dissolution of redevelopment agencies in California commencing February 2012, the City no longer has available to it property tax increment revenues from the Clayton Redevelopment Agency (RDA) for purchase of this parcel for downtown economic development purposes, an action once the icon of successful redevelopment agencies in California. This fact presented significant financial challenges to the City in its consideration of this potential land purchase.

However, within the City's Capital Improvement Project (CIP) Budget, sufficient monies exist in the Downtown Economic Development Project Account coupled with other project savings and interest earnings to manage payment of the $1 million purchase price. Therefore, adoption of the Resolution will also authorize the allocation of $1,030,000.00 within the City's CIP Budget to a new account, CIP Land Acquisition Project (CIP No. 3017 – 303-7520-00) to underwrite the monetary purchase of the parcel plus additional monies for legal counsel expenses, escrow fees and other related expenses ($30,000).

According to Finance Manager Merry Pelletier, there are sufficient monies in the CIP Budget to fund this land acquisition yet it will severely limit the City's future financial capabilities to perform other capital improvement projects or downtown economic development enhancements.

Attachments: City Resolution [2 pp.] + documents

RESOLUTION NO. - 2013

A RESOLUTION APPROVING THE REAL PROPERTY PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF CLAYTON AND THE CLAYTON COMMUNITY CHURCH

THE CITY COUNCIL
City of Clayton, California

WHEREAS, the Clayton Community Church ("Church") is the owner of real property located in downtown Clayton also known as APN 118-560-010-1 ("Property"); and

WHEREAS, the Church has listed this Property for sale and the City is interested in acquiring the Property; and

WHEREAS, the City and Church have negotiated a purchase and sale agreement, which includes, but is not limited to joint escrow instructions, and an access easement deed and agreement ("Agreement"); and

WHEREAS, the parties desire to execute the Agreement; and

WHEREAS, City staff has determined that the City's approval of the Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3), because it cannot be seen with any certainty that such approval will involve any additional commitment to any specific project which may result in a potentially significant physical impact on the environment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLAYTON THAT:

SECTION 1. The City Council does hereby find and affirm the above-noted recitals are true and correct and hereby incorporated in the body of this Resolution as if restated in full.

SECTION 2. The City Council does hereby approve the Agreement between the City and the Church, which is attached hereto and incorporated herein by reference. The City Council hereby authorizes and directs its City Manager (with the concurrence of the City Attorney) to execute and deliver on behalf of the City the Agreement and any documents and instruments as may be necessary or convenient in the furtherance of the actions authorized by this Resolution.

SECTION 3. The City Council hereby authorizes and directs City staff to file a Notice of Exemption for the City as a lead agency under CEQA within five (5) days from the adoption of this Resolution.

SECTION 4. The City Council does hereby authorize the allocation of $1,030,000.00 in the City Capital Improvement Project Budget to a new account, CIP Land Acquisition Project (CIP No. 3017-303-7520-00) to effect the City's purchase of said Property.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Clayton, California, at a special public meeting thereof held on January 31, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Julie K. Pierce, Mayor

ATTEST:

Laci J. Jackson, City Clerk

Attachment:
  Real Property Purchase and Sale Agreement and Joint Escrow Instructions

I certify that the foregoing Resolution was duly and regularly passed by the City Council of the City Clayton, California at a special public meeting held on January 31, 2013.

Laci J. Jackson, City Clerk

Attachment

REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(Clayton Community Church)

by and between the

CITY OF CLAYTON,
a California municipal corporation

and

CLAYTON COMMUNITY CHURCH,
a California nonprofit religious corporation

DATED AS OF JANUARY 31, 2013,
FOR REFERENCE PURPOSES ONLY

CITY OF CLAYTON

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(Clayton Community Church)

This REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (Clayton Community Church) ("**Agreement**") is dated as of January 31, 2013, for reference purposes only, and is entered into by and between the CITY OF CLAYTON, a California municipal corporation ("**Buyer**"), and CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation ("**Seller**"). Seller and Buyer enter into this Agreement with reference to the following recitals of fact (each, a "**Recital**"):

RECITALS

A. Seller owns that certain undeveloped real property generally located in the City of Clayton, County of Contra Costa, California, with Assessor Parcel Number 118-560-010, approximately 1.66 acres in size (specifically defined in Section 1 of this Agreement as the "**Property**");

B. Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property from Seller, pursuant to the terms and conditions of this Agreement;

C. Buyer has determined that the public benefit of this Agreement outweighs any private benefit arising from this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS OF SELLER AND BUYER SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, SELLER AND BUYER AGREE, AS FOLLOWS:

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 Definitions. The following words, terms or phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation:

1.1.1 **Acceptance Notice**. Defined in Section 6.

1.1.2 **Acceptance Period**. Defined in Section 6.

1.1.3 **Affiliate**. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.1.4 **Agreement**. This Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Clayton Community Church) by and between Seller and Buyer, including all of the attached exhibits.

1.1.5 **Assignment of Easements.** A written assignment from Seller to Buyer of all existing easements benefitting the Property in substantially the form of Exhibit "E" attached to this Agreement.

1.1.6 **Business Day**. Any weekday on which Buyer is open to conduct regular municipal functions with Buyer personnel.

1.1.7 **Buyer (or City).** The City of Clayton, a California municipal corporation and any assignee of or successor to the rights, powers or responsibilities of the City of Clayton.

1.1.8 **Buyer Parties**. Collectively, Buyer, Buyer's City Council and Buyer's elected officials, employees, agents and attorneys.

1.1.9 **Buyer Title Policy**. A standard CLTA Owners' policy of title insurance issued by the Title Company, with coverage in the amount of the Purchase Price, showing title to the Property vested in Buyer and also insuring the priority and interest of Buyer in the Neighboring Property pursuant to the Easement and ROFR.

1.1.10 **CEQA**. The California Environmental Quality Act, Public Resources Code Section 21000, *et seq*.

1.1.11 **CEQA Documents**. Any exemption determination, any Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum or amendment to, or subsequent or supplemental Environmental Impact Report) required or permitted by any Government, pursuant to CEQA, for Buyer to approve or perform this Agreement.

1.1.12 **City Manager**. The City Manager of Buyer, or his or her designee or successor in function.

1.1.13 **Claim**. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) and any judgment.

1.1.14 **Close of Escrow**. The first date on which the Escrow Agent has filed the Seller Deed with the Recorder for the County for recording in the official records of the County.

1.1.15 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by Ownership of Equity Interests, by contract or otherwise.

1.1.16 **County.** The County of Contra Costa, California.

1.1.17 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

1.1.18 **Default Interest.** Interest at an annual rate equal to the lesser of: (a) six percent (6%) per annum; or (b) the Usury Limit.

1.1.19 **Due Diligence Completion Notice.** A written notice from Buyer delivered to Seller, prior to the end of the Due Diligence Period, indicating Buyer's unconditional acceptance of the condition of the Property or indicating Buyer's rejection of the condition of the Property and refusal to accept a conveyance of title to the Property, describing in reasonable detail the actions that Buyer reasonably believes are indicated to allow Buyer to unconditionally accept the condition of the Property.

1.1.20 **Due Diligence Investigations.** Buyer's due diligence investigations of the Property to determine the suitability of the Property for Buyer's intended use, including investigation of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of Buyer, all at the sole cost and expense of Buyer.

1.1.21 **Due Diligence Period.** The time period commencing on the day immediately following the Escrow Opening Date and ending at 5:00 P.M. Pacific Time on the date that is Five (5) Business Days prior to the Escrow Closing Date.

1.1.22 **Easement.** The permanent easement for vehicular and pedestrian access between the Property and Main Street provided in that certain Access Easement Deed and Agreement, in substantially the form of Exhibit "D" attached to this Agreement.

1.1.23 **Effective Date.** Defined in Section 2.

1.1.24 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or any Hazardous Substance Discharge.

1.1.25 **Environmental Laws.** All Federal, State, local or City laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government in effect on or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.]; or the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.]; together with any regulations promulgated under the authorities referenced in this Section 1.1.25.

1.1.26 **Equity Interest**. All or any part of any equity or Ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an Ownership or equity nature) in any entity, at any tier of Ownership, that directly owns or holds any Ownership or equity interest in a Person.

1.1.27 **Escrow**. An escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the sale of the Property from Seller to Buyer pursuant to this Agreement.

1.1.28 **Escrow Agent**. Placer Title Company, 1981 N. Broadway, Suite 100, Walnut Creek, California 94596, Attention: Ms. Patsi Czabarnic, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.29 **Escrow Closing Date**. The earlier of: (a) on or before the fifth (5th) Business Day following the Escrow Agent's receipt of written confirmation from both Seller and Buyer of the satisfaction or waiver of all conditions precedent to the Close of Escrow; or (b) March 15, 2013.

1.1.30 **Escrow Closing Statement**. A statement prepared by the Escrow Agent indicating, among other things, the Escrow Agent's estimate of all funds to be deposited or received by Seller or Buyer, respectively, and all charges to be paid by Seller or Buyer, respectively, through the Escrow.

1.1.31 **Escrow Default**. The unexcused failure of a Party to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, pursuant to the terms and conditions of this Agreement.

1.1.32 **Escrow Opening Date**. The first date on which a copy of this Agreement signed by both Seller and Buyer is deposited with the Escrow Agent.

1.1.33 **Event of Default**. The occurrence of any one or more of the following:

(a) *Monetary Default*. A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid or the bond, surety or insurance not provided;

(b) *Escrow Default*. An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the document or funds not submitted;

(c) *Non-Monetary Default*. Any Non-Monetary Default that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of Notice of the Non-Monetary Default, an Event of Default shall occur, if the Party in Default does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.1.34 **Federal**. The federal government of the United States of America.

1.1.35 **FIRPTA Affidavit**. A certification from Seller pursuant to the requirements of Section 1445 of the United States Internal Revenue Code.

1.1.36 **Form 593**. A California Franchise Tax Board Form 593-C.

1.1.37 **Government**. Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

1.1.38 **Gross Consideration**. The sum of all of the following: (a) the gross amount of cash paid or to be paid, (b) the fair market value of other property transferred, or to be transferred; (c) the outstanding amount of any liability assumed, or to be assumed, by the transferee or to which the property estate or interest is subject immediately before and after the transfer, or (d) in the case of a transfer without any of the previously described forms of consideration, the fair market value of the estate or interest in the property transferred or to be transferred.

1.1.39 **Hazardous Substance**. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, explosive, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (c) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and

Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (d) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq., or any so-called "superfund" or "superlien" law; (e) defined as a "pollutant" or "contaminant" under 42 U.S.C. § 9601(33); (f) defined as "hazardous waste" under 40 C.F.R. Part 260; (g) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (h) any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (n) defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (o) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) or becomes regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to Law.

1.1.40 **Hazardous Substance Discharge**. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from any construction, installation, use or operation or other activities conducted at, on, under or from the Property, whether or not caused by a Party. Hazardous Substance Discharge shall only include any deposit, discharge, generation, release or spill of a Hazardous Substance that is required by applicable law to be reported to a governmental agency.

1.1.41 **Indemnify**. Where this Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

1.1.42 **Indemnitee**. Any Person entitled to be Indemnified under the terms of this Agreement.

1.1.43 **Indemnitor**. A Party that agrees to Indemnify any other Person under the terms of this Agreement.

1.1.44 **Law**. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Property or otherwise relating to this Agreement or any Party's rights, obligations or remedies under this Agreement, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.1.45 **Legal Costs**. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorney fees, court costs and expenses and consultant and expert witness fees and expenses.

1.1.46 **Monetary Default**. Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, bond, surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

1.1.47 **Neighboring Property**. Defined in Section 6.

1.1.48 **Neighboring Property Escrow**. Defined in Section 6.

1.1.49 **Neighboring Property Escrow Agent**. Defined in Section 6.

1.1.50 **Non-Monetary Default**. The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Agreement by a Party.

1.1.51 **Notice**. Any consent, demand, designation, election, notice or request relating to this Agreement. All Notices must be in writing.

1.1.52 **Notify**. To give a Notice.

1.1.53 **Offer**. Defined in Section 6.

1.1.54 **Parties**. Collectively, Seller and Buyer.

1.1.55 **Party**. Individually, either Seller or Buyer, as applicable.

1.1.56 **Permitted Exception**. All of the following: (a) all items shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy that are approved by Buyer pursuant to Section 3.3; (b) any lien for non-delinquent property taxes or assessments; (c) any Laws applicable to the Property; (d) any existing improvements on the Property, if any; and (e) any other document or encumbrance expressly required or allowed to be recorded against the Property pursuant to the terms of this Agreement.

1.1.57 **Person**. Any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.1.58 **Preliminary Report**. A preliminary report issued by the Title Company in contemplation of the issuance of the Buyer Title Policy, accompanied by the best available copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.59 **Property**. That certain real property specifically described in **Exhibit "A"** attached to this Agreement.

1.1.60 **Purchase Agreement**. Defined in Section 6.

1.1.61 **Purchase Price**. One Million Dollars ($1,000,000).

1.1.62 **Right of First Refusal Memorandum**. Defined in Section 6.

1.1.63 **ROFR**. Defined in Section 6.

1.1.64 **Seller**. Clayton Community Church, a California nonprofit religious corporation and any assignee of or successor to the rights, powers or responsibilities of Clayton Community Church.

1.1.65 **Seller Deed**. A deed conveying Seller's interest in the Property from Seller to Buyer, at the Close of Escrow, substantially in the form of **Exhibit "C"** attached to this Agreement.

1.1.66 **Seller Official Action**. The official action of the Board of Directors of Seller in substantially the form attached to this Agreement as **Exhibit "B"** authorizing Seller to enter into and perform this Agreement.

1.1.67 **Seller Parties**. Collectively, Seller and the directors, officers, employees, agents, shareholders, members, managers and partners of Seller.

1.1.68 **State**. The State of California.

1.1.69 **Third Person**. Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.70 **Title Company**. Placer Title Company, 1981 N. Broadway, Suite 100, Walnut Creek, California 94596, Attention: Ms. Patsi Czabarnic, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.71 **Title Notice**. A written notice from Buyer to Seller indicating Buyer's acceptance of the state of the title to the Property, as described in the Preliminary Report, or Buyer's disapproval or conditional approval of specific matters shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy, describing in suitable detail the actions that Buyer reasonably believes are required to obtain Buyer's unconditional approval of the state of the title to the Property.

1.1.72 **Title Notice Response**. The written response of Seller to the Title Notice, in which Seller either elects to: (a) cause the removal from the Preliminary Report of any matters disapproved or conditionally approved in the Title Notice; (b) obtain title or other insurance or endorsement in a form reasonably satisfactory to Buyer insuring against any matters disapproved or conditionally approved in the Title Notice; or (c) not take either action described in clause "(a)" or "(b)" of this Section 1.1.72.

1.1.73 **Title Notice Waiver.** A written notice from Buyer to Seller waiving Buyer's previous disapproval or conditional approval in the Title Notice of specific matters shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.74 **Unavoidable Delay**. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency. Unavoidable Delay shall also not include discretionary government action or inaction by Buyer.

1.1.75 **Usury Limit**. The highest rate of interest, if any, that Law allows under the circumstances.

2. **EFFECTIVE DATE.** This Agreement shall become effective on the first date on which all of the following have occurred: (**"Effective Date"**): (a) Buyer has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Seller; (b) Buyer has received a certified copy of the Seller Official Action signed by the authorized representative(s) of Seller; (c) this Agreement has been approved by Buyer's City Council; (d) this Agreement has been signed by the authorized representative(s) of Buyer; and (e) one (1) original of this Agreement signed by the authorized representative(s) of Buyer has been delivered by Buyer to Seller. Buyer shall send Notice of the Effective Date to Seller within seven (7) days following the occurrence of the Effective Date. Seller shall sign and return a copy of such Notice to Buyer within seven (7) days after receipt of such Notice.

3. PURCHASE AND SALE OF PROPERTY

3.1 Escrow. Seller shall sell the Property to Buyer and Buyer shall purchase the Property from Seller, pursuant to the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the Property from Seller to Buyer and the purchase of the Property by Buyer from Seller, pursuant to the terms and conditions of this Agreement, Seller and Buyer agree to open the Escrow with the Escrow Agent. The provisions of Section 5 are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow.

3.2 Payment of Purchase Price. Buyer shall purchase the Property from Seller for the Purchase Price.

3.3 Buyer's Approval of Title to Property.

3.3.1 **Title Notice**. Within five (5) days after the Escrow Opening Date, Buyer shall request the Preliminary Report from the Title Company and that the Title Company deliver a copy of the Preliminary Report to Seller. Within fifteen (15) days following Buyer's receipt of the Preliminary Report, Buyer shall send the Title Notice to Seller.

3.3.2 **Failure to Deliver Title Notice**. If Buyer fails to send the Title Notice to Seller within the time period provided in Section 3.3.1, Buyer will be deemed to disapprove the status of title to the Property and refuse to accept conveyance of the Property and either Buyer or Seller shall have the right to cancel the Escrow and terminate this Agreement upon seven (7) days Notice, in their respective sole and absolute discretion.

3.3.3 **Title Notice Response**. Within fifteen (15) days following Seller's receipt of the Title Notice (if any), Seller shall send the Title Notice Response to Buyer. If the Title Notice does not disapprove or conditionally approve any matter in the Preliminary Report or Buyer fails to deliver the Title Notice, Seller shall not be required to send the Title Notice Response. If Seller does not send the Title Notice Response to Buyer, if necessary, within the time period provided in this Section 3.3.3, Seller shall be deemed to elect not to take any action in reference to the Title Notice. If Seller elects in the Title Notice Response to take any action in reference to the Title Notice, Seller shall complete such action, prior to the Escrow Closing Date or as otherwise specified in the Title Notice Response.

3.3.4 **Title Notice Waiver**. If Seller elects or is deemed to have elected not to address one or more matters set forth in the Title Notice to Buyer's reasonable satisfaction, then within ten (10) days after the earlier of: (a) Buyer's receipt of Seller's Title Notice Response; or (b) the last date for Seller to deliver its Title Notice Response pursuant to Section 3.3.3, Buyer shall either: (i) refuse to accept the title to and conveyance of the Property, or (ii) waive Buyer's disapproval or conditional approval of all such matters set forth in the Title Notice by sending the Title Notice Waiver to Seller. Failure by Buyer to timely send the Title Notice Waiver, where the Title Notice Response or Seller's failure to deliver the Title Notice Response results in Seller's election not to address one or more matters set forth in the Title Notice to Buyer's reasonable satisfaction, will be deemed Buyer's continued refusal to accept the title to and conveyance of the Property, in which case either Buyer or Seller shall have the right, in their respective sole and absolute discretion, to cancel the Escrow and terminate this Agreement upon seven (7) days Notice to the other Party and Escrow Agent.

3.3.5 **Disapproval of Encumbrances Securing Seller Obligations.** Notwithstanding any other provision of this Agreement to the contrary, Buyer disapproves any and all encumbrances against the Property securing monetary (other than non-delinquent property taxes) or performance obligations of Seller or any other Person.

3.3.6 **No Termination Liability**. Any termination of this Agreement or cancellation of the Escrow pursuant to this Section 3.3 shall be without liability to the other Party or any other Person. Termination shall be accomplished by delivery of a Notice of termination to both the other Party and the Escrow Agent at least seven (7) days prior to the termination date. Following issuance of a Notice of termination of this Agreement pursuant to a right provided under this Section 3.3, the Parties and the Escrow Agent shall proceed pursuant to Section 5.13. Once a Notice of termination is given pursuant to this Section 3.3, delivery of a Title Notice or Title Notice Waiver shall have no force or effect and this Agreement shall terminate in accordance with the Notice of termination.

3.4 Due Diligence Investigations.

3.4.1 **Time and Expense.** Buyer shall complete all Due Diligence Investigations within the Due Diligence Period and shall conduct all Due Diligence Investigations at Buyer's sole cost and expense.

3.4.2 **Right to Enter.** As of the Effective Date, Seller licenses, permits and authorizes Buyer to enter the Property for the purpose of conducting Due Diligence Investigations. The license given by Seller in this Section 3.4 to conduct Due Diligence Investigations shall terminate with the termination of this Agreement. Any Due Diligence Investigations by Buyer shall not unreasonably disrupt any then existing use or occupancy of the Property. Buyer's exercise of the license provided pursuant to this Section 3.4 after expiration of the Due Diligence Period shall not extend the Due Diligence Period.

3.4.3 **Limitations.** Buyer shall not conduct any intrusive or destructive testing of any portion of the Property, other than low volume soil or water samples, without Seller's prior written consent, which may be withheld in Seller's sole discretion. Buyer shall pay all of Buyer's vendors, inspectors, surveyors, consultants or agents engaged in any inspection or testing of the Property, such that no mechanics liens or similar liens for work performed are imposed upon the Property by any such Person. Following the conduct of any Due Diligence Investigations on the Property, Buyer shall reasonably restore the Property to substantially the Property's condition prior to the conduct of such Due Diligence Investigations. Buyer shall Indemnify Seller against any and all Claims arising from Buyer's Due Diligence Investigations regarding the Property.

3.4.4 **Due Diligence Completion Notice.** Buyer shall deliver a Due Diligence Completion Notice to Seller prior to the end of the Due Diligence Period. If Buyer does not unconditionally accept the condition of the Property by delivery of its Due Diligence Completion Notice stating such acceptance, prior to the end of the Due Diligence Period, Buyer shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by Buyer, then either Seller or Buyer shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person, by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 5.13. Notwithstanding the foregoing provisions of this Section 3.4, if Buyer delivers a Due Diligence Completion Notice to Seller before Seller exercises Seller's right to cancel the Escrow and terminate this Agreement pursuant to this Section 3.4.4, whether or not before the end of the Due Diligence Period, then Buyer shall be deemed to have unconditionally accepted the condition of the Property in accordance with this Section 3.4.4 and Seller shall have no further right to terminate this Agreement or cancel the Escrow pursuant to this Section 3.4.4.

3.5 "AS-IS" Acquisition. Subject to Seller's legal obligation to disclose facts regarding the Property to Buyer or Seller's representations, warranties or covenants set forth in this Agreement, the Close of Escrow shall evidence Buyer's unconditional and irrevocable acceptance of the Property in the Property's AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT ANY WARRANTY WHATSOEVER, including any warranty as to character, quality, performance, condition, physical condition, soil conditions, the presence or absence of fill, shoring or bluff stability or support, subsurface support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Property (active, inactive or abandoned), the suitability of the Property for Buyer's intended use or any other use or the existence or absence of Hazardous Substances affecting the Property and with full knowledge of the physical condition of the Property, the nature of Seller's interest in and use of the Property, all laws applicable to the Property and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Property.

3.6 Seller Covenants Regarding Maintenance of the Property. Seller covenants and agrees with Buyer that between the Effective Date and the date of the Close of Escrow:

3.6.1 **No Changes to Agreements.** Seller shall not modify or amend any lease or contract respecting the Property, or enter into any new lease or contract respecting the Property, without Buyer's prior written approval;

3.6.2 **Normal Maintenance**. Seller shall maintain the Property in accordance with the same standards Seller has customarily observed in Seller's Ownership and management of the Property;

3.6.3 **Maintenance of Insurance**. Seller shall maintain in force all insurance policies maintained by Seller as of the date of this Agreement with respect to the Property; and

3.6.4 **No Title Exceptions.** Seller shall not cause, permit, allow or suffer any additional exception to the title of the Property.

4. SELLER ACKNOWLEDGEMENT OF NO RELOCATION OR CONDEMNATION CLAIMS.

4.1 Seller Statement of Intent. Seller acknowledges and agrees that this Agreement is the result of a voluntary intent of Seller to sell the Property and an intent of Buyer to purchase the Property for a negotiated amount, the purchase and sale transaction provided for in this Agreement does not arise from Buyer's use or threatened use of Buyer's condemnation powers and, as of the Effective Date, the Property is undeveloped, unoccupied and not put to any use by Seller or any other Person. Accordingly, Seller further acknowledges and agrees that Seller has no right or claim to receive compensation from Buyer arising from or relating to Buyer's acquisition of the Property beyond the Purchase Price under either: (a) the California Relocation Assistance Law, Government Code Section 7260, et seq., and the implementing regulations set forth in California Code of Regulations, Title 25, Chapter 6, Section 6000, et seq. (collectively, "**Relocation Law**"), for relocation assistance or benefits, moving expenses, reestablishment expenses or other expenses or losses associated with Buyer's acquisition of the Property or Seller moving persons or property from the Property; or (b) the California Eminent Domain Law, California Code of Civil Procedure, Section 1230.010, et seq. ("**Condemnation Law**"), for just compensation, severance damages, compensation for loss of goodwill, litigation expenses, attorney fees and costs, damages for inverse condemnation, damages for unreasonable pre-condemnation delay, damages for unreasonable pre-condemnation activities or other expenses or losses associated with Buyer's acquisition of the Property. Seller further acknowledges and agrees that neither Seller, nor any Person claiming by or through Seller, as of the Effective Date, has any alleged or actual claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, attorney fees and costs), or any judgment against Buyer arising from or in any way related to Buyer's acquisition or use of the Property or for moving persons or property from the Property, whether pursuant to the Relocation Law or the Condemnation Law, whether known or unknown, or whether foreseeable or unforeseeable as of the Effective Date (each, an "**Acquisition Claim**").

4.2 Seller Representations. Seller acknowledges, agrees, represents and warrants to Buyer that Seller has received the compensation from Buyer that Seller voluntarily negotiated and agreed to pursuant to this Agreement for Buyer's acquisition of the Property and Seller has no actual or potential Acquisition Claims. Seller further represents, covenants and warrants to Buyer that, to the best knowledge of Seller, there is no individual or entity other than Seller with any Acquisition Claim arising by, under or through Seller or that has or had any right in or to the Property or to the possession or use of the Property. Seller further represents, covenants and warrants to Buyer that Seller has not assigned, transferred, pledged, hypothecated or conveyed any right or interest of Seller in the Property or any Acquisition Claim to any other Person. Seller acknowledges and agrees that Buyer is acquiring the Property in material reliance on Seller's acknowledgments, agreements, representations, warranties and covenants set forth in this Section 4.

4.3 Informed Consent; Legal Advice. Seller represents and warrants to Buyer that Seller has carefully read this Section 4 and that Seller makes and delivers the acknowledgments, agreements, representations, warranties and covenants set forth in this Section 4 with full knowledge of any and all rights Seller may have regarding any and all Acquisition Claims and the acknowledgments, agreements, representations, warranties and covenants set forth in this Section 4, with legal advice from an attorney of Seller's selection. Seller freely makes and delivers the acknowledgments, agreements, representations, warranties and covenants set forth in this Section 4, without relying on any agreement, promise, statement or representation by or on behalf of Buyer. Seller further acknowledges and agrees that Seller and Seller's legal and other counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with any Acquisition Claim or the acknowledgments, agreements, representations, warranties and covenants set forth in this Section 4.

5. JOINT ESCROW INSTRUCTIONS

5.1 Opening of Escrow; Escrow Instructions. The purchase and sale of the Property shall take place through the Escrow to be administered by Escrow Agent. Buyer shall cause the Escrow Opening Date to occur within seven (7) days following the occurrence of the Effective

Date. Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties.

5.2 Escrow Instructions. This Section 5 constitutes the joint escrow instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Property, as contemplated by this Agreement. Buyer and Seller shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, the provisions of this Agreement shall control.

5.3 Escrow Agent Authority. Seller and Buyer authorize Escrow Agent to:

5.3.1 **Charges**. Pay and charge Seller and Buyer for their respective shares of the applicable fees, taxes, charges and costs payable by either Seller or Buyer regarding the Escrow;

5.3.2 **Settlement/Closing Statements**. Release each Party's Escrow Closing Statement to the other Party;

5.3.3 **Document Recording**. File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

5.3.4 **Counterpart Documents**. Utilize documents signed by Seller or Buyer in counterparts, including attaching separate signature pages to one original of the same document.

5.4 Buyer's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Buyer, Buyer's obligation to purchase the Property from Seller on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Buyer) of each of the following conditions precedent to such purchase on or before the Escrow Closing Date:

5.4.1 **Title Policy**. Title Company is committed to issue the Buyer Title Policy to Buyer upon payment of Title Company's premium for such policy;

5.4.2 **CEQA Documents**. Adoption, approval or certification of the CEQA Documents by each applicable Government;

5.4.3 **Seller Escrow Deposits**. Seller deposits all of the items into Escrow required by Section 5.8;

5.4.4 **Settlement/Closing Statement.** Buyer approves Buyer's Escrow Closing Statement; and

5.4.5 **Seller Pre-Closing Obligations**. Seller performs all of the material obligations required to be performed by Seller pursuant to this Agreement prior to the Close of Escrow.

5.5 Seller's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Seller, Seller's obligation to sell the Property to Buyer on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Seller) of each of the following conditions precedent to such sale on or before the Escrow Closing Date:

5.5.1 **Title**. Buyer accepts the state of the title of the Property, in accordance with Section 3.3.

5.5.2 **Due Diligence**. Buyer delivers its Due Diligence Completion Notice to Seller stating Buyer's unconditional acceptance of the condition of the Property, in accordance with Section 3.4.

5.5.3 **Buyer Escrow Deposits**. Buyer deposits all of the items into Escrow required by Section 5.7;

5.5.4 **Settlement/Closing Statement**. Seller approves Seller's Escrow Closing Statement; and

5.5.5 **Buyer Pre-Closing Obligations**. Buyer performs all of the material obligations required to be performed by Buyer pursuant to this Agreement prior to Close of Escrow.

5.6 Failure of Conditions Not Default. Buyer's failure to satisfy any of the conditions set forth in Section 5.4.2 shall not constitute an Escrow Default (or any other type of Default or Event of Default) by Buyer under this Agreement; provided, further, that Buyer retains Buyer's sole and absolute discretion with respect to any legislative act or approval by Buyer.

5.7 Buyer's Escrow Deposits. Buyer shall deposit the following items into Escrow and, concurrently, provide a copy of each document submitted into Escrow to Seller, at least one (1) Business Day prior to the Escrow Closing Date:

5.7.1 **Closing Funds**. All monetary amounts required to be deposited into Escrow by Buyer under the terms of this Agreement to close the Escrow, all in immediately available funds;

5.7.2 **Seller Deed Certificate of Acceptance**. The Certificate of Acceptance attached to the Seller Deed signed by the authorized representative(s) of Buyer in recordable form;

5.7.3 **Easement**. The Easement signed by the authorized representative(s) of Buyer in recordable form;

5.7.4 **Assignment of Easements**. The Assignment of Easements signed by the authorized representative(s) of Buyer in recordable form;

5.7.5 **Right of First Refusal Memorandum**. The Right of First Refusal Memorandum signed by the authorized representative(s) of Buyer in recordable form;

5.7.6 **Escrow Closing Statement.** Buyer's Escrow Closing Statement signed by the authorized representative(s) of Buyer;

5.7.7 **Other Reasonable Items.** Any other money or documents required to be delivered by Buyer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow, issue the Buyer Title Policy or comply with applicable Law that have not previously been delivered by Buyer.

5.8 Seller's Escrow Deposits. Seller shall deposit the following items into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Buyer, at least three (3) Business Days prior to the Escrow Closing Date:

5.8.1 **Seller Deed.** The Seller Deed signed by the authorized representative(s) of Seller in recordable form;

5.8.2 **Easement.** The Easement signed by the authorized representative(s) of Seller in recordable form;

5.8.3 **Assignment of Easements.** The Assignment of Easements signed by the authorized representative(s) of Seller in recordable form;

5.8.4 **Right of First Refusal Memorandum.** The Right of First Refusal Memorandum signed by the authorized representative(s) of Seller in recordable form;

5.8.5 **Escrow Closing Statement.** Seller's Escrow Closing Statement signed by the authorized representative(s) of Seller;

5.8.6 **FIRPTA Affidavit.** A FIRPTA affidavit signed by the authorized representative(s) of Seller, in the form used by the Escrow Agent;

5.8.7 **Form 593.** A Form 593 signed by the authorized representative(s) of Seller; and

5.8.8 **Other Reasonable Items.** Any other money or documents required to be delivered by Seller under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow, issue the Buyer Title Policy or comply with applicable Law that have not been previously delivered by Seller.

5.9 Closing Procedure. Upon Escrow Agent's receipt of written confirmation from both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

5.9.1 **Recording and Distribution of Documents.** Escrow Agent shall cause the following documents to be filed with the Recorder of the County for recording in the official records of the County regarding the Property in the following order of priority at Close of Escrow: (a) the Seller Deed; and (b) any other documents to be recorded regarding the Property through the Escrow upon the joint instructions of the Parties. Further, at Close of Escrow, Escrow Agent shall file the Easement and the Right of First Refusal Memorandum with the

Recorder of the County for recording in the official records of the County regarding the Neighboring Property. At Close of Escrow, Escrow Agent shall deliver conformed copies of all documents filed with the Recorder of the County for recording in the official records of the County through the Escrow to Seller, Buyer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each conformed copy of a document filed for recording shall show all recording information. The Parties intend and agree that this Section 5.9.1 shall establish the relative priorities of the documents to be recorded in the official records of the County through the Escrow, by providing for recordation of senior interests prior to junior interests, in the order provided in this Section 5.9.1;

5.9.2 **Funds**. Distribute all funds held by the Escrow Agent pursuant to the Escrow Closing Statements approved in writing by Seller and Buyer, respectively.

5.9.3 **FIRPTA Affidavit**. File the FIRPTA Affidavit with the United States Internal Revenue Service;

5.9.4 **Form 593**. File the Form 593 with the California Franchise Tax Board; and

5.9.5 **Title Policy**. Obtain from the Title Company and deliver to Buyer the Buyer Title Policy issued by the Title Company.

5.10 Close of Escrow. The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. Buyer authorizes the City Manager to agree on Buyer's behalf to one or more extensions of the Escrow Closing Date up to a maximum time period extension of six (6) months in the aggregate, in the City Manager's sole and absolute discretion. Seller's agreement to any such extension of the Escrow Closing Date shall be provided through Seller's designated representative set forth in Section 8.2.2. If for any reason, other than a Default or Event of Default by such Party or a failure in performance by the Escrow Agent, the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 5.13. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 5.10, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 5.10 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

5.11 Escrow Costs. Escrow Agent shall Notify Buyer and Seller of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both

Seller and Buyer at least four (4) Business Days prior to the Escrow Closing Date. Buyer shall pay one-half of Escrow Agent's charges for conducting the Escrow, one-half of the premium charged by the Title Company for the Buyer Title Policy and all of the costs of any endorsements to the coverage of the Buyer Title Policy requested by Buyer. Seller shall pay one-half of Escrow Agent's charges for conducting the Escrow, one-half of the premium charged by the Title Company for the Buyer Title Policy, all recording fees (if any), all documentary transfer taxes (if any), and any and all other charges, fees and taxes levied by each and every Government relative to the conveyance of the Property through the Escrow.

5.12 Escrow Cancellation Charges. If the Escrow fails to close due to Seller's Default under this Agreement, Seller shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close due to Buyer's Default under this Agreement, Buyer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any. If the Escrow fails to close for any reason other than Seller's Default or Buyer's Default, Seller and Buyer shall each pay one-half of all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively, if any.

5.13 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

5.13.1 **Cancellation Instructions.** The Parties shall, within five (5) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

5.13.2 **Return of Funds and Documents.** Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Buyer or Escrow Agent shall return to Seller all documents previously delivered by Seller to Buyer or Escrow Agent, respectively, regarding the Escrow; (b) Seller or Escrow Agent shall return to Buyer all documents previously delivered by Buyer to Seller or Escrow Agent, respectively, regarding the Escrow; (c) Escrow Agent shall, unless otherwise provided in this Agreement, return to Buyer all funds deposited in Escrow by Buyer, less Buyer's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 5.12; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to Seller all funds deposited in Escrow by Seller less Seller's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 5.12.

5.14 Report to IRS. After the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service under applicable Federal law, if such report is required pursuant to Internal Revenue Code Section 6045(e), Escrow Agent shall report the gross proceeds of the purchase and sale of the Property pursuant to this Agreement to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e). Concurrently with the filing of such reporting form with Internal Revenue Service, Escrow Agent shall deliver a copy of the filed form to both Seller and Buyer.

5.15 Condemnation. If any portion of the Property or any interest in any portion of the Property becomes the subject of any eminent domain proceeding prior to Close of Escrow, including the filing of any notice of intended condemnation or proceedings in the nature of eminent domain, Seller shall give Buyer Notice of such occurrence and Buyer shall have the option, exercisable within fifteen (15) Business Days after receipt of such Notice from Seller, to either: (a) cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 5.13; or (b) continue with this Agreement in accordance with its terms, in which event Seller shall assign to Buyer, at the Close of Escrow, any and all right of Seller to receive any condemnation award attributable to the Property.

6. **BUYER RIGHT OF FIRST REFUSAL REGARDING NEIGHBORING PROPERTY OWNED BY SELLER.** Seller is also the owner of that certain real property adjacent to the Property and specifically described in **Exhibit "G"** attached to this Agreement ("**Neighboring Property**"). As part of this Agreement, Seller grants to Buyer and Buyer accepts from Seller a right of first refusal ("**ROFR**") regarding the sale of the Neighboring Property. Seller shall only sell the Neighboring Property after compliance with the provisions of this Section 6. Any sale of the Neighboring Property shall be pursuant to a written offer ("**Offer**") from a bona fide Third Person purchaser setting forth the terms and conditions of the proposed purchase, provided that such terms and conditions must provide for a closing date of not less than thirty (30) calendar days after acceptance of the Offer. If Seller receives an Offer that Seller is willing to accept, Seller shall give Buyer a copy of the Offer. Buyer shall have twenty-one (21) calendar days following the date of delivery of a copy of the Offer to Buyer ("**Acceptance Period**") within which to Notify Seller of Buyer's election to purchase the Neighboring Property on terms and conditions substantially consistent with the terms and conditions specified in the Offer, including non-cash consideration or cash consideration substantially equivalent in value to any non-cash consideration specified in the Offer ("**Acceptance Notice**"). Seller shall not accept any Offer from a Third Person, until after the earlier of: (a) expiration of the Acceptance Period, without Buyer Notifying Seller of Buyer's election to purchase the Neighboring Property under the terms and conditions specified in the Offer; or (b) Buyer Notifying Seller that Buyer will not elect to purchase the Neighboring Property under the terms and conditions specified in the Offer. Within fifteen (15) business days following Seller's receipt of the Acceptance Notice, the Parties shall proceed to open an escrow for the purchase and sale of the Neighboring Property ("**Neighboring Property Escrow**") with an escrow company reasonably selected by Buyer ("**Neighboring Property Escrow Agent**") by delivering a fully signed copy of a definitive purchase and sale agreement and joint escrow instructions ("**Purchase Agreement**") to Neighboring Property Escrow Agent containing terms and conditions consistent with the Offer and other reasonable terms and conditions. If the Acceptance Notice is not delivered to Seller by Buyer before the expiration of the Acceptance Period, then Seller may proceed to sell the Neighboring Property any time within one hundred eighty (180) calendar days after the expiration of the Acceptance Period, for a Gross Consideration that is no less than eighty-five percent (85%) of the Gross Consideration set forth in the Offer and with a closing date of not less than thirty (30) calendar days after acceptance of the Offer, free and clear of any rights of Buyer under this Section 6 (Buyer shall not have any right of first refusal regarding subsequent sales of

the Neighboring Property by such a purchaser from Seller or such purchaser's successors in interest). Any sale or proposed sale of the Neighboring Property on any terms or conditions that include a Gross Consideration that is less than eighty-five percent (85%) of the Gross Consideration set forth in the Offer, a closing date of less than thirty (30) calendar days after acceptance of the Offer or after expiration of the one hundred eighty (180) calendar day time period described in the immediately preceding sentence shall be a new sale subject to all of the rights of Buyer under this Section 6. If an Offer proposes non-cash consideration and the Parties disagree on the fair market value of such non-cash consideration, the Parties agree to select a neutral Third Person to determine the fair market value of the non-cash consideration. Should either Party not accept the fair market value of any non-cash consideration determined by the neutral assessment, the Parties agree to submit the issue to a subsequent neutral Third Person. The Parties agree that a Third Person neutral assessment and subsequent Third Person neutral assessment shall each be completed within thirty (30) days following the first notice of a disagreement between the Parties regarding the fair market value of non-cash consideration. The Parties agree to share equally in the cost of each Third Person neutral assessment. Any sale of the Neighboring Property to any Person, other than Buyer, after compliance with this Section 6, shall be subject to the Easement. Buyer and Seller shall sign a "**Right of First Refusal Memorandum**", in substantially the form of **Exhibit "F"** attached to this Agreement, in recordable form and such Right of First Refusal Memorandum shall be recorded against the Neighboring Property at the Close of Escrow.

7. REMEDIES

7.1 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

7.2 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

8. GENERAL PROVISIONS

8.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

8.2 Notices, Demands and Communications Between the Parties.

8.2.1 **Delivery.** Any and all Notices submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in Section 8.2.2. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 8.2.

Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is placed in the United States mail in accordance with this Section 8.2. Any attorney representing a Party may give any Notice on behalf of such Party.

8.2.2 **Addresses.** The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Seller:	Clayton Community Church 6055 Main Street Clayton, CA 94517 Attention: Shawn Robinson, Pastor
To Buyer:	City of Clayton 6000 Heritage Trail Clayton, CA 94517-1250 Attention: City Manager
With Copy to:	Best Best & Krieger LLP 2001 North Main Street, Suite 390 Walnut Creek, CA 94596 Attention: Mala Subramanian, Esq.

8.3 Relationship of Parties. The Parties each intend and agree that Seller and Buyer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

8.4 Warranty Against Payment of Consideration for Agreement. Seller represents and warrants to Buyer that: (a) Seller has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting Colliers International (Seller's real estate broker), bona fide employees of Seller and other Third Persons to whom fees are paid for professional services related to this Agreement on a basis other than a commission, percentage, brokerage or contingent fee; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Seller or any of Seller's agents, employees or representatives to any elected or appointed official or employee of Buyer in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 8.4 shall entitle Buyer to terminate this Agreement and cancel Escrow (if open) upon seven (7) days Notice to Seller and, if the Escrow is open, to Escrow Agent. Upon any such termination of this Agreement, Seller shall immediately refund any payments made to or on behalf of Seller by Buyer pursuant to this Agreement or otherwise related to the Property, prior to the date of such termination. Buyer is representing itself in the purchase of the Property pursuant to this Agreement and has no agent.

8.5 Non-liability of Buyer Officials and Employees. No elected official or employee of Buyer shall be personally liable to Seller, or any successor in interest to Seller, in the event of any Default by Buyer under this Agreement or for any amount that may become due to Seller or to Seller's successor, or on any obligations under the terms of this Agreement.

8.6 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

8.7 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

8.8 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts or choice of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

8.9 Unavoidable Delay; Extension of Time of Performance.

8.9.1 **Notice.** Performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. The extension of time for performance under this Agreement resulting from the occurrence of an Unavoidable Delay shall commence on the later of: (1) the date of occurrence of the condition causing the Unavoidable Delay; or (2) twenty (20) days prior to the date of Notice of such Unavoidable Delay pursuant to this Section 8.9.1. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

8.9.2 **Assumption of Economic Risks**. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

____________________ Initials of Authorized Seller Representative(s)	____________________ Initials of Authorized Buyer Representative(s)

8.10 Tax Consequences. Seller acknowledges and agrees that Seller shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Seller related to this Agreement.

8.11 Real Estate Commissions. Each Party: (a) represents and warrants that the Party did not engage or deal with any broker or finder in connection with this Agreement, except that Seller is being represented by Colliers International in the transaction that is the subject of this Agreement and no Person is entitled to any commission or finder's fee regarding this Agreement on account of any agreement or arrangement made by such Party, except that Colliers International, as agent for Seller, will be paid a commission by Seller; and (b) shall Indemnify the other Party against any breach of the representation and warranty set forth in clause "(a)" of this Section 8.11.

8.12 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

8.13 Third Person Legal Challenges. If a Third Person files a legal action regarding Buyer's approval or performance of this Agreement, prior to the Close of Escrow, Buyer shall have the right to cancel the Escrow and terminate this Agreement, without liability to Seller or any other Person, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 5.13. Any legal action that is subject to this Section 8.13 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement shall be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

8.14 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

8.15 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

8.16 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Property.

8.17 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Seller and Buyer.

8.18 Assignment. Buyer may assign Buyer's rights and obligations under this Agreement, at any time, with the prior reasonable approval of Seller. Following any assignment of Buyer's rights and obligations under this Agreement, Buyer shall be relieved of all obligations under this Agreement, except those obligations of Buyer becoming due before the date of such assignment.

8.19 Exhibit List. All of the exhibits attached to this Agreement are as follows:

Exhibit A	Property Legal Description
Exhibit B	Seller Official Action
Exhibit C	Seller Deed
Exhibit D	Easement
Exhibit E	Assignment of Easements

8.20 No Implied Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

8.21 City Manager Implementation. Buyer shall implement this Agreement through its City Manager. The City Manager is hereby authorized by Buyer to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement on behalf of Buyer, issue approvals, interpretations or waivers and enter into amendments to this Agreement on behalf of Buyer, to the extent that any such action(s) does/do not increase the monetary obligations of Buyer by more than Fifty Thousand Dollars ($50,000) in the aggregate. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise by separate action of the City Council. Nothing in this Section 8.21 shall restrict the submission to the City Council of any matter within the City Manager's authority under this Section 8.21, in the City Manager's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 8.21 is to authorize certain actions on behalf of Buyer by the City Manager, but not to require that such actions be taken by the City Manager, without consideration by the City Council.

8.22 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

8.23 Counterparts. This Agreement may be signed in multiple counterpart originals each of which is deemed to be an original and all of which shall constitute one agreement. This Agreement includes twenty-five (25) pages and four (4) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

8.24 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronically shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of each Party shall be required for each document to be recorded.

[*Signatures on following page*]

SIGNATURE PAGE
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(Clayton Community Church)

IN WITNESS WHEREOF, the Parties have signed and entered into this Agreement by and through the signatures of their respective authorized representative(s) as follow:

BUYER:

CITY OF CLAYTON, a California municipal corporation

By:______________________________
Julie K. Pierce, Mayor

ATTEST:

By:______________________________
Laci Jackson, City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By:______________________________
City Attorney

SELLER:

CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation

By:______________________________

Name:____________________________

Title:____________________________

By:______________________________

Name:____________________________

Title:____________________________

EXHIBIT A
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(Clayton Community Church)

<u>Property Legal Description</u>

[Attached behind this cover page]

LEGAL DESCRIPTION

CLAYTON COMMUNITY CHURCH (VACANT PARCEL)

(APN 118-560-010)

All that real property situated in the City of Clayton, County of Contra Costa, State of California, more particularly described as follows:

<u>Parcel One:</u>

Parcel 2 as shown on the map entitled Parcel Map MS 419-90, recorded August 19, 1993, in Book 163 of Parcel Maps at Page 1, in the office of the Recorder of Contra Costa County.

Excepting therefrom:

All rights to oil, gas, casinghead gas, asphaltum and other hydrocarbons now or hereafter found, situated or located in all or any part or portion of the property lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface hereof, and to grant leases for all or any said purposes, but without any right whatsoever to enter upon the surface of said property or any part or portion thereof lying within five hundred feet (500') vertical distance below the surface thereof, as reserved in the deed from Albert Seeno Construction Co., a limited partnership, recorded November 18, 1987, in Book 14024, Page 1, Official Records, Instrument No. 87-243943.

<u>Parcel Two:</u>

A portion of Parcel 4 as shown on the map entitled Parcel Map Ms 419-90, recorded August 19, 1993, in Book 163 of Parcel Maps at Page 1, and being Lot 2 of LLA 98-2, recorded May 29, 1998, Series No. 98-120531, both of Contra Costa County Records, and described as follows:

Beginning at the northwest corner of said Parcel 4; thence, along the northerly line of said parcel, said line also being the southerly right of way line of Clayton Road, North 80° 12' 45" East, 66.27 feet; thence, leaving said common line, South 00° 33' 22" West, 153.28 feet to the most southerly line of said Parcel 4 (163 PM 1); thence, along said southerly line, North 89° 26' 38" West, 65.19 feet to the west line of said Parcel 4 (163 PM 1), said line also being the east line of Parcel 2 as said parcel is shown on said map (163 PM 1); thence, along said common line, North 00° 33' 22" East, 141.38 feet to the point of beginning.

Excepting therefrom:

All rights to oil, gas, casinghead gas, asphaltum and other hydrocarbons now or hereafter found, situated or located in all or any part or portion of the property lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface hereof, and to grant leases for all or any said purposes, but

without any right whatsoever to enter upon the surface of said property or any part or portion thereof lying within five hundred feet (500') vertical distance below the surface thereof, as reserved in the deed from Albert Seeno Construction Co., a limited partnership, recorded November 18, 1987, in Book 14024, Page 1, Official Records, Instrument No. 87-243943.

Containing 1.66 acres, more or less.

REGISTERED PROFESSIONAL ENGINEER
RICHARD A. ANGRISANI
C27662
CIVIL
STATE OF CALIFORNIA

EXHIBIT B
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(Clayton Community Church)

Seller Official Action

[Attached behind this cover page]

Resolution of the Board of Directors of
CLAYTON COMMUNITY CHURCH

At a meeting of the board of directors of Clayton Community Church, a California nonprofit religious corporation ("**Church**"), duly held on **[INSERT MEETING DATE]**, at which meeting all directors were in attendance, the following resolutions were unanimously adopted:

WHEREAS, the Church is about to enter into that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Clayton Community Church) ("**Agreement**"), dated **[INSERT DATE OF AGREEMENT]**, with the City of Clayton, a California municipal corporation ("**City**"), to sell certain real property owned by the Church and grant an easement and a right of first refusal regarding certain other real property owned by the Church, all located in the City of Clayton, County of Contra Costa, State of California, and all as more specifically described in the Agreement; and

WHEREAS, the Board of Directors of the Church has reviewed the Agreement and all documents entered into or to be entered into in connection with the Agreement and considers the transaction to be in the best interest of the Church.

NOW, THEREFORE, BE IT RESOLVED that the Church enter into the Agreement and all documents previously presented to, reviewed, and approved by the Board of Directors of the Church in reference to the Agreement.

RESOLVED, FURTHER, that the officers of the Church acting alone be, and they hereby are, authorized, empowered, and directed on behalf of the Church to sign, enter into and deliver the Agreement and all other documents to be made or entered by the Church in connection with the Agreement, and to take all actions on behalf of the Church that may be necessary to complete the transactions contemplated by these documents. The following named officers of the Church, without any additional or further consent of any person, are authorized and empowered for, on behalf of and in the name of the Church to: (1) sign, enter into, make and deliver the Agreement and perform the Church's obligations set forth in the Agreement; (2) sign, enter into, make and deliver all other documents to be signed, entered into, made or delivered by the Church in connection with the transactions contemplated in the Agreement; and (3) take all actions on behalf of the Church that may be considered necessary to complete the transactions contemplated in the Agreement:

President
[Name]

Secretary
[Name]

[Titles of other officers]
[Names]

RESOLVED, FURTHER, that the authority conferred by this Resolution shall be considered retroactive, and any and all acts authorized in this Resolution that were performed before the passage of this Resolution are approved and ratified. The authority conferred by this Resolution shall continue in full force and effect until the City shall have received notice in writing, certified by the Secretary of the Church, of the revocation of this authority by a resolution duly adopted by the Board of Directors of the Church.

RESOLVED, FURTHER, that the activities covered by the authorities conferred in this Resolution constitute duly authorized activities of the Church; these authorities are now in full force and effect; and there is no provision in any document under which the Church is organized and/or that governs the Church's continued existence limiting the power of the Board of Directors of the Church to grant such authority, and the activities covered by the authorities conferred in this Resolution are in conformity with the provisions of all such documents.

The undersigned, **[INSERT NAME OF SECRETARY]**, Secretary of the Church, certifies that the foregoing is a true copy of the Resolution duly adopted by the Board of Directors of the Church at a meeting held on **[INSERT MEETING DATE]**.

IN TESTIMONY WHEREOF, I have executed this Resolution and affixed the corporate seal of the Church as of **[DATE]**.

Date:

____
Name [Typed name]
Secretary

[Seal]

____
Name [Typed name]
Title

____
Name [Typed name]
Title

EXHIBIT C
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(Clayton Community Church)

Seller Deed

[Attached behind this cover page]

Exhibit C

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517-1250
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from Recording Fees – Government Code Section 27383

APN(s): ____________________

GRANT DEED
(City of Clayton)

The undersigned declares:

Documentary Transfer Tax is: **Exempt – California Revenue and Taxation Code Section 11922**

County of Contra Costa; City of Clayton

Assessor's Parcel No.: ____________________________

□ computed on full value of interest or property conveyed, or

□ computed on full value of liens or encumbrances remaining at time of sale.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation ("**Grantor**"),

hereby grants to

CITY OF CLAYTON, a California municipal corporation ("**Grantee**"),

that certain real property legally described in Exhibit "1" attached to and by this reference incorporated into this Grant Deed.

Dated: ____________________, 2013

CLAYTON COMMUNITY CHURCH, a
California non-profit religious corporation

By: ____________________________________
Name: __________________________________
Title: ___________________________________

Mail Tax Statements to: City of Clayton, 6000 Heritage Trail, Clayton, CA 94517-1250,
Attention: City Manager

EXHIBIT "1"
TO
GRANT DEED
(City of Clayton)

Legal Description

[*Attached behind this cover page*]

LEGAL DESCRIPTION

CLAYTON COMMUNITY CHURCH (VACANT PARCEL)

(APN 118-560-010)

All that real property situated in the City of Clayton, County of Contra Costa, State of California, more particularly described as follows:

Parcel One:

Parcel 2 as shown on the map entitled Parcel Map MS 419-90, recorded August 19, 1993, in Book 163 of Parcel Maps at Page 1, in the office of the Recorder of Contra Costa County.

Excepting therefrom:

All rights to oil, gas, casinghead gas, asphaltum and other hydrocarbons now or hereafter found, situated or located in all or any part or portion of the property lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface hereof, and to grant leases for all or any said purposes, but without any right whatsoever to enter upon the surface of said property or any part or portion thereof lying within five hundred feet (500') vertical distance below the surface thereof, as reserved in the deed from Albert Seeno Construction Co., a limited partnership, recorded November 18, 1987, in Book 14024, Page 1, Official Records, Instrument No. 87-243943.

Parcel Two:

A portion of Parcel 4 as shown on the map entitled Parcel Map Ms 419-90, recorded August 19, 1993, in Book 163 of Parcel Maps at Page 1, and being Lot 2 of LLA 98-2, recorded May 29, 1998, Series No. 98-120531, both of Contra Costa County Records, and described as follows:

Beginning at the northwest corner of said Parcel 4; thence, along the northerly line of said parcel, said line also being the southerly right of way line of Clayton Road, North 80° 12' 45" East, 66.27 feet; thence, leaving said common line, South 00° 33' 22" West, 153.28 feet to the most southerly line of said Parcel 4 (163 PM 1); thence, along said southerly line, North 89° 26' 38" West, 65.19 feet to the west line of said Parcel 4 (163 PM 1), said line also being the east line of Parcel 2 as said parcel is shown on said map (163 PM 1); thence, along said common line, North 00° 33' 22" East, 141.38 feet to the point of beginning.

Excepting therefrom:

All rights to oil, gas, casinghead gas, asphaltum and other hydrocarbons now or hereafter found, situated or located in all or any part or portion of the property lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface hereof, and to grant leases for all or any said purposes, but

without any right whatsoever to enter upon the surface of said property or any part or portion thereof lying within five hundred feet (500') vertical distance below the surface thereof, as reserved in the deed from Albert Seeno Construction Co., a limited partnership, recorded November 18, 1987, in Book 14024, Page 1, Official Records, Instrument No. 87-243943.

Containing 1.66 acres, more or less.

REGISTERED PROFESSIONAL ENGINEER
RICHARD A. ANGRISANI
C 27662
CIVIL
STATE OF CALIFORNIA

CERTIFICATE OF ACCEPTANCE
OF
GRANT DEED

This is to certify that all of the estates and/or interests in real property conveyed by the foregoing Grant Deed from Clayton Community Church, a California nonprofit religious corporation, to the City of Clayton, a California municipal corporation ("City"), are hereby accepted by the undersigned authorized officer on behalf of City, pursuant to authority conferred on such authorized officer by City, and City consents to recordation of such Grant Deed in the Official Records of the Recorder of the County of Contra Costa, California.

CITY:

CITY OF CLAYTON, a California municipal corporation

By: ______________________________
Gary A. Napper
City Manager

Dated: _______________________, 2013

STATE OF CALIFORNIA } ss:
COUNTY OF CONTRA COSTA

On ______________________ before me, ____,
(here insert name and title of the officer)

personally appeared ____
who 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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________

(This area for notary stamp)

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA } ss:

On ______________________ before me, ____,
(here insert name and title of the officer)

personally appeared ____

<u>who</u> 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

<u>I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.</u>

WITNESS my hand and official seal.

Signature ____________________

(This area for notary stamp)

EXHIBIT D
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

<u>Easement</u>

[Attached behind this cover page]

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517-1250
Attention: City Manager

Space above line for Recorder's use only
Exempt from recording fees per Govt. Code § 27383
Exempt from Documentary Transfer Tax per Govt. Code § 11922

ACCESS EASEMENT DEED AND AGREEMENT

(Clayton Community Church)

This ACCESS EASEMENT DEED AND AGREEMENT (Clayton Community Church) ("**Easement Agreement**") is made and entered into as of ____________________, 2013 ("**Effective Date**"), by and between the CITY OF CLAYTON, a California municipal corporation ("**City**") and CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation ("**Owner**"). City and Owner enter into this Easement Agreement with reference to all of the following recited facts:

RECITALS

A. Owner owns that certain real property located in the City of Clayton, California, specifically described on Exhibit "A" attached to this Easement Agreement and incorporated into this Easement Agreement by this reference ("**Servient Property**");

B. City owns that certain real property located in the City of Clayton, California, specifically described on Exhibit "B" attached to this Easement Agreement and incorporated into this Easement Agreement by this reference ("**Dominant Property**");

C. City and Owner previously entered into that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Clayton Community Church), dated as of January 31, 2013 ("**Purchase Agreement**"), pursuant to which Owner is obligated to grant the Easement (defined in Section 1) to City;

D. Owner desires to convey to City and City desires to obtain from Owner a permanent, non-exclusive easement over the Servient Property for ingress and egress between the Dominant Property and Main Street in the City, pursuant to the terms and conditions of this Easement Agreement;

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND AGREEMENTS SET FORTH IN THIS EASEMENT AGREEMENT, CITY AND OWNER AGREE AS FOLLOWS:

1. **DEFINITIONS.** As used in this Easement Agreement, the following words, phrases or terms shall have the meaning provided in this Section 1, unless the specific context of usage of a particular word, phrase or term requires a different meaning:

1.1 Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any portion of the Servient Property or the Improvements, whether or not insured or insurable.

1.2 City. The City of Clayton, a California municipal corporation, and its successors and assigns.

1.3 City Parties. Collectively, City, its governing body, elected officials, directors, officers, employees, agents and attorneys.

1.4 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) or any judgment.

1.5 Condemnation. Any of the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Servient Property by condemnation, eminent domain or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Servient Property, but creating a right to compensation, such as a change in grade of any street upon which the Servient Property abuts.

1.6 Condemnation Award. Any award(s) paid or payable (whether or not in a separate award) to either Party, after the Effective Date, because of or as compensation for any Condemnation, including: (a) any award made regarding any Improvements that are the subject of the Condemnation; (b) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation; (c) any interest on such award; and (d) any other sums payable on account of such Condemnation.

1.7 Construction. Any alteration, construction, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration or other work affecting the Servient Property.

1.8 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person or contractually bind such Person, whether pursuant to ownership of Equity Interests, contract or otherwise.

1.9 County. The County of Contra Costa, California.

1.10 Default. Any Monetary Default, Insurance Maintenance Default or Non-Monetary Default.

1.11 Default Interest. Interest at an annual rate equal to the lesser of: (a) six percent (6%) per annum; or (b) the Usury Limit.

1.12 Easement. Defined in Section 2.1.

1.13 Easement Agreement. This Access Easement Deed and Agreement (Clayton Community Church).

1.14 Easement Area. Defined in Section 2.2.

1.15 Effective Date. Defined in the first paragraph of this Easement Agreement.

1.16 Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

1.17 Event of Default. The occurrence of any one or more of the following:

1.17.1 **Monetary Default**. A Monetary Default that continues for thirty (30) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

1.17.2 **Insurance Maintenance Default**. City gives Owner Notice of an Insurance Maintenance Default and Owner does not cure such Insurance Maintenance Default within thirty (30) days after the date of such Notice.

1.17.3 **Non-Monetary Default**. Any Non-Monetary Default occurs and the defaulting Party does not cure the Default within thirty (30) days after Notice describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with due diligence be cured within thirty (30) days from the date of such Notice, if the defaulting Party does not: (a) within thirty (30) days from the date of such Notice, advise the other Party of the intention of the defaulting Party to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure; (c) diligently prosecute such cure to completion; and (d) complete such cure within a reasonable time under the circumstances.

1.18 Federal. The federal government of the United States of America.

1.19 Government. Each and every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider or other entity or instrumentality having or claiming jurisdiction over the Servient Property (or any activity this Easement Agreement allows), including the Federal government of the United States of America, the State and County governments and their subdivisions and municipalities, including City, any planning commission, building department, zoning board of appeals, design review board or committee and all other applicable governmental agencies, authorities, and subdivisions thereof having or claiming jurisdiction over the Servient Property or any activities on or at the Servient Property.

1.20 Hazardous Substances. Flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law or becomes, regulated or classified as hazardous or toxic under any Law (or the regulations adopted pursuant to any Law) regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

1.21 Hazardous Substance Discharge. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Servient Property, or relating to transportation of any Hazardous Substance to, from, across or over the Servient Property (whether on its own or contained in other material or property), or that arises at any time from the use, occupancy, or operation of the Servient Property or any activities conducted at, on, under or in the Servient Property, whether or not caused by a Party and whether or not occurring before, on or after the Effective Date. Hazardous Substance Discharge shall only include any deposit, discharge, generation, release or spill of a Hazardous Substance that is required by applicable law to be reported to a governmental agency.

1.22 Indemnify. Where this Easement Agreement states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). "**Indemnified**" shall have the correlative meaning.

1.23 Indemnitee. Any Person entitled to be Indemnified under this Easement Agreement.

1.24 Indemnitor. Any Person that agrees to Indemnify any other Person under this Easement Agreement.

1.25 Improvements. Any and all improvements (including fixtures, equipment or utility infrastructure) constructed or installed on or within the Easement Area pursuant to this Easement Agreement, whether or not existing on the Effective Date or constructed or installed after the Effective Date.

1.26 Insurance Maintenance Default. Owner's failure to obtain, replace, maintain or pay premiums for (or give City evidence of) any insurance, when and as this Easement Agreement requires.

1.27 Law. All laws, ordinances, requirements, orders, proclamations, directives, rules or regulations of any Government affecting the Servient Property, this Easement Agreement, or any Construction in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Servient Property, or relating to any taxes, or otherwise relating to this Easement Agreement or any Party's rights, obligations or remedies under this Easement Agreement, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.28 Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for Legal Costs), including reasonable attorneys' fees, court costs and expenses. All references to Legal Costs shall include the salaries, benefits and costs of in-house or contract general counsel to a Person and the lawyers employed in the office of such general counsel who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate and multiplied by the time spent on such matter rounded to increments of one-tenth of an hour, in addition to costs of outside counsel retained by the Person for such matter.

1.29 Monetary Default. Except to the extent constituting an Insurance Maintenance Default, any failure by Owner to pay or apply, when and as this Easement Agreement requires, any amount of money, whether to City or to a Third Person.

1.30 Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default or an Insurance Maintenance Default: (a) any breach by Owner of Owner's obligations under this Easement Agreement; (b) Owner's failure to comply with any material restriction or prohibition in this Easement Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a breach of this Easement Agreement by Owner.

1.31 Notice. Any approval, consent, demand, designation, election, notice or request relating to this Easement Agreement. Notices shall be delivered, and shall become effective only in accordance with Section 11.2.

1.32 Notify. Give a Notice.

1.33 Owner. Clayton Community Church, a California nonprofit religious corporation, and its successors and assigns.

1.34 Owner Parties. Collectively, Owner, its officers, directors, employees, agents, attorneys and any owners of Equity Interests in Owner.

1.35 Owner Party. Individually, Owner, its officers, directors, employees, agents, attorneys or any owner of Equity Interests in Owner.

1.36 Parties. Collectively, Owner and City.

1.37 Party. Individually, Owner or City, as applicable.

1.38 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.39 Property Insurance. Commercial property insurance providing coverage for the Servient Property and all Improvements or other property located on the Servient Property against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County from time to time, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all Improvements or other property located on the Servient Property and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision and with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Servient Property; coverage for terrorism; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

1.40 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Owner.

1.41 Record, recorded, recording or recordation. Recordation of the referenced document in the official records of the County.

1.42 Restoration. After a Casualty or Condemnation, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration or safeguarding of the damaged Improvements, substantially equivalent to their condition before the Casualty or Condemnation, subject to any changes in Law that would limit the foregoing.

1.43 Restore. Accomplish a Restoration.

1.44 Servient Property. Defined in Recital A.

1.45 State. The State of California.

1.46 Third Person. Any Person that is not a Party, Controlled by or under common Control with a Party, or an elected official, director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest, employee or agent of a Party.

1.47 Usury Limit. The highest rate of interest, if any, that Law allows under the circumstances.

2. GRANT OF ACCESS EASEMENT.

2.1 Easement Grant. Subject to the terms and conditions of this Easement Agreement, as of the Effective Date, Owner grants to City a perpetual, non-exclusive, two-way easement within, over, above and across the Servient Property for the purposes of pedestrian and vehicular ingress and egress, passage, travel and deliveries between the Dominant Property and Main Street, as further described in this Section 2 ("**Easement**"). The Easement location shall vary during the term of this Easement Agreement, as set forth in Section 2.2. The Easement shall burden the Servient Property and benefit the Dominant Property.

2.2 Easement Location. The Parties agree that the Easement is granted to provide two-way access between the Dominant Property and Main Street fully across the Servient Property. The Parties further agree that the Easement shall initially be a "floating easement" of between twenty (20) and twenty-four (24) feet in width, located within the existing onsite parking lot of the Servient Property, as shown on Exhibit C, with the future permanent location of the Easement to be determined at a future date by mutual agreement between any owner of the Servient Property and the then current owner of the Dominant Property ("**Easement Area**").

2.3 Easement Appurtenant. The Easement shall be appurtenant to the Dominant Property and shall pass to and benefit successive owners of the Dominant Property with the fee title to the Dominant Property.

2.4 Rights and Obligations Run with the Land. All provisions of this Easement Agreement are intended by the Parties to be restrictive covenants running with the land of both the Servient Property and the Dominant Property pursuant to California Civil Code Section 1468 and binding upon and inuring to the benefit of all successive owners of both the Servient Property and the Dominant Property.

2.5 No Dedication. The provisions of this Easement Agreement are not intended to and shall not constitute a dedication of the Easement or the Servient Property for public use. The rights and Easement granted in this Easement Agreement are private and only for the benefit of the Parties.

3. **USE RESTRICTIONS**. Except upon the express written agreement of all of the Parties, no Party shall place or construct within, upon or about the Easement Area, any structure or impediment that will restrict the use of the Easement Area by the Parties for pedestrian and vehicular ingress and egress, passage, travel, and deliveries to or from the Dominant Property, through the Easement Area, and Main Street; provided, however, traffic controls reasonably necessary to guide and control the orderly flow of traffic in the Easement Area or to comply with requirements of Law may be installed within, upon or about the Easement Area by a Party, so long as access to or from the Dominant Property through the Easement Area or the Servient Property is not closed or blocked and traffic circulation within the Dominant Property through the Easement Area or the Servient Property is not materially changed or altered by such controls. Except as otherwise set forth in this Easement Agreement, no walls, fences, gates or barriers of any sort or kind shall be constructed or maintained within, upon or about the Easement Area that prevents or impairs pedestrian or vehicular ingress or egress, passage, travel or deliveries to or from the Dominant Property, through the Easement Area, and Main Street. No parking shall ever be permitted on the designated driveways, fire lanes, entranceways or exits of the Easement Area. Except as otherwise expressly stated in this Easement Agreement, the Servient Property retains all rights to non-exclusive use and enjoyment of the Easement Area consistent with the Easement grant provided in this Easement Agreement. Except to the extent any such activity interferes with the City's use of the Easement pursuant to this Easement Agreement, nothing in this Easement Agreement is intended to restrict, curtail, or reduce the Owner's use of the Servient Property as allowed under both the State and Federal Constitution, including the free exercise of religion and freedom of speech, consistent otherwise with Federal, State, County and City statutes, ordinances, zoning or other applicable laws or regulations.

4. OPERATION AND MAINTENANCE COVENANT. Owner, for itself and Owner's successors and assigns, covenants to and agrees with City that:

4.1 Maintenance Standard. Prior to the fixing of a permanent location of the Easement Area pursuant to Section 2.2, Owner shall operate and maintain the Easement Area in a commercially reasonable manner and condition, including maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation and all other improvements on, within or about the Easement Area, now existing or made in the future by or on behalf of Owner, as necessary to maintain the appearance, character and use of the Easement Area for the purposes set forth in Section 2, all at Owner's sole cost and expense, other than Owner cure or abatement of any Maintenance Deficiency pursuant to Section 4.2. Following the fixing of the permanent location of the Easement Area pursuant to Section 2.2, the cost of maintenance and improvement of the Easement Area shall be paid solely by the Party who first develops or improves the entirety of the Easement Area, as necessary to maintain the appearance, character and use of the Easement Area for the purposes set forth in Section 2. The respective maintenance obligations of the Parties described in the first two sentences of this Section 4.1, are referred to, respectively, as the "**Maintenance Standard.**" Notwithstanding the foregoing, the Maintenance Standard shall not apply during any period after a casualty loss, as long as the applicable Party is diligently taking reasonable steps to obtain available Property Insurance Proceeds and repair, Restore or remove any Improvements or conditions that violate the Maintenance Standard. Each Party shall pay for all costs of repairing any damage to the Easement Area, other than normal wear and tear, caused by the negligence or willful misuse of the Easement Area by such Party or its respective employees, agents, contractors, customers, invitees, licensees or tenants, or by the employees, agents, contractors, customers, invitees or licensees of its tenants.

4.2 Maintenance Deficiency. If there is an occurrence of an adverse condition affecting the Easement Area in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then the Party without the obligation to maintain the Improvements or other condition of the Easement Area creating the Maintenance Deficiency may Notify the other Party of the Maintenance Deficiency. If a Maintenance Deficiency is not cured within thirty (30) calendar days following Notice of such Maintenance Deficiency, the notifying Party shall have the right, but not the obligation, to perform all acts necessary to cure the Maintenance Deficiency or take any other action at law or in equity that may then be available to the notifying Party to accomplish the abatement of the Maintenance Deficiency. Any amount expended by the notifying Party for the cure or abatement of a Maintenance Deficiency pursuant to this Section 4.2 (including Legal Costs) shall be reimbursed to the notifying Party by the other Party within thirty (30) calendar days after Notice of the amount expended. If any amount becoming due to a notifying Party under this Section 4.2 is not reimbursed to the notifying Party by the other Party within thirty (30) calendar days after Notice of the amount owed, the amount shall accrue Default Interest from the thirtieth (30th) calendar day after Notice of the amount owed until all of the unpaid principal and accrued Default Interest are paid in full. Nothing in this Section 4 is intended to limit or otherwise restrict any right or authority of City outside of this Easement Agreement to abate a condition that is or may be a Maintenance Deficiency.

5. HAZARDOUS SUBSTANCE DISCHARGE. Neither Party shall cause or permit any Hazardous Substance Discharge. If any Hazardous Substance Discharge occurs, the responsible Party shall immediately remedy, repair and remediate any damage or harm caused by such Hazardous Substance Discharge at such Party's sole cost and expense and shall notify the other Party of such Hazardous Substance Discharge, as soon as possible, but in all circumstances, within fifteen (15) calendar days following the Party learning of such Hazardous Substance Discharge.

6. TAXES AND ASSESSMENTS. Owner shall pay, without abatement, deduction or offset, any and all real and personal property taxes, general and special assessments and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed by any Government on or against the Servient Property or personal property located on or in the Servient Property. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Owner under this Easement Agreement shall be paid by Owner before each such tax, assessment or installment of tax or assessment becomes delinquent. Owner, at Owner's own cost and expense, shall have the right, at any time, to contest or seek a reduction in the assessed valuation attributable to the Servient Property, or to contest any taxes or assessments attributable to the Servient Property or the Easements, provided Owner undertakes all proceedings necessary to prevent the sale of the Servient Property for such taxes or assessments (including payment of the full contested amount subject to such contest or possible reduction, if required by applicable law), and promptly upon termination of such proceedings (but in any event prior to the sale of the Servient Property to satisfy the contested tax or assessment) pays in full the taxes or assessments determined to be due and owing, plus all interest, penalties and other costs with respect to such contest. Owner shall Indemnify City regarding any liability, loss or damage resulting from any taxes, assessments or other charges required by this Easement Agreement to be paid by Owner and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

7. INDEMNIFICATION.

7.1 Owner Indemnity. Owner shall Indemnify the City Parties against any Claim arising from this Easement Agreement or the use or operation of the Easement or Easement Area, to the extent such Claim arises from: (a) any wrongful intentional act or negligence of the Owner Parties; (b) any agreements that Owner (or anyone claiming by or through Owner) makes with a Third Person regarding this Easement Agreement, the Easement, the Improvements or the Servient Property; or (c) any Hazardous Substance Discharge caused in whole or in part by a Owner Party.

7.2 City Indemnity. City shall Indemnify the Owner Parties against any Claim arising from this Easement Agreement or the use or operation of the Easement or Easement Area, to the extent such Claim arises from: (a) any wrongful intentional act or negligence of the City Parties; (b) any agreements that City (or anyone claiming by or through City) makes with a Third Person regarding this Easement Agreement, the Easement or the Easement Area; or (c) any Hazardous Substance Discharge caused in whole or in part by a City Party and occurring on or after the Effective Date.

7.3 Independent Insurance and Indemnity Obligations. Owner's insurance or indemnification obligations under this Easement Agreement are independent of each other and shall not in any way satisfy restrict, limit or modify the other obligation.

7.4 Survival of Obligation to Indemnify. The indemnity obligations of the Parties pursuant to this Easement Agreement shall survive the termination of this Easement Agreement, until any and all actual or prospective Claims regarding any matter subject to such obligations to Indemnify pursuant to this Easement Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

8. CASUALTY OR CONDEMNATION. Owner shall, at Owner's sole cost and expense, maintain Property Insurance covering the Easement Area until such time as the permanent location of the Easement Area is fixed in accordance with Section 2.2. Following the fixing of the permanent location of the Easement Area, the Party who first develops or improves the entirety of the Easement Area shall maintain Property Insurance covering the Easement Area. Upon request by the other Party, the Party responsible for Property Insurance pursuant to this Section 8 shall provide evidence of the maintenance of such insurance to such requesting Party. If either Party becomes aware of any Casualty or actual, contemplated or threatened Condemnation, then such Party shall promptly Notify the other Party of such matter. If any Casualty or Condemnation occurs, the Party responsible for Property Insurance pursuant to this Section 8 shall Restore the affected Improvements with reasonable promptness, regardless of the availability or sufficiency of Property Insurance Proceeds or Condemnation Award for such purpose. The Party responsible for Property Insurance pursuant to this Section 8 shall use all Property Insurance Proceeds or Condemnation Award for Restoration on the terms set forth in this Section 8. First, the Party responsible for Property Insurance pursuant to this Section 8 shall reimburse itself and the other Party from such Property Insurance Proceeds or Condemnation Award for their actual, necessary and proper costs and expenses in collecting such Property Insurance Proceeds or Condemnation Award. Until the Party responsible for Property Insurance pursuant to this Section 8 has completed and paid for all of the subject Restoration, the Party responsible for Property Insurance pursuant to this Section 8 shall hold all Property Insurance Proceeds or Condemnation Award in trust for the benefit of the other Party to be used first to Restore and for no other purpose. If Property Insurance Proceeds or Condemnation Award are insufficient to Restore, then the Party responsible for Property Insurance pursuant to this Section 8 shall nevertheless Restore at its sole cost and expense. In the event of a Condemnation that prevents Restoration, the Party responsible for Property Insurance pursuant to this Section 8 is not required to Restore and the Condemnation Award shall be distributed to it and the other Party in accordance with their respective interests in the property that is the subject of the Condemnation.

9. REMEDIES.

9.1 Right to Cure Defaults. During the continuance of an Event of Default under this Easement Agreement, a Party shall have the right, but not the obligation, following thirty (30) days advance Notice to the Party in Default, to cure the subject Default(s). Any sum expended by a Party to cure any Default of the other Party shall be reimbursed by the Party in Default, within thirty (30) calendar days after Notice to the Party in Default of the amount. Any amount expended by a Party to cure any Default of the other Party that is not reimbursed by the Party in

Default within thirty (30) calendar days after Notice to the Party in Default of such amount, shall accrue Default Interest, until paid in full.

9.2 All Available Remedies. In addition to the rights and remedies of the Parties under Section 9.1, in the sole and absolute discretion of each Party, respectively, following the occurrence of a Default or Event of Default by the other Party, a Party may pursue any remedies or proceedings available to such Party at law or in equity regarding a Default or Event of Default by the other Party, including recovering monetary damages, specific performance or any other remedy provided for at law or in equity.

9.3 Inadequacy of Monetary Damages; Injunctive Relief. Monetary damages for the breach of this Easement Agreement are declared by the Parties to be inadequate and the Parties may be enjoined by any court of competent jurisdiction from commencing or proceeding with any action or inaction that diminishes, in any respect, the possessory or use rights of the other Party regarding the Easements or other rights granted or provided in this Easement Agreement.

9.4 Remedies Cumulative. All rights and remedies of the Parties under this Easement Agreement regarding a Default or Event of Default by the other Party shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of another right or remedy for the same or any subsequent Default or Event of Default.

10. NO LIMITATION ON CITY AUTHORITY. Nothing in this Easement Agreement shall be deemed to limit, modify or abridge the governmental police power or other legal authority (whether direct or delegated) of City under applicable Law regarding the Servient Property, the Dominant Property or Owner.

11. MISCELLANEOUS.

11.1 Intent to Bind Successors. All terms, conditions, covenants, restrictions or agreements set forth in this Easement Agreement shall bind and benefit the respective successors or assigns of City or Owner. City, Owner and any subsequent or successor owners of either the Dominant Property or the Servient Property shall only be bound by the terms and conditions of this Easement Agreement and subject to the obligations created by this Easement Agreement during their respective ownership of either the Dominant Property or the Servient Property.

11.2 Notices. All Notices shall be in writing and shall be addressed to Owner or City as set forth in Section 11.2.1. Notices shall be delivered by Federal Express, United Parcel Service, or other nationally recognized overnight (one business day) delivery service to the address set forth in Section 11.2.1. A Notice shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the delivery service) to the address(es) set forth in Section 11.2.1. Either Party may change its address for delivery of Notices by giving Notice in compliance with this Easement Agreement. Any Party giving a Notice may request the recipient to acknowledge delivery of such Notice. The recipient shall promptly comply with any such acknowledgment request, but failure to do so shall not limit the effectiveness of any Notice. Notice given for a Party by any attorney who represents such Party shall constitute Notice by such Party. Any correctly addressed Notice that is refused, unclaimed or undeliverable because of an act or omission of the Party to be Notified shall be considered to be effective as of the first date that the Notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger or overnight delivery service.

11.2.1 **Addresses.** The following are the addresses for delivery of Notices to the Parties, as of the Effective Date.

To City:	City of Clayton 6000 Heritage Trail Clayton, CA 94517-1250 Attention: City Manager
With Copy to:	Best Best & Krieger LLP 2001 North Main Street, Suite 390 Walnut Creek, CA 94596 Attention: Malathy Subramanian, Esq.
To Owner:	Clayton Community Church 6055 Main Street Clayton, CA 94517 Attention: Shawn Robinson, Pastor

11.3 No Third-Party Beneficiaries. No Person shall have any enforceable rights under this Easement Agreement other than the Parties and their respective successors and assigns. Nothing in this Easement Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Easement Agreement on any Person other than the Parties and their respective successors and assigns. Nothing in this Easement Agreement, express or implied, is intended to relieve or discharge any obligation of any Person who is not a Party to any Party or give any Person who is not a Party any right of subrogation or action over or against any Party.

11.4 No Implied Waiver. No waiver of any Default shall be implied from any omission by the non-defaulting Party to take any action regarding such Default. No express waiver of any Default shall affect any Default or cover any period of time other than the Default and period of time specified in such express waiver. One or more waivers of any Default in the performance of any term, provision or covenant contained in this Easement Agreement shall not be deemed a waiver of any subsequent Default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Easement Agreement. The consent or approval by a Party to or of any act or request of the other Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent acts or requests.

11.5 Estoppel Certificates. Each Party covenants that upon receipt of written request from the other Party, it shall, within fifteen (15) days after receipt of such request, give to the requesting Party or such other Person specified by the requesting Party, an estoppel certificate stating: (a) whether or not the Party knows of any Default by City or Owner under this Easement Agreement, and if there are known Defaults, specifying the nature of such Defaults; (b) whether or not the Party knows of any assignment, modification or amendment of all or any portion of this Easement Agreement (and if so, stating the terms thereof); (c) whether or not this Easement Agreement is in full force and effect; and (d) any other information reasonably requested by the requesting Party.

11.6 Amendments. All amendments to this Easement Agreement must be in writing, signed by the authorized representative(s) of the Parties and recorded in the official records of the County.

11.7 Mortgagee Protection. Breach of this Easement Agreement shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Servient Property, but all of the terms, provisions, conditions, restrictions, agreements and covenants of this Easement Agreement shall be binding and effective against any owner of the Servient Property whose title to the Servient Property is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.8 Breach Shall Not Permit Termination. Notwithstanding any other provision of this Easement Agreement to the contrary, no breach of any provision of this Easement Agreement shall entitle any Party, its successors or assigns, to cancel, rescind, or otherwise terminate any easement, restriction, covenant, or access right granted or provided in this Easement Agreement. This Section 11.8 shall not affect any rights or remedies that any Party, its successors or assigns, may have in the event of any breach of this Easement Agreement, other than the right to terminate this Easement Agreement.

11.9 Relationship of Parties. The Parties each intend and agree that the Parties are independent contracting entities and do not intend by this Easement Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between them.

11.10 Tax Consequences. Owner acknowledge and agree that Owner shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Owner related to this Easement Agreement.

11.11 No Other Representations or Warranties. Except as expressly set forth in this Easement Agreement, no Party makes any representation or warranty material to this Easement Agreement to the other Party.

11.12 Counterparts. This Easement Agreement may be signed by the respective authorized representatives of the Parties in multiple counterpart originals, each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

11.13 Entire Agreement. This Easement Agreement and the other documents and exhibits referred to in this Easement Agreement contain the entire agreement of the Parties as to the rights granted in this Easement Agreement and the obligations assumed in this Easement Agreement, and no oral statement or representation regarding such subject matter shall be of any force or effect.

11.14 Severability. Invalidation of any term, agreement, covenant, condition or restriction or any other provision contained in this Easement Agreement or the application of any term, agreement, covenant, condition or restriction or any other provision contained in this Easement Agreement to any Person by judgment or court order shall in no way affect any of the other terms, agreements, covenants, conditions, restrictions or provisions in this Easement Agreement, or the application of any term agreement, covenant, condition or restriction or any other provision contained in this Easement Agreement to any other Person and the same shall remain in full force and effect.

11.15 Headings. The headings of the various sections of this Easement Agreement are for convenience of reference and identification only and shall not be deemed to limit, expand or define the intent, meaning or interpretation of the respective sections of this Easement Agreement.

11.16 Governing Law. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Easement Agreement, without application of conflicts or choice of laws principles or statutes.

11.17 Venue. The Parties acknowledge that this Easement Agreement has been negotiated and entered into in the County and relates to real property located in the County. Any legal action brought to interpret or enforce this Easement Agreement shall be brought in a court of competent jurisdiction in the County.

11.18 Attorney's Fees. In the event of any controversy, claim or dispute between the Parties relating to this Easement Agreement, the prevailing Party shall be entitled to recover Legal Costs from the other Party.

11.19 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted all or any part of this Easement Agreement. The Parties have participated substantially in the negotiation, drafting, and revision of this Easement Agreement, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Easement Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Easement Agreement. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each collective noun in this Easement Agreement shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise. Every reference to any document, including this Easement Agreement, refers to such document as modified from time to time, and includes all exhibits, schedules and riders to such document. The word "or" includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time. The use in this Easement Agreement of the neuter gender shall include the masculine and the feminine, and the singular number shall include the plural, whenever the context so requires.

11.20 Additional Documents. To further implement this Easement Agreement, each Party agrees to sign and deliver such other instruments as may be necessary or proper to grant or otherwise establish or confirm the Easement and the provisions and conditions of this Easement Agreement.

11.21 Recording. The Parties intend that this Easement Agreement be recorded in the official records of the Recorder for the County. Any Party may cause this Easement Agreement to be so recorded.

Signature Page
To
Access Easement Deed and Agreement
(Clayton Community Church)

IN WITNESS WHEREOF, Owner and City sign and enter into this Easement Agreement, by and through the signatures of their respective authorized representatives, as follow:

CITY:

CITY OF CLAYTON, a California municipal corporation

By:______________________________
Julie K. Pierce, Mayor

ATTEST:

By:______________________________
Laci Jackson, City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP

By:______________________________
City Attorney

OWNER:

CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation

By:______________________________

Name:____________________________

Title:_____________________________

By:______________________________

Name:____________________________

Title:_____________________________

EXHIBIT "A"
To
Access Easement Deed and Agreement
(Clayton Community Church)

Servient Property Legal Description

[Attached behind this cover page]

LEGAL DESCRIPTION

CLAYTON COMMUNITY CHURCH (OCCUPIED PARCEL)

(APN 119-011-003)

All that real property situated in the City of Clayton, County of Contra Costa, State of California, more particularly described as follows:

<u>Parcel One:</u>

Lots 1, 2, and 3, Block 1, as shown on that certain map entitled Memorandum Map of the Town of Clayton, filed in Map Book E at Page 101 ½ , in the office of the Recorder of Contra Costa County.

<u>Parcel Two:</u>

A portion of the Southeast ¼ of the Southeast ¼ of Section 11, Township 1 North, Range 1 West, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the southwest corner of Block 1 as shown on that certain map entitled Memorandum Map of the Town of Clayton, filed in Map Book E at Page 101 ½ , in the office of the Recorder of Contra Costa County; thence West, 50 feet; thence North, 100 feet; thence East, 50 feet to the west line of said Block 1; thence South, along said west line, 100 feet to the point of beginning.

Containing 0.57 acres, more or less.

REGISTERED PROFESSIONAL ENGINEER
RICHARD A. ANGRISANI
C27662
CIVIL
STATE OF CALIFORNIA

EXHIBIT “B”
To
Access Easement Deed and Agreement
(Clayton Community Church)

<u>Dominant Property Legal Description</u>

[Attached behind this cover page]

LEGAL DESCRIPTION

CLAYTON COMMUNITY CHURCH (VACANT PARCEL)

(APN 118-560-010)

All that real property situated in the City of Clayton, County of Contra Costa, State of California, more particularly described as follows:

Parcel One:

Parcel 2 as shown on the map entitled Parcel Map MS 419-90, recorded August 19, 1993, in Book 163 of Parcel Maps at Page 1, in the office of the Recorder of Contra Costa County.

Excepting therefrom:

All rights to oil, gas, casinghead gas, asphaltum and other hydrocarbons now or hereafter found, situated or located in all or any part or portion of the property lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface hereof, and to grant leases for all or any said purposes, but without any right whatsoever to enter upon the surface of said property or any part or portion thereof lying within five hundred feet (500') vertical distance below the surface thereof, as reserved in the deed from Albert Seeno Construction Co., a limited partnership, recorded November 18, 1987, in Book 14024, Page 1, Official Records, Instrument No. 87-243943.

Parcel Two:

A portion of Parcel 4 as shown on the map entitled Parcel Map Ms 419-90, recorded August 19, 1993, in Book 163 of Parcel Maps at Page 1, and being Lot 2 of LLA 98-2, recorded May 29, 1998, Series No. 98-120531, both of Contra Costa County Records, and described as follows:

Beginning at the northwest corner of said Parcel 4; thence, along the northerly line of said parcel, said line also being the southerly right of way line of Clayton Road, North 80° 12' 45" East, 66.27 feet; thence, leaving said common line, South 00° 33' 22" West, 153.28 feet to the most southerly line of said Parcel 4 (163 PM 1); thence, along said southerly line, North 89° 26' 38" West, 65.19 feet to the west line of said Parcel 4 (163 PM 1), said line also being the east line of Parcel 2 as said parcel is shown on said map (163 PM 1); thence, along said common line, North 00° 33' 22" East, 141.38 feet to the point of beginning.

Excepting therefrom:

All rights to oil, gas, casinghead gas, asphaltum and other hydrocarbons now or hereafter found, situated or located in all or any part or portion of the property lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas lying below a depth of more than five hundred feet (500') below the surface hereof, and to grant leases for all or any said purposes, but

without any right whatsoever to enter upon the surface of said property or any part or portion thereof lying within five hundred feet (500') vertical distance below the surface thereof, as reserved in the deed from Albert Seeno Construction Co., a limited partnership, recorded November 18, 1987, in Book 14024, Page 1, Official Records, Instrument No. 87-243943.

Containing 1.66 acres, more or less.

REGISTERED PROFESSIONAL ENGINEER
RICHARD A. ANGRISANI
C27662
CIVIL
STATE OF CALIFORNIA

EXHIBIT "C"
To
Access Easement Deed and Agreement
(Clayton Community Church)

Easement Area Location Map

[Attached behind this cover page]

EXHIBIT C

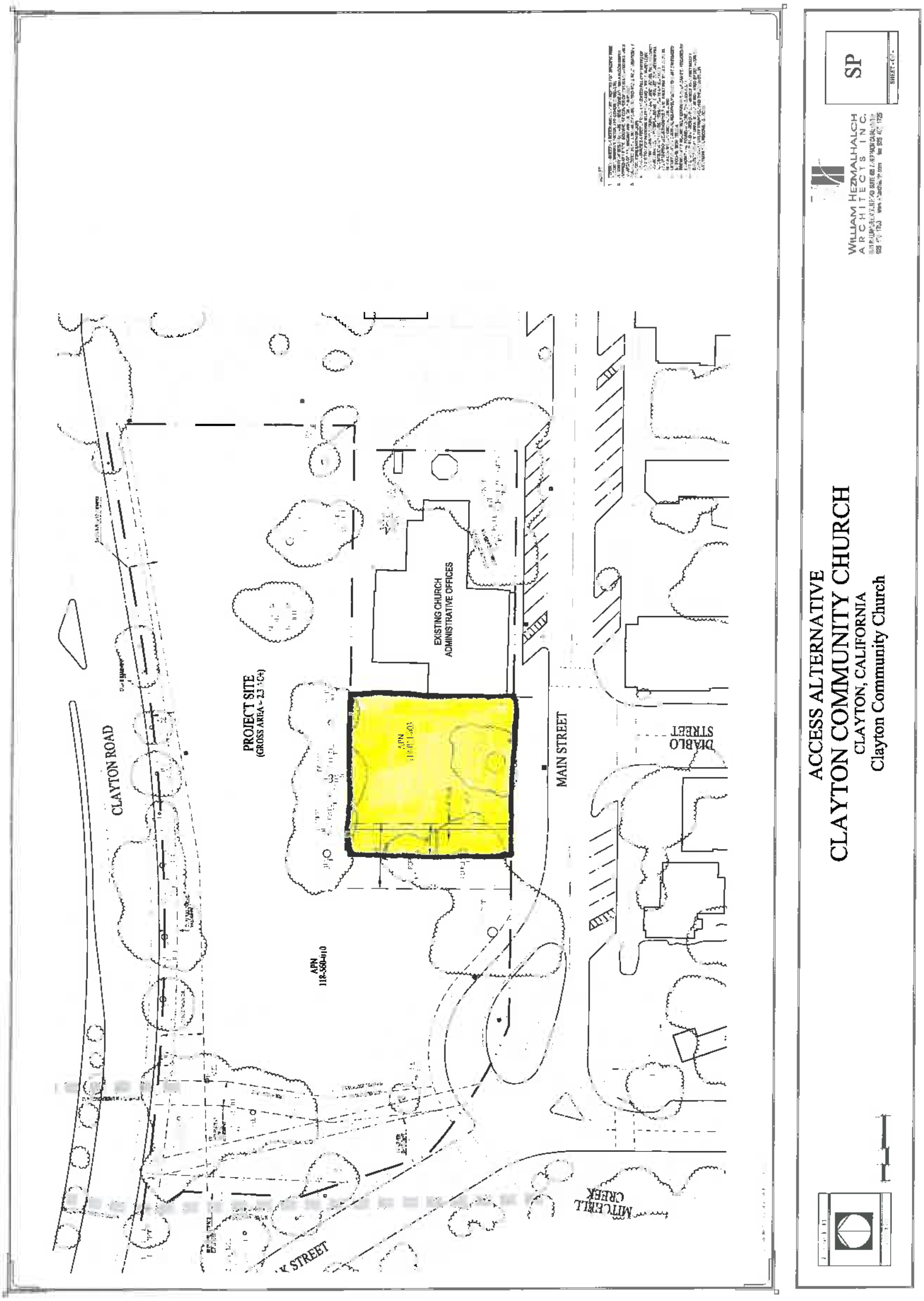

ACCESS ALTERNATIVE
CLAYTON COMMUNITY CHURCH
CLAYTON, CALIFORNIA
Clayton Community Church
SP
WILLIAM HEZMALHALCH
ARCHITECTS INC.
CLAYTON ROAD
PROJECT SITE
(GROSS AREA – 2.3 AC±)
EXISTING CHURCH
ADMINISTRATIVE OFFICES
MAIN STREET
DIABLO
STREET
APN
118-560-010
MITCHELL
CREEK

EXHIBIT E
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

Assignment of Easements

[Attached behind this cover page]

EXHIBIT E

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517-1250
Attention: City Manager

Space above line for Recorder's use only
Exempt from recording fees per Govt. Code § 27383
Exempt from Documentary Transfer Tax per Govt. Code § 11922

APN(s): ____________________

ASSIGNMENT AND ASSUMPTION OF EASEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF EASEMENTS (this "Assignment") is entered into as of **[TO BE DETERMINED]** ("Effective Date"), by and between CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation ("Assignor"), and the CITY OF CLAYTON, a California municipal corporation ("Assignee"). Assignor and Assignee are sometimes referred to in this Assignment, individually, as a "Party" and, collectively, as the "Parties." Assignor and Assignee enter into this Assignment with reference to the following recited facts:

RECITALS

A. Assignor and Assignee previously entered into that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions, dated **[TO BE DETERMINED]** ("Agreement"), pursuant to which Assignor sold certain real property ("Property") to Assignee and Assignee purchased the Property from Assignor;

B. Under the terms of the Agreement, Assignor is required to assign to Assignee all of Assignor's right, title and interest in all easements benefiting the Property;

C. This Assignment is intended to be Assignor's assignment to Assignee of all of Assignor's right, title and interest in all easements benefitting the Property;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND AGREEMENTS CONTAINED IN THIS ASSIGNMENT, ASSIGNOR AND ASSIGNEE AGREE, AS FOLLOWS:

1. **INCORPORATION OF RECITALS**. The recitals of fact set forth immediately preceding this Assignment are true and correct and are incorporated into this Assignment, in their entirety, by this reference.

2. **ASSIGNMENT.** As of the Effective Date, Assignor assigns to Assignee all of Assignor's right, title and interest under both: (1) that certain Grant and Agreement of Easements, dated May 27, 1998, by and among Assignee, Assignor's predecessor in interest, Presley Homes, a California corporation, and Sumitomo Bank Leasing and Finance, Inc., a Delaware corporation, recorded in the official records of the County of Contra Costa, California, with Document Number 98-0138359-00 ("City Lot Easement"); and (2) that certain Reciprocal Easement Agreement Between Landowners For Access and Parking, dated June 17, 1998, between Assignor's predecessor in interest, Presley Homes, a California corporation, and Sumitomo Bank Leasing and Finance, Inc., a Delaware corporation, recorded in the official records of the County of Contra Costa, California, with Document Number 98-0138360-00 ("Reciprocal Easement"). The City Lot Easement and the Reciprocal Easement are, collectively, referred to in this Assignment as the "Easement Agreements."

3. **ASSUMPTION.** As of the Effective Date, Assignee assumes from Assignor and agrees to perform all of Assignor's obligations under the Easement Agreements arising from and after the Effective Date.

4. **ASSIGNOR REPRESENTATIONS AND WARRANTIES.** Assignor represents and warrants to Assignee, and acknowledges that Assignee entered into this Assignment in material reliance on such representations and warranties, each of the following:

4.1 City Lot Easement. A true, correct and complete copy of the City Lot Easement is attached to this Assignment as Exhibit "A;"

4.2 City Lot Easement In Effect; No Defaults. The City Lot Easement is in full force and effect with no defaults under the City Lot Easement by Assignor or, to Assignor's knowledge, by any other party to the City Lot Easement. Neither Assignor nor, to Assignor's knowledge, any other party to the City Lot Easement has taken any action that would constitute a default under the City Lot Easement, with the giving of Notice or the passage of time or both.

4.3 No Other Assignment of City Lot Easement. Assignor has not made any prior conditional or unconditional assignment, conveyance or pledge of all or any part of Assignor's rights under the City Lot Easement that will continue following the Effective Date.

4.4 Reciprocal Easement. A true, correct and complete copy of the Reciprocal Easement is attached to this Assignment as Exhibit "B;"

4.5 Reciprocal Easement In Effect; No Defaults. The Reciprocal Easement is in full force and effect with no defaults under the Reciprocal Easement by Assignor or, to Assignor's knowledge, by any other party to the Reciprocal Easement. Neither Assignor nor, to Assignor's knowledge, any other party to the Reciprocal Easement has taken any action that would constitute a default under the Reciprocal Easement, with the giving of Notice or the passage of time or both.

4.6 No Other Assignment of Reciprocal Easement. Assignor has not made any prior conditional or unconditional assignment, conveyance or pledge of all or any part of Assignor's rights under the Reciprocal Easement that will continue following the Effective Date.

4.7 Reciprocal Easement Provides Access. Prior to the Effective Date, the Reciprocal Easement provided and, after the Effective Date, the Reciprocal Easement will continue to provide, in perpetuity, vehicular and pedestrian ingress and egress between the Property and Main Street over and through the properties described in the Reciprocal Easement.

5. **INDEMNIFICATION**. Assignor shall indemnify, defend and hold harmless Assignee against any Claim arising during any time period on or before the date of this Assignment and relating to the City Lot Easement or the Reciprocal Easement, to the extent such Claim arises from or relates to: (a) any wrongful intentional act or negligence of Assignor; or (b) any agreements that Assignor (or anyone claiming by or through Assignor) makes or has made with a third party regarding the City Lot Easement or the Reciprocal Easement. The indemnity and defense obligations of Assignor under this Assignment shall survive the expiration or earlier termination of this Assignment, until all Claims against Assignee for which any such indemnity obligation exists are fully, finally, absolutely and completely barred by applicable statutes of limitations.

6. **NOTICES BETWEEN THE PARTIES.** Any approval, consent, demand, designation, election, notice, or request relating to this Assignment is referred to in this Assignment as a "Notice." Notices shall be delivered, and shall become effective, only in accordance with this Section 6. All Notices between the Parties regarding or pursuant to this Assignment shall be in writing, and shall be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight (one business day) deliver service (e.g., Federal Express or United Parcel Service), addressed to the Party to whom the Notice is given at the addresses provided below in this Section 6, subject to the right of any Party to designate a different address for itself by Notice so given. Any Notice given by registered or certified United States mail shall be deemed to have been given on the third (3rd) business day after the Notice is deposited with the United States Postal Service for delivery. Any Notice delivered by personal delivery or delivery service, shall be deemed given upon receipt, attempted delivery by the delivery service, or rejection or refusal of the Notice by the Party to whom the Notice is sent. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to constitute receipt of the Notice. Delivery of any Notice to any designated courtesy copy recipients shall not be required before such Notice is effective as between the Parties.

To Assignor:	Clayton Community Church 6055 Main Street Clayton, CA 94517 Attention: Shawn Robinson, Pastor
To Assignee:	City of Clayton 6000 Heritage Trail Clayton, CA 94517-1250 Attention: City Manager

7. **COUNTERPARTS**. This Assignment may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which, together, shall constitute one and the same document.

8. **BINDING ON SUCCESSORS AND ASSIGNS**. This Assignment shall be binding on and inure to the benefit of the Parties and their respective heirs, administrators, successors and assigns.

9. **SURVIVAL**. All rights and obligations that by their nature are to be performed after any termination of this Assignment shall survive any such termination.

10. **CAPTIONS**. The section headings in this Assignment are for convenience of reference only and, in no way, are intended to affect the substance or interpretation of this Assignment.

11. **NO INTENDED THIRD PARTY BENEFICIARIES**. The Parties do not intend to create any rights for, in favor of or on behalf of any person or entity by entering into this Assignment, other than the Parties themselves.

12. **WAIVERS**. No waiver or breach of any provision of this Assignment shall be deemed a waiver of any other provision of this Assignment, and no waiver of any provision in this Assignment shall be valid, unless in writing and signed by the waiving Party.

13. **PRINCIPLES OF INTERPRETATION**. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Assignment. The Parties have each participated substantially in the negotiation, drafting, and revision of this Assignment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Assignment may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Assignment. The words "include" and "including" in this Assignment shall be construed to be followed by the words: "without limitation." Each collective noun in this Assignment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Assignment, refers to such document, as modified from time to time (excepting any modification that violates this Assignment), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Assignment includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement in this Assignment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

14. **AMENDMENT**. This Assignment may not be amended or altered, except by a written instrument signed by both of the Parties.

15. **GOVERNING LAW**. This Assignment shall be governed and construed in accordance with the procedural and substantive laws of the State of California, without regard to conflicts or choice of law principles.

[Signatures on following page]

SIGNATURE PAGE
TO
ASSIGNMENT AND ASSUMPTION OF EASEMENTS

Assignor and Assignee have signed this Assignment by and through the signatures of their authorized representatives, as set forth below:

ASSIGNEE:

CITY OF CLAYTON, a California municipal corporation

By:______________________________
Julie K. Pierce, Mayor

ATTEST:

By:______________________________
Laci Jackson, City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By:______________________________
City Attorney

ASSIGNOR:

CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation

By:______________________________

Name:____________________________

Title:_____________________________

By:______________________________

Name:____________________________

Title:_____________________________

EXHIBIT "A"
TO
ASSIGNMENT AND ASSUMPTION OF EASEMENTS

Complete Copy of City Lot Easement

[Attached behind this cover page]

Exhibit A

Recording Requested by
and When Recorded Mail to:

Randall Hatch
Community Development Director
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

9770939

CONTRA COSTA Co Recorder's Office
STEPHEN L. WEIR, County Recorder

DOC - 98-0138359-00
Check Number
Wednesday, JUN 17, 1998 14:25:00
MIC $2.00 | MOD $22.00 | REC $30.00
TCF $20.00 |
Ttl Pd $74.00 Nbr-0000160225
ima/R4/2-21

Space Above This Line for Recorder's Use

GRANT AND AGREEMENT OF EASEMENTS

This Grant and Agreement of Easements (the "Easement Agreement") is made by and among the City of Clayton, a municipal corporation ("City"), Presley Homes, a California corporation ("Presley"), and Sumitomo Bank Leasing and Finance, Inc., a Delaware corporation ("Sumitomo"). with reference to the following facts:

RECITALS

A. Presley previously owned certain real property located in Clayton, California, described as Parcel 4, as shown on that certain map entitled "Parcel Map MS-419-90" recorded in Book 163 of Parcel Map Page 1 on August 19, 1993, Contra Costa County Records ("Benefited Property").

B. Concurrent with the recording of this Easement Agreement, Sumitomo has purchased from Presley, and Presley has conveyed to Sumitomo, a portion of the Benefited Property consisting of approximately one (1.00) acre, as more particularly described in the attached **Exhibit A** (the "Child Care Site"). The portion of the Benefited Property still owned by Presley following the conveyance of the Child Care Site to Sumitomo is more particularly described in the attached **Exhibit B** and shall be referred to herein as the "Presley Parcel."

C. Under Section 3 of the Memorandum of Understanding and Agreement Relating to Oakhurst Country Club Development effective April 1, 1997 (the "Memorandum of Understanding"), City agreed to grant to Presley a thirty foot (30') wide easement appurtenant to the Benefited Property for ingress, egress, drainage and utilities, and Presley agreed to improve the area covered by such easement, together with certain areas adjacent thereto, for use as a landscaped parking lot . The improvements to be constructed by Presley pursuant to Section 3 of the Memorandum of Understanding shall be referred to in this Easement Agreement as the "Parking Area Improvements."

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, City, Presley and Sumitomo agree as follows:

1. **GRANT OF EASEMENTS.**

1.1 **Access, Utility and Drainage Easement.** City hereby grants to Presley and to Sumitomo nonexclusive easements appurtenant to the Presley Parcel and the Child Care Site, respectively, for purposes of ingress and egress, drainage and utilities (the "Access, Utility and Drainage Easement") over, across and under that area described in the attached **Exhibit C** (the "Access, Utility and Drainage Easement Area"). Presley and Sumitomo may be referred to collectively as the "Benefited Parties" or individually as a "Benefited Party."

1.2 **Construction and Maintenance Easements.** The area to be improved with the Parking Area Improvements, including the Access, Utility and Drainage Easement Area, is more particularly described in the attached **Exhibit D** (the "Improved Area"). That portion of the Improved Area exclusive of the Access, Utility and Drainage Easement Area is more particularly described in the attached **Exhibit E** and shall be referred to in this Easement Agreement as the "Parking Area." City hereby grants to Presley and to Sumitomo nonexclusive easements appurtenant to the Presley Parcel and the Child Care Site, respectively, over and across the Improved Area for purposes of temporary access as reasonably required from time to time in connection with (i) the construction, maintenance and repair of the Parking Area Improvements and (ii) the installation, maintenance and repair of drainage systems and improvements and underground utility lines and equipment located within the Access, Utility and Drainage Easement Area and serving the Child Care Site and/or the Presley Parcel (the "Construction and Maintenance Easement"). The Access, Utility and Drainage Easement and the Construction and Maintenance Easement may be referred to collectively as the "Easements."

2. **USE AND MAINTENANCE OF ACCESS, UTILITY AND DRAINAGE EASEMENT AND IMPROVED AREA.**

2.1 **Use of Access, Utility and Drainage Easement.** The Access, Utility and Drainage Easement shall be used for purposes of (i) the construction, maintenance, repair and use of a paved surface for pedestrian and vehicular ingress and egress to and from the Benefited Property by the owners and occupants thereof and their respective tenants, customers, employees, representatives and invitees and (ii) subject to applicable City and utility company regulations, the installation, maintenance, repair and use of drainage systems and improvements and underground utility lines and equipment, including, without limitation, catch basins, culverts, pipelines, conduit, wire, cable and other equipment and facilities for drainage and utilities including, without limitation, storm drainage, sewer, water, gas, electric, television, telephone and cable. The use of the Access, Utility and Drainage Easement Area by Sumitomo and Presley for ingress and egress purposes shall be nonexclusive with the use of the Parking Area by the public (which use of the Parking Area may include, without limitation, use by the Benefited Parties and their invitees). Sumitomo and Presley shall have the nonexclusive right to use the Access, Utility and Drainage Easement Area for drainage and utility purposes. City acknowledges and agrees that the Access, Utility and Drainage Easement will be used in connection with the separate development and use of both the Child Care Site and the Presley Parcel for commercial or other purposes, including without limitation, the use of the Child Care Site as a child care facility. The rights of Sumitomo and Presley to use the Access, Utility and Drainage Easement will not be affected by the nature or intensity of the use of the Child Care Site or the Presley Parcel, as may exist from time to time.

2.2 Construction and Maintenance Easement. Presley will construct the Parking Area Improvements in accordance with the Memorandum of Understanding and Sumitomo will thereafter maintain the Parking Area Improvements in a neat and clean condition and in good condition and repair. Such obligations shall include, without limitation, maintenance and repair of the paved surface, sidewalks, lighting and landscaping and striping of parking areas. Sumitomo and Presley may subsequently agree to reallocate or share such maintenance and repair obligations as they may from time to time determine. To the extent that Sumitomo is responsible for performing such maintenance and repair obligations, Presley agrees to assign to Sumitomo, and to cooperate with Sumitomo in the enforcement of, any warranties or similar rights from any contractors, subcontractors or material suppliers that may from time to time be in effect with regard to any of the Parking Area Improvements. Presley and Sumitomo shall have the right to use the Construction and Maintenance Easement and the Improved Area on a temporary basis from time to time for purposes of such construction, maintenance and repair. City acknowledges that such use of the Improved Area may temporarily interfere with the public's use of the Parking Areas, and City agrees that neither Presley nor Sumitomo shall be liable for any such interference provided reasonable efforts are made to minimize the interference.

2.3 Costs of Maintenance and Repair. The costs of maintaining and repairing the Parking Area Improvements shall be shared equally by the Benefited Parties. Within fifteen (15) days after receipt of demand together with invoices or other supporting documentation from the Benefited Party performing the maintenance or repair work, the other Benefited Party shall reimburse one-half (1/2) of the cost of the maintenance or repairs. Any amount not paid within such fifteen (15)-day period shall thereafter bear interest until paid at the highest rate permitted under the usury laws of the State of California. Notwithstanding the foregoing, to the extent that any repair or maintenance work is necessitated by the negligent or intentional acts or omissions of a Benefited Party, of City, or of any other party having the right to use the Access, Utility and Drainage Easement Area for drainage and/or utility purposes (including, without limitation, work performed by a Benefited Party or any such other party in connection with the installation, maintenance or repair of its underground utilities and/or in connection with the development of its property), that Benefited Party, City, or such other party, as the case may be, shall be solely responsible for the costs of such repair or maintenance work necessitated by its acts or omissions. In consideration of the agreement of the Benefited Parties to maintain the Parking Area Improvements, City agrees that, for purposes of satisfying City's requirements for providing on-site parking in connection with the development of the Child Care Site, one (1) parking space in the Parking Area shall be deemed available to satisfy the requirement for one (1) of the required on-site parking spaces for the Child Care Site.

2.4 Rights of Other Parties to Perform Maintenance. If the Benefited Party responsible for the maintenance and repair of the Parking Area Improvements fails to perform any necessary maintenance or repair and such failure continues for a period of forty-five (45) days after receipt of written notice from City or from the other Benefited Party specifying the maintenance or repair to be performed, the party giving such notice shall have the right, but not the obligation, to perform, or cause to be performed, the necessary maintenance or repair and to obtain reimbursement from the other party(ies) for their respective share(s) of the actual, reasonable costs thereof in accordance with **Section 2.3** of this Easement Agreement.

2.5 Duration of Maintenance Obligations. The obligations of a Benefited Party to perform maintenance obligations under **Section 2.2** and/or to contribute to the cost of maintenance under

Section 2.3 shall be limited to such obligations as may accrue during the period of the Benefited Party's fee ownership of its portion of the Benefited Property. With respect to any portion of the Benefited Property the fee interest in which is subsequently transferred by a Benefited Party, the Benefited Party transferring such interest shall have no responsibility under this Easement Agreement for any such obligations accruing after the transfer, which obligations shall be binding upon the transferee.

3. **DURATION OF EASEMENTS.** The Easements shall become effective on recordation of this Easement Agreement and shall remain effective in perpetuity unless terminated by written instrument executed by all of the parties hereto, or their respective successors or assigns as owners of the Presley Parcel, the Child Care Site and the Improved Area.

4. **NATURE OF EASEMENTS.** The Easements granted in this Easement Agreement run with, are appurtenant to and benefit the Benefited Property and shall run with, are appurtenant to and burden the Access, Utility and Drainage Easement Area and the Improved Area as both equitable servitudes and covenants running with the land. The obligations of the parties hereto shall be binding upon their respective successors or assigns as owners of the Presley Parcel, the Child Care Site and the Improved Area, as the case may be. Any provision of this Easement Agreement to the contrary notwithstanding, this Easement Agreement shall not create any rights for the benefit of the public.

5. **MISCELLANEOUS.**

5.1 **Further Actions.** Each party to this Easement Agreement agrees to cooperate in the execution of all other and further documents reasonably necessary to carry out the intent of this Easement Agreement.

5.2 **Notices.** Any and all written notices under or concerning this Easement Agreement may be served personally or by first-class, prepaid U.S. Mail addressed as follows, certified, return receipt requested. The following addresses shall at all times hereafter be deemed correct and current, unless notice of change has previously been served in writing upon the other parties.

To City:	City of Clayton 6000 Heritage Trail Clayton, CA 94517 Attention: City Manager
To Presley:	Presley Homes 8000 Clayton Road Clayton, CA 94517 Attention: Jim Meek
To Sumitomo:	c/o ARAMARK 573 Park Point Drive Golden, CO 80401 Attention: Property Controller

With a copy to:
Children's World Learning Center
6095 Main Street
Clayton, CA 94517
Attention: Center Director

5.3 **Attorneys' Fees.** In the event that any action is brought for breach of this Easement Agreement. the prevailing party or parties shall be entitled to his/her/its reasonable attorneys' fees and court costs.

5.4 **Choice of Law.** This Easement Agreement is made and entered into in the State of California and shall be interpreted and enforced under and pursuant to the laws of said jurisdiction.

5.5 **Context and Interpretation; Severability.** Wherever in this Easement Agreement the context may require, the masculine gender shall be deemed to include the feminine and/or neuter, the neuter to include the feminine and/or masculine, the singular to include the plural, and the plural to include the singular. The section captions or headings in this Agreement are intended for convenience of reference only, and shall not be used to limit, expand, or otherwise interpret any provision hereof. No prior drafts, memoranda or correspondence shall be admissible to contradict, supplement or interpret any provision of this Agreement. The provisions of this Agreement have been fully negotiated by and among the parties to this Agreement, and no statute or rule which requires interpretation against the drafter of a document shall apply. If it is found that any provision of this Agreement or of the instruments or documents referred to in this Agreement are invalid, such finding shall not affect any other provisions thereof, which other provisions shall be severable from any invalid provision.

5.6 **Counterparts.** This Easement Agreement may be executed in one or more counterparts, which counterparts shall be deemed original and together shall constitute one and the same instrument.

5.7 **Recitals; Exhibits.** The recitals and the exhibits referred to in and attached to this Easement Agreement are hereby incorporated in and made a part of this Easement Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Grant and Agreement of Easements this May day of 27th, 1998.

CITY OF CLAYTON,
a municipal corporation

By: ____________________

Its: Mayor

PRESLEY HOMES,
a California corporation

By: ____________________

Its: Vice President

SUMITOMO BANK LEASING
AND FINANCE, INC.,
a Delaware corporation

By: ____________________

Its: Senior Vice President

138359

STATE OF CALIFORNIA)
)ss.
County of Contra Costa)

On May 29, 1998, before me, Frances Douglas, Clayton City Cler ~~a Notary Public in and for said State,~~ personally appeared R. Littorno, Mayor, 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 he/she/they, or the entity upon behalf of which he/she/they acted, executed the instrument.

Witness my hand and Official Seal. (Seal)

Frances Douglas
Signature

006692.0011407983.6

138359

STATE OF CALIFORNIA)

)ss.

County of CONTRA COSTA)

On MAY 27, , 1998, before me, NICOLE I. SZILAGYI, a Notary Public in and for said State, personally appeared JAMES LAWRENCE MEEK, 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 he/she/they, or the entity upon behalf of which he/she/they acted, executed the instrument.

Witness my hand and Official Seal. (Seal)

Signature

NICOLE I SZILAGYI
Commission # 1088140
Notary Public — California
Contra Costa County
My Comm. Expires Feb 19, 2000

006692.001\407983.6

STATE OF CALIFORNIA)
)ss.
County of Queens)

On Jan. 23, 1998, before me, Jeannette Carmona, a Notary Public in and for said State, personally appeared David A. Marin, 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 he/she/they, or the entity upon behalf of which he/she/they acted, executed the instrument.

Witness my hand and Official Seal.

(Seal)

JEANNETTE CARMONA
Notary Public, State of New York
No. 01CA5072806
Qualified in Queens County
Commission Expires Feb. 10, 1999

Jeannette Carmona
Signature

006692.001\407983.6

EXHIBIT B
Presley Parcel

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING LOT 2, LLA 98-2 RECORDED ON MAY 29, 1998 AT SERIES NUMBER 98-120531, OFFICIAL CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING A PORTION OF PARCEL 2 AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP MS-419-90" FILED AUGUST 19, 1993 IN BOOK 163 OF PARCEL MAPS AT PAGE 1, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 1:

ALL OF SAID PARCEL 2

LOT 2:

A PORTION OF PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 4 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG THE NORTHERN PARCEL LINE OF SAID PARCEL, SAID LINE ALSO BEING THE SOUTHERLY RIGHT OF WAY OF CLAYTON ROAD NORTH 80°12'45" EAST 66.27 FEET, THENCE LEAVING SAID PARCEL LINE SOUTH 00°33'22" WEST 153.28 FEET TO THE MOST SOUTHERN LINE OF SAID PARCEL 4 (163 PM 1), THENCE ALONG SAID SOUTHERN LINE NORTH 89°26'38" WEST 65.19 FEET TO THE MOST WESTERLY LINE OF PARCEL 4 (163 PM 1) SAID LINE ALSO BEING THE MOST EASTERN LINE OF PARCEL 2 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG SAID COMMON LINE NORTH 00°33'22" EAST 141.38 FEET TO THE POINT OF BEGINNING.

EXHIBIT A
Child Care Site

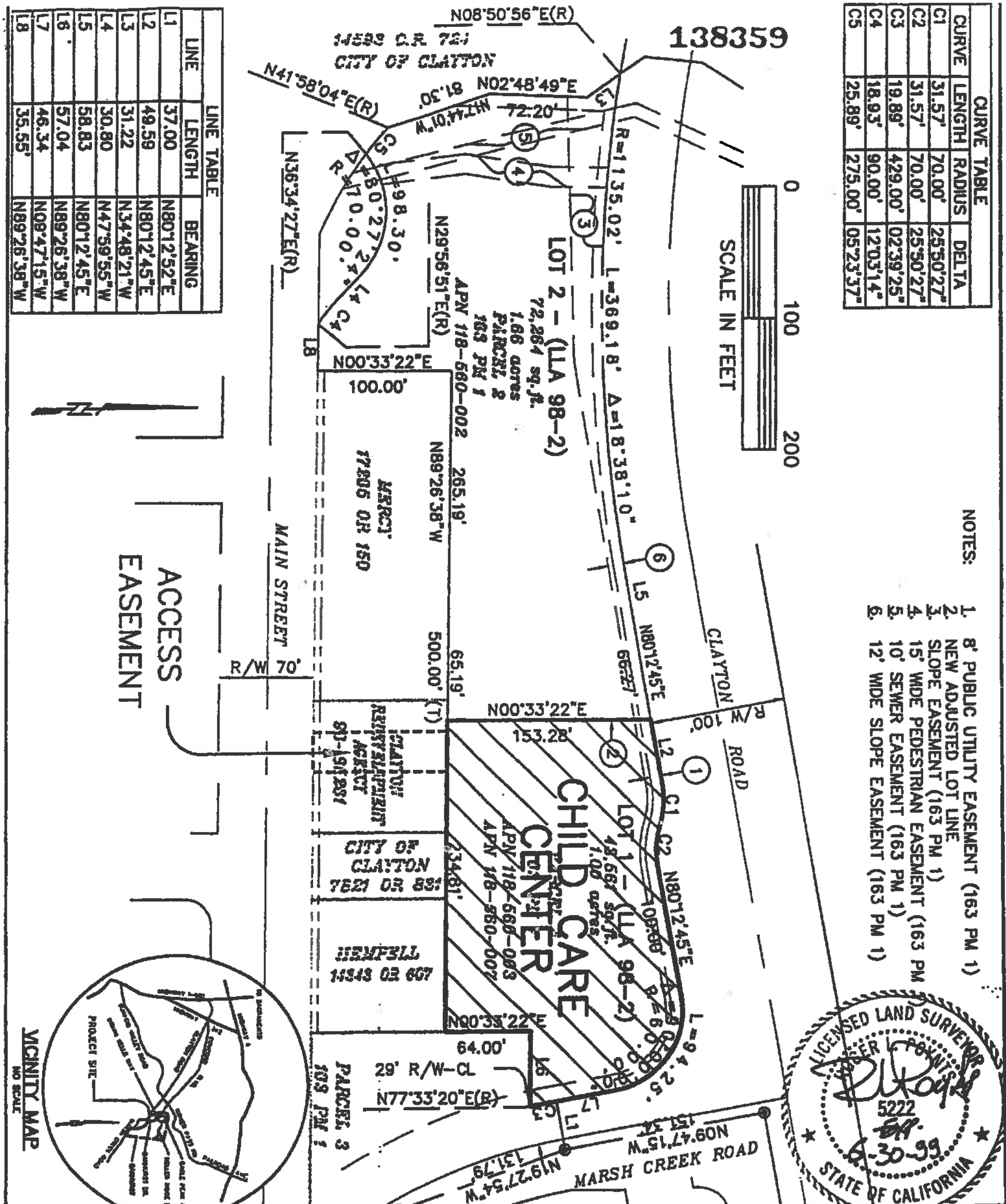
ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING LOT 1, LLA 98-2 RECORDED ON MAY 29, 1998 AT SERIES NUMBER 98-120531, OFFICIAL CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING A PORTION OF PARCEL 4 AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP MS-419-90", FILED AUGUST 19, 1993 IN BOOK 163 OF PARCEL MAPS AT PAGE 1, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF SAID PARCEL 4 (163 PM 1), EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 4 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG THE NORTHERN PARCEL LINE OF SAID PARCEL, SAID LINE ALSO BEING THE SOUTHERLY RIGHT OF WAY OF CLAYTON ROAD NORTH 80°12'45" EAST 66.27 FEET, THENCE LEAVING SAID PARCEL LINE SOUTH 00°33'22" WEST 153.28 FEET TO THE MOST SOUTHERN LINE OF SAID PARCEL 4 (163 PM 1), THENCE ALONG SAID SOUTHERN LINE NORTH 89°26'38" WEST 65.19 FEET TO THE MOST WESTERLY LINE OF PARCEL 4 (163 PM 1) SAID LINE ALSO BEING THE MOST EASTERN LINE OF PARCEL 2 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG SAID COMMON LINE NORTH 00°33'22" EAST 141.38 FEET TO THE POINT OF BEGINNING.

138359



LINE TABLE

LINE	LENGTH	BEARING
L1	37.00	N80°12'52"E
L2	49.59	N80°12'45"E
L3	31.22	N34°48'21"W
L4	30.80	N47°59'55"W
L5	58.83	N80°12'45"E
L6	57.04	N89°26'38"W
L7	46.34	N09°47'15"W
L8	35.55'	N89°26'38"W

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA
C1	31.57'	70.00'	25°50'27"
C2	31.57'	70.00'	25°50'27"
C3	19.89'	429.00'	02°39'25"
C4	18.93'	90.00'	12°03'14"
C5	25.89'	275.00'	05°23'37"

NOTES:

1. 8' PUBLIC UTILITY EASEMENT (163 PM 1)
2. NEW ADJUSTED LOT LINE
3. SLOPE EASEMENT (163 PM 1)
4. 15' WIDE PEDESTRIAN EASEMENT (163 PM 1)
5. 10' SEWER EASEMENT (163 PM 1)
6. 12' WIDE SLOPE EASEMENT (163 PM 1)

DRAWN:	JM	
CHECKED:	R.L.P.	
SURVEY:		
APPROVED:		

UDI-TETRAD CONSULTING ENGINEERS, INC.
5528 PACHECO BLVD., PACHECO, CA 94553 (925) 674-0218

EXHIBIT "A"

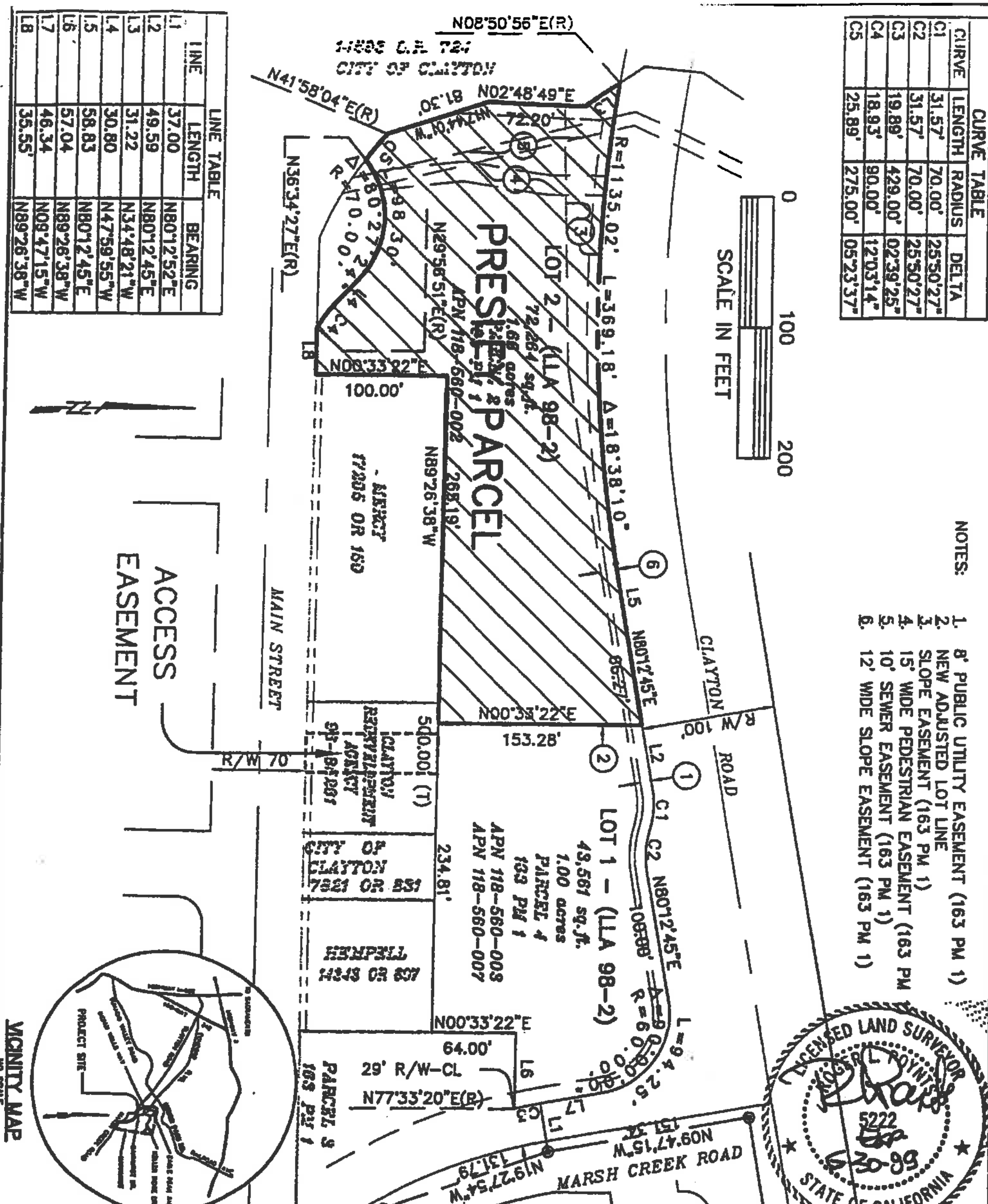
CHILD CARE SITE

GRANT AND AGREEMENT OF EASEMENTS

SCALE: 1" = 100'

DATE: 6-1-98

JOB NO. 261



LINE TABLE

LINE	LENGTH	BEARING
L1	37.00	N80°12'52"E
L2	49.59	N80°12'45"E
L3	31.22	N34°48'21"W
L4	30.80	N47°59'55"W
L5	58.83	N80°12'45"E
L6	57.04	N89°26'38"W
L7	46.34	N09°47'15"W
L8	35.55'	N89°26'38"W

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA
C1	31.57'	70.00'	25°50'27"
C2	31.57'	70.00'	25°50'27"
C3	19.89'	429.00'	02°39'25"
C4	18.93'	90.00'	12°03'14"
C5	25.89'	275.00'	05°23'37"

NOTES:

1. 8' PUBLIC UTILITY EASEMENT (163 PM 1)
2. NEW ADJUSTED LOT LINE
3. SLOPE EASEMENT (163 PM 1)
4. 15' WIDE PEDESTRIAN EASEMENT (163 PM
5. 10' SEWER EASEMENT (163 PM 1)
6. 12' WIDE SLOPE EASEMENT (163 PM 1)

DRAWN:	J.M.
CHECKED:	R.L.P.
SURVEY:	
APPROVED:	

UDI-TETRAD CONSULTING ENGINEERS, INC.

5528 PACHECO BLVD., PACHECO, CA 94553 (925) 674-0218

EXHIBIT "B"

PRESLEY PARCEL

GRANT AND AGREEMENT OF EASEMENTS

SCALE: 1" = 100'

DATE: 6-1-98

EXHIBIT C

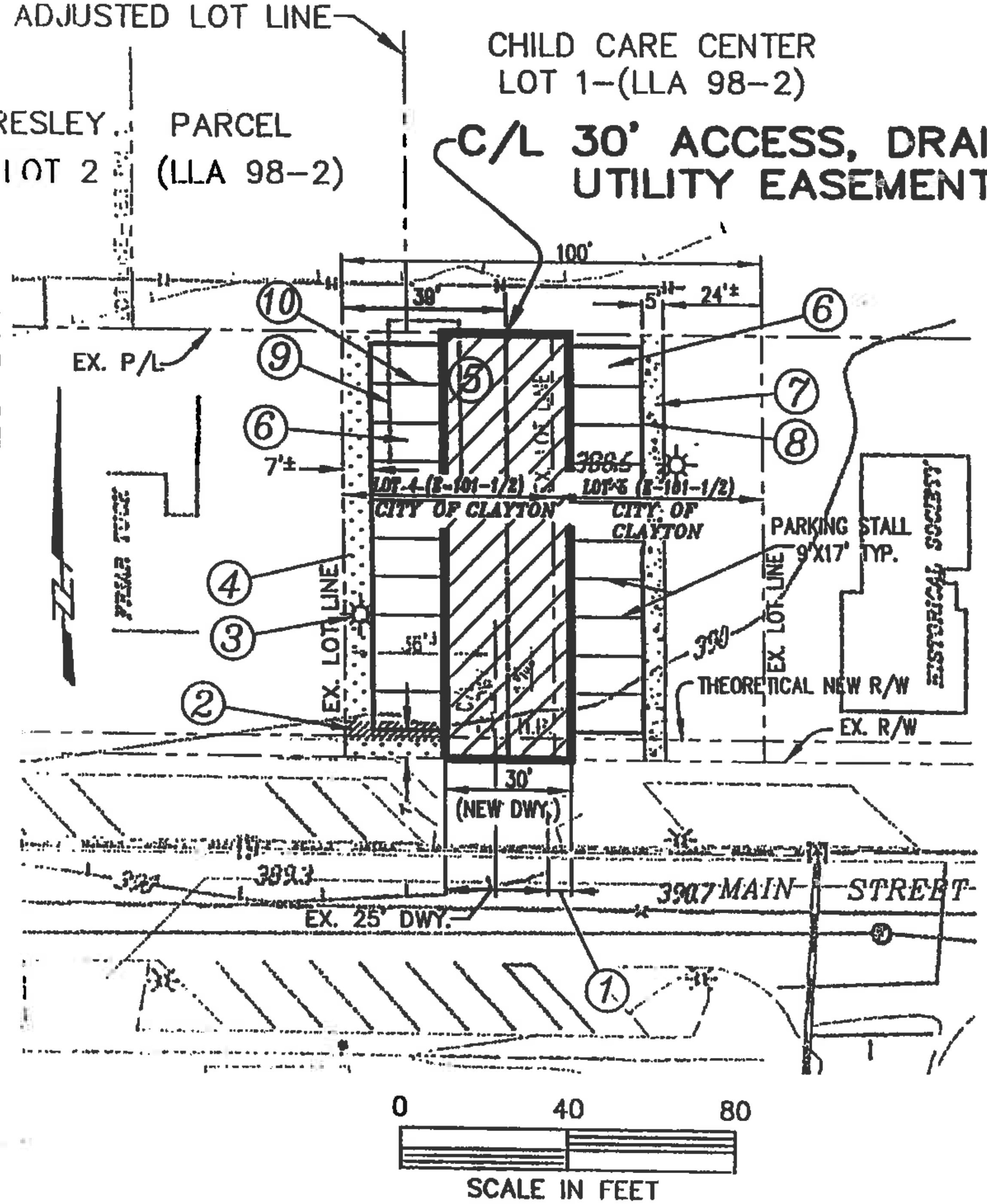
Access, Utility and Drainage Easement Area

ALL THE CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING A PORTION OF LOTS 4 AND 5 AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MEMORANDUM MAP OF THE TOWN OF CLAYTON" RECORDED IN BOOK E OF MAPS AT PAGE 101½ ON JANUARY 8, 1898 CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS AND CROSSHATCHED ON THE ATTACHED PAGE C-2:

A STRIP OF LAND 30' WIDE, 15' ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER-LINE:

A LINE 39' EAST OF AND PARALLEL WITH THE MOST WESTERLY LINE OF SAID LOT 4 (E - 101½), THE SIDE LINES OF SAID 30' WIDE EASEMENT BEING LENGTHENED OR SHORTENED TO COINCIDE WITH THE NORTHERLY AND SOUTHERLY BOUNDARIES OF SAID LOTS 4 AND 5.

138359



PROPOSED IMPROVEMENTS

ITEM	DESCRIPTION	QTY
1	REMOVE AND REPLACE APPROX. 40 SF EX. DWY APPROACH & SWK AS REQ'D AND CONSTRUCT NEW 30' WIDE STAMPED CONC. DWY APPROACH.	LS
2	REMOVE EX. CONC. SWK.	100 SF
3	INSTALL NEW DECORATIVE STREET LIGHTS TO MATCH EXISTING.	2 EA
4	INSTALL LANDSCAPING ON WEST & SOUTH PERIMETER OF NEW PARKING LOT.	780 SF
5	INSTALL NEW PVMT. FOR DWY., 3" AC ON 8" AB.	3300 SF
6	INSTALL NEW PVMT. FOR PARKING STALLS – 2.5" AC ON 6" AB.	3060 SF
7	CONSTRUCT 4" THICK BY 5' WIDE CONC SWK.	500 SF
8	CONST. 6" VERT. CURB	268 LF
9	RELOCATE EX. CITY OF CLAYTON PORTABLE STORAGE SHED	LS
10	STRIPING FOR PARKING STALLS	LS

LICENSED LAND SURVEYOR
ROGER L. POYNTS
5222
Exp. 6-30-99
STATE OF CALIFORNIA

DRAWN: J.M.
CHECKED: R.L.P.
SURVEY:
APPROVED:

UDI–TETRAD CONSULTING ENGINEERS, INC.

5528 PACHECO BLVD., PACHECO, CA 94553 (925) 674–0218

EXHIBIT "C"

ACCESS DRAINAGE AND UTILITY EASEMENT
GRANT AND AGREEMENT OF EASEMENTS

SCALE: 1" = 40'
DATE: 6–1–98
JOB NO. 261

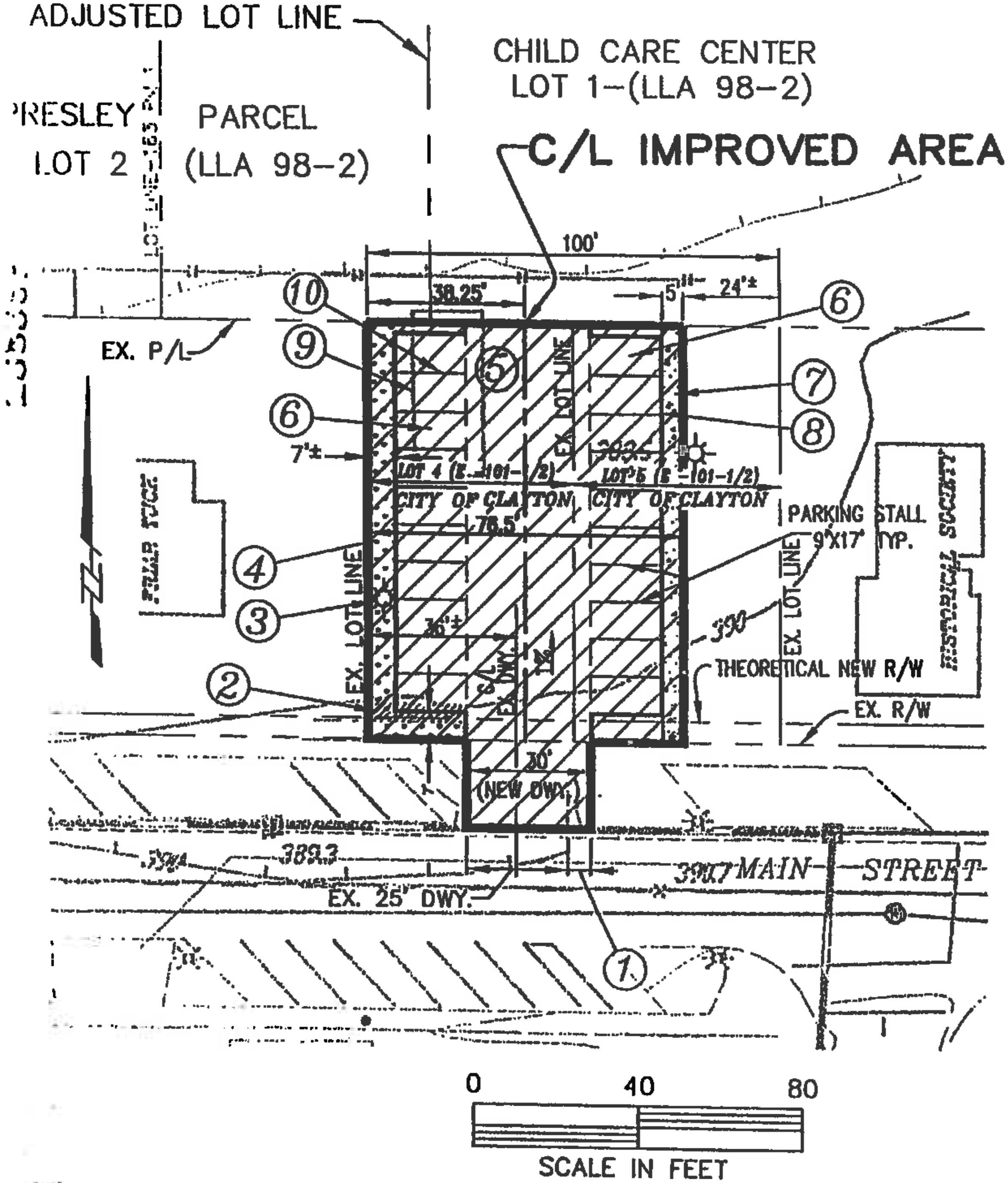
EXHIBIT D
Improved Area

ALL THE CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING A PORTION OF LOTS 4 AND 5 AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MEMORANDUM MAP OF THE TOWN OF CLAYTON" RECORDED IN BOOK E OF MAPS AT PAGE 101 ½ ON JANUARY 8, 1898 CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS AND CROSSHATCHED ON THE ATTACHED PAGE D-2:

A STRIP OF LAND 76.5' WIDE, 38.25' ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER-LINE:

A LINE 38.25' EAST OF AND PARALLEL WITH THE MOST WESTERLY LINE OF SAID LOT 4 (E - 101 ½), THE SIDE LINES OF SAID 76.5' WIDE AREA BEING LENGTHENED OR SHORTENED TO COINCIDE WITH THE NORTHERLY AND SOUTHERLY BOUNDARIES OF SAID LOTS 4 AND 5

TOGETHER WITH THAT CERTAIN 30' WIDE AREA ADJACENT TO THE SOUTHERN BOUNDARY OF SAID LOTS 4 AND 5, AS CROSSHATCHED AND DESIGNATED AS "(NEW DWY.)" ON THE ATTACHED PAGE D-2.



PROPOSED IMPROVEMENTS

ITEM	DESCRIPTION	QTY
1	REMOVE AND REPLACE APPROX. 40 SF EX. DWY APPROACH & SWK AS REQ'D AND CONSTRUCT NEW 30' WIDE STAMPED CONC. DWY APPROACH.	LS
2	REMOVE EX. CONC. SWK.	100 SF
3	INSTALL NEW DECORATIVE STREET LIGHTS TO MATCH EXISTING.	2 EA
4	INSTALL LANDSCAPING ON WEST & SOUTH PERIMETER OF NEW PARKING LOT.	780 SF
5	INSTALL NEW PVMT. FOR DWY., 3" AC ON 8" AB.	3300 SF
6	INSTALL NEW PVMT. FOR PARKING STALLS – 2.5" AC ON 6" AB.	3060 SF
7	CONSTRUCT 4" THICK BY 5' WIDE CONC SWK.	500 SF
8	CONST. 6" VERT. CURB	268 LF
9	RELOCATE EX. CITY OF CLAYTON PORTABLE STORAGE SHED	LS
10	STRIPING FOR PARKING STALLS	LS

LICENSED LAND SURVEYOR
ROGER L. POYNTS
5222
EXP. 6-30-99
STATE OF CALIFORNIA

DRAWN:	J.M.
CHECKED:	R.L.P.
SURVEY:	
APPROVED:	

UDI–TETRAD CONSULTING ENGINEERS, INC.
5528 PACHECO BLVD., PACHECO, CA 94553 (925) 674–0218

EXHIBIT "D"
IMPROVED AREA
GRANT AND AGREEMENT OF EASEMENTS

SCALE: 1" = 40'
DATE: 6–1–98
JOB NO. 261

EXHIBIT E
Parking Area

ALL THE CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING A PORTION OF LOTS 4 AND 5 AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "MEMORANDUM MAP OF THE TOWN OF CLAYTON" RECORDED IN BOOK E OF MAPS AT PAGE 101½ ON JANUARY 8, 1898 CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS AND CROSSHATCHED ON THE ATTACHED PAGE E-2:

PARCEL 1:

A STRIP OF LAND 24' WIDE, 12' ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER-LINE:

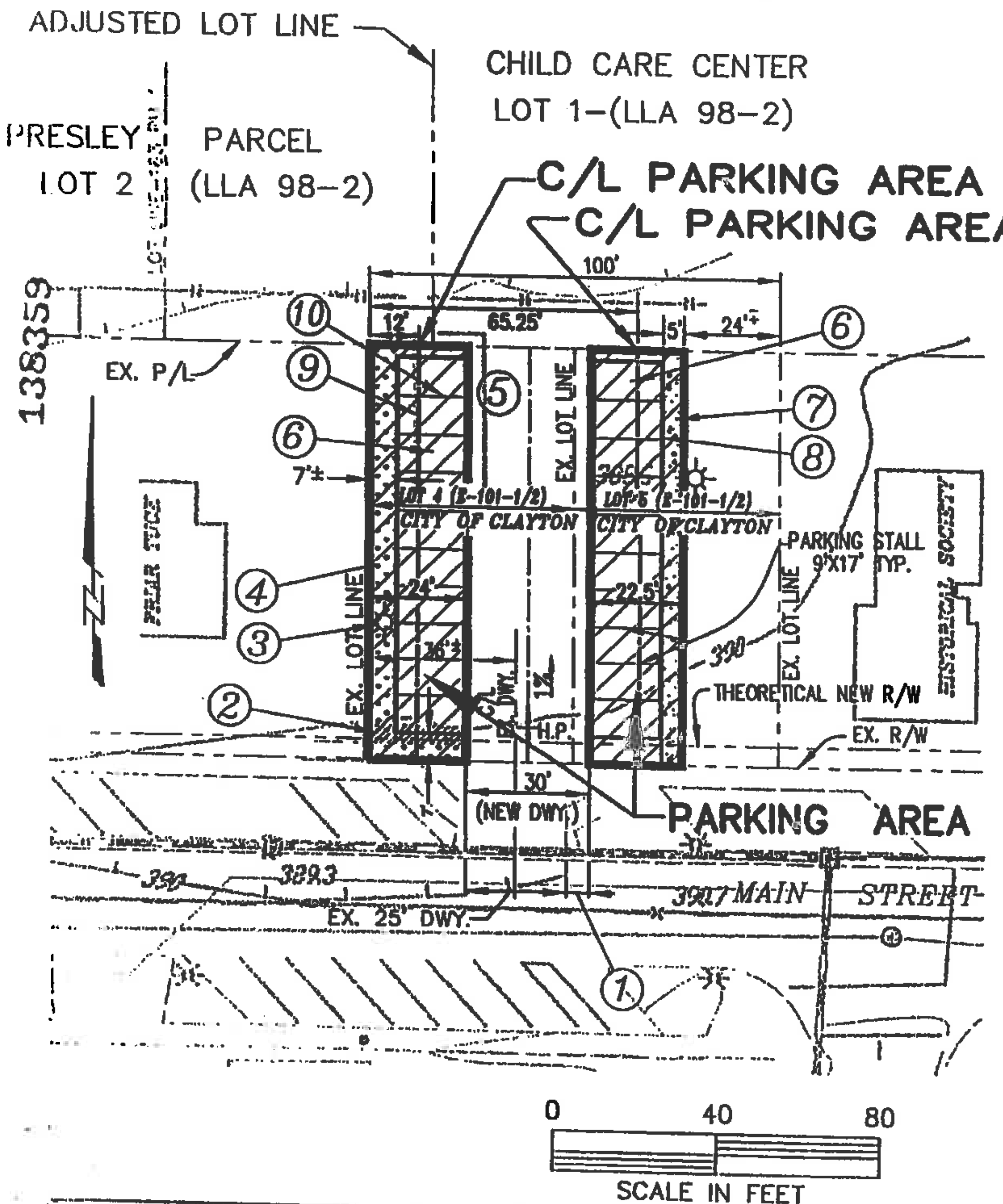
A LINE 12' EAST OF AND PARALLEL WITH THE MOST WESTERLY LINE OF SAID LOT 4 (E - 101½), THE SIDE LINES OF SAID 24' WIDE AREA BEING LENGTHENED OR SHORTENED TO COINCIDE WITH THE NORTHERLY AND SOUTHERLY BOUNDARIES OF SAID LOT 4.

PARCEL 2:

A STRIP OF LAND 22.5' WIDE, 11.25' ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER-LINE:

A LINE 65.25' EAST OF AND PARALLEL WITH THE MOST WESTERLY LINE OF SAID LOT 4 (E - 101½), THE SIDE LINES OF SAID 22.5' WIDE AREA BEING LENGTHENED OR SHORTENED TO COINCIDE WITH THE NORTHERLY AND SOUTHERLY BOUNDARIES OF SAID LOT 5.

138359



PROPOSED IMPROVEMENTS

ITEM	DESCRIPTION	QTY
1	REMOVE AND REPLACE APPROX. 40 SF EX. DWY APPROACH & SWK AS REQ'D AND CONSTRUCT NEW 30' WIDE STAMPED CONC. DWY APPROACH.	LS
2	REMOVE EX. CONC. SWK.	100 SF
3	INSTALL NEW DECORATIVE STREET LIGHTS TO MATCH EXISTING.	2 EA
4	INSTALL LANDSCAPING ON WEST & SOUTH PERIMETER OF NEW PARKING LOT.	760 SF
5	INSTALL NEW PVMT. FOR DWY., 3" AC ON 8" AB.	3300 SF
6	INSTALL NEW PVMT. FOR PARKING STALLS – 2.5" AC ON 6" AB.	3060 SF
7	CONSTRUCT 4" THICK BY 5' WIDE CONC SWK.	500 SF
8	CONST. 6" VERT. CURB	288 LF
9	RELOCATE EX. CITY OF CLAYTON PORTABLE STORAGE SHED	LS
10	STRIPING FOR PARKING STALLS	LS

LICENSED LAND SURVEYOR
ROGER L. POYNTS
5222
Exp. 6-30-99
STATE OF CALIFORNIA

UDI–TETRAD CONSULTING ENGINEERS, INC.
5528 PACHECO BLVD., PACHECO, CA 94553 (925) 674–0218

EXHIBIT "E"

PARKING AREA
GRANT AND AGREEMENT OF EASEMENTS

DRAWN:	J.M.
CHECKED:	R.L.P.
SURVEY:	
APPROVED:	

SCALE: 1" = 40'
DATE: 6-1-98
JOB NO. 261

138359

RESOLUTION NO. 21-98

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON AUTHORIZING EXECUTION OF GRANT AND AGREEMENT OF EASEMENTS WITH PRESLEY HOMES AND SUMITOMO BANK LEASING AND FINANCE, INC.

WHEREAS, City representatives and those of Presley Homes, a California corporation and Sumitomo Bank Leasing and Finance, Inc., a Delaware corporation have negotiated and agreed upon the terms of a Grant and Agreement of Easements (Agreement herein), a true and correct copy of which is attached hereto and made a part hereof; and

WHEREAS, pursuant to the Memorandum of Understanding and Agreement relating to Oakhurst Country Club development effective April 1, 1997, between the City and Presley Homes, Presley is to pay the City $50,000.00 in exchange for an easement for access, drainage and utility purposes between its property and Main Street across a parcel owned by City, and develop parking areas adjacent to such easement; and

WHEREAS, the City Attorney and Community Development Director have recommended to the Council the approval of the attached Agreement and the City Manager has concurred in such recomendation;

NOW THEREFORE, be it resolved by the City Council of the City of Clayton that the Grant and Agreement of Easements, a true copy of which is attached hereto, is approved and the Mayor is authorized to execute the same, with staff directed to deliver it for recordation upon payment to the City of the aforementioned $50,000.00.

Passed and adopted at a regular meeting of the City Council on April 21. 1998. by the following vote:

AYES: Council Members Peterson, Pierce, Vice Mayor Laurence, Mayor Littorno

NOES: None

ABSENT: Council Member Manning

Richard A. Littorno

Mayor

APPROVED AS TO FORM:

MAURICE E. HUGUET, JR.
City Attorney

APPROVED AS TO ADMINISTRATION

City Manager

ATTEST:

Frances Douglas

City Clerk

I hereby certify that the foregoing Resolution was duly and regularly passed by the City Council of the City of Clayton at a regular meeting held on April 21, 1998.

Frances Douglas

City Clerk

MEH:pcb
ClaytonRes19-98

END OF DOCUMENT

EXHIBIT "B"
TO
ASSIGNMENT AND ASSUMPTION OF EASEMENTS

Complete Copy of Reciprocal Easement

[Attached behind this cover page]

Exhibit B

RECORDING REQUESTED BY
AND WHEN RECORDED
RETURN TO:

Presley Homes
P. O. Box 6110
Newport Beach, CA
92658-6110
Attn: General Counsel

9770939

CONTRA COSTA Co Recorder's Office
STEPHEN L. WEIR, County Recorder

DOC - 98-0138360-00
Check Number
Wednesday, JUN 17, 1998 14:25:00
MIC $1.00 MOD $8.00 REC $12.00
TCF $7.00
Ttl Pd $28.00 Nbr-0000160226
ima/R4/1-8

RECIPROCAL EASEMENT AGREEMENT BETWEEN LANDOWNERS FOR ACCESS AND PARKING

THIS RECIPROCAL EASEMENT AGREEMENT BETWEEN LANDOWNERS FOR ACCESS AND PARKING ("Easement Agreement") is made to be effective upon the date of its recordation by and between PRESLEY HOMES, a California corporation ("Presley"), and SUMITOMO BANK LEASING AND FINANCE, INC., a Delaware corporation ("SBLF"), with reference to the following facts:

RECITALS:

A. Presley is the owner of that certain real property located in the City of Clayton, County of Contra Costa, State of California (the "Presley Property"), more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. Pursuant to that certain real estate purchase agreement ("Purchase Agreement"), dated May 19, 1997, Presley has agreed to sell and SBLF has agreed to buy that certain real property ("SBLF Property") described on Exhibit "B" attached hereto and incorporated herein by this reference.

C. By this Easement Agreement and pursuant to the Purchase Agreement, the parties desire to create a non-exclusive easement over a portion of the Presley Property for the benefit of SBLF Property for the purposes described herein, a non-exclusive easement over a portion of the SBLF Property for the benefit of the Presley Property for the purposes described herein, and to create certain rights and obligations pursuant to Section 1468 of the California Civil Code.

In consideration of the mutual promises, covenants, agreements and understandings contained herein, the parties hereto agree as follows:

A G R E E M E N T

1. Grant of Easement. SBLF hereby grants to Presley, its tenants, customers, employees, agents and invitees a non-exclusive easement for access and parking (the "Presley Access and Parking Easement") over the drive aisles and parking stalls designated now or in the future on the SBLF Property. SBLF also grants to Presley, its employees, contractors and agents a non-exclusive easement over the portion of the SBLF Property within thirty-five (35) feet of the eastern boundary of the Presley Property to facilitate the installation of utilities to service the Presley Property (the "Presley Utility Easement"). The Presley Access and Parking Easement and the Presley Utility Easement are collectively referred to herein as the "Presley Easements." Presley hereby grants to SBLF, its tenants, customers, employees, agents and invitees a non-exclusive easement for access and parking (the "SBLF Easement") over the drive aisles and parking stalls designated now or in the future on the Presley Property. The SBLF Easement and the Presley Easements are hereinafter sometimes together referred to as the "Easements."

2. Purpose. The purpose of the Easements is to provide vehicular and pedestrian ingress and egress, parking, and all purposes related thereto and to facilitate the installation of utilities to service the Presley Property.

3. Obligation to Maintain and Restore. SBLF shall maintain the portion of the SBLF Property covered by the Presley Access and Parking Easement, and Presley shall maintain the portion of the Presley Property covered by the SBLF Easement in accordance with generally accepted maintenance practices and standards for similar commercial property in Contra Costa, California. Presley shall maintain all utility structures and facilities installed by Presley within the Presley Utility Easement. Presley shall be responsible for any damage done to the SBLF Property caused by Presley, its employees, contractors and agents resulting from the installation, repair, or maintenance of such utilities, and Presley shall repair and restore the SBLF Property to at least as good condition as existed prior to Presley's entry onto the SBLF Property for such installation, repair and maintenance purposes.

4. Affected and Benefited Land. The land affected by the covenants contained in this Easement Agreement pertaining to the Presley Easement is the SBLF Property, and the land affected by the covenants contained in this Easement Agreement pertaining to the SBLF Easement is the Presley Property (together, the "Affected Land"). The land benefited by the covenants contained

in this Easement Agreement pertaining to the Presley Easement is the Presley Property, and the land benefited by the covenants contained in this Easement Agreement pertaining to the SBLF Easement is the SBLF Property (together, the "Benefited Land").

5. Persons Bound by this Easement Agreement. Each successive owner of the Affected Land or any portion thereof and each person having any interest therein derived through any such owner shall be bound during the period of his or her or its ownership by the covenants contained in this Easement Agreement applicable thereto for the benefit of the Benefited Land. Each successive owner of the Benefited Land or any portion thereof and each person having any interest therein derived through any such owner shall be bound during the period of his or her or its ownership by the covenants contained in this Easement Agreement applicable thereto for the benefit of the Affected Land.

6. Recordation. The parties hereto shall cause this Easement Agreement to be recorded in the Official Records of Contra Costa, California.

7. Enforcement. The fee simple owner of all or any affected portion of the Benefited Land may employ any lawful means whatsoever to enforce the provisions of this Easement Agreement applicable thereto. In the event of bringing of any action or suit by any party or parties hereto against another party or parties hereunder by reason of any breach of any of the agreements or provisions on the part of the other party or parties arising out of this Easement Agreement, then in the event the party or parties in whose favor final judgment shall be entered shall be entitled to have and recover of and from the other party or parties all costs and expenses of suit, including reasonable attorneys' fees.

8. Successors and Assigns. This Easement Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto. This Easement Agreement is intended to be, among other things, a covenant running with the land.

9. No Abandonment. Non-use of the Easements by SBLF or Presley shall not be deemed to be an abandonment of the Easements unless and until the fee owner of the Benefited Land records in the Official Records of Contra Costa, California a document acknowledging his or her or its abandonment of the Easement. The fee owners of the Affected Land hereby waive and shall be barred from pursuing any action or proceeding to quiet title to the Easements based solely or partially on non-use of the Easements by the fee owners of the Benefited Land.

10. Exhibits. All exhibits to this Agreement are incorporated herein by this reference as though fully set forth in the body hereof.

IN WITNESS WHEREOF, and for the purposes of complying with the provisions of Section 1468 of the California Civil Code, the parties hereto have executed this Easement Agreement as of this 17 day of June, 1998.

PRESLEY HOMES,
a California corporation

By: ____________________
Its: V.P. Operations

By: Karen A Ball
Its: Director of Frensaw Marketing

"Presley"

SUMITOMO BANK LEASING AND FINANCE, INC.,
a Delaware corporation

By: David Arnold
Its: Senior Vice President

"SBLF"

138360

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss:
COUNTY OF CONTRA COSTA)

On this 11TH day of JUNE, 1998, before me, the undersigned notary public, personally appeared KAREN ANN BALL and RICHARD DANIEL JOHN,

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

NICOLE I SZILAGYI
Commission # 1028140
Notary Public — California
Contra Costa County
My Comm. Expires Feb 19, 2000

OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER
Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ INDIVIDUAL
☒ CORPORATE OFFICER(S)

TITLE(S)

☐ PARTNER(S)
☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

Presley Homes

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT Reciprocal Easement Agreement Between Landowners for Access and Parking

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

F:\REAL\973\14051163\ACCESS4.ESM
6/2/98

ALL-PURPOSE ACKNOWLEDGMENT

138360

State of New York)
County of Queens)

On June 4, 1998 (Date) before me, Jeannette Carmona, Notary Public (Name, Title of Officer, e.g., "Jane Doe, Notary Public")

personally appeared David L. Ward,

☒ 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.

Jeannette Carmona
Signature of Notary

JEANNETTE CARMONA
Notary Public, State of New York
No. 01CA5072806
Qualified in Queens County
Commission Expires Feb. 10, 1999

CAPACITY CLAIMED BY SIGNER:

☐ INDIVIDUAL(S)

☒ CORPORATE OFFICER(S)

Senior Vice President
TITLE

TITLE

☐ PARTNER(S)

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ SUBSCRIBING WITNESS

☐ GUARDIAN/CONSERVATOR

☐ OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

Sumitomo Bank Leasing and Finance, Inc.

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PRESLEY PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING LOT 2, LLA 98-2 RECORDED ON MAY 29, 1998 AT SERIES NUMBER 98-120531, OFFICIAL CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING A PORTION OF PARCEL 2 AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP MS-419-90" FILED AUGUST 19, 1993 IN BOOK 163 OF PARCEL MAPS AT PAGE 1, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 1:

ALL OF SAID PARCEL 2

LOT 2:

A PORTION OF PARCEL 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 4 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG THE NORTHERN PARCEL LINE OF SAID PARCEL, SAID LINE ALSO BEING THE SOUTHERLY RIGHT OF WAY OF CLAYTON ROAD NORTH 80°12'45" EAST 66.27 FEET, THENCE LEAVING SAID PARCEL LINE SOUTH 00°33'22" WEST 153.28 FEET TO THE MOST SOUTHERN LINE OF SAID PARCEL 4 (163 PM 1), THENCE ALONG SAID SOUTHERN LINE NORTH 89°26'38" WEST 65.19 FEET TO THE MOST WESTERLY LINE OF PARCEL 4 (163 PM 1) SAID LINE ALSO BEING THE MOST EASTERN LINE OF PARCEL 2 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG SAID COMMON LINE NORTH 00°33'22" EAST 141.38 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

LEGAL DESCRIPTION OF SBLF PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING LOT 1, LLA 98-2 RECORDED ON MAY 29, 1998 AT SERIES NUMBER 98-120531, OFFICIAL CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, CONTRA COSTA COUNTY, CALIFORNIA, BEING A PORTION OF PARCEL 4 AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP MS-419-90", FILED AUGUST 19, 1993 IN BOOK 163 OF PARCEL MAPS AT PAGE 1, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF SAID PARCEL 4 (163 PM 1), EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 4 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG THE NORTHERN PARCEL LINE OF SAID PARCEL, SAID LINE ALSO BEING THE SOUTHERLY RIGHT OF WAY OF CLAYTON ROAD NORTH 80°12'45" EAST 66.27 FEET, THENCE LEAVING SAID PARCEL LINE SOUTH 00°33'22" WEST 153.28 FEET TO THE MOST SOUTHERN LINE OF SAID PARCEL 4 (163 PM 1), THENCE ALONG SAID SOUTHERN LINE NORTH 89°26'38" WEST 65.19 FEET TO THE MOST WESTERLY LINE OF PARCEL 4 (163 PM 1) SAID LINE ALSO BEING THE MOST EASTERN LINE OF PARCEL 2 AS SAID PARCEL IS SHOWN ON SAID MAP (163 PM 1), THENCE ALONG SAID COMMON LINE NORTH 00°33'22" EAST 141.38 FEET TO THE POINT OF BEGINNING.

EXHIBIT F
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

Right of First Refusal Memorandum

[Attached behind this cover page]

Exhibit F

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517-1250
Attention: City Manager

Space above line for Recorder's use only

Exempt from recording fees per Govt. Code § 27383
Exempt from Documentary Transfer Tax per Govt. Code § 11922

APN(s): ____________________

RIGHT OF FIRST REFUSAL MEMORANDUM

(Clayton Community Church)

This Right of First Refusal Memorandum is made on **[TO BE DETERMINED]**, by and between CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation ("**Grantor**"), and the CITY OF CLAYTON, a California municipal corporation ("**Grantee**"), that agree as follows:

1. Grantor grants to Grantee, in accordance with that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Clayton Community Church), dated as of December 18, 2012, by and between Grantor and Grantee ("**Agreement**"), a right of first refusal ("**ROFR**") regarding the sale of that certain real property specifically described in Exhibit 1 attached to this Right of First Refusal Memorandum ("**Property**").

2. The term of the ROFR begins on the "Close of Escrow" under the Agreement.

3. This Right of First Refusal Memorandum is prepared for the purpose of providing record notice of the ROFR and shall not alter or affect in any way the rights and obligations of Grantor or Grantee under the Agreement. In the event of any inconsistency between this Right of First Refusal Memorandum and the Agreement, the terms of the Agreement shall control. The Agreement is a public record of the Grantee and may be inspected at the offices of the Grantee, located at 6000 Heritage Trail, Clayton, California 94517, during regular business hours of Grantee.

SIGNATURE PAGE
TO
RIGHT OF FIRST REFUSAL MEMORANDUM
(Clayton Community Church)

Grantor and Grantee have signed this Right of First Refusal Memorandum by and through the signatures of their authorized representatives, as set forth below:

GRANTOR:

CLAYTON COMMUNITY CHURCH, a California nonprofit religious corporation

By:______________________________

Name:____________________________

Title:_____________________________

By:______________________________

Name:____________________________

Title:_____________________________

GRANTEE:

CITY OF CLAYTON, a California municipal corporation

By:______________________________
Julie K. Pierce, Mayor

ATTEST:

By:______________________________
Laci Jackson, City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By:______________________________
City Attorney

EXHIBIT 1
TO
RIGHT OF FIRST REFUSAL MEMORANDUM
(Clayton Community Church)

Property Legal Description

[Attached behind this cover page]

LEGAL DESCRIPTION

CLAYTON COMMUNITY CHURCH (OCCUPIED PARCEL)

(APN 119-011-003)

All that real property situated in the City of Clayton, County of Contra Costa, State of California, more particularly described as follows:

<u>Parcel One:</u>

Lots 1, 2, and 3, Block 1, as shown on that certain map entitled Memorandum Map of the Town of Clayton, filed in Map Book E at Page 101 ½ , in the office of the Recorder of Contra Costa County.

<u>Parcel Two:</u>

A portion of the Southeast ¼ of the Southeast ¼ of Section 11, Township 1 North, Range 1 West, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the southwest corner of Block 1 as shown on that certain map entitled Memorandum Map of the Town of Clayton, filed in Map Book E at Page 101 ½ , in the office of the Recorder of Contra Costa County; thence West, 50 feet; thence North, 100 feet; thence East, 50 feet to the west line of said Block 1; thence South, along said west line, 100 feet to the point of beginning.

Containing 0.57 acres, more or less.

REGISTERED PROFESSIONAL ENGINEER
RICHARD A. ANGRISANI
C27662
CIVIL
STATE OF CALIFORNIA

EXHIBIT G
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

Neighboring Property Legal Description

[Attached behind this cover page]

LEGAL DESCRIPTION

CLAYTON COMMUNITY CHURCH (OCCUPIED PARCEL)

(APN 119-011-003)

All that real property situated in the City of Clayton, County of Contra Costa, State of California, more particularly described as follows:

<u>Parcel One:</u>

Lots 1, 2, and 3, Block 1, as shown on that certain map entitled Memorandum Map of the Town of Clayton, filed in Map Book E at Page 101 ½ , in the office of the Recorder of Contra Costa County.

<u>Parcel Two:</u>

A portion of the Southeast ¼ of the Southeast ¼ of Section 11, Township 1 North, Range 1 West, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the southwest corner of Block 1 as shown on that certain map entitled Memorandum Map of the Town of Clayton, filed in Map Book E at Page 101 ½ , in the office of the Recorder of Contra Costa County; thence West, 50 feet; thence North, 100 feet; thence East, 50 feet to the west line of said Block 1; thence South, along said west line, 100 feet to the point of beginning.

Containing 0.57 acres, more or less.

REGISTERED PROFESSIONAL ENGINEER
RICHARD A. ANGRISANI
C27662
CIVIL
STATE OF CALIFORNIA