

RESOLUTION NO. 2004-137

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE A PURCHASE
AND SALE AGREEMENT FOR REAL PROPERTY AND ADOPT FINDINGS THAT
THE ACQUISITION AND PROPOSED USE IS IN CONFORMANCE WITH THE CITY
OF ELK GROVE GENERAL PLAN**

WHEREAS, the City of Elk Grove desires to purchase the 11.27 acre site, identified as the Real Property located at 10250 Iron Rock Way, which comprises 5.65 acres and is improved with a 60,000 square foot industrial building (identified as a portion of Assessor Parcel Number 134-0630-034); and the 5.62 acre vacant parcel of land, identified as Assessor Parcel Number 134-0630-013, within the City of Elk Grove, State of California; and

WHEREAS, the City of Elk Grove General Plan was adopted on November 19, 2003; and

WHEREAS, the California Government Code 65402, provides in part that no real property shall be acquired until the use of the property has been reported upon as to conformity with the applicable General Plan; and

WHEREAS, the City of Elk Grove proposes the use of the 60,000 square foot existing industrial building for use as a municipal corporation yard; and

WHEREAS, the proposed activity is allowed in the Light Industry land use designation as described in the 2003 General Plan; and

WHEREAS, the City of Elk Grove has no plans at this time to increase building intensity and floor ratios beyond the standards allowed in the 2003 General Plan; and

WHEREAS, California Environmental Quality Act Guidelines Class 1 exemption applies to the operation of existing facilities where negligible or no expansion is involved; and

WHEREAS, the project involves the use of an existing vacant parcel and an existing 60,000 square foot building; and

WHEREAS, no adverse environmental effects were identified during staff review of the proposed acquisition; and

WHEREAS, No special circumstances exist that create a reasonable possibility that the activity may have a significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby find:

The proposed use of the existing building located at 10250 Iron Rock Way (Portion of APN #134-0630-034) and the vacant parcel of land identified as Sacramento County Assessor Parcel #134-0630-013, for use as a municipal corporation yard is in conformity with the City of Elk Grove 2003 General Plan.

The project qualifies for Categorical exemption in accordance with CEQA Guidelines Section 15301.

BE IT FURTHER RESOLVED:

The City Manager is hereby authorized to execute the Purchase and Sale Agreement and Joint Escrow Instructions by and between O.K. and B., a California general partnership, and Marvin L. Oates, and successors in trust, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 (collectively, Seller) and the City of Elk Grove, a municipal corporation (Purchaser), a copy of which is attached and incorporated into this resolution.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 16th day of June 2004.



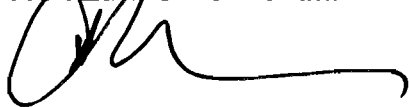
SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

**AGREEMENT OF PURCHASE AND SALE
AND
JOINT ESCROW INSTRUCTIONS**

This Agreement of Purchase and Sale and Joint Escrow Instructions ("**Agreement**") dated for reference purposes May 25, 2004, by and between **O.K. AND B.**, a California general partnership, and **MARVIN L. OATES**, as **CO-TRUSTEE OF THE MARVIN L. OATES TRUST** (collectively, "**Seller**"), and the **CITY OF ELK GROVE**, a municipal corporation ("**Purchaser**").

RECITALS

- A. Seller is the owner of that certain real property ("**Real Property**") located in the City of Elk Grove ("**City**"), County of Sacramento ("**County**"), State of California, consisting of two (2) parcels of land legally described on Exhibit A and depicted on Exhibit B, both Exhibits attached hereto and made a part hereof (each, individually, "**Parcel 1**" and "**Parcel 2**").
- B. Parcel 1 is located on the southwest corner of Iron Rock Way and Union Park Way (APN 134-0630-013) and Parcel 2 is located at 10250 Iron Rock Way (APN 134-0630-034). Currently, Parcel 1 consists of approximately 5.62 acres of unimproved land and Parcel 2 consists of approximately 6.1 acres of land improved with an approximately 60,000 square foot building ("**Building**") and adjoining paved/fenced yard (collectively, "**Improvements**"). Collectively, Parcel 1, Parcel 2, and Improvements shall hereinafter be referred to as the "**Property**."
- C. Seller and Purchaser intend for Seller to have a licensed land surveyor create a legal description for Parcel 2 ("**Parcel 2 Revised Legal Description**") which moves one of the property lines by approximately 40 feet as depicted on Exhibit C, attached hereto and made a part hereof, as "**New Parcel 2 Tentative Property Line**," hereby reducing the area of Parcel 2 to approximately 5.65 acres to be purchased by Purchaser.
- D. Located in the Building are miscellaneous items of furniture and fixtures including, but not limited to, modular office furniture and phone related equipment and connections (collectively, "**Personal Property**").
- E. Purchaser intends to purchase the Property from Seller and Seller intends to sell the Property to Purchaser on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

AGREEMENT

1. Purchase and Sale. Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller on the terms and conditions set forth in this Agreement.
2. Effective Date. The date the last party executes this Agreement shall be the "**Effective Date**."

3. Purchase Price.

3.1 The purchase price for the Property shall be calculated as follows:

3.1.1 for Parcel 1, the purchase price shall be Nine Hundred Twenty Thousand and no/100 Dollars (\$920,000), and

3.1.2 for Parcel 2, the purchase price shall be Four Million One Hundred Thousand and no/100 Dollars (\$4,100,000), adjusted as set forth in Section 3.2 (collectively, the amounts in Section 3.1.1 and this Section 3.1.2 (as adjusted pursuant to Section 3.1.2) shall be collectively referred to as the "**Purchase Price**").

3.2 The Purchase Price relating to Parcel 2 shall be adjusted upon receipt of the legal description for the reconfigured Parcel 2. If the acreage for Parcel 2 is either less than or greater than 5.65 acres, the Purchase Price relating to Parcel 2 shall either be increased by Six and 82/100 Dollars (\$6.82) per square foot over 246,114 square feet or reduced by Six and 82/100 Dollars (\$6.82) per square foot under 246,114 square feet.

3.3 On or before the Close of Escrow (defined in Section 9.), Purchaser shall deposit into Escrow (defined in Section 9.) the Purchase Price in cash or immediately available funds.

3.4 Purchaser has the right to independently verify the square footage of the Building, and agrees that if the square footage of the Building varies from that recited in this Agreement or in any materials provided by Seller or Seller's real estate broker or other agents, such variation shall have no effect in the Purchase Price.

4. Conditions Precedent.

4.1 Conditions Precedent to Closing. Purchaser's obligation to purchase the Property from Seller is subject to the following conditions precedent ("**Conditions Precedent**"), which are for Purchaser's benefit only:

4.1.1 Title. Within five (5) calendar days after the Effective Date, Seller shall provide Purchaser at Seller's expense, a preliminary report ("**Preliminary Report**") for the Property issued by Stewart Title of Sacramento, 555 Capitol Mall, Suite 280, Sacramento, California 95814, Attention: Cindy Coon, Escrow Holder ("**Escrow Holder**"), together with legible copies of all exceptions and the documents supporting the exceptions ("**Exceptions**") in the updated Preliminary Report (the Preliminary Report, together with the Exceptions, shall be collectively referred to as the "**Title Documents**"). Within twenty (20) calendar days after the Effective Date, Purchaser shall review the Title Documents and shall approve or disapprove, in its sole discretion, the Title Documents by delivering written notice to Seller and Escrow Holder. Purchaser's failure to give Seller and Escrow Holder written notice of Purchaser's approval or disapproval within the specified time period shall be deemed to be Purchaser's disapproval of the Title Documents. If Purchaser notifies Seller of Purchaser's disapproval of the Title Documents or are deemed to be disapproved, Seller shall have five (5) business days after receipt of Purchaser's notice to give Purchaser written notice ("**Seller's Title Notice**") of those disapproved title matters, if any, which Seller is unwilling or unable after reasonable and good faith efforts to have eliminated from title to the Property by the Close of Escrow. Notwithstanding the foregoing, Seller agrees to remove on the Close of Escrow any deeds of trust whereby Seller is the trustor or borrower which are currently recorded against the Property.

If Seller is unable or unwilling to remove all of the title matters objected to by Purchaser, or fails to deliver Seller's Title Notice, Purchaser shall have five (5) business days from receipt of Seller's Title Notice to notify Seller in writing that either (1) Purchaser is willing to purchase the Property, subject to such disapproved exceptions, or (2) Purchaser elects to terminate this transaction. Failure of Purchaser to take either one of the actions described in clause (1) or (2) in the previous sentence shall be deemed to be Purchaser's election to take the action described in clause (2). If this Agreement is terminated pursuant to this Section 4.1.1, then the Deposit shall be returned to Purchaser, and, except as otherwise provided in this Agreement, Seller and Purchaser will have no further obligations or rights to one another under this Agreement.

4.1.2 Title Policies. On or before expiration of the Inspection Period (defined below), Purchaser shall have received evidence, as part of Purchaser's due diligence investigation of the Property, that Escrow Holder's title insurer ("**Title Company**") is ready, willing, and able to issue, upon payment of Title Company's regularly scheduled premium, a California Land Title Association ("**CLTA**") standard owner's policy of title insurance ("**Owner's Policy**") in the face amount of the Purchase Price with the endorsements Purchaser may require ("**Endorsements**"), showing title to the Property vested in Purchaser subject only to the approved Exceptions.

4.1.3 Property Documents. Within ten (10) days of the Effective Date, Seller shall provide Purchaser with copies of the following documents that are in its possession or under its control: relevant studies, documents, land surveys, soils reports, licenses, maintenance contracts, utility contracts, management contracts, service contracts, warranties, and other documents and/or contracts pertaining to the Property, together with any amendments or modifications; any and all information that Seller has regarding environmental matters affecting the Property and regarding the condition of the Property, including, but not limited to, Phase I and/or Phase II Environmental Assessments, wetlands, structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on, or about the Property; copies of leases and relative correspondence; and any and all other documents and matters relative to the Property (collectively, Property Documents). Seller makes no express or implied representations or warranties regarding the truthfulness, accuracy, or completeness of the Property Documents; provided, however, if Seller is aware of any inaccuracies or incompleteness of the Property Documents, Seller shall upon delivery of the Property Documents to Purchaser or upon discovery of inaccuracies or incompleteness inform Purchaser of such inaccuracies or incompleteness.

Prior to the expiration of the Inspection Period (defined in Section 4.1.5) Purchaser shall approve or disapprove the Property Documents. On or before the Close of Escrow, Seller shall assign to Purchaser (without any representation or warranty, express or implied) all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property ("**Assignment of Contracts**") in substantially the form attached hereto and incorporated herein as Exhibit E. Prior to expiration of the Inspection Period, Seller shall terminate the Property Documents that Purchaser specifies in writing to Seller of those Property Documents that Purchaser does not want to assume after the Close of Escrow, by delivering notices to the other parties under the Property Documents in sufficient time to terminate the Property Documents prior to the Close of Escrow. If Purchaser fails to provide the written notice required hereunder, then Seller shall terminate all of the Property Documents as of the Close of

Escrow and there shall be no requirement to deliver the Assignment of Contracts at the Close of Escrow.

4.1.4 Physical Inspection. For a period of forty-five (45) days from the Effective Date ("**Inspection Period**") upon not less than one (1) business day's advance written notice from Purchaser to Seller, Seller shall provide Purchaser and Purchaser's agents and representatives with access to the Property to make such reasonable non-destructive inspections, tests, copies, verifications, assessments, surveys and studies ("**Inspections**") as Purchaser considers reasonably necessary or desirable under the circumstances regarding the Property and its condition. Inspections may include, without limitation, Inspections regarding zoning, building codes and other governmental regulations; imposition of governmental obligations and assessments; architectural inspections; engineering tests; economic feasibility and marketing studies; availability of sewer, water, storm drain and other utilities; availability of roads, access and services; soils, seismic, engineering and geologic reports; environmental assessments, studies, tests and reports (excluding, however, any phase two environmental site assessment or destructive testing); structural and mechanical systems inspections; and availability of permits, land use entitlements, development rights and approvals and other governmental approvals. All Inspections shall be made at Purchaser's sole cost and expense. Purchaser shall repair any damage to the Property caused by any Inspections. Prior to the expiration of the Inspection Period, Purchaser shall provide Seller with written notice of Purchaser's approval or disapproval of the Property, in Purchaser's sole discretion. In the event Purchaser, in its sole discretion, disapproves the Property for any reason, Purchaser may terminate this Agreement and, unless otherwise provided herein, the rights and obligations of the parties under this Agreement shall be of no further force and effect.

Purchaser shall indemnify, defend and hold Seller and the Property harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the Property by Purchaser or Purchaser's representatives or liens arising from Purchaser's due diligence review of the Property. Prior to any entry on to the Property by any of Purchaser's Representatives, Purchaser shall deliver to Seller an endorsement to a commercial general liability insurance policy which evidences that such Purchaser's Representative is carrying a commercial general liability insurance policy with a financially responsible insurance company acceptable to Seller, covering the activities of such Purchaser's Representative on or upon the Property. Such endorsement shall evidence that such insurance policy shall have a per occurrence limit of at least One Million and No/100ths Dollars (\$1,000,000.00) and an aggregate limit of at least Three Million and No/100ths Dollars (\$3,000,000.00), shall name Seller as an additional insured, and shall be primary and non-contributing with any other insurance available to Seller.

4.1.5 New Parcel 2 Legal Description. Within twenty (20) days after the Effective Date, Seller, at its sole cost and expense, shall have a licensed land surveyor prepare the New Parcel 2 Legal Description for Parcel 2. Seller shall deliver the New Parcel 2 Legal Description to Purchaser within said twenty (20) day period and Purchaser shall approve or disapprove the legal description prior to the expiration of the Inspection Period.

4.1.6 Seller's Obligations. The performance by Seller of every covenant, condition, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

4.1.7 Condemnation or Casualty. On the date of Close of Escrow, the Property shall not have been damaged or destroyed in any material respect and no condemnation or eminent domain action or proceeding shall be pending or threatened against the Property.

4.1.8 Seller's Representations. The truth and accuracy, in all material respects, of all Seller's representations and warranties in this Agreement and the related documents executed or to be executed by Seller.

4.2 Failure of Conditions Precedent. In the event any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Purchaser disapproves, pursuant to Section 4. , matters for which Purchaser's approval is required, Purchaser may, within five (5) business days either: (i) waive the condition or disapproval and close Escrow in accordance with this Agreement, or (ii) terminate this Agreement by written notice to Seller.

5. Seller's Representations and Warranties. Seller represents and warrants to Purchaser the following representations and warranties. For the purpose of this Agreement, without creating any personal liability on behalf of such individual, usage of "to the best of Seller's knowledge," or words to such effect, shall mean the knowledge of Marvin L. Oates, including constructive knowledge and duty of reasonable inquiry, existing as of the Effective Date. In the event that Purchaser, prior to Close of Escrow, becomes aware, from Seller or otherwise, of any inaccuracy or omission in the disclosures, information, or representations previously provided to Purchaser by Seller or its consultants or agents, which will have a material, adverse impact on Purchaser, the Property or the intended use of the Property, Purchaser, as its sole option and remedy, may either (i) terminate this transaction, thereby waiving any claims or actions that Purchaser may have against Seller as a result of such inaccuracy or omission, or (ii) proceed with the Close of Escrow hereunder, thereby waiving any rights that Purchaser may have against Seller as a result of such inaccuracy or omission. Purchaser agrees that, under no circumstances, shall Purchaser be entitled to purchase the Property hereunder and then bring any claim or action against Seller for damages as a result of such inaccuracy or omission, except if such inaccuracy or omission is based on fraud or intentional misrepresentation by Seller:

5.1 To the best of Seller's knowledge (i) it has the full power and authority to enter into this Agreement and to perform this Agreement; (ii) it is not the subject of any bankruptcy or insolvency proceedings; and (iii) this Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws from time to time in effect which affect the rights of creditors generally or by limitations upon the availability of equitable remedies.

5.2 To the best of Seller's knowledge, Seller is not a "foreign person" as defined in the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder.

5.3 To the best of Seller's knowledge, as of the Close of Escrow no other person or entity shall lawfully be in possession of the Property or have any right of occupancy of the Property, whether pursuant to a lease, license, occupancy agreement or otherwise.

5.4 To the best of Seller's knowledge, except for the rights of Purchaser under this Agreement, Seller has not granted any options or rights of first refusal to purchase the Property

to any person or entity. Conveyance of the rights described herein will not constitute a breach or default under any agreement to which Seller is bound and/or to which the Property is subject.

5.5 To the best of Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could (i) affect Seller's title to the Property, or any portion thereof, (ii) affect the value of the Property, or any portion thereof, or (iii) subject an owner of the Property, or any portion thereof, to liability.

5.6 To the best of Seller's knowledge, there are no uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.

5.7 To the best of Seller's knowledge, Seller has not received written notice that the Property is in violation of any federal, State, or local law, ordinance, regulation, order, decree or judgment.

5.8 To the best of Seller's knowledge, Seller has not received written notice that the Property or any part thereof is not in full compliance with all applicable building, zoning, environmental, and similar laws, statutes, rules, regulations and ordinances and all covenants, conditions and restrictions applicable to the Property.

5.9 To the best of Seller's knowledge, Seller has disclosed to Purchaser all material information concerning the Property to which Seller has possession or control.

5.10 Except as disclosed in the Property Documents and in the Phase I Environmental Site Assessment prepared by Kleinfelder, Inc., for the City of Elk Grove, dated March 1, 2004, to the best of Seller's knowledge, (i) the Property, (ii) the environmental conditions on, under, or about the Property, (iii) the soil conditions of the Property, and (iv) the ground water conditions of the Property are not, as of the Effective Date of this Agreement, and as of the Close of Escrow, in violation of any federal, state or local law, ordinance or regulation relating to Hazardous Materials (as defined herein) or industrial hygiene. The term "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances and other related materials including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws or regulations.

5.11 When Purchaser's appraiser was on the Property, various fifty-five (55) gal. drums containing oily materials and unknown liquid materials and AST's containing lubricant, waste oil, and oil were observed on the Property. To the best of Seller's knowledge, all fifty-five (55) gal. drums and AST's and the contents of each have been removed by Ramos Environmental Company in accordance with all federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances.

6. Purchaser's Representations and Warranties. Purchaser represents and warrants to the best of Purchaser's knowledge that as of the Effective Date and as of the Close of Escrow:

6.1 Purchaser's Authority. Purchaser has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement and no other action by Purchaser is requisite to the valid and binding execution, delivery and performance of this Agreement.

6.2 Enforceability. This Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

6.3 Conflicting Documents. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Purchaser is a party.

6.4 No Side Agreements or Representations. Purchaser represents, warrants and covenants to Seller that Purchaser has entered into this Agreement based upon its rights and intentions to independently inspect the Property.

7. Indemnification.

7.1 From and after the Close of Escrow, Seller shall indemnify, protect, defend and hold harmless Buyer (and Buyer's officials, representatives, agents and employees) against and in respect of any and all claims, demands, damages, liabilities, losses, judgments, assessments, costs and expenses (including reasonable fees and expenses for legal representation (attorneys, paralegals, consultants, etc.), experts' fees and costs and all court costs) of any kind or nature whatsoever, including, but not limited to, the following:

7.1.1 By reason of Seller or Seller's agents, employees, or representatives sole negligence or intentional act, omission, event or liability relating to the Property arising, incurred, or that occurred before the Close of Escrow; or

7.1.2 Based upon or related to a breach of any representation, warranty, or covenant made by Seller in this Agreement, except as provided in Section 5.

7.2 From and after the Close of Escrow, Purchaser shall indemnify, protect, defend and hold harmless Seller (and Seller's officials, representatives, agents and employees) against and in respect of any and all claims, demands, damages, liabilities, losses, judgments, assessments, costs and expenses (including reasonable fees and expenses for legal representation (attorneys, paralegals, consultants, etc.), experts' fees and costs and all court costs) of any kind or nature whatsoever, including, but not limited to, the following:

7.2.1 By reason of Purchaser's or Purchaser's agents, employees, or representatives sole negligence or intentional act, omission, event or liability relating to the Property arising, incurred, or that occurred after the Close of Escrow; or

7.2.2 Based upon or related to a breach of any representation, warranty, or covenant made by Purchaser in this Agreement.

8. Seller's Covenants. Seller agrees as follows:

8.1 Payment of All Obligations. Seller shall have discharged all mechanics' and materialmen's liens arising from labor and materials furnished prior to the Close of Escrow. Seller will discharge all of Seller's obligations and liabilities under the Property Documents arising prior to the Close of Escrow.

8.2 Personal Property. Prior to the Close of Escrow, Seller shall remove all of the Personal Property, excluding personal property owned by third parties and equipment owned by any telephone utility, from the Property.

8.3 Tenant Leases. Seller shall not enter into any tenant lease between Effective Date of this Agreement and the Close of Escrow without Purchaser's prior written approval.

8.4 Litigation. Seller shall immediately notify Purchaser of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, known to Seller which might affect the Property or any interest of Purchaser.

9. Escrow. Seller shall provide Escrow Holder with a copy of this Agreement fully executed within three (3) days after the Effective Date ("**Escrow**"). This Agreement shall, to the extent possible, act as escrow instructions. The parties agree to execute all further escrow instructions required by Escrow Holder, which further instructions shall be consistent with this Agreement, and shall provide that as between the parties, the terms of this Agreement shall prevail if there is any inconsistency. "**Close of Escrow**" is defined to be date of the recordation of the Grant Deed (in the form attached hereto as Exhibit D and made a part hereof) from Seller to Purchaser for the Property. The Close of Escrow shall occur on or before sixty (60) days following the Effective Date or such other date as the parties hereto shall mutually agree in writing.

10. Closing. On or before Close of Escrow, Seller and Purchaser shall deposit with Escrow Holder the following documents and funds and shall close Escrow as follows:

Seller's Deposits. Seller shall deposit with Escrow Holder the following:

10.1.1 Deed. The original executed and acknowledged Grant Deed conveying the Property to Purchaser ("**Grant Deed**");

10.1.2 Non-Foreign Affidavit. The original Nonforeign Affidavit executed by Seller;

10.1.3 Property Documents. Copies of all Property Documents to be assumed by Purchaser, originals if in Sellers possession or control;

10.1.4 Assignment of Contracts. The original Assignment of Contracts;

10.1.5 Certificates of Occupancy. The original certificates of occupancy, if available; and

10.1.6 Additional Documents. Any other documents or funds required by Escrow Holder from Seller to close Escrow in accordance with this Agreement.

10.2 Purchaser's Deposits. On or before the Close of Escrow, Purchaser shall deposit with Escrow Holder the following:

10.2.1 Purchase Price. The Purchase Price in cash or immediately available funds;

10.2.2 Closing Costs. Additional cash in the amount necessary to pay Purchaser's share of closing costs, as set forth in Section 11.2 and

10.2.3 Additional Documents. Any other documents or funds required of Purchaser to close Escrow in accordance with this Agreement.

11. Closing Costs.

11.1 Seller's Costs. Seller shall pay the title insurance premium for the CLTA Owner's Policy in the amount of the Purchase Price; one-half (1/2) of Title Company's escrow fees and closing costs; the County real property transfer taxes and documentary transfer taxes payable upon recordation of the Deed; and any sales, use, and ad valorem taxes connected with the Close of Escrow.

11.2 Purchaser's Costs. Purchaser shall pay one-half (1/2) of Title Company's Escrow fees and closing costs and the cost for any title Endorsement Purchaser may require.

11.3 All other charges and credits with respect to the Property, shall be prorated to the Close of Escrow on the basis of a thirty (30) day month. Because Purchaser is exempt from real estate taxes pursuant to the California Constitution, ad valorem real property taxes on the Property shall be apportioned and paid as provided in California Revenue and Taxation Code Section 5086. If Seller has prepaid any of the ad valorem real property taxes that are cancelled pursuant to Section 5086, Seller shall seek any refunds to which it is entitled from such taxing agencies. Purchaser shall cooperate with Seller in seeking any refunds. Seller shall pay all ad valorem real property taxes up to the date of the Close of Escrow.

11.4 Utility Charges. Seller will cause all utility and water meters to be read on the Close of Escrow and will be responsible for the cost of all utilities and water used prior to that time.

12. Right to Assign. Except as otherwise provided in this Agreement, the parties shall not have the right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law, except as provided in this Section without the other party's prior written approval, which shall not be unreasonably withheld or delayed.

13. Successors and Assigns. All of the rights, benefits, duties, liabilities, and obligations of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns.

14. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile to the number set forth below (provided that, notices given by facsimile shall not be effective unless the receiving party delivers the notice also by one other method permitted under this Section); (c) upon the day of delivery if the notice has been deposited in a authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either Golden State Overnight, FedEx or United Parcel Service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

If to Seller:	O.K. and B 8615 Elder Creek Road Sacramento, California 95828 Attn: Brian Marty, Esquire Telephone: (916) 381-3600 Facsimile: (916) 381-1834
With a copy to:	Trainer Robertson 701 University Avenue, Suite 200 Sacramento, California 95825 Attn: Donna L. Langley, Esquire Telephone: (916) 929-7000 Facsimile: (916) 929-7111
If to Purchaser:	City of Elk Grove Development Services 8400 Laguna Palms Way Elk Grove, CA 95758 Attn: Real Property Manager Telephone: 916-478-3617 Facsimile: 916-691-6411

Any notice to a party which is required to be given to multiple addresses shall only be deemed to have been delivered when all of the notices to that party have been delivered pursuant to this Section. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal. Any notice delivered after 5:00 p.m. (recipient's time) or on a non-business day shall be deemed delivered on the next business day. A party may change or supplement the addresses given above, or designate additional addressees, for purposes of this Section by delivering to the other party written notice in the manner set forth above.

15. Possession. Right to possession of the Property shall transfer to Purchaser at the Close of Escrow.

16. Attorney Fees; Litigation Costs. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs, in addition to any other proper relief. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

17. Destruction. In the event of any damage or other loss to the Property prior to the Close of Escrow that materially and adversely affects Purchaser's intended use of the Property or the value of the Property, excluding any such damage or loss caused by Purchaser, Purchaser may, without liability, terminate this Agreement, if Purchaser elects not to terminate this Agreement, the Purchase Price shall be adjusted to reflect any reduction in value resulting from the damage or loss to the Property.

18. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

19. Construction. The title and headings of the Sections in this Agreement are intended solely for reference and do not modify, explain, or construe any provision of this Agreement. All references to sections, recitals, and the preamble shall, unless otherwise stated, refer to the Sections, Recitals, and Preamble of this Agreement. In construing this Agreement, the singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared the agreement.

20. Integration. This Agreement, all attached exhibits, and all related documents referred to in this Agreement, constitute the entire agreement between the parties. There are no oral or parol agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing executed by the party to be charged.

21. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.

22. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

23. Waivers. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving

party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by Seller and Purchaser.

25. Survival. All of the Purchaser's and Seller's warranties, indemnities, representations, covenants, obligations, undertakings and agreements contained in this Agreement shall survive the Close of Escrow of the Property, and the execution and deliver of this Agreement and of any and all documents or instruments delivered in connection herewith; and no warranty, indemnity, covenant, obligation, undertaking or agreement herein shall be deemed to merge with the Grant Deed for the Property. Notwithstanding the foregoing, the representations and warranties of Purchaser and Seller shall only survive the Close of Escrow for a period of eighteen (18) months.

26. Incorporation of Exhibits. All attached exhibits are incorporated in this Agreement by reference.

27. Brokers. Purchaser warrants to Seller that it is not represented by a real estate broker and that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. Seller warrants to Purchaser that other than Scott Cable, with Buzz Oates Real Estate, no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. Pursuant to separate agreement, Seller is solely responsible for the payment of any commission, finder's fee, or other compensation to Buzz Oates Real Estate directly and Seller shall indemnify, defend, and hold Purchaser harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out any claims by Scott Cable. If any other broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

28. Governing Law. This Agreement shall be governed by and construed in accordance with California law.

29. Days of Week. A "business day," as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day.

30. Condition and Inspection of Property. Notwithstanding any other provision of this Agreement to the contrary, Seller makes no representation or warranty (except as expressly set forth in this Agreement) whatsoever regarding the Property, the physical condition of the Property, its past use, its compliance with laws (including, without limitation, laws governing environmental matters, zoning, and land use), or its suitability for Purchaser's intended use, the Lease, or the tenant or the tenant's financial condition. Seller has not conducted any

investigation regarding the condition of the Property, and the Property is sold AS-IS, WHERE-IS, WITH ALL FAULTS, AND THERE IS NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PROPERTY. Purchaser hereby represents and warrants that Purchaser is relying solely upon, and as of the expiration of the Inspection Period will have conducted its own independent inspection, investigation, and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including, without limitation, any and all matters concerning the condition, use, sale, development or suitability for development of the Property.

31. Property Condition Waiver. Following the Close of Escrow, Purchaser waives its right to recover from Seller and hereby releases Seller from, any and all damages, losses, liabilities, costs or expenses whatsoever (including attorneys' fees and costs) and claims therefor, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or connected with (i) the physical condition of the Property, (ii) the failure of the Building or other improvements and components of the Property to comply with any law or regulation applicable thereto, and (iii) the environmental condition of the Property. The foregoing waiver and release shall exclude only those losses, liabilities, damages, costs or expenses, and claims therefor, arising from or attributable to (x) a material matter actually known to Seller (including constructive notice) and (1) not disclosed to Purchaser and (2) not discovered by Purchaser prior to the Close of Escrow, and (y) any breach by Seller of its express representations or warranties under this Agreement. Notwithstanding anything to the contrary in this Agreement, the waiver set forth in this Section 31. is not a waiver or release of Purchaser's right to recover from contractor's, subcontractors, architects, engineers, and consultants involved in the design and construction of the Improvements on the Property. Except as to such damages, losses, liabilities, costs or expenses, and claims therefor, which are excluded from Purchaser's waiver and release, Purchaser expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

Purchaser's Initials

32. **RESOLUTION OF DISPUTES. DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED BY ARBITRATION PURSUANT TO SECTION 1281 ET. SEQ. OF THE CALIFORNIA CODE OF CIVIL PROCEDURE SUBJECT TO THE FOLLOWING FURTHER PROVISIONS:**

32.1 ARBITRATOR SHALL BE A RETIRED JUDGE WHO HAS SERVED AT LEAST FIVE (5) YEARS IN THE COURTS OF THE STATE;

32.2 THE ARBITRATION SHALL BE BY SINGLE NEUTRAL ARBITRATOR; AND

32.3 PARTIES SHALL HAVE RIGHT OF DISCOVERY AS SET FOR THE IN SECTION 1283.05 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, WHICH IS HEREBY MADE A PART OF THIS AGREEMENT.

32.4 NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 33 DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 33. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION TO NEUTRAL ARBITRATION.

Buyer's Initials

Seller's Initials

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

[SIGNATURES ON FOLLOWING PAGE]

SELLER:

O. K. AND B.,
a California general partnership

By: _____
Marvin L. Oates, as Co-Trustee of The
Marvin L. Oates Trust, General Partner

Date: _____

MARVIN L. OATES, as Co-Trustee of the
Marvin L. Oates Trust

Date: _____

PURCHASER:

CITY OF ELK GROVE, a municipal
corporation

By: _____

Its: _____

Date: _____

RECOMMENDED FOR APPROVAL:

By: _____
Real Property Manager

Date: _____

APPROVED AS TO FORM:

By _____
Anthony Manzanetti, City Attorney

Date: _____

ATTEST:

By: _____
City Clerk
Date: _____:

EXHIBIT A

Parcel 1:

Parcel 9, as shown on the Parcel Map entitled, "Union Industrial Park", recorded in Book 92 of Parcel Maps, at Page 14, records of Sacramento County.

EXCEPTING THEREFROM the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said land or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right of ingress and egress beneath the surface of said land to explore for, extract, mine and remove the same, and to make such use of the said land beneath the surface as is necessary or useful in connection therewith, which use may include lateral or slant drilling, boring, digging or sinking of wells, shafts or tunnels; provided, however, that said grantor, its successors and assigns, shall not use the surface of said land in the exercise of any of said rights and shall not disturb the surface of said land or any improvements thereon, as reserved in the Deeds to Union Carbide Corporation recorded in Book 661230, Pages 330 and 335.

Assessor's Parcel No: 134-0630-013

Parcel 2:

That certain area of land situated in the State of California, County of Sacramento, described as follows:

FROM the Northwest corner of Parcel 12, as shown on the Parcel Map, entitled "Union Industrial Park", recorded in Book 92 of Parcel Maps, at Page 14, North 50°19'22" East a distance of 350.00 feet to the point of beginning.

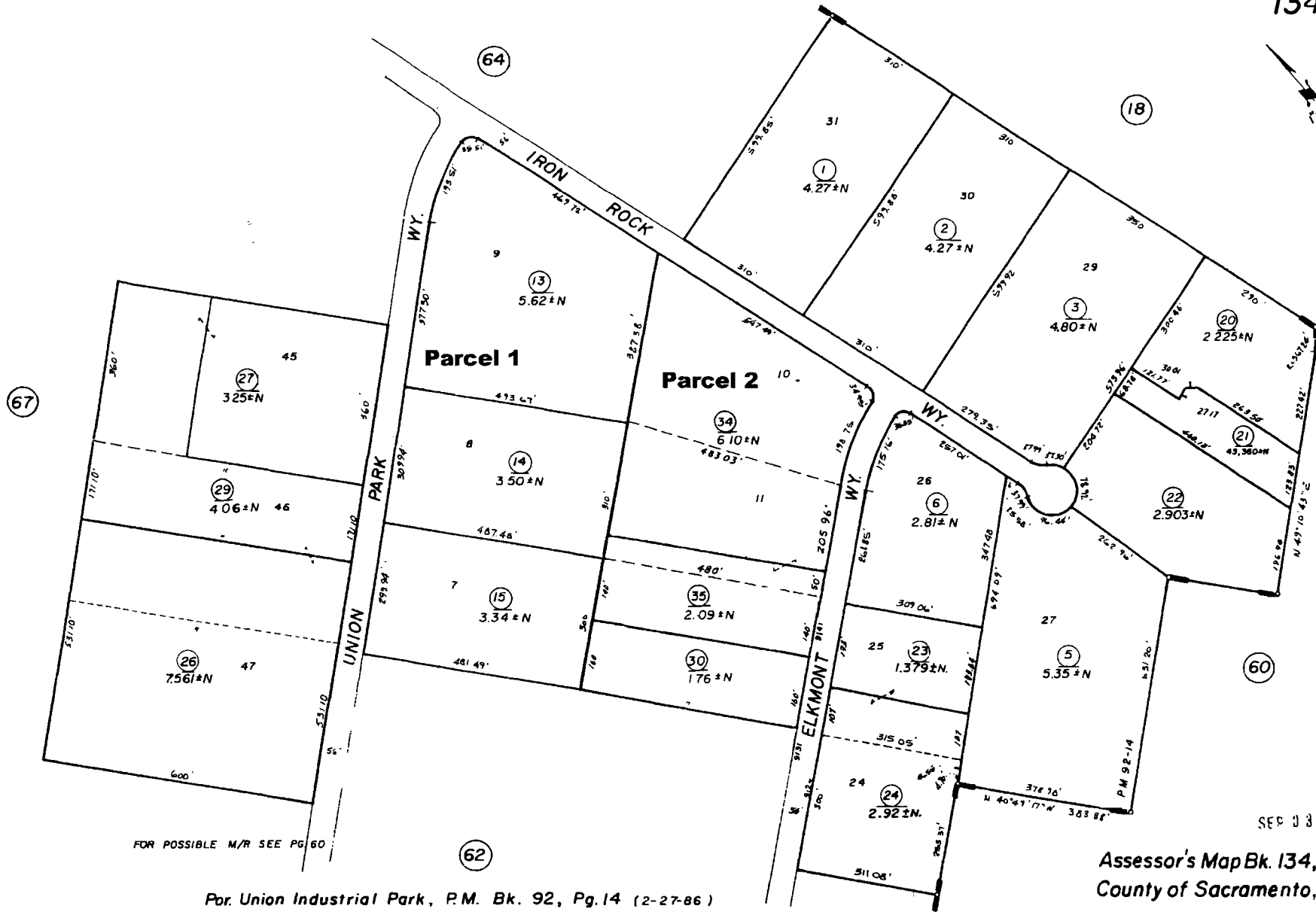
FROM such point of Beginning North 50°19'22" East a distance of 647.38 feet; thence South 16°40'17" East a distance of 547.49 feet, thence along a curve to the right having a radius of 25.00 feet whose chord bears South 27°40'26" West a distance of 34.95 feet; thence along a curve to the left having a radius of 528.00 feet whose chord bears South 61°10'16" West a distance of 198.75 feet; thence South 50°19'22" West a distance of 205.96 feet; thence North 39°40'38" West a distance of 480.00 feet to the Point of Beginning.

Assessor's Parcel No. 134-0630-034

EXHIBIT B

POR. SEC. 7, T.6 N., R.6 E., M.D.B. & M.

134-63



FOR POSSIBLE M/R SEE PG. 60

Por. Union Industrial Park, P.M. Bk. 92, Pg. 14 (2-27-86)

Assessor's Map Bk. 134, Pg. 63
County of Sacramento, Calif.

SEP 03 2002

EXHIBIT C

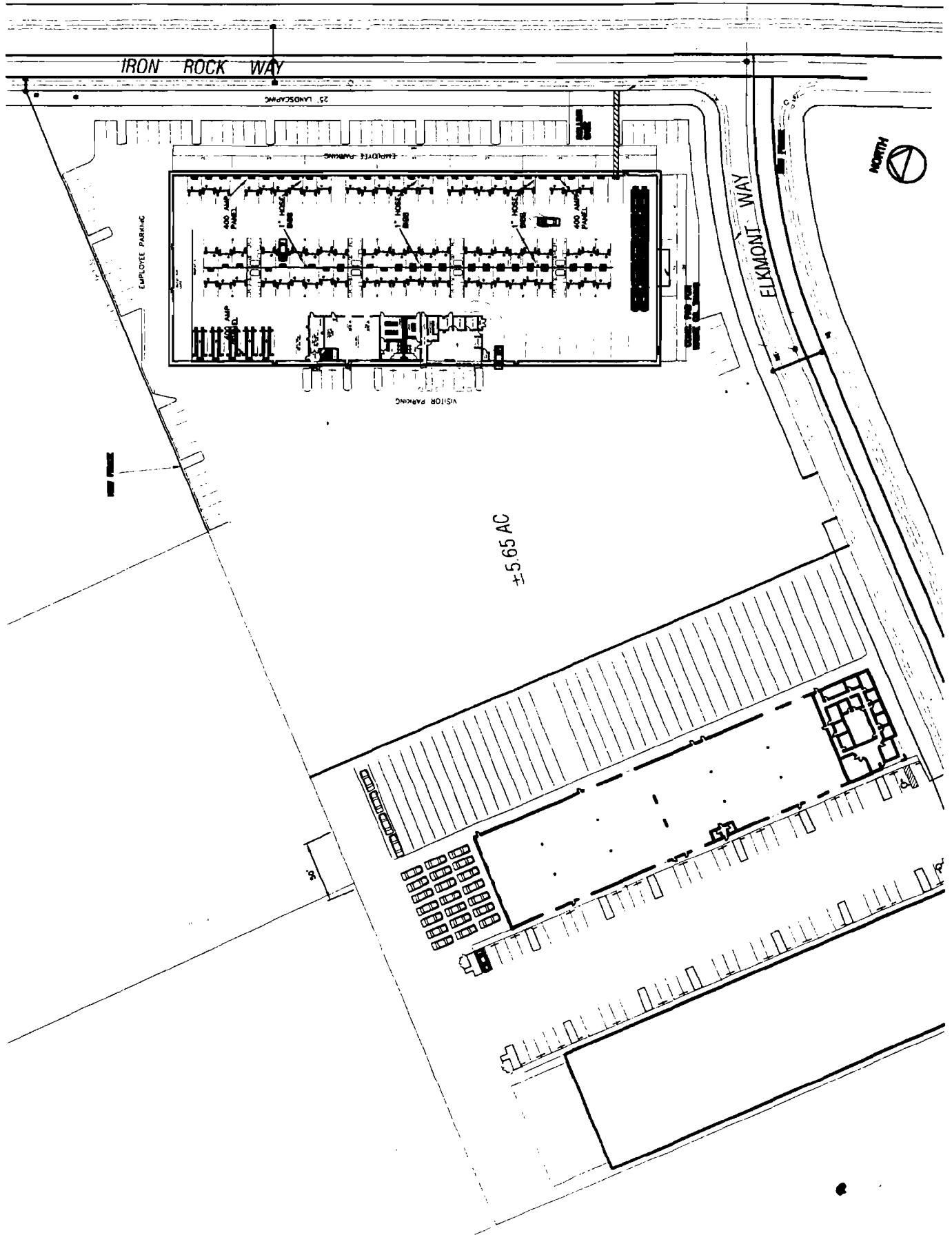


EXHIBIT D

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Elk Grove
8400 Laguna Palms Way
Elk Grove, California 95758

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

FOR A VALUABLE CONSIDERATION, receipt and sufficiency is hereby acknowledged,

O.K. and B., a California general partnership, as to an undivided 2/3rd interest; and Marvin L. Oates, Co-Trustee of the Marvin L. Oates Trust as to an undivided 1/3rd interest, Grantors,

hereby GRANT(s) to the

CITY OF ELK GROVE, a municipal corporation, Grantee,

the following described real property in the City of Elk Grove, County of Sacramento, State of California; as described in Exhibit A and depicted in Exhibit B.

Executed this ____ day of _____, 200__

GRANTOR:

O.K. AND B.,
a California general partnership

By: _____
Marvin L. Oates, as Co-Trustee of The Marvin L. Oates
Trust, General Partner

Date: _____

**MARVIN L. OATES, as Co-Trustee of the Marvin L.
Oates Trust**

Date: _____

ASSIGNMENT OF CONTRACTS

THIS ASSIGNMENT OF CONTRACTS ("Assignment"), dated _____, 2004, is entered into by and between _____ ("Assignor") and _____ ("Assignee").

W I T N E S S E T H :

Assignor, as seller, and Assignee, as buyer, entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions, dated _____, 2004 ("Agreement"), regarding the purchase and sale of the "Property" (as such term is defined in the Agreement).

Under the Agreement, Assignor is obligated to assign to Assignee, all of Assignor's right, title and interest in and to the Contracts (as such terms are defined in the Agreement).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee, all of Assignor's estate, right, title and interest in and to the Contracts, and Assignee hereby accepts such assignment and assumes the obligations thereunder.

Assignor agrees to indemnify, defend and hold Assignee and the Property harmless from and against any and all damages, claims, liabilities expenses (including reasonable attorneys' fees) (collectively, "Claims") arising out of or relating to the Contracts to the extent such Claims relate to events occurring before the Close of Escrow. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any and all Claims arising out of or relating to the Contracts to the extent such Claims relate to events occurring after the Close of Escrow.

In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

This Assignment shall not merge with or limit any provision of the Agreement and the provisions of the Agreement shall govern and control the rights and obligations of Assignor and Assignee with respect to all matters described therein, including, without

limitation, representations and warranties, the apportionment of payment obligations, and indemnification obligations.

This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

ASSIGNEE:

ASSIGNOR:

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-137**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 16th day of June 2004 by the following vote:

AYES 5: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:



A handwritten signature in cursive script, appearing to read "Peggy E. Jackson", written over a horizontal line.

**Peggy E. Jackson, City Clerk
City of Elk Grove, California**